

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

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**FORM 6-K**

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

**DATED: June 1, 2023**

**Commission File No. 001-33811**

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**NAVIOS MARITIME PARTNERS L.P.**

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

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

Form 20-F       Form 40-F

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NAVIOS MARITIME PARTNERS L.P.  
FORM 6-K

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This Report on Form 6-K is hereby incorporated by reference into the Navios Maritime Partners L.P. Registration Statement on Form F-3, File No. 333-271842.

**Operating and Financial Review and Prospects**

The following is a discussion of the financial condition and results of operations for the three month periods ended March 31, 2023 and 2022 of Navios Maritime Partners L.P. (referred to herein as “we”, “us”, “Company” or “Navios Partners”). All of the financial statements have been stated in accordance with generally accepted accounting principles in the United States of America (“U.S. GAAP”). You should read this section together with the consolidated financial statements and the accompanying notes included in Navios Partners’ 2022 Annual Report filed on Form 20-F with the U.S. Securities and Exchange Commission (the “SEC”) on March 24, 2023.

This Report contains and will contain forward-looking statements (as defined in Section 27A of the Securities Act of 1933, as amended, and Section 21E of the Securities Exchange Act of 1934, as amended) concerning future events, TCE rates (as defined herein), and Navios Partners’ expected cash flow generation, future contracted revenues, future distributions and its ability to make distributions going forward, opportunities to reinvest cash accretively in a fleet renewal program or otherwise, potential capital gains, its ability to take advantage of dislocation in the market and Navios Partners’ growth strategy and measures to implement such strategy; including expected vessel acquisitions and entering into further time charters and Navios Partners’ ability to refinance its debt on attractive terms, or at all. Words such as “may,” “expects,” “intends,” “plans,” “believes,” “anticipates,” “hopes,” “estimates,” and variations of such words and similar expressions are intended to identify forward-looking statements. These forward-looking statements are based on the information available to, and the expectations and assumptions deemed reasonable by Navios Partners at the time these statements were made. Although Navios Partners believes that the expectations reflected in such forward-looking statements are reasonable, no assurance can be given that such expectations will prove to have been correct. These statements involve risks and are based upon a number of assumptions and estimates that are inherently subject to significant uncertainties and contingencies, many of which are beyond the control of Navios Partners. Actual results may differ materially from those expressed or implied by such forward-looking statements. Factors that could cause actual results to differ materially include, but are not limited to, risks relating to: global and regional economic and political conditions including global economic activity, demand for seaborne transportation of the products we ship, the ability and willingness of charterers to fulfill their obligations to us and prevailing charter rates, the economic condition of the markets in which we operate, shipyards performing scrubber installations, construction of newbuilding vessels, drydocking and repairs, changing vessel crews and availability of financing, potential disruption of shipping routes due to accidents, wars, sanctions, diseases, pandemics, political events, piracy or acts by terrorists; uncertainty relating to global trade, including prices of seaborne commodities and continuing issues related to seaborne volume and ton miles, our continued ability to enter into long- term time charters, our ability to maximize the use of our vessels, expected demand in the dry and liquid cargo shipping sectors in general and the demand for our drybulk, containerships and tanker vessels in particular, fluctuations in charter rates for drybulk, containerships and tanker vessels, the aging of our fleet and resultant increases in operations costs, the loss of any customer or charter or vessel, the financial condition of our customers, changes in the availability and costs of funding due to conditions in the bank market, capital markets and other factors, fluctuation in interest rates and foreign exchange rates, and the impact of the discontinuance of the London Interbank Offered Rate for US Dollars, or LIBOR, after June 30, 2023, increases in costs and expenses, including but not limited to: crew, insurance, provisions, port expenses, lube oil, bunkers, repairs, maintenance and general and administrative expenses, the expected cost of, and our ability to comply with, governmental regulations and maritime self-regulatory organization standards, as well as standard regulations imposed by our charterers applicable to our business, general domestic and international political conditions, competitive factors in the market in which Navios Partners operates; risks associated with operations outside the United States; and other factors listed from time to time in Navios Partners’ filings with the Securities and Exchange Commission, including its Form 20-F and Form 6-K. Navios Partners expressly disclaims any obligations or undertaking to release publicly any updates or revisions to any forward-looking statements contained herein to reflect any change in Navios Partners’ expectations with respect thereto or any change in events, conditions or circumstances on which any statement is based. Navios Partners makes no prediction or statement about the performance of its common units.

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### **Recent Developments**

#### **Financing arrangements**

In May 2023, Navios Partners completed a \$178.0 million sale and leaseback transaction with an unrelated third party, in order to finance the acquisition of two newbuilding 5,300 TEU containerships and two newbuilding Aframax/LR2 tanker vessels. The sale and leaseback transaction: (i) matures ten years after the drawdown date; and (ii) bears interest at Term Secured Overnight Financing Rate (“SOFR”) plus 210 bps per annum.

In May 2023, Navios Partners entered into a new credit facility with a commercial bank for up to \$30.0 million in order to refinance existing indebtedness of three product tanker vessels. The credit facility: (i) matures five years after the drawdown date; and (ii) bears interest at Term SOFR plus 100 bps per annum for any part of the loan (up to 70%) secured by cash collateral and 225 bps per annum for the remaining loan amount.

In April 2023, Navios Partners entered into an export credit agency-backed facility for a total amount of up to \$165.6 million in order to finance the acquisition of two newbuilding 7,700 TEU containerships. The facility: (i) matures 12 years after the drawdown date; and (ii) bears interest at SOFR plus 150 bps per annum.

In April 2023, Navios Partners entered into a new credit facility with a commercial bank for up to \$65.0 million in order to refinance existing indebtedness of five product tanker vessels. The credit facility: (i) matures five years after the drawdown date; and (ii) bears interest at SOFR plus 200 bps per annum.

#### **Acquisition of vessels**

On April 27, 2023, Navios Partners took delivery of the Navios Sakura, a 2023-built Capesize vessel of 182,169 dwt (see Note 11 – Commitments and Contingencies to the unaudited condensed consolidated financial statements, included elsewhere in this Report).

#### **Sale of vessels**

On May 10, 2023, Navios Partners agreed to sell the Lumen N, a 2008-built LR1 Product Tanker vessel of 63,599 dwt, to an unrelated third party, for a sales price of \$22.3 million. The sale is expected to be completed during the second quarter of 2023.

On April 12, 2023, Navios Partners agreed to sell the Navios Anthos, a 2004-built Panamax vessel of 75,798 dwt, to an unrelated third party, for a sales price of \$11.0 million. The sale was completed on May 3, 2023.

### **Overview**

We are an international owner and operator of dry cargo and tanker vessels, formed on August 7, 2007 under the laws of the Republic of the Marshall Islands. Olympos Maritime Ltd. is our general partner (the “General Partner”).

As of May 29, 2023, there were 30,184,388 outstanding common units and 622,296 general partnership units. Navios Maritime Holdings Inc. (“Navios Holdings”) currently owns an approximately 10.3% ownership interest in Navios Partners and the General Partner currently owns an approximately 2.0% ownership interest in Navios Partners based on all outstanding common units and general partnership units.

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**Fleet**

Navios Partners' fleet consists of 81 drybulk vessels, 47 containerships and 45 tanker vessels, including one newbuilding Capesize chartered-in vessel under bareboat contract expected to be delivered in the second quarter of 2023, six newbuilding Aframax/LR2 vessels expected to be delivered in 2024 and the first half of 2025, two newbuilding MR2 Product Tanker chartered-in vessels under bareboat contracts expected to be delivered in the second half of 2025 and the first half of 2026 and 12 newbuilding Containerships expected to be delivered by the second half of 2023, in 2024 and by the first half of 2025. The fleet excludes one LR1 Product Tanker vessel agreed to be sold.

We generate revenues by charging our customers for the use of our vessels to transport their dry cargo commodities, containers, crude oil and/or refined petroleum products. In general, the vessels in our fleet are chartered-out under time charters, which range in length from one to twelve years at inception. From time to time, we operate vessels in the spot market until the vessels have been chartered out under short-term, medium and long-term charters.

The following table provides summary information about our fleet as of May 24, 2023:

<b>Owned Drybulk Vessels</b>	<b>Type</b>	<b>Built</b>	<b>Capacity (DWT)</b>	<b>Charter-Out Rate<sup>(1)</sup></b>	<b>Index<sup>(2)</sup></b>	<b>Expiration Date<sup>(3)</sup></b>
Navios Christine B	Ultra-Handymax	2009	58,058	—	100.0% average BSI 58 10TC	Jul-23
Navios Celestial	Ultra-Handymax	2009	58,063	\$ 11,400	No	Sep-23
Navios Vega	Ultra-Handymax	2009	58,792	\$ 14,250	No	Jun-23
Navios La Paix	Ultra-Handymax	2014	61,485	—	111.0% average BSI 58 10TC	Jul-24
Navios Hyperion	Panamax	2004	75,707	\$ 19,000	No	Nov-23
Navios Orbiter	Panamax	2004	76,602	—	100.0% average BPI 4TC	Sep-23
Navios Hope	Panamax	2005	75,397	—	100.0% average BPI 4TC	Jun-24
Navios Taurus	Panamax	2005	76,596	—	100.0% average BPI 4TC	Feb-24
					100.0% average BPI 4TC	Jun-23
Navios Sun	Panamax	2005	76,619	\$ 16,844	No	Sep-23
					100.0% average BPI 4TC	Dec-23
Navios Asteriks <sup>(24)</sup>	Panamax	2005	76,801	—	100.0% average BPI 4TC	Sep-23
Navios Helios	Panamax	2005	77,075	—	100.0% average BPI 4TC	Jan-24

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Navios Apollon I	Panamax	2005	87,052	—	105.0% average BPI 4TC	Sep-23
N Amalthia	Panamax	2006	75,318	—	90.0% average BPI 82	Apr-24
Navios Sagittarius <sup>(5)</sup>	Panamax	2006	75,756	—	100.0% average BPI 4TC	Sep-23
Navios Galileo	Panamax	2006	76,596	—	89.0% average BPI 82	Jan-24
N Bonanza	Panamax	2006	76,596	16,405	No	Jun-23
				\$ —	100.0% average BPI 4TC	Apr-24
Navios Harmony	Panamax	2006	82,790	\$ 8,550	No	Jun-23
Copernicus N	Panamax	2010	93,062	\$ 16,721	No	Jun-23
				—	107.0% average BPI 4TC	Sep-23
Unity N	Panamax	2011	79,642	—	100.0% average BPI 4TC	Oct-23
Odysseus N	Panamax	2011	79,642	—	100.0% average BPI 4TC	Nov-23
Rainbow N	Panamax	2011	79,642	—	100.0% average BPI 4TC	Aug-23
Navios Avior	Panamax	2012	81,355	\$ 16,469	No	Jun-23
				—	100.0% average BPI 82	Feb-24
Navios Centaurus	Panamax	2012	81,472	\$ 17,977	No	Jun-23
				—	101.0% average BPI 82	Aug-23
Navios Victory	Panamax	2014	77,095	—	106.75% average BPI 4TC	Oct-23
Navios Alegria <sup>(24)</sup>	Panamax	2016	84,852	\$ 14,197	No	Jul-24
Navios Sphera	Panamax	2016	84,872	\$ 19,268	No	Jun-23
				—	108.0% average BPI 82	Apr-24
Navios Sky <sup>(5)</sup>	Panamax	2015	82,056	\$ 19,541	No	Jun-23
				—	105.0 % average BPI 82	Sep-24
Navios Uranus <sup>(6)</sup>	Panamax	2019	81,821	\$ 15,593	No	Dec-23
Navios Herakles I <sup>(6)</sup>	Panamax	2019	82,036	\$ 18,503	No	Jun-23
				—	115.0% average BPI 82	Aug-23

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Navios Galaxy II <sup>(6)</sup>	Panamax	2020	81,789	\$18,635	—	No	Jun-23
						112.5% average BPI 82	Dec-24
Navios Felicity I <sup>(6)</sup>	Panamax	2020	81,962	\$14,919	—	No	Dec-23
Navios Magellan II <sup>(6)</sup>	Panamax	2020	82,037	\$19,335	—	No	Jun-23
						112.0% average BPI 82	Feb-24
Navios Primavera <sup>(5)</sup>	Panamax	2022	82,003	\$18,473	—	No	Jun-23
						112.0% average BPI 82	Jul-23
Navios Meridian <sup>(5)</sup>	Panamax	2023	82,010	\$19,132	—	No	Jun-23
						115.5% average BPI 82	Jan-24
Navios Beaufiks <sup>(5)</sup>	Capesize	2004	180,310	\$22,563	—	No	Sep-23
Navios Fantastiks <sup>(5)</sup>	Capesize	2005	180,265	\$18,911	—	No	Dec-23
Navios Stellar <sup>(5)</sup>	Capesize	2009	169,001	—	—	99.0% average BCI 5TC	Apr-24
Navios Aurora II	Capesize	2009	169,031	—	—	99.0% average BCI 5TC	May-24
Navios Happiness	Capesize	2009	180,022	\$20,710	—	No	Dec-23
Navios Bonavis <sup>(5)</sup>	Capesize	2009	180,022	\$20,791	—	No	Jun-23
						107.0% average BCI 5TC	Apr-24
Navios Phoenix <sup>(5)</sup>	Capesize	2009	180,242	\$19,288	—	No	Jun-23
						100.0% average BCI 5TC + \$1,905 per day	Jan-24
Navios Sol <sup>(5)</sup>	Capesize	2009	180,274	\$20,378	—	No	Dec-23
						110.0% average BCI 5TC	Apr-24
Navios Lumen <sup>(5)</sup>	Capesize	2009	180,661	—	—	107.0% average BCI 5TC	Apr-24
Navios Pollux <sup>(5)</sup>	Capesize	2009	180,727	—	—	100.0% of pool earnings	Jul-23
Navios Antares <sup>(5)</sup>	Capesize	2010	169,059	—	—	100.0% average BCI 5TC	Jan-24
Navios Symphony	Capesize	2010	178,132	—	—	104.5% average BCI 5TC	Jan-24
Navios Melodia	Capesize	2010	179,132	\$18,702	—	No	Jun-23
						105.0% average BCI 5TC	Apr-24
Navios Luz	Capesize	2010	179,144	—	—	102.0% average BCI 5TC	Jul-23
						106.0% average BCI 5TC	May-24

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Navios Etoile	Capesize	2010	179,234	\$ 20,948	—	No	Jun-23
						105.0% average BCI 5TC	Feb-24
Navios Buena Ventura	Capesize	2010	179,259	\$ 20,349	—	No	Jun-23
						105.0% average BCI 5TC	Feb-24
Navios Bonheur	Capesize	2010	179,259	—	—	103.0% average BCI 5TC	Sep-23
Navios Fulvia	Capesize	2010	179,263	\$ 18,703	—	No	Jun-23
						105.0% average BCI 5TC	Feb-24
Navios Aster	Capesize	2010	179,314	\$ 19,932	—	No	Jun-23
				\$ 22,721	—	No	Sep-23
						108.0% average BCI 5TC	Dec-23
Navios Ace <sup>(5)</sup>	Capesize	2011	179,016	—	—	107.25% average BCI 5TC	Mar-24
Navios Altamira	Capesize	2011	179,165	—	—	107.0% average BCI 5TC	Mar-24
Navios Azimuth	Capesize	2011	179,169	\$ 19,701	—	No	Jun-23
						105.0% average BCI 5TC	Feb-24
Navios Koyo	Capesize	2011	181,415	\$ 22,308	—	No	Jun-23
						118.0% average BCI 5TC	Apr-24
Navios Ray <sup>(5)</sup>	Capesize	2012	179,515	\$ 19,950	—	No	Dec-23
						105.0% average BCI 5TC	Feb-24
Navios Joy	Capesize	2013	181,389	Freight Voyage	—	No	Sep-23
Navios Gem	Capesize	2014	181,336	—	—	128.0% average BCI 5TC	Jan-24
Navios Canary <sup>(24)</sup>	Capesize	2015	180,528	\$ 24,819	—	No	Dec-23
Navios Corali <sup>(24)</sup>	Capesize	2015	181,249	\$ 25,201	—	No	Oct-23
Navios Felix <sup>(24)</sup>	Capesize	2016	181,221	\$ 21,850	—	No	Jun-23
						100.0% average BCI 5TC + \$4,085 per day	Jan-24
Navios Mars	Capesize	2016	181,259	—	—	126.0% average BCI 5TC	Oct-23
Navios Armonia <sup>(6)</sup>	Capesize	2022	182,079	\$ 20,750	—	No	Sep-27
Navios Azalea <sup>(6)</sup>	Capesize	2022	182,064	\$ 19,950	—	No	Nov-27
Navios Astra <sup>(25)</sup>	Capesize	2022	182,392	\$ 21,000	—	No	Sep-27
Navios Altair <sup>(6)</sup>	Capesize	2023	182,115	\$ 19,600	—	No	Nov-27
Navios Sakura <sup>(6)</sup>	Capesize	2023	182,169	\$ 19,550	—	No	Mar-28

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<b>Owned Containerships</b>	<b>Type</b>	<b>Built</b>	<b>Capacity (TEU)</b>	<b>Charter-Out Rate<sup>(1)</sup></b>	<b>Index<sup>(2)</sup></b>	<b>Expiration Date<sup>(3)</sup></b>
				\$ 39,795	No	May-24
Navios Summer <sup>(5)</sup>	Containership	2006	3,450	\$ 30,320	No	May-25
				\$ 20,845	No	May-26
				\$ 34,110	No	Jul-26
Navios Verano <sup>(5)</sup>	Containership	2006	3,450	\$ 18,818	No	Apr-26
Hyundai Hongkong <sup>(7)</sup>	Containership	2006	6,800	\$ 30,119	No	Dec-23
				\$ 21,083	No	Dec-28
Hyundai Singapore <sup>(7)</sup>	Containership	2006	6,800	\$ 30,119	No	Dec-23
				\$ 21,083	No	Dec-28
Hyundai Busan <sup>(7)</sup>	Containership	2006	6,800	\$ 30,119	No	Aug-24
				\$ 21,083	No	Aug-29
Hyundai Shanghai <sup>(7)</sup>	Containership	2006	6,800	\$ 30,119	No	Aug-24
				\$ 21,083	No	Aug-29
Hyundai Tokyo <sup>(7)</sup>	Containership	2006	6,800	\$ 30,119	No	Dec-23
				\$ 21,083	No	Dec-28
Protostar N	Containership	2007	2,741	\$ 46,556	No	Nov-25
Navios Spring <sup>(5)</sup>	Containership	2007	3,450	\$ 58,500	No	May-25
Matson Lanai <sup>(5)</sup>	Containership	2007	4,250	\$ 55,794	No	Jul-25
				\$ 43,875	No	Apr-24
Navios Indigo <sup>(5)</sup>	Containership	2007	4,250	\$ 34,125	No	Apr-25
				\$ 24,375	No	Apr-26
				\$ 41,438	No	Aug-26
				\$ 45,425	No	Dec-23
Navios Vermilion <sup>(5)</sup>	Containership	2007	4,250	\$ 23,972	No	Nov-24
				\$ 41,722	No	Dec-24
Navios Verde <sup>(5)</sup>	Containership	2007	4,250	\$ 21,725	No	Apr-25
				\$ 92,381	No	Jan-24
Navios Amarillo <sup>(5)</sup>	Containership	2007	4,250	\$ 63,956	No	Jan-25
				\$ 28,425	No	Jan-26
				\$ 9,475	No	Jan-28
Navios Azure <sup>(5)</sup>	Containership	2007	4,250	\$ 20,748	No	Apr-26
Navios Domino <sup>(5)</sup>	Containership	2008	4,250	\$ 24,934	No	Aug-23
				\$ 23,453	No	Sep-25
Navios Delight <sup>(5)</sup>	Containership	2008	4,250	\$ 45,425	No	Jan-24
				\$ 45,425	No	Nov-23
Navios Magnolia	Containership	2008	4,730	\$ 23,972	No	Oct-24
				\$ 41,722	No	Nov-24
Navios Jasmine	Containership	2008	4,730	\$ 60,000	No	Apr-25
Navios Chrysalis	Containership	2008	4,730	\$ 23,453	No	Jun-25
				\$ 45,425	No	Oct-23
Navios Nerine	Containership	2008	4,730	\$ 23,972	No	Sep-24
				\$ 41,722	No	Oct-24
Spectrum N	Containership	2009	2,546	\$ 36,538	No	Mar-25



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Navios Devotion <sup>(5)</sup>	Containership	2009	4,250	\$43,875	No	Mar-24
				\$34,125	No	Mar-25
				\$24,375	No	Mar-26
				\$41,438	No	Jul-26
Navios Destiny <sup>(5)</sup>	Containership	2009	4,250	\$45,425	No	Nov-23
				\$23,972	No	Oct-24
				\$41,722	No	Nov-24
Navios Lapis	Containership	2009	4,250	\$20,244	No	Apr-24
Navios Tempo	Containership	2009	4,250	\$44,438	No	Sep-25
Navios Miami	Containership	2009	4,563	\$45,425	No	Nov-23
				\$23,972	No	Oct-24
				\$41,722	No	Nov-24
Navios Dorado	Containership	2010	4,250	\$21,676	No	Jun-24
Zim Baltimore	Containership	2010	4,360	\$43,875	No	Jan-24
				\$34,125	No	Jan-25
				\$24,375	No	Jan-26
				\$41,438	No	May-26
Navios Bahamas	Containership	2010	4,360	\$60,000	No	May-25
				\$42,164	No	Apr-24
Zim Carmel	Containership	2010	4,360	\$32,689	No	Apr-25
				\$23,214	No	Apr-26
				\$39,795	No	Jun-26
Navios Unison <sup>(5)</sup>	Containership	2010	10,000	\$26,276	No	Jun-26
Navios Constellation <sup>(5)</sup>	Containership	2011	10,000	\$26,276	No	Jun-26
Fleur N	Containership	2012	2,782	\$19,750	No	Mar-24
Ete N	Containership	2012	2,782	\$19,750	No	Feb-24

<b>Owned Tanker Vessels</b>	<b>Type</b>	<b>Built</b>	<b>Capacity (DWT)</b>	<b>Charter-Out Rate<sup>(1)</sup></b>	<b>Profit Sharing Arrangements</b>	<b>Expiration Date<sup>(3)</sup></b>
Hector N	MR1 Product Tanker	2008	38,402	\$ 14,319	No	Jun-23
				\$ 15,306	No	Aug-23
Nave Equinox	MR2 Product Tanker	2007	50,922	\$ 20,392 <sup>(8)</sup>	No	Sep-24
Nave Pulsar <sup>(24)</sup>	MR2 Product Tanker	2007	50,922	\$ 27,650	No	Aug-23
Nave Orbit	MR2 Product Tanker	2009	50,470	\$ 15,306	No	Sep-24
Nave Equator <sup>(24)</sup>	MR2 Product Tanker	2009	50,542	\$ 23,651	No	Aug-23
Nave Aquila <sup>(5)</sup>	MR2 Product Tanker	2012	49,991	\$ 27,181	No	Sep-23
Nave Atria <sup>(5)</sup>	MR2 Product Tanker	2012	49,992	\$ 14,887	No	Nov-24
Nave Capella	MR2 Product Tanker	2013	49,995	\$ 22,138	No	Jan-25
Nave Alderamin	MR2 Product Tanker	2013	49,998	\$ 22,138	No	Nov-24
Nave Bellatrix <sup>(5)</sup>	MR2 Product Tanker	2013	49,999	\$ 23,083	No	Aug-23
Nave Orion <sup>(5)</sup>	MR2 Product Tanker	2013	49,999	\$ 22,138	No	Dec-24
Nave Titan	MR2 Product Tanker	2013	49,999	\$ 25,891	No	Feb-25
Bougainville <sup>(24)</sup>	MR2 Product Tanker	2013	50,626	Floating Rate <sup>(9)</sup>	No	Dec-23
Nave Pyxis <sup>(24)</sup>	MR2 Product Tanker	2014	49,998	\$ 25,891	No	Jan-25
Nave Luminosity	MR2 Product Tanker	2014	49,999	\$ 23,004 <sup>(10)</sup>	No	Dec-25
Nave Jupiter	MR2 Product Tanker	2014	49,999	\$ 16,491	No	Aug-23
Nave Velocity	MR2 Product Tanker	2015	49,999	\$ 15,553 <sup>(11)</sup>	No	Oct-24

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Nave Sextans	MR2 Product Tanker	2015	49,999	\$ 16,844	No	May-23
				\$ 23,196 <sup>(10)</sup>	No	May-26
Nave Ariadne	LR1 Product Tanker	2007	74,671	Floating Rate <sup>(12)</sup>	No	Dec-23
Nave Cielo	LR1 Product Tanker	2007	74,671	\$ 16,335	No	Sep-23
				\$ 26,564	No	Nov-23
Lumen N <sup>(4)</sup>	LR1 Product Tanker	2008	63,599	Floating Rate <sup>(12)</sup>	No	Jun-23
Nave Andromeda	LR1 Product Tanker	2011	75,000	\$ 28,394	No	Mar-25
Nave Cetus	LR1 Product Tanker	2012	74,581	\$ 32,094	No	Jul-25
Nave Cassiopeia	LR1 Product Tanker	2012	74,711	\$ 33,150 <sup>(13)</sup>	No	Jan-25
Nave Estella	LR1 Product Tanker	2012	75,000	\$ 28,394	No	Dec-24
Nave Rigel	LR1 Product Tanker	2013	74,673	Floating Rate <sup>(14)</sup>	No	Dec-23
Nave Atropos <sup>(24)</sup>	LR1 Product Tanker	2013	74,695	\$ 21,971	No	Oct-24
Nave Galactic	VLCC	2009	297,168	\$ 45,425	No	Sep-23
Nave Spherical	VLCC	2009	297,188	Floating Rate	Yes <sup>(15)</sup>	Jan-24
Nave Constellation	VLCC	2010	296,988	Freight Voyage	No	Jun-23
Nave Quasar	VLCC	2010	297,376	Freight Voyage	No	May-23
Nave Synergy	VLCC	2010	299,973	Freight Voyage	No	Jun-23
Nave Universe	VLCC	2011	297,066	Freight Voyage	No	Jun-23
Nave Buena Suerte	VLCC	2011	297,491	\$ 47,906	Yes <sup>(16)</sup>	Jun-25

<u>Bareboat-in vessels</u>	<u>Type</u>	<u>Built</u>	<u>Capacity (DWT)</u>	<u>Charter-Out Rate<sup>(1)</sup></u>	<u>Index<sup>(2)</sup></u>	<u>Expiration Date<sup>(3)</sup></u>
Navios Libra	Panamax	2019	82,011	\$ 18,541	No 109.75% average BPI 82	Jun-23
				—		Jun-24
Navios Star	Panamax	2021	81,994	\$ 19,413	No	Jun-23
				—	110.0% average BPI 82	Apr-24
Navios Amitie	Panamax	2021	82,002	\$ 19,731	No	Jun-23
				—	110.0% average BPI 82	Apr-24
Baghdad	VLCC	2020	313,433	\$ 27,816 <sup>(17)</sup>	No	Sep-30
Nave Electron	VLCC	2021	313,239	\$ 47,906	Yes <sup>(16)</sup>	Jan-26
Erbil	VLCC	2021	313,486	\$ 27,816 <sup>(17)</sup>	No	Feb-31
Nave Celeste	VLCC	2022	313,418	Floating rate	Yes <sup>(18)</sup>	Jul-24

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<b>Chartered-in vessels</b>	<b>Type</b>	<b>Built</b>	<b>Capacity (DWT)</b>	<b>Charter-Out Rate<sup>(1)</sup></b>	<b>Index<sup>(2)</sup></b>	<b>Expiration Date<sup>(3)</sup></b>
Navios Lyra	Handysize	2012	34,718	\$ 9,975	No	Oct-23
Navios Venus	Ultra-Handymax	2015	61,339	—	111.0% average BSI 58 10TC	Feb-24
Navios Amber <sup>(19)</sup>	Panamax	2015	80,994	\$ 19,000	No	Apr-24
Navios Coral <sup>(19)</sup>	Panamax	2016	84,904	\$ 19,736	No	Jun-23
Navios Citrine <sup>(19)</sup>	Panamax	2017	81,626	—	108.0% average BPI 82	Feb-24
Navios Dolphin <sup>(19)</sup>	Panamax	2017	81,630	\$ 14,013 <sup>(20)</sup>	122.0% average BPI 4TC	Jun-23
Navios Gemini <sup>(21)</sup>	Panamax	2018	81,704	\$ 14,919	No	Oct-23
Navios Horizon I <sup>(21)</sup>	Panamax	2019	81,692	\$ 18,530	No	Jun-23
				—	No 108.5% average BPI 82	Oct-23

<b>Bareboat Chartered-in Drybulk Vessels to be Delivered</b>	<b>Type</b>	<b>Expected Delivery</b>	<b>Capacity (DWT)</b>	<b>Charter-Out Rate<sup>(1)</sup></b>	<b>Index<sup>(2)</sup></b>	<b>Expiration Date<sup>(3)</sup></b>
TBN I <sup>(6)</sup>	Capesize	Q2 2023	180,000	\$ 19,550	No	Feb-28

<b>Owned Containerships to be Delivered</b>	<b>Type</b>	<b>Expected Delivery</b>	<b>Capacity (TEU)</b>	<b>Charter-Out Rate<sup>(1)</sup></b>	<b>Index<sup>(2)</sup></b>	<b>Expiration Date<sup>(3)</sup></b>
TBN II	Containership	H2 2023	5,300	\$42,900	No	Sep-24
				\$39,000	No	Sep-25
				\$37,050	No	Sep-26
				\$35,100	No	Sep-27
				\$31,200	No	Sep-28
TBN III	Containership	H2 2023	5,300	\$37,050	No	Nov-28
				\$42,900	No	Oct-24
				\$39,000	No	Oct-25
				\$37,050	No	Oct-26
				\$35,100	No	Oct-27
TBN VIII	Containership	H2 2023	5,300	\$31,200	No	Oct-28
				\$37,050	No	Dec-28
				\$42,900	No	Nov-24
				\$39,000	No	Nov-25
				\$37,050	No	Nov-26
				\$35,100	No	Nov-27
				\$31,200	No	Nov-28
				\$37,050	No	Jan-29

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TBN IV	Containership	H1 2024	5,300	\$42,900	No	May-25
				\$39,000	No	May-26
				\$37,050	No	May-27
				\$35,100	No	May-28
				\$31,200	No	May-29
				\$37,050	No	Jul-29
TBN V	Containership	H1 2024	5,300	\$42,900	No	Jun-25
				\$39,000	No	Jun-26
				\$37,050	No	Jun-27
				\$35,100	No	Jun-28
				\$31,200	No	Jun-29
				\$37,050	No	Aug-29
TBN IX	Containership	H1 2024	5,300	\$42,900	No	Mar-25
				\$39,000	No	Mar-26
				\$37,050	No	Mar-27
				\$35,100	No	Mar-28
				\$31,200	No	Mar-29
				\$37,050	No	May-29
TBN VI	Containership	H2 2024	5,300	\$42,900	No	Aug-25
				\$39,000	No	Aug-26
				\$37,050	No	Aug-27
				\$35,100	No	Aug-28
				\$31,200	No	Aug-29
				\$37,050	No	Oct-29
TBN VII	Containership	H2 2024	5,300	\$42,900	No	Nov-25
				\$39,000	No	Nov-26
				\$37,050	No	Nov-27
				\$35,100	No	Nov-28
				\$31,200	No	Nov-29
				\$37,050	No	Jan-30
TBN X	Containership	H2 2024	5,300	\$37,500	No	Feb-30
TBN XI	Containership	H2 2024	5,300	\$37,500	No	Apr-30
TBN XIX	Containership	H1 2025	7,700	\$57,213	No	Jan-28
				\$52,238	No	Jan-31
				\$37,313	No	Jan-33
				\$27,363	No	Jan-35
				\$24,875 <sup>(23)</sup>	No	Jan-37
TBN XVIII	Containership	H2 2024	7,700	\$57,213	No	Dec-27
				\$52,238	No	Dec-30
				\$37,313	No	Dec-32
				\$27,363	No	Dec-34
				\$24,875 <sup>(23)</sup>	No	Dec-36

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Tanker Vessels to be delivered	Type	Expected Delivery	Capacity (DWT)	Charter-Out Rate <sup>(1)</sup>	Index <sup>(2)</sup>	Expiration Date <sup>(3)</sup>
TBN XII	Aframax / LR2	H1 2024	115,000	\$ 26,366 <sup>(22)</sup>	No	Apr-29
TBN XIII	Aframax / LR2	H2 2024	115,000	\$ 26,366 <sup>(22)</sup>	No	Jul-29
TBN XIV	Aframax / LR2	H2 2024	115,000	\$ 25,576 <sup>(22)</sup>	No	Oct-29
TBN XV	Aframax / LR2	H2 2024	115,000	\$ 25,576 <sup>(22)</sup>	No	Dec-29
TBN XVI	Aframax / LR2	H1 2025	115,000	\$ 27,798 <sup>(22)</sup>	No	Mar-30
TBN XVII	Aframax / LR2	H1 2025	115,000	\$ 27,798 <sup>(22)</sup>	No	May-30
TBN XX <sup>(6)</sup>	MR2 Product Tanker	H2 2025	52,000	—	—	—
TBN XXI <sup>(6)</sup>	MR2 Product Tanker	H1 2026	52,000	—	—	—

- (1) Daily charter-out rate per day, net of commissions.
- (2) Index rates exclude commissions.
- (3) Estimated dates assuming the midpoint or Company's estimate of the redelivery period by charterers.
- (4) Vessel agreed to be sold.
- (5) The vessel is subject to a sale and leaseback transaction with a purchase obligation at the end of the lease term.
- (6) The vessel is subject to a bareboat contract with a purchase option at the end of the contract.
- (7) Includes optional years (Navios Partners' option) after 2023.
- (8) The premium for when the vessel is trading on ice or follow ice breaker is \$1,481 per day.
- (9) Rate based on Scorpio MR pool earnings.
- (10) Charterer's option to extend the charter for one year at \$27,913 net per day.
- (11) Charterer's option to extend the charter for one year at \$16,540 net per day plus one year at \$17,528 net per day.
- (12) Rate based on Penfield pool earnings.
- (13) Charterer's option to extend the charter for one year at \$40,950 net per day.
- (14) Rate based on LR8 pool earnings.
- (15) Contract provides for TD3C-TCE index plus \$1,463 premium.
- (16) Profit sharing arrangement of 35% above \$54,388, 40% above \$59,388 and 50% above \$69,388.
- (17) Charterer's option to extend the bareboat charter for five years at \$29,751 net per day.
- (18) Bareboat charter based on adjusted TD3C-WS with floor \$22,572 and collar at \$29,700.
- (19) The vessel is subject to a charter-in agreement with a purchase option at the end of the agreement, classified as a finance lease.
- (20) Charterer's option to extend charter for one year at \$15,200.
- (21) Purchase option in the form of the right of first refusal and profit share on sale of vessel.
- (22) Charterer has the option to extend for five further one-year options at rates increasing by \$1,234 net per day each year.
- (23) Charterer's option to extend charter for two years at \$24,875 net per day.
- (24) The vessel is subject to a sale and leaseback transaction with a purchase option at the end of the lease term.
- (25) The vessel is subject to a bareboat contract with a purchase obligation at the end of the contract.

### Our Charters

We provide seaborne shipping services under short, medium, and long-term time charters, bareboat charters and voyage charters with customers that we believe are creditworthy. For the three month period ended March 31, 2023, no customer accounted for 10% or more of our total revenues. For the three month period ended March 31, 2022, Cosco represented approximately 10.6% of total revenues. No other customers accounted for 10% or more of total revenues for any of the periods presented.

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Our revenues are driven by the number of vessels in the fleet, the number of days during which the vessels operate and our charter hire rates, which, in turn, are affected by a number of factors, including:

- the duration of the charters;
- the level of spot and long-term market rates at the time of charters;
- decisions relating to vessel acquisitions and disposals;
- the amount of time spent positioning vessels;
- the amount of time that vessels spend in dry dock undergoing repairs and upgrades;
- the age, condition and specifications of the vessels;
- the aggregate level of supply and demand in the liquid, dry and containerized cargo shipping industry;
- economic conditions, such as the impact of inflationary cost pressures, decreased consumer discretionary spending, fluctuations in foreign currency exchange rates, increasing interest rates, and the possibility of recession or financial market instability;
- armed conflicts, such as the Russian/Ukrainian conflicts; and
- the outbreak of global epidemics or pandemics such as coronavirus (COVID-19).

Time charters are available for varying periods, ranging from a single trip (spot charter) to long-term which may be many years. In general, a long-term time charter assures the vessel owner of a consistent stream of global revenue. Operating the vessel in the spot market affords the owner greater spot market opportunity, which may result in high rates when vessels are in high demand or low rates when vessel availability exceeds demand. We intend to operate our vessels in the medium to long-term charter market. Vessel charter rates are affected by world economics, international events, weather conditions, strikes, governmental policies, supply and demand and many other factors that might be beyond our control. Please read “Risk Factors” in our 2022 Annual Report on Form 20-F for a discussion of certain risks inherent in our business.

We could lose a customer or the benefits of a charter if:

- the customer fails to make charter payments because of its financial inability, disagreements with us or otherwise;
- the customer exercises certain rights to terminate the charter of the vessel;
- the customer terminates the charter because we fail to deliver the vessel within a fixed period of time, the vessel is lost or damaged beyond repair, there are serious deficiencies in the vessel or prolonged periods of off-hire, or we default under the charter; or
- a prolonged force majeure event affecting the customer, including damage to or destruction of relevant production facilities, war or political unrest prevents us from performing services for that customer.

Under some of our time charters, either party may terminate the charter contract in the event of war in specified countries or in locations that would significantly disrupt the free trade of the vessel. Some of the time charters covering our vessels require us to return to the charterer, upon the loss of the vessel, all advances paid by the charterer but not earned by us.

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### Trends and Factors Affecting Our Future Results of Operations

We believe the principal factors that will affect our future results of operations are the economic, regulatory, political and governmental conditions that affect the shipping industry generally and that affect conditions in countries and markets in which our vessels engage in business. Please read “Risk Factors” in our 2022 Annual Report on Form 20-F for a discussion of certain risks inherent in our business.

### Results of Operations

#### Overview

The following table reflects certain key indicators of Navios Partners’ fleet performance for the three month periods ended March 31, 2023 and 2022.

	<b>Three Month Period Ended March 31, 2023 (unaudited)</b>	<b>Three Month Period Ended March 31, 2022 (unaudited)</b>
Available Days <sup>(1)</sup>	13,908	11,228
Operating Days <sup>(2)</sup>	13,749	11,072
Fleet Utilization <sup>(3)</sup>	98.9%	98.6%
Time Charter Equivalent rate (per day) <sup>(4)</sup>	\$ 20,811	\$ 20,386
Vessels operating at end of periods	156	128

- (1) Available days for the fleet represent total calendar days the vessels were in Navios Partners’ possession for the relevant period after subtracting off-hire days associated with scheduled repairs, dry dockings or special surveys and ballast days relating to voyages. The shipping industry uses available days to measure the number of days in a relevant period during which a vessel is capable of generating revenues.
- (2) Operating days are the number of available days in the relevant period less the aggregate number of days that the vessels are off-hire due to any reason, including unforeseen circumstances. The shipping industry uses operating days to measure the aggregate number of days in a relevant period during which vessels actually generate revenues.
- (3) Fleet utilization is the percentage of time that Navios Partners’ vessels were available for generating revenue, and is determined by dividing the number of operating days during a relevant period by the number of available days during that period. The shipping industry uses fleet utilization to measure efficiency in finding employment for vessels and minimizing the amount of days that its vessels are off-hire for reasons other than scheduled repairs, dry dockings or special surveys.
- (4) Time Charter Equivalent rate (“TCE rate”) is defined as voyage, time charter revenues and charter-out revenues under bareboat contracts (grossed up by currently applicable fixed vessel operating expenses) less voyage expenses during a period divided by the number of available days during the period. The TCE rate per day is a standard shipping industry performance measure used primarily to present the actual daily earnings generated by vessels on various types of charter contracts for the number of available days of the fleet.

**FINANCIAL HIGHLIGHTS**

The following table presents consolidated revenue and expense information for the three month periods ended March 31, 2023 and 2022.

	Three Month Period Ended March 31, 2023 (unaudited)	Three Month Period Ended March 31, 2022 (unaudited)
Time charter and voyage revenues	\$ 309,522	\$ 236,617
Time charter and voyage expenses	(39,763)	(17,143)
Direct vessel expenses	(14,440)	(11,193)
Vessel operating expenses (entirely through related parties transactions)	(83,216)	(73,172)
General and administrative expenses	(19,499)	(13,916)
Depreciation and amortization of intangible assets	(54,218)	(42,866)
Amortization of unfavorable lease terms	7,588	21,839
Gain on sale of vessels, net	33,450	—
Interest expense and finance cost, net	(35,524)	(13,227)
Interest income	1,617	2
Other expense, net	(6,352)	(1,276)
<b>Net income</b>	<b>\$ 99,165</b>	<b>\$ 85,665</b>
<b>EBITDA<sup>(1)</sup></b>	<b>\$ 188,836</b>	<b>\$ 126,118</b>
<b>Adjusted EBITDA<sup>(1)</sup></b>	<b>\$ 155,386</b>	<b>\$ 126,118</b>
<b>Operating Surplus<sup>(1)</sup></b>	<b>\$ 65,748</b>	<b>\$ 55,825</b>

- (1) EBITDA, Adjusted EBITDA and Operating Surplus are non-GAAP financial measures. See “Reconciliation of EBITDA and Adjusted EBITDA to Net Cash from Operating Activities, EBITDA and Operating Surplus” for a description of EBITDA, Adjusted EBITDA and Operating Surplus and a reconciliation of EBITDA, Adjusted EBITDA and Operating Surplus to the most comparable measure under U.S. GAAP.

**Period over Period Comparisons**

**For the Three Month Period ended March 31, 2023 compared to the Three Month Period ended March 31, 2022**

**Time charter and voyage revenues:** Time charter and voyage revenues of Navios Partners for the three month period ended March 31, 2023 increased by \$72.9 million, or 30.8%, to \$309.5 million, as compared to \$236.6 million for the same period in 2022. The increase in revenue was mainly attributable to the increase in the size of our fleet and to the increase in the TCE rate. For the three month periods ended March 31, 2023 and 2022, the time charter and voyage revenues were negatively affected by \$13.0 million and \$4.8 million, respectively, relating to the straight-line effect of the containerships and tankers charters with de-escalating rates. For the three month period ended March 31, 2023, the TCE rate increased by 2.1% to \$20,811 per day, as compared to \$20,386 per day for the same period in 2022. The available days of the fleet increased by 23.9% to 13,908 days for the three month period ended March 31, 2023, as compared to 11,228 days for the same period in 2022 mainly due to the acquisition of the 36-vessel drybulk fleet from Navios Holdings and the deliveries of newbuilding and secondhand vessels, partially mitigated by the sale of vessels.



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**Time charter and voyage expenses:** Time charter and voyage expenses for the three month period ended March 31, 2023 increased by \$22.7 million to \$39.8 million, as compared to \$17.1 million for the three month period ended March 31, 2022. The increase was mainly attributable to a: (i) \$9.9 million increase in bunkers expenses arising from the increased number of freight voyages in the first quarter of 2023 (ii) \$9.7 million increase in bareboat and charter-in hire expense of the tanker and drybulk fleet primarily due to the expansion of our fleet; (iii) \$1.1 million increase in brokers' commissions; (iv) \$1.1 million increase in port expenses; and (v) \$0.9 million increase in other voyage expenses.

**Direct vessel expenses:** Direct vessel expenses for the three month period ended March 31, 2023, increased by \$3.2 million to \$14.4 million, as compared to \$11.2 million for the three month period ended March 31, 2022. The increase of \$3.2 million was mainly attributable to the amortization of the deferred drydock and special survey costs due to the increase in the size of our fleet.

**Vessel operating expenses:** Vessel operating expenses for the three month period ended March 31, 2023, increased by approximately \$10.0 million to \$83.2 million, as compared to \$73.2 million for the same period in 2022. The increase was mainly due to the expansion of our fleet and the adjustment of the fixed daily fee in accordance with the management agreements (the "Management Agreements"), partially mitigated by the sale of vessels.

**General and administrative expenses:** General and administrative expenses increased by \$5.6 million to \$19.5 million for the three month period ended March 31, 2023, as compared to \$13.9 million for the three month period ended March 31, 2022. The increase was mainly due to a: (i) \$3.9 million increase in administrative fees paid to the Manager (as defined herein) as per the administrative services agreement (the "Administrative Services Agreement"), mainly due to the expansion of our fleet, partially mitigated by the sale of vessels; and (ii) \$1.7 million increase in professional and legal fees, as well as audit fees and other administrative expenses.

**Depreciation and amortization of intangible assets:** Depreciation and amortization of intangible assets amounted to \$54.2 million for the three month period ended March 31, 2023, as compared to \$42.9 million for the three month period ended March 31, 2022. The increase of \$11.3 million was mainly attributable to a: (i) \$13.6 million increase due to the delivery of the 36-vessel drybulk fleet in Navios Partners' owned fleet; (ii) \$2.1 million increase in depreciation expense due to the delivery of eight vessels during the second half of 2022 and the first quarter of 2023; and (iii) \$0.4 million increase in depreciation expense due to vessel improvements. The above increase was partially mitigated by a: (i) \$2.5 million decrease due to the sale of 15 vessels during the second half of 2022 and the first quarter of 2023; and (ii) \$2.3 million decrease in amortization of favorable lease terms. Depreciation of vessels is calculated using an estimated useful life of 25 years for drybulk and tanker vessels and 30 years for containerships, respectively, from the date the vessel was originally delivered from the shipyard.

**Amortization of unfavorable lease terms:** Amortization of unfavorable lease terms amounted to \$7.6 million and \$21.8 million for the three month periods ended March 31, 2023 and March 31, 2022, respectively, related to the fair value of the time charters with unfavorable lease terms as determined at the acquisition date of Navios Maritime Containers L.P. ("Navios Containers") and at the date of obtaining control of Navios Maritime Acquisition Corporation ("Navios Acquisition").

**Gain on sale of vessels, net:** Gain on sale of vessels amounted to \$33.5 million for the three month period ended March 31, 2023, relating to a gain on sale of eight of our vessels amounted to \$34.1 million, partially mitigated by an impairment loss of one of our vessels that amounted to \$0.6 million (see Note 4 – Vessels, net to the unaudited condensed consolidated financial statements, included elsewhere in this Report). There was no gain on sale of vessels for the three month period ended March 31, 2022.

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**Interest expense and finance cost, net:** Interest expense and finance cost, net for the three month period ended March 31, 2023 increased by \$22.3 million to \$35.5 million, as compared to \$13.2 million for the three month period ended March 31, 2022. The increase was mainly due to: (i) the increase in Navios Partner's weighted average loan balance to \$1,904.6 million for the three month period ended March 31, 2023, as compared to the \$1,352.1 million for the three month period ended March 31, 2022; and (ii) the increase of the weighted average interest rate for the three month period ended March 31, 2023 to 6.96% from 3.70% for the three month period ended March 31, 2022.

**Interest income:** Interest income amounted to \$1.6 million for the three month period ended March 31, 2023, as compared to no interest income for the three month period ended March 31, 2022.

**Other expense, net:** Other expense, net for the three month period ended March 31, 2023 increased by \$5.1 million to \$6.4 million, as compared to \$1.3 million for the three month period ended March 31, 2022, mainly due to the increase in expenses related to claims and foreign exchange differences.

**Net income:** Net income for the three month period ended March 31, 2023 amounted to \$99.2 million as compared to \$85.7 million net income for the three month period ended March 31, 2022. The increase of \$13.5 million was due to the factors discussed above.

### **Off-Balance Sheet Arrangements**

We have no off-balance sheet arrangements that have or are reasonably likely to have, a current or future material effect on our financial condition, changes in financial condition, revenues or expenses, results of operations, liquidity, capital expenditures or capital resources.

### **Liquidity and Capital Resources**

We anticipate that our primary sources of funds for our short-term liquidity needs will be cash flows from our equity offerings, operations, proceeds from assets' sales, long-term bank borrowings and other debt raisings. In addition to distributions on our units, our primary short-term liquidity needs are to fund general working capital requirements, cash reserve requirements including those under our credit facilities and debt service, while our long-term liquidity needs primarily relate to expansion and investment capital expenditures and other maintenance capital expenditures and debt repayment. As of March 31, 2023, Navios Partners' current assets totaled \$318.2 million, while current liabilities totaled \$492.5 million, resulting in a negative working capital position of \$174.3 million. Navios Partners' cash forecast indicates that it will generate sufficient cash through its contracted revenue of \$3.4 billion as of May 24, 2023 and cash proceeds from the sale of vessels (see Note 4 - Vessels, net and Note 15 - Subsequent Events to the unaudited condensed consolidated financial statements included elsewhere in this Report) to make the required principal and interest payments on its indebtedness, provide for the normal working capital requirements of the business for a period of at least 12 months from the date of issuance of our unaudited condensed consolidated financial statements.

Generally, our long-term sources of funds derive from cash from operations, long-term bank borrowings and other debt or equity financings to fund acquisitions and expansion and investment capital expenditures. We cannot assure you that we will be able to secure adequate financing or to obtain additional funds on favorable terms to meet our liquidity needs.

Cash deposits and cash equivalents in excess of amounts covered by government provided insurance are exposed to loss in the event of non-performance by financial institutions. Navios Partners does maintain cash deposits and cash equivalents in excess of government provided insurance limits. Navios Partners also minimizes exposure to credit risk by dealing with a diversified group of major financial institutions.

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The following table presents cash flow information derived from the unaudited condensed Consolidated Statements of Cash Flows of Navios Partners for the three month periods ended March 31, 2023 and 2022.

	<b>Three Month Period Ended March 31, 2023 (unaudited)</b>	<b>Three Month Period Ended March 31, 2022 (unaudited)</b>
Net cash provided by operating activities	\$ 94,516	\$ 5,153
Net cash provided by/ (used in) investing activities	44,232	(21,669)
Net cash used in financing activities	(100,635)	(44,734)
<b>Increase/ (decrease) in cash, cash equivalents and restricted cash</b>	<b>\$ 38,113</b>	<b>\$ (61,250)</b>

### **Cash provided by operating activities for the three month period ended March 31, 2023 as compared to the cash provided by operating activities for the three month period ended March 31, 2022**

Net cash provided by operating activities increased by \$89.3 million to \$94.5 million of cash provided by operating activities for the three month period ended March 31, 2023, as compared to \$5.2 million of cash provided by operating activities for the same period in 2022. In determining net cash provided by operating activities, net income is adjusted for the effects of certain non-cash items as discussed below.

The aggregate adjustments to reconcile net income to net cash provided by operating activities was \$35.9 million of non-cash positive net adjustments for the three month period ended March 31, 2023, which consisted mainly of the following adjustments: (i) \$54.2 million depreciation and amortization of intangible assets; (ii) \$9.1 million non-cash amortization of deferred revenue and straight-line effect of the containerships and tankers charters with de-escalating rates; (iii) \$9.1 million amortization of deferred dry dock and special survey costs; (iv) \$2.6 million amortization of operating lease assets/ liabilities; and (v) \$2.0 million amortization and write-off of deferred finance costs and discount. These adjustments were partially mitigated by: (i) \$33.5 million gain from sale of vessels; and (ii) \$7.6 million amortization of unfavorable lease terms.

The net cash outflow resulting from the change in operating assets and liabilities of \$40.6 million for the three month period ended March 31, 2023 resulted from a: (i) \$73.3 million decrease in amounts due to related parties; (ii) \$12.5 million in payments for dry dock and special survey costs; and (iii) \$4.8 million decrease in accounts payable. This was partially mitigated by: (i) a \$31.5 million decrease in accounts receivable (ii) an \$8.9 million increase in deferred revenue; (iii) a \$7.3 million increase in accrued expenses; (iv) a \$1.9 million decrease in prepaid expenses and other current assets; and (v) a \$0.4 million decrease in amounts due from related parties.

The aggregate adjustments to reconcile net income to net cash provided by operating activities was a \$33.5 million non-cash positive net adjustments for the three month period ended March 31, 2022, which consisted mainly of the following adjustments: (i) \$42.9 million depreciation and amortization of intangible assets; (ii) \$6.2 million amortization of deferred dry dock and special survey costs; (iii) \$5.1 million non-cash amortization of deferred revenue and straight line effect of the containerships charters with de-escalating rates; and (iv) \$1.3 million amortization and write-off of deferred finance costs and discount. These adjustments were partially mitigated by: (i) \$21.8 million amortization of unfavorable lease terms; and (ii) \$0.2 million amortization of operating lease assets/ liabilities.

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The net cash outflow resulting from the change in operating assets and liabilities of \$114.0 million for the three month period ended March 31, 2022 resulted from: (i) a \$64.2 million decrease in amounts due to related parties; (ii) an \$18.5 million increase in amounts due from related parties; (iii) a \$15.4 million increase in accounts receivable; (iv) a \$10.5 million increase in prepaid expenses and other current assets; (v) \$9.4 million in payments for dry dock and special survey costs; and (vi) a \$4.8 million decrease in deferred revenue. This was partially mitigated by a: (i) \$4.9 million increase in accrued expenses; and (ii) \$3.9 million increase in accounts payable.

### **Cash provided by investing activities for the three month period ended March 31, 2023 as compared to the cash used in investing activities for the three month period ended March 31, 2022**

Net cash provided by investing activities for the three month period ended March 31, 2023 amounted to \$44.2 million as compared to \$21.7 million cash used in investing activities for the three month period ended March 31, 2022.

Cash provided by investing activities of \$44.2 million for the three month period ended March 31, 2023 was mainly due to \$157.6 million proceeds related to the sale of eight vessels. This was partially mitigated by: (i) \$62.1 million related to deposits for the acquisition/ option to acquire vessels and capitalized expenses; and (ii) \$51.3 million related to vessels' acquisitions and additions.

Cash used in investing activities of approximately \$21.7 million for the three month period ended March 31, 2022 was mainly due to: (i) \$19.0 million related to deposits for the acquisition/ option to acquire vessels and capitalized expenses; and (ii) \$2.7 million related to vessels' additions.

### **Cash used in financing activities for the three month period ended March 31, 2023 as compared to cash used in financing activities for the three month period ended March 31, 2022**

Net cash used in financing activities increased by approximately \$55.9 million to \$100.6 million outflow for the three month period ended March 31, 2023, as compared to \$44.7 million outflow for the same period in 2022.

Cash used in financing activities of \$100.6 million for the three month period ended March 31, 2023 was mainly due to: (i) \$172.5 million repayments of loans and financial liabilities; (ii) \$2.8 million payments of deferred finance costs related to the new credit facilities and financial liability; and (iii) \$1.5 million payment in total for cash distributions. This was partially mitigated by \$76.2 million proceeds from the new credit facility and sale and leaseback agreement.

Cash used in financing activities of \$44.7 million for the three month period ended March 31, 2022 was mainly due to: (i) \$97.2 million repayments of loans and financial liabilities; (ii) \$1.5 million payment in total for cash distributions; and (iii) \$1.0 million payments of deferred finance costs related to the new credit facilities. This was partially mitigated by \$55.0 million of proceeds from the new credit facility.

**Reconciliation of EBITDA and Adjusted EBITDA to Net Cash from Operating Activities, EBITDA and, Operating Surplus**

	Three Month Period Ended March 31, 2023 (unaudited)	Three Month Period Ended March 31, 2022 (unaudited)
Net cash provided by operating activities	\$ 94,516	\$ 5,153
Net (decrease)/ increase in operating assets	(21,359)	53,956
Net decrease in operating liabilities	62,023	60,013
Net interest cost	33,907	13,225
Amortization and write-off of deferred finance cost	(2,031)	(1,324)
Amortization of operating lease assets/liabilities	(2,558)	211
Non-cash amortization of deferred revenue and straight-line	(9,111)	(5,074)
Stock-based compensation	(1)	(42)
Gain on sale of vessels, net	33,450	—
<b>EBITDA<sup>(1)</sup></b>	<b>\$ 188,836</b>	<b>\$ 126,118</b>
Gain on sale of vessels, net	(33,450)	—
<b>Adjusted EBITDA<sup>(1)</sup></b>	<b>\$ 155,386</b>	<b>\$ 126,118</b>
Cash interest income	1,255	2
Cash interest paid	(34,642)	(11,252)
Maintenance and replacement capital expenditures	(56,251)	(59,043)
<b>Operating Surplus<sup>(2)</sup></b>	<b>\$ 65,748</b>	<b>\$ 55,825</b>

  

	Three Month Period Ended March 31, 2023 (unaudited)	Three Month Period Ended March 31, 2022 (unaudited)
Net cash provided by operating activities	\$ 94,516	\$ 5,153
Net cash provided by/(used in) investing activities	44,232	(21,669)
Net cash used in financing activities	(100,635)	(44,734)

**(1) EBITDA and Adjusted EBITDA**

EBITDA represents net income before interest and finance costs, depreciation and amortization (including intangible accelerated amortization) and income taxes. Adjusted EBITDA represents EBITDA excluding certain items, as described in the table above. Navios Partners uses Adjusted EBITDA as a liquidity measure and reconciles EBITDA and Adjusted EBITDA to net cash provided by operating activities, the most comparable U.S. GAAP liquidity measure. EBITDA in this document is calculated as follows: net cash provided by operating activities adding back, when applicable and as the case may be, the effect of: (i) net increase/ (decrease) in operating assets; (ii) net decrease in operating liabilities; (iii) net interest cost; (iv) amortization and write-off of deferred finance costs and discount; (v) gain on sale of assets; (vi) non-cash amortization of deferred revenue and straight-line effect of the containerships and tankers charters with de-escalating rates; (vii) stock-based compensation expense; and (viii) amortization of operating lease assets/ liabilities. Navios Partners believes that EBITDA and Adjusted EBITDA are each the basis upon which liquidity can be assessed and presents useful information to investors regarding Navios Partners' ability to service and/or incur indebtedness, pay capital expenditures, meet working capital requirements and make cash distributions. Navios Partners also believes that EBITDA and Adjusted EBITDA are used: (i) by potential lenders to evaluate potential transactions; (ii) to evaluate and price potential acquisition candidates; and (iii) by securities analysts, investors and other interested parties in the evaluation of companies in our industry.

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Each of EBITDA and Adjusted EBITDA have limitations as an analytical tool, and should not be considered in isolation or as a substitute for the analysis of Navios Partners' results as reported under U.S. GAAP. Some of these limitations are: (i) EBITDA and Adjusted EBITDA do not reflect changes in, or cash requirements for, working capital needs; and (ii) although depreciation and amortization are non-cash charges, the assets being depreciated and amortized may have to be replaced in the future. EBITDA and Adjusted EBITDA do not reflect any cash requirements for such capital expenditures. Because of these limitations, EBITDA and Adjusted EBITDA should not be considered as a principal indicator of Navios Partners' performance. Furthermore, our calculation of EBITDA and Adjusted EBITDA may not be comparable to that reported by other companies due to differences in methods of calculation.

EBITDA for the three month period ended March 31, 2023 and 2022 was affected by the items described in the table above. Excluding these items, Adjusted EBITDA increased by approximately \$29.3 million to \$155.4 million for the three month period ended March 31, 2023, as compared to \$126.1 million for the same period in 2022. The increase in Adjusted EBITDA was primarily due to a \$72.9 million increase in time charter and voyage revenues. The above increase was partially mitigated by a: (i) \$22.7 million increase in time charter and voyage expenses, mainly due to the increase in (a) bunker expenses arising from the increased number of freight voyages in the first quarter of 2023 and (b) bareboat and charter-in hire expense of the tanker and drybulk fleet primarily due to the expansion of our fleet; (ii) \$10.0 million increase in vessel operating expenses in accordance with our Management Agreements, mainly due to the expansion of our fleet; (iii) \$5.6 million increase in general and administrative expenses in accordance with our Administrative Services Agreement, mainly due to the expansion of our fleet; (iv) \$5.1 million increase in other expenses, net; and (v) \$0.2 million increase in direct vessel expenses (excluding the amortization of deferred drydock, special survey costs and other capitalized items).

### **(2) Operating Surplus**

Navios Partners generated Operating Surplus for the three month period ended March 31, 2023 of \$65.7 million, as compared to \$55.8 million for the three month period ended March 31, 2022. Operating Surplus is a non-GAAP financial measure used by certain investors to assist in evaluating a partnership's ability to make quarterly cash distributions (See "Reconciliation of EBITDA and Adjusted EBITDA to Net Cash from Operating Activities, EBITDA and Operating Surplus" contained herein).

Operating Surplus represents net income adjusted for depreciation and amortization expense, non-cash interest expense, non-cash interest income, estimated maintenance and replacement capital expenditures and one-off items. Maintenance and replacement capital expenditures are those capital expenditures required to maintain over the long term the operating capacity of, or the revenue generated by, Navios Partners' capital assets.

Operating Surplus is a quantitative measure used in the publicly-traded partnership investment community to assist in evaluating a partnership's ability to make quarterly cash distributions. Operating Surplus is not required by accounting principles generally accepted in the United States and should not be considered a substitute for net income, cash flow from operating activities and other operations or cash flow statement data prepared in accordance with accounting principles generally accepted in the United States or as a measure of profitability or liquidity.

### **Capital Expenditures**

Navios Partners finances its capital expenditures with cash flow from operations, equity raisings, long-term bank borrowings and other debt raisings. Capital expenditures for each of the three month periods ended March 31, 2023 and 2022 amounted to \$113.4 million and \$21.7 million, respectively. The reserves for estimated maintenance and replacement capital expenditures for the three month periods ended March 31, 2023 and 2022 were \$56.3 million and \$59.0 million, respectively.

Maintenance for our vessels and expenses related to drydocking expenses are reimbursed at cost by Navios Partners to Navios Shipmanagement Inc., (the "Manager") and Navios Tankers Management Inc. ("Tankers Manager" and together with the Manager, the "Managers") under the Management Agreements.

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### **Maintenance and Replacement Capital Expenditures Reserve**

We estimate that our annual replacement reserve for the year ending December 31, 2023 will be approximately \$225.9 million, for replacing our vessels at the end of their useful lives.

The amount for estimated replacement capital expenditures attributable to future vessel replacement was based on the following assumptions: (i) current market price to purchase a five year old vessel of similar size and specifications; (ii) a 25-year useful life for drybulk and tanker vessels and a 30-year useful life for containerships; and (iii) a relative net investment rate.

The amount for estimated maintenance capital expenditures attributable to future vessel drydocking and special survey was based on certain assumptions including the remaining useful life of the owned vessels of our fleet, market costs of drydocking and special survey and a relative net investment rate.

Our Board of Directors, with the approval of the Conflicts Committee, may determine that one or more of our assumptions should be revised, which could cause our Board of Directors to increase or decrease the amount of estimated maintenance and replacement capital expenditures. The actual cost of replacing the vessels in our fleet will depend on a number of factors, including prevailing market conditions, charter hire rates and the availability and cost of financing at the time of replacement. We may elect to finance some or all of our maintenance and replacement capital expenditures through the issuance of additional common units, which could be dilutive to existing unitholders.

### **Limitations on Cash Distributions and Our Ability to Change Our Cash Distribution Policy**

There is no guarantee that unitholders will receive quarterly distributions from us on the common units on any quarter.

Our ability to make distributions to our unitholders depends on the performance of our subsidiaries and their ability to distribute funds to us. The ability of our subsidiaries to make distributions to us may be restricted by, among other things, the provisions of existing and future indebtedness, applicable partnership and limited liability company laws and other laws and regulations.

See Note 13 – Cash distributions and earnings per unit to the unaudited condensed consolidated financial statements included elsewhere in this Report.

### **Quantitative and Qualitative Disclosures about Market Risks**

#### **Foreign Exchange Risk**

Our functional and reporting currency is the U.S. dollar. We engage in worldwide commerce with a variety of entities. Although our operations may expose us to certain levels of foreign currency risk, our transactions are predominantly U.S. dollar denominated. Transactions in currencies other than U.S. dollars are translated at the exchange rate in effect at the date of each transaction. Differences in exchange rates during the period between the date a transaction denominated in a foreign currency is consummated and the date on which it is either settled or translated, are recognized.

#### **Interest Rate Risk**

Interest rates have increased significantly as central banks in Europe, United States and other developed countries raise interest rates in an effort to reduce the inflation effect. The eventual implications of tighter monetary policy, and potentially higher long-term interest rates may drive a higher cost of capital for our Company.

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Borrowings under our credit facilities and financial liabilities bear interest at a rate based on a premium over U.S. LIBOR or SOFR. Therefore, we are exposed to the risk that our interest expense may increase if interest rates rise. For the three month periods ended March 31, 2023 and 2022, we paid interest on our outstanding debt at a weighted average interest rate of 6.96% and 3.70%, respectively. An 1% increase in LIBOR or SOFR would have increased our interest expense for the three month periods ended March 31, 2023 and 2022 by \$3.7 million and \$3.0 million, respectively.

### **Concentration of Credit Risk**

Financial instruments, which potentially subject us to significant concentrations of credit risk, consist principally of trade accounts receivable. We closely monitor our exposure to customers for credit risk. We have policies in place to ensure that we trade with customers with an appropriate credit history.

For the three month period ended March 31, 2023, no customer accounted for 10% or more of our total revenues. For the three month period ended March 31, 2022, Cosco, represented approximately 10.6% of total revenues. No other customers accounted for 10% or more of total revenues for any of the periods presented.

If we lose a charter, we may be unable to re-deploy the related vessel on terms as favorable to us due to the long-term nature of most charters and the cyclical nature of the industry or we may be forced to charter the vessel on the spot market at then market rates which may be less favorable than the charter that has been terminated. If we are unable to re-deploy a vessel for which the charter has been terminated, we will not receive any revenues from that vessel, but we may be required to pay expenses necessary to maintain the vessel in proper operating condition. If we lose a vessel, any replacement or newbuilding would not generate revenues during its construction acquisition period, and we may be unable to charter any replacement vessel on terms as favorable to us as those of the terminated charter.

Even if we successfully charter our vessels in the future, our charterers may go bankrupt or fail to perform their obligations under the charter agreements, they may delay payments or suspend payments altogether, they may terminate the charter agreements prior to the agreed-upon expiration date or they may attempt to renegotiate the terms of the charters. The permanent loss of a customer, time charter or vessel, or a decline in payments under our charters, could have a material adverse effect on our business, results of operations and financial condition and our ability to make cash distributions in the event we are unable to replace such customer, time charter or vessel. For further details, please read "Risk Factors" in our 2022 Annual Report filed on Form 20-F with the SEC on March 24, 2023.

### **Recent Accounting Pronouncements**

The Company's recent accounting pronouncements are included in the accompanying notes to the unaudited condensed consolidated financial statements included elsewhere in this Report.

### **Critical Accounting Policies**

Our financial statements have been prepared in accordance with U.S. GAAP. The preparation of these financial statements requires us to make estimates in the application of our accounting policies based on the best assumptions, judgments and opinions of management. Actual results may differ from these estimates under different assumptions or conditions.

Critical accounting policies are those that reflect significant judgments or uncertainties, and potentially result in materially different results under different assumptions and conditions. All significant accounting policies are as described in Note 2-Summary of Significant Accounting Policies to the notes to the consolidated financial statements included in the Company's Annual Report on Form 20-F for the year ended December 31, 2022 filed with the SEC on March 24, 2023 and in Note 2-Summary of Significant Accounting Policies included in the accompanying notes to the unaudited condensed consolidated financial statements included elsewhere in this Report.



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**Exhibit List**

- Exhibit No.**
- 99.1 Bareboat Charter and Memorandum of Agreement, dated February 14, 2023, between Glory Ocean Shipping S.A. and Temm Maritime Co., Ltd., as buyers and bareboat owners, and Koufonisi Shipping Corporation, as seller and bareboat charterer, providing for the sale and leaseback of the Navios Felix.\*
- 99.2 Term Loan Facility Agreement dated February 16, 2023, by and among Terpsichore Shipping Corporation, Erato Shipmanagement Corporation, Calliope Shipping Corporation, and Euterpe Shipping Corporation, as borrowers, DNB Bank ASA, as agent, and the Banks and Financial Institutions listed therein.\*
- 99.3 Term Loan Facility Agreement dated April 19, 2023, by and among Folegandros Shipping Corporation, Serifos Shipping Corporation, Sifnos Shipping Corporation, Syros Shipping Corporation and Skiathos Shipping Corporation, as borrowers, Skandinaviska Enskilda Banken AB, as agent, bank, and arranger, and the Banks and Financial Institutions listed therein.\*
- 99.4 Loan Agreement dated April 25, 2023, between Karpathos Shipping Corporation, and Patmos Shipping Corporation, as borrowers, KFW IPEX-Bank GMBH, as facility and security agent, mandated lead arranger, and K-Sure agent, and the Banks and Financial Institutions listed therein.\*
- 99.5 Loan Agreement dated May 2, 2023, between Antipsara Shipping Corporation, Kithira Shipping Corporation, and Thasos Shipping Corporation, as borrowers, Eurobank S.A., as agent, arranger, and security agent, Eurobank Cyprus Ltd., as account bank, and the Banks and Financial Institutions listed therein.\*
- 99.6 Bareboat Charter and Memorandum of Agreement (Form of) dated May 19, 2023, by and between Xiang H145 International Ship Lease Co., Limited, Xiang H142 International Ship Lease Co., Limited, Xiang H143 International Ship Lease Co., Limited, Xiang H144 International Ship Lease Co., Limited, wholly owned subsidiaries of Bank of Communications Financial Leasing Company as buyers and bareboat owners and Polymnia Shipping Corporation, Kleio Shipping Corporation, Astrovalos Shipping Corporation and Gavdos Shipping Corporation as seller and bareboat charterers, providing for the sale and leaseback of Nave Cosmos, Nave Photon, Zim Seagull and Zim Albatross.\*

\* Filed herewith

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**NAVIOS MARITIME PARTNERS L.P.**  
**CONDENSED CONSOLIDATED BALANCE SHEETS**  
(Expressed in thousands of U.S. Dollars except unit data)

	<u>Notes</u>	<u>March 31, 2023</u> <u>(unaudited)</u>	<u>December 31, 2022</u>
<b>ASSETS</b>			
<b>Current assets</b>			
Cash and cash equivalents	3	\$ 197,467	\$ 157,814
Restricted cash	3	15,744	17,284
Accounts receivable, net		43,547	75,030
Prepaid expenses and other current assets		61,463	60,296
<b>Total current assets</b>		<b>318,221</b>	<b>310,424</b>
Vessels, net	4	3,695,272	3,777,329
Deposits for vessels acquisitions	11	265,255	218,663
Other long-term assets	6, 11	33,922	46,122
Deferred dry dock and special survey costs, net		98,739	99,999
Amounts due from related parties	12	39,844	41,403
Intangible assets	5	74,048	78,716
Operating lease assets	14	310,492	323,048
<b>Total non-current assets</b>		<b>4,517,572</b>	<b>4,585,280</b>
<b>Total assets</b>		<b>\$ 4,835,793</b>	<b>\$ 4,895,704</b>
<b>LIABILITIES AND PARTNERS' CAPITAL</b>			
<b>Current liabilities</b>			
Accounts payable		\$ 22,192	\$ 27,117
Accrued expenses		23,373	16,049
Deferred revenue		47,472	38,875
Operating lease liabilities, current portion	14	37,884	39,853
Amounts due to related parties	12	31,454	104,751
Current portion of financial liabilities, net	6	170,056	216,955
Current portion of long-term debt, net	6	160,037	174,140
<b>Total current liabilities</b>		<b>492,468</b>	<b>617,740</b>
Operating lease liabilities, net	14	263,234	271,262
Unfavorable lease terms	5	40,318	47,906
Long-term financial liabilities, net	6	889,705	864,661
Long-term debt, net	6	650,712	689,691
Deferred revenue		51,031	50,138
Other long-term liabilities		7,736	11,343
<b>Total non-current liabilities</b>		<b>1,902,736</b>	<b>1,935,001</b>
<b>Total liabilities</b>		<b>\$ 2,395,204</b>	<b>\$ 2,552,741</b>
<b>Commitments and contingencies</b>	11	—	—
<b>Partners' capital:</b>			
Common Unitholders (30,184,388 units issued and outstanding at each of March 31, 2023 and December 31, 2022)	1, 8	2,401,169	2,305,494
General Partner (622,296 units issued and outstanding at each of March 31, 2023 and December 31, 2022)	1, 8	39,420	37,469
<b>Total partners' capital</b>		<b>2,440,589</b>	<b>2,342,963</b>
<b>Total liabilities and partners' capital</b>		<b>\$ 4,835,793</b>	<b>\$ 4,895,704</b>

See unaudited notes to the condensed consolidated financial statements

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**NAVIOS MARITIME PARTNERS L.P.**  
**CONDENSED CONSOLIDATED STATEMENTS OF OPERATIONS**  
(Expressed in thousands of U.S. Dollars except unit and per unit data)

	Notes	Three Month Period Ended March 31, 2023 (unaudited)	Three Month Period Ended March 31, 2022 (unaudited)
Time charter and voyage revenues	2, 9, 14	\$ 309,522	\$ 236,617
Time charter and voyage expenses	14	(39,763)	(17,143)
Direct vessel expenses	12	(14,440)	(11,193)
Vessel operating expenses (entirely through related parties transactions)	12	(83,216)	(73,172)
General and administrative expenses	12	(19,499)	(13,916)
Depreciation and amortization of intangible assets	4, 5	(54,218)	(42,866)
Amortization of unfavorable lease terms	5	7,588	21,839
Gain on sale of vessels, net	4	33,450	—
Interest expense and finance cost, net	6	(35,524)	(13,227)
Interest income		1,617	2
Other expense, net		(6,352)	(1,276)
<b>Net income</b>		<b>\$ 99,165</b>	<b>\$ 85,665</b>

	Three Month Period Ended March 31, 2023 (unaudited)	Three Month Period Ended March 31, 2022 (unaudited)
<b>Net income</b>		
Common Unitholders	\$ 97,183	\$ 83,952
General Partner	1,982	1,713
<b>Net income</b>	<b>\$ 99,165</b>	<b>\$ 85,665</b>

	Three Month Period Ended March 31, 2023 (unaudited)	Three Month Period Ended March 31, 2022 (unaudited)
<b>Earnings per unit (see Note 13):</b>		
Earnings per common unit, basic	\$ 3.22	\$ 2.78
Earnings per common unit, diluted	\$ 3.22	\$ 2.78

See unaudited notes to the condensed consolidated financial statements

**NAVIOS MARITIME PARTNERS L.P.**  
**CONDENSED CONSOLIDATED STATEMENTS OF CASH FLOWS**  
(Expressed in thousands of U.S. Dollars)

	Notes	Three Month Period Ended March 31, 2023 (unaudited)	Three Month Period Ended March 31, 2022 (unaudited)
<b>OPERATING ACTIVITIES:</b>			
Net income		\$ 99,165	\$ 85,665
<b>Adjustments to reconcile net income to net cash provided by operating activities:</b>			
Depreciation and amortization of intangible assets	4, 5	54,218	42,866
Amortization of unfavorable lease terms	5	(7,588)	(21,839)
Non-cash amortization of deferred revenue and straight line		9,111	5,074
Amortization of operating lease assets/ liabilities	14	2,558	(211)
Amortization and write-off of deferred finance costs and discount		2,031	1,324
Amortization of deferred dry dock and special survey costs		9,134	6,201
Gain on sale of vessel, net	4	(33,450)	—
Stock-based compensation	8	1	42
<b>Changes in operating assets and liabilities:</b>			
Decrease/ (increase) in accounts receivable		31,483	(15,431)
Decrease/ (increase) in prepaid expenses and other current assets	15	1,949	(10,545)
Decrease/ (increase) in amounts due from related parties	12	421	(18,541)
Payments for dry dock and special survey costs		(12,494)	(9,439)
(Decrease)/ increase in accounts payable		(4,924)	4,049
Increase in accrued expenses		7,324	4,946
Increase/ (decrease) in deferred revenue		8,875	(4,804)
Decrease in amounts due to related parties	12	(73,298)	(64,204)
<b>Net cash provided by operating activities</b>		<b>94,516</b>	<b>5,153</b>
<b>INVESTING ACTIVITIES:</b>			
Net cash proceeds from sale of vessels	4	157,655	—
Deposits for acquisition/ option to acquire vessel	11	(62,140)	(19,023)
Acquisition of/ additions to vessels	4,12	(51,283)	(2,646)
<b>Net cash provided by/ (used in) investing activities</b>		<b>44,232</b>	<b>(21,669)</b>
<b>FINANCING ACTIVITIES:</b>			
Cash distributions paid	13	(1,540)	(1,541)
Repayment of long-term debt and financial liabilities	6	(172,542)	(97,167)
Payments of deferred finance costs	6	(2,753)	(1,026)
Proceeds from long-term debt and financial liabilities	6	76,200	55,000
<b>Net cash used in financing activities</b>		<b>(100,635)</b>	<b>(44,734)</b>
<b>Increase/ (decrease) in cash, cash equivalents and restricted cash</b>		<b>38,113</b>	<b>(61,250)</b>
<b>Cash, cash equivalents and restricted cash, beginning of period</b>		<b>175,098</b>	<b>169,446</b>
<b>Cash, cash equivalents and restricted cash, end of period</b>		<b>\$ 213,211</b>	<b>\$ 108,196</b>

See unaudited notes to the condensed consolidated financial statements

**NAVIOS MARITIME PARTNERS L.P.**  
**CONDENSED CONSOLIDATED STATEMENTS OF CASH FLOWS**  
(Expressed in thousands of U.S. Dollars)

	<b>Three Month Period Ended March 31, 2023 (unaudited)</b>	<b>Three Month Period Ended March 31, 2022 (unaudited)</b>
<b>Supplemental disclosures of cash flow information</b>		
Cash interest paid	\$ 34,642	\$ 11,252
<b>Non cash financing activities</b>		
Stock-based compensation	\$ 1	\$ 42
Financial and finance lease liabilities	\$ 68,410	\$ —
<b>Non cash investing activities</b>		
Acquisition of vessels	\$ (90,677)	\$ —

See unaudited notes to the condensed consolidated financial statements

**NAVIOS MARITIME PARTNERS L.P.**  
**CONDENSED CONSOLIDATED STATEMENTS OF CHANGES IN PARTNERS' CAPITAL**  
(Expressed in thousands of U.S. Dollars except unit data)

	Limited Partners				Total Partners' Capital
	General Partner		Common Unitholders		
	Units	Amount	Units	Amount	
<b>Balance, December 31, 2022</b>	<b>622,296</b>	<b>\$37,469</b>	<b>30,184,388</b>	<b>\$2,305,494</b>	<b>\$2,342,963</b>
Cash distribution paid (\$0.05 per unit—see Note 13)	—	(31)	—	(1,509)	(1,540)
Stock based compensation (see Note 8)	—	—	—	1	1
Net income	—	1,982	—	97,183	99,165
<b>Balance, March 31, 2023</b>	<b>622,296</b>	<b>\$39,420</b>	<b>30,184,388</b>	<b>\$2,401,169</b>	<b>\$2,440,589</b>

	Limited Partners				Total Partners' Capital
	General Partner		Common Unitholders		
	Units	Amount	Units	Amount	
<b>Balance, December 31, 2021</b>	<b>622,555</b>	<b>\$26,008</b>	<b>30,197,087</b>	<b>\$1,743,717</b>	<b>\$1,769,725</b>
Cash distribution paid (\$0.05 per unit—see Note 13)	—	(31)	—	(1,510)	(1,541)
Stock based compensation (see Note 8)	—	—	—	42	42
Net income	—	1,713	—	83,952	85,665
<b>Balance, March 31, 2022</b>	<b>622,555</b>	<b>\$27,690</b>	<b>30,197,087</b>	<b>\$1,826,201</b>	<b>\$1,853,891</b>

See unaudited notes to the condensed consolidated financial statements

**NAVIOS MARITIME PARTNERS L.P.**  
**UNAUDITED NOTES TO THE CONDENSED CONSOLIDATED FINANCIAL STATEMENTS**  
(Expressed in thousands of U.S. Dollars except unit and per unit data)

**NOTE 1 – DESCRIPTION OF BUSINESS**

Navios Maritime Partners L.P. (“Navios Partners” or the “Company”), is an international owner and operator of dry cargo and tanker vessels, formed on August 7, 2007 under the laws of the Republic of the Marshall Islands. The Company’s general partner is Olympos Maritime Ltd. (the “General Partner”) (see Note 12 – Transactions with related parties and affiliates).

Navios Partners is engaged in the seaborne transportation services of a wide range of liquid and dry cargo commodities including crude oil, refined petroleum, chemicals, iron ore, coal, grain, fertilizer and also containers, chartering its vessels under short, medium and longer-term charters. The operations of Navios Partners are managed by Navios Shipmanagement Inc., (the “Manager”) and Navios Tankers Management Inc. (“Tankers Manager” and together with the Manager, the “Managers”) which are entities affiliated with the Company’s Chairwoman and Chief Executive Officer (see Note 12 – Transactions with related parties and affiliates).

As of March 31, 2023, there were 30,184,388 outstanding common units and 622,296 general partnership units. As of March 31, 2023, Navios Maritime Holdings Inc. (“Navios Holdings”) owned an approximately 10.3% ownership interest in Navios Partners and the General Partner held an approximately 2.0% ownership interest in Navios Partners based on all outstanding common units and general partnership units.

**NOTE 2 – SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES**

**(a) Basis of presentation:** The accompanying interim condensed consolidated financial statements are unaudited, but, in the opinion of management, reflect all adjustments for a fair statement of Navios Partners’ consolidated balance sheets, statement of partners’ capital, statements of operations and cash flows for the periods presented. The results of operations for the interim periods are not necessarily indicative of results for the full year. The footnotes are condensed as permitted by the requirements for interim financial statements and accordingly, do not include information and disclosures required under United States generally accepted accounting principles (“U.S. GAAP”) for complete financial statements. All such adjustments are deemed to be of a normal recurring nature. These interim financial statements should be read in conjunction with the Company’s consolidated financial statements and notes included in Navios Partners’ Annual Report for the year ended December 31, 2022 filed on Form 20-F on March 24, 2023 with the U.S. Securities and Exchange Commission (“SEC”).

Based on internal forecasts and projections that take into account reasonably possible changes in Company’s trading performance, management believes that the Company has adequate financial resources, including cash from sale of vessels (see Note 4 – Vessels, net and Note 15 – Subsequent Events) to continue in operation and meet its financial commitments, including but not limited to capital expenditures and debt service obligations, for a period of at least twelve months from the date of issuance of these condensed consolidated financial statements. Accordingly, the Company continues to adopt the going concern basis in preparing its financial statements.

Following Russia’s invasion of Ukraine in February 2022 the United States, the European Union, the United Kingdom and other countries have announced sanctions against Russia, and may impose wider sanctions and take other actions in the future. To date, no apparent consequences have been identified on the Company’s business. It should be noted that since the Company employs Ukrainian and Russian seafarers, it may face problems in relation to their employment, repatriation, salary payments and be subject to claims in this regard. Notwithstanding the foregoing, it is possible that these tensions might eventually have an adverse impact on our business, financial condition, results of operations and cash flows.



**NAVIOS MARITIME PARTNERS L.P.**  
**UNAUDITED NOTES TO THE CONDENSED CONSOLIDATED FINANCIAL STATEMENTS**  
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Interest rates have increased significantly as central banks in Europe, United States and other developed countries raise interest rates in an effort to reduce the inflation effect. The eventual implications of tighter monetary policy, and potentially higher long-term interest rates may drive a higher cost of capital for our Company.

**(b) Principles of consolidation:** The accompanying interim condensed consolidated financial statements include Navios Partners' wholly owned subsidiaries incorporated under the laws of the Republic of Marshall Islands, Liberia, Malta, Delaware, Cayman Islands, Hong Kong, British Virgin Islands, Luxemburg and Belgium from their dates of incorporation or from the date of acquiring control or, for chartered-in vessels, from the dates charter-in agreements were in effect. All significant inter-company balances and transactions have been eliminated in Navios Partners' consolidated financial statements.

Navios Partners also consolidates entities that are determined to be variable interest entities ("VIE") as defined in the accounting guidance, if it determines that it is the primary beneficiary. A VIE is defined as a legal entity where either (i) equity interest holders as a group lack the characteristics of a controlling financial interest, including decision making ability and an interest in the entity's residual risks and rewards, (ii) the equity holders have not provided sufficient equity investment to permit the entity to finance its activities without additional subordinated financial support, or (iii) the voting rights of some investors are not proportional to their obligations to absorb the expected losses of the entity, their rights to receive the expected residual returns of the entity, or both and substantially all of the entity's activities either involve or are conducted on behalf of an investor that has disproportionately few voting rights.

**Subsidiaries:** Subsidiaries are those entities in which Navios Partners has an interest of more than one half of the voting rights or otherwise has power to govern the financial and operating policies of the entity.

A discussion of the Company's significant accounting policies can be found in Note 2 to the Company's consolidated financial statements included in the Annual Report filed on Form 20-F on March 24, 2023 with the SEC for the year ended December 31, 2022. There have been no material changes to these policies in the three months ended March 31, 2023.

**(c) Revenue and Expense Recognition:**

*Revenue from time chartering*

Revenues from time chartering and bareboat chartering of vessels are accounted for as operating leases and are thus recognized on a straight line basis as the average lease revenue over the rental periods of such charter agreements, as service is performed. A time charter involves placing a vessel at the charterers' disposal for a period of time during which the charterer uses the vessel in return for the payment of a specified daily hire rate. Short period charters for less than three months are referred to as spot-charters. Charters extending three months to a year are generally referred to as medium-term charters. All other charters are considered long-term. The Company has determined to recognize lease revenue as a combined single lease component for all time charters (operating leases) as the related lease component and non-lease components will have the same timing and pattern of the revenue recognition of the combined single lease component. The performance obligations in a time charter contract are satisfied over term of the contract beginning when the vessel is delivered to the charterer until it is redelivered back to the Company. Under time charters, operating costs such as for crews, maintenance and insurance are typically paid by the owner of the vessel. Revenue from time chartering and bareboat chartering of vessels amounted to \$267,672 and \$221,318 for the three month periods ended March 31, 2023 and 2022, respectively.

**NAVIOS MARITIME PARTNERS L.P.**  
**UNAUDITED NOTES TO THE CONDENSED CONSOLIDATED FINANCIAL STATEMENTS**  
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*Revenue from voyage contracts*

Under a voyage charter, a vessel is provided for the transportation of specific goods between specific ports in return for payment of an agreed upon freight per ton of cargo. Upon adoption of ASC 606, the Company recognizes revenue ratably from port of loading to when the charterer's cargo is discharged as well as defer costs that meet the definition of "costs to fulfill a contract" and relate directly to the contract. Revenue from voyage contracts amounted to \$23,750 and \$6,571 for the three month periods ended March 31, 2023 and 2022, respectively.

*Pooling arrangements*

For vessels operating in pooling arrangements, the Company earns a portion of total revenues generated by the pool, net of expenses incurred by the pool. The amount allocated to each pool participant vessel, including the Company's vessels, is determined in accordance with an agreed-upon formula, which is determined by points awarded to each vessel in the pool based on the vessel's age, design and other performance characteristics. Revenue under pooling arrangements is accounted for as variable rate operating leases on the accrual basis and is recognized when an agreement with the pool exists, price is fixed, service is provided and the collectability is reasonably assured. The allocation of such net revenue may be subject to future adjustments by the pool however, such changes are not expected to be material. The Company recognizes net pool revenue on a monthly and quarterly basis, when the vessel has participated in a pool during the period and the amount of pool revenue can be estimated reliably based on the pool report. Revenue from vessels operating in pooling arrangements amounted to \$18,050 and \$8,666 for the three month periods ended March 31, 2023 and 2022, respectively.

*Revenue from profit-sharing*

Profit-sharing revenues are calculated at an agreed percentage of the excess of the charterer's average daily income (calculated on a quarterly or semi annual basis) over an agreed amount and accounted for on an accrual basis based on provisional amounts and for those contracts that provisional accruals cannot be made due to the nature of the profit sharing elements, these are accounted for on the actual cash settlement or when such revenue becomes determinable. Profit-sharing revenue amounted to \$50 and \$62 for the three month periods ended March 31, 2023 and 2022, respectively.

Revenues are recorded net of address commissions. Address commissions represent a discount provided directly to the charterers based on a fixed percentage of the agreed upon charter or freight rate. Since address commissions represent a discount (sales incentive) on services rendered by the Company and no identifiable benefit is received in exchange for the consideration provided to the charterer, these commissions are presented as a reduction of revenue.

***Recent Accounting Pronouncements:***

These condensed consolidated financial statements should be read in conjunction with the consolidated financial statements and related notes included in Navios Partners' Annual Report on Form 20-F for the year ended December 31, 2022.

**NAVIOS MARITIME PARTNERS L.P.**  
**UNAUDITED NOTES TO THE CONDENSED CONSOLIDATED FINANCIAL STATEMENTS**  
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**NOTE 3 – CASH AND CASH EQUIVALENTS**

	<u>March 31, 2023</u>	<u>December 31, 2022</u>
Cash and cash equivalents	\$ 197,467	\$ 157,814
Restricted cash	15,744	17,284
<b>Total cash and cash equivalents and restricted cash</b>	<b>\$ 213,211</b>	<b>\$ 175,098</b>

As of March 31, 2023 and December 31, 2022, restricted cash amounted to \$15,744 and \$17,284, respectively, and relates to amounts held in retention accounts in order to service debt and interest payments, as required by certain of the Company's credit facilities and financial liabilities.

Cash deposits and cash equivalents in excess of amounts covered by government-provided insurance are exposed to loss in the event of non-performance by financial institutions. Navios Partners does maintain cash deposits and equivalents in excess of government-provided insurance limits. Navios Partners also minimizes exposure to credit risk by dealing with a diversified group of major financial institutions.

**NOTE 4 – VESSELS, NET**

Total Vessels	<u>Cost</u>	<u>Accumulated Depreciation</u>	<u>Net Book Value</u>
<b>Balance December 31, 2022</b>	<b>\$4,292,150</b>	<b>\$ (514,821)</b>	<b>\$3,777,329</b>
Additions/ (Depreciation)	141,960	(49,449)	92,511
Disposals/ Impairment	(186,336)	11,768	(174,568)
<b>Balance March 31, 2023</b>	<b>\$4,247,774</b>	<b>\$ (552,502)</b>	<b>\$3,695,272</b>

The above balances as of March 31, 2023 are analyzed in the following tables:

Owned Vessels	<u>Cost</u>	<u>Accumulated Depreciation</u>	<u>Net Book Value</u>
<b>Balance December 31, 2022</b>	<b>\$3,757,903</b>	<b>\$ (505,943)</b>	<b>\$3,251,960</b>
Additions/ (Depreciation)	96,026	(43,840)	52,186
Disposals/ Impairment	(130,262)	10,677	(119,585)
<b>Balance March 31, 2023</b>	<b>\$3,723,667</b>	<b>\$ (539,106)</b>	<b>\$3,184,561</b>

Right-of-use assets under finance Lease	<u>Cost</u>	<u>Accumulated Depreciation</u>	<u>Net Book Value</u>
<b>Balance December 31, 2022</b>	<b>\$534,247</b>	<b>\$ (8,878)</b>	<b>\$525,369</b>
Additions/ (Depreciation)	45,934	(5,609)	40,325
Transfers to owned vessels	(56,074)	1,091	(54,983)
<b>Balance March 31, 2023</b>	<b>\$524,107</b>	<b>\$ (13,396)</b>	<b>\$510,711</b>

**NAVIOS MARITIME PARTNERS L.P.**  
**UNAUDITED NOTES TO THE CONDENSED CONSOLIDATED FINANCIAL STATEMENTS**  
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Right-of-use asset under finance leases are calculated at an amount equal to the finance liability, increased with the allocated excess value, the initial direct costs and adjusted for the carrying amount of the straight-line effect of liability as well as the favorable and unfavorable lease terms derived from charter-in agreements.

During the three month periods ended March 31, 2023 and 2022, the Company capitalized certain extraordinary fees and costs related to vessels' regulatory requirements, including ballast water treatment system installation, exhaust gas cleaning system installation and scrubber system installation, that amounted to \$7,189 and \$2,646, respectively, and are presented under the caption "Acquisition of/ additions to vessels" in the condensed Consolidated Statements of Cash Flows (see Note 12 – Transactions with related parties and affiliates).

***Acquisition of Vessels***

**2023**

On March 29, 2023, Navios Partners took delivery of the Navios Altair, a 2023-built Capesize vessel of 182,115 dwt, from an unrelated third party, by entering into a 15-year bareboat charter-in agreement which provides for purchase options with de-escalating purchase prices. Navios Partners accounted for the bareboat charter-in agreement as finance lease, and recognized a right-of-use asset at \$45,934 being an amount equal to the initial measurement of the finance lease liability (see Note 6 – Borrowings) increased by the amount of \$2,815, which was prepaid before the lease commencement.

On March 6, 2023, Navios Partners paid an amount of \$42,879 (including \$1,600 related to the scrubber system installation) and acquired from an unrelated third party, the Navios Felix, a 2016-built scrubber-fitted Capesize vessel of 181,221 dwt, which was previously accounted for as a right-of-use asset under finance lease. At the same date, the Company derecognized the right-of-use asset under finance lease and recognized the vessel at an aggregate cost of \$53,232.

On February 5, 2023, Navios Partners took delivery of the Navios Meridian, a 2023-built Panamax vessel of 82,010 dwt, from an unrelated third party, for an acquisition cost of \$35,605.

***Sale of Vessels***

**2023**

On March 3, 2023, Navios Partners sold the Nave Photon, a 2008-built VLCC vessel of 297,395 dwt, to an unrelated third party, for a net sales price of \$52,000.

On February 7, 2023, Navios Partners sold the Navios Prosperity I, a 2007-built Panamax vessel of 75,527 dwt, to an unrelated third party, for a net sales price of \$13,337.

On February 3, 2023, Navios Partners sold the Jupiter N, a 2011-built Post-Panamax vessel of 93,062 dwt, to an unrelated third party, for a net sales price of \$16,096.

On January 26, 2023, Navios Partners sold the Star N, a 2009-built MR1 Product Tanker vessel of 37,836 dwt, to an unrelated third party, for a net sales price of \$17,738.

On January 26, 2023, Navios Partners sold the Navios Amaryllis, a 2008-built Ultra-Handymax vessel of 58,735 dwt, to an unrelated third party, for a net sales price of \$14,798.

**NAVIOS MARITIME PARTNERS L.P.**  
**UNAUDITED NOTES TO THE CONDENSED CONSOLIDATED FINANCIAL STATEMENTS**  
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On January 24, 2023, Navios Partners sold the Nave Polaris, a 2011-built Chemical Tanker vessel of 25,145 dwt, to an unrelated third party, for a net sales price of \$14,909.

On January 17, 2023, Navios Partners sold the Nave Dorado, a 2005-built MR2 Product Tanker vessel of 47,999 dwt, to an unrelated third party, for a net sales price of \$15,313.

On January 9, 2023, Navios Partners sold the Nave Cosmos, a 2010-built Chemical Tanker vessel of 25,130 dwt, to an unrelated third party, for a net sales price of \$13,464.

Following the sale of the above vessels and the committed sale of the Navios Libertas during the three month period ended March 31, 2023 analyzed below, the aggregate amount of \$33,450 (including the aggregate remaining carrying balance of dry-dock and special survey cost of \$4,620), including an impairment loss of \$601 in connection with the committed sale of the Navios Libertas, was presented under the caption "Gain on sale of vessels, net" in the condensed Consolidated Statements of Operations and condensed Consolidated Statements of Cash Flows.

***Vessels agreed to be sold***

On March 17, 2023, Navios Partners agreed to sell the Navios Libertas, a 2007-built Panamax vessel of 75,511 dwt, to an unrelated third party, for a sales price of \$13,800. The sale was completed on May 4, 2023.

On February 6, 2023, Navios Partners agreed to sell the Serenitas N, a 2011-built Ultra-Handymax vessel of 56,644 dwt, to an unrelated third party, for a sales price of \$12,250. The sale was completed on May 16, 2023 (see Note 15 – Subsequent Events).

On January 3, 2023, Navios Partners agreed to sell the Aurora N, a 2008-built LR1 Product Tanker vessel of 63,495 dwt, to an unrelated third party, for a sales price of \$22,500. The sale was completed on April 5, 2023 (see Note 15 – Subsequent Events).

***Vessels impairment loss***

**2023**

During the first quarter of 2023, an impairment loss of \$601 was recognized in connection with the committed sale of the Navios Libertas in May 2023, as the carrying amount of the asset group was not recoverable and exceeded its fair value less costs to sell, as described above. The vessel was subject to an existing time charter with an unrelated charterer and was not immediately available for sale and therefore, did not qualify as an asset held for sale as of March 31, 2023.

**NAVIOS MARITIME PARTNERS L.P.**  
**UNAUDITED NOTES TO THE CONDENSED CONSOLIDATED FINANCIAL STATEMENTS**  
(Expressed in thousands of U.S. Dollars except unit and per unit data)

**NOTE 5 – INTANGIBLE ASSETS AND LIABILITIES**

Intangible assets as of March 31, 2023 and December 31, 2022 consisted of the following:

	<u>Cost</u>	<u>Accumulated Amortization</u>	<u>Net Book Value</u>
<b>Favorable lease terms December 31, 2022</b>	<b>\$211,644</b>	<b>\$ (132,928)</b>	<b>\$78,716</b>
Amortization	—	(4,668)	(4,668)
<b>Favorable lease terms March 31, 2023</b>	<b>\$211,644</b>	<b>\$ (137,596)</b>	<b>\$74,048</b>

Amortization expense of favorable lease terms for each of the periods ended March 31, 2023 and 2022 is presented in the following table:

	<u>Three month Period ended March 31, 2023</u>	<u>Three month Period ended March 31, 2022</u>
Favorable lease terms	\$ (4,668)	\$ (6,865)
<b>Total</b>	<b>\$ (4,668)</b>	<b>\$ (6,865)</b>

The aggregate amortization of the intangible assets for the 12-month periods ending March 31 is estimated to be as follows:

<u>Period</u>	<u>Amount</u>
2024	\$18,156
2025	18,020
2026	12,607
2027	6,665
2028	4,982
2029 and thereafter	13,618
<b>Total</b>	<b>\$74,048</b>

Intangible assets subject to amortization are amortized using straight-line method over their estimated useful lives to their estimated residual value of zero. As of March 31, 2023, the weighted average useful life of the remaining favorable lease terms was 5.4 years.

Intangible liabilities as of March 31, 2023 and December 31, 2022 consisted of the following:

	<u>Cost</u>	<u>Accumulated Amortization</u>	<u>Net Book Value</u>
<b>Unfavorable lease terms December 31, 2022</b>	<b>\$231,407</b>	<b>\$ (183,501)</b>	<b>\$47,906</b>
Amortization	—	(7,588)	(7,588)
<b>Unfavorable lease terms March 31, 2023</b>	<b>\$231,407</b>	<b>\$ (191,089)</b>	<b>\$40,318</b>

Amortization income of unfavorable lease terms for each of the periods ended March 31, 2023 and 2022 is presented in the following table:

	<u>Three month Period ended March 31, 2023</u>	<u>Three month Period ended March 31, 2022</u>
Unfavorable lease terms	\$ 7,588	\$ 21,839
<b>Total</b>	<b>\$ 7,588</b>	<b>\$ 21,839</b>

**NAVIOS MARITIME PARTNERS L.P.**  
**UNAUDITED NOTES TO THE CONDENSED CONSOLIDATED FINANCIAL STATEMENTS**  
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The aggregate amortization of the intangible liabilities for the 12-month periods ending March 31 is estimated to be as follows:

<b>Period</b>	<b>Amount</b>
2024	\$15,470
2025	12,462
2026	11,445
2027	941
2028	—
2029 and thereafter	—
<b>Total</b>	<b><u>\$40,318</u></b>

Intangible liabilities subject to amortization are amortized using straight-line method over their estimated useful lives to their estimated residual value of zero. As of March 31, 2023, the weighted average useful life of the remaining unfavorable lease terms was 3.0 years.

#### **NOTE 6 – BORROWINGS**

Borrowings as of March 31, 2023 and December 31, 2022 consisted of the following:

	<b>March 31, 2023</b>	<b>December 31, 2022</b>
Credit facilities	\$ 821,836	\$ 874,038
Financial liabilities	684,922	695,934
Finance lease liabilities	381,259	389,007
<b>Total borrowings</b>	<b>\$ 1,888,017</b>	<b>\$ 1,958,979</b>
Less: Current portion of long-term borrowings, net	(330,093)	(391,095)
Less: Deferred finance costs, net	(17,507)	(13,532)
<b>Long-term borrowings, net</b>	<b><u>\$ 1,540,417</u></b>	<b><u>\$ 1,554,352</u></b>

As of March 31, 2023, the total borrowings, net of deferred finance costs were \$1,870,510.

#### **Credit Facilities**

**FIRST-CITIZENS BANK & TRUST COMPANY:** On December 21, 2022, Navios Partners entered into a credit facility with First-Citizens Bank & Trust Company of up to \$44,200 in order to refinance the existing indebtedness of three of its tanker vessels and for general corporate purposes. On January 5, 2023, the full amount was drawn. As of March 31, 2023, the total outstanding balance was \$44,200 and is repayable in 20 consecutive quarterly installments of \$1,500 each, with a final balloon installment of \$14,200 to be paid on the last repayment date. The facility matures in the first quarter of 2028 and bears interest at Term Secured Overnight Financing Rate (“SOFR”) plus 195 bps per annum.

**NAVIOS MARITIME PARTNERS L.P.**  
**UNAUDITED NOTES TO THE CONDENSED CONSOLIDATED FINANCIAL STATEMENTS**  
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**Financial Liabilities**

In February 2023, the Company entered into a sale and leaseback agreement of \$32,000 with an unrelated third party, in order to finance the Navios Felix, a 2016-built Capesize vessel of 181,221 dwt. The bareboat charter-in provides for purchase options with de-escalating purchase prices starting on the end of the fourth year. Navios Partners has a purchase option of \$750 to acquire the vessel at the end of the lease term and given the fact that such exercise price is not equal to the fair value of the asset at the end of the lease term, the transaction was determined to be a failed sale. In accordance with ASC 842-40, the Company did not derecognize the respective vessel from its balance sheet and accounted for the amount received under the sale and leaseback agreement as a financial liability. On March 10, 2023, the amount of \$32,000 was drawn. Navios Partners is obliged to make 120 consecutive monthly payments of \$260 each that commenced in March 2023. The sale and leaseback transaction matures in the first quarter of 2033 and bears interest at Libor plus 200 bps per annum. As of March 31, 2023, the outstanding balance under the sale and leaseback agreement was \$31,740.

In January 2022, the Company entered into a sale and leaseback agreement of \$27,440 with an unrelated third party for the Navios Meridian, a newbuilding Panamax vessel of 82,010 dwt. The bareboat charter-in provides for purchase options with de-escalating purchase prices starting on the end of the fourth year. In January 2022, Navios Partners declared its option to purchase the vessel at the end of the tenth year of the bareboat charter-in agreement, preserving the right to exercise the purchase option earlier during the option period. Under ASC 842-40, the transfer of the vessel was determined to be a failed sale. In February 2023, Navios Partners took delivery of the Navios Meridian and recognized an amount of \$27,440 as financial liability in accordance with ASC 842-40. Navios Partners is obliged to make 120 consecutive monthly payments of \$152 each that commenced in February 2023. The sale and leaseback transaction matures in the first quarter of 2033, with a purchase obligation of \$9,147 on the last repayment date and bears interest at Libor plus 180 bps per annum. As of March 31, 2023, the outstanding balance under the sale and leaseback agreement was \$27,135.

**Finance Lease Liabilities**

On March 29, 2023, Navios Partners took delivery of the Navios Altair, a 2023-built Capesize vessel of 182,115 dwt under a 15-year bareboat charter-in agreement. The bareboat charter-in provides for purchase options with de-escalating purchase prices starting on the end of the fourth year. The Company has performed an assessment considering the lease classification criteria under ASC 842 and concluded that the agreement is a finance lease. Consequently, the Company has recognized a finance lease liability based on the net present value of the charter-in payments including the purchase option to acquire the vessel at the end of the lease period, discounted by the Company's incremental borrowing rate of approximately 6.5%. As of March 31, 2023, the outstanding balance was \$41,094 and is repayable in 15 years in consecutive monthly installments up to \$275 each, with a purchase option of \$9,500, assuming that the option will be exercised at the end of the agreement.

The Company recognizes the total interest expense incurred on finance lease liabilities under the caption "Interest expense and finance cost, net" in the condensed Consolidated Statements of Operations. For the three month period ended March 31, 2023, the total interest expense incurred amounted to \$5,165. No interest expense on finance lease liabilities was incurred for the three month period ended March 31, 2022. As of March 31, 2023, payments related to the finance lease liabilities amounted to \$5,688 and are presented under the caption "Repayment of long-term debt and financial liabilities" in the condensed Consolidated Statements of Cash Flows.



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**Credit Facilities and Financial Liabilities**

The credit facilities and certain financial liabilities contain a number of restrictive covenants that prohibit or limit Navios Partners from, among other things: incurring or guaranteeing indebtedness; entering into affiliate transactions; charging, pledging or encumbering the vessels; changing the flag, class, management or ownership of Navios Partners' vessels; changing the commercial and technical management of Navios Partners' vessels; selling or changing the beneficial ownership or control of Navios Partners' vessels; not maintaining Navios Holdings', Angeliki Frangou's or their affiliates' ownership in Navios Partners of at least 5.0%; and subordinating the obligations under the credit facilities to any general and administrative costs related to the vessels, including the fixed daily fee payable under the Management Agreements (defined herein).

As of March 31, 2023 and December 31, 2022, the security deposits under certain sale and leaseback agreements were \$5,535 and \$8,650, respectively, and are presented under the caption "Other long-term assets" in the condensed Consolidated Balance Sheets.

The Company's credit facilities and certain financial liabilities also require compliance with a number of financial covenants, including: (i) maintain a required security ranging over 105% to 140%; (ii) minimum free consolidated liquidity in an amount equal to \$500 per owned vessel and a number of vessels as defined in the Company's credit facilities and financial liabilities; (iii) maintain a ratio of EBITDA to interest expense of at least 2.00:1.00; (iv) maintain a ratio of total liabilities or total debt to total assets (as defined in the Company's credit facilities and financial liabilities) ranging from less than 0.75 to 0.80; and (v) maintain a minimum net worth ranging from \$30,000 to \$135,000.

It is an event of default under the credit facilities and certain financial liabilities if such covenants are not complied with in accordance with the terms and subject to the prepayments or cure provisions of the facilities.

As of March 31, 2023, Navios Partners was in compliance with the financial covenants and/or the prepayments and/or the cure provisions, as applicable, in each of its credit facilities and certain financial liabilities.

The annualized weighted average interest rates of the Company's total borrowings for the three month periods ended March 31, 2023 and 2022 were 6.96% and 3.70%, respectively.

The maturity table below reflects the principal payments for the next five 12-month periods ending March 31 and thereafter of all borrowings of Navios Partners outstanding as of March 31, 2023, based on the repayment schedules of the respective credit facilities, financial liabilities and finance lease liabilities.

<b>Period</b>	<b>Amount</b>
2024	\$ 336,494
2025	425,638
2026	431,665
2027	231,304
2028	138,902
2029 and thereafter	324,014
<b>Total</b>	<b><u>\$1,888,017</u></b>

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**NOTE 7 – FAIR VALUE OF FINANCIAL INSTRUMENTS**

The carrying value amounts of many of Navios Partners' financial instruments, including accounts receivable and accounts payable approximate their fair value due primarily to the short-term maturity of the related instruments.

**Fair value of financial instruments**

The following methods and assumptions were used to estimate the fair value of each class of financial instrument:

**Cash and cash equivalents:** The carrying amounts reported in the condensed Consolidated Balance Sheets for interest bearing deposits approximate their fair value because of the short maturity of these deposits.

**Restricted Cash:** The carrying amounts reported in the condensed Consolidated Balance Sheets for interest bearing deposits approximate their fair value because of the short maturity of these deposits.

**Amounts due from related parties, long-term:** The carrying amount of due from related parties long-term reported in the condensed Consolidated Balance Sheets approximates its fair value.

**Amounts due to related parties, short-term:** The carrying amount of due to related parties, short-term reported in the condensed Consolidated Balance Sheets approximates its fair value due to the short-term nature of these payables.

**Credit facilities and financial liabilities, including current portion, net:** The book value has been adjusted to reflect the net presentation of deferred finance costs. The outstanding balance of the floating rate credit facilities and financial liabilities continues to approximate its fair value, excluding the effect of any deferred finance costs.

The estimated fair values of the Navios Partners' financial instruments are as follows:

	<u>March 31, 2023</u>		<u>December 31, 2022</u>	
	<u>Book Value</u>	<u>Fair Value</u>	<u>Book Value</u>	<u>Fair Value</u>
Cash and cash equivalents	\$ 197,467	\$ 197,467	\$ 157,814	\$ 157,814
Restricted cash	\$ 15,744	\$ 15,744	\$ 17,284	\$ 17,284
Amounts due from related parties, long-term	\$ 39,844	\$ 39,844	\$ 41,403	\$ 41,403
Amounts due to related parties, short-term	\$ (31,454)	\$ (31,454)	\$ (104,751)	\$ (104,751)
Credit facilities and financial liabilities, including current portion, net	\$(1,489,251)	\$(1,506,758)	\$(1,556,440)	\$(1,569,972)

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**Fair Value Measurements**

The estimated fair value of the Company's financial instruments that are not measured at fair value on a recurring basis, categorized based upon the fair value hierarchy, are as follows:

Level I: Inputs are unadjusted, quoted prices for identical assets or liabilities in active markets that the Company has the ability to access. Valuation of these items does not entail a significant amount of judgment.

Level II: Inputs other than quoted prices included in Level I that are observable for the asset or liability through corroboration with market data at the measurement date.

Level III: Inputs that are unobservable. The Company did not use any Level III inputs as of March 31, 2023 and December 31, 2022.

	<b>Fair Value Measurements as at March 31, 2023</b>			
	<b>Total</b>	<b>Level I</b>	<b>Level II</b>	<b>Level III</b>
Cash and cash equivalents	\$ 197,467	\$197,467	\$ —	\$ —
Restricted cash	\$ 15,744	\$ 15,744	\$ —	\$ —
Amounts due from related parties, long-term	\$ 39,844	\$ —	\$ 39,844	\$ —
Amounts due to related parties, short-term	\$ (31,454)	\$ —	\$ (31,454)	\$ —
Credit facilities and financial liabilities, net <sup>(1)</sup>	\$(1,506,758)	\$ —	\$(1,506,758)	\$ —

	<b>Fair Value Measurements as at December 31, 2022</b>			
	<b>Total</b>	<b>Level I</b>	<b>Level II</b>	<b>Level III</b>
Cash and cash equivalents	\$ 157,814	\$157,814	\$ —	\$ —
Restricted cash	\$ 17,284	\$ 17,284	\$ —	\$ —
Amounts due from related parties, long-term	\$ 41,403	\$ —	\$ 41,403	\$ —
Amounts due to related parties, short-term	\$ (104,751)	\$ —	\$ (104,751)	\$ —
Credit facilities and financial liabilities, net <sup>(1)</sup>	\$(1,569,972)	\$ —	\$(1,569,972)	\$ —

(1) The fair value of the Company's credit facilities and financial liabilities is estimated based on currently available credit facilities and financial liabilities with similar contract terms, interest rate and remaining maturities as well as taking into account the Company's creditworthiness.

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The estimated fair value of the Company's assets measured at fair value on a non-recurring basis, is based on the concluded sales price and is categorized based upon the fair value hierarchy as follows:

	<u>Fair Value Measurements as at March 31, 2023</u>			
	<u>Total</u>	<u>Level I</u>	<u>Level II</u>	<u>Level III</u>
Vessels, net	\$13,524	\$ —	\$13,524	\$ —

  

	<u>Fair Value Measurements as at December 31, 2022</u>			
	<u>Total</u>	<u>Level I</u>	<u>Level II</u>	<u>Level III</u>
Vessels, net	\$ 57,402	\$ —	\$ 57,402	\$ —

#### **NOTE 8 – REPURCHASES AND ISSUANCE OF UNITS**

In July 2022, the Board of Directors of Navios Partners authorized a common unit repurchase program for up to \$100,000 of the Company's common units. Common unit repurchases will be made from time to time for cash in open market transactions at prevailing market prices or in privately negotiated transactions. The timing and amount of repurchases under the program will be determined by Navios Partners' management based upon market conditions and financial and other considerations, including working capital and planned or anticipated growth opportunities. As of March 31, 2023, no repurchases of common units has been made. The program does not require any minimum repurchase or any specific number of common units and may be suspended or reinstated at any time in the Company's discretion and without notice. The Board of Directors will review the program periodically.

The effect of compensation expense arising from the restricted common units granted in December 2019 and 2018 and February 2019, amounted to \$1 and \$42 for the three month periods ended March 31, 2023 and 2022, respectively, and was presented under the caption "General and administrative expenses" in the condensed Consolidated Statements of Operations.

As of March 31, 2023, the estimated compensation cost related to service conditions of non-vested restricted common units granted in 2019 not yet recognized was \$3.

As of each of March 31, 2023 and December 31, 2022, there were 1,001 restricted common units outstanding that remained unvested.

#### **NOTE 9 – SEGMENT INFORMATION**

ASC 280, "Segment Reporting," establishes standards for reporting information about operating segments on a basis consistent with the Company's internal organizational structure as well as information about geographical areas, business segments and major customers in financial statements for details on the Company's business segments. The Company uses the "management approach" in determining reportable operating segments. The management approach considers the internal organization and reporting used by the Company's chief operating decision maker for making operating decisions and assessing performance as the source for determining the Company's reportable segments.

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Navios Partners reports financial information and evaluates its operations by charter revenues. Navios Partners does not use discrete financial information to evaluate operating results for each type of charter or by sector. As a result, management, including the chief operating decision maker, reviews operating results solely by revenue per day and operating results of the fleet as a whole, determining where to allocate resources and drive business forward by examining consolidated results. Thus Navios Partners has determined that it operates under one reportable segment.

The following table sets out operating revenue by geographic region for Navios Partners' reportable segment. Revenue is allocated on the basis of the geographic region in which the customer is located. Drybulk, Containerships and Tankers operate worldwide. Revenues from specific geographic region, which contribute over 10.0% of total revenue, are disclosed separately.

**Revenue by Geographic Region**

Vessels operate on a worldwide basis and are not restricted to specific locations. Accordingly, it is not possible to allocate the assets of these operations to specific countries.

	<b>Three Month Period ended March 31, 2023</b>	<b>Three Month Period ended March 31, 2022</b>
Asia	\$ 200,753	\$ 141,196
Europe	59,451	73,916
America	49,318	21,505
<b>Total</b>	<b><u>\$ 309,522</u></b>	<b><u>\$ 236,617</u></b>

**NOTE 10 – INCOME TAXES**

The Republic of the Marshall Islands does not impose a tax on international shipping income. Under the laws of the Marshall Islands, Liberia, Cayman Islands, Hong Kong, British Virgin Islands Panama and Belgium, the countries of the vessel-owning subsidiaries' incorporation and/or vessels' registration, the vessel-owning subsidiaries are subject to registration and tonnage taxes, which have been included in vessel expenses in the accompanying condensed Consolidated Statements of Operations.

In accordance with the currently applicable Greek law, foreign flagged vessels that are managed by Greek or foreign ship management companies having established an office in Greece on the basis of the applicable licensing regime are subject to tax liability towards the Greek state, which is calculated on the basis of the relevant vessel's tonnage. A tax credit is recognized for tonnage tax (or similar tax) paid abroad, up to the amount of the tax due in Greece.

The owner, the manager and the bareboat charterer or the financial lessee (where applicable) are liable to pay the tax due to the Greek state. The payment of said tax exhausts the tax liability of the foreign ship owning company, the bareboat charterer, the financial lessee (as applicable) and the relevant manager against any tax, duty, charge or contribution payable on income from the exploitation of the foreign flagged vessel outside Greece.

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We have elected to be treated and we are currently treated as a corporation for U.S. federal income tax purposes. As such, we are not subject to section 1446 as that section only applies to entities that for U.S. federal income tax purposes are characterized as partnerships.

Pursuant to Section 883 of the Internal Revenue Code of the United States, U.S. source income from the international operation of ships is generally exempt from U.S. income tax if the company operating the ships meets certain incorporation and ownership requirements. Among other things, in order to qualify for this exemption, the company operating the ships must be incorporated in a country, which grants an equivalent exemption from income taxes to U.S. corporations. All the vessel-owning subsidiaries satisfy these initial criteria.

In addition, these companies must meet an ownership test. The management of Navios Partners believes that this ownership test was satisfied prior to the IPO by virtue of a special rule applicable to situations where the ship operating companies are beneficially owned by a publicly traded company. Although not free from doubt, management also believes that the ownership test will be satisfied based on the trading volume and ownership of Navios Partners' units, but no assurance can be given that this will remain so in the future.

**NOTE 11 – COMMITMENTS AND CONTINGENCIES**

Navios Partners is involved in various disputes and arbitration proceedings arising in the ordinary course of business. Provisions have been recognized in the financial statements for all such proceedings where Navios Partners believes that a liability may be probable, and for which the amounts are reasonably estimable, based upon facts known at the date the financial statements were prepared. Management believes the ultimate disposition of these matters will be immaterial individually and in the aggregate to Navios Partners' financial position, results of operations or liquidity.

In November 2017, Navios Partners agreed to bareboat charter-in, under a ten-year bareboat contract, from an unrelated third party, the Navios Libra, a newbuilding Panamax vessel of 82,011 dwt, delivered on July 24, 2019. Navios Partners agreed to pay in total \$5,540, representing a deposit for the option to acquire the vessel after the end of the fourth year, of which the first half of \$2,770 was paid during the year ended December 31, 2017 and the second half of \$2,770 was paid during the year ended December 31, 2018. As of March 31, 2023, the total amount of \$6,243, including expenses, is presented under the caption "Other long-term assets" in the condensed Consolidated Balance Sheets.

On October 18, 2019, Navios Partners agreed to bareboat charter-in, under a ten-year bareboat contract each, from an unrelated third party, the Navios Amitie and the Navios Star, two newbuilding Panamax vessels of 82,002 dwt and 81,994 dwt, respectively. The vessels were delivered in Navios Partner's fleet on May 28, 2021 and June 10, 2021, respectively. Navios Partners has the option to acquire the vessels after the end of the fourth year for the remaining period of the bareboat charters. Navios Partners had agreed to pay in total \$12,328, representing a deposit for the option to acquire the vessels after the end of the fourth year, of which \$1,434 was paid during the year ended December 31, 2019, \$10,034 was paid during the year ended December 31, 2020, and the remaining amount of \$860 was paid upon the delivery of the vessels. As of March 31, 2023, the total amount of \$13,243, including expenses, is presented under the caption "Other long-term assets" in the condensed Consolidated Balance Sheets.

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On March 25, 2021, Navios Partners agreed to bareboat charter-in, under a 15-year bareboat contract, from an unrelated third party, one newbuilding Capesize vessel. The vessel, Navios Sakura, has 182,169 dwt and was delivered in Navios Partners' fleet on April 27, 2023. Navios Partners has the option to acquire the vessel after the end of year four for the remaining period of the bareboat charter. Navios Partners agreed to pay in total \$3,500, representing a deposit for the option to acquire the vessel after the end of the fourth year of which \$1,750 was paid during the year ended December 31, 2021 and the remaining amount of \$1,750 was paid upon the delivery of the vessel. As of March 31, 2023, the total amount of \$2,361 including expenses, is presented under the caption "Other long-term assets" in the condensed Consolidated Balance Sheets.

On July 2, 2021, Navios Partners agreed to purchase four 5,300 TEU newbuilding containerships, from an unrelated third party, for a purchase price of \$61,600 each. The vessels are expected to be delivered into Navios Partners' fleet during the second half of 2023 and first half of 2024. Navios Partners agreed to pay in total \$18,480 in three installments for each vessel and the remaining amount of \$43,120 for each vessel plus extras will be paid upon delivery of the vessel. During the year ended December 31, 2021, the first installment of each vessel of \$6,160, or \$24,640 accumulated for the four vessels, was paid. During the year ended December 31, 2022, the aggregate amount of \$36,960 in relation to the second instalment for the four vessels and the third instalment for the two vessels, was paid. As of March 31, 2023, the total amount of \$61,600 is presented under the caption "Deposits for vessels acquisitions" in the condensed Consolidated Balance Sheets.

On October 1, 2021, Navios Partners exercised its option to acquire two 5,300 TEU newbuilding containerships, from an unrelated third party, for a purchase price of \$61,600 each. The vessels are expected to be delivered into Navios Partners' fleet during the second half of 2024. Navios Partners agreed to pay in total \$18,480 in three installments for each vessel and the remaining amount of \$43,120 for each vessel plus extras will be paid upon delivery of the vessel. During the year ended December 31, 2021, the first installment of each vessel of \$6,160, or \$12,320 accumulated for the two vessels, was paid. During the first quarter of 2023, the second installment of \$6,160 for the one vessel, was paid. As of March 31, 2023, the total amount of \$18,480 is presented under the caption "Deposits for vessels acquisitions" in the condensed Consolidated Balance Sheets.

In November 2021, Navios Partners agreed to purchase four 5,300 TEU newbuilding containerships (two plus two optional), from an unrelated third party, for a purchase price of \$62,825 each. The vessels are expected to be delivered into Navios Partners' fleet during the second half of 2023 and in 2024. Navios Partners agreed to pay in total \$25,130 in four installments for each vessel and the remaining amount of \$37,695 plus extras for each vessel will be paid upon delivery of the vessel. During the year ended December 31, 2022, the aggregate amount of \$43,978 in relation to the first installment for the four vessels, the second installment for the two vessels and the third installment for the one vessel, was paid. During the first quarter of 2023, the second installment of \$6,282 for the one vessel, was paid. As of March 31, 2023, the total amount of \$50,260 is presented under the caption "Deposits for vessels acquisitions" in the condensed Consolidated Balance Sheets.

In April 2022, Navios Partners agreed to purchase four 115,000 dwt Aframax/LR2 newbuilding vessels for a purchase price of \$58,500 each (plus \$4,158 in additional features). The vessels are expected to be delivered into Navios Partners' fleet during 2024. Navios Partners agreed to pay in total \$23,400 plus extras in four installments for each vessel and the remaining amount of \$35,100 plus extras for each vessel will be paid upon delivery of each vessel. During the year ended December 31, 2022, the first installment of each vessel of \$6,266, or \$25,063 accumulated for the four vessels, was paid. During the first quarter of 2023, the second installment for the one vessel of \$6,266, was paid. As of March 31, 2023, the total amount of \$31,329 is presented under the caption "Deposits for vessels acquisitions" in the condensed Consolidated Balance Sheets.

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In June 2022, Navios Partners agreed to purchase two newbuilding liquefied natural gas (LNG) dual fuel 7,700 TEU containerships, from an unrelated third party, for an amended purchase price of \$115,510 each (original price of \$120,610 each). The vessels are expected to be delivered into Navios Partners' fleet during the second half of 2024 and the first quarter of 2025. Navios Partners agreed to pay in total \$92,408 in four installments for each vessel and the remaining amount of \$23,102 for each vessel will be paid upon delivery of the vessel. During the year ended December 31, 2022, the first installment of each vessel of \$23,102, or \$46,204 accumulated for the two vessels, was paid. During the first quarter of 2023, the second installment for the one vessel of \$23,102, was paid. As of March 31, 2023, the total amount of \$69,306 is presented under the caption "Deposits for vessels acquisitions" in the condensed Consolidated Balance Sheets.

In September, 2022, Navios Partners agreed to bareboat charter-in, under a 15-year bareboat contract, from an unrelated third party, one newbuilding Capesize vessel, of approximately 180,000 dwt. Navios Partners has the option to acquire the vessel after the end of year four for the remaining period of the bareboat charter. Navios Partners agreed to pay in total \$3,500, representing a deposit for the option to acquire the vessel after the end of the fourth year of which \$1,750 was paid during the year ended December 31, 2022 and the remaining amount of \$1,750 will be paid upon the delivery of the vessel. The vessel is expected to be delivered in the second quarter of 2023. As of March 31, 2023, the total amount of \$2,096, including expenses, is presented under the caption "Other long-term assets" in the condensed Consolidated Balance Sheets.

In November 2022, Navios Partners agreed to acquire two 115,000 dwt Aframax/LR2 newbuilding vessels for a purchase price of \$60,500 each (plus \$4,158 in additional features). The vessels are expected to be delivered into Navios Partners' fleet during the first half of 2025. Navios Partners agreed to pay in total \$24,200 plus extras in four installments for each vessel and the remaining amount of \$36,300 plus extras for each vessel will be paid upon delivery of each vessel. During the first quarter of 2023, the first installment of each vessel of \$6,050, or \$12,100 accumulated for the two vessels, was paid. As of March 31, 2023, \$12,100 is presented under the caption "Deposits for vessels acquisitions" in the condensed Consolidated Balance Sheets.

In December 2022, Navios Partners agreed to acquire two newbuilding Japanese MR2 Product Tanker vessels from an unrelated third party, under bareboat contracts. Each vessel has approximately 52,000 dwt and is being bareboat-in for ten years. Navios Partners has the option to acquire the vessels starting at the end of year four until the end of the charter period. Navios Partners agreed to pay in total \$18,000, representing a deposit for the option to acquire the vessels after the end of the fourth year. The vessels are expected to be delivered into Navios Partners' fleet during the second half of 2025 and the first half of 2026. The closing of the transaction is subject to completion of customary documentation.

Upon acquisition of the majority of outstanding stock of Navios Maritime Acquisition Corporation ("Navios Acquisition"), Navios Partners assumed the following commitments:

In September 2018, Navios Acquisition agreed to a 12-year bareboat charter-in agreement with de-escalating purchase options for the Baghdad and Erbil, two newbuilding Japanese VLCCs of 313,433 dwt and 313,486 dwt, respectively. On October 28, 2020, Navios Acquisition took delivery of the Baghdad. On February 17, 2021, Navios Acquisition took delivery of the Erbil. As of March 31, 2023, the total amount of \$1,767 is presented under the caption "Other long-term assets" in the condensed Consolidated Balance Sheets.



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In the first quarter of 2019, Navios Acquisition exercised its option to a 12-year bareboat charter-in agreement with de-escalating purchase options for the Nave Electron, a newbuilding Japanese VLCC of 313,239 dwt. On August 30, 2021, Navios Partners took delivery of the Nave Electron. As of March 31, 2023, the total amount of \$1,626 is presented under the caption “Other long-term assets” in the condensed Consolidated Balance Sheets.

In the second quarter of 2020, Navios Acquisition exercised its option for the Nave Celeste, a newbuilding Japanese VLCC of 313,418 dwt under a 12-year bareboat charter agreement with de-escalating purchase options. On July 5, 2022, Navios Partners took delivery of the Nave Celeste. As of March 31, 2023, the total amount of \$1,052 is presented under the caption “Other long-term assets” in the condensed Consolidated Balance Sheets.

As of March 31, 2023, an amount of \$22,180 related to capitalized costs is presented under the caption “Deposits for vessels acquisitions” in the condensed Consolidated Balance Sheets.

As of March 31, 2023, the Company’s future minimum lease commitments under the Company’s charter-in contracts for undelivered vessels, are as follows:

<u>Period ending March 31,</u>	<u>Amount</u>
2024	\$ 8,117
2025	9,600
2026	10,868
2027	15,480
2028	15,775
2029 and thereafter	145,816
<b>Total</b>	<b><u>\$205,656</u></b>

**NOTE 12 – TRANSACTIONS WITH RELATED PARTIES AND AFFILIATES**

**Vessel operating expenses:** In August 2019, Navios Partners extended the duration of its management agreement (“Management Agreement”) with the Manager until January 1, 2025, with an automatic renewal for an additional five years, unless earlier terminated by either party.

Following the completion of the merger with Navios Maritime Containers L.P. (“Navios Containers”), the fleet of Navios Containers is included in Navios Partners’ owned fleet and continued to be operated by the Manager pursuant to the terms of the Navios Containers’ management agreement with the Manager (the “NMCI Management Agreement”).

Following the completion of the merger with Navios Acquisition, the fleet of Navios Acquisition is included in Navios Partners’ owned fleet and continued to be operated by Tankers Manager pursuant to the terms of Navios Acquisition’s management agreement with Tankers Manager (the “NNA Management Agreement” and together with the Management Agreement and the NMCI Management Agreement, the “Management Agreements”).

The Management Agreements also provide for a technical and commercial management fee of \$0.05 per day per vessel and an annual increase of 3% of the fixed daily fee after January 1, 2022 for the remaining period unless agreed otherwise.

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Following completion of the mergers with Navios Containers and Navios Acquisition, the Managers provided commercial and technical management services to Navios Partners' vessels until December 31, 2021 for a daily fee of: (a) \$4.35 per Ultra-Handymax Vessel; (b) \$4.45 per Panamax Vessel; (c) \$5.41 per Capesize Vessel; (d) \$6.1 per Containership of TEU 1,300 up to 3,400; (e) \$6.22 per Containership of TEU 3,450 up to 4,999; (f) \$6.9 per Containership of TEU 6,800; (g) \$7.78 per Containership of TEU 8,000 up to 9,999; (h) \$8.27 per Containership of TEU 10,000 up to 11,999; (i) \$6.83 per MR2 and MR1 product tanker and chemical tanker vessel; (j) \$7.23 per LR1 product tanker vessel; and (k) \$9.65 per VLCC. Commencing from January 1, 2022 vessel operating expenses are fixed for one year for a daily fee of: (a) \$4.48 per Ultra-Handymax Vessel; (b) \$4.58 per Panamax Vessel; (c) \$5.57 per Capesize Vessel; (d) \$6.28 per Containership of TEU 1,300 up to 3,400; (e) \$6.40 per Containership of TEU 3,450 up to 4,999; (f) \$7.11 per Containership of TEU 6,800; (g) \$8.01 per Containership of TEU 8,000 up to 9,999; (h) \$8.52 per Containership of TEU 10,000 up to 11,999; (i) \$7.03 per MR2 and MR1 product tanker and chemical tanker vessel; (j) \$7.44 per LR1 product tanker vessel; and (k) \$9.94 per VLCC.

Pursuant to the acquisition of the 36-vessel drybulk fleet from Navios Holdings, which includes time charter-in vessels, Navios Partners and the Manager, on July 25, 2022, amended the Management Agreement to include a technical and commercial management fee of \$0.025 per time charter-in vessel per day.

Commencing from January 1, 2023 vessel operating expenses are fixed for one year for a daily fee of: (a) \$4.62 per Ultra-Handymax Vessel; (b) \$4.72 per Panamax Vessel; (c) \$5.74 per Capesize Vessel; (d) \$6.47 per Containership of TEU 1,300 up to 3,400; (e) \$6.59 per Containership of TEU 3,450 up to 4,999; (f) \$7.32 per Containership of TEU 6,800; (g) \$8.25 per Containership of TEU 8,000 up to 9,999; (h) \$8.77 per Containership of TEU 10,000 up to 11,999; (i) \$7.24 per MR2 and MR1 product tanker and chemical tanker vessel; (j) \$7.67 per LR1 product tanker vessel; and (k) \$10.24 per VLCC.

The Management Agreements also provide for payment of a termination fee, equal to the fees charged for the full calendar year preceding the termination date in the event the agreements are terminated on or before December 31, 2024.

Drydocking expenses are reimbursed at cost for all vessels.

During the three month periods ended March 31, 2023 and 2022 certain extraordinary fees and costs related to vessels' regulatory requirements, including ballast water treatment system installation, exhaust gas cleaning system installation and scrubber system installation under the Company's Management Agreements, amounted to \$5,589 and \$2,646, respectively, and are presented under the caption "Acquisition of/ additions to vessels" in the condensed Consolidated Statements of Cash Flows. During three month periods ended March 31, 2023 and 2022, certain extraordinary fees and costs related to COVID-19 measures, including crew related expenses, amounted to \$1,294 and \$2,955, respectively, and are presented under the caption of "Direct vessel expenses" in the condensed Consolidated Statements of Operations.

Total vessel operating expenses for each of the three month periods ended March 31, 2023 and 2022 amounted to \$83,216 and \$73,172, respectively.

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**General and administrative expenses:** Pursuant to the administrative services agreement (the “Administrative Services Agreement”), the Manager also provides administrative services to Navios Partners, which include bookkeeping, audit and accounting services, legal and insurance services, administrative and clerical services, banking and financial services, advisory services, client and investor relations and other. Under the Administrative Services Agreement, which provide for allocable general and administrative costs, the Manager is reimbursed for reasonable costs and expenses incurred in connection with the provision of these services. In August 2019, Navios Partners extended the duration of its existing Administrative Services Agreement with the Manager until January 1, 2025, to be automatically renewed for another five years. The agreement also provides for payment of a termination fee, equal to the fees charged for the full calendar year preceding the termination date in the event the Administrative Services Agreement is terminated on or before December 31, 2024.

Total general and administrative expenses charged by the Manager for the three month periods ended March 31, 2023 and 2022 amounted to \$14,106 and \$10,205, respectively.

**Balance due from/ (to) related parties:** Balance due from related parties long term as of March 31, 2023 and December 31, 2022 amounted to \$39,844 and \$41,403, respectively. Balance due to related parties, short-term as of March 31, 2023 and December 31, 2022 amounted to \$31,454 and \$104,751, respectively, and mainly consisted of payables to the Managers. The balances mainly consisted of administrative fees, drydocking, extraordinary fees and costs related to regulatory requirements including ballast water treatment system, other expenses, as well as fixed vessel operating expenses, in accordance with the Management Agreements.

**Others:** Navios Partners has entered into an omnibus agreement with Navios Holdings (the “Partners Omnibus Agreement”) in connection with the closing of Navios Partners’ IPO governing, among other things, when Navios Holdings and Navios Partners may compete against each other as well as rights of first offer on certain drybulk carriers. Pursuant to the Partners Omnibus Agreement, Navios Partners generally agreed not to acquire or own Panamax or Capesize drybulk carriers under time charters of three or more years without the consent of an independent committee of Navios Partners. In addition, Navios Holdings has agreed to offer to Navios Partners the opportunity to purchase vessels from Navios Holdings when such vessels are fixed under time charters of three or more years.

**General partner:** Olympos Maritime Ltd., an entity affiliated to our Chairwoman and Chief Executive Officer, Angeliki Frangou, is the holder of Navios Partners’ general partner interest.

**NOTE 13 – CASH DISTRIBUTIONS AND EARNINGS PER UNIT**

The amount of distributions paid by Navios Partners and the decision to make any distribution is determined by the Company’s board of directors and will depend on, among other things, Navios Partners’ cash requirements as measured by market opportunities and restrictions under its credit agreements and other debt obligations and such other factors as the Board of Directors may deem advisable. There is no guarantee that the Company will pay the quarterly distribution on the common units in any quarter. The Company is prohibited from making any distributions to unitholders if it would cause an event of default, or an event of default exists, under its existing credit facilities.

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There are incentive distribution rights held by Navios GP L.L.C., which are analyzed as follows:

	<b>Total Quarterly Distribution Target Amount</b>	<b>Marginal Percentage Interest in Distributions</b>		
		<b>Common Unitholders</b>	<b>Incentive Distribution Right Holder</b>	<b>General Partner</b>
Minimum Quarterly Distribution	up to \$5.25	98%	—	2%
First Target Distribution	up to \$6.0375	98%	—	2%
Second Target Distribution	above \$ 6.0375 up to \$6.5625	85%	13%	2%
Third Target Distribution	above \$6.5625 up to \$7.875	75%	23%	2%
Thereafter	above \$7.875	50%	48%	2%

The first 98% of the quarterly distribution is paid to all common unitholders. The incentive distributions rights (held by Navios GP L.L.C.) apply only after a minimum quarterly distribution of \$6.0375 per unit.

In January 2022, the Board of Directors of Navios Partners authorized its quarterly cash distribution for the three month period ended December 31, 2021 of \$0.05 per unit. The distribution was paid on February 11, 2022 to all unitholders of common units and general partnership units of record as of February 9, 2022. The aggregate amount of the declared distribution was \$1,541.

In January 2023, the Board of Directors of Navios Partners authorized its quarterly cash distribution for the three month period ended December 31, 2022 of \$0.05 per unit. The distribution was paid on February 14, 2023 to all unitholders of common units and general partnership units of record as of February 10, 2023. The aggregate amount of the declared distribution was \$1,540.

In April 2023, the Board of Directors of Navios Partners authorized its quarterly cash distribution for the three month period ended March 31, 2023 of \$0.05 per unit. The distribution was paid on May 12, 2023 to all unitholders of common units and general partnership units of record as of May 9, 2023. The aggregate amount of the declared distribution was \$1,540.

Navios Partners calculates earnings per unit by allocating reported net income for each period to each class of units based on the distribution waterfall for available cash specified in Navios Partners' partnership agreement, net of the unallocated earnings (or losses). Basic earnings per common unit is determined by dividing net income by the weighted average number of common units outstanding during the period. Diluted earnings per unit is calculated in the same manner as basic earnings per unit, except that the weighted average number of outstanding units increased to include the dilutive effect of outstanding unit options or phantom units. Net loss per unit undistributed is determined by taking the distributions in excess of net income and allocating between common units and general partnership units on a 98%-2% basis. There were no options or phantom units outstanding during each of the three month periods ended March 31, 2023 and 2022.

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The calculations of the basic and diluted earnings per unit are presented below.

	<b>Three Month Period Ended March 31, 2023</b>	<b>Three Month Period Ended March 31, 2022</b>
Net income	\$ 99,165	\$ 85,665
Income attributable to:		
Common unitholders	\$ 97,183	\$ 83,952
Weighted average units outstanding basic		
Common unitholders	30,183,387	30,154,171
Earnings per unit basic:		
Common unitholders	\$ 3.22	\$ 2.78
Weighted average units outstanding diluted		
Common unitholders	30,184,388	30,197,087
Earnings per unit diluted:		
Common unitholders	\$ 3.22	\$ 2.78
Earnings per unit distributed basic:		
Common unitholders	\$ 0.05	\$ 0.05
Earnings per unit distributed diluted:		
Common unitholders	\$ 0.05	\$ 0.05

Potential common units of 1,001 and 42,916 for the three month periods ended March 31, 2023 and 2022, respectively, are included in the calculation of earnings per unit diluted.

#### **NOTE 14 – LEASES**

##### **Time charter out contracts and pooling arrangements**

The Company's contract revenues from time chartering, bareboat chartering and pooling arrangements are governed by ASC 842.

##### **Operating Leases**

A discussion of the Company's operating leases can be found in Note 22 – Leases to the Company's consolidated financial statements included in the Annual Report filed on Form 20-F on March 24, 2023 with the SEC for the year ended December 31, 2022.

Based on management estimates and market conditions, the lease term of the leases is being assessed at each balance sheet date. At lease commencement, the Company determines a discount rate to calculate the present value of the lease payments so that it can determine lease classification and measure the lease liability. In determining the discount rate to be used at lease commencement, the Company used its incremental borrowing rate as there was no implicit rate included in charter-in contracts that can be readily determinable. The incremental borrowing rate is the rate that reflects the interest a lessee would have to pay to borrow funds on a collateralized basis over a similar term and in a similar economic environment. The Company then applies the respective incremental borrowing rate based on the remaining lease term of the specific lease. Navios Partners' incremental borrowing rates were approximately 7% for the Navios Libra and the Nave Celeste, 5% for the Navios Amitie and the Navios Star, 6% for the Baghdad, the Erbil, the Navios Horizon I, the Navios Gemini, the Navios Venus and the Navios Lyra, and 4% for the Nave Electron.

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As of March 31, 2023 and December 31, 2022, the unamortized balance of the operating lease liability amounted \$301,118 and \$311,115, respectively, and is presented under the captions “Operating lease liabilities, current portion” and “Operating lease liabilities, net” in the condensed Consolidated Balance Sheets. Right-of-use assets amounted \$310,492 and \$323,048 as at March 31, 2023 and December 31, 2022, respectively, and are presented under the caption “Operating lease assets” in the condensed Consolidated Balance Sheets.

The Company recognizes the lease payments for its operating leases as charter hire expenses on a straight-line basis over the lease term. Lease expense incurred and paid for the three months period ended March 31, 2023 and 2022 amounted to \$17,333 and \$7,617, respectively, and is presented under the caption “Time charter and voyage expenses” in the condensed Consolidated Statements of Operations.

For the three month periods ended March 31, 2023 and 2022, the sublease income (net of commissions, if any) for vessels where the Company is a lessee amounted to \$20,374 and \$16,182, respectively. Sublease income is presented under the caption “Time charter and voyage revenues” in the condensed Consolidated Statements of Operations.

As of March 31, 2023, the weighted average useful life of the remaining operating lease terms was 9.4 years.

The table below provides the total amount of lease payments on an undiscounted basis on the Company’s chartered-in contracts as of March 31, 2023:

<b>Period ending March 31,</b>	<b>Amount</b>
2024	\$ 53,702
2025	42,720
2026	38,340
2027	38,095
2028	37,394
2029 and thereafter	177,158
<b>Total</b>	<b><u>\$387,409</u></b>
<b>Operating lease liabilities, including current portion</b>	<b>\$301,118</b>
<b>Discount based on incremental borrowing rate</b>	<b>\$ 86,291</b>

#### **Finance Leases**

For a detailed description of the finance lease liabilities and right-of-use assets for vessels under finance leases, refer to Note 6 – Borrowings and Note 4 – Vessels, net, respectively.

For the three month periods ended March 31, 2023 and 2022 the sublease income (net of commissions, if any) for vessels where the Company is a lessee amounted to \$17,785 and \$0, respectively. Sublease income is presented under the caption “Time charter and voyage revenues” in the condensed Consolidated Statements of Operations.

As of March 31, 2023, the weighted average useful life of the remaining finance lease terms was 7.7 years.

**NAVIOS MARITIME PARTNERS L.P.**  
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The table below provides the total amount of lease payments and options to acquire vessels on an undiscounted basis under the Company's finance leases as of March 31, 2023:

Period ending March 31,	<u>Amount</u>
2024	\$ 76,913
2025	124,380
2026	27,246
2027	26,822
2028	26,464
2028 and thereafter	240,027
<b>Total</b>	<b><u>\$521,852</u></b>
<b>Finance lease liabilities, including current portion (see Note 6 – Borrowings)</b>	<b><u>\$381,259</u></b>
<b>Discount based on incremental borrowing rate</b>	<b><u>\$140,593</u></b>

**Bareboat charter-out contract**

Subsequently to the charter-in agreement, the Company entered into bareboat charter-out agreements for a firm charter period of ten years for the Baghdad and the Erbil and an extra optional period of five years, for both vessels, and for a firm period of up to two-years for the Nave Celeste. The Company performed also an assessment of the lease classification under the ASC 842 and concluded that the agreements are operating leases.

The Company recognizes in relation to the operating leases for the charter-out agreements the charter-out hire income in the Consolidated Statements of Operations on a straight-line basis. As of March 31, 2023 and 2022 the charter hire income (net of commissions, if any) amounted to \$7,977 and \$5,185, respectively, and is presented under the caption "Time charter and voyage revenues" in the condensed Consolidated Statements of Operations.

**NOTE 15 – SUBSEQUENT EVENTS****Acquisition of vessels**

On April 27, 2023, Navios Partners took delivery of the Navios Sakura, a 2023-built Capesize vessel of 182,169 dwt (see Note 11 – Commitments and Contingencies).

**Sale of vessels**

On May 10, 2023, Navios Partners agreed to sell the Lumen N, a 2008-built LR1 Product Tanker vessel of 63,599 dwt, to an unrelated third party, for a sales price of \$22,250. The sale is expected to be completed during the second quarter of 2023.

On April 12, 2023, Navios Partners agreed to sell the Navios Anthos, a 2004-built Panamax vessel of 75,798 dwt, to an unrelated third party, for a sales price of \$11,000. The sale was completed on May 3, 2023.

The aggregate gain on sale of the above vessels and the committed sales of the Serenitas N and the Aurora N (see Note 4 – Vessels, net) is expected to be approximately \$17,021.

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**Financing arrangements**

In May 2023, Navios Partners completed a \$178,000 sale and leaseback transaction with an unrelated third party, in order to finance the acquisition of two newbuilding 5,300 TEU containerships and two newbuilding Aframax/LR2 tanker vessels. The sale and leaseback transaction: (i) matures ten years after the drawdown date; and (ii) bears interest at Term SOFR plus 210 bps per annum.

In May 2023, Navios Partners entered into a new credit facility with a commercial bank for up to \$30,000 in order to refinance existing indebtedness of three product tanker vessels. The credit facility: (i) matures five years after the drawdown date; and (ii) bears interest at Term SOFR plus 100 bps per annum for any part of the loan (up to 70%) secured by cash collateral and 225 bps per annum for the remaining loan amount.

In April 2023, Navios Partners entered into an export credit agency-backed facility for a total amount of up to \$165,638 in order to finance the acquisition of two newbuilding 7,700 TEU containerships. The facility: (i) matures 12 years after the drawdown date; and (ii) bears interest at SOFR plus 150 bps per annum.

In April 2023, Navios Partners entered into a new credit facility with a commercial bank for up to \$65,000 in order to refinance existing indebtedness of five product tanker vessels. The credit facility: (i) matures five years after the drawdown date; and (ii) bears interest at SOFR plus 200 bps per annum.



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**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: June 1, 2023

## ‘BARECON 2001’ STANDARD BAREBOAT CHARTER

PART I

1. Shipbroker  <b>Mitsui &amp; CO.LTD</b>	<b>BIMCO STANDARD BAREBOAT CHARTER CODE NAME : “BARECON 2001”</b>  PART I	
	2. Place and date <b>At _____ on _____ February 2023</b>	
3. Owners / Place of business (Cl. 1) <b>GLORY OCEAN SHIPPING S.A. Banco General Tower, 15th Floor, Aquilino De La Guardia Street, Marbella, Panama City, Republic of Panama (as to 99% share) and TEMM MARITIME CO., LTD. Boeki Bldg Rm 801 123-1 Higashimachi Chuo-ku Kobe Japan (as to 1% share) whose performance shall be guaranteed by Funada Kaiun Co., Ltd.</b>	4. Bareboat Charterers / Place of business (Cl. 1) <b>Koufonisi Shipping Corporation of Marshall Islands.</b>	
5. Vessel’s name, call sign, flag and IMO number (Cl. 1 and 3) <b>NAVIOS FELIX, 3EXY3, Panamanian flag, 180,200 M.T. D/W Type Bulk Carrier, IMO Number9756743</b>		
6. Type of Vessel <b>180,200 M.T. D/W Type Bulk Carrier</b>	7. GT / NT <b>GT : 93,044 tons NT : 60,504 tons</b>	
8. When / Where built <b>September, 2016 at Imabari Shipbuilding Co., Ltd.</b>	9. Total DWT (abt.) in metric tons on <b>summer freeboard</b> <b>180,200 M.T.</b>	
10. Classification Society (Cl. 3) <b>Nippon Kaiji Kyokai (NK)</b>	11. Date of last special survey by the Vessel’s classification society <b>28 Jun 2021</b>	
12. Further particulars of Vessel (also indicate minimum number of months’ validity of class certificates agreed acc. to Cl. 3) <b>Cargoes to be carried; All lawful cargoes within the Vessel’s capabilities/Class, IMO, flag, her insurance</b>		
13. Port or Place of delivery (Cl.3) <b>As per Clause 5 of the MOA (as defined in Clause 1 hereof)</b>	14. Time for delivery (Cl.4) <b>As per Clause 5 of the MOA See Also Clause 32.</b>	15. Cancelling date (Cl.5) <b>As per Clause 5 of the MOA</b>
16. Port or Place of redelivery (Cl. 3) <b>See Clause 15</b>	17. No. of months’ validity of trading and class certificates upon redelivery (Cl. 15) <b>3 months</b>	
18. Running days’ notice if other than stated in Cl.4 <b>N/A</b>	19. Frequency of dry-docking Cl. 10(g) <b>As per Classification Society and flag state requirements</b>	
20. Trading Limits (Cl.6) <b>Trading Limits: always safely afloat world-wide within International Navigation Conditions with the Charterer’s option to break same paying extra insurance, but always in accordance with Clause 13, 40 and 62.  Any country/place designated pursuant to any applicable, now or in the future, international laws or supranational laws or other regulations, imposing trade and economic sanctions, prohibitions or restrictions shall always be excluded..</b>		
21. Charter Period (Cl. 2) <b>Ten (10) years plus/minus 60 days in Charterers’ option (See Clause 34)</b>	22. Charter hire (Cl. 11) <b>See Clause 35</b>	
23. New class and other statutory requirements (state percentage of Vessel’s insurance value acc. to Box 29 (Cl. 10(a)(ii)) <b>N/A</b>		
24. Rate of interest payable acc. to Cl.11(f) and, if applicable, acc. to PART IV <b>N/A</b>	25. Currency and method of payment (Cl.11) <b>United States Dollars payable calendar monthly in advance</b>	
26. Place of payment; also state beneficiary and bank account (Cl. 11) <b>To be advised</b>	27. Bank guarantee / bond (sum and place) (Cl. 24 (optional)) <b>N/A</b>	

28. Mortgage(s), if any (state whether Cl. 12(a) or (b) applies; if 12(b) applies, state date of Financial Instrument and name of Mortgagee(s)/Place of business) (Cl. 12) <b>See Clause 44</b>	29. Insurance (hull and machinery and war risks) (state value acc. to Cl.13(f) or, if applicable, acc. to Cl. 14(k)) (also state if Cl.14 applies) <b>See Clause 40</b>
30. Additional insurance cover, if any, for Owners’ account limited to (Cl. 13(b) or, if applicable, Cl. 14(g)) <b>N/A</b>	31. Additional insurance cover, if any, for Charterers’ account limited to (Cl. 13(b) or, if applicable, Cl. 14(g)) <b>See Clause 40 (c)</b>
32. Latent defects (only to be filled in if period other than stated in Cl.3) <b>N/A</b>	33. Brokerage commission and to whom payable (Cl.27) <b>N/A</b>
34. Grace period (state number of clear banking days) (Cl. 28) <b>See Clause 41</b>	35. Dispute Resolution (state 30(a), 30(b) or 30(c); if 30(c) agreed, Place of Arbitration must be stated (Cl. 30) <b>London / English Law</b>
36. War cancellation (indicate countries agreed) (Cl. 26(f)) <b>N/A</b>	
37. Newbuilding Vessel (indicate with ‘yes’ or ‘no’ whether PART III applies) (optional) <b>No</b>	38. Name and place of Builders (only to be filled in if PART III applies) <b>N/A</b>
39. Vessel’s Yard Building No. (only to be filled in if PART III applies) <b>No</b>	40. Date of <del>Building</del> Shipbuilding Contract (only to be filled in if PART III applies) <b>N/A</b>
41. Liquidated damages and costs shall accrue to (state party acc. to Cl. 1) <b>a) N/A</b> <b>b) N/A</b> <b>c) N/A</b>	
42. Hire/Purchase agreement (indicate with ‘yes’ or ‘no’ whether PART IV applies) (optional) <b>N/A</b>	43. Bareboat Charter Registry (indicate with ‘yes’ or ‘no’ whether PART IV applies) (optional) <b>N/A</b> <b>See Clause 37(d)</b>
44. Flag and Country of the Bareboat Charter Registry (only to be filled in if PART V applies) <b>N/A</b> <b>See Clause 37 (d)</b>	45. Country of the Underlying Registry (only to be filled in if PART V applies) <b>N/A</b>
46. Number of additional clauses covering special provisions, if agreed <b>Clause 32 to 60 inclusive</b>	

PREAMBLE - It is mutually agreed that this Contract shall be performed subject to the conditions contained in this Charter which shall include PART I and PART II. In the event of a conflict of conditions, the provisions of PART I shall prevail over those of PART II to the extent of such conflict but no further. It is further mutually agreed that PART III and/or PART IV and/or PART V shall only apply and shall only form part of this Charter if expressly agreed and stated in Boxes 37, 42 and 43. If PART III and/or PART IV and/or PART V apply, it is further agreed that in the event of a conflict of conditions, the provisions of PART I and PART II shall prevail over those of PART III and/or PART IV and/or PART V to the extent of such conflict but no further.

Signature (Owners)

Signature (Charterers)

**GLORY OCEAN SHIPPING S.A. (as to 99% share)**

**/s/ Hiroyuki Funada**

**By: Hiroyuki Funada**  
**Title: Director/President**

**/s/ Georgios Panagakis**

**By: Georgios Panagakis**  
**Title: Attorney-in-Fact**

**TEMM MARITIME CO., LTD. (as to 1% share)**

**/s/ Katsuya Mito**

**By: Katsuya Mito**  
**Title: President**

**PART II**  
**“BARECON 2001” Standard Bareboat Charter**

**1. Definitions**

In this Charter, the following terms shall have the meanings hereby assigned to them:

“The Owners” shall mean the party identified in Box 3;

“The Charterers” shall mean the party identified in Box 4;

“The Vessel” shall mean the vessel named in Box 5 and with particulars as stated in Boxes 6 to 12;

“Financial Instrument” means the mortgage, deed of covenant or other such financial security instrument as annexed to this Charter and stated in Box 28.

“MOA” means the Memorandum of Agreement entered into between the Owners as buyers and Koufonisi Shipping Corporation of the Marshall Islands as Sellers (the “Sellers”) dated \_\_\_\_\_ February 2023 in respect of the Vessel.

“Banking Days” shall mean the days identified in Cl.36 (b)

“Total Loss” shall mean the situation identified in Cl.40 (a)

**2. Charter Period**

In consideration of the hire detailed in Box 22, the Owners have agreed to let and the Charterers have agreed to hire the Vessel for the period stated in Box 21 (the “Charter Period”).

**3. Delivery Also See Clause 32**

**The Vessel shall be delivered and taken over by the Charterers as per Clause 32.**

*(not applicable when PART III applies, as indicated in Box 37)*

~~(a) The Owners shall before and at the time of delivery exercise due diligence to make the Vessel seaworthy and in every respect ready in hull, machinery and equipment for service under this Charter. The Vessel shall be delivered by the Owners and taken over by the Charterers at the port or place indicated in Box 13 in such ready safe berth as the Charterers may direct.~~

~~(b) The Vessel shall be properly documented on delivery in accordance with the laws of the flag state indicated in Box 5 and the requirements of the classification society stated in Box 10. The Vessel upon delivery shall have her survey cycles up to date and trading and class certificates valid for at least the number of months agreed in Box 12.~~

~~(c) The delivery of the Vessel by the Owners and the taking over of the Vessel by the Charterers shall constitute a full performance by the Owners of all the Owners’ obligations under this Clause 3, and thereafter the Charterers shall not be entitled to make or assert any claim against the Owners on account of any conditions, representations or warranties expressed or implied with respect to the Vessel but the Owners shall be liable for the cost of but not the time for repairs or renewals occasioned by latent defects in the Vessel, her machinery or appurtenances, existing at the time of delivery under this Charter, provided such defects have manifested themselves within twelve (12) months after delivery unless otherwise provided in Box 32.~~

**4. Time for Delivery See Clause 32**

*(not applicable when PART III applies, as indicated in Box 37)*

~~The Vessel shall not be delivered before the date indicated in Box 14 without the Charterers’ consent and the Owners shall exercise due diligence to deliver the Vessel not later than the date indicated in Box 15.~~

~~Unless otherwise agreed in Box 18, the Owners shall give the Charterers not less than thirty (30) running days’ preliminary and not less than fourteen (14) running days’ definite notice of the date on which the Vessel is expected to be ready for delivery.~~

~~The Owners shall keep the Charterers closely advised of possible changes in the Vessel’s position.~~

~~(b) If it appears that the Vessel will be delayed beyond the cancelling date, the Owners may, as soon as they are in position to state with reasonable certainty the day on which the Vessel should be ready, give notice thereof to the Charterers asking whether they will exercise their option of cancelling, and the option must then be declared within one hundred and sixty-eight (168) running hours of the receipt by the Charterers of such notice or within thirty-six (36) running hours after the cancelling date, whichever is the earlier. If the Charterers do not then exercise their option of cancelling, the seventh day after the readiness date stated in the Owners’ notice shall be substituted for the cancelling date indicated in Box 15 for the purpose of this Clause 5.~~

~~(c) Cancellation under this Clause 5 shall be without prejudice to any claim the Charterers may otherwise have on the Owners under this Charter.~~

**6. Trading Restrictions**

The Vessel shall be employed in lawful trades for the carriage of suitable lawful merchandise within the trading limits indicated in Box 20.

The Charterers undertake not to employ the Vessel or suffer the Vessel to be employed otherwise than in conformity with the terms of the contracts of insurance (including any warranties expressed or implied therein) without first obtaining the consent of the insurers to such employment and complying with such requirements as to extra premium or otherwise as the insurers may prescribe.

The Charterers also undertake not to employ the Vessel or suffer her employment in any trade or business which is forbidden by the law of any country to which the Vessel may sail or is otherwise illicit or in carrying illicit or prohibited goods or in any manner whatsoever which may render her liable to condemnation, destruction, seizure or confiscation.

Notwithstanding any other provisions contained in this Charter it is agreed that nuclear fuels or radioactive products or waste are specifically excluded from the cargo permitted to be loaded or carried under this Charter. This exclusion does not apply to radio-isotopes used or intended to be used for any industrial, commercial, agricultural, medical or scientific purposes provided the Owners’ prior approval has been obtained to loading thereof.

**7. Surveys on Delivery and Redelivery**

*(not applicable when PART III applies, as indicated in Box 37)*

~~The Owners and Charterers have the right of shall each appointing surveyors for the purpose of determining and agreeing in writing the condition of the Vessel at the time of delivery. redelivery hereunder. The Owners shall bear all expenses of the On-hire Survey including loss of time, if any, and the Charterers shall bear all expenses of the Off-hire Survey including loss of time, if any, at the daily equivalent to the rate of hire or pro rata thereof.~~

**8. Inspection See Clause 45, 59**

The Owners shall have the right **maximum once per year** at any time after giving **reasonable 1 month prior** notice to the Charterers to inspect or survey the Vessel or instruct a duly authorised surveyor to carry out such survey on their behalf: - **provided it does not interfere with the operation/itinerary of the Vessel and/or crew**

(a) to ascertain the condition of the Vessel and satisfy themselves that the Vessel is being properly repaired and maintained. The costs and fees for such inspection or survey shall be paid by the Owners, unless the Vessel is found to require repairs or maintenance in order to achieve the condition so provided;

(b) in dry-dock if the Charterers have not dry-docked her in accordance with Clause 10(g). The costs and fees for such inspection or survey shall be paid by the Charterers; and

**5. Cancelling**

*(not applicable when PART III applies, as indicated in Box 37)*

(a) Should the Vessel not be delivered latest by the cancelling date indicated in Box 15, the Charterers shall have the option of cancelling this Charter by giving the Owners notice of cancellation within thirty-six (36) running hours after the cancelling date stated in Box 15, failing which this Charter shall remain in full force and effect.

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~~(c) for any other commercial reason they consider necessary (provided it does not unduly interfere with the commercial operation of the Vessel). The costs and fees for such inspection and survey shall be paid by the Owners.~~

~~All time used in respect of inspection, survey or repairs shall be for the Charterers' account and form part of the Charter Period.~~

The Charterers shall also permit the Owners to inspect the Vessel's log books **maximum once per year whenever reasonably requested** and shall whenever required by the Owners furnish them with full information regarding any casualties or other accidents or damage to the Vessel.

**9. Inventories, Oil and Stores**

~~A complete inventory of the Vessel's entire equipment, outfit including spare parts, appliances and of all consumable stores on board the Vessel shall be made by the Charterers in conjunction with the Owners on delivery and again on redelivery of the Vessel. The Charterers and the Owners, respectively, shall at the time of delivery and redelivery take over and pay for all bunkers, lubricating oil, unbroached provisions, paints, ropes and other consumable stores (excluding spare parts) in the said Vessel at the then current market prices at the ports of delivery and redelivery, respectively. The Charterers shall ensure that all spare parts listed in the inventory and used during the Charter Period are replaced at their expense prior to redelivery of the Vessel. SEE ALSO CLAUSE 32, 46, and 53~~

**10. Maintenance and Operation**

(a)(i) Maintenance and Repairs - During the Charter period the Vessel shall be in the full possession and at the absolute disposal for all purposes of the Charterers and under their complete control in every respect. The Charterers shall **exercise due diligence** to maintain the Vessel, her machinery, boilers, appurtenances and spare parts in a good state of repair, in efficient operating condition and in accordance with good commercial maintenance practice and, except as provided for in Clause 14(l), if applicable, at their own expense, they shall at all times keep the Vessel's Class **unexpired fully up to date** with the Classification Society indicated in Box 10 maintain all other necessary certificates in force at all times.

(ii) New Class and Other Safety Requirements  
~~In the event of any improvement, structural changes or new equipment becoming necessary for the continued operation of the Vessel by reason of new class requirements or by compulsory legislation costing (excluding the Charterers' loss of time) more than the percentage stated in Box 23, or if Box 23 is left blank, 5 per cent. of the Vessel's insurance value as stated in Box 29, then the extent, if any, to which the rate of hire shall be varied and the ratio in which the cost of compliance shall be shared between the parties concerned in order to achieve a reasonable distribution thereof as between the Owners and the Charterers having regard, inter alia, to the length of the period remaining under this Charter, shall in the absence of agreement, be referred to the dispute resolution method agreed in Clause 30. SEE CLAUSE 38~~

(iii) Financial Security - The Charterers shall maintain financial security or responsibility in respect of third party liabilities as required by any government, including federal, state or municipal or other division or authority thereof, to enable the Vessel, without penalty or charge, lawfully to enter, remain at, or leave any port, place, territorial or contiguous waters of any country, state or municipality in performance of this Charter without any delay. This obligation shall apply whether or not such requirements have been lawfully imposed by such government or division or authority thereof.

The Charterers shall make and maintain all arrangements by bond or otherwise as may be necessary to satisfy such requirements at the Charterers' sole expense and the Charterers shall indemnify the Owners against all consequences whatsoever (including loss of time) for any failure or inability to do so.

(b) Operation of the Vessel - The Charterers shall at their own expense and by their own procurement man, victual, navigate, operate, supply, fuel and, whenever required, repair the Vessel during the Charter Period and they shall pay all charges and expenses of every kind and nature whatsoever incidental to their use and operation of the Vessel under this Charter, including annual flag state fees and any foreign general municipality and/or state taxes. The Master, officers and crew of the Vessel shall be the servants of the Charterers for all purposes whatsoever, **even if for any reason appointed by the Owners.**

Charterers shall comply with the regulations regarding officers and crew in force in the country of the Vessel's flag or any other applicable law.

(c) The Charterers shall keep the Owners ~~and the mortgagee(s)~~ advised of the intended employment, planned dry-docking and major repairs of the Vessel, as reasonably required.

(d) Flag and Name of Vessel

~~During the Charter Period, the Charterers shall have the liberty to paint the Vessel in their own colours, install and display their funnel insignia and fly their own house flag. The Charterers shall also have the liberty, with the Owners' consent, which shall not be unreasonably withheld, to change the flag and/or the name of the Vessel during the Charter Period. Painting and re-painting, instalment and re-instalment, registration and de-registration, if required by the Owners, shall be at the Charterers' expense and time. SEE CLAUSE 37 & 43~~

~~(e) Changes to the Vessel - Subject to Clause 10(a)(ii), the Charterers shall make no structural changes in the Vessel or changes in the machinery, boilers, appurtenances or spare parts thereof without in each instance first securing the Owners' approval thereof. If the Owners so agree, the Charterers shall, if the Owners so require, restore the Vessel to its former condition before the termination of this Charter. SEE CLAUSE 38~~

(f) Use of the Vessel's Outfit, Equipment and Appliances - The Charterers shall have the use of all outfit, equipment, and appliances on board the Vessel at the time of delivery, provided the same or their substantial equivalent shall be returned to the Owners on redelivery in **substantially** the same **good order** and condition as when received, ordinary wear and tear excepted. The Charterers shall from time to time during the Charter period replace such items of equipment as shall be so damaged or worn as to be unfit for use. The Charterers are to procure that all repairs to or replacement of any damaged, worn or lost parts or equipment be effected in such manner (both as regards workmanship and quality of materials) as not to diminish the value of the Vessel. The Charterers have the right to fit additional equipment at their expense and risk but the Charterers shall remove such equipment at the end of the period **unless agreed otherwise by the Owners and the Charterers**, if requested by the Owners. Any equipment including radio equipment on hire on the Vessel at time of delivery shall be kept and maintained by the Charterers and the Charterers shall assume the obligations and liabilities of the Owners under any lease contracts in connection therewith and shall reimburse the Owners for all expenses incurred in connection therewith, also for any new equipment required in order to comply with radio regulations.

(g) Periodical Dry-Docking - The Charterers shall dry-dock the Vessel and clean and paint her underwater parts whenever the same may be necessary, but not

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less than once during the period stated in Box 19 or, if Box 19 has been left blank, every sixty (60) calendar months after delivery or such other period as may be required by the Classification Society or flag state.

**11. Hire SEE CLAUSE 35**

(a) The Charterers shall pay hire due to the Owners punctually in accordance with the terms of this Charter in respect of which time shall be of the essence.

(b) The Charterers shall pay to the Owners for the hire of the Vessel a lump sum in the amount indicated in Box 22 which shall be payable not later than every thirty running days in advance, the first lump sum being payable on the date and hour of the Vessel's delivery to the Charterers. Hire shall be paid continuously throughout the Charter Period.

(c) Payment of hire shall be made in cash without discount in the currency and in the manner indicated in Box 25 and at the place mentioned in Box 26.

(d) Final payment of hire, if for a period of less than thirty (30) running days, shall be calculated proportionally according to the number of days remaining before redelivery and advance payment to be effected accordingly.

(e) Should the Vessel be lost or missing, hire shall cease from the date and time when she was lost or last heard of. The date upon which the Vessel is to be treated as lost or missing shall be ten (10) days after the Vessel was last reported or when the Vessel is posted as missing by Lloyd's, whichever occurs first. Any hire paid in advance to be adjusted accordingly.

(f) Any delay in payment of hire shall entitle the Owners to interest at the rate per annum as agreed in Box 24. If Box 24 has not been filled in, the three months interbank offered rate in London (LIBOR or its successor) of the currency stated in Box 25, as quoted by the British Bankers' Association (BBA) on the date when the hire fell due, increased by 2 per cent, shall apply.

(g) Payment of interest due under sub-clause 11(f) shall be made within seven (7) running days of the date of the Owners' invoice specifying the amount payable or, in the absence of an invoice, at the time of the next hire payment date.

**12. Mortgage SEE CLAUSE 44**

*(only to apply if Box 28 has been appropriately filled in)*

\*) (a) The Owners warrant that they have not effected any mortgage(s) of the Vessel and that they shall not effect any mortgage(s) without the prior consent of the Charterers, which shall not be unreasonably withheld.

\*) (b) The Vessel chartered under this Charter is financed by a mortgage according to the Financial Instrument. The Charterers undertake to comply, and provide such information and documents to enable the Owners to comply, with all such instructions or directions in regard to the employment, insurances, operation, repairs and maintenance of the Vessel as laid down in the Financial Instrument or as may be directed from time to time during the currency of the Charter by the mortgagee(s) in conformity with the Financial Instrument. The Charterers confirm that, for this purpose, they have acquainted themselves with all relevant terms, conditions and provisions of the Financial Instrument and agree to acknowledge this in writing in any form that may be required by the mortgagee(s). The Owners warrant that they have not effected any mortgage(s) other than stated in Box 28 and that they shall not agree to any amendment of the mortgage(s) referred to in Box 28 or effect any other mortgage(s) without the prior consent of the Charterers, which shall not be unreasonably withheld.

\*) (Optional, Clauses 12 (a) and 12 (b) are alternatives; indicate alternative agreed in Box 28).

**13. Insurance and Repairs SEE CLAUSE 40**

(a) During the Charter Period the Vessel shall be kept insured by the Charterers at their expense against hull and machinery, war and Protection and Indemnity risks (and any risks against which it is compulsory to insure for the operation of the Vessel, including maintaining financial security in accordance with sub-clause 10(a) (iii)) ~~in underwriter's standard from as the Owners have received, reviewed and shall in writing approved, which approval shall not be unreasonably withheld.~~ in such form as the Owners shall in writing approve, which approval shall not be unreasonably withheld. Such insurances shall be arranged by the Charterers to protect the interests of both the Owners and the Charterers and the mortgagees (if any), and the Charterers shall be at liberty to protect under such insurances the interests of any managers they may appoint. Insurance policies shall cover the Owners and the Charterers according to their respective interests. ~~Subject to the provisions of the Financial Instrument, if any, and the approval of the Owners and the insurers, the Charterers shall effect all insured repairs and shall undertake settlement and reimbursement from the insurers of all costs in connection with such repairs as well as insured charges, expenses and liabilities to the extent of coverage under the insurances herein provided for.~~

The Charterers also to remain responsible for and to effect repairs and settlement of costs and expenses incurred thereby in respect of all other repairs not covered by the insurances and/or not exceeding any possible franchise(s) or deductibles provided for in the insurances.

All time used for repairs under the provisions of sub-clause 13(a) and for repairs of latent defects according to Clause 3(c) above, including any deviation, shall be for the Charterers' account.

(b) ~~If the conditions of the above insurances permit additional insurance to be placed by the parties, such cover shall be limited to the amount for each party set out in Box 30 and Box 31, respectively. The Owners or the Charterers as the case may be shall immediately furnish the other party with particulars of any additional insurance effected, including copies of any cover notes or policies and the written consent of the insurers of any such required insurance in any case where the consent of such insurers is necessary.~~

(c) The Charterers shall upon the request of the Owners provide information and promptly execute such documents as may be **reasonably** required to enable the Owners to comply with the insurance provisions of the Financial Instrument.

(d) ~~Subject to the provisions of the Financial Instrument, if any, should the Vessel become an actual, constructive, compromised or agreed total loss under the insurances required under sub-clause 13(a), all insurance payments for such loss shall be paid to the Owners who shall distribute the moneys between the Owners and the Charterers according to their respective interests. The Charterers undertake to notify the Owners and the mortgagee(s), if any, of any occurrences in consequence of which the Vessel is likely to become a total loss as defined in this clause. SEE CLAUSE 40~~

(e) The Owners shall, upon the request of the Charterers, promptly execute such documents as may be required to enable the Charterers to abandon the Vessel to insurers and claim a constructive total loss.

(f) ~~For the purpose of insurance coverage against hull and machinery and war risks under the provisions of sub-clause 13(a), the value of the Vessel is the sum indicated in Box 29. SEE CLAUSE 40~~

**14. Insurance, Repairs and Classification N/A**

*(Optional, only to apply if expressly agreed and stated in Box 29, in which event Clause 13 shall be considered deleted).*

(a) During the Charter Period the Vessel shall be kept insured by the Owners at their expenses against hull and machinery and war risks under the form of policy or



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policies attached hereto. The Owners and/or insurers shall not have any right of recovery or subrogation against the Charterers on account of loss of or any damage to the Vessel or her machinery or appurtenances covered by such insurance, or on account of payments made to discharge claims against or liabilities of the Vessel or the Owners covered by such insurance. Insurance policies shall cover the Owners and the Charterers according to their respective interests.

(b) During the Charter Period the Vessel shall be kept insured by the Charterers at their expense against Protection and Indemnity risks (and any risks against which it is compulsory to insure for the operation of the Vessel, including maintaining financial security in accordance with sub-clause 10(a)(iii)) in such form as the Owners shall in writing approve which approval shall not be unreasonably withheld.

(c) In the event that any act or negligence of the Charterers shall vitiate any of the insurance herein provided, the Charterers shall pay to the Owners all losses and indemnify the Owners against all claims and demands which would otherwise have been covered by such insurance.

(d) The Charterers shall, subject to the approval of the Owners or Owners' Underwriters, effect all insured repairs, and the Charterers shall undertake settlement of all miscellaneous expenses in connection with such repairs as well as all insured charges, expenses and liabilities, to the extent of coverage under the insurances provided for under the provisions of sub-clause 14(a). The Charterers to be secured reimbursement through the Owners' Underwriters for such expenditures upon presentation of accounts.

(e) The Charterers to remain responsible for and to effect repairs and settlement of costs and expenses incurred thereby in respect of all other repairs not covered by the insurances and/or not exceeding any possible franchise(s) or deductibles provided for in the insurances.

(f) All time used for repairs under the provisions of sub-clause 14(d) and 14(e) and for repairs of latent defects according to Clause 3 above, including any deviation, shall be for the Charterers' account and shall form part of the Charter Period.

The Owners shall not be responsible for any expenses as are incident to the use and operation of the Vessel for such time as may be required to make such repairs.

(g) If the conditions of the above insurances permit additional insurance to be placed by the parties such cover shall be limited to the amount for each party set out in Box 30 and Box 31, respectively. The Owners or the Charterers as the case may be shall immediately furnish the other party with particulars of any additional insurance effected, including copies of any cover notes or policies and the written consent of the insurers of any such required insurance in any case where the consent of such insurers is necessary.

(h) Should the Vessel become an actual, constructive, compromised or agreed total loss under the insurances required under sub-clause 14(a), all insurance payments for such loss shall be paid to the Owners, who shall distribute the moneys between themselves and the Charterers according to their respective interests.

(i) If the Vessel becomes an actual, constructive, compromised or agreed total loss under the insurances arranged by the Owners in accordance with sub-clause 14(a), this Charter shall terminate as of the date of such loss.

(j) The Charterers shall upon the request of the Owners, promptly execute such documents as may be required to enable the Owners to abandon the Vessel to the insurers and claim a constructive total loss.

(k) For the purpose of insurance coverage against hull and machinery and war risks under the provisions of sub-clause 14(a), the value of the Vessel is the sum indicated in Box 29.

(l) Notwithstanding anything contained in sub-clause 10(a), it is agreed that under the provisions of Clause 14, if applicable, the Owners shall keep the Vessel's Class fully up to date with the Classification Society indicated in Box 10 and maintain all other necessary certificates in force at all times.

**15. Redelivery ALSO SEE CLAUSE 46**

At the expiration of the Charter Period the Vessel shall be redelivered by the Charterers to the Owners at a safe **berth or anchorage at a safe and ice-free** port or place as indicated in Box 16, ~~in such ready safe berth as the Owners may direct.~~ The Charterers shall give the Owners not less than thirty (30) running days' preliminary notice of expected date, range of ports of redelivery or port or place of redelivery and not less than fourteen (14) running days' definite notice of expected date and port or place of redelivery. Any changes thereafter in Vessel's position shall be notified immediately to the Owners.

The Charterers warrant that they will not permit the Vessel to commence a voyage (including any preceding ballast voyage) which cannot reasonably be expected to be completed in time to allow redelivery of the Vessel within the Charter Period. Notwithstanding the above, should the Charterers fail to redeliver the Vessel within the Charter Period, the Charterers shall pay the daily equivalent to the rate of hire stated in Box 22 plus 5 per cent or to the market rate, whichever is the higher, for the number of days by which the Charter Period is exceeded. All other terms, conditions and provisions of the Charter shall continue to apply.

Subject to the provisions of Clause 10, the Vessel shall be redelivered to the Owners in **substantially** the same ~~or as good~~ **structure, state, condition and class** as that in which she was delivered, fair wear and tear not affecting class excepted.

The Vessel upon redelivery shall have her survey cycles up to date and trading and class certificates valid for at least the number of months agreed in Box 17.

**16. Non-Lien ALSO SEE CLAUSE 47**

The Charterers will not suffer, nor permit to be continued, any lien or encumbrance incurred by them or their agents, which might have priority over the title and interest of the Owners in the Vessel. ~~The Charterers further agree to fasten to the Vessel in a conspicuous place and to keep so fastened during the Charter Period a notice reading as follows:~~

~~"This Vessel is the property of (name of Owners). It is under charter to (name of Charterers) and by the terms of the Charter Party neither the Charterers nor the Master have any right, power or authority to create, incur or permit to be imposed on the Vessel any lien whatsoever."~~

**17. Indemnity ALSO SEE CLAUSE 54**

(a) The Charterers shall indemnify the Owners against any loss, damage or expense incurred by the Owners arising out of or in relation to the operation of the Vessel by the Charterers, and against any lien of whatsoever nature arising out of an event occurring during the Charter Period. If the Vessel be arrested or otherwise detained by reason of claims or liens arising out of her operation hereunder by the Charterers, the Charterers shall at their own expense take all reasonable steps to secure that within a reasonable time the Vessel is released, including the provision of bail.

Without prejudice to the generality of the foregoing, the Charterers agree to indemnify the Owners against all consequences or liabilities arising from the Master, officers or agents signing Bills of Lading or other documents.

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(b) If the Vessel be arrested or otherwise detained by reason of a claims or claims against the Owners, the Owners shall at their own expense take all reasonable steps to secure that within a reasonable time the Vessel is released, including the provision of bail.

In such circumstances the Owners shall indemnify the Charterers against any loss, damage or expense incurred by the Charterers (including hire paid under this Charter) as a direct consequence of such arrest or detention.

**18. Lien**

The Owners to have a lien upon all cargoes, sub-hires and sub-freights belonging or due to the Charterers or any sub-charterers and any Bill of Lading freight for all claims under this Charter, and the Charterers to have a lien on the Vessel for all moneys paid in advance and not earned.

**19. Salvage**

All salvage and towage performed by the Vessel shall be for the Charterers' benefit and the cost of repairing damage occasioned thereby shall be borne by the Charterers.

**20. Wreck Removal**

In the event of the Vessel becoming a wreck or obstruction to navigation the Charterers shall indemnify the Owners against any sums whatsoever which the Owners shall become liable to pay and shall pay in consequence of the Vessel becoming a wreck or obstruction to navigation.

**21. General Average**

The Owners shall not contribute to General Average.

**22. Assignment, Sub-Charter and Sale**

(a) The Charterers shall not assign this Charter nor sub-charter the Vessel on a bareboat basis except with the prior consent in writing of the Owners, which shall not be unreasonably withheld, and subject to such terms and conditions as the Owners shall approve.  
~~(b) The Owners shall not sell the Vessel during the currency of this Charter except with the prior written consent of the Charterers, which shall not be unreasonably withheld, and subject to the buyer accepting an assignment of this Charter. SEE CLAUSE 48~~

**23. Contracts of Carriage**

- \*) (a) The Charterers are to procure that all documents issued during the Charter Period evidencing the terms and conditions agreed in respect of carriage of goods shall contain a paramount clause incorporating any legislation relating to carrier's liability for cargo compulsorily applicable in the trade; if no such legislation exists, the documents shall incorporate the Hague-Visby Rules. The documents shall also contain the New Jason Clause and the Both-to-Blame Collision Clause.
- \*) ~~(b) The Charterers are to procure that all passenger tickets issued during the Charter Period for the carriage of passengers and their luggage under this Charter shall contain a paramount clause incorporating any legislation relating to carrier's liability for passengers and their luggage compulsorily applicable in the trade; if no such legislation exists, the passenger tickets shall incorporate the Athens Convention Relating the Carriage of Passengers and their Luggage by Sea, 1974, and any protocol thereto.~~
- \*) *Delete as applicable.*

**24. Bank Guarantee**

*(Optional, only to apply if Box 27 filled in)*  
The Charterers undertake to furnish, before delivery of the Vessel, a first-class bank guarantee or bond in the sum and at the place as

**25. Requisition/Acquisition ALSO SEE CLAUSE 40 (a)/(b)**

(a) In the event of the requisition for Hire of the Vessel by any governmental or other competent authority (hereinafter referred to a "Requisition for Hire") irrespective of the date during the Charter Period when "Requisition for Hire" may occur and irrespective of the length thereof and whether or not it be for an indefinite or a limited period of time, and irrespective of whether it may or will remain in force for the remainder of the Charter Period, this Charter shall not be deemed thereby or thereupon to be frustrated or otherwise terminated and the Charterers shall continue to pay the stipulated hire in the manner provided by this Charter until the time when the Charter would have terminated pursuant to any of the provisions hereof always provided however that in the event of "Requisition for Hire" any Requisition Hire or compensation received or receivable by the Owners shall be payable to the Charterers during the remainder of the Charter Period or the period of the 'Requisition for Hire' whichever be the shorter.

(b) Notwithstanding the provisions of clause 25 (a), in the event of the Owners being deprived of their ownership in the Vessel by any Compulsory Acquisition of the Vessel or requisition for title by any governmental or other competent authority, **which for the avoidance of any doubt, shall exclude requisition for use or hire not involving requisition of title** (hereinafter referred to as 'Compulsory Acquisition'), then, ~~irrespective of the date during the Charter Period when "Compulsory Acquisition" may occur;~~ this Charter shall be deemed terminated as of the date of such "Compulsory Acquisition". In such event charter hire to be considered as earned and to be paid up to the date and time of such "Compulsory Acquisition", **but not thereafter.**

**26. War**

(a) For the purpose of this Clause, the words 'War Risks' shall include any war (whether actual or threatened), act of war, civil war, hostilities, revolution, rebellion, civil commotion, warlike operations, the laying of mines (whether actual or reported), acts of piracy, acts of terrorists, acts of hostility or malicious damage, blockades (whether imposed against all vessels or imposed selectively against vessels of certain flags or ownership, or against certain cargoes or crews or otherwise howsoever), by any person, body, terrorist or political group, or the Government of any state whatsoever, which may be dangerous or are likely to be or to become dangerous to the Vessel, her cargo, crew or other persons on board the Vessel.

(c) The Vessel shall not load contraband cargo, or to pass through any blockade, whether such blockade be imposed on all vessels, or is imposed selectively in any way whatsoever against vessels of certain flags or ownership, or against certain cargoes or crews or otherwise howsoever, or to proceed to an area where she shall be subject, or is likely to be subject to a belligerent's right of search and/or confiscation.

~~(d) If the insurers of the war risk insurance, when Clause 14 is applicable, should require payment of premiums and/or calls because, pursuant to the Charterers' orders, the Vessel is within, or is due to enter and remain within, any area or areas which are specified by such insurers as being subject to additional premiums because of War Risks, then such premiums and/or calls shall be reimbursed by the Charterers to the Owners at the same time as the next payment of hire is due:~~

indicated in Box 27 as guarantee for full performance of their obligations under this Charter.

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- (e) The Charterers shall have the liberty:
- (i) to comply with all orders, directions, recommendations or advice as to departure, arrival, routes, sailing in convoy, ports of call, stoppages, destinations, discharge of cargo, delivery, or in any other way whatsoever which are given by the government of the nation under whose flag the vessel sails, or any other government, body or group whatsoever acting with the power to compel compliance with their orders or directions’
  - (ii) to comply with the orders, directions or recommendations of any war risks underwriters who have the authority to give the same under the terms of the war risks insurance;
  - (iii) to comply with the terms of any resolution of the Security Council of the United Nations, any directives of the European Community, the effective orders of any other supranational body which has the right to issue and give the same, and with national laws aimed at enforcing the same to which the Owners are subject, and to obey the orders and directions of those who are charged with their enforcement.
- ~~(f) In the event of outbreak of war (whether there be a declaration of war or not) (i) between any two or more of the following countries: the United States of America; Russia; the United Kingdom; France; and the People’s Republic of China, (ii) between any two or more of the countries stated in Box 36, both the Owners and the Charterers shall have the right to cancel this Charter, whereupon the Charterers shall redeliver the Vessel to the Owners in accordance with Clause 15, if the Vessel has cargo on board after discharge thereof at destination, or if debarred under this Clause from reaching and entering it at a near open and safe port as directed by the Owners, or if the Vessel has no cargo on board, at the port at which the Vessel then is or if at sea at a near, open and safe port as directed by the Owners. In all cases hire shall continue to be paid in accordance with Clause 11 and except as aforesaid all other provisions of this Charter shall apply until redelivery.~~

**27. Commission**

The Owners to pay a commission at the rate indicated in Box 33 to the Brokers named in Box 33 on any hire paid under the Charter. If no rate is indicated in Box 33, the commission to be paid by the Owners shall cover the actual expenses of the Brokers and a reasonable fee for their work.

If the full hire is not paid owing to breach of the Charter by either of the parties, the party liable therefore shall indemnify the Brokers against their loss of commission. Should the parties agree to cancel the Charter, the Owners shall indemnify the Brokers against any loss of commission but in such case the commission shall not exceed the brokerage on one year’s hire.

**28. Termination**

(a) Charterer’s Default

The Owners shall be entitled to withdraw the Vessel from the service of the Charterers and terminate the Charter with immediate effect by written notice to the Charterers if:

- (i) the Charterers fail to pay hire in accordance with Clause 11. However, where there is a failure to make punctual payment of hire due to oversight, negligence, errors or omissions on the part of the Charterers or their bankers, the Owners shall give the Charterers written notice of the number of clear banking days stated in Box 34 (as recognised at the agreed place of payment) in which to rectify the failure, and when so rectified within such number of days following the Owners’ notice, the payment shall stand as regular and punctual. Failure by the Charterers to pay hire within the

number of days stated in Box 34 of their receiving the Owners’ notice as provided herein, shall entitle the Owners to withdraw the Vessel from the service of the Charterers and terminate the Charter without further notice;

- (ii) the Charterers fail to comply with the requirements of:
  - (1) Clause 6 (Trading Restrictions)
  - (2) Clause 13(a) (Insurance and Repairs)provided that the Owners shall have the option, by written notice to the Charterers, to give the Charterers a specified number of days grace within which to rectify the failure without prejudice to the Owners’ right to withdraw and terminate under this Clause if the Charterers fail to comply with such notice;
- (iii) the Charterers fail to rectify any failure to comply with the requirements of sub-clause 10(a)(i) (Maintenance and Repairs) as soon as practically possible after the Owners have requested them in writing so to do and in any event so that the Vessel’s insurance cover is not prejudiced. SEE CLAUSE 41 & 42

(b) Owners’ Default

If the Owners shall by any act or omission be in breach of their obligations under this Charter to the extent that the Charterers are deprived of the use of the Vessel and such breach continues for a period of fourteen (14) running days after written notice thereof has been given by the Charterers to the Owners, the Charterers shall be entitled to terminate this Charter with immediate effect by written notice to the Owners.

(c) Loss of Vessel

This Charter shall be deemed to be terminated if the Vessel becomes a total loss or is declared as a constructive or compromised or arranged total loss. For the purpose of this sub-clause, the Vessel shall not be deemed to be lost unless she has either become an actual total loss or agreement has been reached with her underwriters in respect of her constructive, compromised or arranged total loss or if such agreement with her underwriters is not reached it is adjudged by a competent tribunal that a constructive loss of the Vessel has occurred. SEE CLAUSE 40 (d)/(e)

(d) Either party shall be entitled to terminate this Charter with immediate effect by written notice to the other party in the event of an order being made or resolution passed for the winding up, dissolution, liquidation or bankruptcy of the other party (otherwise than for the purpose of reconstruction or amalgamation) or if a receiver is appointed, or if it suspends payment, ceases to carry on business or makes any special arrangements or composition with its creditors.

(e) The termination of this Charter shall be without prejudice to all rights accrued due between the parties prior to the date of termination and to any claim that either party might have.

**29. Repossession**

In the event of the termination of this Charter in accordance with the applicable provisions of Clause 28, the Owners shall have the right to repossess the Vessel from the Charterers at her current or next port of call, or at a port or place convenient to them without hindrance or interference by the Charterers, courts or local authorities. Pending physical repossession of the Vessel in accordance with this Clause 29, the Charterers shall

**PART II**  
**“BARECON 2001” Standard Bareboat Charter**

hold the Vessel as gratuitous bailee only to the Owners. The Owners shall arrange for an authorised representative to board the Vessel as soon as reasonably practicable following the termination of the Charter. The Vessel shall be deemed to be repossessed by the Owners from the Charterers upon the boarding of the Vessel by the Owners' representative. All arrangements and expenses relating to the settling of wages, disembarkation and repatriation of the Charterers' Master, officers and crew shall be the sole responsibility of the Charterers.

**30. Dispute Resolution**

- \*) (a) This Contract shall be governed by and construed in accordance with English law and any dispute arising out of or in connection with this Contract shall be referred to arbitration in London in accordance with the Arbitration Act 1996 or any statutory modification or re-enactment thereof save to the extent necessary to give effect to the provisions of this Clause.

The arbitration shall be conducted in accordance with the London Maritime Arbitrators Association (LMAA) Terms current at the time when the arbitration proceedings are commenced.

The reference shall be to three arbitrators. A party wishing to refer a dispute to arbitration shall appoint its arbitrator and send notice of such appointment in writing to the other party requiring the other party to appoint its own arbitrator within 14 calendar days of that notice and stating that it will appoint its arbitrator as sole arbitrator unless the other party appoints its own arbitrator and gives notice that it has done so within the 14 days specified. If the other party does not appoint its own arbitrator and give notice that it has done so within the 14 days specified, the party referring a dispute to arbitration may, without the requirement of any further prior notice to the other party, appoint its arbitrator as sole arbitrator and shall advise the other party accordingly. The award of a sole arbitrator shall be binding on both parties as if he had been appointed by agreement.

Nothing herein shall prevent the parties agreeing in writing to vary these provisions to provide for the appointment of a sole arbitrator.

In cases where neither the claim nor any counterclaim exceeds the sum of US\$50,000 (or such other sum as the parties may agree) the arbitration shall be conducted in accordance with the LMAA Small Claims Procedure current at the time when the arbitration proceedings are commenced.

- \*) (b) This Contract shall be governed by and construed in accordance with Title 9 of the United States Code and the Maritime Law of the United States and any dispute arising out of or in connection with this Contract shall be referred to three persons at New York, one to be appointed by each of the parties hereto, and the third by the two so chosen; their decision or that of any two of them shall be final; and for the purposes of enforcing any award, judgment may be entered on an award by any court of competent jurisdiction. The proceedings shall be conducted in accordance with the rules of the Society of Maritime Arbitrators, Inc.

In cases where neither the claim nor any counterclaim exceeds the sum of US\$50,000 (or such other sum as the parties may agree) the arbitration shall be conducted in accordance with the Shortened Arbitration Procedure of the Society of Maritime Arbitrators, Inc. current at the time when the arbitration proceedings are commenced.

- \*) (c) This Contract shall be governed by and construed in accordance with the laws of the place mutually agreed by the parties and any dispute arising out of or in connection with this Contract shall be referred to arbitration at a mutually agreed place, subject to the procedures applicable there:

(d) Notwithstanding (a), (b) or (c) above, the parties may agree at any time to refer to mediation any difference and/or dispute arising out of or in connection with this Contract.

In the case of a dispute in respect of which arbitration has been commenced under (a), (b) or (c) above, the following shall apply:-

- (i) Either party may at any time and from time to time elect to refer the dispute or part of the dispute to mediation by service on the other party of a written notice (the “Mediation Notice”) (calling on the other party to agree to mediation.
- (ii) The other party shall thereupon within 14 calendar days of receipt of the Mediation Notice confirm that they agree to mediation, in which case the parties shall thereafter agree a mediator within a further 14 calendar days, failing which on the application of either party a mediator will be appointed promptly by the Arbitration Tribunal (the “Tribunal”) or such person as the Tribunal may designate for that purpose. The mediation shall be conducted in such place and in accordance with such procedure and on such terms as the parties may agree or, in the event of disagreement, as may be set by the mediator.
- (iii) If the other party does not agree to mediate, that fact may be brought to the attention of the Tribunal and may be taken into account by the Tribunal when allocating the costs of the arbitration as between the parties.
- (iv) The mediation shall not affect the right of either party to seek such relief or take such steps as it considers necessary to protect its interest.
- (v) Either party may advise the Tribunal that they have agreed to mediation. The arbitration procedures shall continue during the conduct of the mediation by the Tribunal may take the mediation timetable into account when settling the timetable for steps in the arbitration.
- (vi) Unless otherwise agreed or specified in the mediation terms, each party shall bear its own costs incurred in the mediation and the parties shall share equally the mediator's costs and expenses.
- (vii) The mediation process shall be without prejudice and confidential and no information or documents disclosed during it shall be revealed to the Tribunal except to the extent that they are disclosable under the law and procedure governing the arbitration.

*(Note: the parties should be aware that the mediation process may not necessarily interrupt time limits.)*

(e) If Box 35 in Part I is not appropriately filled in, sub-clause 30(a) of this Clause shall apply. Sub-clause 30(d) shall apply in all cases.

- \*) *Sub-clauses 30(a), 30(b) and 30(c) are alternatives; indicate alternative agreed in Box 35.*

**31. Notices SEE CLAUSE 51**

(a) Any notice to be given by either party to the other party shall be in writing and may be sent by fax, telex, registered or recorded mail or by personal service.

(b) The address of the Parties for service of such communication shall be as stated in Boxes 3 and 4 respectively.

PART III

PROVISIONS TO APPLY FOR NEWBUILDING VESSELS ONLY

(Optional, only to apply if expressly agreed and stated in Box 37)

1. **Specifications and Shipbuilding Contract**

(a) The Vessel shall be constructed in accordance with the Building Shipbuilding Contract (hereafter called “the ‘Shipbuilding Building Contract’”) as annexed to this Charter, made between the Builders and the Sellers Owners and in accordance with the specifications and plans annexed thereto, such Building Contract, specifications and plans having been countersigned as approved by the Charterers.

(b) No change shall be made in the Shipbuilding Building Contract or in the specifications or plans of the Vessel as approved by the Charterers as aforesaid without the Charterers’ consent.

(c) The Charterers shall have the right to send their representative to the Builders’ Yard to inspect the Vessel during the course of her construction to satisfy themselves that construction is in accordance with such approved specifications and plans as referred to under sub-clause (a) of this Clause.

(d) The Vessel shall be built in accordance with the Building Contract and shall be of the description set out therein. Subject to the provisions of sub-clause 2(c)(ii) hereunder, the Charterers shall be bound to accept the Vessel from the Owners, completed and constructed in accordance with the Building Contract, on the date of delivery by the Builders. The Charterers undertake that having accepted the Vessel they will not thereafter raise any claims against the Owners in respect of the Vessel’s performance or specification or defects, if any. Nevertheless, in respect of any repairs, replacements or defects which appear within the first 12 months from delivery by the Builders, the Owners shall endeavour to compel the Builders to repair, replace or remedy any defects or to recover from the Builders any expenditure incurred in carrying out such repairs, replacements or remedies. However, the Owners’ liability to the Charterers shall be limited to the extent the Owners have a valid claim against the Builders under the guarantee clause of the Building Contract (a copy whereof has been supplied to the Charterers). The Charterers shall be bound to accept such sums as the Owners are reasonably able to recover under this Clause and shall make no further claim on the Owners for the difference between the amount(s) so recovered and the actual expenditure on repairs, replacement or remedying defects or for any loss of time incurred.

Any liquidated damages for physical defects or deficiencies shall accrue to the account of the party stated in Box 41(a) or if not filled in shall be shared equally between the parties.

The costs of pursuing a claim or claims against the Builders under this Clause (including any liability to the Builders) shall be borne by the party stated in Box 41(b) or if not filled in shall be shared equally between the parties.

2. **Time and Place of Delivery – SEE CLAUSE 33**

(a) Subject to the Vessel having completed her acceptance trials including trials of cargo equipment in accordance with the Building Contract and specifications to the satisfaction of the Charterers, the Owners shall give and the Charterers shall take delivery of the Vessel afloat when ready for delivery and properly documented at the Builders’ Yard or some other safe and readily accessible dock, wharf or place as may be agreed between the parties hereto and the Builders. Under the Building Contract, the Builders have estimated that the Vessel will be ready for delivery to the Owners as therein provided but the delivery date for the purpose of the Charter shall be the date when the Vessel is in fact ready for delivery by the Builders after completion of trials whether that be before or after as indicated in the Building Contract. The Charterers shall not be entitled to refuse acceptance of delivery of the Vessel

and upon and after such acceptance, subject to Clause 1(d), the Charterers shall not be entitled to make any claim against the Owners in respect of any conditions, representations or warranties, whether express or implied, as to the seaworthiness of the Vessel or in respect of delay in delivery.

(b) If for any reason other than a default by the Sellers Owners under the Shipbuilding Contract, the Builders become entitled under that Contract not to deliver the Vessel to the Sellers, the Owners shall upon giving to the Charterers written notice of Builders becoming so entitled, be excused from giving delivery of the Vessel to the Charterers and upon receipt of such notice by the Charterers this Charter shall cease to have effect.

(c) If for any reason the Owners become entitled under the Building Contract to reject the Vessel the Owners shall, before exercising such right of rejection, consult the Charterers and thereupon

(i) if the Charterers do not wish to take delivery of the Vessel they shall inform the Owners within seven (7) running days by notice in writing and upon receipt by the Owners of such notice this Charter shall cease to have effect; or

(ii) if the Charterers wish to take delivery of the Vessel they may by notice in writing within seven (7) running days require the Owners to negotiate with the Builders as to the terms on which delivery should be taken and/or refrain from exercising their right of rejection and upon receipt of such notice the Owners shall commence such negotiations and/or take delivery of the Vessel from the Builders and deliver her to the Charterers;

(iii) in no circumstances shall the Charterers be entitled to reject the Vessel unless the Owners are able to reject the Vessel from the Builders; **SEE CLAUSE 33**

(iv) if this Charter terminates under sub-clause (b) of this Clause, the Owners shall thereafter not be liable to the Charterers for any claim under or arising out of this Charter or its termination.

(d) Any liquidated damages for delay in delivery under the Building Contract and any costs incurred in pursuing a claim therefor shall accrue to the account of the party stated in Box 41(c) or if not filled in shall be shared equally between the parties.

3. **Guarantee Works – SEE CLAUSE 32**

If not otherwise agreed, the Owners authorise the Charterers to arrange for the guarantee works to be performed in accordance with the Shipbuilding building Contract terms, and hire to continue during the period of guarantee works. The Charterers have to advise the Owners about the performance to the extent the Owners may request.

4. **Name of Vessel – SEE CLAUSE 44**

The name of the Vessel shall be mutually agreed between the Owners and the Charterers and the Vessel shall be painted in the colours, display the funnel insignia and fly the house flag as required by the Charterers.

5. **Survey on Redelivery – SEE CLAUSE 46**

The Owners and the Charterers shall appoint surveyors for the purpose of determining and agreeing in writing the condition of the Vessel at the time of redelivery.

Without prejudice to Clause 15 (PART II), the Charterers shall bear all survey expenses and all other costs, if any, including the cost of docking and undocking, if required, as well as all repair costs incurred. The Charterers shall also bear all loss of time spent in connection with any docking and undocking as well as repairs, which shall be paid at the rate of hire per day or pro rata.

PART IV

HIRE/PURCHASE AGREEMENT

*(Optional, only to apply if expressly agreed and stated in Box 42)*

On expiration of this Charter and provided the Charterers have fulfilled their obligations according to PART I and II as well as PART III, if applicable, it is agreed that on payment of the final payment of hire as per Clause 11 the Charterers have purchased the Vessel with everything belonging to her and the Vessel is fully paid for:

*In the following paragraphs the Owners are referred to as the Sellers and the Charterers as the Buyers:*

The Vessel shall be delivered by the Sellers and taken over by the Buyers on expiration of the Charter:

The Sellers guarantee that the Vessel, at the time of delivery, is free from all encumbrances and maritime liens or any debts whatsoever other than those arising from anything done or not done by the Buyers or any existing mortgage agreed not to be paid off by the time of delivery. Should any claims, which have been incurred prior to the time of delivery, be made against the Vessel, the Sellers hereby undertake to indemnify the Buyers against all consequences of such claims to the extent it can be proved that the Sellers are responsible for such claims. Any taxes, notarial, consular and other charges and expense connected with the purchase and registration under Buyers' flag shall be for Buyers' account. Any taxes, consular and other charges and expenses connected with closing of the Sellers' register shall be for Sellers' account.

In exchange for payment of the last month's hire instalment the Sellers shall furnish the Buyers with a Bill of Sale duly attested and legalised, together with a certificate setting out the registered encumbrances, if any. On delivery of the Vessel the Sellers shall provide for deletion of the Vessel from the Ship's Register and deliver a certificate of deletion to the Buyers:

The Sellers shall, at the time of delivery, hand to the Buyers all classification certificates (for hull, engines, anchors, chains, etc) as well as all plans which may be in Sellers' possession:

The wireless installation and nautical instruments, unless on hire, shall be included in the sale without any extra payment:

The Vessel with everything belonging to her shall be at Sellers' risk and expense until she is delivered to the Buyers, subject to the conditions of this Contract, and the Vessel with everything belonging to her shall be delivered and taken over as she is at the time of delivery, after which the Sellers shall have no responsibility for possible faults or deficiencies of any description:

The Buyers undertake to pay for the repatriation of the Master, officers, and other personnel if appointed by the Sellers to the port where the Vessel entered the Bareboat Charter as per Clause 3 (PART II) or to pay the equivalent cost of their journey to any other place:

PART V

PROVISIONS TO APPLY FOR VESSELS REGISTERED IN A BAREBOAT CHARTER REGISTRY

*(Optional, only to apply if expressly agreed and stated in Box 43)*

1. **Definitions**

For the purpose of this PART V, the following terms shall have the meanings hereby assigned to them:

“The Bareboat Charter Registry” shall mean the registry of the state whose flag the Vessel will fly and in which the Charterers are registered as the bareboat charterers during the period of the Bareboat Charter.

“The Underlying Registry” shall mean the registry of the state in which the Owners of the Vessel are registered as Owners and to which jurisdiction and control of the Vessel will revert upon termination of the Bareboat Charter Registration.

2. **Mortgage—See Clause 44**

The Vessel chartered under this Charter is financed by a mortgage and the provisions of Clause 12(b) (PART II) shall apply.

3. **Termination of Charter by Default**

If the Vessel chartered under this Charter is registered in a Bareboat Charter Registry as stated in Box 44, and if the Owners shall default in the payment of any amounts due under the mortgage(s) specified in Box 28, the Charterers shall, if so required by the mortgagee, direct the Owners to re-register the Vessel in the Underlying Registry as shown in Box 45.

In the event of the Vessel being deleted from the Bareboat Charter Registry as stated in Box 44, due to a default by the Owners in the payment of any amounts due under the mortgage(s), the Charterers shall have the right to terminate this Charter forthwith and without prejudice to any other claim they may have against the Owners under this Charter.



Additional Clauses

to

the Bareboat Charter Party dated 14 February 2023 (this "Charter") by  
**GLORY OCEAN SHIPPING S.A.** (as to 99% share) and **TEMM  
MARITIME CO., LTD.** (as to 1% share) as owner (the "Owners") and  
**Koufonisi Shipping Corporation** as charterer (the "Charterers")  
in respect of MV "**NAVIOS FELIX**" (the "Vessel")

**32. DELIVERY**

- (a) The Charterers shall take delivery of the Vessel under this Charter simultaneously with delivery by the Sellers (as defined in Clause 1 of this Charter) as sellers to the Owners as buyers under the MOA, and the Owners shall be obliged to deliver the Vessel to the Charterers hereunder in the same moment as the Owners are taking delivery of the Vessel under the MOA.
- (b) In the event that the Vessel is not delivered to Owners under the MOA for any reason, this Charter shall automatically terminate.
- (c) The Owners warrant that the Vessel, at time of delivery, is free from all charters, encumbrances, mortgages and maritime liens or any other debts whatsoever, other than (i) those incurred prior to the delivery of the Vessel hereunder, (ii) this Charter and (iii) the mortgage over the Vessel, assignment of insurance in respect of the Vessel and the assignment of the charter hires in respect hereof in favour of **THE CHUGOKU BANK, LTD.** (the "**Mortgagee**").
- (d) The Vessel shall be delivered under this Charter in the same condition and with the same equipment, inventory and spare parts as she is delivered to the Owners under the MOA. The Charterers know the Vessel's condition at the time of delivery, and expressly agree that the Vessel's condition as delivered under the MOA is acceptable and in accordance with the provisions of this Charter. The Vessel shall be delivered to the Charterers under this Charter strictly "as is/where is", and the Charterers shall waive any and all claims against the Owners under this Charter on account of any conditions, seaworthiness, representations, warranties expressed or implied in respect of the Vessel (including but not limited to any bunkers, oils, spare parts and other items whatsoever) on delivery.

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### 33. ISM CODE

During the currency of this Charter the Charterers shall procure at the costs and expenses and time of the Charterers that the Vessel and the “company” (as defined by the ISM code) shall comply with the requirements of the ISM code. Upon request the Charterers shall provide a copy of relevant documents of compliance (DOC) and safety management certificate (SMC) to the Owners. For the avoidance of any doubt any loss, damage, expense or delay caused by the failure on the part of the “Company” to comply with the ISM code shall be for the Charterers’ account.

### 34. CHARTER PERIOD

- (a) The Owners shall let to the Charterers and the Charterers shall take the Vessel on charter for the period and upon the terms and conditions contained herein.
- (b) Subject always to the provisions hereto, the period of the chartering of the Vessel hereunder (hereinafter referred to as the “**Charter Period**”) shall comprise (unless terminated at an earlier date in accordance with the terms hereof) a firm charter period of 10 years from the date of the delivery of the Vessel by the Owners to the Charterers under this Charter (the “**Delivery Date**”) with up to 60 days more or less, provided always that the chartering of the Vessel hereunder may be terminated by the Owners pursuant to Clause 41 or shall terminate in the event of the Total Loss or Compulsory Acquisition of the Vessel subject to, and in accordance with provisions of Clause 40.

### 35. CHARTER HIRE

#### Monthly Hire Rate

After the delivery of Vessel, the Charterers shall pay the hire monthly in advance for the Charter Period, which consist of (i) Monthly Fixed Hire, (ii) Monthly Variable Hire and (iii) Monthly Owners’ profit:

(i) Monthly Fixed Hire (same as Owners’ loan principal repayment based on 10 years equal monthly repayment schedule with US\$750,000 balloon) is the sum of US\$ 260,416.667- for Vessel, which is equal to one one hundred twentieth (1/120) of the initial Charter Principal Balance minus US\$750,000 balloon; and

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(ii) Monthly Variable Hire is calculated from the number of the days in any relevant month, and daily variable hire in accordance with the following formula:

Monthly Variable Hire = Daily Variable Hire x the number of the days in the relevant month

Daily Variable Hire = Charter Principal Balance x (2.0% + one (1) month ICE LIBOR as applicable for the month in respect of which such Daily Variable Hire is to be calculated) / 360

Applicable one (1) month ICE LIBOR to be confirmed ten (10) Banking Days prior to hire due date (The both parties to discuss again about the exact date when the date for delivery of the vessel gets closer.). The Owners shall notify the Charterers in writing of the Monthly Variable Hire due on any due date for hire by sending to the Charterers a duly issued invoice for that Monthly Variable Hire and Monthly Fixed Hire at least four (4) Banking Days before such due date.

Charter Principal Balance means US\$32,000,000.- less the aggregate Monthly Fixed Hire as has at any relevant time been paid to the Owners for Vessel.

Should the ICE LIBOR fail to negative interest rate, zero (0) is to be applied as ICE LIBOR.

Should the ICE LIBOR is abolished, alternate indicator shall be discussed, agreed between both party and applied to this calculation.

(iii) Monthly Owners profit: US\$20,000/month for Vessel.

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“Banking Day” shall mean a day on which banks are open in Japan, Piraeus/Greece, Germany, London and New York.

Hire to be payable monthly in advance into the Owners designated account as the fund available on the due date.

No address commission to Charterers.

### **36. PAYMENTS**

- (a) Notwithstanding anything to the contrary contained in this Charter, all payments by the Charterers hereunder (whether by way of hire or otherwise) shall be made as follows:-
- (i) not later than 11:00 a.m. (New York time) on one Banking Day prior to the date on which the relevant payment is due under the terms of this Charter: and
  - (ii) in United States Dollars to the bank account in the name of the Owners established and maintained in THE CHUGOKU BANK, LTD. Kure Branch, as more specifically notified later by the Owners in writing (or such other bank or banks as may from time to time be notified by the Owners to the Charterers by not less than fourteen (14) days' prior written notice) for the account of the Owners.
- (b) If any day for the making of any payment hereunder shall not be a Banking Day (as defined in Clause 35 hereof) the due date for payment of the same shall be the next following Banking Day.
- (c) Subject to the terms of this Charter, the Charterers' obligation to pay hire in accordance with the requirements of Clause 35 and this Clause 36 and to pay certain amount of insurance benefit pursuant to Clause 40 (e) and to pay the Termination Compensation pursuant to Clause 42 shall be absolute irrespective of any contingency whatsoever, including (but not limited to) (i) any failure or delay on the part of any party hereto or thereto, whether with or without fault on its part, other than the Owners, in performing or complying with any of the terms or covenants hereunder, (ii) any insolvency, bankruptcy, reorganization, arrangement, readjustment of debt, dissolution, liquidation or similar proceedings by or against the Owners or the Charterers or any change in the constitution of the Owners or the Charterers or any other person, (iii) any invalidity or unenforceability or lack of due authorization of or other defect in this Charter, or (iv) any other cause which would or might but for this provision have the effect of terminating or in any way affecting any obligation of the Charterers under this Charter.

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- (d) In the event of failure by the Charterers to pay within three (3) Banking Days after the due date for payment thereof, or in the case of a sum payable on demand, the date of demand therefor, any hire or other amount payable by them under this Charter, the Charterers will pay to the Owners on demand interest on such hire or other amount from the date of such failure to the date of actual payment (both before and after any relevant judgment or winding up of the Charterers) at the rate determined by the Owners and certified by them to the Charterers (such certification to be conclusive in the absence of manifest error) to be the aggregate of (i) two & one-half per centum (2½ %) and (ii) the London Interbank Offered Rate for US Dollar deposits of not more than one month's duration (as selected by the Owners or their funders in the light of the likely duration of the default in question) (as such rate is from time to time quoted by leading banks in the London Interbank Market). Interest payable by the Charterers as aforesaid shall be compounded at such intervals as the Owners shall determine and shall be payable on demand.
  - (e) Any interest payable under this Charter shall accrue from day to day and shall be calculated on the actual number of days elapsed and a three hundred and sixty (360) day year.
  - (f) In this Charter, unless the context otherwise requires, "month" means a period beginning in one calendar month (and, in the case of the first month, on the date of delivery hereunder) and ending in the succeeding calendar month on the day numerically corresponding to the day of the calendar month in which such period started provided that if there is no such numerically corresponding day, such period shall end on the last day in the relevant calendar month and "monthly" shall be construed accordingly.

**37. FLAG AND CLASS**

- (a) The Vessel shall upon the Delivery Date be registered in the name of the Owners under the Panamanian flag. The Owners and Charterers agree to keep the Panamanian flag during the Charter Period, subject to Clause 37(c).
- (b) The Owners shall have no right to transfer the Vessel's classification society.

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The Charterers shall, at any time after the Delivery Date and at the Charterers' expense, have the right to transfer the Vessel's classification society from Nippon Kaiji Kyokai to any other classification society at least equivalent to Nippon Kaiji Kyokai.

- (c) Further, in the event that the Charterers need to change the flag of the Vessel for its commercial or operational reason, the Charterers can change the flag with the prior written Owner's consent, which should not be unreasonably withheld, provided however that:
- (i) the Owners may reject such change of flag if the proposed flag will cause any problem for the Mortgagee (in the reasonable opinion of the Mortgagee);
  - (ii) the Owners shall have the right to take redelivery the Vessel under the Panamanian flag, and accordingly If the Vessel is redelivered to the Owners without the purchase by the Charterers under Clause 49 hereof and she is then under the flag of any state other than Panama, on demand, the Owners may change such flag to the Panamanian flag so that the Owners may take redelivery of the Vessel under the Panamanian flag (in which case the Charterer shall cooperate with the Owners for change to the Panamanian flag); and
  - (iii) any expenses and time (including, but not limited to, documented legal charges for finance documents for the Mortgagee) in relation to change of flag (including charge to the Panamanian flag) shall be for the Charterers' account.
- (d) With the prior written consents of the Owner and the Mortgagee (which shall not be unreasonably withheld) and subject to the Charterers' supplying the standard de-registration agreement reasonably satisfactory to the Mortgagee, the Charterers are entitled to establish the standard bareboat charter registration on the Vessel at the costs, expense (including but not limited to, documented legal charges for finance documents for the Mortgagee, if any) and time of the Charterers.
- (e) If during the Charter Period there are modifications made to the Vessel which are compulsory for the Vessel to comply with change to rules and regulations to which operation of the Vessel is required to conform, the cost relating to such modifications shall be for the account of the Charterers.
- (f) The Owners will arrange the Vessel's registration under Panama flag and recordation of their mortgage and for the issuance of all Vessel's initial certificates of the flag at the Owners' cost. Thereafter the Charterers are responsible to arrange for the renewal of such certs at the Charterers' cost throughout the Charter Period

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**38. IMPROVEMENT AND ADDITIONS**

The Charterers shall have the right to fit additional equipment and to make severable improvements and additions at their expense and risk. Such additional equipment, improvements and additions shall be removed from the Vessel without causing any material damage to the Vessel (any such damage being made good by the Charterers at their time and expense) provided however that the Charterers shall redeliver the Vessel without removing such additional equipment, improvements and additions if the Owners consent to such non-removal before the redelivery.

The Charterers shall also have the right to make structural or non-severable improvements and additions to the Vessel at their own time, costs and expense and risk provided that such improvements and additions do not diminish the market value of the Vessel and are not likely to diminish the market value of the Vessel during or at the end of the Charter Period and do not in any way affect or prejudice the marketability or the useful life of the Vessel and are not likely to affect or prejudice the marketability or the useful life of the Vessel during or at the end of the Charter Period.

In the event of any structural modifications to Vessel or installation of new equipment becoming necessary for the continued operation of Vessel by reason of new class regulations or by compulsory legislation to which operation of Vessel is required to conform, the cost of such compulsory modifications shall be for the Charterers' account.

**39. UNDERTAKING**

The Charterers undertake and agree that throughout the Charter period they will:-

- notify the Owners in writing of any Termination Event (or event of which they are aware which, with the giving of notice and/or lapse of time or other applicable condition, would constitute a Termination Event);

**40. INSURANCE, TOTAL LOSS AND COMPULSORY ACQUISITION**

- (a) For the purposes of this Charter, the term "Total Loss" shall include actual or constructive or compromised or agreed or arranged total

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loss of the Vessel including any such total loss as may arise during a requisition for hire. "Compulsory Acquisition" shall have the meaning assigned thereto in Clause 25(b) hereof.

- (b) The Charterers undertake with the Owners that throughout the Charter Period:-
- (i) they will keep the Vessel insured in the first class underwriter's standard form as the Owners shall in writing approve, which approval shall not be unreasonably withheld, with such insurers (including P&I and war risks associations) as shall be reasonably acceptable to the Owners with deductibles reasonably acceptable to the Owners (it being agreed and understood by the Charterers that there shall be no element of self- insurance or insurance through captive insurance companies without the prior written consent of the Owners);
  - (ii) they will be properly entered in and keep entry of the Vessel with P&I Club that is a member of the International Group of Protection and Indemnity Association for the full commercial value and tonnage of the Vessel and against all prudent P&I Risks in accordance with the rules of such association or club including, in case of oil pollution liability risks equal to the highest level of cover from time to time available under the basic entry with such P&I (but always a minimum of USD1,000,000,000);
  - (iii) The policies in respect of the insurances against fire and usual marine risks and policies or entries in respect of the insurances against war risks shall, in each case, include the following loss payable provisions:-
    - (a) For so long as the Vessel is mortgaged and in accordance with the Deed of Assignment of insurances entered or to be entered into between the Charterers and any mortgagee (the "Assignee");

Until such time as the Assignee shall have notified the insurers to the contrary:

- (i) All recoveries hereunder in respect of an actual, constructive or compromised or arranged total loss



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shall be paid in full to the Assignee without any deduction or deductions whatsoever and applied in accordance with clause 40 (e);

- (ii) All other recoveries not exceeding United States Dollars Five Hundred Thousand (US\$500,000.00) shall be paid in full to the Charterers or to their order without any deduction or deductions whatsoever; and
  - (iii) All other recoveries exceeding United States Dollars Five Hundred Thousand (US\$500,000.00) shall, subject to the prior written consent of the Assignee be paid in full to the Charterers or their order without any deduction whatsoever.
- (b) During any periods when the Vessel is not mortgaged:
- (i) All recoveries hereunder in respect of an actual, constructive or compromised or arranged total loss shall be paid in full to the Owners without any deduction or deductions whatsoever and applied in accordance with clause 40 (e);
  - (ii) All other recoveries not exceeding United States Dollars Two Million (US\$2,000,000.00) shall be paid in full to the Charterers or to their order without any deduction or deductions whatsoever; and
  - (iii) All other recoveries exceeding United States Dollars Two million (US\$2,000,000.00) shall, subject to the prior written consent of the Owners be paid in full to the Charterers or their order without any deduction whatsoever, subject to the fulfillment of the provisions of Clause 44;

and the Owners and Charterers agree to be bound by the above provisions.

- (iv) the Charterers shall procure that duplicates of all cover notes, policies and certificates of entry shall be furnished to the Owners for their custody;
- (v) the Charterers shall procure that the insurers and the war risk and protection and indemnity associations with which the Vessel is entered shall

- (A) furnish the Owners with a letter or letters of undertaking in relevant underwriter's standard form and in accordance with the underwriters' rules.
- (B) supply to the Owners such information in relation to the insurances effected, or to be effected, with them as the Owners may from time to time reasonably require: and
- (vi) the Charterers shall use all reasonable efforts to procure that the policies, entries or other instruments evidencing the insurances are endorsed to the effect that the insurers shall give to the Owners prior written notification of any amendment, suspension, cancellation or termination of the insurances in accordance with the underwriters' guidance and rules.
- (c) Notwithstanding anything to the contrary contained in Clauses 13 and any other provisions hereof, the Vessel shall be kept insured during the Charter Period in respect of marine and war risks on hull and machinery basis (The Charterers shall have the option, to take out on a full hull and machinery basis increased value or total loss cover in an amount not exceeding Thirty per centum (30%) of the total amount insured from time to time) for not less than the amounts specified in column (b) in the table set out below in respect of the one-yearly period during the Charter Period specified in column (a) (on the assumption that the first such period commences on the Delivery Date) against such amount (hereinafter referred to as the "**Minimum Insured Value**"):

(a) Year	(b) Minimum Insured Value
1	US\$ 35,200,000
2	US\$ 31,762,500
3	US\$ 28,325,000
4	US\$ 24,887,500
5	US\$ 21,450,000
6	US\$ 18,012,500
7	US\$ 14,575,000
8	US\$ 11,137,500
9	US\$ 7,700,000
10	US\$ 4,262,500

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- (d) (i) If the Vessel shall become a Total Loss or be subject to Compulsory Acquisition the Chartering of the Vessel to the Charterers hereunder shall cease and the Charterers shall:-
- (A) immediately pay to the Owners all hire, and any other amounts, which have fallen due for payment under this Charter and have not been paid as at and up to the date on which the Total Loss or Compulsory Acquisition occurred (the “**Date of Loss**”) together with interest thereon at a rate reflecting the Owners’ reasonable cost of funds at such intervals, which amount to be agreed between the Owners and the Charterers and shall cease to be under any liability to pay any hire, but not any other amounts, thereafter becoming due and payable under this Charter, ~~Provided that all hire and any other amounts prepaid by the Charterers subsequent to the Date of Loss shall be forthwith refunded by the Owners:~~
  - (B) for the purposes of this sub-clause, the expression “relevant Minimum Insured Value” shall mean the Minimum Insured Value applying to the one-year period in which the Date of Loss occurs.
- (ii) For the purpose of ascertaining the Date of Loss:-
- (A) an actual total loss of the Vessel shall be deemed to have occurred at noon (London time) on the actual date the Vessel was lost but in the event of the date of the loss being unknown the actual total loss shall be deemed to have occurred at noon (London time) on the date on which it is acknowledged by the insurers to have occurred:
  - (B) a constructive, compromised, agreed, or arranged total loss of the Vessel shall be deemed to have occurred at noon (London time) on the date that notice claiming such a total loss of the Vessel is given to the insurers, or, if the insurers do not admit such a claim, at the date and time at which a total loss is subsequently admitted by the insurers or adjudged by a competent court of law or arbitration tribunal to have

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occurred. Either the Owners or, with the prior written consent of the Owners (such consent not to be unreasonably withheld), the Charterers shall be entitled to give notice claiming a constructive total loss but prior to the giving of such notice there shall be consultation between the Charterers and the Owners and the party proposing to give such notice shall be supplied with all such information as such party may request; and

(C) Compulsory Acquisition shall be deemed to have occurred at the time of occurrence of the relevant circumstances described in Clause 25 (b) hereof.

(e) All moneys payable under the insurance effected by the Charterers pursuant to Clauses 13 and 40, or other compensation, in respect of a Total Loss or pursuant to Compulsory Acquisition of the Vessel shall be received in full by the Owners (or the Mortgagees as assignees thereof) and applied by the Owners (or, as the case may be, the Mortgagees):-

FIRST, in payment of all the Owners' costs incidental to the collection thereof,

SECONDLY, in or towards payment to the Owners (to the extent that the Owners have not already received the same in full) of a sum equal to the aggregate of (i) unpaid but due hire under this Charter and unpaid interest thereon up to and including the Date of Loss and (ii) the "Termination Amount" (defined below) as at the Date of Loss, and

THIRDLY, in payment of any surplus to the Charterers by way of compensation for early termination.

"Termination Amount" shall mean:

(A) in case that Date of Loss is at or after the end of 4th year of the Charter Period, the Termination Amount shall be equal to the Purchase Option Price payable under Clause 49 which shall be calculated based on the Date of Loss; and

(B) in case that the Date of Loss is before the 4th year of the Charter Period, the Termination Amount shall be as follows:

(date)	(amount)
as at the Delivery Date:	US\$ 34,087,500
at the end of 1 <sup>st</sup> year of the Charter Period:	US\$ 30,855,500
at the end of 2 <sup>nd</sup> year of the Charter Period:	US\$ 27,623,500
at the end of 3 <sup>rd</sup> year of the Charter Period:	US\$24,391,500.,

provided that, in relation to (B), if Date of Loss is between the two dates as specified above, then the Termination Amount shall be adjusted proportionally on the basis of 360 days a year.

- (f) The Charterers and the Mortgagee shall execute the "Assignment of Insurances" of which contents and wording shall be mutually agreed between the Owners and the Charterers.

#### 41. TERMINATION EVENTS

- (a) Each of the following events shall be a "Termination Event" for purposes of this Charter:-
- (i) if any installment of hire or any other sum payable by the Charterers under this Charter (including any sum expressed to be payable by the Charterers on demand) shall not be paid at its due date or within ten (10) Banking Days following the due date of payment and such failure to pay is not remedied within three (3) Banking Days of receipt by the Charterers of written notice from the Owners notifying the Charterers of such failure and requesting that payment is made; or
  - (ii) Save in circumstances where requisition for hire or compulsory requisition result in termination of insurances for the Vessel, if either (A) the Charterers shall fail at any time to effect or maintain any insurances required to be effected and maintained under this Charter, or any insurer shall avoid or cancel any such insurances (other than where the relevant avoidance or cancellation results from an event or circumstance outside the reasonable control of the Charterers and the relevant insurances are reinstated or re-constituted in a manner meeting the requirements of this Charter within seven (7) days of such avoidance or cancellation) or the Charterers shall commit any breach of or make any misrepresentation in respect of any such insurances the result of which the relevant insurer avoids the policy or otherwise excuses or releases itself from all or any of its liability thereunder, or (B) any

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of the said insurances shall cease for any reason whatsoever to be in full force and effect (other than where the reason in question is outside the reasonable control of the Charterer and the relevant insurances are reinstated or re-constituted in a manner meeting the requirements of this Charter within seven (7) days of such cease); or

- (iii) if the Charterers shall at any time fail to observe or perform any of their material obligations under this Charter, other than those obligations referred to in sub-clause (i) or sub-clause (ii) of this Clause 41(a), and such failure to observe or perform any such obligation is either not remediable or is remediable but is not remedied within thirty (30) days of receipt by the Charterers of a written notice from the Owners requesting remedial action; or
- (iv) if any material representation or warranty by the Charterers in connection with this Charter or in any document or certificate furnished to the Owners by the Charterers in connection herewith or therewith shall prove to have been untrue, inaccurate or misleading in any material respect when made (and such occurrence continues unremedied for a period of thirty (30) days after receipt by the Charterers of written notice from the Owners requesting remedial action); or
- (v) if a petition shall be presented (and not withdrawn or stayed within sixty (60) days) or an order shall be made or an effective resolution shall be passed for the administration or winding-up of the Charterers (other than for the purpose of a reconstruction or amalgamation during and after which the Charterers remain solvent and the terms of which have been previously approved in writing by the Owners which approval shall not be unreasonably withheld) or if an encumbrancer shall take possession or an administrative or other receiver shall be appointed of the whole or any substantial part of the property, undertaking or assets of the Charterers or if an administrator of the Charterers shall be appointed (and, in any such case, such possession is not given up or such appointment is not withdrawn within sixty (60) days) or if anything analogous to any of the foregoing shall occur under the laws of the place of the Charterers' incorporation, or
- (vi) if the Charterers shall stop payments to all of its creditors or shall cease to carry on or suspend all or a substantial part of their business or shall be unable to pay their debts, or shall admit in writing their inability to pay their debts, as they become due or shall otherwise become or be adjudicated insolvent; or

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- (vii) if the Charterers shall apply to any court or other tribunal for, a moratorium or suspension of payments with respect to all or a substantial part of their debts or liabilities, or
  - (viii) (A) (a) if the Vessel is arrested or detained (other than for reasons solely attributable to the Owners or to those for whom, for the purposes of this provision, the Owners shall be deemed responsible, including without limitation, any legal person who, at the date hereof or at any time in the future is affiliated with the Owners) and such arrest or detention is not lifted within ninety (90) days (or such longer period as the Owners shall reasonably agree in the light of all the circumstances) of the date on which the Vessel has been arrested or detained, or (b) if any petition of any public auction or other sale proceeding (following such arrest or detention) is filed or such proceeding is commenced or ordered by the competent court or other authority (except that the Charterer promptly contested in good faith and which is continuing),  
(B) if a distress or execution shall be levied or enforced upon or sued out against all or any substantial part of the property or assets of the Charterers and shall not be discharged or stayed within ninety (90) days; or
  - (ix) if any consent, authorization, license or approval necessary for this Charter to be or remain the valid legally binding obligations of the Charterers, or to the Charterers to perform their obligations hereunder or thereunder, shall be materially adversely modified or is not granted or is revoked, suspended, withdrawn or terminated or expires and is not renewed (provided that the occurrence of such circumstances shall not give rise to a Termination Event if the same are remedied within thirty (30) days of the date of their occurrence); or
  - (x) if (a) any legal proceeding for the purpose of the reconstruction or rehabilitation of the Charterers is commenced and continuing in any jurisdiction and (b) the Owners receive a termination notice from the receiver, trustee or others of the Charterers which informs the termination/rejection of the Charter pursuant to the relevant laws, codes and regulations applicable to such proceeding.

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- (b) A Termination Event shall constitute (as the case may be) either a repudiatory breach of, or breach of condition by the Charterers under, this Charter or an agreed terminating event the occurrence of which will (in any such case) entitle the Owners by notice to the Charterers to terminate the chartering of the Vessel under this Charter and recover the amounts provided for in Clause 42(c) either as liquidated damages or as an agreed sum payable on the occurrence of such event.

#### 42. OWNERS' RIGHTS ON TERMINATION

- (a) At any time after a Termination Event shall have occurred and be continuing, the Owners may, by notice to the Charterers immediately, or on such date as the Owners shall specify, terminate the chartering by the Charterers of the Vessel under this Charter, whereupon the Vessel shall no longer be in the possession of the Charterers with the consent of the Owners, and the Charterers shall redeliver the Vessel to the Owners. For the avoidance of doubt, in case of the termination of the Charter in accordance with 41 (a) (x) hereof, the Charter shall be deemed to be terminated upon receipt by the Owners of the termination notice set forth in Clause 41 (a) (x) hereof.
- (b) On or at any time after termination of the chartering by the Charterers of the Vessel pursuant to Clause 42(a) hereof the Owners shall be entitled to retake possession of the Vessel, the Charterers hereby agreeing that the Owners, for that purpose, may put into force and exercise all their rights and entitlements at law and may enter upon any premises belonging to or in the occupation or under the control of the Charterers where the Vessel may be located.
- (c) If the Owners pursuant to Clause 42(a) hereof give notice to terminate the chartering by the Charterers of the Vessel, the Charterers shall pay to the Owners on the date of termination (the "**Termination Date**"), the aggregate of (A) all hire due and payable, but unpaid, under this Charter to (and including) the Termination Date together with interest accrued thereon pursuant to Clause 36(d) hereof from the due date for payment thereof to the Termination Date, (B) any sums, other than hire, due and payable by the Charterers, but unpaid, under this Charter together with interest accrued thereon pursuant to Clause 36(d) to the Termination Date and (C) any actual direct financial loss suffered by the Owners which direct loss shall be determined as the shortfall, if any, between (a) the current market value of the Vessel (average value as estimated by two



independent valuers such as major London brokers i.e. Arrow Valuations Ltd, Barry Rogliano Salles, Braemar ACM Shipbroking, H Clarkson & Co. Ltd., E.A. Gibsons Shipbrokers, Fearnleys, Galbraith, Simpson Spencer & Young, Howe Robinson & Co Ltd London and Maersk Broker K.S. (to include, in each case, their successors or assigns and such subsidiary or other company in the same corporate group through which valuations are commonly issued by each of these brokers), or such other first-class independent broker as the Owners and Charterers may agree in writing from time to time) and (b) the Termination Amount (as defined in Clause 40(e)) to be calculated based on the Termination Date ~~at any given time always taking into account any charterhire paid during the year to which the specified Termination Amount relates~~ **PROVIDED ALWAYS** that if the said market value exceeds the aggregate of (A) and (B) and the Termination Amount, then the Owners shall pay the amount of such excess to the Charterers forthwith. The aggregate of (A), (B) and (C) above shall hereinafter be referred to as the “**Termination Compensation**”).

- (d) If the Charter is terminated in accordance with this Clause 42 the Charterers shall immediately redeliver the Vessel at a safe and ice-free port or place as indicated by the Owners. The Vessel shall be redelivered to the Owners in substantially the same condition and class as that in which she was delivered, fair wear and tear not affecting class excepted.
- (e) The Owners agree that if following termination of the Charter under this Clause, the Owners sell or otherwise transfer the Vessel to a third party, or enter into any other arrangement with a third party with an option to purchase the Vessel, then the Owners shall pay to the Charterers after that sale (i) the amount of the sale price less (ii) the aggregate of the unpaid Termination Compensation and the Termination Amount (as defined in Clause 40(e)) which would be payable by the Charterers as set out in Clause 49 as at the date of such sale (which shall include, for the avoidance of doubt, any costs and expenses incurred by the Owners arising from or in relation to the termination and the re-possession of the Vessel and operation, repair (as the case may be) and such sale of the Vessel).

#### 43. NAME

The Charterers shall, subject only to prior notification to the relevant authorities of the jurisdiction in which for the time being the Vessel is registered, be entitled from time to time to change the name of the Vessel. During the Charter Period, the Charterers shall have the liberty to paint the Vessel in their own colours, install and display their funnel insignia and

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fly their own house flag. Painting and installment shall be at Charterers' expense and time. The Charterer shall also have the liberty to change the name of the Vessel during the Charter Period at the expense and time of the Charterers (including the legal charge for finance documents for the Mortgagee, if any).

The Owners shall have no right to change the name of the Vessel during the Charter Period.

#### **44. MORTGAGE and ASSIGNMENT**

The Owners confirm that they are familiar with the terms of the assignment of insurances made or to be made by the Charterers in favour or the Mortgagee, and they agree to the terms thereof and will do nothing that conflicts therewith, excepting that the Owners shall be entitled to assign its rights, title and interest in and to this Charter to the Mortgagee or its assignee. Neither party shall assign its right or obligations or part of thereof to any third party without the written consent of the other, unless otherwise expressly permitted herein.

In respect of the Vessel the Owners undertake not to borrow more than the respective purchase option prices as set out at the relevant milestone in Clause 49 hereof.

The Owners have the right to register a first preferred mortgage on the Vessel in favour of the Mortgagee securing a loan under the Loan Agreement under standard mortgages and security documentation. In which case, the Owners undertake to procure from the Mortgagee a Letter of Quiet Enjoyment in a form and substance acceptable to the Charterers.

The Charterers agree to sign an acknowledgement of the Owners' charterhire assignment or any other comparable document reasonably required by the Mortgagee, in favour of the Mortgagee. During the course of the Charter the Owners have the right to register a substitute mortgage in favour of another bank provided such registration is effected in a similar amount to the loan amount outstanding with the Mortgagee at that time and only if such substitute mortgagee executes a Letter of Quiet Enjoyment in favour of the Charterers in the same form as that provided by the Mortgagee or the form acceptable for the Charterers. The Charterers will then agree to sign a charterhire assignment in favour of the substitute mortgage in a form as shall be agreed by the Charterers, which agreement not be unreasonably withheld. Any cost incurred by the Charterers shall be for Owners' account.

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Subject to the term and conditions of this Charter, the Charterers also agree that the Owners have the right to assign its rights, title and interest in and to the insurances by way of assignment of insurance in respect of the Vessel to and in favour of the Assignee in a form and substance acceptable to Charterers and the Assignee.

Owners shall procure that any mortgage and charterhire assignment shall be subject to this Charter and to the rights of the Charterers hereunder, in accordance with, and subject to, a Letter of Quiet Enjoyment.

In the event that the Owners execute security of any nature (including but not limited to any mortgage, assignment of insurances) over the Vessel then the Owners hereby undertake and agree as a condition of this Charter to procure that the beneficiary of such security executes in favour of the Charterers a letter of quiet enjoyment in such form and content as is reasonably acceptable to the Charterers, and the effectiveness of this assignment clause is subject to the agreement of a letter of Quiet Enjoyment on or before delivery of the Vessel.

The Charterers shall not assign charter nor sub-charter Vessel on a bareboat basis except with the prior consent in writing of the Owners, which shall not be unreasonably withheld. Such Owners' prior written consent will not be required provided that Vessel remain at all times under the management of Navios Shipmanagement Inc. or an affiliate of Navios Shipmanagement Inc. or of Angeliki Frangou Furthermore, the Charterers may assign or transfer the charter by way of novation to a subsidiary or affiliate of Navios Maritime Partners L.P. without Owners' prior written consent, in which case, (i) the Charterers, the Owners and such new charterers as permitted under this Clause shall enter into a novation agreement on or before such novation at the Charterers' cost and (ii) new assignment of insurances and assignment of charterhires as mentioned above and an amendment of the Mortgage (as the case may be) shall be made in favour of the Mortgagee at the Charterers' cost.

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#### **45. REDELIVERY INSPECTION**

Prior to redelivery and without interference to the operation of the Vessel, the Owners, at their risk and expense, shall have the right provided that such right is declared at least 20 days prior to the expected redelivery date to carry out an underwater inspection of the Vessel by Class approved diver and in the presence of Class surveyor and Owners' and Charterers' representatives. Should any damages in the Vessel's underwater parts be found that will impose a condition or recommendation of Vessel's class then:

- a) In case Class imposes a condition or recommendation of class that does not require drydocking before next scheduled drydocking. Charterers shall pay to Owners the estimated cost to repair such damage in way which is acceptable to Class, which to be direct cost to repair such damage only, as per average quotation for the repair work obtained from two reputable independent shipyards at or in the vicinity of the redelivery port, one to be obtained by Owners and one by Charterers within 2 Banking Days from the date of imposition of the condition/recommendation unless the parties agree otherwise.
- b) In case Class require Vessel to be drydocked before the next scheduled drydocking the Charterers shall drydock the Vessel at their expense prior to redelivery of the Vessel to the Owners and repair same to Class satisfaction.

In such event the Vessel shall be redelivered at the port of the dockyard.

#### **46. REDELIVERY**

The Charterers shall redeliver to the Owners the Vessel with everything belonging to her at the time of redelivery including spare parts on board, used or unused subject to the Clause 38 hereof. The Owners shall take over and pay the Charterers for remaining bunkers and unused lubricating oils including hydraulic oils, and greases, unbroached provisions, paints, ropes and other consumable stores as per Clause 53 at the Charterers' purchased prices with supporting vouchers. For the purpose of this clause, the Charterers shall withhold the Hire two last hire payments (the "Withheld Hire") and shall offset the cost of bunkers, unused lubricating oils and unbroached provisions etc., remaining on board at the time of redelivery from the Withheld Hire. If the Withheld Hire is not sufficient to cover the cost of bunkers, unused lubricating oils, and unbroached provisions etc. the Owners shall settle the outstanding amount within 3 Banking Days after redelivery of the Vessel.

Personal effects of the Master, officers and crew including slop chest, hired equipment, if any and the following listed items are excluded and shall be removed by the Charterers prior to or at the time of redelivery of the Vessel:

- E-mail equipment not part of GMDSS
- Gas bottles
- Electric deck air compressor
- Blasting and painting equipment
- Videotel (or similar) film library

**47. MORTGAGE NOTICE**

The Charterers keep prominently displayed in the chart room, engine room and the master’s cabin of the Vessel a framed printed notice in plain type (the print on which shall measure at least six inches by nine inches) reading as follows:-

NOTICE OF MORTGAGE

“This Vessel is covered by a First Preferred Ship Mortgage given to THE CHUGOKU BANK, LTD., a banking corporation duly organized and existing under the laws of Japan, having its head office at 3-6-1, Hon-dori, Kure, Hiroshima-Pref., Japan, its successors and assigns, under the authority of the laws of the Republic of Panama. Under the terms of said Mortgage, neither the owner of this Vessel, any charterer, the Master of this Vessel, nor any other person has any right, power or authority to create, incur or permit to be imposed upon the Vessel any liens, maritime or otherwise, other than the lien of said Mortgage and liens for crew’s wages or salvage.”

**48. SALE OF VESSEL BY OWNERS**

1. The Owners have the right to sell the Vessel to a reputable third party (“**Purchaser**”) at any time during the Charter Period with the prior written consent of the Charterers and provided that (i) the Purchaser agrees to take over the benefit and burden of this Charter, (ii) such ownership change does not result in any reflagging of the Vessel, (iii) such ownership change does not result in the Charterers being obliged to increase any payment under this Charter, (iv) such ownership change does not increase the actual or contingent obligations of the Charterers under this Charter, and (v) the Charterers shall not be liable for the costs and expenses (including legal fees) incurred in the sale of the Vessel by the Owners under this Clause 48.
2. The Owners shall give the Charterers at least one month’s prior written notice of any sale.

3. Subject to 48.1, the Charterers and Owners undertake with each other to execute one or more novation agreements (or other documents required under applicable law) to novate the rights and obligations of the Owners under this Charter to the Purchaser such novation agreement(s) or other documents to be in such form and substance acceptable to the Charterers and such novation will be effective upon delivery of the Vessel from the Owners to the Purchaser.”

#### 49. CHARTERERS' OPTION TO PURCHASE VESSEL

1. From (and including) the end of 4th year of the Charter Period, the Charterers have the option to purchase the Vessel at the following purchase price. The Charterers' purchase option is subject to Charterers' written declaration to the Owners latest three (3) months prior to the expected date of delivery, such date to be indicated by the Charterers in their declaration notice (such purchase option price at such expected date of delivery indicated in the declaration notice as calculated by the following formula, being called the “**Purchase Option Price**”).

The Purchase Option Price shall be calculated in accordance with the following formula (Pls also see purchase option price appendix ):

“Purchase Option Price = (A) + (B) + (C)”

(A) = Charter Principal Balance

(B) = Owners' profit starting from US\$1,450,000. at the end of 4th year and de-escalate US\$75,000/year to the end of 10th year

(C) = Owners' broker commission: 1.00% over the above (A) + (B) for Vessel

2. The Purchase Option Price shall be paid in full free of bank charges to the Owners (as seller) upon the delivery date of the Vessel under this Clause.
3. Immediately prior to delivery of the Vessel by the Owners to the Charterers under the PO MOA (as defined in Clause 49.4) the Parties shall execute a Protocol of Redelivery and Acceptance under this Charter (the “**Redelivery Protocol**”) and save in respect of any claims accrued under this Charter prior to the date and time of the Redelivery Protocol, this Charter shall terminate forthwith.

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4. Upon the date of any written notification by the Charterers to the Owners of their intention to purchase the Vessel, the Owners and the Charterers shall be deemed to have unconditionally entered into a contract to sell and purchase the Vessel for the Purchase Option Price on and in strict conformity with the terms and conditions contained in the Memorandum of Agreement attached to this Charter as Exhibit A (the “**PO MOA**”).

**50. MISCELLANEOUS**

- (a) The terms and conditions of this Charter and the respective rights of the Owners and the Charterers shall not be waived or varied otherwise than by an instrument in writing of the same date as or subsequent to this Charter executed by both parties or by their duly authorized representatives.
- (b) Unless otherwise provided in this Charter whether expressly or by implication, time shall be of the essence in relation to the performance by the Charterers of each and every one of their obligations hereunder.
- (c) No failure or delay on the part of the Owners or the Charterers in exercising any power, right or remedy hereunder or in relation to the Vessel shall operate as a waiver thereof nor shall any single or partial exercise of any such right, power or remedy preclude any other or further exercise of any such right or power or the exercise of any other right, power or remedy.
- (d) If any terms or condition of this Charter shall to any extent be illegal invalid or unenforceable the remainder of this Charter shall not be affected thereby and all other terms and condition shall be legal valid and enforceable to the fullest extent permitted by law.
- (e) The respective rights and remedies conferred on the Owners and the Charterers by this Charter are cumulative, may be exercised as often as the Owners or the Charterers (as the case may be) think fit and are in addition to, and are not exclusive of, any rights and remedies provided by law.

## 51. COMMUNICATIONS

Except as otherwise provided for in this Charter, all notices or other communications under or in respect of this Charter to either party hereto shall be in writing and shall be made or given to such party at the address, facsimile number or e-mail address appearing below (or at such other address, facsimile number or e-mail address as such party may hereafter specify for such purposes to the other by notice in writing):-

(i) in the case of the Owners c/o FUNADA KAIUN CO., LTD.

**Address** : 13-7 Nigata Sanbashi-dori Kure Hiroshima, 737-0154  
**Telephone** : +81-823-79-0005  
**Telefax** : +81-823-79-0031  
**E-mail** : [hiroyuki.funada@funadakaiun.com](mailto:hiroyuki.funada@funadakaiun.com)

(ii) in the case of the Charterers c/o Navios Shipmanagement Inc.

**Address** : 85 Akti Miaouli Street, 18538, Piraeus, Greece  
**Telephone** : 30-210-4595000  
**E-mail** : [ops@navios.com](mailto:ops@navios.com)  
[legal@navios.com](mailto:legal@navios.com),  
[tech@navios.com](mailto:tech@navios.com)  
[legal\\_corp@navios.com](mailto:legal_corp@navios.com)

(iii) in the case of the Brokers c/o Mitsui & Co., Ltd.

**Address** : 2-1, Otemachi 1-Chome, Chiyodaku, Tokyo 100-8631, Japan  
**Telephone** : +81-3-3285-4327  
**Telefax** :  
**E-mail** : [tkmyh@dg.mitsui.com](mailto:tkmyh@dg.mitsui.com)

A written notice includes a notice by facsimile or e-mail. A notice or other communication received on a non-working day or after business hours in the place of receipt shall be deemed to be served on the next following working day in such place.

Subject always to the foregoing sentence, any communication by personal delivery or letter shall be deemed to be received on delivery, any communication by e-mail shall be deemed to be received upon transmission of the automatic answerback of the addresses and any communication by facsimile shall be deemed to be received upon appropriate acknowledgment by the addressee's receiving equipment.



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All communications and documents delivered pursuant to or otherwise relating to this Charter shall either be in English or accompanied by a certified English translation.

**52. TRADING IN WAR RISK AREA**

The Charterers shall be permitted to order the Vessel into an area subject to War Risks as defined in Clause 26 without consent of the Owners provided that all Marine, War and P&I Insurance are maintained with full force and effect and the Charterers shall pay any and all additional premiums to maintain such insurance.

**53. INVENTORIES, OIL AND STORES**

A complete inventory of the Vessel's entire equipment, outfit including spare parts, appliances and of all consumable stores on board the Vessel shall be made by the Charterers in conjunction with the Owners on delivery and again on redelivery of the Vessel.

The Owners shall at the time of redelivery take over and pay for all bunkers, lubricating oil, unbroached provisions, paints, ropes and other consumable stores (excluding spare parts) in the said Vessel at the Charterers' purchased prices with supporting vouchers. However, the Charterers shall not pay to the Owners at time of delivery for any bunkers, lubricating oil, provisions, paints, ropes and consumable stores which the Charterers have supplied to the Vessel at the Charterers' expense prior to delivery. The Charterers shall ensure that all spare parts listed in the inventory and used during the Charter Period are replaced at their expense prior to redelivery of the Vessel.

**54. INDEMNITY FOR POLLUTION RISKS**

The Charterers shall indemnify the Owners against the following Pollution Risks:-

- (a) liability for damages or compensation payable to any person arising from pollution;
- (b) the costs of any measures reasonably taken for the purpose of preventing, minimizing or cleaning up any pollution together with any liability for losses or damages arising from any measures so taken;

- 
- (c) liability which the Owners and/or the Charterers may incur, together with costs and expenses incidental thereto, as the result of escape or discharge or threatened escape discharge of oil or any other substance;
  - (d) the costs or liabilities incurred as a result of compliance with any order or direction given by any government or authority for the purpose of preventing or reducing pollution or the risk of pollution; provided always that such costs or liabilities are not recoverable under the Hull and Machinery Insurance Policies on the Vessel;
  - (e) liability which the Owners and/or the Charterers may incur to salvors under the exception to the principal of “no cure-no pay” in Article 1 (b) of Lloyds Standard Form of Salvage Agreement (LOF 1990); and
  - (f) liability which the Charterers may incur for the payment of fines in respect of pollution in so far as such liability may be covered under the rules of the P&I Club.

#### **55. TRADE AND COMPLIANCE CLAUSE**

The Charterers and the Owners hereby agree that no person/s or entity/ies under this Charter will be individual(s) or entity(ies) designated under any applicable national or international law imposing trade and economic sanctions.

Further, the Charterers and the Owners agree that the performance of this Charter will not require any action prohibited by sanctions or restrictions under any applicable national or international law or regulation imposing trade or economic sanctions.

#### **56. ANTI-BRIBERY AND ANTI-CORRUPTION**

The Charterers and the Owners hereby agree that in connection with this Contract and/or any other business transactions related to it, they as well as their sub-contractors and each of their affiliates, directors, officers, employees, agents, and every other person acting on its and its sub-contractors' behalf, shall perform all required duties, transactions and dealings in compliance with all applicable laws, rules, regulations relating to anti-bribery and anti-money laundering.

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**57 COSTS AND EXPENSES**

- (a) The parties hereto agree that all operational cost including required cost in relation to Vessel's flag (such as tonnage tax, insurance and crew certs etc) would be for the Charterers' account. However, all other cost (such as financing cost /cost for registration and discharge of their mortgage etc) would be for the Owners' account.
- (b) For this Charter and the MOA, each party should bear its own costs unless otherwise agreed herein.

**58 MANAGEMENT COMPANY**

The management company shall be Navios Shipmanagement Inc., or any other management company affiliated to Angeliki Frangou. The Charterers may change the management company with the Owners' prior consent not to be unreasonably withheld, unless such change is to an affiliate of Navios Shipmanagement Inc. or of Angeliki Frangou in which case Owners' consent will not be required.

**59 BBC SURVEY (Further to Clause 8)**

In case the Vessel has any incidents/casualties, Owners have the right to carry out physical inspection more than once per year at Owners' expense. Charterers will do their best to organize the timing and place based on Owners' preferred timing. Charterers' technical and operation team will organize accordingly. Owners shall have the right to visit the Vessel at dry-dock after the completion of DD works.

**60 SANCTION**

- (1) In this Clause, the following provisions shall apply where any sanction, prohibition or restriction is imposed on any specified persons, entities or bodies including the designation of any specified vessels or fleets under United Nations Resolutions or trade or economic sanctions, laws or regulations of the European Union, United States of America, United Kingdom, Panama, Japan, the Flag State of the Vessel and/or the Marshall Islands.
- (2) The Owners and the Charterers hereby represent and warrant to each other that as of the even date hereof, they have never received any notice of legal proceedings or investigation in relation to the sanctions, restrictions or designation referred to in sub-clause (1) and have never acknowledged existence of such legal proceedings or investigation.

- 
- (3) The Owners hereby warrants that at the date of entering into this Agreement and during the currency of this Charter:
- (i) none of the Owners, their directors and officers is subject to any of the sanctions, prohibitions, restrictions or designation referred to in sub-clause (1) which prohibit or render unlawful any performance by the Charterers and/or the Owners under this Charter;
  - (ii) the Owners are letting and performing other obligations hereunder as principals and not as agent, trustee or nominee of any person with whom transactions are prohibited or restricted under sub-clause (1); and
  - (iii) the Owners will promptly inform the Charterers of receipt of any notice of proceeding or investigation referred to in sub-clause (2) and send the copy of such notice and any relevant documents they have received in relation thereto.
- (4) The Charterers hereby warrants that at the date of entering into this Agreement and during the currency of this Charter:
- (i) none of the Charterers, the management company under Clause 58 hereof, their respective directors and officers is subject to any of the sanctions, prohibitions, restrictions or designation referred to in sub-clause (1) which prohibit or render unlawful any performance by the Charterers and/or the Owners under this Charter; the Charterers are hiring and performing other obligations hereunder as principals and not as agent, trustee or nominee of any person with whom transactions are prohibited or restricted under sub-clause (1);
  - (ii) the Vessel is not a designated vessel under any of the sanctions, prohibitions, restrictions or designation referred to in sub-clause (1);
  - (iii) **the Charterer will promptly inform the Owners of receipt of any notice of** proceeding or investigation referred to in sub-clause (2) and send the copy of such notice and any relevant documents they have received in relation thereto; and
  - (iv) on demand the Charterers will provide the Owners of all Relevant Documents in relation to the Vessel and/or the cargo on board the Vessel. In this paragraph (v), "Relevant Documents" shall mean (A) such documents as required to prove that the Charterers are not in breach of the sanctions, prohibitions, restrictions or designation referred to in sub-clause (1) and/or (B) such documents as required for the Owners and/or the Mortgagee to disclose to any competent authority in relation to the sanctions, prohibitions, restrictions or designation referred to in sub-clause (1), provided that the Relevant Documents shall be reasonably and practicably obtainable to the Charterers.

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**61 DOWN PAYMENT**

The Charterers shall pay US\$8,000,000 to the Owners as down payment to the Purchase Option Price upon delivery of the Vessel. The down payment will be netted off against payment of the purchase price under the MEMORANDUM OF AGREEMENT signed by Koufonisi Shipping Corporation and GRORY OCEAN SHIPPING S.A. dated on 20<sup>th</sup> February 2023 (herein called "MOA") at the time of delivery of the Vessel under the MOA and this Charter pursuant to clause 32.

The down payment is not part of the Purchase Option Price of Clause 49 and shall be kept by the Owners on delivery of the Vessel under the PO MOA referred to in Clause 49.

The down payment does not bear interest and is non-refundable. For the avoidance of any doubt, should the Charter be terminated due to Total Loss, the Owners shall make the payment referred to in Clause 40, but shall have no obligation to make any refund to the Charterers in respect of the Down payment.

**62. NAABSA Clause**

The Vessel may lie safely aground at any safe berth or safe place where it is customary and safe for vessels of similar size and type to lie.

(end)

**Dated February 2023**

**\$161,600,000**

**SINOSURE-BACKED TERM LOAN FACILITY**

**TERPSICHORE SHIPPING CORPORATION  
ERATO SHIPMANAGEMENT CORPORATION  
CALLIOPE SHIPPING CORPORATION  
EUTERPE SHIPPING CORPORATION**  
as joint and several Borrowers  
and Hedge Guarantors

**THE BANKS AND FINANCIAL INSTITUTIONS**

listed in Schedule 1  
as Lenders  
and Hedge Counterparties

**DNB (UK) LIMITED**

as Bookrunner

**DNB BANK ASA, LONDON BRANCH**

as Facility Agent  
and Security Agent

**DNB BANK ASA**

as Sinosure Agent

**FACILITY AGREEMENT**

relating to  
the financing of four 5,300 TEU container vessels

**WATSON FARLEY  
&  
WILLIAMS**

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## PARTIES

- (1) **TERPSICHORE SHIPPING CORPORATION**, a corporation incorporated in the Republic of the Marshall Islands whose registered address is at Trust Company Complex, Ajeltake Road, Ajeltake Island, Majuro, Marshall Islands MH96960 as a borrower (“**Borrower A**”)
- (2) **ERATO SHIPMANAGEMENT CORPORATION**, a corporation incorporated in the Republic of the Marshall Islands whose registered address is at Trust Company Complex, Ajeltake Road, Ajeltake Island, Majuro, Marshall Islands MH96960 as a borrower (“**Borrower B**”)
- (3) **CALLIOPE SHIPPING CORPORATION**, a corporation incorporated in the Republic of the Marshall Islands whose registered address is at Trust Company Complex, Ajeltake Road, Ajeltake Island, Majuro, Marshall Islands MH96960 as a borrower (“**Borrower C**”)
- (4) **EUTERPE SHIPPING CORPORATION**, a corporation incorporated in the Republic of the Marshall Islands whose registered address is at Trust Company Complex, Ajeltake Road, Ajeltake Island, Majuro, Marshall Islands MH96960 as a borrower (“**Borrower D**”)
- (5) **THE COMPANIES** listed in Part B of Schedule 1 (*The Parties*) as hedge guarantors (the “**Hedge Guarantors**”)
- (6) **THE BANKS AND THE FINANCIAL INSTITUTIONS** listed in Part C of Schedule 1 (*The Parties*) as lenders (the “**Original Lenders**”)
- (7) **THE BANKS AND THE FINANCIAL INSTITUTIONS** listed in Part D of Schedule 1 (*The Parties*) as hedge counterparties (the “**Hedge Counterparties**”)
- (8) **DNB (UK) LIMITED** as bookrunner (the “**Bookrunner**”)
- (9) **DNB BANK ASA, LONDON BRANCH** as agent of the other Finance Parties (the “**Facility Agent**”)
- (10) **DNB BANK ASA, LONDON BRANCH** as security agent for the Secured Parties (the “**Security Agent**”)
- (11) **DNB BANK ASA** (acting through its London branch) as agent of the Lenders for any Sinosure related matters (the “**Sinosure Agent**”)

## BACKGROUND

- (A) The Lenders have agreed to make available to the Borrowers a term loan facility in an aggregate amount of up to \$161,600,000 to finance part of the Contract Price of each Ship, currently under construction by the Builder for, and to be purchased by, each relevant Borrower, divided into four Tranches as follows:
  - (i) Tranche A in a principal amount not exceeding the lesser of (i) \$40,000,000, (ii) 65 per cent. of the Contract Price of Ship A and (iii) 65 per cent. of the Initial Market Value of Ship A;

- 
- (ii) Tranche B in a principal amount not exceeding the lesser of (i) \$40,000,000, (ii) 65 per cent. of the Contract Price of Ship B and (iii) 65 per cent. of the Initial Market Value of Ship B;
  - (iii) Tranche C in a principal amount not exceeding the lesser of (i) \$40,800,000, (ii) 65 per cent. of the Contract Price of Ship C and (iii) 65 per cent. of the Initial Market Value of Ship C; and
  - (iv) Tranche D in a principal amount not exceeding the lesser of (i) \$40,800,000, (ii) 65 per cent. of the Contract Price of Ship D and (iii) 65 per cent. of the Initial Market Value of Ship D.
- (B) The Hedge Counterparties have agreed to enter into interest rate swap transactions with the Borrowers from time to time to hedge the Borrowers' exposure under this Agreement to interest rate fluctuations.
  - (C) Sinasure has agreed to provide an export buyer's credit insurance policy covering ninety-five (95) per cent. of the political and commercial risks associated with the Facility and interest accrued thereon.

**OPERATIVE PROVISIONS**

## SECTION 1

### INTERPRETATION

#### DEFINITIONS AND INTERPRETATION

##### 1.1 Definitions

In this Agreement:

“**Account Bank**” means DNB Bank ASA, London Branch acting through its office at 8<sup>th</sup> Floor, The Walbrook Building, 25 Walbrook, London EC4N 8 AF, England or any replacement bank or other financial institution as may be approved by the Facility Agent acting with the authorisation of the Majority Lenders.

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

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

“**Advance**” means each Commercial Advance and ECA Advance.

“**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.

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

“**Approved Brokers**” means any international reputable firm or firms of insurance brokers approved in writing by the Facility Agent (acting on the instructions of the Majority Lenders).

“**Approved Classification**” means, in relation to a Ship, as at the date of this Agreement, the classification in relation to that Ship specified in Schedule 7 (*Details of the Ships and other Definitions*) with the relevant Approved Classification Society or the equivalent classification with another Approved Classification Society or any other classification approved in writing by the Facility Agent acting with the authorisation of the Majority Lenders (such authorisation not to be unreasonably withheld).

“**Approved Classification Society**” means, in relation to a Ship, as at the date of this Agreement, the classification society in relation to that Ship specified in Schedule 7 (*Details of the Ships and other Definitions*) or any other classification society approved in writing by the Facility Agent acting with the authorisation of the Majority Lenders.

“**Approved Flag**” means, in relation to a Ship, the flag of Panama, Liberia, Marshall Islands or such other flag approved in writing by the Facility Agent acting with the authorisation of the Lenders, such authorisation not to be unreasonably withheld and a reference to “the Approved Flag” in respect of a Ship shall be a reference to the flag under which that Ship is then flagged with the agreement of the Facility Agent acting with the authorisation of the Lenders.

“**Approved Manager**” means, in relation to a Ship, Navios Shipmanagement Holdings Corporation, any of its Affiliates and Subsidiaries or any other person approved in writing by the Facility Agent acting with the authorisation of the Majority Lenders, such authorisation not to be unreasonably withheld, as the commercial and technical manager of any Ship.

**“Approved Valuer”** means Arrow Shipbroking Group Limited, Braemar Shipbroking Limited, Clarkson Valuations Limited, Fearnleys Shipbrokers UK Ltd, Howe Robinson and Company Limited, Maersk Broker K/S, MSI Valuation, VesselsValue Limited and Simpson Spence & Young Ltd (or any Affiliate of such person through which valuations are commonly issued) and any other firm or firms of independent sale and purchase shipbrokers approved in writing by the Facility Agent, acting with the authorisation of the Majority Lenders.

**“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.

**“Assignable Charter”** means any time charterparty, consecutive voyage charter or contract of affreightment in respect of a Ship of a duration (or capable of exceeding a duration) of 12 months or more or any bareboat charter entered into in accordance with Clauses 24.16 (*Restrictions on chartering, appointment of managers etc.*) and 24.19 (*Charterparty Assignment*).

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

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

**“Availability Period”** means, in relation to each Tranche, the period from and including the date of this Agreement to and including the earlier of (i) the Delivery Date of the relevant Ship and (ii) 31 January 2025, or such later date as may be agreed by the Facility Agent, acting with the authorisation of the Lenders and Sinosure in writing.

**“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 any Advance that is due to be made on or before the proposed Utilisation Date.

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

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

**“Bail-In Legislation”** means:

- (a) in relation to an EEA Member Country which has implemented, or which at any time implements, Article 55 BRRD, the relevant implementing law or regulation as described in the EU Bail-In Legislation Schedule from time to time;
- (b) in relation to any state other than such an EEA Member Country and the United Kingdom, any analogous law or regulation from time to time which requires contractual recognition of any Write-down and Conversion Powers contained in that law or regulation; and

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(c) in relation to the United Kingdom, the UK Bail-In Legislation.

“**Balloon Instalments**” has the meaning given in Clause 6.1 (*Repayment of Loan*).

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

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

“**Builder**” has the meaning given to that term in Schedule 7 (*Details of the Ships and other Definitions*).

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

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

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

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

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

“**Change of Control**” has the meaning given to it in Clause 7.2 (*Change of control*).

“**Charter**” means, in relation to a Ship, any charter relating to that Ship, or other contract for its employment, whether or not already in existence (including without limitation, any Assignable Charter).

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

“**Charterparty Assignment**” means, in relation to an Assignable Charter, a first priority assignment of the rights of the relevant Borrower under that Assignable Charter and any related Charter Guarantee executed or to be executed by that Borrower in favour of the Security Agent in agreed form.

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

“**Commercial Advance**” means a borrowing of all or part of a Tranche under this Agreement in the amount of:

- (a) in relation to Tranche A, the lower of (i) \$8,000,000 and (ii) an amount when aggregated with the amount provided under the ECA Advance under Tranche A equals to the lower of (A) 65 per cent. of the Contract Price of Ship A and (B) 65 per cent. of the Initial Market Value of Ship A;

- (b) in relation to Tranche B, the lower of (i) \$8,000,000 and (ii) an amount when aggregated with the amount provided under the ECA Advance under Tranche B equals to the lower of (A) 65 per cent. of the Contract Price of Ship B and (B) 65 per cent. of the Initial Market Value of Ship B;
- (c) in relation to Tranche C, the lower of (i) \$8,160,000 and (ii) an amount when aggregated with the amount provided under the ECA Advance under Tranche C equals to the lower of (A) 65 per cent. of the Contract Price of Ship C and (B) 65 per cent. of the Initial Market Value of Ship C; and
- (d) in relation to Tranche D, the lower of (i) \$8,160,000 and (ii) an amount when aggregated with the amount provided under the ECA Advance under Tranche D equals to the lower of (A) 65 per cent. of the Contract Price of Ship D and (B) 65 per cent. of the Initial Market Value of Ship D.

**“Commercial Lender”** means:

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

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

**“Commercial Lender Commitment”** means:

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

**“Commitment”** means:

- (a) in relation to a Commercial Lender, its Commercial Lender Commitment; and
- (b) in relation to an ECA Lender, its ECA Lender Commitment,

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

**“Compounded Reference Rate”** means, in relation to any RFR Banking Day during the Interest Period of the Loan or any part of the Loan, the percentage rate per annum which is the Daily Non-Cumulative Compounded RFR Rate for that RFR Banking Day.

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

- (a) is agreed in writing by the Borrowers, the Facility Agent (in its own capacity) and the Facility Agent (acting on the instructions of Majority Lenders);
- (b) specifies a calculation methodology for that rate; and

(c) has been made available to the Borrowers and each Finance Party.

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

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

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

- (i) information that:
  - (A) is or becomes public information other than as a direct or indirect result of any breach by that Finance Party of Clause 46 (*Confidential Information*); or
  - (B) is identified in writing at the time of delivery as non-confidential by any member of the Group or any of its advisers; or
  - (C) is known by that Finance Party before the date the information is disclosed to it in accordance with paragraphs (a) or (b) above or is lawfully obtained by that Finance Party after that date, from a source which is, as far as that Finance Party is aware, unconnected with the Group and which, in either case, as far as that Finance Party is aware, has not been obtained in breach of, and is not otherwise subject to, any obligation of confidentiality; or
  - (D) in relation to the Guarantor such information as the Guarantor is entitled to disclose by rules and regulations of the SEC and any US Stock Exchange applicable to the Guarantor; and
- (ii) any Funding Rate.

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

“**Contract Price**” means, in relation to a Ship, the price payable for that Ship under Article II (*contract price & terms of payment*) of the relevant Shipbuilding Contract, plus any other amounts further to adjustment as provided in Article V (*modification, changes and extras*) of the relevant Shipbuilding Contract.

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

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

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

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

**“Deed of Covenant”** means, in relation to a Ship, if required by the laws of the Approved Flag of that Ship, a deed of covenant collateral to the Mortgage over that Ship and creating Security over that Ship in agreed form.

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

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

**“Delivery Date”** means, in relation to a Ship, the date on which that Ship is delivered by the Builder to the relevant Borrower under the relevant Shipbuilding Contract.

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

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

and which (in either such case) is not caused by, and is beyond the control of, the Party or, if applicable, any Transaction Obligor whose operations are disrupted.

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

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



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

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

**“Earnings Account”** means in relation to a Borrower:

- (a) an account in the name of that Borrower with the Account Bank designated “[*name of borrower*] - Earnings Account”;
- (b) any other account (with that or another office of the Account Bank) which is designated by the Facility Agent as the Earnings Account for the purposes of this Agreement; or
- (c) any sub-account of any account referred to in paragraphs (a) or (b) above.

**“ECA Advance”** means a borrowing of all or part of a Tranche under this Agreement in the amount of:

- (a) in relation to Tranche A, the lower of (i) \$32,000,000 and (ii) an amount when aggregated with the amount provided under the Commercial Advance under Tranche A equals to the lower of (A) 65 per cent. of the Contract Price of Ship A and (B) 65 per cent. of the Initial Market Value of Ship A;

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- (b) in relation to Tranche B, the lower of (i) \$32,000,000 and (ii) an amount when aggregated with the amount provided under the Commercial Advance under Tranche B equals to the lower of (A) 65 per cent. of the Contract Price of Ship B and (B) 65 per cent. of the Initial Market Value of Ship B;
  - (c) in relation to Tranche C, the lower of (i) \$32,640,000 and (ii) an amount when aggregated with the amount provided under the Commercial Advance under Tranche C equals to the lower of (A) 65 per cent. of the Contract Price of Ship C and (B) 65 per cent. of the Initial Market Value of Ship C; and
  - (d) in relation to Tranche D, the lower of (i) \$32,640,000 and (ii) an amount when aggregated with the amount provided under the Commercial Advance under Tranche D equals to the lower of (A) 65 per cent. of the Contract Price of Ship D and (B) 65 per cent. of the Initial Market Value of Ship D.

**“ECA Lender”** means:

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

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

**“ECA Lender Commitment”** means:

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

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

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

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

**“Environmental Incident”** means:

- (a) any release, emission, spill or discharge of Environmentally Sensitive Material whether within a Ship or from a Ship into any other vessel or into or upon the air, water, land or soils (including the seabed) or surface water; or
- (b) any incident in which Environmentally Sensitive Material is released, emitted, spilled or discharged into or upon the air, water, land or soils (including the seabed) or surface water from a vessel other than any Ship and which involves a collision between any 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 any Transaction Obligor 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; or
- (c) any other incident in which Environmentally Sensitive Material is released, emitted, spilled or discharged into or upon the air, water, land or soils (including the seabed) or surface water otherwise than from a Ship and in connection with which a Ship is actually or potentially liable to be arrested and/or where any Transaction Obligor 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 present or future law relating to pollution or protection of human health or the environment, to conditions in the workplace, to the carriage, generation, handling, storage, use, release or spillage of Environmentally Sensitive Material or to actual or threatened releases of Environmentally Sensitive Material.

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

**“EU Bail-In Legislation Schedule”** means the document described as such and published by the LMA from time to time.

**“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.

**“Event of Default”** means any event or circumstance specified as such in Clause 27 (*Events of Default*).

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

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

**“FATCA”** means:

- (a) sections 1471 to 1474 of the Code or any associated regulations;
- (b) any treaty, law or regulation of any other jurisdiction, or relating to an intergovernmental agreement between the US and any other jurisdiction, which (in either case) facilitates the implementation of any law or regulation referred to in paragraph (a) above; or

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- (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 any of the relevant Finance Parties and any Obligor setting out any of the fees referred to in Clause 11 (*Fees and Sinasure Premium*).

**“Finance Document”** means:

- (a) this Agreement;
- (b) any Fee Letter;
- (c) the Guarantee;
- (d) each Utilisation Request;
- (e) any Reference Rate Supplement;
- (f) any Compounding Methodology Supplement;
- (g) any Security Document;
- (h) any Hedging Agreement;
- (i) any Manager’s Undertaking;
- (j) any other document which is executed for the purpose of establishing any priority or subordination arrangement in relation to the Secured Liabilities; or
- (k) any other document designated as such by the Facility Agent and the Borrowers.

**“Finance Party”** means the Bookrunner, the Facility Agent, the Sinasure Agent, the Security Agent, a Lender or a Hedge Counterparty.

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

- (a) moneys borrowed;
- (b) any amount raised by acceptance under any acceptance credit facility or dematerialised equivalent;
- (c) any amount raised pursuant to any note purchase facility or the issue of bonds, notes, debentures, loan stock or any similar instrument;
- (d) the amount of any liability in relation to any lease or hire purchase contract which would, in accordance with GAAP, be treated as a balance sheet liability;
- (e) receivables sold or discounted (other than any receivables to the extent they are sold on a non-recourse basis);
- (f) any amount raised under any other transaction (including any forward sale or purchase agreement) of a type not referred to in any other paragraph of this definition having the commercial effect of a borrowing;
- (g) any derivative transaction entered into in connection with protection against or benefit from fluctuation in any rate or price (and, when calculating the value of any derivative transaction, only the marked to market value (or, if any actual amount is due as a result of the termination or close-out of that derivative transaction, that amount) shall be taken into account);
- (h) any counter-indemnity obligation in relation to a guarantee, indemnity, bond, standby or documentary letter of credit or any other instrument issued by a bank or financial institution; and
- (i) the amount of any liability in relation to any guarantee or indemnity for any of the items referred to in paragraphs (a) to (h) above.

**“Funding Rate”** means any individual rate notified by a Lender to the Facility Agent pursuant to sub-paragraph (ii) of paragraph (a) of Clause 10.2 (*Cost of funds*).

**“GAAP”** means generally accepted accounting principles in the US.

**“General Assignment”** means, in relation to a Ship, the first priority general assignment creating Security over:

- (a) that Ship’s Earnings, its Insurances and any Requisition Compensation in relation to that Ship; and
- (b) any Charter and any Charter Guarantee in relation to that Ship; and
- (c) the benefit of any warranties of quality in favour of the relevant Borrower under the relevant Shipbuilding Contract of that Ship, in agreed form.

**“Group”** means the Guarantor and its Subsidiaries for the time being (excluding any Subsidiaries whose shares are listed on any public stock exchange and whose financial statements are not consolidated into the financial statements of the Guarantor) and **“member of the Group”** shall be construed accordingly.

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**“Group Vessel”** means any ship (including, but not limited to, the Ship) from time to time wholly owned by a member of the Group (directly or indirectly) including chartered-in vessels for which a member of the Group has a purchase obligation but excluding, for the avoidance of doubt, any newbuilding vessels not delivered to the relevant member of the Group at the relevant time.

**“Guarantee”** means a guarantee executed by the Guarantor in agreed form.

**“Guarantor”** means Navios Maritime Partners L.P., a limited partnership formed and existing in the Republic of the Marshall Islands whose registered address is at Trust Company Complex, Ajeltake Road, Ajeltake Island, Majuro, Marshall Islands MH96960.

**“Hedge Counterparty Guarantee”** means any guarantee in agreed form entered into or to be entered into in favour of a Borrower for the purpose of guaranteeing the obligations owed by a Hedge Counterparty to that Borrower under a Hedging Agreement.

**“Hedge Counterparty Guarantor”** means any person who provides a Hedge Counterparty Guarantee.

**“Hedge Receipts”** means all moneys whatsoever which are now, or later become, payable (actually or contingently) to a Borrower or the Security Agent by a Hedge Counterparty or a Hedge Counterparty Guarantor under a Hedging Agreement or a Hedge Counterparty Guarantee.

**“Hedging Agreement”** means any master agreement, confirmation, transaction, schedule or other agreement in agreed form entered into or to be entered into by the Borrowers for the purpose of hedging interest payable under this Agreement.

**“Hedging Agreement Security”** means, in relation to a Borrower, a hedging agreement security creating Security over that Borrower’s rights and interests in any Hedging Agreement and any Hedge Counterparty Guarantee, in agreed form.

**“Hedging Close-Out Liabilities”** means as at any relevant date the amount certified by the Hedge Counterparty as the net aggregate amount in dollar which would be payable by each Borrower under the Hedging Agreement at the relevant determination date as a result of termination or closing out under the Hedging Agreement.

**“Hedging Prepayment Proceeds”** means any Hedge Receipts arising as a result of termination or closing out under a Hedging Agreement.

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

**“Inventory of Hazardous Materials”** means an inventory certificate or statement of compliance (as applicable) issued by the relevant classification society or shipyard authority which is supplemented by a list of any and all materials known to be potentially hazardous utilised in the construction of, or otherwise installed on, that Ship, pursuant to the requirements of the EU Ship Recycling Regulation.

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

“**Initial Charter**” has the meaning given to that term in Schedule 7 (*Details of the Ships and other Definitions*).

“**Initial Charterer**” has the meaning given to that term in Schedule 7 (*Details of the Ships and other Definitions*).

“**Initial Market Value**” means, in relation to a Ship, the Market Value of that Ship calculated in accordance with the valuations relative thereto referred to in paragraph 3.6 of Schedule 2 (*Conditions Precedent*), Part C.

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

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

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

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

“**ISDA Master Agreement**” means the 2002 Master Agreement as published by the International Swaps and Derivatives Association, Inc.

“**ISM Code**” means the International Safety Management Code for the Safe Operation of Ships and for Pollution Prevention (including the guidelines on its implementation), adopted by the International Maritime Organisation, as the same may be amended or supplemented from time to time.

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

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

“**Lender**” means any Commercial Lender and any ECA Lender.

“**LMA**” means the Loan Market Association or any successor organisation.

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

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

**“Major Casualty”** means, in relation to a Ship, any casualty to that Ship in relation to which the claim or the aggregate of the claims against all insurers, before adjustment for any relevant franchise or deductible, exceeds \$1,000,000 or the equivalent in any other currency.

**“Majority Lenders”** means:

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

**provided that**, the Majority Lenders shall always consist of at least one Commercial Lender.

**“Management Agreement”** means, in relation to a Ship, the agreement entered into between the Borrower owning that Ship and an Approved Manager regarding the management of that Ship.

**“Manager’s Undertaking”** means, in relation to a Ship, the letter of undertaking from an Approved Manager relating to that Ship subordinating the rights of such Approved Manager against that Ship and the relevant Borrower to the rights of the Finance Parties in agreed form.

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

**“Market Disruption Rate”** means the rate specified as such in the Reference Rate Terms.

**“Market Value”** means, in relation to a Ship or any other vessel, at any date, the market value of that Ship or vessel determined in accordance with paragraph (a) of Clause 25.7 (*Provision of valuations*) and, prepared:

- (a) unless otherwise specified by the Facility Agent, as at a date not more than 30 days previously;
- (b) by an Approved Valuer or Approved Valuers;
- (c) with or without physical inspection of that Ship or vessel (as the Facility Agent may require); and
- (d) on the basis of a sale for prompt delivery for cash on normal arm’s length commercial terms as between a willing seller and a willing buyer, free of any Charter.



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

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

“**Money Laundering**” has the meaning given in Article 1 of Directive 2015/849/EC of the Council of the European Communities.

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

“**Mortgage**” means, in relation to a Ship, a first priority, or, as the case may be, preferred ship mortgage on that Ship under the laws of an Approved Flag in agreed form.

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

“**Original Commercial Lender**” means the lenders listed as such in Part C of Schedule 1 (*The Parties*).

“**Original ECA Lender**” means the lenders listed as such in Part C of Schedule 1 (*The Parties*).

“**Original Financial Statements**” means the annual audited consolidated financial statements of the Group for its financial year ended 31 December 2021.

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

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

“**Parallel Debt**” means any amount which a Borrower owes to the Security Agent under Clause 31.2 (*Parallel Debt (Covenant to pay the Security Agent)*) or under that clause as incorporated by reference or in full in any other Finance Document.

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

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

“**Permitted Charter**” means, in relation to a Ship, a Charter:

- (a) which is a time, voyage or consecutive voyage charter;

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- (b) the duration of which does not exceed and is not capable of exceeding, by virtue of any optional extensions, 12 months plus a redelivery allowance of not more than 30 days;
  - (c) which is entered into on *bona fide* arm's length terms at the time at which that Ship is fixed; and
  - (d) in relation to which not more than two months' hire is payable in advance,
- and any other Charter which is approved in writing by the Facility Agent acting with the authorisation of the Majority Lenders.

**"Permitted Financial Indebtedness"** means:

- (a) any Financial Indebtedness incurred under the Finance Documents; and
- (b) any Financial Indebtedness (including without limitation, any shareholder or intra-Group loans made available to the Borrowers (or any of them) in the normal course of its business of trading and operating any of Ship) that is subordinated to all Financial Indebtedness incurred under the Finance Documents in writing in a manner acceptable to the Facility Agent in all respects.

**"Permitted Security"** means:

- (a) Security created by the Finance Documents or disclosed in writing to the Facility Agent prior to the signing of this Agreement and acceptable to the Facility Agent;
- (b) any netting or set-off arrangement entered into by any member of the Group in the ordinary course of its banking arrangements for the purpose of netting debit and credit balances;
- (c) liens for unpaid master's and crew's wages in accordance with first-class ship ownership and management practice;
- (d) liens for salvage;
- (e) liens for master's disbursements incurred in the ordinary course of trading; and
- (f) any other lien arising by operation of law or otherwise in the ordinary course of the operation, repair or maintenance of any Ship:
  - (i) not as a result of any default or omission by any Borrower;
  - (ii) not being enforced through arrest; and
  - (iii) subject, in the case of liens for repair or maintenance, to Clause 24.16 (*Restrictions on chartering, appointment of managers etc.*) and provided such lien does not secure amounts more than 30 days overdue (unless the overdue amount is being contested in good faith by appropriate steps).

**"Poseidon Principles"** means the financial industry framework for assessing and disclosing the climate alignment of ship finance portfolios published in June 2019 as the same may be amended or replaced from time to time.

**“Potential Event of Default”** means 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.

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

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

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

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

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

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

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

**“Relevant Person”** means:

- (a) the Obligors and each of their Subsidiaries; and
- (b) each of their directors, officers and employees.

**“Repayment Date”** means each date on which a Repayment Instalment is required to be paid under Clause 6.2 (*Repayment Dates*).

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

**“Repeating Representation”** means each of the representations set out in Clause 19 (*Representations*) except Clause 19.10 (*Insolvency*), Clause 19.11 (*No filing or stamp taxes*) and Clause 19.12 (*Deduction of Tax*) and any representation of any Transaction Obligor made in any other Finance Document that is expressed to be a “Repeating Representation” or is otherwise expressed to be repeated.

**“Reporting Day”** means the day specified as such in the Reference Rate Terms.

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

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

**“Requisition”** means in relation to a Ship:

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

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

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

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

- (a) listed on any Sanctions List or targeted by Sanctions (whether designated by name or by reason of being included in a class of person); or
- (b) located in or incorporated under the laws of any country or territory that is the target of comprehensive, country- or territory-wide Sanctions; or
- (c) directly or indirectly owned or controlled by, or acting on behalf, at the direction or for the benefit of, a person referred to in (a) and/or (to the extent relevant under Sanctions) (b) above.

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

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

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

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

**“Sanctions Authority”** means the Norwegian State, the United Nations, the European Union, the United Kingdom, the United States of America, and any authority acting on behalf of any of them, or their respective legislative, executive, enforcement and/or regulatory authorities or bodies acting in connection with Sanctions.

**“Sanctions Laws”** means the economic or financial sanctions laws and/or regulations, trade embargoes, prohibitions, restrictive measures, decisions, executive orders or notices from regulators implemented, adapted, imposed, administered, enacted and/or enforced by any Sanctions Authority.

**“Sanctions List”** means:

- (a) the lists of Sanctions designations and/or targets maintained by any Sanctions Authority and/or
- (b) any other Sanctions designation or target listed and/or adopted by a Sanctions Authority,

in all cases, as amended, supplemented or replaced from time to time.

**“Sanctions”** means any applicable (to any Relevant Person and/or Finance Party as the context provides) laws, regulations or orders concerning any trade, economic or financial sanctions or embargoes.

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

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

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

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

**“Security Document”** means:

- (a) any Shares Security;
- (b) any Mortgage;
- (c) any Deed of Covenant;
- (d) any General Assignment;
- (e) any Charterparty Assignment;
- (f) any Account Security;
- (g) any Hedging Agreement Security;
- (h) any other document (whether or not it creates Security) which is executed as security for the Secured Liabilities; or
- (i) any other document designated as such by the Facility Agent and the Borrowers.

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

**“Security Property”** means:

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

except:

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

**“Selection Notice”** means a notice substantially in the form set out in Part B of Schedule 3 (*Requests*) given in accordance with Clause 8.3 (*Interest Periods*).

**“Servicing Party”** means the Facility Agent or the Security Agent.

**“Shareholder”** means relation to each Borrower, Navios Maritime Operating L.L.C., a limited liability company formed and existing in the Republic of the Marshall Islands whose registered address is at Trust Company Complex, Ajeltake Road, Ajeltake Island, Majuro, Marshall Islands MH96960.

**“Shares Security”** means, in relation to a Borrower, a document creating Security over the issued shares in that Borrower in agreed form.

**“Ship”** means Ship A, Ship B, Ship C or Ship D.

**“Ship A”** has the meaning given to that term in Schedule 7 (*Details of the Ships and other Definitions*).

**“Ship B”** has the meaning given to that term in Schedule 7 (*Details of the Ships and other Definitions*).

**“Ship C”** has the meaning given to that term in Schedule 7 (*Details of the Ships and other Definitions*).

**“Ship D”** has the meaning given to that term in Schedule 7 (*Details of the Ships and other Definitions*).

“**Shipbuilding Contract**” has the meaning given to that term in Schedule 7 (*Details of the Ships and other Definitions*).

“**Sinosure**” means the China Export & Credit Insurance Corporation, a state-owned enterprise having its registered office at No. 11 Fenghuiyuan, Xicheng District, Beijing 100033, the People’s Republic of China.

“**Sinosure Policy**” means, in relation to each Ship, the export buyer’s credit insurance policy anticipated to be issued by Sinosure in favour of the Lenders, governed by Chinese law, whereby Sinosure agrees to insure, on the terms and conditions thereof, 95 per cent. of the amount of the relevant Tranche outstanding from time to time plus any interest payable in relation thereto, on terms and conditions acceptable to the Lenders.

“**Sinosure Premium**” means, in relation to each Sinosure Policy, the premium payable to Sinosure in one lump sum, before the date of the Utilisation Request in respect of the Ship to which that Sinosure Policy relates.

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

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

“**Subsidiary**” means that a company (S) is a subsidiary of another company (P) if:

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

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

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

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

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

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

“**Termination Date**” means, in relation to a Tranche and subject to Clause 7.9 (*Mandatory Prepayment – Put Option*), the date falling on the earlier of (i) the tenth anniversary of the Utilisation Date of that Tranche and (ii) 31 January 2035.

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

“**Total Commitments**” means the aggregate of the Commitments, being in an amount up to \$161,600,000 as at the date of this Agreement.

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

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

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

- (a) in the case of an actual loss of that Ship, the date on which it occurred or, if that is unknown, the date when that Ship was last heard of;
- (b) in the case of a constructive, compromised, agreed or arranged total loss of that Ship, the earlier of:
  - (i) the date on which a notice of abandonment is given (or deemed or agreed to be given) to the insurers; and
  - (ii) the date of any compromise, arrangement or agreement made by or on behalf of the relevant Borrower with that Ship’s insurers in which the insurers agree to treat that Ship as a total loss; and
- (c) in the case of any other type of Total Loss, the date (or the most likely date) on which it appears to the Facility Agent that the event constituting the total loss occurred.

**“Tranche”** means Tranche A, Tranche B, Tranche C or Tranche D.

**“Tranche A”** means that part of the Loan made or to be made available to Borrower A in a principal amount not exceeding the lesser of (i) \$40,000,000, (ii) 65 per cent. of the Contract Price of Ship A and (iii) 65 per cent. of the Initial Market Value of Ship A.

**“Tranche B”** means that part of the Loan made or to be made available to Borrower B in a principal amount not exceeding the lesser of (i) \$40,000,000, (ii) 65 per cent. of the Contract Price of Ship B and (iii) 65 per cent. of the Initial Market Value of Ship B.

**“Tranche C”** means that part of the Loan made or to be made available to Borrower C in a principal amount not exceeding the lesser of (i) \$40,800,000, (ii) 65 per cent. of the Contract Price of Ship C and (iii) 65 per cent. of the Initial Market Value of Ship C.

**“Tranche D”** means that part of the Loan made or to be made available to Borrower D in a principal amount not exceeding the lesser of (i) \$40,800,000, (ii) 65 per cent. of the Contract Price of Ship D and (iii) 65 per cent. of the Initial Market Value of Ship D.



**“Transaction Document”** means:

- (a) a Finance Document;
- (b) a Shipbuilding Contract;
- (c) any Assignable Charter;
- (d) any Charter Guarantee relating to an Assignable Charter;
- (e) a Sinasure Policy; or
- (f) any other document designated as such by the Facility Agent and a Borrower.

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

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

**“Transfer Certificate”** means a certificate substantially in the form set out in Schedule 4 (*Form of Transfer Certificate*) or any other form agreed between the Facility 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 Facility Agent executes the relevant Assignment Agreement or Transfer Certificate.

**“UK Bail-In Legislation”** means Part 1 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 institutes or their affiliates (otherwise than through liquidation, administration or other insolvency proceedings).

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

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

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

**“US Tax Obligor”** means:

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

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

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

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

**“VAT”** means:

- (a) any value added tax imposed by the Value Added Tax Act 1994;
- (b) any tax imposed in compliance with the Council Directive of 28 November 2006 on the common system of value added tax (EC Directive 2006/112); and
- (c) any other tax of a similar nature, whether imposed in the United Kingdom or in a member state of the European Union in substitution for, or levied in addition to, such tax referred to in paragraph (a) or (b) above, or imposed elsewhere.

**“Warranty”** means Article IX (*warranty of quality*) of the relevant Shipbuilding Contract and any renewal of such warranty after the making good of any warranty claim.

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

## 1.2 Construction

- (a) Unless a contrary indication appears, a reference in this Agreement to:
- (i) the “**Account Bank**”, the “**Bookrunner**”, the “**Facility Agent**”, any “**Finance Party**”, the “**Sinosure Agent**”, “**Sinosure**”, any “**Hedge Counterparty**”, any “**Lender**”, any “**Obligor**”, any “**Party**”, any “**Secured Party**”, the “**Security Agent**”, any “**Transaction Obligor**” or any other person shall be construed so as to include its successors in title, permitted assigns and permitted transferees to, or of, its rights and/or obligations under the Finance Documents;
  - (ii) “**assets**” includes present and future properties, revenues and rights of every description;
  - (iii) a liability which is “**contingent**” means a liability which is not certain to arise and/or the amount of which remains unascertained;
  - (iv) “**document**” includes a deed and also a letter, fax, email or telex;
  - (v) “**expense**” means any kind of cost, charge or expense (including all legal costs, charges and expenses) and any applicable Tax including VAT;
  - (vi) a Lender’s “**cost of funds**” in relation to its participation in the Loan or any part of the Loan is a reference to the average cost (determined either on an actual or a notional basis) which that Lender would incur if it were to fund, from whatever source(s) it may reasonably select, an amount equal to the amount of that participation in the Loan or that part of the Loan for a period equal in length to the Interest Period of the Loan or that part of the Loan;
  - (vii) a “**Finance Document**”, a “**Security Document**” or “**Transaction Document**” or any other agreement or instrument is a reference to that Finance Document, Security Document or Transaction Document or other agreement or instrument as amended, replaced, novated, supplemented, extended or restated;
  - (viii) a “**group of Lenders**” includes all the Lenders;
  - (ix) “**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;
  - (x) “**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;
  - (xi) “**proceedings**” means, in relation to any enforcement provision of a Finance Document, proceedings of any kind, including an application for a provisional or protective measure;
  - (xii) a “**person**” includes any individual, firm, company, corporation, government, state or agency of a state or any association, trust, joint venture, consortium, partnership or other entity (whether or not having separate legal personality);
  - (xiii) a “**regulation**” includes any regulation, rule, official directive, request or guideline (whether or not having the force of law) of any governmental, intergovernmental or supranational body, agency, department or regulatory, self-regulatory or other authority or organisation;

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- (xiv) a reference to a “**Ship**”, its name, its flag and, if applicable, its port of registry shall include any replacement name, flag and, if applicable, replacement port of registry, in each case, as may be approved in writing from time to time by the Facility Agent acting with the authorisation of the Lenders;
  - (xv) a provision of law is a reference to that provision as amended or re-enacted from time to time;
  - (xvi) a time of day is a reference to London time;
  - (xvii) any English legal term for any action, remedy, method of judicial proceeding, legal document, legal status, court, official or any legal concept or thing shall, in respect of a jurisdiction other than England, be deemed to include that which most nearly approximates in that jurisdiction to the English legal term;
  - (xviii) words denoting the singular number shall include the plural and vice versa; and
  - (xix) “**including**” and “**in particular**” (and other similar expressions) shall be construed as not limiting any general words or expressions in connection with which they are used.
- (b) The determination of the extent to which a rate is “**for a period equal in length**” to an Interest Period shall disregard any inconsistency arising from the last day of that Interest Period being determined pursuant to the terms of this Agreement.
  - (c) Section, Clause and Schedule headings are for ease of reference only and are not to be used for the purposes of construction or interpretation of the Finance Documents.
  - (d) Unless a contrary indication appears, a term used in any other Finance Document or in any notice given under, or in connection with, any Finance Document has the same meaning in that Finance Document or notice as in this Agreement.
  - (e) A reference in this Agreement to a page or screen of an information service displaying a rate shall include:
    - (i) any replacement page of that information service which displays that rate; and
    - (ii) the appropriate page of such other information service which displays that rate from time to time in place of that information service, and, if such page or service ceases to be available, shall include any other page or service displaying that rate specified by the Facility Agent after consultation with the Borrowers.
  - (f) A reference in this Agreement to a Central Bank Rate shall include any successor rate to, or replacement rate for, that rate.
  - (g) Any Reference Rate Supplement overrides anything in:
    - (i) Schedule 8 (*Reference Rate Terms*); or
    - (ii) any earlier Reference Rate Supplement.

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- (h) A Compounding Methodology Supplement relating to the Daily Non-Cumulative Compounded RFR Rate or the Cumulative Compounded RFR Rate overrides anything relating to that rate in:
- (i) Schedule 9 (*Daily Non-Cumulative Compounded RFR Rate*) or Schedule 10 (*Cumulative Compounded RFR Rate*), as the case may be; or
  - (ii) any earlier Compounding Methodology Supplement.
- (i) A Potential Event of Default is “**continuing**” if it has not been remedied or waived and an Event of Default is “**continuing**” if it has not been waived.

### 1.3 Construction of insurance terms

In this Agreement:

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

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

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

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

“**protection and indemnity risks**” means the usual risks covered by a protection and indemnity association managed in London, including pollution risks and the proportion (if any) of any sums payable to any other person or persons in case of collision which are not recoverable under the hull and machinery policies by reason of the incorporation in them of clause 6 of the International Hull Clauses (1/11/02) (1/11/03), clause 8 of the Institute Time Clauses (Hulls) (1/10/83) (1/11/95) or the Institute Amended Running Down Clause (1/10/71) or any equivalent provision.

“**war risks**” includes the risk of mines and all risks excluded by clauses 29, 30 or 31 of the International Hull Clauses (1/11/02), clauses 29 or 30 of the International Hull Clauses (1/11/03), clauses 24, 25 or 26 of the Institute Time Clauses (Hulls) (1/11/95) or clauses 23, 24 or 25 of the Institute Time Clauses (Hulls)(1/10/83) or any equivalent provision.

### 1.4 Agreed forms of Finance Documents

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

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

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- (b) in any other form agreed in writing between each Borrower and the Facility Agent acting with the authorisation of the Majority Lenders or, where Clause 45.2 (*All Lender matters*) applies, all the Lenders.

### **1.5 Third party rights**

- (a) Unless expressly provided to the contrary in a Finance Document, a person (other than Sinosure) 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) Sinosure may, subject to this Clause 1.5 (*Third party rights*) and the Third Parties Act, rely on any clause of this Agreement which expressly confers rights on it, and is a third party beneficiary of the terms of this Agreement and the rights expressed to be for its benefit.
- (c) Subject to Clause 45.3 (*Other exceptions*) and except where the consent of Sinosure is expressly required pursuant to any term of any Finance Document, but otherwise notwithstanding any term of any Finance Document, the consent of any person who is not a Party is not required to rescind or vary this Agreement at any time.
- (d) Any Receiver, Delegate, Affiliate or any other person described in paragraph (d) of Clause 14.2 (*Other indemnities*), paragraph (b) of Clause 30.11 (*Exclusion of liability*), paragraph (b) Clause 31.11 (*Exclusion of liability*) may, subject to this Clause 1.5 (*Third party rights*) and the Third Parties Act, rely on any Clause of this Agreement which expressly confers rights on it.

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## SECTION 2

### THE FACILITY

#### THE FACILITY

##### 2.1 The Facility

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

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

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

##### 2.3 No obligations imposed on Sinosure

Sinosure shall not have any obligations or liabilities under this Agreement unless and until it becomes a Lender in accordance with the terms of this Agreement in which event its obligations and liabilities shall be limited to those it has as a Lender.

##### 2.4 Sinosure override

- (a) Notwithstanding anything to the contrary in any Finance Document, nothing in any Finance Document shall oblige any Finance Party to act (or omit to act) in a manner that is inconsistent with any requirement of Sinosure under or in connection with any Sinosure Policy and in particular, each Finance Party:
  - (i) shall be authorised to take all such actions as it may deem necessary to ensure that all requirements of Sinosure under or in connection with any Sinosure Policy are complied with;
  - (ii) shall be required to exercise, or to refrain from exercising, its rights, powers, authorities and discretions under, and performing its obligations under, or in connection with, the Finance Documents, in accordance with any instructions given to it by Sinosure in accordance with the provisions of any Sinosure Policy;

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- (iii) shall not be obliged to do anything if, in its opinion, to do so could result in a breach of any requirement of Sinosure under or in connection with any Sinosure Policy or affect the validity of any Sinosure Policy or otherwise result in a Sinosure Termination Event pursuant to Clause 7.7 (*Mandatory prepayment – Sinosure Policy*); and
  - (iv) shall not be acting or making any determination unreasonably if such action or such determination is made in accordance with any Sinosure Policy or any instructions given to it by Sinosure in accordance with the provisions of any Sinosure Policy.
- (b) In the event of any conflict between the terms of this Agreement and any Sinosure Policy, the terms of that Sinosure Policy shall prevail.
  - (c) Nothing in this Clause 2.4 (*Sinosure override*) shall affect the obligations of any Obligor under the Finance Documents.

## **2.5 Separate Agreements**

The Borrowers agree and acknowledge that:

- (a) each Sinosure Policy is a separate arrangement between Sinosure and the Finance Parties;
- (b) the Borrowers shall not have any right or recourse against the Finance Parties in respect of or arising by reason of any payment made by Sinosure to any Finance Party under any Sinosure Policy; and
- (c) the payment obligations of the Borrowers to the Finance Parties under the Finance Documents shall in no way be affected by any Sinosure Policy.

## **PURPOSE**

### **3.1 Purpose**

Each Borrower shall apply all amounts borrowed by it under the Facility only for the purpose stated in the preamble (*Background*) to this Agreement.

### **3.2 Monitoring**

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

## **CONDITIONS OF UTILISATION**

### **4.1 Conditions precedent to the Facility Agreement**

On or before the date of this Agreement, the Borrowers shall provide all of the documents and other evidence listed in Part A of Schedule 2 (*Conditions Precedent*) in form and substance satisfactory to the Facility Agent (acting on the instructions of Lenders), which shall notify the Borrowers and the Lenders promptly upon being so satisfied.



#### **4.2 Conditions precedent to each Utilisation Request**

The Borrowers may not deliver each Utilisation Request unless the Facility Agent has received all of the documents and other evidence listed in Part B of Schedule 2 (*Conditions Precedent*) in form and substance satisfactory to the Facility Agent.

#### **4.3 Further conditions precedent**

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

- (a) on the date of a Utilisation Request and on the proposed Utilisation Date and before the Advance is made available:
  - (i) no Default is continuing or would occur from the proposed Advance; and
  - (ii) the Repeating Representations to be made by each Transaction Obligor are true;
- (b) in the case of each Advance, the Facility Agent has received on or before the relevant Utilisation Date, or is satisfied it will receive when such Advance is made available or released (as the case may be), all of the documents and other evidence listed in Part C of Schedule 2 (*Conditions Precedent*) in form and substance satisfactory to the Facility Agent; and
- (c) each Sinusure Policy remains in full force and effect and the Facility Agent has not received, through the Sinusure Agent, any notice from Sinusure requesting the Lenders to suspend the making of the relevant Advance or to repudiate the relevant Sinusure Policy and/or advising the Lenders that the relevant Advance will not be secured by the applicable Sinusure Policy and/or the Lenders are not required by the terms of the relevant Sinusure Policy to suspend the making of that Advance;
- (d) no occurrence, event or circumstances exist which prohibit any of the Lenders from participating in the relevant Advance pursuant to the terms of the relevant Sinusure Policy; and
- (e) the obligations of Sinusure under the relevant Sinusure Policy have not been terminated, cancelled, become invalid or unenforceable or otherwise ceased to be in full force and effect.

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

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

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

If the Majority Lenders and the Sinosure Agent (if required, with the prior approval of Sinosure), at their discretion, permit an Advance to be borrowed before any of the conditions precedent referred to in Clause 4.2 (*Conditions precedent to each Utilisation Request*) or Clause 4.3 (*Further conditions precedent*) has been satisfied, the Borrowers shall ensure that that condition is satisfied within five Business Days after the relevant Utilisation Date or such later date as the Facility Agent, acting with the authorisation of the Majority Lenders, may agree in writing with the Borrowers.

## SECTION 3

### UTILISATION

#### UTILISATION

##### 5.1 Delivery of a Utilisation Request

- (a) The Borrowers may utilise the Facility by delivery to the Facility Agent of a duly completed Utilisation Request not later than the Specified Time.
- (b) The Borrowers may not deliver more than one Utilisation Request under each Tranche.

##### 5.2 Completion of a Utilisation Request

- (a) Each Utilisation Request is irrevocable and will not be regarded as having been duly completed unless:
- (b) the proposed Utilisation Date is a Business Day within the relevant Availability Period;
- (c) the currency and amount of the Utilisation comply with Clause 5.3 (*Currency and amount*);
- (d) the proposed Interest Period complies with Clause 8.4 (*Notifications*);
- (e) the account details to where the relevant Tranche will be remitted; and
- (f) duly executed by an authorised signatory of each Borrower.

##### 5.3 Currency and amount

- (a) The currency specified in a Utilisation Request must be dollars.
- (b) The amount of the proposed Tranche, in relation to each Ship, will comprise of the relevant Commercial Advance and the ECA Advance and must be an amount which is not more than:
  - (i) in relation to Tranche A, the lower of (i) \$40,000,000, (ii) 65 per cent. of the Contract Price of Ship A and (iii) 65 per cent. of the Initial Market Value of Ship A;
  - (ii) in relation to Tranche B, the lower of (i) \$40,000,000, (ii) 65 per cent. of the Contract Price of Ship B and (iii) 65 per cent. of the Initial Market Value of Ship B;
  - (iii) in relation to Tranche C, the lower of (i) \$40,800,000, (ii) 65 per cent. of the Contract Price of Ship C and (iii) 65 per cent. of the Initial Market Value of Ship C; and
  - (iv) in relation to Tranche D, the lower of (i) \$40,800,000, (ii) 65 per cent. of the Contract Price of Ship D and (iii) 65 per cent. of the Initial Market Value of Ship D,

**provided that** the aggregate amount of all Tranches shall not exceed \$161,600,000.

- (c) The amount of the proposed Tranche must be an amount which would not oblige the Borrowers to provide additional security or prepay part of the Loan if the ratio set out in Clause 25 (*Security Cover*) were applied and notice was given by the Facility Agent under Clause 25.1 (*Minimum required security cover*) immediately after that Advance was made.

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#### **5.4 Lenders' participation**

- (a) If the conditions set out in this Agreement have been met, each Lender shall make its participation in each Advance available by the Utilisation Date through its Facility Office.
- (b) The amount of each Lender's participation in each Advance will be equal to the proportion borne by its Available Commitment to the Available Facility immediately before making that Advance.
- (c) The Facility Agent shall notify each Lender of the amount of each Advance and the amount of its participation in that Advance by the Specified Time.

#### **5.5 Notice to Sinosure and the Sinosure Agent**

The Facility Agent shall promptly after each Utilisation Date notify the Sinosure Agent, and the Sinosure Agent shall promptly thereafter notify Sinosure, of the amount of the Advances under the relevant Tranche and of the relevant Utilisation Date.

#### **5.6 Cancellation of Commitments**

The Commitments in respect of any Tranche which are unutilised at the end of the Availability Period for such Tranche shall then be cancelled.

#### **5.7 Payment to third parties**

The Borrowers irrevocably authorise the Facility Agent on each Utilisation Date to pay to, or for the account of, the Borrowers which is to utilise the relevant Advances the amounts which the Facility Agent receives from the Lenders in respect of the relevant Advances. That payment shall be made in like funds as the Facility Agent received from the Lenders in respect of the relevant Advances under each Tranche in to the account which the Borrowers specify in the relevant Utilisation Request.

#### **5.8 Disbursement of Advance to third party**

Payment by the Facility Agent under Clause 5.7 (*Payment to third parties*) to a person other than a Borrower shall constitute the making of the relevant Advance and the Borrowers shall at that time become indebted, as principal and direct obligors, to each Lender in an amount equal to that Lender's participation in that Advance.

#### **5.9 Prepositioning of funds**

If, in respect of any proposed Advance, the Lenders, at the request of the Borrowers and on terms acceptable to all the Lenders and in their absolute discretion, preposition funds with any bank, each Borrower and the Guarantor:

- (a) agree to pay interest on the amount of the funds so prepositioned at the rate described in Clause 8.1 (*Calculation of interest*) on the basis of successive interest periods of one day and so that interest shall be paid together with the first payment of interest on such Advance after the Utilisation Date in respect of it or, if such Utilisation Date does not occur, within three Business Days of demand by the Facility Agent; and
- (b) shall, without duplication, indemnify each Finance Party against any costs, loss or liability it may incur in connection with such arrangement.

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SECTION 4

REPAYMENT, PREPAYMENT AND CANCELLATION

REPAYMENT

6.1 Repayment of Loan

The Borrowers shall repay the Loan as follows:

- (a) Tranche A shall be repaid by:
  - (i) 20 consecutive quarterly instalments, each in an amount of \$1,000,000 followed by 20 consecutive quarterly instalments of \$400,000 (each a “**Tranche A Repayment Instalment**” and together the “**Tranche A Repayment Instalments**”); and
  - (ii) a balloon instalment in the amount of \$12,000,000 (the “**Tranche A Balloon Instalment**”);
- (b) Tranche B shall be repaid by:
  - (i) 20 consecutive quarterly instalments, each in an amount of \$1,000,000 followed by 20 consecutive quarterly instalments of \$400,000 (each a “**Tranche B Repayment Instalment**” and together the “**Tranche B Repayment Instalments**”); and
  - (ii) a balloon instalment in the amount of \$12,000,000 (the “**Tranche B Balloon Instalment**”);
- (c) Tranche C shall be repaid by:
  - (i) 20 consecutive quarterly instalments, each in an amount of \$1,020,000 followed by 20 consecutive quarterly instalments of \$408,000 (each a “**Tranche C Repayment Instalment**” and together the “**Tranche C Repayment Instalments**”); and
  - (ii) a balloon instalment in the amount of \$12,240,000 (the “**Tranche C Balloon Instalment**”); and
- (d) Tranche D shall be repaid by:
  - (i) 20 consecutive quarterly instalments, each in an amount of \$1,020,000 followed by 20 consecutive quarterly instalments of \$408,000 (each a “**Tranche D Repayment Instalment**” and together the “**Tranche D Repayment Instalments**” and together with the Tranche A Repayment Instalments, the Tranche B Repayment Instalments and the Tranche C Repayment Instalments, the “**Repayment Instalments**” and each a “**Repayment Instalment**”); and
  - (ii) a balloon instalment in the amount of \$12,240,000 (the “**Tranche D Balloon Instalment**” and together with the Tranche A Balloon Instalment, the Tranche B Balloon Instalment and the Tranche C Balloon Instalment, the “**Balloon Instalments**” and each a “**Balloon Instalment**”).

## 6.2 Repayment Dates

- (a) Save as referred to in paragraph (b) below, the first Repayment Instalment in respect of each Tranche shall be repaid on the date falling three Months from the relevant Utilisation Date, each subsequent Repayment Instalment in relation to such Tranche shall be repaid at quarterly intervals thereafter and the relevant Balloon Instalment shall be repaid on the Termination Date relating to such Tranche.
- (b) After the Utilisation of the last Tranche, the remaining Repayment Instalments in relation to each Tranche already drawn shall be aligned and the next Repayment Instalment in relation to each Tranche shall be repaid on the date falling three Months from the Utilisation Date of the last Tranche and the remaining Repayment Instalments in relation to each Tranche shall be repaid at quarterly intervals until the relevant Termination Date of such Tranche. The Facility Agent shall notify the Lenders and the Borrowers of the revised repayment schedule within five Business Days from the last Utilisation Date.

## 6.3 Effect of cancellation and prepayment on scheduled repayments

- (a) If the Borrowers cancel the whole or any part of any Available Commitment in accordance with Clause 7.10 (*Right of repayment and cancellation in relation to a single Lender*) or if the Available Commitment of any Lender is cancelled under Clause 7.1 (*Illegality*) then the relevant Repayment Instalments and the relevant Balloon Instalments falling after that cancellation will be reduced *pro rata* by the amount of the Available Commitments so cancelled.
- (b) If the whole or part of any Commitment is cancelled pursuant to Clause 5.6 (*Cancellation of Commitments*) or Clause 7.3 (*Voluntary and automatic cancellation*), then the Repayment Instalments and the Balloon Instalments falling after that cancellation will be reduced *pro rata* by the amount of the Commitments so cancelled.
- (c) If any part of the Loan is repaid or prepaid in accordance with Clause 7.10 (*Right of repayment and cancellation in relation to a single Lender*) or Clause 7.1 (*Illegality*) then the relevant Repayment Instalments and the relevant Balloon Instalments falling after that repayment or prepayment (as applicable) will be reduced *pro rata* by the amount of the Loan repaid or prepaid.
- (d) If any part of the Loan is prepaid in accordance with Clause 7.4 (*Voluntary prepayment of Loan*), then such prepayment shall be applied against each Tranche and the amount of the Repayment Instalments and the relevant Balloon Instalment for each Tranche for each Repayment Date falling after that repayment or prepayment will be reduced *pro rata* by the amount of the Loan repaid or prepaid.
- (e) If any part of the Loan is prepaid in accordance with Clause 7.5 (*Mandatory prepayment on sale, seizure or Total Loss*), Clause 7.6 (*Mandatory prepayment of Hedging Prepayment Proceeds*), Clause 7.7 (*Mandatory prepayment – Sinosure Policy*) or Clause 7.8 (*Mandatory prepayment – Time Charters*), then the amount of the Loan prepaid shall be applied against the Tranche which has been used in respect of the relevant Ship and thereafter any balance shall reduce the then outstanding Repayment Instalments and the Balloon Instalments of the other Tranches *pro rata*.

#### 6.4 Termination Date

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

#### 6.5 Reborrowing

No Borrower may reborrow any part of the Facility which is repaid.

### PREPAYMENT AND CANCELLATION

#### 7.1 Illegality

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

- (a) that Lender shall promptly notify the Facility Agent upon becoming aware of that event;
- (b) upon the Facility Agent notifying the Borrowers, the Available Commitment of that Lender will be immediately cancelled;
- (c) the Borrowers shall prepay that Lender's participation in the Loan on the last day of the Interest Period for the Loan occurring after the Facility Agent has notified the Borrowers or, if earlier, the date specified by the Lender in the notice delivered to the Facility Agent (being no earlier than the last day of any applicable grace period permitted by law) and that Lender's corresponding Commitment shall be immediately cancelled in the amount of the participation prepaid; and
- (d) accrued interest and all other amounts accrued for that Lender under the Finance Documents shall be immediately due and payable.

#### 7.2 Change of control

If there is a Change of Control:

- (a) the Borrowers shall and shall procure that the Guarantor shall promptly notify the Facility Agent upon becoming aware of that event; and
- (b) if the Majority Lenders so require, the Facility Agent shall, by not less than 10 Business Days' notice to the Borrowers, cancel the Facility and declare the Loan, together with accrued interest, and all other amounts accrued under the Finance Documents immediately due and payable, whereupon the Facility will be cancelled and the Loan and all such outstanding interest and other amounts will become immediately due and payable.
- (c) In this Clause 7.2 (*Change of control*):

“**Change of Control**” means a change which results in:

- (a) Navios Maritime Holdings Inc. and/or Mrs. Angeliki Frangou and her direct descendants (either directly or indirectly) (through entities owned and controlled by

her or trusts or foundations of which she is a beneficiary) ceasing to be the owner of, or having ultimate control of the voting rights attaching to more than five per cent. of all the units (including for the avoidance of doubt both general partner units and common units) in the Guarantor; or

- (b) Mrs. Angeliki Frangou and her direct descendants (either directly or indirectly) (through entities owned and controlled by her or trusts or foundations of which she is a beneficiary), ceasing to be the owner of, or having ultimate control of the voting rights attaching to all the issued shares in the general partner of the Guarantor, which is currently Olympos Maritime Ltd; or
- (c) Mrs. Angeliki Frangou ceasing to act as chairman or chief executive officer of the Guarantor and Olympos Maritime Ltd ceasing to be the general partner of the Guarantor; or
- (d) any person or group of persons acting in concert, other than Navios Maritime Holdings Inc., Mrs Angeliki Frangou and her direct descendants (either directly or indirectly), gaining control of the Guarantor.

For the purpose of paragraph (d) above “**control**” means the holding beneficially of more than 50 per cent. of the issued units of the Guarantor (excluding any part of those issued units that carry no right to participate beyond a specified amount in a distribution of either profits or capital).

For the purpose of paragraph (d) above “**acting in concert**” means a group of persons who, pursuant to an agreement or understanding (whether formal or informal), actively co-operate, through the acquisition directly or indirectly of shares in the Guarantor by any of them, either directly or indirectly, to obtain or consolidate control of the Guarantor.

### **7.3 Voluntary and automatic cancellation**

- (a) The Borrowers may, if they give the Facility Agent not less than five Business Days’ (or such shorter period as the Majority Lenders may agree) prior notice, cancel the whole or any part (being a minimum amount of \$1,000,000 per Tranche outstanding) of the Available Facility. Any cancellation under this Clause 7.3 (*Voluntary and automatic cancellation*) shall reduce the Commitments of the Lenders rateably and the amount of the relevant Tranche(s).
- (b) The unutilised Commitment (if any) of each Lender shall be automatically cancelled at close of business on the date on which the Advances are made available.

### **7.4 Voluntary prepayment of Loan**

The Borrowers may, if they gives the Facility Agent not less than five RFR Banking Days’ (or such shorter period as the Majority Lenders and the Facility Agent may agree) prior notice, prepay the whole or any part of the Loan (but, if in part, being an amount that reduces the amount of the Loan by a minimum amount of \$1,000,000 per Tranche outstanding or an integral multiple of that amount).

### **7.5 Mandatory prepayment on sale, seizure or Total Loss**

- (a) If a Ship is sold (without prejudice to paragraph (a) of Clause 21.12 (*Disposals*)) or becomes a Total Loss, the Borrowers shall on the Relevant Date prepay an amount equal to (i) the Tranche applicable to that Ship and (ii) such amount, if applicable, to eliminate any shortfall arising in the ratio set out in Clause 25 (*Security Cover*) immediately following such prepayment.



(b) In this Clause 7.5 (*Mandatory prepayment on sale, seizure or Total Loss*):

“**Relevant Date**” means:

- (a) in the case of a sale of a Ship, on the date on which the sale is completed by delivery of that Ship to the buyer of that Ship; and
- (b) in the case of a Total Loss, on the earlier of (i) the date falling 180 days after the Total Loss Date and (ii) the date of receipt by the Security Agent of the proceeds of insurance relating to such Total Loss.

#### **7.6 Mandatory prepayment of Hedging Prepayment Proceeds**

Any Hedging Prepayment Proceeds arising as a result of any cancellation or prepayment under this Agreement shall, following payment into the relevant Earnings Account in accordance with Clause 26.2 (*Payment of Earnings*), be applied on the last day of the next Interest Period for the Loan which ends after such payment in, in prepayment of the Loan.

#### **7.7 Mandatory prepayment – Sinosure Policy**

(a) The Facility Agent shall inform the Borrowers if, following the Utilisation Date in respect of any Tranche:

- (i) a Sinosure Policy or any obligation of Sinosure under a Sinosure Policy is terminated in whole or in part, cancelled, suspended becomes invalid or unenforceable or otherwise ceases to be in full force and effect or otherwise modified in any material respect other than agreed by the Lenders; or
- (ii) it becomes unlawful or impossible for Sinosure to fulfil any of the obligations expressed to be assumed by it in any Sinosure Policy or for the Sinosure Agent or a Lender to exercise their rights or any of them under any Sinosure Policy; or
- (iii) the Sinosure Agent or any Lender is informed of Sinosure’s intention to, or Sinosure has stated its intention to, repudiate, terminate, cancel or suspend the application of a Sinosure Policy; or
- (iv) Sinosure refuses to accept a claim by the Sinosure Agent under the Sinosure Policy or to pay the compensation in a manner as instructed by the Facility Agent except where such refusal is valid under the Sinosure Policy; or
- (v) any of the events or circumstances set out in Clause 27.7 (*Insolvency*) and Clause 27.8 (*Insolvency proceedings*) occurs in relation to Sinosure; or
- (vi) any Authorisation necessary to enable Sinosure to:
  - (A) issue and maintain any Sinosure Policy;
  - (B) discharge any liability under any Sinosure Policy; or

(C) comply with any provision of any Sinosure Policy which the Facility Agent (acting reasonably) considers material, is not obtained or effected, or is terminated, cancelled or suspended without being renewed or is revoked or any condition thereof is not satisfied; or

(vii) Sinosure ceases to be a policy-orientated financial institution under the direct authority of the People's Republic of China, each a "**Sinosure Termination Event**".

(b) Following such notification, if the Lenders so require and provided that the Sinosure Termination Event is still continuing, the Facility Agent shall give notice to the Borrowers that the Commitments in relation to the relevant Tranche shall be cancelled with effect on the date specified in such notice and/or all other amounts owing to the Finance Parties under the Finance Documents in relation to that Tranche shall fall due for prepayment or (as the case may be) payment and be so paid by the Borrowers immediately after such date of cancellation.

#### **7.8 Mandatory prepayment – Time Charters**

(a) Subject to paragraph (b), if an Initial Charter is terminated or is cancelled, rescinded or frustrated for any reason whatsoever before the time that such Initial Charter was scheduled to expire (the "**Charter Termination Event**") any utilised Commitment of each Lender in respect of the Tranche relating to that Ship shall be automatically cancelled and the Borrowers shall prepay such part of the Tranche relating to that Ship.

(b) No cancellation or prepayment under paragraph (a) above will be required if within 60 days from such Charter Termination Event, the relevant Borrower has provided the Facility Agent with a Charter which is entered into with an established liner company for a duration equal to or greater than the remaining duration of the relevant Initial Charter and at a rate sufficient to cover the principal, interest payments and vessel operating expenses relating to such Ship and in all respects acceptable to the Facility Agent acting on the authorisation of the Majority Lenders and Sinosure and, if applicable, the relevant Borrower has complied with its obligations under Clause 24.19 (*Charterparty Assignment*).

#### **7.9 Mandatory prepayment – Put Option**

(a) The Borrowers shall, if requested by a Commercial Lender (acting in its sole discretion), prepay the Commercial Advances owed to such Commercial Lender in the amounts specified in the Put Option Notice (as defined below) on the date falling on the fifth anniversary after the first Utilisation Date (the "**Put Option Repayment Date**") **provided that** the relevant Commercial Lender provides a written notice (the "**Put Option Notice**") to the Borrowers, the Facility Agent, the ECA Lender and the Sinosure Agent, not less than 180 days prior to the Put Option Repayment Date.

(b) Upon receipt of a Put Option Notice, the Borrowers shall have the right to propose a new Lender (the "**Replacement Commercial Lender**") to replace the outgoing Commercial Lender, subject to the approval of Sinosure and any ECA Lender (and shall inform Sinosure and the ECA Lenders accordingly and such approval or non-approval, as the case may be, to be provided by Sinosure and any ECA Lender within 15 Business Days thereafter) on the basis that such Replacement Commercial Lender confirms its willingness to assume at least 30 days prior to the Put Option Repayment Date and does assume by the Put Option Repayment Date all the obligations of the transferring Lender in accordance with Clause 28 (*Changes to the Lenders and*

*the Hedge Counterparties*) for a purchase price in cash or other cash payment payable at the time of the transfer equal to the outstanding principal amount of such Lender's participation in the Loan and all accrued interest (to the extent that the Facility Agent has not given a notification under Clause 28.9 (*Pro rata interest settlement*)), Break Costs and other amounts payable in relation thereto under the Finance Documents.

- (c) In the event that a Commercial Lender serves a Put Option Notice and either such Replacement Commercial Lender is not accepted by Sinasure or any ECA Lender, or such Replacement Commercial Lender has not confirmed its willingness to assume at least 30 days prior to the Put Option Repayment Date and does not assume by the Put Option Repayment Date all the obligations of the transferring Lender as per paragraph (b) above, an ECA Lender shall also have the right to require from the Borrowers to prepay any or all ECA Advances on the Put Option Repayment Date, which shall be immediately notified to the Borrowers, the Facility Agent and the Sinasure Agent.

#### **7.10 Right of repayment and cancellation in relation to a single Lender**

- (a) If:
- (i) any sum payable to any Lender by a Borrower is required to be increased under paragraph (c) of Clause 12.2 (*Tax gross-up*); or
  - (ii) any Lender claims indemnification from a Borrower under Clause 12.3 (*Tax indemnity*) or Clause 13 (*Increased costs*),
- the Borrowers may give the Facility Agent notice of cancellation of the Commitment of that Lender and their intention to procure the repayment of that Lender's participation in the Loan.
- (b) On receipt of a notice of cancellation referred to in paragraph (a) above, the Commitment of that Lender shall immediately be reduced to zero.
- (c) On the last day of each Interest Period which ends after the Borrowers have given notice of cancellation under paragraph (a) above in relation to a Lender (or, if earlier, the date specified by the Borrowers in that notice), the Borrowers shall repay that Lender's participation in the Loan.
- (d) The Borrowers may, in the circumstances set out in paragraph (a) above, with the prior consent of Sinasure, on 15 Business Days' prior notice to the Facility Agent and that Lender, replace that Lender by requiring that Lender to (and, to the extent permitted by law, that Lender shall) transfer pursuant to Clause 28 (*Changes to the Lenders and the Hedge Counterparties*) (and not part only) of its rights and obligations under this Agreement to a Lender or other bank, financial institution, trust, fund or other entity selected by the Borrowers which confirms its willingness to assume and does assume all the obligations of the transferring Lender in accordance with Clause 28 (*Changes to the Lenders and the Hedge Counterparties*) for a purchase price in cash or other cash payment payable at the time of the transfer equal to the outstanding principal amount of such Lender's participation in the Loan and all accrued interest (to the extent that the Facility Agent has not given a notification under Clause 28.9 (*Pro rata interest settlement*)), Break Costs and other amounts payable in relation thereto under the Finance Documents.

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- (e) The replacement of a Lender pursuant to paragraph (d) above shall be subject to the following conditions:
- (i) the Borrowers shall have no right to replace a Lender acting in its capacity as a Servicing Party;
  - (ii) neither the Facility Agent nor any Lender shall have any obligation to find a replacement Lender;
  - (iii) in no event shall the Lender replaced under paragraph (d) above be required to pay or surrender any of the fees received by such Lender pursuant to the Finance Documents; and
  - (iv) the Lender shall only be obliged to transfer its rights and obligations pursuant to paragraph (d) above once it is satisfied that it has complied with all necessary “know your customer” or other similar checks under all applicable laws and regulations in relation to that transfer.
- (f) A Lender shall perform the checks described in sub-paragraph (iv) of paragraph (e) above as soon as reasonably practicable following delivery of a notice referred to in paragraph (d) above and shall notify the Facility Agent and the Borrowers when it is satisfied that it has complied with those checks.

#### **7.11 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, the amount of that cancellation or prepayment and, if relevant, the part of the Loan to be prepaid or cancelled.
- (b) Any prepayment under this Agreement shall be made together with accrued interest on the amount prepaid and amounts (if any) payable under the Hedging Agreement in connection with that prepayment and, subject to the fee provided for in Clause 11.3 (*Prepayment fee*) and any Break Costs, without premium or penalty.
- (c) No Borrower may reborrow any part of the Facility which is prepaid.
- (d) No Borrower shall 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.
- (e) No amount of the Total Commitments cancelled under this Agreement may be subsequently reinstated.
- (f) If the Facility Agent receives a notice under this Clause 7 (*Prepayment and Cancellation*) it shall promptly forward a copy of that notice to either the Borrowers or the affected Lenders and/or Hedge Counterparties and/or Sinosure, as appropriate.
- (g) If all or part of any Lender’s participation in the Loan is repaid or prepaid, an amount of that Lender’s Commitment (equal to the amount of the participation which is repaid or prepaid) will be deemed to be cancelled on the date of repayment or prepayment.

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**7.12 Application of prepayments**

Any prepayment of any part of the Loan (other than a prepayment pursuant to Clause 7.1 (*Illegality*)) or Clause 7.10 (*Right of repayment and cancellation in relation to a single Lender*) shall be applied *pro rata* to each Lender's participation in that part of the Loan.

## SECTION 5

### COSTS OF UTILISATION

#### INTEREST

##### 8.1 Calculation of interest

- (a) The rate of interest on the Loan or any part of the Loan for any day during an Interest Period is the percentage rate per annum which is the aggregate of:
- (i) the Margin; and
  - (ii) the Compounded Reference Rate for that day.
- (b) If any day during an Interest Period for the Loan or any part of the Loan is not an RFR Banking Day, the rate of interest on the Loan or that part of the Loan for that day will be the rate applicable to the immediately preceding RFR Banking Day.

##### 8.2 Payment of interest

The Borrowers shall pay accrued interest on the Loan or any part of the Loan on the last day of each Interest Period (each an “**Interest Payment Date**”).

##### 8.3 Default interest

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

##### 8.4 Notifications

- (a) The Facility Agent shall promptly upon an Interest Payment being determinable, notify:
- (i) the Borrowers of that Interest Payment;
  - (ii) each Lender of the proportion of that Interest Payment which relates to that Lender’s participation in the Loan or the relevant part of the Loan; and
  - (iii) the Lenders and the Borrowers of:
    - (A) each applicable rate of interest relating to the determination of that Interest Payment; and

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- (B) to the extent it is then determinable, the Market Disruption Rate (if any) relating to the Loan or the relevant part of the Loan. This paragraph (a) shall not apply to any Interest Payment determined pursuant to Clause 10.2 (*Cost of funds*).
- (b) The Facility Agent shall promptly notify the Borrowers of each Funding Rate relating to the Loan or any part of the Loan.
- (c) The Facility Agent shall promptly notify the Lenders and the Borrowers of the determination of a rate of interest relating to the Loan or any part of the Loan to which Clause 10.2 (*Cost of funds*) applies.
- (d) This Clause 8.4 (*Notifications*) shall not require the Facility Agent to make any notification to any Party on a day which is not a Business Day.

## **8.5 Hedging**

- (a) The Borrowers shall have the option to enter into a Hedging Agreement and shall after that date maintain such Hedging Agreement in accordance with this Clause 8.5 (*Hedging*).
- (b) The aggregate notional amount of the transactions in respect of the Hedging Agreement shall be at least such amount of the Loan to be agreed between the Borrowers and the other Parties to this Agreement at the time of entering into any Hedging Agreement.
- (c) The Hedging Agreement shall:
- (i) be with a Hedge Counterparty and each Hedge Counterparty shall also be a Lender;
  - (ii) be for a term ending on the Termination Date;
  - (iii) have settlement dates coinciding with the Interest Payment Dates;
  - (iv) be based on an ISDA Master Agreement and otherwise in form and substance satisfactory to the Facility Agent; and
  - (v) provide that the Termination Currency (as defined in the Hedging Agreement) shall be dollars.
- (d) The rights of each Borrower under the Hedging Agreement and any Hedge Counterparty Guarantee shall be charged or assigned by way of security under the Hedging Agreement Security.
- (e) The parties to the Hedging Agreement must comply with the terms of the Hedging Agreement.
- (f) Neither a Hedge Counterparty nor a Borrower may amend, supplement, extend or waive the terms of the Hedging Agreement or Hedge Counterparty Guarantee without the consent of the Security Agent.
- (g) Paragraph (f) above shall not apply to an amendment, supplement or waiver that is administrative and mechanical in nature and does not give rise to a conflict with any provision of this Agreement or the Hedging Agreement Security.

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- (h) If, at any time, the aggregate notional amount of the transactions in respect of the Hedging Agreement exceeds or, as a result of any repayment or prepayment under this Agreement, will exceed an amount of the Loan at that time, such amount to be agreed between the Borrowers and the other Parties to this Agreement at the time of entering into any Hedging Agreement, the Borrowers must promptly notify the Facility Agent and must, at the request of the Facility Agent, reduce the aggregate notional amount of those transactions by an amount and in a manner satisfactory to the Facility Agent so that it no longer exceeds or will not exceed the above agreed percentage of the Loan then or that will be outstanding.
- (i) Any reductions in the aggregate notional amount of the transactions in respect of the Hedging Agreement in accordance with paragraph (h) above will be apportioned as between those transactions *pro rata*.
- (j) Paragraph (h) above shall not apply to any transactions in respect of the Hedging Agreement under which no Borrower has any actual or contingent indebtedness.
- (k) The Facility Agent must make a request under paragraph (h) above if so required by a Hedge Counterparty.
- (l) Neither a Hedge Counterparty nor the Borrowers may terminate or close out any transactions in respect of the Hedging Agreement (in whole or in part) except:
- (i) in accordance with paragraphs (h)-(k) above;
  - (ii) on the occurrence of an Illegality, (as such expression is defined in the Hedging Agreement);
  - (iii) in the case of termination or closing out by a Hedge Counterparty, if the Facility Agent serves notice under paragraph (a)(ii) of Clause 27.20 (*Acceleration*) or, having served notice under paragraph (a)(iii) of Clause 27.20 (*Acceleration*), makes a demand;
  - (iv) in the case of any other termination or closing out by a Hedge Counterparty or a Borrower, with the consent of the Facility Agent; or
  - (v) if the Secured Liabilities (other than in respect of the Hedging Agreement) have been irrevocably and unconditionally paid and discharged in full;
- (m) If a Hedge Counterparty or a Borrower terminates or closes out a transaction in respect of the Hedging Agreement (in whole or in part) in accordance with sub-paragraphs (ii) or (in the case of a Hedge Counterparty only) (iii) of paragraph (l) above, it shall promptly notify the Facility Agent of that termination or close out.
- (n) If a Hedge Counterparty is entitled to terminate or close out any transaction in respect of the Hedging Agreement under sub-paragraph (iii) of paragraph (l) above, such Hedge Counterparty shall promptly terminate or close out such transaction following a request to do so by the Security Agent.
- (o) A Hedge Counterparty may only suspend making payments under a transaction in respect of the Hedging Agreement if a Borrower is in breach of its payment obligations under any transaction in respect of the Hedging Agreement.



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- (p) Each Hedge Counterparty consents to, and acknowledges notices of, the charging or assigning by way of security by each Borrower pursuant to the relevant Hedging Agreement Security of its rights under the Hedging Agreement to which it is party in favour of the Security Agent.
  - (q) Any such charging or assigning by way of security is without prejudice to, and after giving effect to, the operation of any payment or close-out netting in respect of any amounts owing under the Hedging Agreement.
  - (r) The Security Agent shall not be liable for the performance of the Borrowers' obligations under the Hedging Agreement.
  - (s) No Borrower or any Hedge Counterparty shall assign any of its rights or transfer any of its rights or obligations under the Hedging Agreement or permit a change of Hedge Counterparty Guarantor without the consent of the Security Agent.

## **INTEREST PERIODS**

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

- (a) The Borrowers may select the Interest Period for a Tranche in the relevant Utilisation Request. Subject to paragraph (f) below and Clause 9.2 (*Changes to Interest Periods*), the Borrowers may select each subsequent Interest Period in respect of the Loan in a Selection Notice.
- (b) Each Selection Notice is irrevocable and must be delivered to the Facility Agent by the Borrowers not later than the Specified Time.
- (c) If the Borrowers fail to select an Interest Period in the Utilisation Request or fails to deliver a Selection Notice to the Facility Agent in accordance with paragraphs (a) and (b) above, the relevant Interest Period will, subject to paragraph (f) below and Clause 9.2 (*Changes to Interest Periods*), be the period specified in the Reference Rate Terms.
- (d) Subject to this Clause 9 (*Interest Periods*), the Borrowers may select an Interest Period of any period specified in the Reference Rate Terms or any other period for the purpose of alignment of the Repayment Instalments for the purposes of paragraph (b) of Clause 6.2 (*Repayment Dates*) or any other period agreed between the Borrowers, the Facility Agent (acting on the instructions of all the Lenders) and Sinasure.
- (e) An Interest Period in respect of the Loan or any part of the Loan shall not extend beyond the Termination Date.
- (f) In respect of a Repayment Instalment, the Borrowers may request in the relevant Selection Notice that an Interest Period for a part of the Loan equal to such Repayment Instalment shall end on the Repayment Date relating to it and, subject to paragraph (d) above, select a longer Interest Period for the remaining part of the Loan.
- (g) The first Interest Period for the Loan shall start on the first Utilisation Date and each subsequent Interest Period shall start on the last day of the preceding Interest Period.
- (h) Except for the purposes of paragraph (f) above and Clause 9.2 (*Changes to Interest Periods*), the Loan shall have one Interest Period only at any time.
- (i) No Interest Period shall be longer than three Months.

## 9.2 Changes to Interest Periods

- (a) In respect of a Repayment Instalment and a Balloon Instalment, before the first day of an Interest Period for the Loan, the Facility Agent may establish an Interest Period for a part of the Loan equal to such Repayment Instalment and Balloon Instalment to end on the Repayment Date relating to it and the remaining part of the Loan shall have the Interest Period selected in the relevant Selection Notice, subject to paragraph (d) of Clause 9.1 (*Selection of Interest Periods*).
- (b) If the Facility Agent makes any change to an Interest Period referred to in this Clause 9.2 (*Changes to Interest Periods*), it shall promptly notify the Borrowers and the Lenders.

## 9.3 Non-Business Days

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

## CHANGES TO THE CALCULATION OF INTEREST

### 10.1 Market disruption

If:

- (a) a Market Disruption Rate is specified in the Reference Rate Terms; and
- (b) before the Reporting Time for the Loan or any part of the Loan, the Facility Agent receives notifications from a Lender or Lenders (whose participations in the Loan or the relevant part of the Loan exceed 20 per cent. of the Loan or the relevant part of the Loan as appropriate) that its cost of funds relating to its participation in the Loan or that part of the Loan would be in excess of that Market Disruption Rate, then Clause 10.2 (*Cost of funds*) shall apply to the Loan or that part of the Loan (as applicable) for the relevant Interest Period.

### 10.2 Cost of funds

- (a) If this Clause 10.2 (*Cost of funds*) applies to the Loan or part of the Loan for an Interest Period, Clause 8.1 (*Calculation of interest*) shall not apply to the Loan or that part of the Loan for that Interest Period and the rate of interest on each Lender’s share of the Loan or that part of the Loan for that Interest Period shall be the percentage rate per annum which is the sum of:
  - (i) the Margin; and
  - (ii) the weighted average of the rates notified to the Facility Agent by each Lender, as soon as practicable and in any event by the Reporting Time for the Loan or that part of the Loan to be that which expresses as a percentage rate per annum its cost of funds relating to its participation in the Loan or that part of the Loan.
- (b) If this Clause 10.2 (*Cost of funds*) applies and the Facility Agent or the Borrowers so require, the Facility Agent and the Borrowers shall enter into negotiations (for a period of not more than 30 days) with a view to agreeing a substitute basis for determining the rate of interest or (as the case may be) an alternative basis for funding.

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- (c) Subject to Clause 45.4 (*Changes to reference rates*), any substitute or alternative basis agreed pursuant to paragraph (ii) above shall, with the prior consent of all the Lenders and the Borrowers, be binding on all Parties.
  - (d) If paragraph (e) below does not apply and any rate notified to the Facility Agent under sub-paragraph (ii) of paragraph (a) above is less than zero, the relevant rate shall be deemed to be zero.
  - (e) If this Clause 10.2 (*Cost of funds*) applies pursuant to Clause 10.1 (*Market disruption*) and:
    - (i) a Lender's Funding Rate is less than the Relevant Market Disruption Rate; or
    - (ii) a Lender does not notify a rate to the Facility Agent by the time specified in sub-paragraph (ii) of paragraph (a) above,that Lender's cost of funds relating to its participation in the Loan or the relevant part of the Loan for that Interest Period shall be deemed, for the purposes of sub-paragraph (ii) of paragraph (a) above, to be the Market Disruption Rate for the Loan or that part of the Loan.
  - (f) If this Clause 10.2 (*Cost of Funds*) applies, the Facility Agent shall, as soon as practicable, notify the Borrowers.

### **10.3 Break Costs**

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

## **FEES AND SINSURE PREMIUM**

### **11.1 Fees**

The Borrowers shall pay certain fees to the Finance Parties, as appropriate, referred to, and in the amount and at the times agreed in, a Fee Letter.

### **11.2 Commitment fee**

- (a) The Borrowers shall pay a non-refundable commitment fee to the Facility Agent (for the account of each Lender) computed at the rate of 0.5 per cent. per annum on that Lender's Available Commitment from time to time for the Availability Period
- (b) The accrued commitment fee is payable quarterly in arrears during the period commencing on (and including) 30 November 2022 to the last day of the Availability Period (and on the last day of such period) and, if cancelled, on the cancelled amount of the relevant Lender's Commitment at the time the cancellation is effective.

### 11.3 Prepayment fee

- (a) Subject to paragraph (c) below, in the event that the Borrowers make a prepayment of any ECA Advance or part thereof on any day which is not an Interest Payment Date, the Borrowers shall pay to the Facility Agent for the ECA Lenders a prepayment fee on the date of such prepayment.
- (b) The amount of the prepayment fee is:
  - (i) if the prepayment occurs on or before the first anniversary of the first Utilisation Date, 0.2 per cent. of the amount of the ECA Advance or part thereof prepaid;
  - (ii) if the prepayment occurs after the first anniversary of the first Utilisation Date and on or before the second anniversary of the first Utilisation Date, 0.15 per cent. of the amount of the ECA Advance or part thereof prepaid;
  - (iii) if the prepayment occurs after the second anniversary of the first Utilisation Date and on or before the third anniversary of the first Utilisation Date, 0.1 per cent. of the amount of the ECA Advance or part thereof prepaid; and
  - (iv) if the prepayment occurs after the third anniversary of the first Utilisation Date and on or before the fifth anniversary of the first Utilisation, 0.05 per cent. of the amount of the ECA Advance or part thereof prepaid.
- (c) No prepayment fee shall be payable under this Clause if the prepayment is made under Clause 7.1 (*Illegality*), Clause 7.2 (*Change of control*), Clause 7.5 (*Mandatory prepayment on sale, seizure or Total Loss*), Clause 7.6 (*Mandatory prepayment of Hedging Prepayment Proceeds*), Clause 7.7 (*Mandatory prepayment – SinSURE Policy*), Clause 7.8 (*Mandatory prepayment – Time Charters*), Clause 7.9 (*Mandatory prepayment – Put Option*) or Clause 25.6 (*Prepayment mechanism*).

### 11.4 SinSURE Premium

- (a) The Borrowers shall pay directly to SinSURE each SinSURE Premium in relation to each SinSURE Policy and any related additional issuance or administrative fees prior to the date of the Utilisation Request in respect of the Tranche to which the SinSURE Policy relates and which have been advised to the Borrowers by the SinSURE Agent prior to the date of that Utilisation Request.
- (b) The obligation of the Borrowers to pay each SinSURE Premium shall be an absolute and unconditional obligation and shall not be affected by any matter whatsoever (including the failure of the Borrowers to utilise any part of a Tranche following the issuance of a Utilisation Request in respect of that Tranche and any prepayment, acceleration or cancellation of the whole or part of any Tranche). No part of any SinSURE Premium shall be refundable except in accordance with the terms of the relevant SinSURE Policy and SinSURE's internal regulations.
- (c) If a Finance Party receives a refund of any SinSURE Premium from SinSURE and if all amounts due and owing by the Borrowers under the Finance Documents at that time have been discharged in full, such refund shall be paid to the Borrowers.
- (d) Each Borrower acknowledges that the amount of each SinSURE Premium will be determined solely by SinSURE and no Finance Party is in any way involved in the determination of the amount of that SinSURE Premium and agrees that no Borrower shall have any claim or defence against any Finance Party in connection with the amount of that SinSURE Premium.

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(e) If a Utilisation Request is served in respect of any Tranche, the Borrowers shall pay directly to Sinasure on demand any additional premium payable in respect of any amendment or waiver permitted by paragraphs (b) and (e) of Clause 45.2 (*All Lender matters*) pursuant to the terms of the relevant Sinasure Policy. Without prejudice to the foregoing, the Sinasure Agent shall provide to the Borrowers copies of any documentation it has received from Sinasure with respect to the calculation of the Sinasure Premium.

(f) Subject to the final confirmation by Sinasure, each Sinasure Premium is currently estimated to be in an amount in dollar equivalent to 2.30 per cent. of the Commitments plus accumulated interest under the relevant Tranche.

Subject to the final confirmation of Sinasure, the Sinasure Premium in relation to the relevant Sinasure Policy will be calculated as follows:

$$P = (A + B) \times C$$

Where:

P = amount of the premium payable in respect of the Sinasure Policy;

A = Commitments under that Tranche (in dollars);

B = estimated total accumulated interest amount of that Tranche; and

C = the premium rate as set out in the Sinasure Policy.

(g) For the avoidance of doubt there shall be one Sinasure Policy issued in respect of each Ship and the Sinasure Premium shall be payable in respect of each Sinasure Policy in respect of each Ship.

## SECTION 6

### ADDITIONAL PAYMENT OBLIGATIONS

#### TAX GROSS UP AND INDEMNITIES

##### 12.1 Definitions

(a) In this Agreement:

“**Protected Party**” means a Finance Party which is or will be subject to any liability, or required to make any payment, for or on account of Tax in relation to a sum received or receivable (or any sum deemed for the purposes of Tax to be received or receivable) under a Finance Document.

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

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

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

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

(c) This Clause 12 (*Tax Gross Up and Indemnities*) shall not apply to any Hedging Agreement.

##### 12.2 Tax gross-up

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

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

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

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

(e) Within 30 days of making either a Tax Deduction or any payment required in connection with that Tax Deduction, the Borrower making that Tax Deduction shall deliver to the Facility Agent for the Finance Party entitled to the payment evidence reasonably satisfactory to that Finance Party that the Tax Deduction has been made or (as applicable) any appropriate payment paid to the relevant taxing authority.

### 12.3 Tax indemnity

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

### 12.4 Tax Credit

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

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

## 12.5 Stamp taxes

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

## 12.6 VAT

- (a) All amounts expressed to be payable under a Finance Document by any Party to a Finance Party which (in whole or in part) constitute the consideration for any supply for VAT purposes are deemed to be exclusive of any VAT which is chargeable on that supply, and accordingly, subject to paragraph (b) below, if VAT is or becomes chargeable on any supply made by any Finance Party to any Party under a Finance Document and such Finance Party is required to account to the relevant tax authority for the VAT, that Party must pay to such Finance Party (in addition to and at the same time as paying any other consideration for such supply) an amount equal to the amount of the VAT (and such Finance Party must promptly provide an appropriate VAT invoice to that Party).
- (b) If VAT is or becomes chargeable on any supply made by any Finance Party (the “**Supplier**”) to any other Finance Party (the “**Recipient**”) under a Finance Document, and any Party other than the Recipient (the “**Relevant Party**”) is required by the terms of any Finance Document to pay an amount equal to the consideration for that supply to the Supplier (rather than being required to reimburse or indemnify the Recipient in respect of that consideration):
- (i) (where the Supplier is the person required to account to the relevant tax authority for the VAT) the Relevant Party must also pay to the Supplier (at the same time as paying that amount) an additional amount equal to the amount of the VAT. The Recipient must (where this sub-paragraph (i) applies) promptly pay to the Relevant Party an amount equal to any credit or repayment the Recipient receives from the relevant tax authority which the Recipient reasonably determines relates to the VAT chargeable on that supply; and
- (ii) (where the Recipient is the person required to account to the relevant tax authority for the VAT) the Relevant Party must promptly, following demand from the Recipient, pay to the Recipient an amount equal to the VAT chargeable on that supply but only to the extent that the Recipient reasonably determines that it is not entitled to credit or repayment from the relevant tax authority in respect of that VAT.
- (c) Where a Finance Document requires any Party to reimburse or indemnify a Finance Party for any cost or expense, that Party shall reimburse or indemnify (as the case may be) such Finance Party for the full amount of such cost or expense, including such part of it as represents VAT, save to the extent that such Finance Party reasonably determines that it is entitled to credit or repayment in respect of such VAT from the relevant tax authority.
- (d) Any reference in this Clause 12.6 (VAT) to any Party shall, at any time when that Party is treated as a member of a group or unity (or fiscal unity) for VAT purposes, include (where appropriate and unless the context otherwise requires) a reference to the person who is treated at that time as making the supply, or (as appropriate) receiving the supply, under the grouping rules provided for in Article 11 of Council Directive 2006/112/EC (or as implemented by the relevant member state of the European Union or equivalent provisions imposed elsewhere) so that a reference to a Party shall be construed as a reference to that Party or the relevant group or



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unity (or fiscal unity) of which that Party is a member for VAT purposes at the relevant time or the relevant representative member (or representative or head) of that group or unity at the relevant time (as the case may be).

- (e) In relation to any supply made by a Finance Party to any Party under a Finance Document, if reasonably requested by such Finance Party, that Party must promptly provide such Finance Party with details of that Party's VAT registration and such other information as is reasonably requested in connection with such Finance Party's VAT reporting requirements in relation to such supply.

#### **12.7 FATCA Information**

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

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- (e) If a Borrower is a US Tax Obligor, or the Facility Agent reasonably believes that its obligations under FATCA or any other applicable law or regulation require it, each Lender shall, within ten Business Days of:
- (i) where a Borrower is a US Tax Obligor and the relevant Lender is an Original Lender, the date of this Agreement;
  - (ii) where a Borrower is a US Tax Obligor on a Transfer Date and the relevant Lender is a New Lender, the relevant Transfer Date; or
  - (iii) where a Borrower is not a US Tax Obligor, the date of a request from the Facility Agent,
- supply to the Facility Agent:
- (iv) a withholding certificate on Form W-8, Form W-9 or any other relevant form; or
  - (v) any withholding statement or other document, authorisation or waiver as the Facility Agent may require to certify or establish the status of such Lender under FATCA or that other law or regulation.
- (f) The Facility Agent shall provide any withholding certificate, withholding statement, document, authorisation or waiver it receives from a Lender pursuant to paragraph (e) above to the Borrowers.
- (g) If any withholding certificate, withholding statement, document, authorisation or waiver provided to the Facility Agent by a Lender pursuant to paragraph (e) above is or becomes materially inaccurate or incomplete, that Lender shall promptly update it and provide such updated withholding certificate, withholding statement, document, authorisation or waiver to the Facility Agent unless it is unlawful for the Lender to do so (in which case the Lender shall promptly notify the Facility Agent). The Facility Agent shall provide any such updated withholding certificate, withholding statement, document, authorisation or waiver to the Borrowers.
- (h) The Facility Agent may rely on any withholding certificate, withholding statement, document, authorisation or waiver it receives from a Lender pursuant to paragraph (e) or (g) above without further verification. The Facility Agent shall not be liable for any action taken by it under or in connection with paragraphs (e), (f) or (g) above.

## **12.8 FATCA Deduction**

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

## INCREASED COSTS

### 13.1 Increased costs

- (a) Subject to Clause 13.3 (*Exceptions*), the Borrowers shall, within three Business Days of a demand by the Facility Agent, pay for the account of a Finance Party the amount of any Increased Costs incurred by that Finance Party or any of its Affiliates as a result of:
- (i) the introduction of or any change in (or in the interpretation, administration or application of) any law or regulation; or
  - (ii) compliance with any law or regulation made,
- in each case after the date of this Agreement; or
- (iii) the implementation, application of or compliance with Basel III or CRD IV or any law or regulation that implements or applies Basel III or CRD IV.
- (b) In this Agreement:
- (i) **“Basel III”** means:
    - (A) the agreements on capital requirements, a leverage ratio and liquidity standards contained in “Basel III: A global regulatory framework for more resilient banks and banking systems”, “Basel III: International framework for liquidity risk measurement, standards and monitoring” and “Guidance for national authorities operating the countercyclical capital buffer” published by the Basel Committee on Banking Supervision in December 2010, each as amended, supplemented or restated;
    - (B) the rules for global systemically important banks contained in “Global systemically important banks: assessment methodology and the additional loss absorbency requirement - Rules text” published by the Basel Committee on Banking Supervision in November 2011, as amended, supplemented or restated; and
    - (C) any further guidance or standards published by the Basel Committee on Banking Supervision relating to “Basel III”.
  - (ii) **“CRD IV”** means:
    - (A) Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending regulation (EU) No. 648/2012, as amended by Regulation (EU) 2019/876;
    - (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 supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC, as amended by Directive (EU) 2019/878; and
    - (C) any other law or regulation which implements Basel III.
  - (iii) **“Increased Costs”** means:
    - (A) a reduction in the rate of return from the Facility or on a Finance Party’s (or its Affiliate’s) overall capital;
    - (B) an additional or increased cost; or

(C) a reduction of any amount due and payable under any Finance Document, which is incurred or suffered by a Finance Party or any of its Affiliates to the extent that it is attributable to that Finance Party having entered into its Commitment or funding or performing its obligations under any Finance Document.

### 13.2 Increased cost claims

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

### 13.3 Exceptions

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

- (a) attributable to a Tax Deduction required by law to be made by a Borrower;
- (b) attributable to a FATCA Deduction required to be made by a Party;
- (c) compensated for by Clause 12.3 (*Tax indemnity*) (or would have been compensated for under Clause 12.3 (*Tax indemnity*) but was not so compensated solely because any of the exclusions in paragraph (b) of Clause 12.3 (*Tax indemnity*) applied);
- (d) compensated for by any payment made pursuant to Clause 14.3 (*Mandatory Cost*);
- (e) attributable to the wilful breach by the relevant Finance Party or its Affiliates of any law or regulation; or
- (f) incurred by a Hedge Counterparty in its capacity as such.

## OTHER INDEMNITIES

### 14.1 Currency indemnity

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

that Borrower shall, as an independent obligation, on demand, indemnify each Secured Party to which that Sum is due against any cost, loss or liability arising out of or as a result of the conversion including any discrepancy between (A) the rate of exchange used to convert that Sum from the First Currency into the Second Currency and (B) the rate or rates of exchange available to that person at the time of its receipt of that Sum.

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- (b) Each Borrower 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.
  - (c) This Clause 14.1 (*Currency indemnity*) does not apply to any sum due to a Hedge Counterparty in its capacity as such.

#### 14.2 Other indemnities

- (a) Each Borrower shall, on demand, indemnify each Secured Party against any cost, loss or liability incurred by it as a result of:
  - (i) the occurrence of any Event of Default;
  - (ii) a failure by 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 34 (*Sharing among the Finance Parties*);
  - (iii) funding, or making arrangements to fund, its participation in an Advance requested by the Borrowers in a 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 Secured Party alone); or
  - (iv) the Loan (or part of the Loan) not being prepaid in accordance with a notice of prepayment given by the Borrowers.
- (b) Each Borrower shall, on demand, indemnify each Finance Party, each Affiliate of a Finance Party and each officer or employee of a Finance Party or its Affiliate (each such person for the purposes of this Clause 14.2 (*Other indemnities*) an “**Indemnified Person**”), against any cost, loss or liability (including, without limitation, for negligence or any other category of liability whatsoever) 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 Ship unless such cost, loss or liability is caused by the gross negligence or wilful misconduct of that Indemnified Person.
- (c) Without limiting, but subject to any limitations set out in paragraph (b) above, the indemnity in paragraph (b) above shall cover any cost, loss or liability incurred by each Indemnified Person in any jurisdiction:
  - (i) arising or asserted under or in connection with any law relating to safety at sea, the ISM Code, any Environmental Law or any Sanctions; or
  - (ii) in connection with any Environmental Claim.
- (d) Any Affiliate or any officer or employee of a Finance Party or of any of its Affiliates may rely on this Clause 14.2 (*Other indemnities*) subject to Clause 1.5 (*Third party rights*) and the provisions of the Third Parties Act.

### 14.3 Mandatory Cost

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

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

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

### 14.4 Indemnity to the Facility Agent and Sinosure

Each Borrower shall, on demand, indemnify the Facility Agent and Sinosure against:

- (a) any cost, loss or liability incurred by the Facility Agent or Sinosure (acting reasonably) as a result of:
  - (i) investigating any event which it reasonably believes is a Default; or
  - (ii) acting or relying on any notice, request or instruction which it reasonably believes to be genuine, correct and appropriately authorised; or
  - (iii) instructing lawyers, accountants, tax advisers, surveyors or other professional advisers or experts as permitted under the Finance Documents; and
- (b) any cost, loss or liability (including, without limitation, for negligence or any other category of liability whatsoever) incurred by the Facility Agent or Sinosure (otherwise than by reason of the Facility Agent's gross negligence or wilful misconduct) or, in the case of any cost, loss or liability pursuant to Clause 35.11 (*Disruption to Payment Systems etc.*) notwithstanding the Facility Agent's negligence, gross negligence or any other category of liability whatsoever but not including any claim based on the fraud of the Facility Agent in acting as Facility Agent under the Finance Documents.

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

- (a) Each Borrower shall, on demand, indemnify the Security Agent and every Receiver and Delegate against any cost, loss or liability (including, without limitation, for negligence or any other category of liability whatsoever) incurred by any of them:
- (i) in relation to or as a result of:
    - (A) any failure by a Borrower to comply with its obligations under Clause 16 (*Costs and Expenses*);
    - (B) acting or relying on any notice, request or instruction which it reasonably believes to be genuine, correct and appropriately authorised;
    - (C) the taking, holding, protection or enforcement of the Finance Documents and the Transaction Security;
    - (D) the exercise of any of the rights, powers, discretions, authorities and remedies vested in the Security Agent and each Receiver and Delegate by the Finance Documents or by law;
    - (E) any default by any Transaction Obligor in the performance of any of the obligations expressed to be assumed by it in the Finance Documents;
    - (F) any action by any Transaction Obligor which vitiates, reduces the value of, or is otherwise prejudicial to, the Transaction Security; and
    - (G) instructing lawyers, accountants, tax advisers, surveyors or other professional advisers or experts as permitted under the Finance Documents,
  - (ii) acting as Security Agent, Receiver or Delegate under the Finance Documents or which otherwise relates to any of the Security Property or the performance of the terms of this Agreement or the other Finance Documents (otherwise, in each case, than by reason of the relevant Security Agent's, Receiver's or Delegate's gross negligence or wilful misconduct).
- (b) The Security Agent and every Receiver and Delegate may, in priority to any payment to the Secured Parties, indemnify itself out of the Security Assets in respect of, and pay and retain, all sums necessary to give effect to the indemnity in this Clause 14.5 (*Indemnity to the Security Agent*) and shall have a lien on the Transaction Security and the proceeds of the enforcement of the Transaction Security for all monies payable to it.

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

##### **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*), Clause 13 (*Increased Costs*) or paragraph (a) of Clause 14.3 (*Mandatory Cost*) including (but not limited to) transferring its rights and obligations under the Finance Documents to another Affiliate or Facility Office.
- (b) Paragraph (a) above does not in any way limit the obligations of any Transaction Obligor under the Finance Documents.

##### **15.2 Limitation of liability**

- (a) Each Borrower shall, on demand, indemnify each Finance Party for all costs and expenses reasonably incurred by that Finance Party as a result of steps taken by it under Clause 15.1 (*Mitigation*).

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- (b) A Finance Party is not obliged to take any steps under Clause 15.1 (*Mitigation*) if either:
- (i) a Default has occurred and is continuing; or
  - (ii) in the opinion of that Finance Party (acting reasonably), to do so might be prejudicial to it.

## **COSTS AND EXPENSES**

### **16.1 Transaction expenses**

The Borrowers shall, on demand, pay the Facility Agent, the Security Agent, the Bookrunner and the Sinosure Agent (for the account of Sinosure) the amount of all costs and expenses (including legal fees and VAT) reasonably incurred by any Secured Party in connection with the negotiation, preparation, printing, execution, syndication and perfection of:

- (a) this Agreement and any other documents referred to in this Agreement or in a Security Document;
- (b) each of the Sinosure Policies and any other documents which may at any time be required by Sinosure to give effect to the terms of any Sinosure Policy or which Sinosure is entitled to call for or obtain pursuant to the terms of any Sinosure Policy; and
- (c) any other Finance Documents executed after the date of this Agreement.

### **16.2 Amendment costs**

Subject to Clause 16.4 (*Reference rate transition costs*), if:

- (a) a Transaction Obligor requests an amendment, waiver or consent; or
- (b) an amendment is required pursuant to Clause 35.9 (*Change of currency*); or
- (c) a Transaction Obligor requests, and the Security Agent agrees to, the release of all or any part of the Security Assets from the Transaction Security,

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

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

The Borrowers shall, on demand, pay to:

- (a) each Secured Party the amount of all costs and expenses (including legal fees and VAT) incurred by that Secured 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 Secured Party as a consequence of it entering into a Finance Document, taking or holding the Transaction Security, or enforcing those rights; and
- (b) each Lender and the Sinosure Agent (for the account of Sinosure) the amount of all out-of-pocket costs and expenses (including reasonable legal fees) incurred by a Lender and/or Sinosure in connection with or incidental to the enforcement or exercise of, or the preservation of, its rights, powers, discretions and remedies under any Sinosure Policy and any proceedings instituted by or against any Lender and/or Sinosure in connection thereto.



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**16.4 Reference rate transition costs**

The Borrowers shall on demand reimburse each of the Facility Agent and the Security Agent for the amount of all documented costs and expenses (including legal fees and VAT) reasonably incurred by each Secured Party in connection with:

- (a) the negotiation or entry into of any Reference Rate Supplement or Compounding Methodology Supplement; or
- (b) any amendment, waiver or consent relating to:
  - (i) any Reference Rate Supplement or Compounding Methodology Supplement; or
  - (ii) any change arising as a result of an amendment required under Clause 45.4 (*Changes to reference rates*).

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## SECTION 7

### JOINT AND SEVERAL LIABILITY OF BORROWERS

#### JOINT AND SEVERAL LIABILITY OF THE BORROWERS

##### 17.1 Joint and several liability

All liabilities and obligations of the Borrowers under this Agreement shall, whether expressed to be so or not, be joint and several.

##### 17.2 Waiver of defences

The liabilities and obligations of a Borrower shall not be impaired by:

- (a) this Agreement being or later becoming void, unenforceable or illegal as regards any other Borrower;
- (b) any Lender or the Security Agent entering into any rescheduling, refinancing or other arrangement of any kind with any other Borrower;
- (c) any Lender or the Security Agent releasing any other Borrower or any Security created by a Finance Document; or
- (d) any time, waiver or consent granted to, or composition with any other Borrower or other person;
- (e) 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;
- (f) 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;
- (g) 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;
- (h) any amendment, novation, supplement, extension, restatement (however fundamental, and whether or not more onerous) or replacement of a Finance Document or any other document or security 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;
- (i) any unenforceability, illegality or invalidity of any obligation or any person under any Finance Document or any other document or security; or
- (j) any insolvency or similar proceedings.

##### 17.3 Principal Debtor

Each Borrower declares that it is and will, throughout the Security Period, remain a principal debtor for all amounts owing under this Agreement and the Finance Documents and no Borrower shall, in any circumstances, be construed to be a surety for the obligations of any other Borrower under this Agreement.

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**17.4 Borrower restrictions**

- (a) Subject to paragraph (b) below, during the Security Period no Borrower shall:
- (i) claim any amount which may be due to it from any other Borrower whether in respect of a payment made under, or matter arising out of, this Agreement or any Finance Document, or any matter unconnected with this Agreement or any Finance Document; or
  - (ii) take or enforce any form of security from any other Borrower for such an amount, or in any way seek to have recourse in respect of such an amount against any asset of any other Borrower; or
  - (iii) set off such an amount against any sum due from it to any other Borrower; or
  - (iv) prove or claim for such an amount in any liquidation, administration, arrangement or similar procedure involving any other Borrower; or
  - (v) exercise or assert any combination of the foregoing.
- (b) If during the Security Period, the Facility Agent, by notice to a Borrower, requires it to take any action referred to in paragraph (a) above in relation to any other Borrower, that Borrower shall take that action as soon as practicable after receiving the Facility Agent's notice.

**17.5 Deferral of Borrowers' rights**

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 Facility 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:

- (a) to be indemnified by any other Borrower; or
- (b) to claim any contribution from any other Borrower in relation to any payment made by it under the Finance Documents.

**GUARANTEE AND INDEMNITY – HEDGE GUARANTORS****18.1 Guarantee and indemnity**

Each Hedge Guarantor irrevocably and unconditionally jointly and severally:

- (a) guarantees to each Hedge Counterparty punctual performance by each Borrower of all that Borrower's obligations under the Hedging Agreement;
- (b) undertakes with each Hedge Counterparty that whenever a Borrower does not pay any amount when due under or in connection with any Hedging Agreement, that Hedge Guarantor shall immediately on demand pay that amount as if it were the principal obligor; and

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- (c) agrees with each Hedge Counterparty that if any obligation guaranteed by it is or becomes unenforceable, invalid or illegal, it will, as an independent and primary obligation, indemnify that Hedge Counterparty immediately on demand against any cost, loss or liability it incurs as a result of a Borrower not paying any amount which would, but for such unenforceability, invalidity or illegality, have been payable by it under any Hedging Agreement on the date when it would have been due. The amount payable by a Hedge Guarantor under this indemnity will not exceed the amount it would have had to pay under this Clause 18 (*Guarantee and Indemnity – Hedge Guarantors*) if the amount claimed had been recoverable on the basis of a guarantee.

#### **18.2 Continuing guarantee**

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

#### **18.3 Reinstatement**

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

#### **18.4 Waiver of defences**

The obligations of each Hedge Guarantor under this Clause 18 (*Guarantee and Indemnity – Hedge Guarantors*) and in respect of any Transaction Security will not be affected or discharged by an act, omission, matter or thing which, but for this Clause 18.4 (*Waiver of defences*), would reduce, release or prejudice any of its obligations under this Clause 18 (*Guarantee and Indemnity – Hedge Guarantors*) or in respect of any Transaction Security (without limitation and whether or not known to it or any Secured Party) including:

- (a) any time, waiver or consent granted to, or composition with, any Transaction Obligor or other person;
- (b) the release of any other Transaction Obligor or any other person under the terms of any composition or arrangement with any creditor of any member of the Group;
- (c) the taking, variation, compromise, exchange, renewal or release of, or refusal or neglect to perfect or delay in perfecting, or refusal or neglect to take up or enforce, or delay in taking or enforcing any rights against, or security over assets of, any Transaction Obligor or other person or any non-presentation or non-observance of any formality or other requirement in respect of any instrument or any failure to realise the full value of any security;
- (d) any incapacity or lack of power, authority or legal personality of or dissolution or change in the members or status of a Transaction Obligor or any other person;
- (e) any amendment, novation, supplement, extension, restatement (however fundamental and whether or not more onerous) or replacement of any Finance Document or any other document or security including, without limitation, any change in the purpose of, any extension of or any increase in any facility or the addition of any new facility under any Finance Document or other document or security;

- (f) any unenforceability, illegality or invalidity of any obligation of any person under any Finance Document or any other document or security; or
- (g) any insolvency or similar proceedings.

#### **18.5 Immediate recourse**

Each Hedge Guarantor waives any right it may have of first requiring any Secured Party (or any trustee or agent on its behalf) to proceed against or enforce any other rights or security or claim payment from any person (including without limitation to commence any proceedings under any Finance Document or to enforce any Transaction Security) before claiming or commencing proceedings under this Clause 18 (*Guarantee and Indemnity – Hedge Guarantors*). This waiver applies irrespective of any law or any provision of a Finance Document to the contrary.

#### **18.6 Appropriations**

Until all amounts which may be or become payable by the Borrowers under or in connection with the Hedging Agreement have been irrevocably paid in full, each Secured 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 Secured Party (or any trustee or agent on its behalf) in respect of those amounts, or apply and enforce the same in such manner and order as it sees fit (whether against those amounts or otherwise) and no Hedge Guarantor shall be entitled to the benefit of the same; and
- (b) hold in an interest-bearing suspense account any moneys received from any Hedge Guarantor or on account of any Hedge Guarantor's liability under this Clause 18 (*Guarantee and Indemnity – Hedge Guarantors*).

#### **18.7 Deferral of Hedge Guarantors' rights**

All rights which each Hedge Guarantor at any time has (whether in respect of this guarantee, a mortgage or any other transaction) against any Borrower, any other Transaction Obligor or their respective assets shall be fully subordinated to the rights of the Secured Parties under the Finance Documents and until the end of the Security Period and unless the Facility Agent otherwise directs, no Hedge Guarantor will exercise any rights which it may have (whether in respect of any Finance Document to which it is a Party or any other transaction) by reason of performance by it of its obligations under the Finance Documents or by reason of any amount being payable, or liability arising, under this Clause 18 (*Guarantee and Indemnity – Hedge Guarantors*):

- (a) to be indemnified by a Transaction Obligor;
- (b) to claim any contribution from any third party providing security for, or any other guarantor of, any Transaction Obligor's obligations under the Finance Documents;
- (c) to take the benefit (in whole or in part and whether by way of subrogation or otherwise) of any rights of the Secured Parties under the Finance Documents or of any other guarantee or security taken pursuant to, or in connection with, the Finance Documents by any Secured Party;

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- (d) to bring legal or other proceedings for an order requiring any Transaction Obligor to make any payment, or perform any obligation, in respect of which any Hedge Guarantor has given a guarantee, undertaking or indemnity under Clause 18 (*Guarantee and Indemnity – Hedge Guarantors*);
  - (e) to exercise any right of set-off against any Transaction Obligor; and/or
  - (f) to claim or prove as a creditor of any Transaction Obligor in competition with any Secured Party.

If a Hedge 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 Secured Parties by the Transaction Obligors under or in connection with the Finance Documents to be repaid in full on trust for the Secured Parties and shall promptly pay or transfer the same to the Facility Agent or as the Facility Agent may direct for application in accordance with Clause 35 (*Payment Mechanics*).

#### **18.8 Additional security**

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

18.9 Applicability of provisions of Guarantee to other Security

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

Clauses 18.2 (*Continuing guarantee*), 18.3 (*Reinstatement*), 18.4 (*Waiver of defences*), 18.5 (*Immediate recourse*), 18.6 (*Appropriations*), 18.7 (*Deferral of Hedge Guarantors' rights*) and 18.8 (*Additional security*) shall apply, with any necessary modifications, to any Security which a Hedge Guarantor creates (whether at the time at which it signs this Agreement or at any later time) to secure the Secured Liabilities or any part of them.

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## SECTION 8

### REPRESENTATIONS, UNDERTAKINGS AND EVENTS OF DEFAULT

#### REPRESENTATIONS

##### 19.1 General

Each Borrower makes the representations and warranties set out in this Clause 19 (*Representations*) to each Finance Party on the date of this Agreement.

##### 19.2 Status

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

##### 19.3 Share capital and ownership

- (a) Each Borrower is authorised to issue 500 registered shares without par value, all of which shares have been issued in registered form and are full paid and non-assessable.
- (b) The legal title to and beneficial interest in the issued shares in each Borrower is held free of any Security (other than Permitted Security) or any other claim by the Shareholder and each Borrower is 100 per cent. owned indirectly by the Guarantor.
- (c) None of the issued shares in any Borrower is subject to any option to purchase, pre-emption rights or similar rights.

##### 19.4 Binding obligations

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

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

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

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- (d) No concurrence, consent or authorisation of any person is required for the creation of or otherwise in connection with any Transaction Security.

#### **19.6 Non-conflict with other obligations**

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

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

#### **19.7 Power and authority**

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

#### **19.8 Validity and admissibility in evidence**

All Authorisations required or desirable:

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

#### **19.9 Governing law and enforcement**

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



#### **19.10 Insolvency**

No:

- (a) corporate action, legal proceeding or other procedure or step described in paragraph (a) of Clause 27.8 (*Insolvency proceedings*); or
- (b) creditors' process described in Clause 27.9 (*Creditors' process*),

has been taken or, to its knowledge, threatened in relation to a member of the Group; and none of the circumstances described in Clause 27.7 (*Insolvency*) applies to a member of the Group.

#### **19.11 No filing or stamp taxes**

Under the laws of its Relevant Jurisdictions it is not necessary that the Finance Documents to which it is a party be registered, filed, recorded, notarised or enrolled with any court or other authority in that jurisdiction or that any stamp, registration, notarial or similar Taxes or fees be paid on or in relation to the Finance Documents to which it is a party or the transactions contemplated by those Finance Documents except any filing, recording or enrolling or any tax or fee payable in relation to any Transaction Obligor which is referred to in any legal opinion delivered pursuant to Clause 4 (*Conditions of Utilisation*) and which will be made or paid promptly after the date of the relevant Finance Document.

#### **19.12 Deduction of Tax**

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

#### **19.13 No default**

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

#### **19.14 No misleading information**

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

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**19.15 Financial Statements**

- (a) The Original Financial Statements were prepared in accordance with GAAP consistently applied.
- (b) The Original Financial Statements give a true and fair view of the Group's financial condition as at the end of the relevant financial year and its and the Group's results of operations during the relevant financial year.
- (c) There has been no material adverse change in its assets, business or financial condition (or the assets, business or consolidated financial condition of the Group, in the case of the Guarantor) since 31 December 2022 (other than as disclosed to the Facility Agent prior to the date of this Agreement).
- (d) The Group's most recent financial statements delivered pursuant to Clause 20.2 (*Financial statements*):
  - (i) have been prepared in accordance with Clause 20.3 (*Requirements as to financial statements*); and
  - (ii) give a true and fair view of (if audited) or fairly represent (if unaudited) its financial condition as at the end of the relevant financial year and operations during the relevant financial year (consolidated in the case of the Guarantor).
- (e) Since the date of the most recent financial statements delivered pursuant to Clause 20.2 (*Financial statements*) there has been no material adverse change in its business, assets or financial condition (or the business or consolidated financial condition of the Group, in the case of the Guarantor).

**19.16 *Pari passu* ranking**

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

**19.17 No proceedings pending or threatened**

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

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**19.18 Validity and completeness of the Shipbuilding Contract**

- (a) Each Shipbuilding Contract constitutes legal, valid, binding and enforceable obligations of the Builder.
- (b) The copies of each Shipbuilding Contract delivered to the Facility Agent before the date of this Agreement are true and complete copies.
- (c) No further amendments or additions to each Shipbuilding Contract have been agreed nor have any rights under each Shipbuilding Contract been waived.

**19.19 No rebates etc.**

There is no agreement or understanding to allow or pay any rebate, premium, inducement, commission, discount or other benefit or payment (however described) to any Borrower or any other member of the Group, the Builder or a third party in connection with the purchase by a Borrower of a Ship, other than as disclosed to the Facility Agent in writing on or before the date of this Agreement.

**19.20 Valuations**

- (a) All information supplied by it or on its behalf to an Approved Valuer for the purposes of a valuation delivered to the Facility Agent in accordance with this Agreement was true and accurate as at the date it was supplied or (if appropriate) as at the date (if any) at which it is stated to be given.
- (b) It has not omitted to supply any information to an Approved Valuer which, if disclosed, would adversely affect any valuation prepared by such Approved Valuer.
- (c) There has been no change to the factual information provided pursuant to paragraph (a) above in relation to any valuation between the date such information was provided and the date of that valuation which, in either case, renders that information untrue or misleading in any material respect.

**19.21 No breach of laws**

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

**19.22 No Charter**

No Ship is subject to any Charter other than a Permitted Charter.

**19.23 Compliance with Environmental Laws**

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

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**19.24 No Environmental Claim**

No Environmental Claim has been made or threatened against any member of the Group or any Ship which might reasonably be expected to have a Material Adverse Effect.

**19.25 No Environmental Incident**

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

**19.26 ISM and ISPS Code compliance**

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

**19.27 Taxes paid**

- (a) It is not and no other member of the Group is materially overdue in the filing of any Tax returns and it is not (and no other member of the Group is) overdue in the payment of any amount in respect of Tax.
- (b) No claims or investigations are being, or to the best of its knowledge, are reasonably likely to be, made or conducted against it (or any other member of the Group) with respect to Taxes.

**19.28 Financial Indebtedness**

No Borrower has any Financial Indebtedness outstanding other than Permitted Financial Indebtedness.

**19.29 Overseas companies**

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

**19.30 Good title to assets**

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

**19.31 Ownership**

- (a) Each Borrower is the sole legal and beneficial owner of all rights and interest which each of the relevant Shipbuilding Contract creates in favour of that Borrower.
- (b) With effect on and from each Delivery Date, each Borrower will be the sole legal and beneficial owner of each relevant Ship, its Earnings and its Insurances.
- (c) The Shareholder is the sole legal and beneficial owner of all the shares in each Borrower.
- (d) The Guarantor is the sole legal and beneficial owner of all the issued shares in the Shareholder.

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- (e) With effect on and from the date of its creation or intended creation, each Transaction Obligor will be the sole legal and beneficial owner of any asset that is the subject of any Transaction Security created or intended to be created by such Transaction Obligor.
  - (f) The constitutional documents of each Borrower do not and could not restrict or inhibit any transfer of the shares of any Borrower on creation or enforcement of the security conferred by the Security Documents.

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

For the purposes of The Council of the European Union Regulation No. 2015/848 on Insolvency Proceedings (recast) (the “**Regulation**”), its centre of main interest (as that term is used in Article 3(1) of the Regulation) is not situated in the US or the United Kingdom and it has no “establishment” (as that term is used in Article 2(10) of the Regulation) in such jurisdiction.

#### **19.33 Place of business**

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

#### **19.34 No employee or pension arrangements**

No Borrower has any employees or any liabilities under any pension scheme.

#### **19.35 Sanctions**

No Relevant Person is:

- (a) a Restricted Party;
- (b) in breach of Sanctions; or
- (c) to its knowledge subject to or involved in any complaint, claim, proceeding, formal notice, investigation or other action by any regulatory or enforcement authority or third party concerning any Sanctions.

#### **19.36 US Tax Obligor**

No Transaction Obligor is a US Tax Obligor.

#### **19.37 No Money laundering**

- (a) Each Borrower is acting for its own account in relation to the Loan and in relation to the performance and the discharge of its respective obligations and liabilities under the Finance Documents and the transactions and other arrangements effected or contemplated by the Finance Documents to which such Borrower is a party, and 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.
- (b) Without prejudice to any of the foregoing, none of the Transaction Obligors nor any other member of the Group and their respective members directors, officers, Subsidiaries and, to the best of their knowledge, their Affiliates or employees has engaged in any activity or

conduct which would violate any applicable anti-bribery, anti-corruption or anti-Money Laundering laws, regulations or rules in any applicable jurisdiction and each of the Transaction Obligors has instituted and maintains policies and procedures designed to prevent violation of such laws, regulations and rules.

**19.38 Sinosure conditions**

The Borrowers are not in breach of the provisions of the Sinosure Policies as of the relevant Delivery Date.

**19.39 Repetition**

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

**INFORMATION UNDERTAKINGS**

**20.1 General**

The undertakings in this Clause 20 (*Information Undertakings*) remain in force throughout the Security Period unless the Facility Agent, acting with the authorisation of the Majority Lenders (or, where specified, all the Lenders), may otherwise permit.

**20.2 Financial statements**

The Borrowers shall procure that the Guarantor shall supply to the Facility Agent in sufficient copies for all the Lenders:

- (a) as soon as they become available, but in any event within 180 days after the end of each of the Guarantor's financial years, commencing with the financial year ended on 31 December 2021, the annual audited consolidated financial statement of the Group for that financial year; and
- (b) as soon as the same become available, but in any event within 90 days after the end of each quarter of each of the Guarantor's financial years (ending 31 March, 30 June and 30 September), the unaudited consolidated quarterly financial statements of the Group for that financial quarter starting with the quarter falling within the quarter within which the first Utilisation occurs.

**20.3 Requirements as to financial statements**

- (a) Each set of financial statements delivered by the Guarantor pursuant to Clause 20.2 (*Financial statements*) shall be certified by an officer of the company as giving a true and fair view (if audited) or fairly representing (if unaudited) its financial condition and operations as at the date as at which those financial statements were drawn up if it has not been filed with the US Securities and Exchange Commission.
- (b) The Borrowers shall procure that each set of financial statements of the Guarantor delivered pursuant to Clause 20.2 (*Financial statements*) is prepared using GAAP, accounting practices and financial reference periods consistent with those applied in the

preparation of the Original Financial Statements for the Group unless, in relation to any set of financial statements, it notifies the Facility Agent that there has been a change in GAAP, the accounting practices or reference periods, unless such change is described in the filings made with the US Securities and Exchange Commission, and its auditors (or, if appropriate, the auditors of the Guarantor) deliver to the Facility Agent:

- (i) a description of any change necessary for those financial statements to reflect the GAAP, accounting practices and reference periods upon which the Original Financial Statements were prepared; and
- (ii) sufficient information, in form and substance as may be reasonably required by the Facility Agent, to enable the Lenders to determine whether clause 10 (*financial covenants*) of the Guarantee has been complied with and make an accurate comparison between the financial position indicated in those financial statements and the Original Financial Statements.

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

#### **20.4 DAC6**

- (a) In this Clause 20.4 (*DAC6*), “DAC6” means the Council Directive of 25 May 2018 (2018/822/EU) amending Directive 2011/16/EU or any replacement legislation applicable in the United Kingdom.
- (b) The Borrowers shall supply to the Facility Agent (in sufficient copies for all the Lenders, if the Facility Agent so requests):
  - (i) promptly upon the making of such analysis or the obtaining of such advice, any analysis made or advice obtained on whether any transaction contemplated by the Transaction Documents or any transaction carried out (or to be carried out) in connection with any transaction contemplated by the Transaction Documents contains a hallmark as set out in Annex IV of DAC6; and
  - (ii) promptly upon the making of such reporting and to the extent permitted by applicable law and regulation, any reporting made to any governmental or taxation authority by or on behalf of any member of the Group or by any adviser to such member of the Group in relation to DAC6 or any law or regulation which implements DAC6 and any unique identification number issued by any governmental or taxation authority to which any such report has been made (if available).

#### **20.5 Information: miscellaneous**

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

- (a) all material documents dispatched by it to its shareholders (or any class of them) or its creditors generally at the same time as they are dispatched unless the contents of such communication have already been disclosed in the filings made with the US Securities and Exchange Commission;

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- (b) promptly upon becoming aware of them, the details of any litigation, arbitration or administrative proceedings or investigations (including proceedings or investigations relating to any alleged or actual breach of the ISM Code or of the ISPS Code) which are current, threatened or pending against any member of the Group, and which might, if adversely determined, have a Material Adverse Effect;
  - (c) promptly upon becoming aware of them, the details of any judgment or order of a court, arbitral body or agency which is made against any member of the Group and which might have a Material Adverse Effect or which would involve a liability, or a potential or alleged liability, exceeding \$1,000,000 (or its equivalent in any other currency or currencies);
  - (d) promptly, its constitutional documents where these have been amended or varied unless, in respect of the Guarantor, these changes have been disclosed in the filings with the US Securities and Exchange Commission;
  - (e) promptly, such further information and/or documents regarding:
    - (i) each Ship, goods transported on each Ship, its Earnings and its Insurances;
    - (ii) the Security Assets;
    - (iii) compliance of the Transaction Obligors with the terms of the Finance Documents;
    - (iv) the financial condition, business and operations of any member of the Group,as any Finance Party (through the Facility Agent) may reasonably request; and
  - (f) promptly, such further information and/or documents as any Finance Party (through the Facility Agent) may reasonably request so as to enable such Finance Party to comply with any laws applicable to it or as may be required by any regulatory authority.

#### **20.6 Sinosure notification and information**

- (a) The Borrowers shall promptly notify the Facility Agent and the Sinosure Agent in writing of the occurrence of any event involving a political or commercial risk covered by any Sinosure Policy and shall pay upon demand by the Sinosure Agent any resulting additional premium or administrative fees payable to Sinosure in respect of that Sinosure Policy.
- (b) The Borrowers shall promptly provide the Facility Agent and the Sinosure Agent with copies of all financial or other information required by the Sinosure Agent to satisfy any request for information by Sinosure pursuant to any Sinosure Policy.

#### **20.7 Notification of Default**

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



## 20.8 “Know your customer” checks

- (a) If:
- (i) the introduction of or any change in (or in the interpretation, administration or application of) any law or regulation made after the date of this Agreement;
  - (ii) any change in the status of a Transaction Obligor (including, without limitation, a change of ownership of a Transaction Obligor save for the Guarantor) after the date of this Agreement;
  - (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;
  - (iv) a change in the internal compliance requirements of a Lender; or
  - (v) a requirement for a Lender to update or renew its “know your customer” checks,

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

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

## GENERAL UNDERTAKINGS

### 21.1 General

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

### 21.2 Authorisations

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

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

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

- (i) perform its obligations under the Transaction Documents to which it is a party;
  - (ii) ensure the legality, validity, enforceability or admissibility in evidence in any Relevant Jurisdiction and in the state of the Approved Flag at any time of each Ship of any Transaction Document to which it is a party; and
  - (iii) own and operate each Ship (in the case of the Borrowers); and
- (c) without prejudice to the generality of the above, ensure that if, but for the obtaining of an Authorisation, an Borrower would be in breach of any of the provisions of this Agreement which relate to Sanctions or, by reason of Sanctions, would be prohibited from performing any provision of this Agreement, such an Authorisation is obtained so as to avoid such breach or to enable such performance.

### **21.3 Compliance with laws**

Each Borrower shall, and shall procure that each other Transaction Obligor will, comply in all respects with:

- (a) all Sanctions Laws to which it may be subject; and
- (b) all other laws and regulations to which it may be subject, if failure so to comply has or is reasonably likely to have a Material Adverse Effect.

### **21.4 Environmental compliance**

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

- (a) comply with all applicable Environmental Laws;
- (b) obtain, maintain and ensure compliance with all requisite Environmental Approvals;
- (c) implement procedures to monitor compliance with and to prevent liability under any Environmental Law, where failure to do so has or is reasonably likely to have a Material Adverse Effect.

### **21.5 Environmental Claims**

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

- (a) any Environmental Claim against any member of the Group which is current, pending or threatened; and
- (b) any facts or circumstances which are reasonably likely to result in any Environmental Claim being commenced or threatened against any member of the Group,

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

## 21.6 Taxation

- (a) Each Borrower shall, and shall procure that each other Transaction Obligor will pay and discharge all Taxes imposed upon it or its assets within the time period allowed without incurring penalties unless and only to the extent that:
- (i) such payment is being contested in good faith;
  - (ii) adequate reserves are maintained for those Taxes and the costs required to contest them and both have been disclosed in its latest financial statements delivered to the Facility Agent under Clause 20.2 (*Financial statements*); and
  - (iii) such payment can be lawfully withheld and failure to pay those Taxes does not have or is not reasonably likely to have a Material Adverse Effect.
- (b) No Borrower shall change its residence for Tax purposes.

## 21.7 Overseas companies

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

## 21.8 No change to centre of main interests

Each Borrower shall not change the location of its centre of main interest (as that term is used in Article 3(1) of the Regulation) to either jurisdiction referred to in Clause 19.32 (*Centre of main interests and establishments*) and it will create no “**establishment**” (as that term is used in Article 2(10) of the Regulation) in any such jurisdiction.

## 21.9 *Pari passu* ranking

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

## 21.10 Title

- (a) Each Borrower shall hold the legal title to, and own the entire beneficial interest in:
- (i) the relevant Shipbuilding Contract; and
  - (ii) with effect from the Delivery Date, each Ship, its Earnings and its Insurances.
- (b) Each Borrower shall remain the sole legal and beneficial owner of all rights and interests in the relevant Initial Charter and any Assignable Charter to which it is party.

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- (c) With effect on and from its creation or intended creation, each Borrower shall, and shall procure that each Transaction Obligor shall, hold the legal title to, and own the entire beneficial interest in any other assets the subject of any Transaction Security created or intended to be created by such Borrower or Transaction Obligor.

#### **21.11 Negative pledge**

- (a) No Borrower shall, and shall procure that no other Transaction Obligor will, create or permit to subsist any Security over any of its assets which are, in the case of Transaction Obligors other than the Borrowers, the subject of the Security created or intended to be created by the Finance Documents.
- (b) No Borrower shall:
- (i) acquire any assets other than the relevant Ship, other than any asset acquired in the normal course of business in relation to the operation of the relevant Ship;
  - (ii) sell, transfer or otherwise dispose of any of its assets on terms whereby they are or may be leased to or re-acquired by a Transaction Obligor or any other member of the Group;
  - (iii) sell, transfer or otherwise dispose of any of its receivables on recourse terms;
  - (iv) 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
  - (v) enter into any other preferential arrangement having a similar effect,
- in circumstances where the arrangement or transaction is entered into primarily as a method of raising Financial Indebtedness or of financing the acquisition of an asset.
- (c) Paragraphs (a) and (b) above do not apply to any Permitted Security.

#### **21.12 Disposals**

- (a) No Borrower 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 (including without limitation any Ship, its Earnings or its Insurances).
- (b) Paragraph (a) above does not apply to any Charter as all Charters are subject to Clause 24.16 (*Restrictions on chartering, appointment of managers etc.*).

#### **21.13 Merger**

No Borrower shall enter into any amalgamation, demerger, merger, consolidation or corporate reconstruction.

#### **21.14 Change of business**

- (a) Each Borrower shall procure that no substantial change is made to the general nature of the business of the Guarantor or the Group from that carried on at the date of this Agreement.
- (b) No Borrower shall engage in any business other than the ownership and operation of its Ship.

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**21.15 Financial Indebtedness**

No Borrower shall incur or permit to be outstanding any Financial Indebtedness except Permitted Financial Indebtedness.

**21.16 Expenditure**

No Borrower shall incur any expenditure, except for expenditure reasonably incurred in the ordinary course of owning, operating, maintaining and repairing its Ship.

**21.17 Share capital**

No Borrower shall:

- (a) purchase, cancel, redeem or retire any of its issued shares;
- (b) increase or reduce the number of shares that it is authorized to issue or change the par value of such shares or create any new class of shares;
- (c) issue any further shares except to the relevant Shareholder and provided such new shares are made subject to the terms of the Shares Security relevant to it immediately upon the issue of such new shares in a manner satisfactory to the Security Agent and the terms of that Shares Security are complied with;
- (d) appoint any further director, officer or secretary of that Borrower (unless the provisions of the Shares Security applicable to that Borrower are complied with).

**21.18 Dividends**

- (a) No Borrower shall, following the occurrence of a Default or where any of the following would result in the occurrence of an Event of Default:
  - (i) 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 issued shares (or any class of its shares);
  - (ii) repay or distribute any dividend or share premium reserve; or
  - (iii) redeem, repurchase, defease, retire or repay any of its issued shares or resolve to do so.
- (b) The Borrowers procure that the Guarantor will not (and shall procure that no other member of the Group will) enter into any other facility agreement pursuant to the terms and conditions of which the Guarantor or that other member of the Group will be restricted from paying dividends, other than following the occurrence of an Event of Default.

### **21.19 Other transactions**

No Borrower shall:

- (a) be the creditor in respect of any loan or any form of credit to any person other than another Obligor and where such loan or form of credit is in the ordinary course of its business and in a manner acceptable to the Facility Agent;
- (b) give or allow to be outstanding any guarantee or indemnity in the ordinary course of its business in aggregate not more than \$500,000 to or for the benefit of any person in respect of any obligation of any other person or enter into any document under which that Borrower assumes any liability of any other person other than any guarantee or indemnity given under the Finance Documents.
- (c) enter into any material agreement other than:
  - (i) the Transaction Documents;
  - (ii) any other agreement expressly allowed under any other term of this Agreement; and
- (d) enter into any transaction on terms which are, in any respect, less favourable to that Borrower than those which it could obtain in a bargain made at arms' length; or
- (e) acquire any shares or other securities other than US or UK Treasury bills and certificates of deposit issued by major North American or European banks.

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

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

- (a) make it unlawful for a Transaction Obligor to perform any of its obligations under the Transaction Documents;
- (b) cause any obligation of a Transaction Obligor under the Transaction Documents to cease to be legal, valid, binding or enforceable if that cessation individually or together with any other cessations materially or adversely affects the interests of the Secured Parties under the Finance Documents;
- (c) cause any Transaction Document to cease to be in full force and effect;
- (d) cause any Transaction Security to rank after, or lose its priority to, any other Security; and
- (e) imperil or jeopardise the Transaction Security.

### **21.21 Further assurance**

- (a) Each Borrower shall, and shall procure that each other member of the Group will, promptly, and in any event within the time period specified by the Security Agent do all such acts (including procuring or arranging any registration, notarisation or authentication or the giving of any notice) or execute or procure execution of all such documents (including assignments, transfers, mortgages, charges, notices, instructions, acknowledgments, proxies and powers of attorney), as the Security Agent may specify (and in such form as the Security Agent may require in favour of the Security Agent or its nominee(s)):
  - (i) to create, perfect, vest in favour of the Security Agent or protect the priority of the Security or any right of any kind created or intended to be created under or evidenced by the Finance Documents (which may include the execution of a mortgage, charge, assignment or other Security over all or any of the assets which are, or are intended to be, the subject of the Transaction Security) or for the exercise of any rights, powers and remedies of any of the Secured Parties provided by or pursuant to the Finance Documents or by law;

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- (ii) to confer on the Security Agent or confer on the Secured Parties Security over any property and assets of that Transaction Obligor located in any jurisdiction equivalent or similar to the Security intended to be conferred by or pursuant to the Finance Documents;
  - (iii) to facilitate or expedite the realisation and/or sale of, the transfer of title to or the grant of, any interest in or right relating to the assets which are, or are intended to be, the subject of the Transaction Security or to exercise any power specified in any Finance Document in respect of which the Security has become enforceable; and/or
  - (iv) to enable or assist the Security Agent to enter into any transaction to commence, defend or conduct any proceedings and/or to take any other action relating to any item of the Security Property.
- (b) Each Borrower shall, and shall procure that each other Transaction Obligor will, take all such action as is available to it (including making all filings and registrations) as may be necessary for the purpose of the creation, perfection, protection or maintenance of any Security conferred or intended to be conferred on the Security Agent or the Secured Parties by or pursuant to the Finance Documents.
- (c) At the same time as a Borrower delivers to the Security Agent any document executed by itself or another Transaction Obligor pursuant to this Clause 21.21 (*Further assurance*), that Borrower shall deliver, or shall procure that such other Transaction Obligor will deliver, to the Security Agent a certificate signed by one of that Borrower's or Transaction Obligor's officers which shall:
- (i) set out the text of a resolution of that Borrower's or Transaction Obligor's directors specifically authorising the execution of the document specified by the Security Agent; and
  - (ii) state that either the resolution was duly passed at a meeting of the directors validly convened and held, throughout which a quorum of directors entitled to vote on the resolution was present, or that the resolution has been signed by all the directors or officers and is valid under that Borrower's or Transaction Obligor's articles of incorporation, limited liability company agreement or limited partnership agreement, as applicable.

#### **21.22 Money Laundering**

The Borrowers undertake throughout the Security Period to:

- (a) provide the Lenders with information, certificates and any documents required by the Lenders to ensure compliance with any law, official requirement or other regulatory measure or procedure implemented to combat Money Laundering; and
- (b) notify the Lenders 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.

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**21.23 Sanctions**

- (a) No Borrower shall, and shall ensure that no other Relevant Person will, take any action, make any omission or use (directly or indirectly) any proceeds of the Loan, in a manner that:
  - (i) is a breach of Sanctions; and/or
  - (ii) causes (or will cause) a breach of Sanctions by any Finance Party.
- (b) No Borrower shall, and shall ensure that no other Relevant Person will, take any action or make any omission that results, or is reasonably likely to result, in it or any Finance Party becoming a Restricted Party.

**21.24 Use of proceeds**

No proceeds of any Advance shall be lent, contributed or otherwise made available, directly or indirectly, to or for the benefit of a Restricted Party (including to fund any activities or business of a Restricted Party) nor shall they be lent, contributed or otherwise made available, directly or indirectly, to any person or otherwise be applied (i) to fund any activities or business in any country or territory, that, at the time of such funding, is a country or territory which is subject to Sanctions Laws or (ii) in any other manner that would result in a violation of Sanctions Laws by any person (including any person participating in the Loan, whether as a Finance Party or otherwise) or otherwise in a manner or for a purpose prohibited by Sanctions Laws including, but not limited to, in using any benefits of any money, proceeds or services provided by, or received from, the Lenders under this Agreement, in business activities (including, but not limited to, entering into any ship finance acquisition agreement, ship refinancing agreement or charter agreement relating to a vessel, project or asset) subject to Sanctions Laws or related to a country which is subject to Sanctions Laws and/or a Restricted Party.

**21.25 Anti-corruption law**

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

**21.26 Listing of Guarantor**

The Borrowers procure that the Guarantor shall ensure that its units are listed on the New York Stock Exchange, US Stock Exchange or any other stock exchange acceptable to the Facility Agent.



### **21.27 Sinosure requirements**

No Borrower shall act (or omit to act) in a manner that is inconsistent with any requirement of Sinosure under or in connection with any Sinosure Policy and, in particular each Borrower shall:

- (a) do all that is necessary to ensure that all requirements of Sinosure under or in connection with any Sinosure Policy are complied with (including, without limitation, execute any amendment or supplemental to this Agreement for the purpose of ensuring compliance with the Sinosure Policies);
- (b) refrain from acting in any manner which could result in a breach of any requirement of Sinosure under or in connection with any Sinosure Policy or affect its validity; and
- (c) have no claims whatsoever in respect of any loss, damage or expense suffered or incurred by it against any Finance Party as a result of that Finance Party acting on the instructions of Sinosure in relation to this Agreement.

### **21.28 Sinosure Policy protection**

If at any time, in the reasonable opinion of the Facility Agent and the Sinosure Agent, any provision of a Finance Document contradicts or conflicts with any provision of any Sinosure Policy such that compliance by the Facility Agent or any Lender with the terms of that Sinosure Policy may result in a breach by the Facility Agent or such Lender of the terms of that Finance Document, each Borrower will take all steps as the Facility Agent, the Sinosure Agent and/or Sinosure shall require to:

- (a) remove such contradiction or conflict; and
- (b) ensure that the relevant Sinosure Policy remains in full force and effect.

## **INSURANCE UNDERTAKINGS**

### **22.1 General**

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

### **22.2 Maintenance of obligatory insurances**

Each Borrower shall keep the Ship owned by it insured at its expense against:

- (a) hull and machinery plus freight interest and hull interest and any other usual marine risks (including excess risks);
- (b) war risks, including blocking and trapping and to cover piracy and terrorism if those risks are excluded from fire and usual marine risks cover;
- (c) protection and indemnity risks (including freight, demurrage and defence cover without exclusion of any Environmental Incident) with a protection and indemnity association being a member of the international Group of Protection and Indemnity Clubs; and
- (d) any other risks against which the Facility Agent acting on the instructions of the Majority Lenders considers, having regard to practices and other circumstances prevailing at the relevant time, it would be reasonable for that Borrower to insure and which are specified by the Facility Agent by notice to that Borrower.

### 22.3 Terms of obligatory insurances

Each Borrower shall effect such insurances:

- (a) in dollars;
- (b) in the case of fire and usual marine risks and war risks (the “**Agreed Insured Value**”), in an amount on an agreed value basis at least the greater of:
  - (i) 120 per cent. of the Tranche relating to that Ship; and
  - (ii) the Market Value of that Ship;
- (c) in the case of hull and machinery insurance placed under the Nordic Plan, in an amount on an agreed value basis of at least 80 per cent. of the Agreed Insured Value of that Ship with the remainder of that Agreed Insured Value being covered by hull interest and freight interest covers;
- (d) in the case of oil pollution liability risks, for an aggregate amount equal to the highest level of cover from time to time available under basic protection and indemnity club entry and in the international marine insurance market;
- (e) in the case of protection and indemnity risks, in respect of the full tonnage of its Ship;
- (f) on approved terms; and
- (g) through Approved Brokers and with approved insurance companies and/or underwriters or, in the case of war risks and protection and indemnity risks, in approved war risks and protection and indemnity risks associations.

### 22.4 Further protections for the Finance Parties

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

- (a) subject always to paragraph (b), name that Borrower, the Guarantor or any Approved Manager as the named assured or co-assureds unless the interest of every other named assured is limited:
  - (i) in respect of any obligatory insurances for hull and machinery and war risks;
    - (A) to any provable out-of-pocket expenses that it has incurred and which form part of any recoverable claim on underwriters; and
    - (B) to any third party liability claims where cover for such claims is provided by the policy (and then only in respect of discharge of any claims made against it); and
  - (ii) in respect of any obligatory insurances for protection and indemnity risks, to any recoveries it is entitled to make by way of reimbursement following discharge of any third party liability claims made specifically against it;

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and every other named insured has undertaken in writing to the Security Agent (in such form as it requires) that any deductible shall be apportioned between that Borrower and every other named insured in proportion to the gross claims made or paid by each of them and that it shall do all things necessary and provide all documents, evidence and information to enable the Security Agent to collect or recover any moneys which at any time become payable in respect of the obligatory insurances;

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

#### **22.5 Renewal of obligatory insurances**

Each Borrower shall:

- (a) at least 21 days before the expiry of any obligatory insurance effected by it:
  - (i) notify the Facility Agent of the Approved Brokers (or other insurers) and any protection and indemnity or war risks association through or with which it proposes to renew that obligatory insurance and of the proposed terms of renewal; and
  - (ii) obtain the Facility Agents' approval to the matters referred to in sub-paragraph (i) above;
- (b) at least 14 days before the expiry of any obligatory insurance, renew that obligatory insurance in accordance with the Facility Agent's approval pursuant to paragraph (a) above; and
- (c) procure that the Approved Brokers and/or the approved war risks and protection and indemnity associations with which such a renewal is effected shall promptly after the renewal notify the Facility Agent in writing of the terms and conditions of the renewal.

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

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

- (a) *pro forma* copies of all policies relating to the obligatory insurances which they are to effect or renew; and

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

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

Each Borrower shall ensure that any protection and indemnity and/or war risks associations in which the Ship owned by it is entered provide the Security Agent 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 Facility Agent acting on the instructions of Majority Lenders; and
- (c) a certified copy of each certificate of financial responsibility for pollution by oil or other Environmentally Sensitive Material issued by the relevant certifying authority in relation to that Ship.

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

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

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

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

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**22.10 Guarantees**

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

**22.11 Compliance with terms of insurances**

- (a) No Borrower shall do or omit to do (nor permit to be done or not to be done) any act or thing which would or might render any obligatory insurance invalid, void, voidable or unenforceable or render any sum payable under an obligatory insurance repayable in whole or in part.
- (b) Without limiting paragraph (a) above, each Borrower shall:
  - (i) take all necessary action and comply with all requirements which may from time to time be applicable to the obligatory insurances, and (without limiting the obligation contained in sub-paragraph (iii) of paragraph (b) of Clause 22.6 (*Copies of policies; letters of undertaking*)) ensure that the obligatory insurances are not made subject to any exclusions or qualifications to which the Facility Agent has not given its prior approval;
  - (ii) not make any changes relating to the classification or classification society or manager or operator of the Ship owned by it approved by the underwriters of the obligatory insurances;
  - (iii) make (and promptly supply copies to the Facility Agent of) all quarterly or other voyage declarations which may be required by the protection and indemnity risks association in which the Ship owned by it is entered to maintain cover for trading to the United States of America and Exclusive Economic Zone (as defined in the United States Oil Pollution Act 1990 or any other applicable legislation); and
  - (iv) not employ the Ship owned by it, nor allow it to be employed, otherwise than in conformity with the terms and conditions of the obligatory insurances, without first obtaining the consent of the insurers and complying with any requirements (as to extra premium or otherwise) which the insurers specify.

**22.12 Alteration to terms of insurances**

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

**22.13 Settlement of claims**

Each Borrower shall:

- (a) not settle, compromise or abandon any claim under any obligatory insurance for Total Loss or for a Major Casualty; and
- (b) do all things necessary and provide all documents, evidence and information to enable the Security Agent to collect or recover any moneys which at any time become payable in respect of the obligatory insurances.

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

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

- (a) the Approved Brokers;
- (b) the approved protection and indemnity and/or war risks associations; and
- (c) the approved insurance companies and/or underwriters,  
which relate directly or indirectly to:
  - (i) 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) above relating wholly or partly to the effecting or maintenance of the obligatory insurances.

#### **22.15 Provision of information**

Each Borrower shall promptly provide the Facility Agent (or any persons which it may designate) with any information which the Facility Agent (or any such designated person) requests for the purpose of:

- (a) obtaining or preparing any report from an independent marine insurance broker as to the adequacy of the obligatory insurances effected or proposed to be effected; and/or
- (b) effecting, maintaining or renewing any such insurances as are referred to in Clause 22.16 (*Mortgagee's interest and additional perils insurances*) or dealing with or considering any matters relating to any such insurances,

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

#### **22.16 Mortgagee's interest and additional perils insurances**

- (a) The Security Agent shall be entitled from time to time to effect, maintain and renew a mortgagee's interest marine insurance and a mortgagee's interest additional perils insurance in such amounts, on such terms, through such insurers and generally in such manner as the Security Agent acting on the instructions of the Majority Lenders may reasonably from time to time consider appropriate.
- (b) Each of the insurances referred to in paragraph (a) above shall be in an amount of not less than 120 per cent. of the aggregate of (A) the Loan and (B) any Available Facility.
- (c) 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 paragraph (a) above or dealing with, or considering, any matter arising out of any such insurance.

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## SHIPBUILDING CONTRACT UNDERTAKINGS

### 23.1 General

The undertakings in this Clause 23 (*Shipbuilding Contract Undertakings*) remain in force throughout the Security Period except as the Facility Agent, acting with the authorisation of the Majority Lenders (or, where specified, all the Lenders) may otherwise permit.

### 23.2 No variation, release etc. of Shipbuilding Contracts

No Borrower shall, whether by a document, by conduct, by acquiescence or in any other way:

- (a) vary any Shipbuilding Contract which materially changes either the terms upon which the relevant Ship will be delivered to the relevant Borrower or the specifications of that Ship;
- (b) release, waive, suspend, subordinate or permit to be lost or impaired any interest or right of any kind which the relevant Borrower has at any time to, in or in connection with the relevant Warranty or in relation to any matter arising out of or in connection with the relevant Warranty;
- (c) waive any person's breach of the relevant Warranty; or
- (d) rescind or terminate the relevant Shipbuilding Contract or treat itself as discharged or relieved from further performance of any of its obligations or liabilities under the relevant Shipbuilding Contract.

### 23.3 Action to protect validity of Shipbuilding Contract

Each Borrower shall use its reasonable endeavours to ensure that all interests and rights conferred by the relevant Shipbuilding Contract remain valid and enforceable in all respects and retain the priority which they were intended to have.

### 23.4 No assignment etc. of Shipbuilding Contract

Save as permitted by the Finance Documents, each Borrower shall not assign, novate, transfer or dispose of any of its rights or obligations under the relevant Shipbuilding Contract.

### 23.5 Provision of information relating to Shipbuilding Contracts

Without prejudice to Clause 20.5 (*Information: miscellaneous*) each Borrower shall:

- (a) immediately inform the Facility Agent if any breach of the relevant Shipbuilding Contract occurs or a serious risk of such a breach arises and of any other event or matter affecting the relevant Shipbuilding Contract which has or is reasonably likely to have a Material Adverse Effect;
- (b) provide the Facility Agent, promptly after its reasonable request, with copies of all notices served on or by that Borrower under or in connection with the relevant Shipbuilding Contract; and
- (c) provide the Facility Agent with any information which it reasonably requests about any interest or right of any kind which that Borrower has at any time to, in or in connection with, the relevant Shipbuilding Contract or in relation to any matter arising out of or in connection with that Shipbuilding Contract including the progress of the construction of the relevant Ship.

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## SHIP UNDERTAKINGS

### 24.1 General

The undertakings in this Clause 24 (*Ship Undertakings*) remain in force on and from the relevant Delivery Date and throughout the rest of the Security Period except as the Facility Agent, acting with the authorisation of the Majority Lenders (or, where specified, all the Lenders) may otherwise permit.

### 24.2 Ships' names and registration

Each Borrower shall, in respect of the Ship owned by it:

- (a) keep that Ship registered in its name under the Approved Flag from time to time at its port of registration;
- (b) not do or allow to be done anything as a result of which such registration might be suspended, cancelled or imperilled;
- (c) not enter into any dual flagging arrangement in respect of that Ship; and
- (d) not change the name of that Ship,

**Provided that** any agreed change of name or flag of a Ship shall be subject to:

- (i) that Ship remaining subject to Security securing the Secured Liabilities created by a first priority or preferred ship mortgage on that Ship and, if appropriate, a first priority deed of covenant collateral to that mortgage (or equivalent first priority Security) on substantially the same terms as the Mortgage on that Ship and, if applicable, related Deed of Covenant and on such other terms and in such other form as the Facility Agent, acting with the authorisation of the Majority Lenders, shall approve or require;
- (ii) the issuance of legal opinions in respect of such new flag, the enforceability of the new Finance Documents and the capacity of the Transaction Obligors signing those Finance Documents each in a form and substance satisfactory to the Lenders; and
- (iii) the execution of such other documentation amending and supplementing the Finance Documents as the Facility Agent, acting with the authorisation of the Majority Lenders, shall approve or require.

### 24.3 Repair and classification

Each Borrower 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; and
- (b) so as to maintain the Approved Classification free of overdue recommendations and conditions.



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#### **24.4 Classification society undertaking**

Each Borrower shall, in respect of the Ship owned by it, instruct the Approved Classification Society:

- (a) to send to the Security Agent, following receipt of a written request from the Security Agent, certified true copies of all original class records held by the Approved Classification Society in relation to that Ship;
- (b) to allow the Security Agent (or its agents), at any time and from time to time, to inspect the original class and related records of that Borrower and that Ship at the offices of the Approved Classification Society and to take copies of them;
- (c) to notify the Security Agent immediately in writing if the Approved Classification Society:
  - (i) receives notification from that Borrower or any person that that Ship's Approved 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 that Ship's class under the rules or terms and conditions of that Borrower or that Ship's membership of the Approved Classification Society;
- (d) following receipt of a written request from the Security Agent:
  - (i) to confirm that that Borrower is not in default of any of its contractual obligations or liabilities to the Approved Classification Society, including confirmation that it has paid in full all fees or other charges due and payable to the Approved Classification Society; or
  - (ii) to confirm that that Borrower is in default of any of its contractual obligations or liabilities to the Approved Classification Society, to specify to the Security Agent in reasonable detail the facts and circumstances of such default, the consequences of such default, and any remedy period agreed or allowed by the Approved Classification Society.

#### **24.5 Modifications**

No Borrower shall make any modification or repairs to, or replacement of, any Ship or equipment installed on it which would or might materially alter the structure, type or performance characteristics of that Ship or materially reduce its value.

#### **24.6 Removal and installation of parts**

- (a) Subject to paragraph (b) below, no Borrower shall remove any material part of any Ship, or any item of equipment installed on any Ship unless:
  - (i) the part or item so removed is forthwith replaced by a suitable part or item which is in the same condition as or better condition than the part or item removed;
  - (ii) the replacement part or item is free from any Security in favour of any person other than the Security Agent; and

- (iii) the replacement part or item becomes, on installation on that Ship, the property of that Borrower and subject to the security constituted by the Mortgage on that Ship and, if applicable, the related Deed of Covenant.
- (b) Each Borrower may install equipment owned by a third party if the equipment can be removed without any risk of damage to the Ship owned by that Borrower.

#### **24.7 Surveys**

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

#### **24.8 Inspection**

Each Borrower shall permit the Security Agent (acting through 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 and shall afford all proper facilities for such inspections. The cost of the inspection shall be borne by the Borrowers once per annum, unless an Event of Default has occurred, in which case the cost of all inspections while the Event of Default is continuing shall be borne by the Borrowers.

#### **24.9 Prevention of and release from arrest**

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

#### **24.10 Compliance with laws etc.**

Each Borrower shall:

- (a) comply, or procure compliance with all laws or regulations:
  - (i) relating to its business generally; and
  - (ii) relating to the Ship owned by it, its ownership, employment, operation, management and registration, including, but not limited to:
    - (A) the ISM Code;

- (B) the ISPS Code;
  - (C) all applicable Environmental Laws;
  - (D) all Sanctions; and
  - (E) the laws of the Approved Flag; and
- (b) obtain, comply with and do all that is necessary to maintain in full force and effect any Environmental Approvals; and
- (c) without limiting paragraph (a) above, not employ the Ship owned by it nor allow its employment, operation or management in any manner contrary to any law or regulation including but not limited to the ISM Code, the ISPS Code, all Environmental Laws and Sanctions (or which would be contrary to Sanctions if Sanctions were binding on each Transaction Obligor).

#### **24.11 ISPS Code**

Without limiting paragraph (a) of Clause 24.10 (*Compliance with laws etc.*), each Borrower shall:

- (a) procure that the Ship owned by it and the company responsible for that Ship's compliance with the ISPS Code comply with the ISPS Code; and
- (b) maintain an ISSC for that Ship; and
- (c) notify the Facility Agent immediately in writing of any actual or threatened withdrawal, suspension, cancellation or modification of the ISSC.

#### **24.12 Sanctions and Ship trading**

Without limiting Clause 24.10 (*Compliance with laws etc.*), each Borrower shall procure:

- (a) that the Ship owned by it shall not be used by or for the benefit of a Prohibited User;
- (b) that such Ship shall not be used in trading in any manner contrary to Sanctions;
- (c) that such Ship shall not be traded in any manner which would trigger the operation of any sanctions limitation or exclusion clause (or similar) in the Insurances; and
- (d) that each Charter in respect of that Ship shall contain, for the benefit of that Borrower, language which gives effect to the provisions of paragraph (c) of Clause 24.10 (*Compliance with laws etc.*) as regards Sanctions and of this Clause 24.12 (*Sanctions and Ship trading*) and which permits refusal of employment or voyage orders if compliance would result in a breach of Sanctions (or which would result in a breach of Sanctions if Sanctions were binding on each Obligor).

#### **24.13 Trading in war zones**

In the event of hostilities in any part of the world (whether war is declared or not), no Borrower shall cause or permit any Ship to enter or trade to any zone which is declared a war zone by any government or by that Ship's war risks insurers unless that Borrower has (at its expense) effected any required and applicable special, additional or modified insurance cover.

#### **24.14 Provision of information**

Without prejudice to Clause 20.5 (*Information: miscellaneous*) each Borrower shall, in respect of the Ship owned by it, promptly provide the Facility Agent with any information which it requests regarding:

- (a) that Ship, its employment, position and engagements;
  - (b) the Earnings and payments and amounts due to its master and crew;
  - (c) any expenditure incurred, or likely to be incurred, in connection with the operation, maintenance or repair of that Ship and any payments made by it in respect of that Ship;
  - (d) any towages and salvages; and
  - (e) its compliance, the Approved Manager's compliance and the compliance of that Ship with the ISM Code and the ISPS Code,
- and, upon the Facility Agent's request, promptly provide copies of any current Charter relating to that Ship, of any current guarantee of any such Charter, the Ship's Safety Management Certificate and any relevant Document of Compliance.

#### **24.15 Notification of certain events**

Each Borrower shall, in respect of the Ship owned by it, immediately notify the Facility Agent by fax, confirmed forthwith by letter, of:

- (a) any casualty to that Ship which is or is likely to be or to become a Major Casualty;
- (b) any occurrence as a result of which that Ship has become or is, by the passing of time or otherwise, likely to become a Total Loss;
- (c) any requisition of that Ship for hire;
- (d) any requirement or recommendation made in relation to that Ship by any insurer or classification society or by any competent authority which is not immediately complied with;
- (e) any arrest or detention of that Ship or any exercise or purported exercise of any lien on that Ship or the Earnings;
- (f) any intended dry docking of that Ship;
- (g) any Environmental Claim made against that Borrower or in connection with that Ship, or any Environmental Incident;
- (h) any claim for breach of the ISM Code or the ISPS Code being made against that Borrower, an Approved Manager or otherwise in connection with that Ship; or
- (i) any other matter, event or incident, actual or threatened, the effect of which will or could lead to the ISM Code or the ISPS Code not being complied with; or
- (j) any notice, or such Borrower becoming aware, of any claim, action, suit, proceeding or investigation against any Transaction Obligor, any of its Subsidiaries or any of their respective directors, officers, employees or, to the best of such Borrower's knowledge, agents with respect to Sanctions,

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

**24.16 Restrictions on chartering, appointment of managers etc.**

No Borrower shall, in relation to the Ship owned by it:

- (a) let that Ship on demise charter for any period;
- (b) enter into any time, voyage or consecutive voyage charter in respect of that Ship other than a Permitted Charter or "charter-in" any vessel;
- (c) materially amend, supplement or terminate a Management Agreement if such amendment, supplement or termination causes the occurrence of an Event of Default;
- (d) appoint a manager of that Ship other than an Approved Manager;
- (e) de activate or lay up that Ship; or
- (f) put that Ship into the possession of any person for the purpose of work being done upon it in an amount exceeding or likely to exceed \$750,000 (or the equivalent in any other currency) unless the relevant Borrower ensures that that person has first given to the Security Agent and in terms satisfactory to it a written undertaking not to exercise any lien on that Ship or its Earnings for the cost of such work or for any other reason.

**24.17 Notice of Mortgage**

Each Borrower shall keep the Mortgage registered against the Ship owned by it as a valid first preferred mortgage, carry on board that Ship a certified copy of the 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 that Borrower to the Security Agent.

**24.18 Sharing of Earnings**

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

**24.19 Charterparty Assignment**

If any Borrower enters into an Assignable Charter that Borrower shall promptly after the date of such Assignable Charter enter into a Charterparty Assignment and the assignment contemplated thereunder shall be notified to the relevant charterer and any charter guarantor in accordance with the terms of such Charterparty Assignment and that Borrower shall use its commercially reasonable endeavours to obtain an acknowledgment of that Charterparty Assignment from the relevant Charterer and/or charter guarantor, and shall additionally deliver to the Facility Agent such other documents relevant to that Borrower and that Ship equivalent to those referred to at paragraphs 1.2, 1.3, 1.5, 1.8, 2, 5.1 and 5.4 of Part B of Schedule 2 (*Conditions Precedent*) as the Facility Agent may require.

#### **24.20 Inventory of Hazardous Materials**

Each Borrower shall procure that the Ship owned by it has, from the Delivery Date and/or the next dry dock of that Ship, obtained an Inventory of Hazardous Materials, in respect of such Ship which shall be maintained until the Loan has been fully repaid.

#### **24.21 Dismantling of Ships**

The Borrowers confirm that they will procure that each Ship and any other Group Vessel will be (or, if sold to an intermediary with the intention of being scrapped, will use their best endeavours to procure), that such Ship and any other Group Vessel will be 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, with regards to any EU flagged vessels, the EU Ship Recycling Regulation.

#### **24.22 Poseidon Principles**

The Borrowers shall, upon the request of any Lender and at the cost of the Borrowers on or before 31<sup>st</sup> July in each calendar year commencing from the calendar year of 2025, supply or procure the supply (as specified by the relevant Lender) to the Facility Agent (on behalf of that Lender) of all information necessary in order for that Lender to comply with its obligations under the Poseidon Principles in respect of the preceding year, including, without limitation, all ship fuel oil consumption data required to be collected and reported in accordance with Regulation 22A of Annex VI and any Statement of Compliance, in each case relating to the Ship owned by it for the preceding calendar year provided always that, for the avoidance of doubt, such information shall be “Confidential Information” for the purposes of Clause 46 (*Confidential Information*) but the Borrowers acknowledge that, in accordance with the Poseidon Principles, such information will form part of the information published regarding the relevant Lender’s portfolio climate alignment.

#### **24.23 Notification of compliance**

Each Borrower shall promptly provide the Facility Agent from time to time with evidence (in such form as the Facility Agent requires) that it is complying with this Clause 24 (*Ship Undertakings*).

### **SECURITY COVER**

#### **25.1 Minimum required security cover**

Clause 25.2 (*Provision of additional security; prepayment*) applies if on or after the first Delivery Date, the Facility Agent notifies the Borrowers that:

- (a) the aggregate Market Value of each Ship then subject to a Mortgage; plus
  - (b) the net realisable value of additional Security previously provided under this Clause 25 (*Security Cover*),
- is below 135 per cent. of (i) the Loan and (ii) any Hedging Close-Out Liabilities.

## 25.2 Provision of additional security; prepayment

- (a) If the Facility Agent serves a notice on the Borrowers under Clause 25.1 (*Minimum required security cover*), the Borrowers shall, on or before the date falling 10 Business Days after the date on which the Facility Agent's notice is served (the "**Prepayment Date**"), prepay such part of the Loan as shall eliminate the shortfall.
- (b) A Borrower may, instead of making a prepayment as described in paragraph (a) above, provide, or ensure that a third party has provided, additional security which, in the opinion of the Facility Agent acting on the instructions of the Majority Lenders:
- (i) has a net realisable value at least equal to the shortfall; and
  - (ii) is documented in such terms as the Facility Agent may approve or require,
- before the Prepayment Date; and conditional upon such security being provided in such manner, it shall satisfy such prepayment obligation.

## 25.3 Value of additional vessel security

The net realisable value of any additional security which is provided under Clause 25.2 (*Provision of additional security; prepayment*) and which consists of Security over a vessel shall be the Market Value of the vessel concerned.

## 25.4 Valuations binding

Any valuation under this Clause 25 (*Security Cover*) shall be binding and conclusive as regards each Borrower.

## 25.5 Provision of information

- (a) Each Borrower shall promptly provide the Facility Agent and any shipbroker acting under this Clause 25 (*Security Cover*) with any information which the Facility Agent or the shipbroker may request for the purposes of the valuation.
- (b) If a Borrower fails to provide the information referred to in paragraph (a) above by the date specified in the request, the valuation may be made on any basis and assumptions which the shipbroker or the Facility Agent considers prudent.

## 25.6 Prepayment mechanism

Any prepayment pursuant to Clause 25.2 (*Provision of additional security; prepayment*) shall be made in accordance with the relevant provisions of Clause 7 (*Prepayment and Cancellation*), and each such prepayment shall reduce each Tranche *pro rata* by reducing the Repayment Instalments and the Balloon Instalment in respect of that Tranche falling after such prepayment on a *pro rata* basis by the amount prepaid.

## 25.7 Provision of valuations

- (a) For the purpose of the Utilisation and subject to paragraph (b) below, the Market Value of any Ship shall be determined by reference to the valuation of that Ship as given by an Approved Valuer selected and appointed by the Borrowers and addressed to the Facility Agent or in the event that the Borrowers fail to do so appointed by the Facility Agent. The Agent shall, in its full discretion be entitled to request a second valuation from an Approved Valuer selected and appointed by the Facility Agent, in which case, the Market Value shall be the arithmetic average of the two valuations.
- (b) If the two valuations in respect of a Ship obtained pursuant to paragraph (a) above differ by at least 10 per cent., then a third valuation for that Ship shall be obtained from a third Approved Valuer selected by the Facility Agent, appointed by the Facility Agent and such valuation shall be addressed to the Facility Agent and the Market Value of that Ship shall be the arithmetic average of all three such valuations.
- (c) The Facility Agent shall be entitled, after the Utilisation Date, to test the security cover requirement under Clause 25.1 (*Minimum required security cover*) by reference to the Market Value of any Ship as determined in accordance with paragraphs (a) to (b) above, semi-annually during the Security Period.
- (d) The Facility Agent shall ascertain compliance with clause 10 (*financial covenants*) of the Guarantee by reference to the market value of the Fleet Vessels as provided in the Latest Accounts (as each such term is defined in the Guarantee).
- (e) Each of the valuations referred to at paragraphs (a) and (b) above shall be obtained not more than 30 days before the Utilisation Date, while each of the valuations referred to in paragraph (d) above shall be obtained not more than 30 days before the Test Date of the relevant quarter.
- (f) The Facility Agent may at any time obtain valuations of any Ship and any other vessel over which additional security has been created in accordance with Clause 25.2 (*Provision of additional security; prepayment*) from Approved Valuers to enable the Facility Agent to determine the Market Value of that Ship and any other vessel and also for the purpose of testing the security cover requirement under Clause 25.1 (*Minimum required security cover*).
- (g) The valuations referred to in paragraph (a) to (c) above shall be obtained at the cost and expense of the Borrowers and the Borrowers shall within three Business Days of demand by the Facility Agent pay to the Facility Agent all costs and expenses incurred by it in obtaining any such valuation. The cost of the valuations referred to in paragraph (f) for the Borrowers shall be limited twice per annum, unless an Event of Default has occurred and is continuing or the covenant contained in Clause 25.1 (*Minimum required security cover*) is not complied with, in which case the cost of all valuations shall be borne by the Borrowers.

## ACCOUNTS AND APPLICATION OF EARNINGS

### 26.1 Accounts

No Borrower may, without the prior consent of the Facility Agent, maintain any bank account other than its Earnings Account, save for each earnings account held by the relevant Borrower with Hamburg Commercial Bank AG as account bank at the time of this Agreement. Each Borrower undertakes to close its earnings account with Hamburg Commercial Bank AG promptly after the delivery of its Ship.



## 26.2 Payment of Earnings

- (a) Each Borrower shall ensure that:
  - (i) subject only to the provisions of the General Assignment to which it is a party, all the Earnings in respect of the Ship owned by it are paid in to its Earnings Account; and
  - (ii) all Hedge Receipts are paid in to its Earnings Account.
- (b) Each Borrower shall ensure that as from the relevant Delivery Date and at all times thereafter there is standing to the credit of its Earnings Account an amount of no less than \$500,000.

## 26.3 Location of Accounts

Each Borrower shall promptly:

- (a) comply with any requirement of the Facility Agent as to the location or relocation of its Earnings Account; and
- (b) execute any documents which the Facility Agent specifies to create or maintain in favour of the Security Agent Security over (and/or rights of set-off, consolidation or other rights in relation to) its Earnings Account.

## EVENTS OF DEFAULT

### 27.1 General

Each of the events or circumstances set out in this Clause 27 (*Events of Default*) is an Event of Default except for Clause 27.20 (*Acceleration*) and Clause 27.21 (*Enforcement of security*).

### 27.2 Non-payment

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

- (a) its failure to pay is caused by:
  - (i) administrative or technical error; or
  - (ii) a Disruption Event; and
- (b) payment is made within three Business Days of its due date.

### 27.3 Specific obligations

A breach occurs of Clause 4.5 (*Waiver of conditions precedent*), clause 10 (*financial covenants*) of the Guarantee, Clause 21.10 (*Title*), Clause 21.11 (*Negative pledge*), Clause 21.20 (*Unlawfulness, invalidity and ranking; Security imperilled*), Clause 22.2 (*Maintenance of obligatory insurances*), Clause 22.3 (*Terms of obligatory insurances*), Clause 22.5 (*Renewal of obligatory insurances*) or save to the extent such breach is a failure to pay and therefore subject to Clause 27.2 (*Non-payment*) and Clause 25 (*Security Cover*).

### 27.4 Other obligations

- (a) A Transaction Obligor does not comply with any provision of the Finance Documents (other than those referred to in Clause 27.2 (*Non-payment*) and Clause 27.3 (*Specific obligations*)).

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- (b) No Event of Default under paragraph (a) above will occur if the failure to comply is capable of remedy and is remedied within 15 Business Days of the Facility Agent giving notice to the Borrowers or (if earlier) any Transaction Obligor becoming aware of the failure to comply.

#### **27.5 Misrepresentation**

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

#### **27.6 Cross default**

- (a) Any Financial Indebtedness of any Transaction Obligor (other than the Approved Manager) is not paid when due nor within any originally applicable grace period.
- (b) Any Financial Indebtedness of any Transaction Obligor (other than the Approved Manager) is declared to be or otherwise becomes due and payable prior to its specified maturity as a result of an event of default (however described) unless the Transaction Obligor (other than the Approved Manager) is contesting the declaration of an event of default or of the Financial Indebtedness becoming due and payable in good faith and on substantial grounds by appropriate proceedings and adequate reserves (in the reasonable opinion of the Facility Agent) have been set aside for its payment if such proceedings fail.
- (c) Any commitment for any Financial Indebtedness of any Transaction Obligor (other than the Approved Manager) is cancelled or suspended by a creditor of that Transaction Obligor as a result of an event of default (however described).
- (d) Any creditor of Transaction Obligor (other than the Approved Manager) becomes entitled to declare any Financial Indebtedness of that Transaction Obligor (other than the Approved Manager) due and payable prior to its specified maturity as a result of an event of default (however described) unless the Transaction Obligor is contesting the declaration of an event of default or of the Financial Indebtedness becoming due and payable in good faith and on substantial grounds by appropriate proceedings and adequate reserves (in the reasonable opinion of the Facility Agent) have been set aside for its payment if such proceedings fail.
- (e) No Event of Default will occur under this Clause 27.6 (*Cross default*) in respect of the Guarantor if the aggregate amount of Financial Indebtedness or commitment for Financial Indebtedness falling within paragraphs (a) to (d) above is less than \$30,000,000 (or its equivalent in any other currency).

#### **27.7 Insolvency**

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

## **27.8 Insolvency proceedings**

- (a) Any corporate action, legal proceedings or other procedure or step is taken in relation to:
- (i) the suspension of payments, a moratorium of any indebtedness, winding-up, dissolution, administration or reorganisation (by way of voluntary arrangement, scheme of arrangement or otherwise) of any Transaction Obligor (other than an Approved Manager);
  - (ii) a composition, compromise, assignment or arrangement with any creditor of any Transaction Obligor (other than an Approved Manager);
  - (iii) the appointment of a liquidator, receiver, administrator, administrative receiver, compulsory manager or other similar officer in respect of any Transaction Obligor (other than an Approved Manager) or any of its assets; or
  - (iv) enforcement of any Security over any assets of any Transaction Obligor (other than an Approved Manager),
- or any analogous procedure or step is taken in any jurisdiction.
- (b) Paragraph (a) above shall not apply to any winding-up petition which is frivolous or vexatious and is discharged, stayed or dismissed within 30 days of commencement.

## **27.9 Creditors' process**

Any expropriation, attachment, sequestration, distress or execution (or any analogous process in any jurisdiction) affects any asset or assets of a Transaction Obligor (other than any Approved Manager or an arrest or detention of a Ship which, in accordance with Clause 27.14 (*Arrest*), is discharged within 30 days).

## **27.10 Ownership of the Obligors**

There is in respect of any Borrower, a change in its ownership which results in the Guarantor owning directly or indirectly (but if indirectly only through companies with registered shares), less than 100 per cent. of the shares in that Borrower.

## **27.11 Unlawfulness, invalidity and ranking**

- (a) It is or becomes unlawful for a Transaction Obligor to perform any of its obligations under the Finance Documents.
- (b) Any obligation of a Transaction Obligor under the Finance Documents is not or ceases to be legal, valid, binding or enforceable.
- (c) Any Finance Document ceases to be in full force and effect or to be continuing or is or purports to be determined or any Transaction Security is alleged by a party to it (other than a Finance Party) to be ineffective.
- (d) Any Transaction Security proves to have ranked after, or loses its priority to, any other Security.

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**27.12 Security imperilled**

Any Security created or intended to be created by a Finance Document is in any way imperilled or in jeopardy.

**27.13 Cessation of business**

Any Transaction Obligor suspends or ceases to carry on all or a material part of its business.

**27.14 Arrest**

Any arrest of a Ship or its detention in the exercise or the purported exercise of any lien or claim unless it is redelivered to the full control of the relevant Borrower within 30 days of such arrest or detention.

**27.15 Expropriation**

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

- (a) an arrest or detention of a Ship referred to in Clause 27.14 (*Arrest*); or
- (b) any Requisition.

**27.16 Repudiation and rescission of agreements**

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

**27.17 Litigation**

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

**27.18 Material adverse change**

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

**27.19 Sanctions**

- (a) Any of the Transaction Obligors becomes a Restricted Party or becomes owned or controlled by, or acts directly or indirectly on behalf of, a Restricted Party or any of such persons becomes the owner or controller of a Restricted Party.

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- (b) Any proceeds of the Loan is made available, directly or indirectly, to or for the benefit of a Restricted Party or otherwise is, directly or indirectly, applied in a manner or for a purpose prohibited by Sanctions Laws.
  - (c) Any Transaction Obligor is not in compliance with all Sanctions Laws.

#### **27.20 Acceleration**

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

- (a) by notice to the Borrowers:
  - (i) cancel the Available Commitment of each Lender, whereupon they shall immediately be cancelled;
  - (ii) declare that all or part of the Loan, together with accrued interest, and all other amounts accrued or outstanding under the Finance Documents be immediately due and payable, whereupon it shall become immediately due and payable; and/or
  - (iii) declare that all or part of the Loan be payable on demand, whereupon it shall immediately become payable on demand by the Facility Agent acting on the instructions of the Majority Lenders; and/or
- (b) exercise or direct the Security Agent to exercise any or all of its rights, remedies, powers or discretions under the Finance Documents; and/or
- (c) instruct the Sinosure Agent to enforce on their behalf their rights and remedies under the Sinosure Policy,

and the Facility Agent may serve notices under sub-paragraphs (i), (ii) or (iii) of paragraph (a) above simultaneously or on different dates and any Servicing Party may take any action referred to in paragraph (b) above or Clause 27.21 (*Enforcement of security*) if no such notice is served or simultaneously with or at any time after the service of any of such notice.

#### **27.21 Enforcement of security**

On and at any time after the occurrence of an Event of Default the Security Agent may, and shall if so directed by the Majority Lenders, take any action which, as a result of the Event of Default or any notice served under Clause 27.20 (*Acceleration*), the Security Agent is entitled to take under any Finance Document or any applicable law or regulation.

## SECTION 9

### CHANGES TO PARTIES

#### CHANGES TO THE LENDERS AND THE HEDGE COUNTERPARTIES

##### 28.1 Assignments and transfers by the Lenders

Subject to this Clause 28 (*Changes to the Lenders and the Hedge Counterparties*), and without prejudice to any requirement for the consent of Sinosure under the terms of any Sinosure Policy, 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) The Existing Lender shall consult with the Borrowers for up to 10 Business Days before completing an assignment or transfer pursuant to Clause 28.1 (*Assignments and transfers by the Lenders*), unless the assignment or transfer is:
  - (i) to another Lender or an Affiliate of a Lender;
  - (ii) to a fund which is a Related Fund of that Lender or an Affiliate of that Lender
  - (iii) to the Bookrunner, the Sinosure Agent or an Affiliate of the Bookrunner or the Sinosure Agent and made in connection with the primary syndication or a Utilisation of the Facility; or
  - (iv) made at a time when an Event of Default is continuing.
- (b) An assignment will only be effective on:
  - (i) receipt by the Facility Agent (whether in the Assignment Agreement or otherwise) of written confirmation from the New Lender (in form and substance satisfactory to the Facility Agent) that the New Lender will assume the same obligations to the other Secured Parties as it would have been under if it had been an Original Lender;
  - (ii) receipt by the Facility Agent of written confirmation from Sinosure (in form and substance satisfactory to the Facility Agent) that the New Lender is acceptable in all respects to Sinosure; and
  - (iii) performance by the Facility Agent of all necessary “know your customer” or other similar checks under all applicable laws and regulations in relation to such assignment to a New Lender, the completion of which the Facility Agent shall promptly notify to the Existing Lender and the New Lender.

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- (c) Each Borrower on behalf of itself and each Transaction Obligor agrees that all rights and interests (present, future or contingent) which the Existing Lender has under or by virtue of the Finance Documents are assigned to the New Lender absolutely, free of any defects in the Existing Lender's title and of any rights or equities which a Borrower or any other Transaction Obligor had against the Existing Lender.
  - (d) A transfer will only be effective if the procedure set out in Clause 28.5 (*Procedure for transfer*) is complied with.
  - (e) If:
    - (i) a Lender assigns or transfers any of its rights or obligations under the Finance Documents or changes its Facility Office; and
    - (ii) as a result of circumstances existing at the date the assignment, transfer or change occurs, a Transaction Obligor would be obliged to make a payment to the New Lender or Lender acting through its new Facility Office under Clause 12 (*Tax Gross Up and Indemnities*) or under that clause as incorporated by reference or in full in any other Finance Document or Clause 13 (*Increased Costs*),then the New Lender or Lender acting through its new Facility Office is only entitled to receive payment under those Clauses to the same extent as the Existing Lender or Lender acting through its previous Facility Office would have been if the assignment, transfer or change had not occurred. This paragraph (e) shall not apply in respect of an assignment or transfer made in the ordinary course of the primary syndication of the Facility.
  - (f) Each New Lender, by executing the relevant Transfer Certificate or Assignment Agreement, confirms, for the avoidance of doubt, that the Facility Agent has authority to execute on its behalf any amendment or waiver that has been approved by or on behalf of the requisite Lender or Lenders in accordance with this Agreement on or prior to the date on which the transfer or assignment becomes effective in accordance with this Agreement and that it is bound by that decision to the same extent as the Existing Lender would have been had it remained a Lender.

### **28.3 Assignment or transfer fee**

The New Lender shall, on the date upon which an assignment or transfer takes effect, pay to the Facility Agent (for its own account) a fee of \$3,000.

### **28.4 Limitation of responsibility of Existing Lenders**

- (a) Unless expressly agreed to the contrary, an Existing Lender makes no representation or warranty and assumes no responsibility to a New Lender for:
  - (i) the legality, validity, effectiveness, adequacy or enforceability of the Transaction Documents, the Transaction Security or any other documents;
  - (ii) the financial condition of any Transaction Obligor;
  - (iii) the performance and observance by any Transaction Obligor of its obligations under the Transaction Documents or any other documents; or

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- (iv) the accuracy of any statements (whether written or oral) made in or in connection with any Transaction Document or any other document,  
and any representations or warranties implied by law are excluded.
  - (b) Each New Lender confirms to the Existing Lender and the other Finance Parties and the Secured Parties that it:
    - (i) has made (and shall continue to make) its own independent investigation and assessment of the financial condition and affairs of each Transaction Obligor and its related entities in connection with its participation in this Agreement and has not relied exclusively on any information provided to it by the Existing Lender or any other Finance Party in connection with any Transaction Document or the Transaction Security; and
    - (ii) will continue to make its own independent appraisal of the creditworthiness of each Transaction Obligor and its related entities throughout the Security Period; and
    - (iii) has made (and shall continue to make) its own independent investigation and assessment of the Sinosure Policies and has not relied exclusively on any information provided to it by the Existing Lender in connection with the Sinosure Policies.
  - (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 (*Changes to the Lenders and the Hedge Counterparties*); or
    - (ii) support any losses directly or indirectly incurred by the New Lender by reason of the non-performance by any Transaction Obligor of its obligations under the Transaction Documents or otherwise.

### **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 Facility Agent executes an otherwise duly completed Transfer Certificate delivered to it by the Existing Lender and the New Lender. The Facility Agent shall, subject to paragraph (b) below as soon as reasonably practicable after receipt by it of a duly completed Transfer Certificate appearing on its face to comply with this Agreement and delivered in accordance with this Agreement, execute that Transfer Certificate.
- (b) The Facility Agent shall only be obliged to execute a Transfer Certificate delivered to it by the Existing Lender and the New Lender once it is satisfied it has complied with all necessary “know your customer” or other similar checks under all applicable laws and regulations in relation to the transfer to such New Lender.
- (c) Subject to Clause 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 and in respect of the Transaction Security, each of the Transaction Obligors and the Existing Lender shall be released from further obligations towards one another under the Finance Documents and in respect of the Transaction Security and their respective rights against one another under the Finance Documents and in respect of the Transaction Security shall be cancelled (being the “**Discharged Rights and Obligations**”);



- (ii) each of the Transaction Obligors and the New Lender shall assume obligations towards one another and/or acquire rights against one another which differ from the Discharged Rights and Obligations only insofar as that Transaction Obligor and the New Lender have assumed and/or acquired the same in place of that Transaction Obligor and the Existing Lender;
- (iii) the Facility Agent, the Security Agent, the Bookrunner, the Sinisure Agent, the New Lender and other Lenders shall acquire the same rights and assume the same obligations between themselves and in respect of the Transaction Security as they would have acquired and assumed had the New Lender been an Original Lender with the rights and/or obligations acquired or assumed by it as a result of the transfer and to that extent the Facility Agent, the Security Agent, the Bookrunner, the Sinisure Agent, and the Existing Lenders shall each be released from further obligations to each other under the Finance Documents; and
- (iv) the New Lender shall become a Party as a “**Lender**”.

## 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 Facility Agent executes an otherwise duly completed Assignment Agreement delivered to it by the Existing Lender and the New Lender. The Facility Agent shall, subject to paragraph (b) below, as soon as reasonably practicable after receipt by it of a duly completed Assignment Agreement appearing on its face to comply with the terms of this Agreement and delivered in accordance with the terms of this Agreement, execute that Assignment Agreement.
- (b) The Facility Agent shall only be obliged to execute an Assignment Agreement delivered to it by the Existing Lender and the New Lender once it is satisfied it has complied with all necessary “know your customer” or other similar checks under all applicable laws and regulations in relation to the assignment to such New Lender.
- (c) Subject to Clause 28.9 (*Pro rata interest settlement*), on the Transfer Date:
  - (i) the Existing Lender will assign absolutely to the New Lender its rights under the Finance Documents and in respect of the Transaction Security expressed to be the subject of the assignment in the Assignment Agreement;
  - (ii) the Existing Lender will be released from the obligations (the “**Relevant Obligations**”) expressed to be the subject of the release in the Assignment Agreement (and any corresponding obligations by which it is bound in respect of the Transaction Security); and
  - (iii) the New Lender shall become a Party as a “Lender” and will be bound by obligations equivalent to the Relevant Obligations.
- (d) Lenders may utilise procedures other than those set out in this Clause 28.6 (*Procedure for assignment*) to assign their rights under the Finance Documents (but not, without the consent of the relevant Transaction Obligor or unless in accordance with Clause 28.5 (*Procedure for transfer*), to obtain a release by that Transaction Obligor from the obligations owed to that Transaction Obligor by the Lenders nor the assumption of equivalent obligations by a New Lender) **provided that** they comply with the conditions set out in Clause 28.2 (*Conditions of assignment or transfer*).

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

The Facility 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 (*Changes to the Lenders and the Hedge Counterparties*), each Lender may without consulting with or obtaining consent from any Transaction Obligor, at any time charge, assign or otherwise create Security in or over (whether by way of collateral or otherwise) all or any of its rights under any Finance Document to secure obligations of that Lender including, without limitation:

- (a) any charge, assignment or other Security to secure obligations to a federal reserve or central bank; and
- (b) any charge, assignment or other Security granted to any holders (or trustee or representatives of holders) of obligations owed, or securities issued, by that Lender as security for those obligations or securities,

except that no such charge, assignment or Security shall:

- (i) release a Lender from any of its obligations under the Finance Documents or substitute the beneficiary of the relevant charge, assignment or Security for the Lender as a party to any of the Finance Documents; or
- (ii) require any payments to be made by a Transaction Obligor other than or in excess of, or grant to any person any more extensive rights than, those required to be made or granted to the relevant Lender under the Finance Documents.

## 28.9 Pro rata interest settlement

- (a) If the Facility Agent has notified the Lenders that it is able to distribute interest payments on a “*pro rata* basis” to Existing Lenders and New Lenders then (in respect of any transfer pursuant to Clause 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:
  - (i) any interest or fees in respect of the relevant participation which are expressed to accrue by reference to the lapse of time shall continue to accrue in favour of the Existing Lender up to but excluding the Transfer Date (“**Accrued Amounts**”) and shall become due and payable to the Existing Lender (without further interest accruing on them) on the last day of the current Interest Period (or, if the Interest Period is longer than six Months, on the next of the dates which falls at six Monthly intervals after the first day of that Interest Period); and

- 
- (ii) 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:
    - (A) when the Accrued Amounts become payable, those Accrued Amounts will be payable to the Existing Lender; and
    - (B) 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 (*Pro rata interest settlement*), have been payable to it on that date, but after deduction of the Accrued Amounts.
  - (b) In this Clause 28.9 (*Pro rata interest settlement*) references to “Interest Period” shall be construed to include a reference to any other period for accrual of fees.
  - (c) An Existing Lender which retains the right to the Accrued Amounts pursuant to this Clause 28.9 (*Pro rata interest settlement*) but which does not have a Commitment shall be deemed not to be a Lender for the purposes of ascertaining whether the agreement of any specified group of Lenders has been obtained to approve any request for a consent, waiver, amendment or other vote of Lenders under the Finance Documents.

## **CHANGES TO THE TRANSACTION OBLIGORS**

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

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

### **29.2 Release of security**

- (a) If a disposal of any asset subject to security created by a Security Document is made in the following circumstances:
  - (i) the disposal is permitted by the terms of any Finance Document;
  - (ii) all the Lenders agree to the disposal;
  - (iii) the disposal is being made at the request of the Security Agent in circumstances where any security created by the Security Documents has become enforceable; or
  - (iv) the disposal is being effected by enforcement of a Security Document,the Security Agent may release the asset(s) being disposed of from any security over those assets created by a Security Document. However, the proceeds of any disposal (or an amount corresponding to them) must be applied in accordance with the requirements of the Finance Documents (if any).
- (b) If the Security Agent is satisfied that a release is allowed under this Clause 29.2 (*Release of security*) (at the request and expense of the Borrowers) each Finance Party must enter into any document and do all such other things which are reasonably required to achieve that release. Each other Finance Party irrevocably authorises the Security Agent to enter into any such document. Any release will not affect the obligations of any other Transaction Obligor under the Finance Documents.

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**SECTION 10**

**THE FINANCE PARTIES**

**THE FACILITY AGENT AND THE BOOKRUNNER**

**30.1 Appointment of the Facility Agent**

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

**30.2 Instructions**

- (a) The Facility Agent shall:
  - (i) unless a contrary indication appears in a Finance Document, exercise or refrain from exercising any right, power, authority or discretion vested in it as Facility Agent in accordance with any instructions given to it by:
    - (A) all Lenders if the relevant Finance Document stipulates the matter is an all Lender decision; and
    - (B) in all other cases, the Majority Lenders; and
  - (ii) not be liable for any act (or omission) if it acts (or refrains from acting) in accordance with sub-paragraph (i) above (or, if this Agreement stipulates the matter is a decision for any other Finance Party or group of Finance Parties, in accordance with instructions given to it by that Finance Party or group of Finance Parties).
- (b) The Facility Agent shall be entitled to request instructions, or clarification of any instruction, from the Majority Lenders (or, if the relevant Finance Document stipulates the matter is a decision for any other Finance Party or group of Finance Parties, from that Finance Party or group of Finance Parties) as to whether, and in what manner, it should exercise or refrain from exercising any right, power, authority or discretion and the Facility Agent may refrain from acting unless and until it receives any such instructions or clarification that it has requested.
- (c) Save in the case of decisions stipulated to be a matter for any other Finance Party or group of Finance Parties under the relevant Finance Document and unless a contrary indication appears in a Finance Document, any instructions given to the Facility Agent by the Majority Lenders shall override any conflicting instructions given by any other Parties and will be binding on all Finance Parties.
- (d) Paragraph (a) above shall not apply:
  - (i) where a contrary indication appears in a Finance Document;

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- (ii) where a Finance Document requires the Facility Agent to act in a specified manner or to take a specified action;
  - (iii) in respect of any provision which protects the Facility Agent's own position in its personal capacity as opposed to its role of Facility Agent for the relevant Finance Parties.
- (e) If giving effect to instructions given by the Majority Lenders would in the Facility Agent's opinion have an effect equivalent to an amendment or waiver referred to in Clause 45 (*Amendments and Waivers*), the Facility Agent shall not act in accordance with those instructions unless consent to it so acting is obtained from each Party (other than the Facility Agent) whose consent would have been required in respect of that amendment or waiver.
  - (f) In exercising any discretion to exercise a right, power or authority under the Finance Documents where it has not received any instructions as to the exercise of that discretion the Facility Agent shall do so having regard to the interests of all the Finance Parties.
  - (g) The Facility Agent may refrain from acting in accordance with any instructions of any Finance Party or group of Finance Parties until it has received any indemnification and/or security that it may in its discretion require (which may be greater in extent than that contained in the Finance Documents and which may include payment in advance) for any cost, loss or liability (together with any applicable VAT) which it may incur in complying with those instructions.
  - (h) Without prejudice to the remainder of this Clause 30.2 (*Instructions*), in the absence of instructions, the Facility Agent shall not be obliged to take any action (or refrain from taking action) even if it considers acting or not acting to be in the best interests of the Finance Parties. The Facility Agent may act (or refrain from acting) as it considers to be in the best interest of the Finance Parties.
  - (i) The Facility Agent is not authorised to act on behalf of a Finance Party (without first obtaining that Finance Party's consent) in any legal or arbitration proceedings relating to any Finance Document. This paragraph (i) shall not apply to any legal or arbitration proceeding relating to the perfection, preservation or protection of rights under the Security Documents or enforcement of the Transaction Security or Security Documents.

### **30.3 Duties of the Facility Agent**

- (a) The Facility Agent's duties under the Finance Documents are solely mechanical and administrative in nature.
- (b) Subject to paragraph (c) below, the Facility Agent shall promptly forward to a Party the original or a copy of any document which is delivered to the Facility Agent for that Party by any other Party or, if required, Sinosure.
- (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, the Facility Agent is not obliged to review or check the adequacy, accuracy or completeness of any document it forwards to another Party.

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- (e) If the Facility Agent receives notice from a Party referring to any Finance Document, describing a Default and stating that the circumstance described is a Default, it shall promptly notify the other Finance Parties.
  - (f) If the Facility Agent is aware of the non-payment of any principal, interest, commitment fee or other fee payable to a Finance Party (other than the Facility Agent, the Bookrunner or the Security Agent) under this Agreement, it shall promptly notify the other Finance Parties.
  - (g) The Facility Agent shall have only those duties, obligations and responsibilities expressly specified in the Finance Documents to which it is expressed to be a party (and no others shall be implied).

#### **30.4 Role of the Bookrunner**

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

#### **30.5 No fiduciary duties**

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

#### **30.6 Application of receipts**

Except as expressly stated to the contrary in any Finance Document, any moneys which the Facility Agent receives or recovers in its capacity as Facility Agent shall be applied by the Facility Agent in accordance with Clause 35.5 (*Application of receipts; partial payments*).

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

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

#### **30.8 Rights and discretions**

- (a) The Facility Agent may:
  - (i) rely on any representation, communication, notice or document believed by it to be genuine, correct and appropriately authorised;
  - (ii) assume that:
    - (A) any instructions received by it from the Majority Lenders, any Finance Parties or any group of Finance Parties are duly given in accordance with the terms of the Finance Documents; and
    - (B) unless it has received notice of revocation, that those instructions have not been revoked; and

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- (iii) rely on a certificate from any person:
- (A) as to any matter of fact or circumstance which might reasonably be expected to be within the knowledge of that person; or
  - (B) to the effect that such person approves of any particular dealing, transaction, step, action or thing,
- as sufficient evidence that that is the case and, in the case of paragraph (A) above, may assume the truth and accuracy of that certificate.
- (b) The Facility Agent may assume (unless it has received notice to the contrary in its capacity as agent for the Finance Parties) that:
- (i) no Default has occurred (unless it has actual knowledge of a Default arising under Clause 27.2 (*Non-payment*));
  - (ii) any right, power, authority or discretion vested in any Party or any group of Finance Parties has not been exercised; and
  - (iii) any notice or request made by any Borrower (other than a Utilisation Request or a Selection Notice) is made on behalf of and with the consent and knowledge of all the Transaction Obligors.
- (c) The Facility Agent may engage and pay for the advice or services of any lawyers, accountants, tax advisers, surveyors or other professional advisers or experts.
- (d) Without prejudice to the generality of paragraph (c) above or paragraph (e) below, the Facility Agent may at any time engage and pay for the services of any lawyers to act as independent counsel to the Facility Agent (and so separate from any lawyers instructed by the Lenders) if the Facility Agent in its reasonable opinion deems this to be desirable.
- (e) The Facility Agent may rely on the advice or services of any lawyers, accountants, tax advisers, surveyors or other professional advisers or experts (whether obtained by the Facility Agent or by any other Party) and shall not be liable for any damages, costs or losses to any person, any diminution in value or any liability whatsoever arising as a result of its so relying.
- (f) The Facility Agent may act in relation to the Finance Documents and the Security Property through its officers, employees and agents and shall not:
- (i) be liable for any error of judgment made by any such person; or
  - (ii) be bound to supervise, or be in any way responsible for any loss incurred by reason of misconduct, omission or default on the part of any such person,
- unless such error or such loss was directly caused by the Facility Agent's gross negligence or wilful misconduct.
- (g) Unless a Finance Document expressly provides otherwise the Facility Agent may disclose to any other Party any information it reasonably believes it has received as agent under the Finance Documents.
- (h) Notwithstanding any other provision of any Finance Document to the contrary, neither the Facility Agent nor the Bookrunner 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.

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

### **30.9 Responsibility for documentation**

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

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

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

The Facility Agent shall not be bound to enquire:

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

### **30.11 Exclusion of liability**

- (a) Without limiting paragraph (b) below (and without prejudice to paragraph (e) of Clause 35.11 (*Disruption to Payment Systems etc.*) or any other provision of any Finance Document excluding or limiting the liability of the Facility Agent), the Facility Agent will not be liable for:
  - (i) any damages, costs or losses to any person, any diminution in value, or any liability whatsoever arising as a result of taking or not taking any action under or in connection with any Transaction Document or the Security Property, unless directly caused by its gross negligence or wilful misconduct;



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- (ii) exercising, or not exercising, any right, power, authority or discretion given to it by, or in connection with, any Transaction Document, the Security Property or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with, any Transaction Document or the Security Property;
  - (iii) any shortfall which arises on the enforcement or realisation of the Security Property; or
  - (iv) without prejudice to the generality of sub-paragraphs (i) to (iii) above, any damages, costs or losses to any person, any diminution in value or any liability whatsoever arising as a result of:
    - (A) any act, event or circumstance not reasonably within its control; or
    - (B) the general risks of investment in, or the holding of assets in, any jurisdiction, including (in each case and without limitation) such damages, costs, losses, diminution in value or liability arising as a result of nationalisation, expropriation or other governmental actions; any regulation, currency restriction, devaluation or fluctuation; market conditions affecting the execution or settlement of transactions or the value of assets (including any Disruption Event); breakdown, failure or malfunction of any third party transport, telecommunications, computer services or systems; natural disasters or acts of God; war, terrorism, insurrection or revolution; or strikes or industrial action.
  - (b) No Party other than the Facility Agent may take any proceedings against any officer, employee or agent of the Facility Agent in respect of any claim it might have against the Facility Agent or in respect of any act or omission of any kind by that officer, employee or agent in relation to any Transaction Document or any Security Property and any officer, employee or agent of the Facility Agent may rely on this paragraph (b) subject to Clause 1.5 (*Third party rights*) and the provisions of the Third Parties Act.
  - (c) The Facility Agent will not be liable for any delay (or any related consequences) in crediting an account with an amount required under the Finance Documents to be paid by the Facility Agent if the Facility Agent has taken all necessary steps as soon as reasonably practicable to comply with the regulations or operating procedures of any recognised clearing or settlement system used by the Facility Agent for that purpose.
  - (d) Nothing in this Agreement shall oblige the Facility Agent or the Bookrunner to carry out:
    - (i) any “know your customer” or other checks in relation to any person; or
    - (ii) any check on the extent to which any transaction contemplated by this Agreement might be unlawful for any Finance Party, on behalf of any Finance Party and each Finance Party confirms to the Facility Agent and the Bookrunner that it is solely responsible for any such checks it is required to carry out and that it may not rely on any statement in relation to such checks made by the Facility Agent or the Bookrunner.
  - (e) Without prejudice to any provision of any Finance Document excluding or limiting the Facility Agent’s liability, any liability of the Facility Agent arising under or in connection with any Transaction Document or the Security Property shall be limited to the amount of actual loss which has been finally judicially determined to have been suffered (as determined by reference to the date of default of the Facility Agent or, if later, the date on which the loss arises as a

result of such default) but without reference to any special conditions or circumstances known to the Facility Agent at any time which increase the amount of that loss. In no event shall the Facility Agent be liable for any loss of profits, goodwill, reputation, business opportunity or anticipated saving, or for special, punitive, indirect or consequential damages, whether or not the Facility Agent has been advised of the possibility of such loss or damages.

### **30.12 Lenders' indemnity to the Facility Agent**

- (a) Each Lender shall (in proportion to its share of the Total Commitments or, if the Total Commitments are then zero, to its share of the Total Commitments immediately prior to their reduction to zero) indemnify the Facility Agent, within three Business Days of demand, against any cost, loss or liability incurred by the Facility Agent (otherwise than by reason of the Facility Agent's gross negligence or wilful misconduct) (or, in the case of any cost, loss or liability pursuant to Clause 35.11 (*Disruption to Payment Systems etc.*) notwithstanding the Facility Agent's negligence, gross negligence or any other category of liability whatsoever but not including any claim based on the fraud of the Facility Agent) in acting as Facility Agent under the Finance Documents (unless the Facility Agent has been reimbursed by a Transaction Obligor pursuant to a Finance Document).
- (b) Subject to paragraph (c) below, the Lenders shall have the right to demand from the Borrowers to directly indemnify the Facility Agent for any payment that the Lenders are obliged to make pursuant to paragraph (a) above and failing such direct payment, the Borrowers shall immediately on demand reimburse any Lender for any payment that Lender makes to the Facility Agent pursuant to paragraph (a) above.
- (c) Paragraph (b) above shall not apply to the extent that the indemnity payment in respect of which the Lender claims reimbursement relates to a liability of the Facility Agent to an Obligor.

### **30.13 Resignation of the Facility Agent**

- (a) The Facility Agent may resign and appoint one of its Affiliates as successor by giving notice to the other Finance Parties and the Borrowers.
- (b) Alternatively, the Facility Agent may resign by giving 30 days' notice to the other Finance Parties and the Borrowers, in which case the Majority Lenders may appoint a successor Facility Agent.
- (c) If the Majority Lenders have not appointed a successor Facility Agent in accordance with paragraph (b) above within 20 days after notice of resignation was given, the retiring Facility Agent may appoint a successor Facility Agent.
- (d) If the Facility Agent wishes to resign because (acting reasonably) it has concluded that it is no longer appropriate for it to remain as agent and the Facility Agent is entitled to appoint a successor Facility Agent under paragraph (c) above, the Facility Agent may (if it concludes (acting reasonably) that it is necessary to do so in order to persuade the proposed successor Facility Agent to become a party to this Agreement as Facility Agent) agree with the proposed successor Facility Agent amendments to this Clause 30 (*The Facility Agent and the Bookrunner*) and any other term of this Agreement dealing with the rights or obligations of the Facility Agent consistent with then current market practice for the appointment and protection of corporate trustees.

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- (e) The retiring Facility Agent shall make available to the successor Facility Agent such documents and records and provide such assistance as the successor Facility Agent may reasonably request for the purposes of performing its functions as Facility Agent under the Finance Documents. The Borrowers shall, within three Business Days of demand, reimburse the retiring Facility Agent for the amount of all costs and expenses (including legal fees) properly incurred by it in making available such documents and records and providing such assistance.
- (f) The Facility Agent's resignation notice shall only take effect upon the appointment of a successor.
- (g) Upon the appointment of a successor, the retiring Facility Agent shall be discharged from any further obligation in respect of the Finance Documents (other than its obligations under paragraph (e) above) but shall remain entitled to the benefit of Clause 14.4 (*Indemnity to the Facility Agent and Sinasure*) and this Clause 30 (*The Facility Agent and the Bookrunner*) and any other provisions of a Finance Document which are expressed to limit or exclude its liability (or to indemnify it) in acting as Facility Agent. Any fees for the account of the retiring Facility Agent shall cease to accrue from (and shall be payable on) that date. Any successor and each of the other Parties shall have the same rights and obligations amongst themselves as they would have had if such successor had been an original Party.
- (h) The Majority Lenders may, by notice to the Facility Agent, require it to resign in accordance with paragraph (b) above. In this event, the Facility Agent shall resign in accordance with paragraph (b) above but the cost referred to in paragraph (e) above shall be for the account of the Borrowers.
- (i) The consent of any Borrower (or any other Transaction Obligor) is not required for an assignment or transfer of rights and/or obligations by the Facility Agent.
- (j) The Facility Agent shall resign in accordance with paragraph (b) above (and, to the extent applicable, shall use reasonable endeavours to appoint a successor Facility Agent pursuant to paragraph (c) above) if on or after the date which is three months before the earliest FATCA Application Date relating to any payment to the Facility Agent under the Finance Documents, either:
- (i) the Facility Agent fails to respond to a request under Clause 12.7 (*FATCA Information*) and a Lender reasonably believes that the Facility Agent will not be (or will have ceased to be) a FATCA Exempt Party on or after that FATCA Application Date;
  - (ii) the information supplied by the Facility Agent pursuant to Clause 12.7 (*FATCA Information*) indicates that the Facility Agent will not be (or will have ceased to be) a FATCA Exempt Party on or after that FATCA Application Date; or
  - (iii) the Facility Agent notifies the Borrowers and the Lenders that the Facility Agent will not be (or will have ceased to be) a FATCA Exempt Party on or after that FATCA Application Date;

and (in each case) a Lender reasonably believes that a Party will be required to make a FATCA Deduction that would not be required if the Facility Agent were a FATCA Exempt Party, and that Lender, by notice to the Facility Agent, requires it to resign.

### 30.14 Confidentiality

- (a) In acting as Facility Agent for the Finance Parties, the Facility Agent shall be regarded as acting through its agency division which shall be treated as a separate entity from any other of its divisions or departments.
- (b) If information is received by a division or department of the Facility Agent other than the division or department responsible for complying with the obligations assumed by it under the Finance Documents, that information may be treated as confidential to that division or department, and the Facility Agent shall not be deemed to have notice of it nor shall it be obliged to disclose such information to any Party.
- (c) Notwithstanding any other provision of any Finance Document to the contrary, neither the Facility Agent nor the Bookrunner 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.

### 30.15 Relationship with the other Finance Parties

- (a) Subject to Clause 28.9 (*Pro rata interest settlement*), the Facility Agent may treat the person shown in its records as Lender or Hedge Counterparty at the opening of business (in the place of the Facility Agent's principal office as notified to the Finance Parties from time to time) as the Lender acting through its Facility Office or, as the case may be, the Hedge Counterparty:
  - (i) entitled to or liable for any payment due under any Finance Document on that day; and
  - (ii) entitled to receive and act upon any notice, request, document or communication or make any decision or determination under any Finance Document made or delivered on that day,unless it has received not less than five Business Days' prior notice from that Lender or Hedge Counterparty to the contrary in accordance with the terms of this Agreement.
- (b) Each Finance Party shall supply the Facility Agent with any information that the Security Agent may reasonably specify (through the Facility Agent) as being necessary or desirable to enable the Security Agent to perform its functions as Security Agent. Each Finance Party shall deal with the Security Agent exclusively through the Facility Agent and shall not deal directly with the Security Agent and any reference to any instructions being given by or sought from any Finance Party or group of Finance Parties by or to the Security Agent in this Agreement must be given or sought through the Facility Agent.
- (c) Any Lender may by notice to the Facility Agent appoint a person to receive on its behalf all notices, communications, information and documents to be made or despatched to that Lender under the Finance Documents. Such notice shall contain the address, fax number and (where communication by electronic mail or other electronic means is permitted under Clause 38.5 (*Electronic communication*)) electronic mail address and/or any other information required to enable the transmission of information by that means (and, in each case, the department or officer, if any, for whose attention communication is to be made) and be treated as a notification of a substitute address, fax number, electronic mail address (or such other information), department and officer by that Lender for the purposes of Clause 38.2 (*Addresses*) and sub-paragraph (ii) of paragraph (a) of Clause 38.5 (*Electronic communication*) and the Facility Agent shall be entitled to treat such person as the person entitled to receive all such notices, communications, information and documents as though that person were that Lender.

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

Without affecting the responsibility of any Transaction Obligor for information supplied by it or on its behalf in connection with any Transaction Document, each Finance Party confirms to the Facility Agent and the Bookrunner that it has been, and will continue to be, solely responsible for making its own independent appraisal and investigation of all risks arising under, or in connection with, any Transaction Document including but not limited to:

- (a) the financial condition, status and nature of each member of the Group;
- (b) the legality, validity, effectiveness, adequacy or enforceability of any Transaction Document, the Security Property and any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Transaction Document or the Security Property;
- (c) whether that Finance Party has recourse, and the nature and extent of that recourse, against any Party or any of its respective assets under, or in connection with, any Transaction Document, the Security Property, the transactions contemplated by the Transaction Documents or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Transaction Document or the Security Property;
- (d) the adequacy, accuracy or completeness of any information provided by the Facility Agent, any Party or by any other person under, or in connection with, any Transaction Document, the transactions contemplated by any Transaction Document or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Transaction Document; and
- (e) the right or title of any person in or to or the value or sufficiency of any part of the Security Assets, the priority of any of the Transaction Security or the existence of any Security affecting the Security Assets.

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

Any amount payable to the Facility Agent under Clause 14.4 (*Indemnity to the Facility Agent*), Clause 16 (*Costs and Expenses*) and Clause 30.12 (*Lenders' indemnity to the Facility Agent*) shall include the cost of utilising the Facility Agent's management time or other resources and will be calculated on the basis of such reasonable daily or hourly rates as the Facility Agent may notify to the Borrowers and the other Finance Parties, and is in addition to any fee paid or payable to the Facility Agent under Clause 11 (*Fees and Sinosure Premium*).

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

If any Party owes an amount to the Facility Agent under the Finance Documents, the Facility Agent may, after giving notice to that Party, deduct an amount not exceeding that amount from any payment to that Party which the Facility Agent would otherwise be obliged to make under the Finance Documents and apply the amount deducted in or towards satisfaction of the amount owed. For the purposes of the Finance Documents that Party shall be regarded as having received any amount so deducted.

### 30.19 Reliance and engagement letters

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

### 30.20 Full freedom to enter into transactions

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

- (a) to enter into and arrange banking, derivative, investment and/or other transactions of every kind with or affecting any Transaction Obligor or any person who is party to, or referred to in, a Finance Document (including, but not limited to, any interest or currency swap or other transaction, whether related to this Agreement or not, and acting as syndicate agent and/or security agent for, and/or participating in, other facilities to such Transaction Obligor or any person who is party to, or referred to in, a Finance Document);
- (b) to deal in and enter into and arrange transactions relating to:
  - (i) any securities issued or to be issued by any Transaction Obligor or any other person; or
  - (ii) any options or other derivatives in connection with such securities; and
- (c) to provide advice or other services to any Borrower or any person who is a party to, or referred to in, a Finance Document, and, in particular, the Facility Agent shall be absolutely entitled, in proposing, evaluating, negotiating, entering into and arranging all such transactions and in connection with all other matters covered by paragraphs (a), (b) and (c) above, to use (subject only to insider dealing legislation) any information or opportunity, howsoever acquired by it, to pursue its own interests exclusively, to refrain from disclosing such dealings, transactions or other matters or any information acquired in connection with them and to retain for its sole benefit all profits and benefits derived from the dealings transactions or other matters.

### 30.21 Amounts paid in error

- (a) If the Facility Agent pays an amount to another Party and the Facility Agent notifies that Party that such payment was an Erroneous Payment then the Party to whom that amount was paid by the Facility Agent shall on demand refund the same to the Facility Agent together with interest on that amount from the date of payment to the date of receipt by the Facility Agent, calculated by the Facility Agent to reflect its cost of funds.
- (b) Neither:
  - (i) the obligations of any Party to the Facility Agent; nor

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- (ii) the remedies of the Facility Agent,  
(whether arising under this Clause 30.21 (*Amounts paid in error*) or otherwise) which relate to an Erroneous Payment will be affected by any act, omission, matter or thing which, but for this paragraph (b), would reduce, release or prejudice any such obligation or remedy (whether or not known by the Facility Agent or any other Party).
  - (c) All payments to be made by a Party to the Facility Agent (whether made pursuant to this Clause 30.21 (*Amounts paid in error*) or otherwise) which relate to an Erroneous Payment shall be calculated and be made without (and free and clear of any deduction for) set-off or counterclaim.
  - (d) In this Agreement, “**Erroneous Payment**” means a payment of an amount by the Facility Agent to another Party which the Facility Agent determines (in its sole discretion) was made in error.

## THE SECURITY AGENT

### 31.1 Trust

- (a) The Security Agent declares that it holds the Security Property on trust for the Secured Parties on the terms contained in this Agreement and shall deal with the Security Property in accordance with this Clause 31 (*The Security Agent*) and the other provisions of the Finance Documents.
- (b) Each other Finance Party authorises the Security Agent to perform the duties, obligations and responsibilities and to exercise the rights, powers, authorities and discretions specifically given to the Security Agent under, or in connection with, the Finance Documents together with any other incidental rights, powers, authorities and discretions.

### 31.2 Parallel Debt (Covenant to pay the Security Agent)

- (a) Each Borrower irrevocably and unconditionally undertakes to pay to the Security Agent its Parallel Debt which shall be amounts equal to, and in the currency or currencies of, its Corresponding Debt.
- (b) The Parallel Debt of a Borrower:
  - (i) shall become due and payable at the same time as its Corresponding Debt;
  - (ii) is independent and separate from, and without prejudice to, its Corresponding Debt.
- (c) For the purposes of this Clause 31.2 (*Parallel Debt (Covenant to pay the Security Agent)*), the Security Agent:
  - (i) is the independent and separate creditor of each Parallel Debt;
  - (ii) acts in its own name and not as agent, representative or trustee of the Finance Parties and its claims in respect of each Parallel Debt shall not be held on trust; and
  - (iii) shall have the independent and separate right to demand payment of each Parallel Debt in its own name (including, without limitation, through any suit, execution, enforcement of security, recovery of guarantees and applications for and voting in any kind of insolvency proceeding).

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- (d) The Parallel Debt of a Borrower shall be:
- (i) decreased to the extent that its Corresponding Debt has been irrevocably and unconditionally paid or discharged; and
  - (ii) increased to the extent that its Corresponding Debt has increased,
- and the Corresponding Debt of a Borrower shall be decreased to the extent that its Parallel Debt has been irrevocably and unconditionally paid or discharged,
- in each case provided that the Parallel Debt of a Borrower shall never exceed its Corresponding Debt.
- (e) All amounts received or recovered by the Security Agent in connection with this Clause 31.2 (*Parallel Debt (Covenant to pay the Security Agent)*) to the extent permitted by applicable law, shall be applied in accordance with Clause 35.5 (*Application of receipts; partial payments*).
- (f) This Clause 31.2 (*Parallel Debt (Covenant to pay the Security Agent)*) shall apply, with any necessary modifications, to each Finance Document.

### **31.3 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.

### **31.4 Instructions**

- (a) The Security Agent shall:
- (i) unless a contrary indication appears in a Finance Document, exercise or refrain from exercising any right, power, authority or discretion vested in it as Security Agent in accordance with any instructions given to it by:
    - (A) all Lenders (or the Facility Agent on their behalf) if the relevant Finance Document stipulates the matter is an all Lender decision; and
    - (B) in all other cases, the Majority Lenders (or the Facility Agent on their behalf); and
  - (ii) not be liable for any act (or omission) if it acts (or refrains from acting) in accordance with sub-paragraph (i) above (or if this Agreement stipulates the matter is a decision for any other Finance Party or group of Finance Parties, in accordance with instructions given to it by that Finance Party or group of Finance Parties).
- (b) The Security Agent shall be entitled to request instructions, or clarification of any instruction, from the Majority Lenders (or the Facility Agent on their behalf) (or, if the relevant Finance Document stipulates the matter is a decision for any other Finance Party or group of Finance Parties, from that Finance Party or group of Finance Parties) as to whether, and in what manner, it should exercise or refrain from exercising any right, power, authority or discretion and the Security Agent may refrain from acting unless and until it receives any such instructions or clarification that it has requested.



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- (c) Save in the case of decisions stipulated to be a matter for any other Finance Party or group of Finance Parties under the relevant Finance Document and unless a contrary indication appears in a Finance Document, any instructions given to the Security Agent by the Majority Lenders shall override any conflicting instructions given by any other Parties and will be binding on all Finance Parties.
- (d) Paragraph (a) above shall not apply:
- (i) where a contrary indication appears in a Finance Document;
  - (ii) where a Finance Document requires the Security Agent to act in a specified manner or to take a specified action;
  - (iii) in respect of any provision which protects the Security Agent's own position in its personal capacity as opposed to its role of Security Agent for the relevant Secured Parties.
  - (iv) in respect of the exercise of the Security Agent's discretion to exercise a right, power or authority under any of:
    - (A) Clause 31.28 (*Application of receipts*);
    - (B) Clause 31.29 (*Permitted Deductions*); and
    - (C) Clause 31.30 (*Prospective liabilities*).
- (e) If giving effect to instructions given by the Majority Lenders would in the Security Agent's opinion have an effect equivalent to an amendment or waiver referred to in Clause 45 (*Amendments and Waivers*), the Security Agent shall not act in accordance with those instructions unless consent to it so acting is obtained from each Party (other than the Security Agent) whose consent would have been required in respect of that amendment or waiver.
- (f) In exercising any discretion to exercise a right, power or authority under the Finance Documents where either:
- (i) it has not received any instructions as to the exercise of that discretion; or
  - (ii) the exercise of that discretion is subject to sub-paragraph (iv) of paragraph (d) above,
- the Security Agent shall do so having regard to the interests of all the Secured Parties.
- (g) The Security Agent may refrain from acting in accordance with any instructions of any Finance Party or group of Finance Parties until it has received any indemnification and/or security that it may in its discretion require (which may be greater in extent than that contained in the Finance Documents and which may include payment in advance) for any cost, loss or liability (together with any applicable VAT) which it may incur in complying with those instructions.
- (h) Without prejudice to the remainder of this Clause 31.4 (*Instructions*), in the absence of instructions, the Security Agent may (but shall not be obliged to) take such action in the exercise of its powers and duties under the Finance Documents as it considers in its discretion to be appropriate.

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- (i) The Security Agent is not authorised to act on behalf of a Finance Party (without first obtaining that Finance Party's consent) in any legal or arbitration proceedings relating to any Finance Document. This paragraph (i) shall not apply to any legal or arbitration proceeding relating to the perfection, preservation or protection of rights under the Security Documents or enforcement of the Transaction Security or Security Documents.

### **31.5 Duties of the Security Agent**

- (a) The Security Agent's duties under the Finance Documents are solely mechanical and administrative in nature.
- (b) The Security Agent shall promptly forward to a Party the original or a copy of any document which is delivered to the Security Agent for that Party by any other Party.
- (c) Except where a Finance Document specifically provides otherwise, the Security Agent is not obliged to review or check the adequacy, accuracy or completeness of any document it forwards to another Party.
- (d) If the Security Agent receives notice from a Party referring to any Finance Document, describing a Default and stating that the circumstance described is a Default, it shall promptly notify the other Finance Parties.
- (e) The Security Agent shall have only those duties, obligations and responsibilities expressly specified in the Finance Documents to which it is expressed to be a party (and no others shall be implied).

### **31.6 No fiduciary duties**

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

### **31.7 Business with the Group**

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

### **31.8 Rights and discretions**

- (a) The Security Agent may:
  - (i) rely on any representation, communication, notice or document believed by it to be genuine, correct and appropriately authorised;
  - (ii) assume that:
    - (A) any instructions received by it from the Majority Lenders, any Finance Parties or any group of Finance Parties are duly given in accordance with the terms of the Finance Documents;

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- (B) unless it has received notice of revocation, that those instructions have not been revoked;
  - (C) if it receives any instructions to act in relation to the Transaction Security, that all applicable conditions under the Finance Documents for so acting have been satisfied; and
- (iii) rely on a certificate from any person:
- (A) as to any matter of fact or circumstance which might reasonably be expected to be within the knowledge of that person; or
  - (B) to the effect that such person approves of any particular dealing, transaction, step, action or thing,  
as sufficient evidence that that is the case and, in the case of paragraph (A) above, may assume the truth and accuracy of that certificate.
- (b) The Security Agent shall be entitled to carry out all dealings with the other Finance Parties through the Facility Agent and may give to the Facility Agent any notice or other communication required to be given by the Security Agent to any Finance Party.
- (c) The Security Agent may assume (unless it has received notice to the contrary in its capacity as security agent for the Secured Parties) that:
- (i) no Default has occurred;
  - (ii) any right, power, authority or discretion vested in any Party or any group of Finance Parties has not been exercised; and
  - (iii) any notice or request made by any Borrower (other than a Utilisation Request or a Selection Notice) is made on behalf of and with the consent and knowledge of all the Transaction Obligors.
- (d) The Security Agent may engage and pay for the advice or services of any lawyers, accountants, tax advisers, surveyors or other professional advisers or experts.
- (e) Without prejudice to the generality of paragraph (c) above or paragraph (f) below, the Security Agent may at any time engage and pay for the services of any lawyers to act as independent counsel to the Security Agent (and so separate from any lawyers instructed by the Facility Agent or the Lenders) if the Security Agent in its reasonable opinion deems this to be desirable.
- (f) The Security Agent may rely on the advice or services of any lawyers, accountants, tax advisers, surveyors or other professional advisers or experts (whether obtained by the Security Agent or by any other Party) and shall not be liable for any damages, costs or losses to any person, any diminution in value or any liability whatsoever arising as a result of its so relying.
- (g) The Security Agent may act in relation to the Finance Documents and the Security Property through its officers, employees and agents and shall not:
- (i) be liable for any error of judgment made by any such person; or

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- (ii) be bound to supervise, or be in any way responsible for any loss incurred by reason of misconduct, omission or default on the part of any such person,  
unless such error or such loss was directly caused by the Security Agent's gross negligence or wilful misconduct.
  - (h) Unless a Finance Document expressly provides otherwise the Security Agent may disclose to any other Party any information it reasonably believes it has received as security agent under the Finance Documents.
  - (i) Notwithstanding any other provision of any Finance Document to the contrary, the Security Agent is not obliged to do or omit to do anything if it would or might, in its reasonable opinion, constitute a breach of any law or regulation or a breach of a fiduciary duty or duty of confidentiality.
  - (j) Notwithstanding any provision of any Finance Document to the contrary, the Security Agent is not obliged to expend or risk its own funds or otherwise incur any financial liability in the performance of its duties, obligations or responsibilities or the exercise of any right, power, authority or discretion if it has grounds for believing the repayment of such funds or adequate indemnity against, or security for, such risk or liability is not reasonably assured to it.

### **31.9 Responsibility for documentation**

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

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

### **31.10 No duty to monitor**

The Security Agent shall not be bound to enquire:

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

### 31.11 Exclusion of liability

- (a) Without limiting paragraph (b) below (and without prejudice to any other provision of any Finance Document excluding or limiting the liability of the Security Agent or any Receiver or Delegate), none of the Security Agent nor any Receiver or Delegate will be liable for:
- (i) any damages, costs or losses to any person, any diminution in value, or any liability whatsoever arising as a result of taking or not taking any action under or in connection with any Transaction Document or the Security Property, unless directly caused by its gross negligence or wilful misconduct;
  - (ii) exercising, or not exercising, any right, power, authority or discretion given to it by, or in connection with, any Transaction Document, the Security Property or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with, any Transaction Document or the Security Property; or
  - (iii) any shortfall which arises on the enforcement or realisation of the Security Property; or
  - (iv) without prejudice to the generality of sub-paragraphs (i) to (iii) above, any damages, costs or losses to any person, any diminution in value or any liability whatsoever arising as a result of:
    - (A) any act, event or circumstance not reasonably within its control; or
    - (B) the general risks of investment in, or the holding of assets in, any jurisdiction, including (in each case and without limitation) such damages, costs, losses, diminution in value or liability arising as a result of nationalisation, expropriation or other governmental actions; any regulation, currency restriction, devaluation or fluctuation; market conditions affecting the execution or settlement of transactions or the value of assets (including any Disruption Event); breakdown, failure or malfunction of any third party transport, telecommunications, computer services or systems; natural disasters or acts of God; war, terrorism, insurrection or revolution; or strikes or industrial action.
- (b) No Party other than the Security Agent, that Receiver or that Delegate (as applicable) may take any proceedings against any officer, employee or agent of the Security Agent, a Receiver or a Delegate in respect of any claim it might have against the Security Agent, a Receiver or a Delegate or in respect of any act or omission of any kind by that officer, employee or agent in relation to any Transaction Document or any Security Property and any officer, employee or agent of the Security Agent, a Receiver or a Delegate may rely on this paragraph (b) subject to Clause 1.5 (*Third party rights*) and the provisions of the Third Parties Act.
- (c) The Security Agent will not be liable for any delay (or any related consequences) in crediting an account with an amount required under the Finance Documents to be paid by the Security Agent if the Security Agent has taken all necessary steps as soon as reasonably practicable to comply with the regulations or operating procedures of any recognised clearing or settlement system used by the Security Agent for that purpose.

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- (d) Nothing in this Agreement shall oblige the Security Agent to carry out:
- (i) any “know your customer” or other checks in relation to any person; or
  - (ii) any check on the extent to which any transaction contemplated by this Agreement might be unlawful for any Finance Party,
- on behalf of any Finance Party and each Finance Party confirms to the Security Agent that it is solely responsible for any such checks it is required to carry out and that it may not rely on any statement in relation to such checks made by the Security Agent.
- (e) Without prejudice to any provision of any Finance Document excluding or limiting the liability of the Security Agent or any Receiver or Delegate, any liability of the Security Agent or any Receiver or Delegate arising under or in connection with any Transaction Document or the Security Property shall be limited to the amount of actual loss which has been finally judicially determined to have been suffered (as determined by reference to the date of default of the Security Agent. Receiver or Delegate or, if later, the date on which the loss arises as a result of such default) but without reference to any special conditions or circumstances known to the Security Agent, any Receiver or Delegate at any time which increase the amount of that loss. In no event shall the Security Agent, any Receiver or Delegate be liable for any loss of profits, goodwill, reputation, business opportunity or anticipated saving, or for special, punitive, indirect or consequential damages, whether or not the Security Agent, the Receiver or Delegate has been advised of the possibility of such loss or damages.

#### **31.12 Lenders’ indemnity to the Security Agent**

- (a) Each Lender shall (in proportion to its share of the Total Commitments or, if the Total Commitments are then zero, to its share of the Total Commitments immediately prior to their reduction to zero) indemnify the Security Agent and every Receiver and every Delegate, within three Business Days of demand, against any cost, loss or liability incurred by any of them (otherwise than by reason of the Security Agent’s, Receiver’s or Delegate’s gross negligence or wilful misconduct) in acting as Security Agent, Receiver or Delegate under the Finance Documents (unless the Security Agent, Receiver or Delegate has been reimbursed by a Transaction Obligor pursuant to a Finance Document).
- (b) Subject to paragraph (c) below, the Lenders shall have the right to demand from the Borrowers to directly indemnify the Security Agent for any payment that the Lenders are obliged to make pursuant to paragraph (a) above and failing such direct payment, the Borrowers shall immediately on demand reimburse any Lender for any payment that Lender makes to the Security Agent pursuant to paragraph (a) above.
- (c) Paragraph (b) above shall not apply to the extent that the indemnity payment in respect of which the Lender claims reimbursement relates to a liability of the Security Agent to an Obligor.

#### **31.13 Resignation of the Security Agent**

- (a) The Security Agent may resign and appoint one of its Affiliates as successor by giving notice to the other Finance Parties and the Borrowers.
- (b) Alternatively, the Security Agent may resign by giving 30 days’ notice to the other Finance Parties and the Borrowers, in which case the Majority Lenders may appoint a successor Security Agent.

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- (c) If the Majority Lenders have not appointed a successor Security Agent in accordance with paragraph (b) above within 20 days after notice of resignation was given, the retiring Security Agent may appoint a successor Security Agent.
  - (d) The retiring Security Agent shall make available to the successor Security Agent such documents and records and provide such assistance as the successor Security Agent may reasonably request for the purposes of performing its functions as Security Agent under the Finance Documents. The Borrowers shall, within three Business Days of demand, reimburse the retiring Security Agent for the amount of all costs and expenses (including legal fees) properly incurred by it in making available such documents and records and providing such assistance.
  - (e) The Security Agent's resignation notice shall only take effect upon:
    - (i) the appointment of a successor; and
    - (ii) the transfer, by way of a document expressed as a deed, of all the Security Property to that successor.
  - (f) Upon the appointment of a successor, the retiring Security Agent shall be discharged, by way of a document executed as a deed, from any further obligation in respect of the Finance Documents (other than its obligations under paragraph (b) of Clause 31.25 (*Winding up of trust*) and paragraph (d) above) but shall remain entitled to the benefit of Clause 14.5 (*Indemnity to the Security Agent*) and this Clause 31 (*The Security Agent*) and any other provisions of a Finance Document which are expressed to limit or exclude its liability (or to indemnify it) in acting as Security Agent. Any fees for the account of the retiring Security Agent shall cease to accrue from (and shall be payable on) that date. Any successor and each of the other Parties shall have the same rights and obligations amongst themselves as they would have had if such successor had been an original Party.
  - (g) The Majority Lenders may, by notice to the Security Agent, require it to resign in accordance with paragraph (b) above. In this event, the Security Agent shall resign in accordance with paragraph (b) above but the cost referred to in paragraph (d) above shall be for the account of the Borrowers.
  - (h) The consent of any Borrower (or any other Transaction Obligor) is not required for an assignment or transfer of rights and/or obligations by the Security Agent.

#### **31.14 Confidentiality**

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

### 31.15 Credit appraisal by the Finance Parties

Without affecting the responsibility of any Transaction Obligor for information supplied by it or on its behalf in connection with any Transaction Document, each Finance Party confirms to the Security Agent that it has been, and will continue to be, solely responsible for making its own independent appraisal and investigation of all risks arising under, or in connection with, any Transaction Document including but not limited to:

- (a) the financial condition, status and nature of each member of the Group;
- (b) the legality, validity, effectiveness, adequacy or enforceability of any Transaction Document, the Security Property and any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Transaction Document or the Security Property;
- (c) whether that Finance Party has recourse, and the nature and extent of that recourse, against any Party or any of its respective assets under, or in connection with, any Transaction Document, the Security Property, the transactions contemplated by the Transaction Documents or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Transaction Document or the Security Property;
- (d) the adequacy, accuracy or completeness of any information provided by the Security Agent, any Party or by any other person under, or in connection with, any Transaction Document, the transactions contemplated by any Transaction Document or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Transaction Document; and
- (e) the right or title of any person in or to or the value or sufficiency of any part of the Security Assets, the priority of any of the Transaction Security or the existence of any Security affecting the Security Assets.

### 31.16 Security Agent's management time

- (a) Any amount payable to the Security Agent under Clause 14.5 (*Indemnity to the Security Agent*), Clause 16 (*Costs and Expenses*) and Clause 31.12 (*Lenders' indemnity to the Security Agent*) shall include the cost of utilising the Security Agent's management time or other resources and will be calculated on the basis of such reasonable daily or hourly rates as the Security Agent may notify to the Borrowers and the other Finance Parties, and is in addition to any fee paid or payable to the Security Agent under Clause 11 (*Fees and Sinosure Premium*).
- (b) Without prejudice to paragraph (a) above, in the event of:
  - (i) a Default;
  - (ii) the Security Agent being requested by a Transaction Obligor or the Majority Lenders to undertake duties which the Security Agent and the Borrowers agree to be of an exceptional nature or outside the scope of the normal duties of the Security Agent under the Finance Documents; or



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

#### **31.17 Reliance and engagement letters**

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

#### **31.18 No responsibility to perfect Transaction Security**

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

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

#### **31.19 Insurance by Security Agent**

- (a) The Security Agent shall not be obliged:
  - (i) to insure any of the Security Assets;

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

#### **31.20 Custodians and nominees**

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

#### **31.21 Delegation by the Security Agent**

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

#### **31.22 Additional Security Agents**

- (a) The Security Agent may at any time appoint (and subsequently remove) any person to act as a separate trustee or as a co-trustee jointly with it:
  - (i) if it considers that appointment to be in the interests of the Secured Parties; or
  - (ii) for the purposes of conforming to any legal requirement, restriction or condition which the Security Agent deems to be relevant; or
  - (iii) for obtaining or enforcing any judgment in any jurisdiction,and the Security Agent shall give prior notice to the Borrowers and the Finance Parties of that appointment.

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- (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.

### **31.23 Acceptance of title**

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

### **31.24 Releases**

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

### **31.25 Winding up of trust**

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

- (a) all of the Secured Liabilities and all other obligations secured by the Security Documents have been fully and finally discharged; and
  - (b) no Secured Party is under any commitment, obligation or liability (actual or contingent) to make advances or provide other financial accommodation to any Transaction Obligor pursuant to the Finance Documents,
- then
- (i) the trusts set out in this Agreement shall be wound up and the Security Agent shall release, without recourse or warranty, all of the Transaction Security and the rights of the Security Agent under each of the Security Documents; and
  - (ii) any Security Agent which has resigned pursuant to Clause 31.13 (*Resignation of the Security Agent*) shall release, without recourse or warranty, all of its rights under each Security Document.

### **31.26 Powers supplemental to Trustee Acts**

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

### 31.27 Disapplication of Trustee Acts

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

### 31.28 Application of receipts

All amounts from time to time received or recovered by the Security Agent pursuant to the terms of any Finance Document, under Clause 31.2 (*Parallel Debt (Covenant to pay the Security Agent)*) or in connection with the realisation or enforcement of all or any part of the Security Property (for the purposes of this Clause 31 (*The Security Agent*)), the “**Recoveries**”) shall be held by the Security Agent on trust to apply them at any time as the Security Agent (in its discretion) sees fit, to the extent permitted by applicable law (and subject to the remaining provisions of this Clause 31 (*The Security Agent*)), in the following order of priority:

- (a) in discharging any sums owing to the Security Agent (in its capacity as such) other than pursuant to Clause 31.2 (*Parallel Debt (Covenant to pay the Security Agent)*) or any Receiver or Delegate;
- (b) in payment or distribution to the Facility Agent, on its behalf and on behalf of the other Secured Parties, for application towards the discharge of all sums due and payable by any Transaction Obligor under any of the Finance Documents in accordance with Clause 35.5 (*Application of receipts; partial payments*);
- (c) if none of the Transaction Obligors is under any further actual or contingent liability under any Finance Document, in payment or distribution to any person to whom the Security Agent is obliged to pay or distribute in priority to any Transaction Obligor; and
- (d) the balance, if any, in payment or distribution to the relevant Transaction Obligor.

### 31.29 Permitted Deductions

The Security Agent may, in its discretion:

- (a) 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
- (b) 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).

### **31.30 Prospective liabilities**

Following enforcement of any of the Transaction Security, the Security Agent may, in its discretion, or at the request of the Facility Agent, hold any Recoveries in an interest bearing suspense or impersonal account(s) in the name of the Security Agent with such financial institution (including itself) and for so long as the Security Agent shall think fit (the interest being credited to the relevant account) for later payment to the Facility Agent for application in accordance with Clause 31.28 (*Application of receipts*) in respect of:

- (a) any sum to the Security Agent, any Receiver or any Delegate; and
- (b) any part of the Secured Liabilities,

that the Security Agent or, in the case of paragraph (b) only, the Facility Agent, reasonably considers, in each case, might become due or owing at any time in the future.

### **31.31 Investment of proceeds**

Prior to the payment of the proceeds of the Recoveries to the Facility Agent for application in accordance with Clause 31.28 (*Application of receipts*) the Security Agent may, in its discretion, hold all or part of those proceeds in an interest bearing suspense or impersonal account(s) in the name of the Security Agent with such financial institution (including itself) and for so long as the Security Agent shall think fit (the interest being credited to the relevant account) pending the payment from time to time of those moneys in the Security Agent's discretion in accordance with the provisions of Clause 31.28 (*Application of receipts*).

### **31.32 Currency conversion**

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

### **31.33 Good discharge**

- (a) Any payment to be made in respect of the Secured Liabilities by the Security Agent may be made to the Facility Agent on behalf of the Secured Parties and any payment made in that way shall be a good discharge, to the extent of that payment, by the Security Agent.
- (b) The Security Agent is under no obligation to make the payments to the Facility Agent under paragraph (a) above in the same currency as that in which the obligations and liabilities owing to the relevant Finance Party are denominated.

### **31.34 Amounts received by Obligors**

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

### **31.35 Application and consideration**

In consideration for the covenants given to the Security Agent by each Obligor in relation to Clause 31.2 (*Parallel Debt (Covenant to pay the Security Agent)*), the Security Agent agrees with each Obligor to apply all moneys from time to time paid by such Obligor to the Security Agent in accordance with the foregoing provisions of this Clause 31 (*The Security Agent*).

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

Without prejudice to Clause 31.7 (*Business with the Group*) or any other provision of a Finance Document and notwithstanding any rule of law or equity to the contrary, the Security Agent shall be absolutely entitled:

- (a) to enter into and arrange banking, derivative, investment and/or other transactions of every kind with or affecting any Transaction Obligor or any person who is party to, or referred to in, a Finance Document (including, but not limited to, any interest or currency swap or other transaction, whether related to this Agreement or not, and acting as syndicate agent and/or security agent for, and/or participating in, other facilities to such Transaction Obligor or any person who is party to, or referred to in, a Finance Document);
- (b) to deal in and enter into and arrange transactions relating to:
  - (i) any securities issued or to be issued by any Transaction Obligor or any other person; or
  - (ii) any options or other derivatives in connection with such securities; and
- (c) to provide advice or other services to the Borrowers or any person who is a party to, or referred to in, a Finance Document, and, in particular, the Security Agent shall be absolutely entitled, in proposing, evaluating, negotiating, entering into and arranging all such transactions and in connection with all other matters covered by paragraphs (a), (b) and (c) above, to use (subject only to insider dealing legislation) any information or opportunity, howsoever acquired by it, to pursue its own interests exclusively, to refrain from disclosing such dealings, transactions or other matters or any information acquired in connection with them and to retain for its sole benefit all profits and benefits derived from the dealings transactions or other matters.

## **THE SINOSURE AGENT**

### **32.1 Appointment and duties of Sinosure Agent**

- (a) Each Lender appoints the Sinosure Agent to act as its agent under and in connection with the Sinosure Policies and the Finance Documents in relation to matters involving Sinosure, and specifically any Sinosure Policy and payment of the Sinosure Premium.
- (b) Each Lender authorises the Sinosure Agent to exercise the rights, powers, authorities and discretions specifically given to the Sinosure Agent under, or in connection with, the Sinosure Policies and the Finance Documents together with any incidental rights, powers, authorities and discretions.
- (c) The Sinosure Agent shall promptly forward to each Lender the original or a copy of any document which is delivered to the Sinosure Agent by any other Party or by Sinosure.

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- (d) Except where a Sinosure Policy or a Finance Document specifically provides otherwise, the Sinosure Agent is not obliged to review or check the adequacy, accuracy or completeness of any document it forwards to another Party.
  - (e) The Sinosure Agent has only those duties which are expressly specified in the Finance Documents.
  - (f) The Sinosure Agent shall cooperate with the Lenders to:
    - (i) notify Sinosure of any amendment of or revision to, this Agreement within 10 days of the date of such amendment or revision;
    - (ii) submit to Sinosure a written report no later than 10 days after each Utilisation Date, each Repayment Date and the end of each Interest Period; and
    - (iii) notify Sinosure within 30 days of the date of any Event of Default of which it has been made aware.
  - (g) The Sinosure Agent's duties under the Sinosure Policies and the Finance Documents are solely mechanical and administrative in nature.

### **32.2 Application of certain Clauses**

The provisions of Clauses 30.7 (*Business with the Group*), 31.8 (*Rights and discretions*), 30.9 (*Responsibility for documentation*), 30.11 (*Exclusion of liability*), 30.12 (*Lenders' indemnity to the Facility Agent*), 30.13 (*Resignation of the Facility Agent*), 30.14 (*Confidentiality*) 30.15 (*Relationship with the other Finance Parties*), 31.15 (*Credit appraisal by the Finance Parties*) and 31.36 (*Full freedom to enter into transactions*) shall apply in respect of the Sinosure Agent and its capacity as if each reference to the Facility Agent were a reference to the Sinosure Agent and each reference to the Finance Documents or Transaction Documents included a reference to the Sinosure Policies.

### **32.3 Lenders' representations**

Each Lender represents and warrants to the Sinosure Agent that:

- (a) no information provided by it in writing to the Sinosure Agent or to Sinosure prior to the date of this Agreement was untrue or incorrect in any material respect except to the extent that it, in the exercise of reasonable care and due diligence prior to giving such information, could not have discovered the error or omission;
- (b) it has not taken (or failed to take), and agrees that it shall not take (or fail to take), any action that would result in the Sinosure Agent being in breach of any of its obligations in its capacity as Sinosure Agent under the Sinosure Policies or any of the Finance Documents, or result in the Lenders being in breach of any of their respective obligations as insured parties under the Sinosure Policy, or which would otherwise prejudice the Sinosure Agent's ability to make a claim on behalf of the Lenders under the Sinosure Policies;
- (c) it has reviewed the Sinosure Policies and is aware of their provisions; and
- (d) the representations and warranties made by the Sinosure Agent on its behalf under the Sinosure Policies are true and correct with respect to it in all respects.

#### 32.4 Claims under Sinosure Policies

- (a) All communication between the Finance Parties and Sinosure shall be carried out exclusively through the Sinosure Agent.
- (b) Each Lender acknowledges and agrees that it shall have no entitlement to make any claim or to take any action whatsoever under or in connection with the Sinosure Policies except through the Sinosure Agent and that all of the rights of the Lenders under the Sinosure Policies shall only be exercised by the Sinosure Agent.

#### 32.5 Application of receipts to Sinosure Premium

The Parties agree that any unpaid Sinosure Premium and any unpaid fees, costs and expenses of Sinosure shall constitute amounts then due and payable in respect of the Facility under the Finance Documents for the purposes of the amounts then due and payable in respect of paragraph (a) or (b) of Clause 35.5 (*Application of receipts; partial payments*).

#### 32.6 Sinosure Agent actions

The Sinosure Agent agrees to take such actions under the Sinosure Policies (including with respect to any amendment, modification or supplement to any of the Sinosure Policies) as may be directed on the unanimous instructions of the Lenders from time to time **Provided that**, notwithstanding anything herein or in the Sinosure Policies to the contrary, the Sinosure Agent shall not be obliged to take any such action or to expend or risk its own funds or otherwise incur any liability in the performance of any of its duties or the exercise of any of its rights or powers hereunder or thereunder if it shall have reasonable grounds for believing that repayment of such funds or adequate indemnity against such risk or liability is not reasonably assured to it or if such action would be contrary to applicable law.

#### 32.7 Sinosure Agent indemnity

Each Lender severally agrees to indemnify the Sinosure Agent and its Affiliates, and its and their respective officers, directors, employees and agents for all liabilities, damages, costs and expenses sustained or incurred by, or asserted against the Sinosure Agent or any of its Affiliates or its or their respective officers, directors, employees or agents arising out of or by reason of any action taken by the Sinosure Agent or any of its Affiliates or its or their respective officers, directors, employees or agents as a result of any misrepresentations and/or other breaches under Clause 32.3 (*Lenders' representations*), **Provided that** no Lender shall be liable for any of the foregoing to the extent these arise from the gross negligence or wilful misconduct of the Sinosure Agent. Each Lender expressly confirms and agrees that the Sinosure Agent shall not be liable for any loss caused as a result of the breach by any such Lender of its obligations under Clause 32.3 (*Lenders' representations*).

#### 32.8 Prior consultation with Sinosure

- (a) The Borrowers acknowledge that the Sinosure Agent and the Facility Agent may, under the terms of the Sinosure Policies, be required:
  - (i) to consult with Sinosure prior to the exercise of certain decisions under the Finance Documents to which they are a party (including the exercise of such voting rights in relation to any substantial amendment to any Finance Document); and
  - (ii) to follow certain instructions given by Sinosure.



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- (b) Each Finance Party will be deemed to have acted reasonably if it has acted on the instructions of the Sinosure Agent (in accordance with the terms of the Sinosure Policies) in the making of any such decision or the taking or refraining to take any action under any Finance Document to which it is a party.

**32.9 Action contrary to Sinosure instructions or to the Sinosure Policies etc.**

If, in respect of any matter in relation to or arising out of any of the Finance Documents where the approval, consent, authorisation or instruction of Sinosure is required under the terms of the Finance Documents or the Sinosure Policies, the Lenders or any one of more of them wish to take any step or action under or in relation to which conflicts with, or is contrary to, the provisions of any of the Sinosure Policies, or requires to the approval, consent, authorisation or instruction of Sinosure, such step or action may only be taken with the consent of all the Lenders.

**32.10 Liability of Sinosure Agent**

Neither the Sinosure Agent nor any of its directors, officers, employees or agents shall be liable to the Lenders for anything done or omitted to be done by the Sinosure Agent under or in connection with the Sinosure Policies, unless as a result of the Sinosure Agent's gross negligence or wilful misconduct.

**32.11 Resignation of Sinosure Agent**

- (a) The Sinosure 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 Sinosure Agent may resign by giving notice to the other Finance Parties and the Borrowers, in which case the Majority Lenders (after consultation with the Borrowers) may appoint a successor Sinosure Agent.
- (c) If the Majority Lenders have not appointed a successor Sinosure Agent in accordance with paragraph (b) above within 30 calendar days after notice of resignation was given, the Sinosure Agent (after consultation with the Borrowers) may appoint a successor Sinosure Agent.
- (d) The retiring Sinosure Agent shall, at the Borrowers' cost, make available to the successor Sinosure Agent such documents and records and provide such assistance as the successor Sinosure Agent may reasonably request for the purposes of performing its functions as Sinosure Agent under the Finance Documents.
- (e) The Sinosure Agent's resignation notice shall only take effect upon the appointment of a successor.
- (f) Upon the appointment of a successor, the retiring Sinosure Agent shall be discharged from any further obligation in respect of the Finance Documents but shall remain entitled to the benefit of this Clause 32 (*The Sinosure Agent*). Its 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 notice to the Sinosure Agent, require it to resign in accordance with paragraph (b) above. In this event, the Sinosure Agent shall resign in accordance with paragraph (b) above.

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## 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.

## SHARING AMONG THE FINANCE PARTIES

### 34.1 Payments to Finance Parties

If a Finance Party (a “**Recovering Finance Party**”) receives or recovers any amount from a Transaction Obligor other than in accordance with Clause 35 (*Payment Mechanics*) (a “**Recovered Amount**”) and applies that amount to a payment due to it under the Finance Documents then:

- (a) the Recovering Finance Party shall, within three Business Days, notify details of the receipt or recovery, to the Facility Agent;
- (b) the Facility Agent shall determine whether the receipt or recovery is in excess of the amount the Recovering Finance Party would have been paid had the receipt or recovery been received or made by the Facility Agent and distributed in accordance with Clause 35 (*Payment Mechanics*), without taking account of any Tax which would be imposed on the Facility Agent in relation to the receipt, recovery or distribution; and
- (c) the Recovering Finance Party shall, within three Business Days of demand by the Facility Agent, pay to the Facility Agent an amount (the “**Sharing Payment**”) equal to such receipt or recovery less any amount which the Facility Agent determines may be retained by the Recovering Finance Party as its share of any payment to be made, in accordance with Clause 35.5 (*Application of receipts; partial payments*).

### 34.2 Redistribution of payments

The Facility Agent shall treat the Sharing Payment as if it had been paid by the relevant Transaction Obligor and distribute it among the Finance Parties (other than the Recovering Finance Party) (the “**Sharing Finance Parties**”) in accordance with Clause 35.5 (*Application of receipts; partial payments*) towards the obligations of that Transaction Obligor to the Sharing Finance Parties.

### 34.3 Recovering Finance Party’s rights

On a distribution by the Facility Agent under Clause 34.2 (*Redistribution of payments*) of a payment received by a Recovering Finance Party from a Transaction Obligor, as between the relevant Transaction Obligor and the Recovering Finance Party, an amount of the Recovered Amount equal to the Sharing Payment will be treated as not having been paid by that Transaction Obligor.

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#### 34.4 Reversal of redistribution

If any part of the Sharing Payment received or recovered by a Recovering Finance Party becomes repayable and is repaid by that Recovering Finance Party, then:

- (a) each Sharing Finance Party shall, upon request of the Facility Agent, pay to the Facility Agent for the account of that Recovering Finance Party an amount equal to the appropriate part of its share of the Sharing Payment (together with an amount as is necessary to reimburse that Recovering Finance Party for its proportion of any interest on the Sharing Payment which that Recovering Finance Party is required to pay) (the “**Redistributed Amount**”); and
- (b) as between the relevant Transaction Obligor and each relevant Sharing Finance Party, an amount equal to the relevant Redistributed Amount will be treated as not having been paid by that Transaction Obligor.

#### 34.5 Exceptions

- (a) This Clause 34 (*Sharing among the Finance Parties*) shall not apply to the extent that the Recovering Finance Party would not, after making any payment pursuant to this Clause, have a valid and enforceable claim against the relevant Transaction Obligor.
- (b) A Recovering Finance Party is not obliged to share with any other Finance Party any amount which the Recovering Finance Party has received or recovered as a result of taking legal or arbitration proceedings, if:
  - (i) it notified that other Finance Party of the legal or arbitration proceedings; and
  - (ii) that other Finance Party had an opportunity to participate in those legal or arbitration proceedings but did not do so as soon as reasonably practicable having received notice and did not take separate legal or arbitration proceedings.

## SECTION 11

### ADMINISTRATION

#### PAYMENT MECHANICS

##### 35.1 Payments to the Facility Agent

- (a) On each date on which a Transaction Obligor or a Lender is required to make a payment under a Finance Document, that Transaction Obligor or Lender shall make an amount equal to such payment available to the Facility Agent (unless a contrary indication appears in a Finance Document) for value on the due date at the time and in such funds specified by the Facility Agent as being customary at the time for settlement of transactions in the relevant currency in the place of payment.
- (b) Payment shall be made to such account in the principal financial centre of the country of that currency (or, in relation to euro, in a principal financial centre in such Participating Member State or London, as specified by the Facility Agent) and with such bank as the Facility Agent, in each case, specifies.

##### 35.2 Distributions by the Facility Agent

Each payment received by the Facility Agent under the Finance Documents for another Party shall, subject to Clause 35.3 (*Distributions to a Transaction Obligor*) and Clause 35.4 (*Clawback and pre-funding*) be made available by the Facility Agent as soon as practicable after receipt to the Party entitled to receive payment in accordance with this Agreement (in the case of a Lender, for the account of its Facility Office), to such account as that Party may notify to the Facility Agent by not less than five Business Days' notice with a bank specified by that Party in the principal financial centre of the country of that currency (or, in relation to euro, in the principal financial centre of a Participating Member State or London), as specified by that Party or, in the case of an Advance, to such account of such person as may be specified by the Borrowers in the Utilisation Request.

##### 35.3 Distributions to a Transaction Obligor

The Facility Agent may (with the consent of the Transaction Obligor or in accordance with Clause 36 (*Set-Off*)) apply any amount received by it for that Transaction Obligor in or towards payment (on the date and in the currency and funds of receipt) of any amount due from that Transaction Obligor under the Finance Documents or in or towards purchase of any amount of any currency to be so applied.

##### 35.4 Clawback and pre-funding

- (a) Where a sum is to be paid to the Facility Agent under the Finance Documents for another Party, the Facility Agent is not obliged to pay that sum to that other Party (or to enter into or perform any related exchange contract) until it has been able to establish to its satisfaction that it has actually received that sum.
- (b) Unless paragraph (c) below applies, if the Facility Agent pays an amount to another Party and it proves to be the case that the Facility Agent had not actually received that amount, then the Party to whom that amount (or the proceeds of any related exchange contract) was paid by the Facility Agent shall on demand refund the same to the Facility Agent together with interest on that amount from the date of payment to the date of receipt by the Facility Agent, calculated by the Facility Agent to reflect its cost of funds.

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- (c) If the Facility Agent is willing to make available amounts for the account of the Borrowers before receiving funds from the Lenders then if and to the extent that the Facility Agent does so but it proves to be the case that it does not then receive funds from a Lender in respect of a sum which it paid to the Borrowers:
- (i) the Borrowers shall on demand refund it to the Facility Agent; and
  - (ii) the Lender by whom those funds should have been made available or, if the Lender fails to do so, the Borrowers, shall on demand pay to the Facility Agent the amount (as certified by the Facility Agent) which will indemnify the Facility Agent against any funding cost incurred by it as a result of paying out that sum before receiving those funds from that Lender.

### 35.5 Application of receipts; partial payments

- (a) If the Facility Agent receives a payment that is insufficient to discharge all the amounts then due and payable by a Transaction Obligor under the Finance Documents, the Facility Agent shall apply that payment towards the obligations of that Transaction Obligor under the Finance Documents in the following order:
- (i) **first**, in or towards payment *pro rata* of any unpaid fees, costs and expenses of, and any other amounts owing to, the Facility Agent, the Security Agent, any Receiver or any Delegate under the Finance Documents;
  - (ii) **secondly**, in or towards payment *pro rata* of any accrued interest and fees due but unpaid to the Lenders under this Agreement;
  - (iii) **thirdly**, in or towards payment *pro rata* of any principal due but unpaid to the Lenders under this Agreement;
  - (iv) **fourthly**, in or towards payment *pro rata* of any periodical payments (not being payments as a result of termination or closing out) due but unpaid to the Hedge Counterparties under the Hedging Agreement;
  - (v) **fifthly**, in or towards payment *pro rata* of any payments as a result of termination or closing out due but unpaid to the Hedge Counterparties under the Hedging Agreement; and
  - (vi) **sixthly**, in or towards payment *pro rata* of any other sum due but unpaid under the Finance Documents.
- (b) The Facility Agent shall, if so directed by the Majority Lenders and the Hedge Counterparties, vary, or instruct the Security Agent to vary (as applicable), the order set out in sub-paragraphs (ii) to (vi) of paragraph (a) above.
- (c) Paragraphs (a) and (b) above will override any appropriation made by a Transaction Obligor.
- (d) For the avoidance of doubt any monies receive pursuant to any Sinosure Policy shall be applied, in accordance with sub-paragraphs (ii) and (iii) of paragraph (a) above.

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- (e) A payment by Sinosure to the Finance Parties under any of the Sinosure Policies will not discharge any Transaction Obligor from its payment obligations to such Finance Party under any Finance Document.

#### **35.6 No set-off by Transaction Obligors**

- (a) All payments to be made by a Transaction Obligor under the Finance Documents shall be calculated and be made without (and free and clear of any deduction for) set-off or counterclaim.
- (b) Paragraph (a) above shall not affect the operation of any payment or close out netting in respect of any amounts owing under any Hedging Agreement.

#### **35.7 Business Days**

- (a) Any payment under the Finance Documents which is due to be made on a day that is not a Business Day shall be made on the next Business Day in the same calendar month (if there is one) or the preceding Business Day (if there is not).
- (b) During any extension of the due date for payment of any principal or an Unpaid Sum under this Agreement interest is payable on the principal or Unpaid Sum at the rate payable on the original due date.

#### **35.8 Currency of account**

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

#### **35.9 Change of currency**

- (a) Unless otherwise prohibited by law, if more than one currency or currency unit are at the same time recognised by the central bank of any country as the lawful currency of that country, then:
  - (i) any reference in the Finance Documents to, and any obligations arising under the Finance Documents in, the currency of that country shall be translated into, or paid in, the currency or currency unit of that country designated by the Facility Agent (after consultation with the 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 Facility Agent (acting reasonably).
- (b) If a change in any currency of a country occurs, this Agreement will, to the extent the Facility Agent (acting reasonably and after consultation with the Borrowers) specifies to be necessary, be amended to comply with any generally accepted conventions and market practice in the Relevant Market and otherwise to reflect the change in currency.

### **35.10 Currency Conversion**

- (a) For the purpose of, or pending any payment to be made by any Servicing Party under any Finance Document, such Servicing Party may convert any moneys received or recovered by it from one currency to another, at a market rate of exchange.
- (b) The obligations of any Transaction Obligor to pay in the due currency shall only be satisfied to the extent of the amount of the due currency purchased after deducting the costs of conversion.

### **35.11 Disruption to Payment Systems etc.**

If either the Facility Agent determines (in its discretion) that a Disruption Event has occurred or the Facility Agent is notified by a Borrower that a Disruption Event has occurred:

- (a) the Facility Agent may, and shall if requested to do so by a Borrower, consult with the Borrowers with a view to agreeing with the Borrowers such changes to the operation or administration of the Facility as the Facility Agent may deem necessary in the circumstances;
- (b) the Facility Agent shall not be obliged to consult with the Borrowers in relation to any changes mentioned in paragraph (a) above if, in its opinion, it is not practicable to do so in the circumstances and, in any event, shall have no obligation to agree to such changes;
- (c) the Facility Agent may consult with the Finance Parties in relation to any changes mentioned in paragraph (a) above but shall not be obliged to do so if, in its opinion, it is not practicable to do so in the circumstances;
- (d) any such changes agreed upon by the Facility Agent and the Borrowers shall (whether or not it is finally determined that a Disruption Event has occurred) be binding upon the Parties and any Transaction Obligors as an amendment to (or, as the case may be, waiver of) the terms of the Finance Documents notwithstanding the provisions of Clause 45 (*Amendments and Waivers*);
- (e) the Facility Agent shall not be liable for any damages, costs or losses to any person, any diminution in value or any liability whatsoever (including, without limitation for negligence, gross negligence or any other category of liability whatsoever but not including any claim based on the fraud of the Facility Agent) arising as a result of its taking, or failing to take, any actions pursuant to or in connection with this Clause 35.11 (*Disruption to Payment Systems etc.*); and
- (f) the Facility Agent shall notify the Finance Parties of all changes agreed pursuant to paragraph (d) above.

### **SET-OFF**

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

## **BAIL-IN**

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

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

## **NOTICES**

### **38.1 Communications in writing**

Any communication to be made under or in connection with the Finance Documents shall be made in writing and, unless otherwise stated, may be made by fax or letter.

### **38.2 Addresses**

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

- (a) in the case of the Borrowers, that specified in Schedule 1 (*The Parties*);
- (b) in the case of each Lender, each Hedge Counterparty or any other Obligor, that specified in Schedule 1 (*The Parties*) or, if it becomes a Party after the date of this Agreement, that notified in writing to the Facility Agent on or before the date on which it becomes a Party;
- (c) in the case of the Facility Agent, that specified in Schedule 1 (*The Parties*);
- (d) in the case of the Security Agent, that specified in Schedule 1 (*The Parties*);
- (e) in the case of the Bookrunner, that specified in Schedule 1 (*The Parties*); and
- (f) in the case of the Sinasure Agent, that specified in Schedule 1 (*The Parties*),



or any substitute address, fax number or department or officer as the Party may notify to the Facility Agent (or the Facility Agent may notify to the other Parties, if a change is made by the Facility Agent) by not less than five Business Days' notice.

### **38.3 Delivery**

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

and, if a particular department or officer is specified as part of its address details provided under Clause 38.2 (*Addresses*), if addressed to that department or officer.

- (b) Any communication or document to be made or delivered to a Servicing Party will be effective only when actually received by that Servicing Party and then only if it is expressly marked for the attention of the department or officer of that Servicing Party specified in Schedule 1 (*The Parties*) (or any substitute department or officer as that Servicing Party shall specify for this purpose).
- (c) All notices from or to a Transaction Obligor shall be sent through the Facility Agent unless otherwise specified in any Finance Document.
- (d) Any communication or document made or delivered to the Borrowers in accordance with this Clause will be deemed to have been made or delivered to each of the Transaction Obligors.
- (e) Any communication or document which becomes effective, in accordance with paragraphs (a) to (d) above, after 5.00 p.m. in the place of receipt shall be deemed only to become effective on the following day.

### **38.4 Notification of address and fax number**

Promptly upon receipt of notification of an address and fax number or change of address or fax number pursuant to Clause 38.2 (*Addresses*) or changing its own address or fax number, the Facility Agent shall notify the other Parties.

### **38.5 Electronic communication**

- (a) Any communication to be made or document to be delivered by one Party to another under or in connection with the Finance Documents may be made or delivered by electronic mail or other electronic means (including, without limitation, by way of posting to a secure website) if those two Parties:
- (i) notify each other in writing of their electronic mail address and/or any other information required to enable the transmission of information by that means; and
  - (ii) notify each other of any change to their address or any other such information supplied by them by not less than five Business Days' notice.

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- (b) Any such electronic communication or delivery 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 or delivery.
  - (c) Any such electronic communication or document as specified in paragraph (a) above made or delivered by one Party to another will be effective only when actually received (or made available) in readable form and in the case of any electronic communication or document made or delivered by a Party to the Facility Agent or the Security Agent only if it is addressed in such a manner as the Facility Agent or the Security Agent shall specify for this purpose.
  - (d) Any electronic communication or document 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 or document 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 or a document being delivered shall be construed to include that communication or document being made available in accordance with this Clause 38.5 (*Electronic communication*).

### **38.6 English language**

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

### **38.7 Hedging Agreement**

Notwithstanding anything in Clause 1.1 (*Definitions*), references to the Finance Documents, or a Finance Document in this Clause do not include any Hedging Agreement entered into by a Borrower with a Hedge Counterparty in connection with the Facility.

## **CALCULATIONS AND CERTIFICATES**

### **39.1 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.

### **39.2 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.

### **39.3 Day count convention**

- (a) Any interest, commission or fee accruing under a Finance Document will accrue from day to day and the amount of any such interest, commission or fee is calculated:
  - (i) on the basis of the actual number of days elapsed and a year of 360 days (or, in any case where the practice in the Relevant Market differs, in accordance with that market practice); and
  - (ii) subject to paragraph (b) below, without rounding.
- (b) The aggregate amount of any accrued interest, commission or fee which is, or becomes, payable by an Obligor under a Finance Document shall be rounded to 2 decimal places.

### **PARTIAL INVALIDITY**

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

### **REMEDIES AND WAIVERS**

- (a) No failure to exercise, nor any delay in exercising, on the part of any Secured Party, any right or remedy under a Finance Document shall operate as a waiver of any such right or remedy or constitute an election to affirm any Finance Document. No election to affirm any Finance Document on the part of a Secured Party shall be effective unless it is in writing. No single or partial exercise of any right or remedy shall prevent any further or other exercise or the exercise of any other right or remedy. The rights and remedies provided in each Finance Document are cumulative and not exclusive of any rights or remedies provided by law.
- (b) No variation or amendment of a Finance Document shall be valid unless in writing and signed by or on behalf of all the relevant Finance Parties in accordance with the provisions of Clause 45 (*Amendments and waivers*).

### **ENTIRE AGREEMENT**

- (a) This Agreement, in conjunction with the other Finance Documents, constitutes the entire agreement between the Parties and supersedes all previous agreements, understandings and arrangements between them, whether in writing or oral, in respect of its subject matter.
- (b) Each Borrower acknowledges that it has not entered into this Agreement or any other Finance Document in reliance on, and shall have no remedies in respect of, any representation or warranty that is not expressly set out in this Agreement or in any other Finance Document.

### **SETTLEMENT OR DISCHARGE CONDITIONAL**

Any settlement or discharge under any Finance Document between any Finance Party and any Transaction Obligor shall be conditional upon no security or payment to any Finance Party by any Transaction Obligor or any other person being set aside, adjusted or ordered to be repaid, whether under any insolvency law or otherwise.

## IRREVOCABLE PAYMENT

If the Facility Agent considers that an amount paid or discharged by, or on behalf of, a Transaction Obligor or by any other person in purported payment or discharge of an obligation of that Transaction Obligor to a Secured Party under the Finance Documents is capable of being avoided or otherwise set aside on the liquidation or administration of that Transaction Obligor or otherwise, then that amount shall not be considered to have been unconditionally and irrevocably paid or discharged for the purposes of the Finance Documents.

## AMENDMENTS AND WAIVERS

### 45.1 Required consents

- (a) Subject to Clause 45.2 (*All Lender matters*) and Clause 45.3 (*Other exceptions*) any term of the Finance Documents may be amended or waived only with the consent of the Majority Lenders and, in the case of an amendment, the Obligors and any such amendment or waiver will be binding on all Parties.
- (b) The Facility Agent may effect, on behalf of any Finance Party, any amendment or waiver permitted by this Clause 45 (*Amendments and Waivers*).
- (c) Without prejudice to the generality of Clause 30.8 (*Rights and discretions*), the Facility Agent may engage, pay for and rely on the services of lawyers in determining the consent level required for and effecting any amendment, waiver or consent under this Agreement.
- (d) Paragraph (c) of Clause 28.9 (*Pro rata interest settlement*) shall apply to this Clause 45 (*Amendments and Waivers*).
- (e) The Facility Agent may determine administrative matters and make technical amendments arising out of manifest errors on the face of this Agreement without being required to obtain the consent of the Lenders.

### 45.2 All Lender matters

Subject to Clause 45.4 (*Changes to reference rates*), an amendment of or waiver or consent in relation to any term of any Finance Document that has the effect of changing or which relates to:

- (a) the definitions of “Majority Lenders”, “Sanctions”, “Sanctions Authority”, “Sanctions Laws”, “Sanctions List” and “Restricted Party” in Clause 1.1 (*Definitions*);
- (b) a postponement to or extension of the date of payment of any amount under the Finance Documents;
- (c) a reduction in the Margin or the amount of any payment of principal, interest, fees or commission payable;
- (d) a change in currency of payment of any amount under the Finance Documents;
- (e) an increase in any Commitment or the Total Commitments, an extension of any Availability Period or any requirement that a cancellation of Commitments reduces the Commitments rateably under the Facility;

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- (f) a change to any Transaction Obligor other than in accordance with Clause 29 (*Changes to the Transaction Obligors*);
  - (g) any provision which expressly requires the consent of all the Lenders;
  - (h) this Clause 45 (*Amendments and Waivers*);
  - (i) any change to the preamble (Background), Clause 2 (*The Facility*), Clause 3 (*Purpose*), Clause 5 (*Utilisation*), Clause 6.3 (*Effect of cancellation and prepayment on scheduled repayments*), Clause 7.5 (*Mandatory prepayment on sale, seizure or Total Loss*) or Clause 7.6 (*Mandatory prepayment of Hedging Prepayment Proceeds*), Clause 7.7 (*Mandatory prepayment – Sinasure Policy*), Clause 7.8 (*Mandatory prepayment – Time Charters*), Clause 7.9 (*Mandatory prepayment – Put Option*), Clause 8 (*Interest*), Clause 24.10 (*Compliance with laws etc.*), Clause 24.12 (*Sanctions and Ship trading*), Clause 26 (*Accounts and Application of Earnings*), Clause 28 (*Changes to the Lenders and the Hedge Counterparties*), Clause 34 (*Sharing among the Finance Parties*), Clause 49 (*Governing Law*) or Clause 50 (*Enforcement*);
  - (j) (other than as expressly permitted by the provisions of any Finance Document) the nature or scope of:
    - (i) the guarantees and indemnities granted under any of clause 2 (*guarantee*) of the Guarantee or Clause 18 (*Guarantee and Indemnity – Hedge Guarantors*) or any other guarantee and indemnity forming part of the Finance Documents;
    - (ii) the joint and several liability of the Borrowers under Clause 17 (*Joint and Several Liability of the Borrowers*);
    - (iii) the Security Assets; or
    - (iv) the manner in which the proceeds of enforcement of the Transaction Security are distributed,(except in the case of sub-paragraphs (iii) and (iv) 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);
  - (k) the release or any material variation of the guarantees and indemnities granted under clause 2 (*guarantee*) of the Guarantee or Clause 18 (*Guarantee and Indemnity – Hedge Guarantors*), the joint and several liability of the Borrowers under Clause 17 (*Joint and Several Liability of the Borrowers*) or of any Transaction Security or any guarantee, indemnity or subordination arrangement set out in Finance Document unless permitted under this Agreement or any other Finance Document or relating to a sale or disposal of an asset which is the subject of the Transaction Security where such sale or disposal is expressly permitted under this Agreement or any other Finance Document, shall not be made, or given, without the prior consent of all the Lenders.

#### **45.3 Other exceptions**

- (a) An amendment or waiver which relates to the rights or obligations of a Servicing Party, the Bookrunner or the Sinasure Agent (each in their capacity as such) may not be effected without the consent of that Servicing Party, the Bookrunner or the Sinasure Agent, as the case may be.

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- (b) An amendment or waiver which relates to and would adversely affect the rights or obligations of a Hedge Counterparty (in its capacity as such) may not be effected without the consent of that Hedge Counterparty.
  - (c) The Borrowers and the Facility Agent, the Bookrunner, the Sinasure Agent or the Security Agent, as applicable, may amend or waive a term of a Fee Letter to which they are party.
  - (d) The Hedge Counterparty and the relevant Borrower may amend, supplement or waive the terms of any Hedging Agreement or Hedge Counterparty Guarantee if permitted by paragraph (g) of Clause 8.5 (*Hedging*).

#### 45.4 Changes to reference rates

- (a) Subject to Clause 45.3 (*Other exceptions*), any amendment or waiver which relates to:
  - (i) providing for the use of a Replacement Reference Rate in place of the RFR; and
  - (ii)
    - (A) aligning any provision of any Finance Document to the use of that Replacement Reference Rate;
    - (B) enabling that Replacement Reference Rate to be used for the calculation of interest under this Agreement (including, without limitation, any consequential changes required to enable that Replacement Reference Rate to be used for the purposes of this Agreement);
    - (C) implementing market conventions applicable to that Replacement Reference Rate;
    - (D) providing for appropriate fallback (and market disruption) provisions for that Replacement Reference Rate; or
    - (E) adjusting the pricing to reduce or eliminate, to the extent reasonably practicable, any transfer of economic value from one Party to another as a result of the application of that Replacement Reference Rate (and if any adjustment or method for calculating any adjustment has been formally designated, nominated or recommended by the Relevant Nominating Body, the adjustment shall be determined on the basis of that designation, nomination or recommendation),may be made with the consent of the Facility Agent (acting on the instructions of the Majority Lenders) and the Borrowers.
- (b) An amendment or waiver that relates to, or has the effect of, aligning the means of calculation of interest on the Loan or any part of the Loan under this Agreement to any recommendation of a Relevant Nominating Body which:
  - (i) relates to the use of the RFR on a compounded basis in the international or any relevant domestic syndicated loan markets; and
  - (ii) is issued on or after the date of this Agreement,

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

- (c) If any Lender fails to respond to a request for an amendment or waiver described in paragraph (a) or (b) above within 15 Business Days (or such longer time period in relation to any request which the Borrowers and the Facility Agent may agree) of that request being made:
- (i) its Commitment or its participation in the Loan (as the case may be) shall not be included for the purpose of calculating the Total Commitments or the amount of the Loan (as applicable) when ascertaining whether any relevant percentage of Total Commitments or the aggregate of participations in the Loan (as applicable) has been obtained to approve that request; and
  - (ii) its status as a Lender shall be disregarded for the purpose of ascertaining whether the agreement of any specified group of Lenders has been obtained to approve that request.
- (d) In this Clause 45.4 (*Changes to reference rates*):

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

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

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

#### 45.5 Borrower Intent

Without prejudice to the generality of Clauses 1.2 (*Construction*), 17.2 (*Waiver of defences*) and 18.4 (*Waiver of defences*), each Borrower expressly confirms that it intends that any guarantee contained in this Agreement or any other Finance Document and any Security created by any Finance Document shall extend from time to time to any (however fundamental) variation, increase, extension or addition of or to any of the Finance Documents and/or any facility or amount made available under any of the Finance Documents for the

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

## **CONFIDENTIAL INFORMATION**

### **46.1 Confidentiality**

Each Finance Party agrees to keep all Confidential Information confidential and not to disclose it to anyone, save to the extent permitted by Clause 46.2 (*Disclosure of Confidential Information*) and Clause 46.4 (*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.

### **46.2 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, credit insurers and reinsurers, reinsurers, insurance brokers 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 (and in relation to any Confidential Information relating to the Guarantor, if 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) except that there shall be no such requirement to so inform if the recipient is subject to professional obligations to maintain the confidentiality of the information or is otherwise bound by requirements of confidentiality in relation to the Confidential Information;
- (b) to any person:
  - (i) to (or through) whom it assigns or transfers (or may potentially assign or transfer) all or any of its rights and/or obligations under one or more Finance Documents or which succeeds (or which may potentially succeed) it as Facility Agent or Security Agent and, in each case, to any of that person's Affiliates, Related Funds, Representatives and professional advisers;
  - (ii) with (or through) whom it enters into (or may potentially enter into), whether directly or indirectly, any sub-participation in relation to, or any other transaction under which payments are to be made or may be made by reference to, one or more Finance Documents and/or one or more Transaction Obligors and to any of that person's Affiliates, Related Funds, Representatives and professional advisers;
  - (iii) appointed by any Finance Party or by a person to whom sub-paragraph (i) or (ii) of paragraph (b) above applies to receive communications, notices, information or documents delivered pursuant to the Finance Documents on its behalf (including, without limitation, any person appointed under paragraph (c) of Clause 30.15 (*Relationship with the other Finance Parties*));



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- (iv) who invests in or otherwise finances (or may potentially invest in or otherwise finance), directly or indirectly, any transaction referred to in sub-paragraph (i) or (ii) of paragraph (b) above;
  - (v) to whom information is required or requested to be disclosed by any court of competent jurisdiction or any governmental, banking, taxation or other regulatory authority or similar body, the rules of any relevant stock exchange or pursuant to any applicable law or regulation;
  - (vi) to whom information is required to be disclosed in connection with, and for the purposes of, any litigation, arbitrations, administrative or other investigations, proceedings or disputes;
  - (vii) to whom or for whose benefit that Finance Party charges, assigns or otherwise creates Security (or may do so) pursuant to Clause 28.8 (*Security over Lenders' rights*);
  - (viii) which is a classification society or other entity which a Lender has engaged to make the calculations necessary to enable that Lender to comply with its reporting obligations under the Poseidon Principles;
  - (ix) who is a Party, a member of the Group or any related entity of a Transaction Obligor;
  - (x) as a result of the registration of any Finance Document as contemplated by any Finance Document or any legal opinion obtained in connection with any Finance Document; or
  - (xi) with the consent of the Guarantor;

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

- (A) in relation to sub-paragraphs (i), (ii) and (iii) of paragraph (b) above, the person to whom the Confidential Information is to be given has entered into a Confidentiality Undertaking except that there shall be no requirement for a Confidentiality Undertaking if the recipient is a professional adviser and is subject to professional obligations to maintain the confidentiality of the Confidential Information;
- (B) in relation to sub-paragraphs (iv) and (viii) of paragraph (b) above, the person to whom the Confidential Information is to be given has entered into a Confidentiality Undertaking or is otherwise bound by requirements of confidentiality in relation to the Confidential Information they receive and is informed that some or all of such Confidential Information may be price-sensitive information;
- (C) in relation to sub-paragraphs (v), (vi) and (vii) of paragraph (b) above, the person to whom the Confidential Information is to be given is informed of its confidential nature and that some or all of such Confidential Information may be price-sensitive information except that there shall be no requirement to so inform if, in the opinion of that Finance Party, it is not practicable so to do in the circumstances;

- (c) to any person appointed by that Finance Party or by a person to whom sub-paragraph (i) or (ii) of paragraph (b) above applies to provide administration or settlement services in respect of one or more of the Finance Documents including without limitation, in relation to the trading of participations in respect of the Finance Documents, such Confidential Information as may be required to be disclosed to enable such service provider to provide any of the services referred to in this paragraph (c) if the service provider to whom the Confidential Information is to be given has entered into a confidentiality agreement substantially in the form of the LMA Master Confidentiality Undertaking for Use With Administration/Settlement Service Providers or such other form of confidentiality undertaking agreed between the Borrowers and the relevant Finance Party;
- (d) to any rating agency (including its professional advisers) such Confidential Information as may be required to be disclosed to enable such rating agency to carry out its normal rating activities in relation to the Finance Documents and/or the Transaction Obligors if the rating agency to whom the Confidential Information is to be given is informed of its confidential nature and that some or all of such Confidential Information may be price-sensitive information;
- (e) to Sinosure.

#### **46.3 DAC6**

Nothing in any Finance Document shall prevent disclosure of any Confidential Information or other matter to the extent that preventing that disclosure would otherwise cause any transaction contemplated by the Finance Documents or any transaction carried out in connection with any transaction contemplated by the Finance Documents to become an arrangement described in Part II A 1 of Annex IV of Directive 2011/16/EU.

#### **46.4 Disclosure to numbering service providers**

- (a) Any Finance Party may disclose to any national or international numbering service provider appointed by that Finance Party to provide identification numbering services in respect of this Agreement, the Facility and/or one or more Transaction Obligors the following information:
  - (i) names of Transaction Obligors;
  - (ii) country of domicile of Transaction Obligors;
  - (iii) place of incorporation of Transaction Obligors;
  - (iv) date of this Agreement;
  - (v) Clause 49 (*Governing Law*);
  - (vi) the names of the Facility Agent, the Bookrunner and the Sinosure Agent;
  - (vii) date of each amendment and restatement of this Agreement;
  - (viii) amount of Total Commitments;
  - (ix) currency of the Facility;
  - (x) type of Facility;

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- (xi) ranking of Facility;
  - (xii) Termination Date for each Tranche;
  - (xiii) changes to any of the information previously supplied pursuant to sub-paragraphs (i) to (xii) above; and
  - (xiv) such other information agreed between such Finance Party and the Borrowers,  
to enable such numbering service provider to provide its usual syndicated loan numbering identification services.
- (b) The Parties acknowledge and agree that each identification number assigned to this Agreement, the Facility and/or one or more Transaction Obligors by a numbering service provider and the information associated with each such number may be disclosed to users of its services in accordance with the standard terms and conditions of that numbering service provider.
  - (c) Each Borrower represents, on behalf of itself and the other Transaction Obligors, that none of the information set out in sub-paragraphs (i) to (xiv) of paragraph (a) above is, nor will at any time be, unpublished price-sensitive information.
  - (d) The Facility Agent shall notify the Guarantor and the other Finance Parties of:
    - (i) the name of any numbering service provider appointed by the Facility Agent in respect of this Agreement, the Facility and/or one or more Transaction Obligors; and
    - (ii) the number or, as the case may be, numbers assigned to this Agreement, the Facility and/or one or more Transaction Obligors by such numbering service provider.

#### **46.5 Entire agreement**

This Clause 46 (*Confidential Information*) constitutes the entire agreement between the Parties in relation to the obligations of the Finance Parties under the Finance Documents regarding Confidential Information and supersedes any previous agreement, whether express or implied, regarding Confidential Information.

#### **46.6 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.

#### **46.7 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 sub-paragraph (v) of paragraph (b) of Clause 46.2 (*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;

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- (b) upon becoming aware that Confidential Information has been disclosed in breach of this Clause 46 (*Confidential Information*); and
  - (c) in respect of any publicity regarding the Facility or any of the terms thereof which shall be agreed in advance by the Guarantor and the Facility Agent unless otherwise required in connection with the Guarantor's reporting obligations under or in connection with the rules and regulations of the US Securities Exchange Commission and any US Stock Exchange applicable to the Guarantor.

#### **46.8 Use of logo and/or trademark**

Subject to the Borrowers' prior written consent (such consent not to be unreasonably withheld), each of the Facility Agent and/or the Bookrunner and/or the Sinasure Agent has the right, at its expense, to publish information regarding its participation in, and the agency and arrangement of this Agreement and have the right to use the Borrowers' and/or the Guarantor's logo and trademark in connection with such publication.

#### **46.9 Continuing obligations**

The obligations in this Clause 46 (*Confidential Information*) are continuing and, in particular, shall survive and remain binding on each Finance Party for a period of 12 months from the earlier of:

- (a) the date on which all amounts payable by the Obligor under or in connection with this Agreement have been paid in full and all Commitments have been cancelled or otherwise cease to be available; and
- (b) the date on which such Finance Party otherwise ceases to be a Finance Party.

### **CONFIDENTIALITY OF FUNDING RATES**

#### **47.1 Confidentiality and disclosure**

- (a) The Facility Agent and each Borrower agree to keep each Funding Rate confidential and not to disclose it to anyone, save to the extent permitted by paragraphs (b) and (c) below.
- (b) The Facility Agent may disclose:
  - (i) any Funding Rate to the Borrower pursuant to Clause 8.4 (*Notifications*); and
  - (ii) any Funding Rate to any person appointed by it to provide administration services in respect of one or more of the Finance Documents to the extent necessary to enable such service provider to provide those services if the service provider to whom that information is to be given has entered into a confidentiality agreement substantially in the form of the LMA Master Confidentiality Undertaking for Use With Administration/Settlement Service Providers or such other form of confidentiality undertaking agreed between the Facility Agent and the relevant Lender.

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- (c) The Facility Agent and each Borrower may disclose any Funding Rate to:
- (i) any of its Affiliates and any of its or their officers, directors, employees, professional advisers, auditors, partners and Representatives if any person to whom that Funding Rate is to be given pursuant to this sub-paragraph (i) is informed in writing of its confidential nature and that it may be price sensitive information except that there shall be no such requirement to so inform if the recipient is subject to professional obligations to maintain the confidentiality of that Funding Rate or is otherwise bound by requirements of confidentiality in relation to it;
  - (ii) any person to whom information is required or requested to be disclosed by any court of competent jurisdiction or any governmental, banking, taxation or other regulatory authority or similar body, the rules of any relevant stock exchange or pursuant to any applicable law or regulation if the person to whom that Funding Rate is to be given is informed in writing of its confidential nature and that it may be price sensitive information except that there shall be no requirement to so inform if, in the opinion of the Facility Agent or the relevant Borrower, as the case may be, it is not practicable to do so in the circumstances;
  - (iii) any person to whom information is required to be disclosed in connection with, and for the purposes of, any litigation, arbitration, administrative or other investigations, proceedings or disputes if the person to whom that Funding Rate is to be given is informed in writing of its confidential nature and that it may be price sensitive information except that there shall be no requirement to so inform if, in the opinion of the Facility Agent or the relevant Borrower, as the case may be, it is not practicable to do so in the circumstances; and
  - (iv) any person with the consent of the relevant Lender.

#### **47.2 Related obligations**

- (a) The Facility Agent and each Borrower acknowledge that each Funding Rate is or may be price sensitive information and that its use may be regulated or prohibited by applicable legislation including securities law relating to insider dealing and market abuse and the Facility Agent and each Borrower undertake not to use any Funding Rate for any unlawful purpose.
- (b) The Facility Agent and each Borrower agree (to the extent permitted by law and regulation) to inform the relevant Lender:
  - (i) of the circumstances of any disclosure made pursuant to sub-paragraph (ii) of paragraph (c) of Clause 47.1 (*Confidentiality and disclosure*) except where such disclosure is made to any of the persons referred to in that paragraph during the ordinary course of its supervisory or regulatory function; and
  - (ii) upon becoming aware that any information has been disclosed in breach of this Clause 47 (*Confidentiality of Funding Rates*).

#### **47.3 No Event of Default**

No Event of Default will occur under Clause 27.4 (*Other obligations*) by reason only of a Borrower's failure to comply with this Clause 47 (*Confidentiality of Funding Rates*).

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**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.

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## SECTION 12

### GOVERNING LAW AND ENFORCEMENT

#### GOVERNING LAW

This Agreement and any non-contractual obligations arising out of or in connection with it are governed by English law.

#### ENFORCEMENT

##### 50.1 Jurisdiction

- (a) Unless specifically provided in another Finance Document in relation to that Finance Document, the courts of England have exclusive jurisdiction to settle any dispute arising out of or in connection with any Finance Document (including a dispute regarding the existence, validity or termination of any Finance Document or any non-contractual obligation arising out of or in connection with any Finance Document) (a “Dispute”).
- (b) The Borrowers accept that the courts of England are the most appropriate and convenient courts to settle Disputes and accordingly no Borrower will argue to the contrary.
- (c) This Clause 50.1 (*Jurisdiction*) is for the benefit of the Secured Parties only. As a result, no Secured Party shall be prevented from taking proceedings relating to a Dispute in any other courts with jurisdiction. To the extent allowed by law, the Secured Parties may take concurrent proceedings in any number of jurisdictions.

##### 50.2 Service of process

- (a) Without prejudice to any other mode of service allowed under any relevant law, each Borrower (other than a Borrower incorporated in England and Wales):
  - (i) irrevocably appoints Hill Dickinson Services (London) Limited at its current address at 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 Borrower 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 days of such event taking place) appoint another agent on terms acceptable to the Facility Agent. Failing this, the Facility Agent may appoint another agent for this purpose.

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

**EXECUTION PAGES**

**BORROWERS**

**SIGNED** by ) /s/ Peter Clemons  
its attorney-in-fact )  
for and on behalf of )  
**TERPSICHORE SHIPPING CORPORATION** ) Title: Attorney-in-Fact  
in the presence of: )

Witness' signature: ) /s/ Millie Gray  
Witness' name: ) Trainee Solicitor  
Witness' address: Watson Farley & Williams LLP 15 Appold Street  
London, EC2A 2HB

**SIGNED** by ) /s/ Peter Clemons  
its attorney-in-fact )  
for and on behalf of )  
**ERATO SHIPMANGEMENT CORPORATION** ) Title: Attorney-in-Fact  
in the presence of: )

Witness' signature: ) /s/ Millie Gray  
Witness' name: ) Trainee Solicitor  
Witness' address: Watson Farley & Williams LLP 15 Appold Street  
London, EC2A 2HB

**SIGNED** by ) /s/ Peter Clemons  
its attorney-in-fact )  
for and on behalf of )  
**CALLIOPE SHIPPING CORPORATION** ) Title: Attorney-in-Fact  
in the presence of: )

Witness' signature: ) /s/ Millie Gray  
Witness' name: ) Trainee Solicitor  
Witness' address: Watson Farley & Williams LLP 15 Appold Street  
London, EC2A 2HB



**SIGNED** by ) /s/ Peter Clemons  
its attorney-in-fact )  
for and on behalf of )  
**EUTERPE SHIPPING CORPORATION** ) Title: Attorney-in-Fact  
in the presence of: )  
  
Witness' signature: ) /s/ Millie Gray  
Witness' name: ) Trainee Solicitor  
Witness' address: Watson Farley & Williams LLP 15 Appold Street  
) London, EC2A 2HB

**HEDGE GUARANTORS**

**SIGNED** by ) /s/ Peter Clemons  
its attorney-in-fact )  
for and on behalf of )  
**TERPSICHORE SHIPPING CORPORATION** ) Title: Attorney-in-Fact  
in the presence of: )  
  
Witness' signature: ) /s/ Millie Gray  
Witness' name: ) Trainee Solicitor  
Witness' address: Watson Farley & Williams LLP 15 Appold Street  
) London, EC2A 2HB

**SIGNED** by ) /s/ Peter Clemons  
its attorney-in-fact )  
for and on behalf of )  
**ERATO SHIPMANAGEMENT CORPORATION** ) Title: Attorney-in-Fact  
in the presence of: )  
  
Witness' signature: ) /s/ Millie Gray  
Witness' name: ) Trainee Solicitor  
Witness' address: Watson Farley & Williams LLP 15 Appold Street  
) London, EC2A 2HB

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its attorney-in-fact )  
for and on behalf of )  
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in the presence of: )  
  
Witness' signature: ) /s/ Millie Gray  
Witness' name: ) Trainee Solicitor  
Witness' address: Watson Farley & Williams LLP 15 Appold Street  
) London, EC2A 2HB

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its attorney-in-fact )  
for and on behalf of )  
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in the presence of: )

Witness' signature: ) /s/ Millie Gray  
Witness' name: ) Trainee Solicitor  
Witness' address: Watson Farley & Williams LLP 15 Appold Street  
) London, EC2A 2HB

#### **ORIGINAL LENDERS**

**SIGNED** by ) /s/ Danielle Eastop  
duly authorised ) Authorised Signatory  
for and on behalf of ) Gemma Darney  
**DNB (UK) LIMITED** ) Authorised Signatory

**SIGNED** by ) /s/ Zhang Ju  
duly authorised )  
for and on behalf of )  
**THE EXPORT-IMPORT BANK OF CHINA** )

#### **HEDGE COUNTERPARTIES**

**SIGNED** by ) /s/ Danielle Eastop  
duly authorised ) Authorised Signatory  
for and on behalf of ) Gemma Darney  
**DNB BANK ASA** ) Authorised Signatory

#### **BOOKRUNNER**

**SIGNED** by ) /s/ Danielle Eastop  
duly authorised ) Authorised Signatory  
for and on behalf of ) Gemma Darney  
**DNB (UK) LIMITED** ) Authorised Signatory

---

**FACILITY AGENT**

**SIGNED** by ) /s/ Danielle Eastop  
duly authorised ) Authorised Signatory  
for and on behalf of ) Gemma Darney  
**DNB BANK ASA, LONDON BRANCH** ) Authorised Signatory

**SECURITY AGENT**

**SIGNED** by ) /s/ Danielle Eastop  
duly authorised ) Authorised Signatory  
for and on behalf of ) Gemma Darney  
**DNB BANK ASA, LONDON BRANCH** ) Authorised Signatory

**SINOSURE AGENT**

**SIGNED** by ) /s/ Danielle Eastop  
duly authorised ) Authorised Signatory  
for and on behalf of ) Gemma Darney  
**DNB BANK ASA** ) Authorised Signatory

Dated \_\_\_\_ April 2023

**\$65,000,000**

**TERM LOAN FACILITY**

**FOLEGANDROS SHIPPING CORPORATION  
SERIFOS SHIPPING CORPORATION  
SIFNOS SHIPPING CORPORATION  
SKIATHOS SHIPPING CORPORATION and  
SYROS SHIPPING CORPORATION**

as joint and several Borrowers

and

**THE BANKS AND FINANCIAL INSTITUTIONS**

listed in Schedule 1

as Lenders

and

**SKANDINAVISKA ENSKILDA BANKEN AB (PUBL)**

as Mandated Lead Arranger

and

**SKANDINAVISKA ENSKILDA BANKEN AB (PUBL)**

as Facility Agent

and

**SKANDINAVISKA ENSKILDA BANKEN AB (PUBL)**

as Security Agent

and

**SKANDINAVISKA ENSKILDA BANKEN AB (PUBL) OSLO BRANCH**

as Account Bank

**FACILITY AGREEMENT**

relating to

the refinancing of existing indebtedness secured over five oil/chemical tankers

**WATSON FARLEY  
&  
WILLIAMS**

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THIS AGREEMENT is made on \_\_\_\_\_ April 2023

## PARTIES

- (1) **FOLEGANDROS SHIPPING CORPORATION**, a corporation incorporated in the Republic of the Marshall Islands whose registered address is at Trust Company Complex, Ajeltake Road, Ajeltake Island, Majuro, Marshall Islands MH 96960 as a borrower (“**Borrower A**”)
- (2) **SERIFOS SHIPPING CORPORATION**, a corporation incorporated in the Republic of the Marshall Islands whose registered address is at Trust Company Complex, Ajeltake Road, Ajeltake Island, Majuro, Marshall Islands MH 96960 as a borrower (“**Borrower B**”)
- (3) **SIFNOS SHIPPING CORPORATION**, a corporation incorporated in the Republic of the Marshall Islands whose registered address is at Trust Company Complex, Ajeltake Road, Ajeltake Island, Majuro, Marshall Islands MH 96960 as a borrower (“**Borrower C**”)
- (4) **SKIATHOS SHIPPING CORPORATION**, a corporation incorporated in the Republic of the Marshall Islands whose registered address is at Trust Company Complex, Ajeltake Road, Ajeltake Island, Majuro, Marshall Islands MH 96960 as a borrower (“**Borrower D**”)
- (5) **SYROS SHIPPING CORPORATION**, a corporation incorporated in the Republic of the Marshall Islands whose registered address is at Trust Company Complex, Ajeltake Road, Ajeltake Island, Majuro, Marshall Islands MH 96960 as a borrower (“**Borrower E**”)
- (6) **THE BANKS AND THE FINANCIAL INSTITUTIONS** listed in Part B of Schedule 1 (*The Parties*) as lenders (the “**Original Lenders**”)
- (7) **SKANDINAVISKA ENSKILDA BANKEN AB (PUBL)** as agent of the other Finance Parties (the “**Facility Agent**”)
- (8) **SKANDINAVISKA ENSKILDA BANKEN AB (PUBL)** as security agent for the Secured Parties (the “**Security Agent**”)
- (9) **SKANDINAVISKA ENSKILDA BANKEN AB (PUBL)** as mandated lead arranger (the “**Mandated Lead Arranger**”)
- (10) **SKANDINAVISKA ENSKILDA BANKEN AB (PUBL) OSLO BRANCH** as account bank (the “**Account Bank**”)

## BACKGROUND

The Lenders have agreed to make available to the Borrowers a senior secured term loan facility in an aggregate amount of up to \$65,000,000 in five Tranches, the aggregate of each Tranche in an amount equal to the lesser of (i) the amount relating to such Tranche referred to in Clause 5.3 (*Currency and amount*) and (ii) 45 per cent. of the Initial Market of the Ship relevant to that Tranche for the purpose of refinancing the Existing Indebtedness secured on the Ships and for general corporate purposes.

## OPERATIVE PROVISIONS

---

## SECTION 1

### INTERPRETATION

#### 1 DEFINITIONS AND INTERPRETATION

##### 1.1 Definitions

In this Agreement:

“**Account Bank**” means Skandinaviska Enskilda Banken AB (Publ) Oslo branch, acting through its office at Filipstad Brygge 1, 0252 Oslo, Norway or any replacement bank or other financial institution as may be approved by the Facility Agent acting with the authorisation of the Majority Lenders.

“**Account Security**” means a document creating Security over the Earnings Accounts in agreed form.

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

“**Advance**” means a borrowing of all or part of a Tranche under this Agreement.

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

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

“**Approved Brokers**” means any firm or firms of insurance brokers approved in writing by the Facility Agent (acting on the instructions of the Majority Lenders).

“**Approved Classification**” means, in relation to a Ship, as at the date of this Agreement, the classification in relation to that Ship specified in Schedule 7 (*Details of the Ships and other definitions*) with the relevant Approved Classification Society or the equivalent classification with another Approved Classification Society.

“**Approved Classification Society**” means, in relation to a Ship, as at the date of this Agreement, the classification society in relation to that Ship specified in Schedule 7 (*Details of the Ships and other definitions*) or any other classification society approved in writing by the Facility Agent acting with the authorisation of the Majority Lenders.

“**Approved Flag**” means, in relation to a Ship, the flag of Bahamas, Bermuda, Cayman Islands, Cyprus, Greece, Hong Kong, Liberia, Malta, Panama, the Marshall Islands, Singapore or the United Kingdom or such other flag approved in writing by the Facility Agent acting with the authorisation of the Lenders, such authorisation not to be unreasonably withheld.

“**Approved Manager**” means as at the date of this Agreement

- (a) in relation to a Ship, Navios Tankers Management Inc., a corporation incorporated under the laws of the Republic of the Marshall Islands having its registered address at Trust Company Complex, Ajeltake Road, Ajeltake Island, Majuro, Marshall Islands MH 96960 as manager; and/or



- 
- (b) any Affiliate of Navios Shipmanagement Inc. or any other person approved in writing by the Facility Agent acting with the authorisation of the Majority Lenders, such authorisation not to be unreasonably withheld, as the commercial and technical manager of any Ship.

**“Approved Valuer”** means Arrow Sale and Purchase (UK) Limited, Braemar Seascope Shipping Limited, Simpson Spence Young Ltd, Fearnleys AS, Clarkson Securities AS, Maersk Broker K/S, Howe Robinson, Allied Shipbroking, Barry Rogliano Salles and VesselsValue (or any Affiliate of such person through which valuations are commonly issued) and any other firm or firms of independent sale and purchase shipbrokers approved in writing by the Facility Agent, acting with the authorisation of the Majority Lenders.

**“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.

**“Assignable Charter”** means any time charterparty, consecutive voyage charter or contract of affreightment in respect of a Ship of a duration (or capable of exceeding a duration) of 13 months or more or any bareboat charter entered into in accordance with Clauses 22.16 (*Restrictions on chartering, appointment of managers etc.*) and 22.19 (*Charterparty Assignment*).

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

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

**“Availability Period”** means, in relation to each Tranche, the period from and including the date of this Agreement to and including 31 May 2023, or such later date as may be agreed by the Facility Agent in writing.

**“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 any Advance that is due to be made on or before the proposed Utilisation Date.

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

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

**“Bail-In Legislation”** means:

- (a) in relation to an EEA Member Country which has implemented, or which at any time implements, Article 55 BRRD, the relevant implementing law or regulation as described in the EU Bail-In Legislation Schedule from time to time;
- (b) in relation to any state other than such an EEA Member Country and the United Kingdom, any analogous law or regulation from time to time which requires contractual recognition of any Write-down and Conversion Powers contained in that law or regulation; and

(c) in relation to the United Kingdom, the UK Bail in Legislation.

“**Balloon Instalments**” has the meaning given in Clause 6.1 (*Repayment of Loan*).

“**Baseline CAS**” means any rate which is specified as such in the Reference Rate Terms.

“**Bill of Sale**” means, in relation to a Ship, the bill of sale executed or, as the case may be, to be executed by the relevant Existing Owner as seller transferring title of ownership in that Ship to the relevant Borrower.

“**Borrower**” means Borrower A, Borrower B, Borrower C, Borrower D or Borrower E.

“**Business Day**” means a day (other than a Saturday or Sunday) on which banks are open for general business in Stockholm, Athens, Oslo and New York and in relation to:

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

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

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

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

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

“**Change of Control**” has the meaning given to it in Clause 7.2 (*Change of control*).

“**Charter**” means any charter relating to a Ship, or other contract for its employment, whether or not already in existence (including without limitation, any Initial Charter and an Assignable Charter).

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

“**Charterparty Assignment**” means, in relation to an Assignable Charter, a first priority assignment of the rights of the relevant Borrower under that Assignable Charter and any related Charter Guarantee executed or to be executed by that Borrower in favour of the Security Agent in agreed form.

“**Code**” means the United States Internal Revenue Code of 1986.

“**Commitment**” means:

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

(b) in relation to any other Lender, the amount of any Commitment transferred to it under this Agreement, to the extent not cancelled, reduced or transferred by it under this Agreement.

“**Compounded Reference Rate**” means, in relation to any RFR Banking Day during the Interest Period of the Loan or any part of the Loan, the percentage rate per annum which is the Daily Non-Cumulative Compounded RFR Rate for that RFR Banking Day.

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

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

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

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

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

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

- (D) in relation to the Guarantor such information as the Guarantor is entitled to disclose by rules and regulations of the SEC and any US Stock Exchange applicable to the Guarantor, and
- (ii) any Funding Rate.

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

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

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

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

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

“**Deed of Covenant**” means, in relation to a Ship, if required by the laws of the Approved Flag of that Ship, a deed of covenant collateral to the Mortgage over that Ship in agreed form.

“**Deed of Release**” means any deed releasing the Borrowers and the other Transaction Obligors from their obligations under the Existing Bareboat Charters and any Existing Security in a form acceptable to the Facility Agent

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

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

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

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

- 
- (i) from performing its payment obligations under the Finance Documents; or
  - (ii) from communicating with other Parties or, if applicable, any Transaction Obligor in accordance with the terms of the Finance Documents,

and which (in either such case) is not caused by, and is beyond the control of, the Party or, if applicable, any Transaction Obligor whose operations are disrupted.

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

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

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

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

“**Earnings Account**” means:

- (a) an account in the name of Borrower A with the Account Bank with account number NO2597500410756;

- 
- (b) an account in the name of Borrower B with the Account Bank with account number NO7897500410772;
  - (c) an account in the name of Borrower C with the Account Bank with account number NO5697500410780;
  - (d) an account in the name of Borrower D with the Account Bank with account number NO0397500410764;
  - (e) an account in the name of Borrower E with the Account Bank with account number NO4797500410748;
  - (f) any other account in the name of the Borrowers with the Account Bank which may, with the prior written consent of the Facility Agent, be opened in the place of the account referred to in paragraph (a) above, irrespective of the number or designation of such replacement account; or
  - (g) any sub-account of any account referred to in paragraphs (a) to (f) above.

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

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

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

“**Environmental Incident**” means:

- (a) any release, emission, spill or discharge of Environmentally Sensitive Material whether within a Ship or from a Ship into any other vessel or into or upon the air, water, land or soils (including the seabed) or surface water; or
- (b) any incident in which Environmentally Sensitive Material is released, emitted, spilled or discharged into or upon the air, water, land or soils (including the seabed) or surface water from a vessel other than any Ship and which involves a collision between any 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 any Transaction Obligor 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; or
- (c) any other incident in which Environmentally Sensitive Material is released, emitted, spilled or discharged into or upon the air, water, land or soils (including the seabed) or surface water otherwise than from a Ship and in connection with which a Ship is actually or potentially liable to be arrested and/or where any Transaction Obligor 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.

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

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

**“EU Bail-In Legislation Schedule”** means the document described as such and published by the LMA from time to time.

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

**“Event of Default”** means any event or circumstance specified as such in Clause 25 (*Events of Default*).

**“Existing Bareboat Charter”** means Existing Bareboat Charter A, Existing Bareboat Charter B, Existing Bareboat Charter C, Existing Bareboat Charter D and Existing Bareboat Charter E.

**“Existing Bareboat Charter A”** means the bareboat charter dated 22 March 2019 (as amended and supplemented from time to time) made between (i) Borrower A as bareboat charterer and (ii) Existing Owner A as owner, pursuant to which Existing Owner A agreed to bareboat charter Ship A to Borrower A.

**“Existing Bareboat Charter B”** means the bareboat charter dated 22 March 2019 (as amended and supplemented from time to time) made between (i) Borrower B as bareboat charterer and (ii) Existing Owner B as owner, pursuant to which Existing Owner B agreed to bareboat charter Ship B to Borrower B.

**“Existing Bareboat Charter C”** means the bareboat charter dated 22 March 2019 (as amended and supplemented from time to time) made between (i) Borrower C as bareboat charterer and (ii) Existing Owner C as owner, pursuant to which Existing Owner C agreed to bareboat charter Ship C to Borrower C.

**“Existing Bareboat Charter D”** means the bareboat charter dated 22 March 2019 (as amended and supplemented from time to time) made between (i) Borrower D as bareboat charterer and (ii) Existing Owner D as owner, pursuant to which Existing Owner D agreed to bareboat charter Ship D to Borrower D.

**“Existing Bareboat Charter E”** means the bareboat charter dated 22 March 2019 (as amended and supplemented from time to time) made between (i) Borrower E as bareboat charterer and (ii) Existing Owner E as owner, pursuant to which Existing Owner E agreed to bareboat charter Ship E to Borrower E.

**“Existing Indebtedness”** means Existing Indebtedness A, Existing Indebtedness B, Existing Indebtedness C, Existing Indebtedness D and Existing Indebtedness E.

**“Existing Indebtedness A”** means, at any date, the outstanding Financial Indebtedness of Borrower A on that date under Existing Bareboat Charter A.

**“Existing Indebtedness B”** means, at any date, the outstanding Financial Indebtedness of Borrower B on that date under Existing Bareboat Charter B.

**“Existing Indebtedness C”** means, at any date, the outstanding Financial Indebtedness of Borrower C on that date under Existing Bareboat Charter C.

**“Existing Indebtedness D”** means, at any date, the outstanding Financial Indebtedness of Borrower D on that date under Existing Bareboat Charter D.

**“Existing Indebtedness E”** means, at any date, the outstanding Financial Indebtedness of Borrower E on that date under Existing Bareboat Charter E.

**“Existing Owner”** means Existing Owner A, Existing Owner B, Existing Owner C, Existing Owner D and Existing Owner E.

**“Existing Owner A”** means, in relation to Ship A, Great Folegandros Limited, a corporation incorporated in the Republic of the Marshall Islands whose registered address is at Trust Company Complex, Ajeltake Road, Ajeltake Island, Majuro, Marshall Islands MH96960.

**“Existing Owner B”** means, in relation to Ship B, Great Serifos Limited, a corporation incorporated in the Republic of the Marshall Islands whose registered address is at Trust Company Complex, Ajeltake Road, Ajeltake Island, Majuro, Marshall Islands MH96960.

**“Existing Owner C”** means, in relation to Ship C, Great Sifnos Limited, a corporation incorporated in the Republic of the Marshall Islands whose registered address is at Trust Company Complex, Ajeltake Road, Ajeltake Island, Majuro, Marshall Islands MH96960.

**“Existing Owner D”** means, in relation to Ship D, Great Skiathos Limited, a corporation incorporated in the Republic of the Marshall Islands whose registered address is at Trust Company Complex, Ajeltake Road, Ajeltake Island, Majuro, Marshall Islands MH96960.

**“Existing Owner E”** means, in relation to Ship E, Great Syros Limited, a corporation incorporated in the Republic of the Marshall Islands whose registered address is at Trust Company Complex, Ajeltake Road, Ajeltake Island, Majuro, Marshall Islands MH96960.

**“Existing Security”** means any Security created to secure the Existing Indebtedness.

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

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

**“FATCA”** means:

- (a) sections 1471 to 1474 of the Code or any associated regulations;



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

**“FATCA Application Date”** means:

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

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

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

**“Fee Letter”** means any letter or letters dated on or about the date of this Agreement between any of the Facility Agent, the Security Agent, the Mandated Lead Arranger and any Obligor setting out any of the fees referred to in Clause 11 (*Fees*).

**“Finance Document”** means:

- (a) this Agreement;
- (b) any Fee Letter;
- (c) the Guarantee;
- (d) any Utilisation Request;
- (e) any Reference Rate Supplement;
- (f) any Compounding Methodology Supplement;
- (g) any Security Document;
- (h) any Manager’s Undertaking;
- (i) any other document which is executed for the purpose of establishing any priority or subordination arrangement in relation to the Secured Liabilities; or
- (j) any other document designated as such by the Facility Agent and the Borrowers.

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

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

- (a) moneys borrowed;
- (b) any amount raised by acceptance under any acceptance credit facility or dematerialised equivalent;
- (c) any amount raised pursuant to any note purchase facility or the issue of bonds, notes, debentures, loan stock or any similar instrument;
- (d) the amount of any liability in relation to any lease or hire purchase contract which would, in accordance with GAAP, be treated as a balance sheet liability;
- (e) receivables sold or discounted (other than any receivables to the extent they are sold on a non-recourse basis);
- (f) any amount raised under any other transaction (including any forward sale or purchase agreement) of a type not referred to in any other paragraph of this definition having the commercial effect of a borrowing;
- (g) any derivative transaction entered into in connection with protection against or benefit from fluctuation in any rate or price (and, when calculating the value of any derivative transaction, only the marked to market value (or, if any actual amount is due as a result of the termination or close-out of that derivative transaction, that amount) shall be taken into account);
- (h) any counter-indemnity obligation in relation to a guarantee, indemnity, bond, standby or documentary letter of credit or any other instrument issued by a bank or financial institution; and
- (i) the amount of any liability in relation to any guarantee or indemnity for any of the items referred to in paragraphs (a) to (h) above.

**“Funding Rate”** means any individual rate notified by a Lender to the Facility Agent pursuant to sub-paragraph (ii) of paragraph (a) of Clause 10.3 (*Cost of funds*).

**“GAAP”** means generally accepted accounting principles in the US.

**“General Assignment”** means, in relation to a Ship, the general assignment creating Security over:

- (a) that Ship’s Earnings, its Insurances and any Requisition Compensation in relation to that Ship; and
- (b) any Charter and any Charter Guarantee in relation to that Ship,

in agreed form.

**“Group”** means the Guarantor and its Subsidiaries for the time being (excluding any Subsidiaries whose shares are listed on any public stock exchange and whose financial statements are not consolidated into the financial statements of the Guarantor) and **“member of the Group”** shall be construed accordingly.

**“Group Vessel”** means any ship (including, but not limited to, the Ship) from time to time wholly owned by a member of the Group (directly or indirectly) but excluding, for the avoidance of doubt, any newbuilding vessels not delivered to the relevant member of the Group at the relevant time.

**“Guarantee”** means a guarantee executed by the Guarantor in agreed form.

**“Guarantor”** means Navios Maritime Partners L.P., a limited partnership formed in the Republic of the Marshall Islands whose registered address is at Trust Company Complex, Ajeltake Road, Ajeltake Island, Majuro, Marshall Islands MH 96960.

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

**“IHM”** means an inventory of hazardous materials classification in respect of a Ship from the Approved Classification Society.

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

**“Initial Charter”** has the meaning given to that term in Schedule 7 (*Details of the Ships and other definitions*).

**“Initial Market Value”** means, in relation to a Ship, the Market Value of that Ship calculated in accordance with the valuations relative thereto referred to in paragraph 3.7 of Schedule 2, Part B.

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

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

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

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

**“ISM Code”** means the International Safety Management Code for the Safe Operation of Ships and for Pollution Prevention (including the guidelines on its implementation), adopted by the International Maritime Organisation, as the same may be amended or supplemented from time to time.

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

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

“**Lender**” means:

- (a) any Original Lender; and
- (b) any bank, financial institution, trust, fund or other entity which has become a Party in accordance with Clause 26 (*Changes to the Lenders*),

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

“**LMA**” means the Loan Market Association or any successor organisation.

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

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

“**Major Casualty**” means, in relation to a Ship, any casualty to that Ship in relation to which the claim or the aggregate of the claims against all insurers, before adjustment for any relevant franchise or deductible, exceeds \$1,000,000 or the equivalent in any other currency.

“**Majority Lenders**” means:

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

“**Management Agreement**” means the agreement entered into between a Borrower and/or the Guarantor or its Affiliates and the Approved Manager regarding the management of a Ship acceptable to the Lenders in all respects.

“**Manager’s Undertaking**” means, in relation to a Ship, the letter of undertaking from the Approved Manager relating to that Ship subordinating the rights of the Approved Manager respectively against that Ship and the relevant Borrower owing that Ship to the rights of the Finance Parties in agreed form.

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

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

**“Market Value”** means, in relation to a Ship or any other vessel, at any date, the market value of that Ship or vessel determined in accordance with paragraph (a) of Clause 23.7 (*Provision of valuations*) and, prepared:

- (a) unless otherwise specified by the Facility Agent, as at a date not more than 30 days previously;
- (b) by an Approved Valuer or Approved Valuers;
- (c) with or without physical inspection of that Ship or vessel (as the Facility Agent may require); and
- (d) on the basis of a sale for prompt delivery for cash on normal arm’s length commercial terms as between a willing seller and a willing buyer, free of any Charter.

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

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

**“Money Laundering”** has the meaning given in Article 1 of Directive 2015/849/EC of the Council of the European Communities.

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

**“Mortgage”** means, in relation to a Ship, a first priority, or, as the case may be, preferred ship mortgage on that Ship in agreed form.

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

**“Original Financial Statements”** means the annual audited consolidated financial statements of the Group for its financial year ended 31 December 2022.

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

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

**“Parallel Debt”** means any amount which a Borrower owes to the Security Agent under Clause 29.2 (*Parallel Debt (Covenant to pay the Security Agent)*) or under that clause as incorporated by reference or in full in any other Finance Document.

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

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

**“Permitted Charter”** means, in relation to a Ship, a Charter:

- (a) which is a time, voyage or consecutive voyage charter;
- (b) the duration of which does not exceed and is not capable of exceeding, by virtue of any optional extensions, 13 months plus a redelivery allowance of not more than 30 days;
- (c) which is entered into on *bona fide* arm’s length terms at the time at which that Ship is fixed; and
- (d) in relation to which not more than two months’ hire is payable in advance,

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

**“Permitted Financial Indebtedness”** means:

- (a) any Financial Indebtedness incurred under the Finance Documents;
- (b) until the Release Date, the Existing Indebtedness; and
- (c) any Financial Indebtedness (including without limitation, any shareholder or intra-Group loans made available to the Borrowers (or any of them) in the normal course of its business of trading and operating any of Ship) that is subordinated to all Financial Indebtedness incurred under the Finance Documents in writing in a manner acceptable to the Facility Agent in all respects.

**“Permitted Security”** means:

- (a) until the Release Date, the Existing Security;
- (b) Security created by the Finance Documents;
- (c) liens for unpaid master’s and crew’s wages in accordance with first class ship ownership and management practice and not being enforced through arrest;
- (d) liens for salvage;
- (e) liens for master’s disbursements incurred in the ordinary course of trading in accordance with first class ship ownership and management practice and not being enforced through arrest; and
- (f) any other lien arising by operation of law or otherwise in the ordinary course of the operation, repair or maintenance of any Ship:
  - (i) not as a result of any default or omission by any Borrower;

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- (ii) not being enforced through arrest; and
  - (iii) subject, in the case of liens for repair or maintenance, to Clause 22.16 (*Restrictions on chartering, appointment of managers etc.*),

and provided such lien does not secure amounts more than 30 days overdue (unless the overdue amount is being contested in good faith by appropriate steps).

**“Poseidon Principles”** means the financial industry framework for assessing and disclosing the climate alignment of ship finance portfolios published in June 2019 as the same may be amended or replaced from time to time.

**“Potential Event of Default”** means any event or circumstance specified in Clause 25 (*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.

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

**“Purchase Price”** means, in relation to a Ship, the total purchase price payable for that Ship under the relevant Bill of Sale.

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

**“Reference Rate Supplement”** means a document which:

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

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

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

**“Release Date”** means the date on which the relevant Advance is to be released in accordance with the instructions contained in the Utilisation Request and/or release letter or instruction addressed to the Escrow Agent (as defined in paragraph (b) of Clause 5.6 (*Retentions and payment to third parties*)).

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**“Relevant Date”** has the meaning given to it in Clause 7.5 (*Mandatory prepayment on sale, seizure or Total Loss*).

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

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

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

**“Relevant Person”** means:

- (a) the Obligors and each of their Subsidiaries; and
- (b) each of their directors, officers and employees.

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

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

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

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

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

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

**“Requisition”** means in relation to a Ship:

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



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

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

- (a) listed on any Sanctions List or targeted by Sanctions (whether designated by name or by reason of being included in a class of person); or
- (b) located in or incorporated under the laws of any country or territory that is the target of comprehensive, country- or territory-wide Sanctions; or
- (c) directly or indirectly owned or controlled by, or acting on behalf, at the direction or for the benefit of, a person referred to in (a) and/or (to the extent relevant under Sanctions) (b) above.

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

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

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

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

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

**“Sanctions Authority”** means the Norwegian state, the Swedish state, the United Nations, the European Union, the United Kingdom, the United States of America, and any authority acting on behalf of any of them, or their respective legislative, executive, enforcement and/or regulatory authorities or bodies acting in connection with Sanctions.

**“Sanctions Laws”** means the economic or financial sanctions laws and/or regulations, trade embargoes, prohibitions, restrictive measures, decisions, executive orders or notices from regulators implemented, adapted, imposed, administered, enacted and/or enforced by any Sanctions Authority.

**“Sanctions List”** means:

- (a) the lists of Sanctions designations and/or targets maintained by any Sanctions Authority and/or
- (b) any other Sanctions designation or target listed and/or adopted by a Sanctions Authority,

in all cases, as amended, supplemented or replaced from time to time.

**“Sanctions”** means any applicable (to any Relevant Person and/or Finance Party as the context provides) laws, regulations or orders concerning any trade, economic or financial sanctions or embargoes.

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

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

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

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

**“Security Document”** means:

- (a) any Shares Security;
- (b) any Mortgage;
- (c) any General Assignment;
- (d) any Charterparty Assignment;
- (e) any Account Security;
- (f) any other document (whether or not it creates Security) which is executed as security for the Secured Liabilities; or
- (g) any other document designated as such by the Facility Agent and the Borrowers.

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

**“Security Property”** means:

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

except:

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

“**Servicing Party**” means the Facility Agent or the Security Agent.

“**Shareholder**” means Navios Maritime Midstream Operating L.L.C., a limited liability company formed and existing in the Republic of the Marshall Islands whose registered address is at Trust Company Complex, Ajeltake Road, Ajeltake Island, Majuro, Marshall Islands MH96960.

“**Shares Security**” means, in relation to a Borrower, a document creating Security over the issued shares in that Borrower in agreed form.

“**Ship**” means Ship A, Ship B, Ship C, Ship D or Ship E.

“**Ship A**” has the meaning given to that term in Schedule 7 (*Details of the Ships and other definitions*).

“**Ship B**” has the meaning given to that term in Schedule 7 (*Details of the Ships and other definitions*).

“**Ship C**” has the meaning given to that term in Schedule 7 (*Details of the Ships and other definitions*).

“**Ship D**” has the meaning given to that term in Schedule 7 (*Details of the Ships and other definitions*).

“**Ship E**” has the meaning given to that term in Schedule 7 (*Details of the Ships and other definitions*).

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

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

“**Subsidiary**” means that a company (S) is a subsidiary of another company (P) if:

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

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

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

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

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

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

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

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

“**Total Commitments**” means the aggregate of the Commitments, being in an amount of up to \$65,000,000.

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

- (a) actual, constructive, compromised, agreed or arranged total loss of that Ship; or
- (b) in the case of any of the events described in paragraph (a) of the definition “Requisition”, any such Requisition of a Ship unless that Ship is returned to the full control of the relevant Borrower within 60 days of such Requisition; and
- (c) in the case of any of the events described in paragraph (b) of the definition “Requisition”, any such Requisition of a Ship unless that Ship is returned to the full control of the relevant Borrower within 90 days of such Requisition, provided that in the event of piracy if the relevant underwriters confirm to the Facility Agent in writing (in customary terms) prior to the end of the 90-day period that the relevant Ship is subject to an approved piracy insurance cover, the earlier of 12 Months after the date on which that Ship is captured by pirates and the date on which the piracy insurance cover expires.

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

- (a) in the case of an actual loss of that Ship, the date on which it occurred or, if that is unknown, the date when that Ship was last heard of;
- (b) in the case of a constructive, compromised, agreed or arranged total loss of that Ship, the earlier of:
  - (i) the date on which a notice of abandonment is given (or deemed or agreed to be given) to the insurers; and
  - (ii) the date of any compromise, arrangement or agreement made by or on behalf of the relevant Borrower with that Ship’s insurers in which the insurers agree to treat that Ship as a total loss; and
- (c) in the case of any other type of Total Loss, the date (or the most likely date) on which it appears to the Facility Agent that the event constituting the total loss occurred.

“**Tranche**” means Tranche A, Tranche B, Tranche C, Tranche D or Tranche E.

“**Tranche A**” means that part of the Loan to be made available to the Borrowers to refinance the relevant Existing Indebtedness relating to Ship A in a principal amount not exceeding the lesser of (i) \$13,000,000 and (ii) 45 per cent. of the Initial Market Value of Ship A.

**“Tranche B”** means that part of the Loan to be made available to the Borrowers to refinance the relevant Existing Indebtedness relating to Ship B in a principal amount not exceeding the lesser of (i) \$13,750,000 and (ii) 45 per cent. of the Initial Market Value of Ship B.

**“Tranche C”** means that part of the Loan to be made available to the Borrowers to refinance the relevant Existing Indebtedness relating to Ship C in a principal amount not exceeding the lesser of (i) \$12,750,000 and (ii) 45 per cent. of the Initial Market Value of Ship C.

**“Tranche D”** means that part of the Loan to be made available to the Borrowers to refinance the relevant Existing Indebtedness relating to Ship D in a principal amount not exceeding the lesser of (i) \$12,750,000 and (ii) 45 per cent. of the Initial Market Value of Ship D.

**“Tranche E”** means that part of the Loan to be made available to the Borrowers to refinance the Existing Indebtedness relating to Ship E in a principal amount not exceeding the lesser of (i) \$12,750,000 and (ii) 45 per cent. of the Initial Market Value of Ship E.

**“Transaction Document”** means:

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

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

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

**“Transfer Certificate”** means a certificate substantially in the form set out in Schedule 4 (*Form of Transfer Certificate*) or any other form agreed between the Facility 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 Facility Agent executes the relevant Assignment Agreement or Transfer Certificate.

**“UK Bail-In Legislation”** means Part 1 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 institutes or their affiliates (otherwise than through liquidation, administration or other insolvency proceedings).

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

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

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

**“US Tax Obligor”** means:

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

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

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

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

**“VAT”** means:

- (a) any value added tax imposed by the Value Added Tax Act 1994;
- (b) any tax imposed in compliance with the Council Directive of 28 November 2006 on the common system of value added tax (EC Directive 2006/112); and
- (c) any other tax of a similar nature, whether imposed in the United Kingdom or in a member state of the European Union in substitution for, or levied in addition to, such tax referred to in paragraph (a) or (b) above, or imposed elsewhere.

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

to cancel, reduce, modify or change the form of a liability of such a person or any contract or instrument under which that liability arises, to convert all or part of that liability into shares, securities or obligations of that person or any other person, to provide that any such contract or instrument is to have effect as if a right had been exercised under it or to suspend any obligation in respect of that liability or any of the powers under that Bail-In Legislation that are related to or ancillary to any of those powers; and

- (ii) any similar or analogous powers under that Bail-In Legislation.

## 1.2 Construction

(a) Unless a contrary indication appears, a reference in this Agreement to:

- (i) the “**Account Bank**”, the “**Facility Agent**”, any “**Finance Party**”, the “**Mandated Lead Arranger**”, any “**Lender**”, any “**Obligor**”, any “**Party**”, any “**Secured Party**”, the “**Security Agent**”, any “**Transaction Obligor**” or any other person shall be construed so as to include its successors in title, permitted assigns and permitted transferees to, or of, its rights and/or obligations under the Finance Documents;
- (ii) “**assets**” includes present and future properties, revenues and rights of every description;
- (iii) a liability which is “**contingent**” means a liability which is not certain to arise and/or the amount of which remains unascertained;
- (iv) “**document**” includes a deed and also a letter, fax, email or telex;
- (v) “**expense**” means any kind of cost, charge or expense (including all legal costs, charges and expenses) and any applicable Tax including VAT;
- (vi) a Lender’s “**cost of funds**” in relation to its participation in the Loan or any part of the Loan is a reference to the average cost (determined either on an actual or a notional basis) which that Lender would incur if it were to fund, from whatever source(s) it may reasonably select, an amount equal to the amount of that participation in the Loan or that part of the Loan for a period equal in length to the Interest Period of the Loan or that part of the Loan;
- (vii) a “**Finance Document**”, a “**Security Document**” or “**Transaction Document**” or any other agreement or instrument is a reference to that Finance Document, Security Document or Transaction Document or other agreement or instrument as amended, replaced, novated, supplemented, extended or restated;
- (viii) a “**group of Lenders**” includes all the Lenders;
- (ix) “**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;
- (x) “**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;

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- (xi) “**proceedings**” means, in relation to any enforcement provision of a Finance Document, proceedings of any kind, including an application for a provisional or protective measure;
  - (xii) a “**person**” includes any individual, firm, company, corporation, government, state or agency of a state or any association, trust, joint venture, consortium, partnership or other entity (whether or not having separate legal personality);
  - (xiii) a “**regulation**” includes any regulation, rule, official directive, request or guideline (whether or not having the force of law) of any governmental, intergovernmental or supranational body, agency, department or regulatory, self-regulatory or other authority or organisation;
  - (xiv) a provision of law is a reference to that provision as amended or re-enacted from time to time;
  - (xv) a time of day is a reference to Stockholm time;
  - (xvi) any English legal term for any action, remedy, method of judicial proceeding, legal document, legal status, court, official or any legal concept or thing shall, in respect of a jurisdiction other than England, be deemed to include that which most nearly approximates in that jurisdiction to the English legal term;
  - (xvii) words denoting the singular number shall include the plural and vice versa; and
  - (xviii) “**including**” and “**in particular**” (and other similar expressions) shall be construed as not limiting any general words or expressions in connection with which they are used.
- (b) Section, Clause and Schedule headings are for ease of reference only and are not to be used for the purposes of construction or interpretation of the Finance Documents.
  - (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 reference in this Agreement to a page or screen of an information service displaying a rate shall include:
    - (i) any replacement page of that information service which displays that rate; and
    - (ii) the appropriate page of such other information service which displays that rate from time to time in place of that information service,
    - (iii) and, if such page or service ceases to be available, shall include any other page or service displaying that rate specified by the Facility Agent after consultation with the Borrowers.
  - (e) A reference in this Agreement to a Central Bank Rate shall include any successor rate to, or replacement rate for, that rate.
  - (f) Any Reference Rate Supplement overrides anything in:
    - (i) Schedule 8 (*Reference Rate Terms*); or



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- (ii) any earlier Reference Rate Supplement.
  - (g) A Compounding Methodology Supplement relating to the Daily Non-Cumulative Compounded RFR Rate or the Cumulative Compounded RFR Rate overrides anything relating to that rate in:
    - (i) Schedule 9 (*Daily Non-Cumulative Compounded RFR Rate*) or Schedule 10 (*Cumulative Compounded RFR Rate*), as the case may be; or
    - (ii) any earlier Compounding Methodology Supplement.
  - (h) A Potential Event of Default is “**continuing**” if it has not been remedied or waived and an Event of Default is “**continuing**” if it has not been waived.

### 1.3 Construction of insurance terms

In this Agreement:

“**approved**” means, for the purposes of Clause 21 (*Insurance Undertakings*), approved in writing by the Facility Agent.

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

“**obligatory insurances**” means all insurances effected, or which any Borrower is obliged to effect, under Clause 21 (*Insurance Undertakings*) or any other provision of this Agreement or of another Finance Document.

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

“**protection and indemnity risks**” means the usual risks covered by a protection and indemnity association managed in London, including pollution risks and the proportion (if any) of any sums payable to any other person or persons in case of collision which are not recoverable under the hull and machinery policies by reason of the incorporation in them of clause 6 of the International Hull Clauses (1/11/02) (1/11/03), clause 8 of the Institute Time Clauses (Hulls) (1/10/83) (1/11/95) or the Institute Amended Running Down Clause (1/10/71) or any equivalent provision.

“**war risks**” includes the risk of mines and all risks excluded by clauses 29, 30 or 31 of the International Hull Clauses (1/11/02), clauses 29 or 30 of the International Hull Clauses (1/11/03), clauses 24, 25 or 26 of the Institute Time Clauses (Hulls) (1/11/95) or clauses 23, 24 or 25 of the Institute Time Clauses (Hulls) (1/10/83) or any equivalent provisions.

### 1.4 Agreed forms of Finance Documents

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

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

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

### **1.5 Third party rights**

- (a) Unless expressly provided to the contrary in a Finance Document, a person who is not a Party has no right under the Contracts (Rights of Third Parties) Act 1999 (the “**Third Parties Act**”) to enforce or to enjoy the benefit of any term of this Agreement.
- (b) Subject to Clause 42.3 (*Other exceptions*) but otherwise notwithstanding any term of any Finance Document, the consent of any person who is not a Party is not required to rescind or vary this Agreement at any time.
- (c) Any Receiver, Delegate, Affiliate or any other person described in paragraph (d) of Clause 14.2 (*Other indemnities*), paragraph (b) of Clause 28.11 (*Exclusion of liability*), or paragraph (b) of Clause 29.11 (*Exclusion of liability*) may, subject to this Clause 1.5 (*Third party rights*) and the Third Parties Act, rely on any Clause of this Agreement which expressly confers rights on it.

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## SECTION 2

### THE FACILITY

#### 2 THE FACILITY

##### 2.1 The Facility

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

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

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

#### 3 PURPOSE

##### 3.1 Purpose

Each Borrower shall apply all amounts borrowed by it under the Facility only for the purpose stated in the preamble (*Background*) to this Agreement.

##### 3.2 Monitoring

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

#### 4 CONDITIONS OF UTILISATION

##### 4.1 Initial conditions precedent

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

#### **4.2 Further conditions precedent**

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

- (a) on the date of the Utilisation Request and on the proposed Utilisation Date and before any Advance is made available:
  - (i) no Default has occurred or would occur from the proposed Utilisation;
  - (ii) the representations set out in Clause 18 (*Representations*) to be made by each Transaction Obligor are true; and
  - (iii) to be made by each Transaction Obligor are true; and
  - (iv) no Ship has been sold or become a Total Loss; and
- (b) on or before the Utilisation Date, the Facility Agent has received, or is satisfied it will receive when the Advances are made available, all of the documents and other evidence listed in Part B of Schedule 2 (*Conditions Precedent*) in form and substance satisfactory to the Facility Agent.

#### **4.3 Conditions precedent to release of the relevant Advance**

The Facility Agent will only be obliged to comply with Clause 5.4 (*Lenders' participation*) and Clause 5.10 (*Release of prepositioned funds*) if on or before the Release Date, the Facility Agent has received, or is satisfied it will receive when the relevant Advance is made available, all of the documents and other evidence listed in Part B of Schedule 2 (*Conditions Precedent*) in form and substance satisfactory to the Facility Agent.

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

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

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

If the Majority Lenders, at their discretion, permit an Advance to be borrowed before any of the conditions precedent referred to in Clause 4.1 (*Initial conditions precedent*), Clause 4.2 (*Further conditions precedent*) or Clause 4.3 (*Conditions precedent to release of the relevant Advance*) has been satisfied, the Borrowers shall ensure that that condition is satisfied within five Business Days after the Utilisation Date or such later date as the Facility Agent, acting with the authorisation of the Majority Lenders, may agree in writing with the Borrowers.

## SECTION 3

### UTILISATION

#### 5 UTILISATION

##### 5.1 Delivery of a Utilisation Request

- (a) The Borrowers may utilise the Facility by delivery to the Facility Agent of a duly completed Utilisation Request not later than the Specified Time.
- (b) The Borrowers may not deliver more than one Utilisation Request under each Tranche and all Tranches shall be drawn simultaneously on the same Utilisation Date unless otherwise agreed by the Facility Agent.

##### 5.2 Completion of a Utilisation Request

- (a) The Utilisation Request is irrevocable and will not be regarded as having been duly completed unless:
- (b) the proposed Utilisation Date is a Business Day within the Availability Period;
- (c) the currency and amount of the Utilisation comply with Clause 5.3 (*Currency and amount*); and
- (d) the proposed Interest Period complies with Clause 9 (*Interest Periods*).

##### 5.3 Currency and amount

- (a) The currency specified in a Utilisation Request must be dollars.
- (b) The amount of the proposed Advance must be an amount which is not more than the lower of:
  - (i) in relation to the Advance under Tranche A, \$13,000,000 and 45 per cent. of the Initial Market Value of Ship A;
  - (ii) in relation to the Advance under Tranche B, \$13,750,000 and 45 per cent. of the Initial Market Value of Ship B;
  - (iii) in relation to the Advance under Tranche C, \$12,750,000 and 45 per cent. of the Initial Market Value of Ship C;
  - (iv) in relation to the Advance under Tranche D, \$12,750,000 and 45 per cent. of the Initial Market Value of Ship D;
  - (v) in relation to the Advance under Tranche E, \$12,750,000 and 45 per cent. of the Initial Market Value of Ship E,**provided that** the aggregate amount of all Tranches shall not exceed \$65,000,000.
- (c) The amount of the proposed Advance must be an amount which would not oblige the Borrowers to provide additional security or prepay part of the Loan if the ratio set out in Clause 23 (*Security Cover*) were applied and notice was given by the Facility Agent under Clause 23.1 (*Minimum required security cover*) immediately after that Advance was utilised.

#### **5.4 Lenders' participation**

- (a) If the conditions set out in this Agreement have been met, each Lender shall make its participation in each Advance available by the Utilisation Date through its Facility Office.
- (b) The amount of each Lender's participation in each Advance will be equal to the proportion borne by its Available Commitment to the Available Facility immediately before making that Advance.
- (c) The Facility Agent shall notify each Lender of the amount of each Advance and the amount of its participation in that Advance by the Specified Time.

#### **5.5 Payment to third parties**

The Borrowers irrevocably authorise the Facility Agent on the Utilisation Date to pay to, or for the account of, the Borrowers the amounts which the Facility Agent receives from the Lenders in respect of the relevant Advance. That payment shall be made in like funds as the Facility Agent received from the Lenders in respect of the relevant Advance to the account which the Borrowers specify in the Utilisation Request.

#### **5.6 Cancellation of Commitments**

The Commitments in respect of any Tranche which are unutilised at the end of the Availability Period for such Tranche shall then be cancelled.

#### **5.7 Retentions and payment to third parties**

The Borrowers irrevocably authorise the Facility Agent:

- (a) to deduct from the proceeds of the Advance any fees then payable to the Finance Parties in accordance with Clause 11 (*Fees*) and any other items listed as deductible items in the Utilisation Request and to apply them in payment of the items to which they relate;
- (b) on the Utilisation Date, to pay to, or for the account of, the relevant Borrower which is to utilise the relevant Advance the balance (after any deduction made in accordance with paragraph (a) above) of the amounts which the Facility Agent receives from the Lenders in respect of the relevant Advance. That payment shall be made in like funds as the Facility Agent received from the Lenders in respect of the relevant Advance to the client account of an escrow agent approved in writing by the Facility Agent (the "**Escrow Agent**") which the Borrowers specify in the Utilisation Request to be thereafter released to the account of the relevant Existing Owner and with such bank which the Borrowers specify in the Utilisation Request; and
- (c) following the deduction of fees in accordance with paragraph (a) above and payment of the balance of the relevant Advance in accordance with paragraph (b) above, any excess amount to be thereafter released to an Earnings Account of a Borrower specified in the Utilisation Request.

#### **5.8 Disbursement of Advance to third party**

Payment by the Lender under Clause 5.7 (*Retentions and payment to third parties*) to a person other than a Borrower shall constitute the making of the relevant Advance and the Borrowers shall at that time become indebted, as principal and director obligors, to each Lender in an amount equal to that Lender's participation in that Advance.

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**5.9 Prepositioning of funds**

If, in respect of any proposed Advance, the Lenders, at the request of the Borrowers and on terms acceptable to all the Lenders and in their absolute discretion, preposition funds with the Escrow Agent:

- (a) agree to pay interest on the amount of the funds so prepositioned at the rate described in Clause 8.1 (*Calculation of interest*) on the basis of successive interest periods of one day and so that interest shall be paid together with the first payment of interest on such Advance after the Utilisation Date in respect of it or, if the Release Date does not occur, within three Business Day of demand by the Facility Agent; and
- (b) shall without duplication, indemnify each Finance Party against any costs, loss or liability it may incur in connection with such arrangement.

**5.10 Release of prepositioned funds**

On the Release Date, the Facility Agent (acting on the instructions of the Majority Lenders) shall instruct the Escrow Agent to release the amount of the relevant Advance as specified in the Utilisation Request, subject to the provisions of Clause 4.3 (*Conditions precedent to release of the relevant Advance*) and Clause 4.4 (*Notification of satisfaction of conditions precedent*).

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SECTION 4

REPAYMENT, PREPAYMENT AND CANCELLATION

6 REPAYMENT

6.1 Repayment of Loan

The Borrowers shall repay each Tranche as follows:

- (a) Tranche A by:
  - (i) 20 equal consecutive quarterly instalments, each in an amount of \$390,000 (each a “**Repayment Instalment A**” and together the “**Repayment Instalments A**”); and
  - (ii) a balloon instalment in the amount of \$5,200,000 (the “**Balloon Instalment A**”),
- (b) Tranche B by:
  - (i) 20 equal consecutive quarterly instalments, each in an amount of \$412,500 (each a “**Repayment Instalment B**” and together the “**Repayment Instalments B**”); and
  - (ii) a balloon instalment in the amount of \$5,500,000 (the “**Balloon Instalment B**”);
- (c) Tranche C by:
  - (i) 20 equal consecutive quarterly instalments, each in an amount of \$382,500 (each a “**Repayment Instalment C**” and together the “**Repayment Instalments C**”); and
  - (ii) a balloon instalment in the amount of \$5,100,000 (the “**Balloon Instalment C**”);
- (d) Tranche D by:
  - (i) 20 equal consecutive quarterly instalments, each in an amount of \$382,500 (each a “**Repayment Instalment D**” and together the “**Repayment Instalments D**”); and
  - (ii) a balloon instalment in the amount of \$5,100,000 (the “**Balloon Instalment D**”);
- (e) Tranche E by:
  - (i) 20 equal consecutive quarterly instalments, each in an amount of \$382,500 (each a “**Repayment Instalment E**” and together the “**Repayment Instalments E**” and together with the Repayment Instalments A, the Repayment Instalments B, the Repayment Instalments C and the Repayment Instalments D, the “**Repayment Instalments**” and each a “**Repayment Instalment**”); and
  - (ii) a balloon instalment in the amount of \$5,100,000 (the “**Balloon Instalment E**” and together with the Balloon Instalment A, the Balloon Instalment B, the Balloon Instalment C and the Balloon Instalment D, the “**Balloon Instalments**” and each a “**Balloon Instalment**”).



## 6.2 Repayment Dates

The first Repayment Instalment in respect of each Tranche shall be repaid on the date falling three Months from the Utilisation Date, each subsequent Repayment Instalment in respect of that Tranche shall be repaid at quarterly intervals thereafter and each relevant Balloon Instalment shall be repaid on the Termination Date.

## 6.3 Effect of cancellation and prepayment on scheduled repayments

- (a) If the Borrowers cancel the whole or any part of any Available Commitment in accordance with Clause 7.6 (*Right of repayment and cancellation in relation to a single Lender*) or if the Available Commitment of any Lender is cancelled under Clause 7.1 (Illegality and Sanctions affecting a Lender) then the Repayment Instalments and the Balloon Instalments falling after that cancellation will be reduced *pro rata* by the amount of the Available Commitments so cancelled.
- (b) If the Borrowers cancel the whole or any part of any Available Commitment in accordance with Clause 7.3 (*Voluntary and automatic cancellation*) or if the whole or part of any Commitment is cancelled pursuant to Clause 5.6 (*Cancellation of Commitments*), then the Repayment Instalments and the Balloon Instalments falling after that cancellation will be reduced *pro rata* by the amount of the Commitments so cancelled.
- (c) If any part of the Loan is repaid or prepaid in accordance with Clause 7.6 (*Right of repayment and cancellation in relation to a single Lender*) or Clause 7.1 (Illegality and Sanctions affecting a Lender) then the Repayment Instalments and the Balloon Instalments falling after that repayment or prepayment (as applicable) will be reduced *pro rata* by the amount of the Loan repaid or prepaid.
- (d) If any part of the Loan is prepaid in accordance with Clause 7.4 (*Voluntary prepayment of Loan*), then such prepayment shall be applied *pro rata* against each Tranche and the amount of the Repayment Instalments and Balloon Instalment for each Tranche for each Repayment Date falling after that repayment or prepayment will be reduced *pro rata* by the amount of the Loan repaid or prepaid, unless such voluntary prepayment is made against the full amount of each Tranche, then such amount prepaid shall be applied against that Tranche.
- (e) If any part of the Loan is prepaid in accordance with Clause 7.5 (*Mandatory prepayment on sale, seizure or Total Loss*), then the amount of the Loan prepaid shall be applied against the Tranche which has been used in respect of the relevant Ship and thereafter any balance shall reduce the then outstanding Repayment Instalments and the Balloon Instalment of the other Tranches in order of maturity.

## 6.4 Termination Date

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

## 6.5 Reborrowing

No Borrower may reborrow any part of the Facility which is repaid.

## 7 PREPAYMENT AND CANCELLATION

### 7.1 Illegality and Sanctions affecting a Lender

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

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

### 7.2 Change of control

If there is a Change of Control:

- (a) the Borrowers and/or the Guarantor shall promptly notify the Facility Agent upon becoming aware of that event; and
- (b) if the Majority Lenders so require, the Facility Agent shall, by not less than 10 Business Days' notice to the Borrowers, cancel the Facility and declare the Loan, together with accrued interest, and all other amounts accrued under the Finance Documents immediately due and payable, whereupon the Facility will be cancelled and the Loan and all such outstanding interest and other amounts will become immediately due and payable.

In this Clause 7.2 (*Change of control*):

“**Change of Control**” means a change which results in:

- (a) Navios Maritime Holdings Inc. and/or Mrs. Angeliki Frangou and her direct descendants (either directly or indirectly) (through entities owned and controlled by her or trusts or foundations of which she is a beneficiary) ceasing to be the owner of, or having ultimate control of the voting rights attaching to more than five per cent. of all the units (including for the avoidance of doubt both general partner units and common units) in the Guarantor; or
- (b) Mrs. Angeliki Frangou and her direct descendants (either directly or indirectly) (through entities owned and controlled by her or trusts or foundations of which she is a beneficiary), ceasing to be the owner of, or having ultimate control of the voting rights attaching to all the issued shares in the general partner of the Guarantor, which is currently Olympos Maritime Ltd; or
- (c) Mrs. Angeliki Frangou ceasing to act as chairman or chief executive officer of the Guarantor and Olympos Maritime Ltd ceasing to be the general partner of the Guarantor; or

- (d) any person or group of persons acting in concert, other than Navios Maritime Holdings Inc., Mrs Angeliki Frangou and her direct descendants (either directly or indirectly), gaining control of the Guarantor.

For the purpose of paragraph (d) above “**control**” means the holding beneficially issued units of the Guarantor representing 50 per cent. or more of the voting rights.

For the purpose of paragraph (d) above “**acting in concert**” means a group of persons who, pursuant to an agreement or understanding (whether formal or informal), actively co-operate, through the acquisition directly or indirectly of shares in the Guarantor by any of them, either directly or indirectly, to obtain or consolidate control of the Guarantor.

### 7.3 Voluntary and automatic cancellation

- (a) The Borrowers may, if they give the Facility Agent not less than ten Business Days’ (or such shorter period as the Majority Lenders may agree) prior notice, cancel the whole or any part (being a minimum amount of \$1,000,000) of the Available Facility. Any cancellation under this Clause 7.3 (*Voluntary and automatic cancellation*) shall reduce the Commitments of the Lenders rateably and the amount of the relevant Tranche(s).
- (b) The unutilised Commitment (if any) of each Lender shall be automatically cancelled at close of business on the date on which the Advances are made available.

### 7.4 Voluntary prepayment of Loan

The Borrowers may, if they give the Facility Agent no less than five RFR Banking Days (or such shorter period as the Majority Lenders may agree) prior notice, prepay the whole or any part of the Loan (but, if in part, being an amount that reduces the amount of the Loan by a minimum amount of \$1,000,000 or an integral multiple of that amount or such lesser amount as may be acceptable to the Majority Lenders).

### 7.5 Mandatory prepayment on sale, seizure or Total Loss

- (a) If a Ship is sold (without prejudice to paragraph (a) of Clause 20.12 (*Disposals*)) or becomes a Total Loss, the Borrowers shall on the Relevant Date prepay an amount equal to (i) the Tranche applicable to that Ship and (ii) such amount, if applicable, to eliminate any shortfall arising in the ratio set out in Clause 23 (*Security Cover*) immediately following the prepayment.
- (b) In this Clause 7.5 (*Mandatory prepayment on sale, seizure or Total Loss*):
- “**Relevant Date**” means:
- (a) in the case of a sale of a Ship, on the date on which the sale is completed by delivery of that Ship to the buyer of that Ship; and
- (b) in the case of a Total Loss, on the earlier of (i) the date falling 120 days after the Total Loss Date and (ii) the date of receipt by the Security Agent of the proceeds of insurance relating to such Total Loss.

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**7.6 Right of repayment and cancellation in relation to a single Lender**

- (a) If:
- (i) any sum payable to any Lender by a Borrower is required to be increased under paragraph (c) of Clause 12.2 (*Tax gross-up*); or
  - (ii) any Lender claims indemnification from a Borrower under Clause 12.3 (*Tax indemnity*) or Clause 13 (*Increased costs*),
- the Borrowers may give the Facility Agent notice of cancellation of the Commitment of that Lender and their intention to procure the repayment of that Lender's participation in the Loan.
- (b) On receipt of a notice of cancellation referred to in paragraph (a) above, the Commitment of that Lender shall immediately be reduced to zero.
- (c) On the last day of each Interest Period which ends after the Borrowers have given notice of cancellation under paragraph (a) above in relation to a Lender (or, if earlier, the date specified by the Borrowers in that notice), the Borrowers shall repay that Lender's participation in the Loan.
- (d) The Borrowers may, in the circumstances set out in paragraph (a) above, on 15 Business Days' prior notice to the Facility Agent and that Lender, replace that Lender by requiring that Lender to (and, to the extent permitted by law, that Lender shall) transfer pursuant to Clause 26 (*Changes to the Lenders*) (and not part only) of its rights and obligations under this Agreement to a Lender or other bank, financial institution, trust, fund or other entity selected by the Borrowers which confirms its willingness to assume and does assume all the obligations of the transferring Lender in accordance with Clause 26 (*Changes to the Lenders*) for a purchase price in cash or other cash payment payable at the time of the transfer equal to the outstanding principal amount of such Lender's participation in the Loan and all accrued interest (to the extent that the Facility Agent has not given a notification under Clause 26.9 (*Pro rata interest settlement*)) and other amounts payable in relation thereto under the Finance Documents.
- (e) The replacement of a Lender pursuant to paragraph (d) above shall be subject to the following conditions:
- (i) the Borrowers shall have no right to replace a Servicing Party;
  - (ii) neither the Facility Agent nor any Lender shall have any obligation to find a replacement Lender;
  - (iii) in no event shall the Lender replaced under paragraph (d) above be required to pay or surrender any of the fees received by such Lender pursuant to the Finance Documents; and
  - (iv) the Lender shall only be obliged to transfer its rights and obligations pursuant to paragraph (d) above once it is satisfied that it has complied with all necessary "know your customer" or other similar checks under all applicable laws and regulations in relation to that transfer.
- (f) A Lender shall perform the checks described in sub-paragraph (iv) of paragraph (e) above as soon as reasonably practicable following delivery of a notice referred to in paragraph (d) above and shall notify the Facility Agent and the Borrowers when it is satisfied that it has complied with those checks.

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**7.7 Restrictions**

- (a) Any notice of cancellation or prepayment given by any Party under this Clause 7 (*Prepayment and Cancellation*) shall be irrevocable and, unless a contrary indication appears in this Agreement, shall specify the date or dates upon which the relevant cancellation or prepayment is to be made and the amount of that cancellation or prepayment and, if relevant, the part of the Loan to be prepaid or cancelled.
- (b) Any prepayment under this Agreement shall be made together with accrued interest on the amount prepaid, without premium or penalty.
- (c) No Borrower may reborrow any part of the Facility which is prepaid.
- (d) No Borrower shall 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.
- (e) No amount of the Total Commitments cancelled under this Agreement may be subsequently reinstated.
- (f) If the Facility Agent receives a notice under this Clause 7 (*Prepayment and Cancellation*) it shall promptly forward a copy of that notice to either the Borrowers or the affected Lenders, as appropriate.
- (g) If all or part of any Lender's participation in the Loan is repaid or prepaid, an amount of that Lender's Commitment (equal to the amount of the participation which is repaid or prepaid) will be deemed to be cancelled on the date of repayment or prepayment.

**7.8 Application of prepayments**

Any prepayment of any part of the Loan (other than a prepayment pursuant to Clause 7.1 (*Illegality and Sanctions affecting a Lender*)) or Clause 7.6 (*Right of repayment and cancellation in relation to a single Lender*) shall be applied pro rata to each Lender's participation in that part of the Loan.

## SECTION 5

### COSTS OF UTILISATION

#### 8 INTEREST

##### 8.1 Calculation of interest

- (a) The rate of interest on the Loan or any part of the Loan for any day during an Interest Period is the percentage rate per annum which is the aggregate of:
- (i) the Margin; and
  - (ii) the Compounded Reference Rate for that day.
- (b) If any day during an Interest Period for the Loan or any part of the Loan is not an RFR Banking Day, the rate of interest on the Loan or that part of the Loan for that day will be the rate applicable to the immediately preceding RFR Banking Day.

##### 8.2 Payment of interest

The Borrowers shall pay accrued interest on the Loan or any part of the Loan on the last day of each Interest Period (each an “**Interest Payment Date**”).

##### 8.3 Default interest

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

##### 8.4 Notifications

- (a) The Facility Agent shall no later than 3 Business Days prior to each Interest Payment Date, notify:
- (i) the Borrowers of that Interest Payment;
  - (ii) each Lender of the proportion of that Interest Payment which relates to that Lender’s participation in the Loan or the relevant part of the Loan; and
  - (iii) the Lenders and the Borrowers of:
    - (A) each applicable rate of interest relating to the determination of that Interest Payment; and

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- (B) to the extent it is then determinable, the Market Disruption Rate (if any) relating to the Loan or the relevant part of the Loan. This paragraph (a) shall not apply to any Interest Payment determined pursuant to Clause 10.3 (*Cost of funds*).
- (b) The Facility Agent shall promptly notify the Borrowers of each Funding Rate relating to the Loan or any part of the Loan.
- (c) The Facility Agent shall promptly notify the Lenders and the Borrowers of the determination of a rate of interest relating to the Loan or any part of the Loan to which Clause 10.3 (*Cost of funds*) applies.
- (d) This Clause 8.4 (*Notifications*) shall not require the Facility Agent to make any notification to any Party on a day which is not a Business Day.

## **9 INTEREST PERIODS**

### **9.1 Interest Periods**

- (a) Subject to this Clause 9 (*Interest Periods*), each Interest Period in respect of each Tranche shall be the period specified in the Reference Rate Terms or any other period agreed between the Borrowers, the Facility Agent and the Lenders save that the Borrowers may not select more than three (3) Interest Period of one (1) month in each calendar year.
- (b) An Interest Period in respect of the Loan or any part of the Loan shall not extend beyond the Termination Date.
- (c) The first Interest Period for the Loan shall start on the Utilisation Date and each subsequent Interest Period shall start on the last day of the preceding Interest Period.
- (d) No Interest Period shall be longer than three Months.

### **9.2 Changes to Interest Periods**

- (a) In respect of a Repayment Instalment, before the first day of an Interest Period for the Loan, the Facility Agent may establish an Interest Period for a part of the Loan equal to such Repayment Instalment to end on the Repayment Date relating to it and the remaining part of the Loan shall have the Interest Period specified in the Reference Rate Terms.
- (b) If the Facility Agent makes any change to an Interest Period referred to in this Clause 9.2 (*Changes to Interest Periods*), it shall promptly notify the Borrowers and the Lenders.

### **9.3 Non-Business Days**

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

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## **10 CHANGES TO THE CALCULATION OF INTEREST**

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

If:

- (a) there is no RFR or Central Bank Rate for the purposes of calculating the Daily Non-Cumulative Compounded RFR Rate for an RFR Banking Day during an Interest Period for the Loan or any part of the Loan; and
- (b) “Cost of funds will apply as a fallback” is specified in the Reference Rate Terms, Clause 10.3 (*Cost of funds*) shall apply to the Loan or that part of the Loan (as applicable) for that Interest Period.

### **10.2 Market disruption**

If:

- (i) a Market Disruption Rate is specified in the Reference Rate Terms; and
- (ii) before the Reporting Time for the Loan or any part of the Loan, the Facility Agent receives notifications from a Lender or Lenders (whose participations in the Loan or the relevant part of the Loan exceed 40 per cent. of the Loan or the relevant part of the Loan as appropriate) that its cost of funds relating to its participation in the Loan or that part of the Loan would be in excess of that Market Disruption Rate,

then Clause 10.3 (*Cost of funds*) shall apply to the Loan or that part of the Loan (as applicable) for the relevant Interest Period.

### **10.3 Cost of funds**

- (a) If this Clause 10.3 (*Cost of funds*) applies to the Loan or part of the Loan for an Interest Period, Clause 8.1 (*Calculation of interest*) shall not apply to the Loan or that part of the Loan for that Interest Period and the rate of interest on the Loan or that part of the Loan for that Interest Period shall be the percentage rate per annum which is the sum of:
  - (i) the Margin; and
  - (ii) the weighted average of the rates notified to the Facility Agent by each Lender as soon as practicable and in any event by the Reporting Time for the Loan or that part of the Loan to be that which expresses as a percentage rate per annum its cost of funds relating to its participation in the Loan or that part of the Loan.
- (b) If this Clause 10.3 (*Cost of funds*) applies and the Facility Agent or the Borrowers so require, the Facility Agent and the Borrowers shall enter into negotiations (for a period of not more than 30 days) with a view to agreeing a substitute basis for determining the rate of interest or (as the case may be) an alternative basis for funding.
- (c) Subject to Clause 42.4 (*Changes to reference rates*), any substitute or alternative basis agreed pursuant to paragraph (b) above shall, with the prior consent of all the Lenders and the Borrowers, be binding on all Parties.



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- (d) If paragraph (e) below does not apply and any rate notified to the Facility Agent under sub-paragraph (ii) of paragraph (a) above is less than zero, the relevant rate shall be deemed to be zero.
  - (e) If this Clause 10.3 (*Cost of funds*) applies pursuant to Clause 10.2 (*Market disruption*) and a Lender's Funding Rate is less than the relevant Market Disruption Rate that Lender's cost of funds relating to its participation in the Loan or the relevant part of the Loan for that Interest Period shall be deemed, for the purposes of sub-paragraph (ii) of paragraph (a) above, to be the Market Disruption Rate for the Loan or that part of the Loan.
  - (f) If this Clause 10.3 (*Cost of funds*) applies but any Lender does not supply a quotation by the time specified in sub-paragraph (ii) of paragraph (a) above, the rate of interest shall be calculated on the basis of the rates notified by the remaining Lenders.
  - (g) If this Clause 10.3 (*Cost of funds*) applies, the Facility Agent shall, as soon as is practicable, notify the Borrowers.

## **11 FEES**

### **11.1 Commitment fee**

- (a) The Borrowers shall pay to the Facility Agent (for the account of each Lender) a fee computed at the rate of 0.50 per cent. per annum on that Lender's Available Commitment from time to time for the Availability Period.
- (b) The accrued commitment fee is payable quarterly in arrears during the period commencing on (and including) the date of this Agreement to the last day of the Availability Period on the last day of such period and, if cancelled, on the cancelled amount of the relevant Lender's Commitment at the time the cancellation is effective.
- (c) No commitment fee shall be payable if the Utilisation Date falls within five Business Days of the date of this Agreement.

### **11.2 Arrangement fee**

The Borrowers shall pay to the Mandated Lead Arranger a non-refundable arrangement fee as set out in the relevant Fee Letter.

## SECTION 6

### ADDITIONAL PAYMENT OBLIGATIONS

#### 12 TAX GROSS UP AND INDEMNITIES

##### 12.1 Definitions

(a) In this Agreement:

“**Protected Party**” means a Finance Party which is or will be subject to any liability, or required to make any payment, for or on account of Tax in relation to a sum received or receivable (or any sum deemed for the purposes of Tax to be received or receivable) under a Finance Document.

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

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

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

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

##### 12.2 Tax gross-up

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

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

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

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

(e) Within 30 days of making either a Tax Deduction or any payment required in connection with that Tax Deduction, the Borrower making that Tax Deduction shall deliver to the Facility Agent for the Finance Party entitled to the payment evidence reasonably satisfactory to that Finance Party that the Tax Deduction has been made or (as applicable) any appropriate payment paid to the relevant taxing authority.

### 12.3 Tax indemnity

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

### 12.4 Tax Credit

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

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

## 12.5 Stamp taxes

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

## 12.6 VAT

- (a) All amounts expressed to be payable under a Finance Document by any Party to a Finance Party which (in whole or in part) constitute the consideration for any supply for VAT purposes are deemed to be exclusive of any VAT which is chargeable on that supply, and accordingly, subject to paragraph (b) below, if VAT is or becomes chargeable on any supply made by any Finance Party to any Party under a Finance Document and such Finance Party is required to account to the relevant tax authority for the VAT, that Party must pay to such Finance Party (in addition to and at the same time as paying any other consideration for such supply) an amount equal to the amount of the VAT (and such Finance Party must promptly provide an appropriate VAT invoice to that Party).
- (b) If VAT is or becomes chargeable on any supply made by any Finance Party (the “**Supplier**”) to any other Finance Party (the “**Recipient**”) under a Finance Document, and any Party other than the Recipient (the “**Relevant Party**”) is required by the terms of any Finance Document to pay an amount equal to the consideration for that supply to the Supplier (rather than being required to reimburse or indemnify the Recipient in respect of that consideration):
- (i) (where the Supplier is the person required to account to the relevant tax authority for the VAT) the Relevant Party must also pay to the Supplier (at the same time as paying that amount) an additional amount equal to the amount of the VAT. The Recipient must (where this sub-paragraph (i) applies) promptly pay to the Relevant Party an amount equal to any credit or repayment the Recipient receives from the relevant tax authority which the Recipient reasonably determines relates to the VAT chargeable on that supply; and
- (ii) (where the Recipient is the person required to account to the relevant tax authority for the VAT) the Relevant Party must promptly, following demand from the Recipient, pay to the Recipient an amount equal to the VAT chargeable on that supply but only to the extent that the Recipient reasonably determines that it is not entitled to credit or repayment from the relevant tax authority in respect of that VAT.
- (c) Where a Finance Document requires any Party to reimburse or indemnify a Finance Party for any cost or expense, that Party shall reimburse or indemnify (as the case may be) such Finance Party for the full amount of such cost or expense, including such part of it as represents VAT, save to the extent that such Finance Party reasonably determines that it is entitled to credit or repayment in respect of such VAT from the relevant tax authority.
- (d) Any reference in this Clause 12.6 (VAT) to any Party shall, at any time when that Party is treated as a member of a group or unity (or fiscal unity) for VAT purposes, include (where appropriate and unless the context otherwise requires) a reference to the person who is treated at that time as making the supply, or (as appropriate) receiving the supply, under the grouping rules provided for in Article 11 of Council Directive 2006/112/EC (or as implemented by the relevant member state of the European Union or equivalent provisions imposed elsewhere) so that a reference to a Party shall be construed as a reference to that Party or the relevant group or unity (or fiscal unity) of which that Party is a member for VAT purposes at the relevant time or the relevant representative member (or representative or head) of that group or unity at the relevant time (as the case may be).

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- (e) In relation to any supply made by a Finance Party to any Party under a Finance Document, if reasonably requested by such Finance Party, that Party must promptly provide such Finance Party with details of that Party's VAT registration and such other information as is reasonably requested in connection with such Finance Party's VAT reporting requirements in relation to such supply.

#### 12.7 FATCA Information

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

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- (i) where a Borrower is a US Tax Obligor and the relevant Lender is an Original Lender, the date of this Agreement;
  - (ii) where a Borrower is a US Tax Obligor on a Transfer Date and the relevant Lender is a New Lender, the relevant Transfer Date; or
  - (iii) where a Borrower is not a US Tax Obligor, the date of a request from the Facility Agent, supply to the Facility Agent:
    - (iv) a withholding certificate on Form W-8, Form W-9 or any other relevant form; or
    - (v) any withholding statement or other document, authorisation or waiver as the Facility Agent may require to certify or establish the status of such Lender under FATCA or that other law or regulation.
  - (f) The Facility Agent shall provide any withholding certificate, withholding statement, document, authorisation or waiver it receives from a Lender pursuant to paragraph (e) above to the Borrowers.
  - (g) If any withholding certificate, withholding statement, document, authorisation or waiver provided to the Facility Agent by a Lender pursuant to paragraph (e) above is or becomes materially inaccurate or incomplete, that Lender shall promptly update it and provide such updated withholding certificate, withholding statement, document, authorisation or waiver to the Facility Agent unless it is unlawful for the Lender to do so (in which case the Lender shall promptly notify the Facility Agent). The Facility Agent shall provide any such updated withholding certificate, withholding statement, document, authorisation or waiver to the Borrowers.
  - (h) The Facility Agent may rely on any withholding certificate, withholding statement, document, authorisation or waiver it receives from a Lender pursuant to paragraph (e) or (g) above without further verification. The Facility Agent shall not be liable for any action taken by it under or in connection with paragraphs (e), (f) or (g) above.

## **12.8 FATCA Deduction**

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

## **13 INCREASED COSTS**

### **13.1 Increased costs**

- (a) Subject to Clause 13.3 (*Exceptions*), the Borrowers shall, within three Business Days of a demand by the Facility Agent, pay for the account of a Finance Party the amount of any Increased Costs incurred by that Finance Party or any of its Affiliates as a result of:

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- (i) the introduction of or any change in (or in the interpretation, administration or application of) any law or regulation; or
  - (ii) compliance with any law or regulation made,
- in each case after the date of this Agreement; or
- (iii) the implementation, application of or compliance with Basel III or CRD IV or any law or regulation that implements or applies Basel III or CRD IV.
- (b) In this Agreement:
- (i) **“Basel III”** means:
    - (A) the agreements on capital requirements, a leverage ratio and liquidity standards contained in “Basel III: A global regulatory framework for more resilient banks and banking systems”, “Basel III: International framework for liquidity risk measurement, standards and monitoring” and “Guidance for national authorities operating the countercyclical capital buffer” published by the Basel Committee on Banking Supervision in December 2010, each as amended, supplemented or restated;
    - (B) the rules for global systemically important banks contained in “Global systemically important banks: assessment methodology and the additional loss absorbency requirement—Rules text” published by the Basel Committee on Banking Supervision in November 2011, as amended, supplemented or restated; and
    - (C) any further guidance or standards published by the Basel Committee on Banking Supervision relating to “Basel III”.
  - (ii) **“CRD IV”** means:
    - (A) Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending regulation (EU) No. 648/2012, as amended by Regulation (EU) 2019/876;
    - (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, as amended by Directive (EU) 2019/878; and
    - (C) any other law or regulation which implements Basel III.
  - (iii) **“Increased Costs”** means:
    - (A) a reduction in the rate of return from the Facility or on a Finance Party’s (or its Affiliate’s) overall capital;
    - (B) an additional or increased cost; or

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(C) a reduction of any amount due and payable under any Finance Document, which is incurred or suffered by a Finance Party or any of its Affiliates to the extent that it is attributable to that Finance Party having entered into its Commitment or funding or performing its obligations under any Finance Document.

### 13.2 Increased cost claims

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

### 13.3 Exceptions

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

- (a) attributable to a Tax Deduction required by law to be made by a Borrower;
- (b) attributable to a FATCA Deduction required to be made by a Party;
- (c) compensated for by Clause 12.3 (*Tax indemnity*) (or would have been compensated for under Clause 12.3 (*Tax indemnity*) but was not so compensated solely because any of the exclusions in paragraph (b) of Clause 12.3 (*Tax indemnity*) applied);
- (d) compensated for by any payment made pursuant to Clause 14.3 (*Mandatory Cost*); or
- (e) attributable to the wilful breach by the relevant Finance Party or its Affiliates of any law or regulation.

## 14 OTHER INDEMNITIES

### 14.1 Currency indemnity

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

that Borrower shall, as an independent obligation, on demand, indemnify each Secured Party to which that Sum is due against any cost, loss or liability arising out of or as a result of the conversion including any discrepancy between (A) the rate of exchange used to convert that Sum from the First Currency into the Second Currency and (B) the rate or rates of exchange available to that person at the time of its receipt of that Sum.



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- (b) Each Borrower 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 Borrower shall, on demand, indemnify each Secured Party against any cost, loss or liability incurred by it as a result of:
- (i) the occurrence of any Event of Default;
  - (ii) a failure by a Borrower 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 31 (*Sharing among the Finance Parties*);
  - (iii) funding, or making arrangements to fund, its participation in an Advance 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 Secured Party alone); or
  - (iv) the Loan (or part of the Loan) not being prepaid in accordance with a notice of prepayment given by the Borrowers.
- (b) Each Borrower shall, on demand, indemnify each Finance Party, each Affiliate of a Finance Party and each officer or employee of a Finance Party or its Affiliate (each such person for the purposes of this Clause 14.2 (*Other indemnities*) an “**Indemnified Person**”), against any cost, loss or liability incurred by that Indemnified Person pursuant to or in connection with any litigation, arbitration or administrative proceedings or regulatory enquiry, in connection with or arising out of the entry into and the transactions contemplated by the Finance Documents, having the benefit of any Security constituted by the Finance Documents or which relates to the condition or operation of, or any incident occurring in relation to, any Ship unless such cost, loss or liability is caused by the gross negligence or wilful misconduct of that Indemnified Person.
- (c) Without limiting, but subject to any limitations set out in paragraph (b) above, the indemnity in paragraph (b) above shall cover any cost, loss or liability incurred by each Indemnified Person in any jurisdiction:
- (i) arising or asserted under or in connection with any law relating to safety at sea, the ISM Code, any Environmental Law or any Sanctions; or
  - (ii) in connection with any Environmental Claim.
- (d) Any Affiliate or any officer or employee of a Finance Party or of any of its Affiliates may rely on this Clause 14.2 (*Other indemnities*) subject to Clause 1.5 (*Third party rights*) and the provisions of the Third Parties Act.

#### 14.3 Mandatory Cost

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

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

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

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

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

- (a) any cost, loss or liability incurred by the Facility Agent (acting reasonably) as a result of:
  - (i) investigating any event which it reasonably believes is a Default; or
  - (ii) acting or relying on any notice, request or instruction which it reasonably believes to be genuine, correct and appropriately authorised; or
  - (iii) instructing lawyers, accountants, tax advisers, surveyors or other professional advisers or experts as permitted under the Finance Documents; and
- (b) any cost, loss or liability incurred by the Facility Agent (otherwise than by reason of the Facility Agent's gross negligence or wilful misconduct) or, in the case of any cost, loss or liability pursuant to Clause 32.11 (*Disruption to Payment Systems etc.*) not including any claim based on the gross negligence, wilful misconduct or fraud of the Facility Agent in acting as Facility Agent under the Finance Documents.

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

- (a) Each Borrower shall, on demand, indemnify the Security Agent and every Receiver and Delegate against any cost, loss or liability (including, without limitation, for negligence or any other category of liability whatsoever) incurred by any of them:
  - (i) in relation to or as a result of:
    - (A) any failure by a Borrower to comply with its obligations under Clause 16 (*Costs and Expenses*);
    - (B) acting or relying on any notice, request or instruction which it reasonably believes to be genuine, correct and appropriately authorised;
    - (C) the taking, holding, protection or enforcement of the Finance Documents and the Transaction Security;

- (D) the exercise of any of the rights, powers, discretions, authorities and remedies vested in the Security Agent and each Receiver and Delegate by the Finance Documents or by law;
  - (E) any default by any Transaction Obligor in the performance of any of the obligations expressed to be assumed by it in the Finance Documents;
  - (F) any action by any Transaction Obligor which vitiates, reduces the value of, or is otherwise prejudicial to, the Transaction Security; and
  - (G) instructing lawyers, accountants, tax advisers, surveyors or other professional advisers or experts as permitted under the Finance Documents,
- (ii) acting as Security Agent, Receiver or Delegate under the Finance Documents or which otherwise relates to any of the Security Property or the performance of the terms of this Agreement or the other Finance Documents (otherwise, in each case, than by reason of the relevant Security Agent's, Receiver's or Delegate's gross negligence or wilful misconduct).
- (b) The Security Agent and every Receiver and Delegate may, in priority to any payment to the Secured Parties, indemnify itself out of the Security Assets in respect of, and pay and retain, all sums necessary to give effect to the indemnity in this Clause 14.5 (*Indemnity to the Security Agent*) and shall have a lien on the Transaction Security and the proceeds of the enforcement of the Transaction Security for all monies payable to it.

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

### **15.1 Mitigation**

- (a) Each Finance Party shall, in consultation with the 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 and Sanctions affecting a Lender), Clause 12 (*Tax Gross Up and Indemnities*), Clause 13 (*Increased Costs*) or paragraph (a) of Clause 14.3 (*Mandatory Cost*) including (but not limited to) transferring its rights and obligations under the Finance Documents to another Affiliate or Facility Office.
- (b) Paragraph (a) above does not in any way limit the obligations of any Transaction Obligor under the Finance Documents.

### **15.2 Limitation of liability**

- (a) Each Borrower shall, on demand, indemnify each Finance Party for all costs and expenses reasonably incurred by that Finance Party as a result of steps taken by it under Clause 15.1 (*Mitigation*).
- (b) A Finance Party is not obliged to take any steps under Clause 15.1 (*Mitigation*) if either:
- (i) a Default has occurred and is continuing; or
  - (ii) in the opinion of that Finance Party (acting reasonably), to do so might be prejudicial to it.

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## 16 COSTS AND EXPENSES

### 16.1 Transaction expenses

The Borrowers shall, on demand, pay the Facility Agent, the Security Agent and the Mandated Lead Arranger the amount of all costs and expenses (including legal fees and VAT) reasonably incurred by any Secured Party in connection with the negotiation, preparation, printing, execution, syndication and perfection of:

- (a) this Agreement and any other documents referred to in this Agreement or in a Security Document; and
- (b) any other Finance Documents executed after the date of this Agreement.

### 16.2 Amendment costs

Subject to Clause 16.4 (*Reference rate transition costs*), if:

- (a) a Transaction Obligor requests an amendment, waiver or consent; or
- (b) an amendment is required pursuant to Clause 32.9 (*Change of currency*); or
- (c) a Transaction Obligor requests, and the Security Agent agrees to, the release of all or any part of the Security Assets from the Transaction Security,

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

### 16.3 Enforcement and preservation costs

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

### 16.4 Reference rate transition costs

The Borrowers shall on demand reimburse each of the Facility Agent and the Security Agent for the amount of all documented costs and expenses (including legal fees and VAT) reasonably incurred by each Secured Party in connection with:

- (a) the negotiation or entry into of any Reference Rate Supplement or Compounding Methodology Supplement; or
- (b) any amendment, waiver or consent relating to:
  - (i) any Reference Rate Supplement or Compounding Methodology Supplement; or
  - (ii) any change arising as a result of an amendment required under Clause 42.4 (*Changes to reference rates*).

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**SECTION 7**

**JOINT AND SEVERAL LIABILITY OF BORROWERS**

**17 JOINT AND SEVERAL LIABILITY OF THE BORROWERS**

**17.1 Joint and several liability**

All liabilities and obligations of the Borrowers under this Agreement shall, whether expressed to be so or not, be joint and several.

**17.2 Waiver of defences**

The liabilities and obligations of a Borrower shall not be impaired by:

- (a) this Agreement being or later becoming void, unenforceable or illegal as regards any other Borrower;
- (b) any Lender or the Security Agent entering into any rescheduling, refinancing or other arrangement of any kind with any other Borrower;
- (c) any Lender or the Security Agent releasing any other Borrower or any Security created by a Finance Document; or
- (d) any time, waiver or consent granted to, or composition with any other Borrower or other person;
- (e) 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;
- (f) 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;
- (g) 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;
- (h) any amendment, novation, supplement, extension, restatement (however fundamental, and whether or not more onerous) or replacement of a Finance Document or any other document or security 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;
- (i) any unenforceability, illegality or invalidity of any obligation or any person under any Finance Document or any other document or security; or
- (j) any insolvency or similar proceedings.

**17.3 Principal Debtor**

Each Borrower declares that it is and will, throughout the Security Period, remain a principal debtor for all amounts owing under this Agreement and the Finance Documents and no Borrower shall, in any circumstances, be construed to be a surety for the obligations of any other Borrower under this Agreement.

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**17.4 Borrower restrictions**

- (a) Subject to paragraph (b) below, during the Security Period no Borrower shall:
- (i) claim any amount which may be due to it from any other Borrower whether in respect of a payment made under, or matter arising out of, this Agreement or any Finance Document, or any matter unconnected with this Agreement or any Finance Document; or
  - (ii) take or enforce any form of security from any other Borrower for such an amount, or in any way seek to have recourse in respect of such an amount against any asset of any other Borrower; or
  - (iii) set off such an amount against any sum due from it to any other Borrower; or
  - (iv) prove or claim for such an amount in any liquidation, administration, arrangement or similar procedure involving any other Borrower; or
  - (v) exercise or assert any combination of the foregoing.
- (b) If during the Security Period, the Facility Agent, by notice to a Borrower, requires it to take any action referred to in paragraph (a) above in relation to any other Borrower, that Borrower shall take that action as soon as practicable after receiving the Facility Agent's notice.

**17.5 Deferral of Borrowers' rights**

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 Facility 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:

- (a) to be indemnified by any other Borrower; or
- (b) to claim any contribution from any other Borrower in relation to any payment made by it under the Finance Documents.

## SECTION 8

### REPRESENTATIONS, UNDERTAKINGS AND EVENTS OF DEFAULT

#### 18 REPRESENTATIONS

##### 18.1 General

Each Borrower makes the representations and warranties set out in this Clause 18 (*Representations*) to each Finance Party on the date of this Agreement.

##### 18.2 Status

- (a) It is a corporation or limited partnership, duly incorporated or formed and validly existing in good standing under the law of its jurisdiction of incorporation.
- (b) It and each Transaction Obligor has the power to own its assets and carry on its business as it is being conducted.

##### 18.3 Share capital and ownership

- (a) Each of Borrower A and Borrower B is authorised to issue 500 registered shares with a par value of \$1.00 per share, all of which shares have been issued in registered form and are fully paid and non-assessable.
- (b) Each of Borrower C, Borrower D and Borrower E is authorised to issue 500 registered and/or bearer shares with a par value of \$1.00 per share, all of which shares have been issued in registered form and are fully paid and non-assessable.
- (c) The legal title to and beneficial interest in the issued shares in each Borrower is held free of any Security (other than any Existing Security until the Release Date) or any other claim by the Shareholder and each Borrower is 100 per cent. owned indirectly by the Guarantor.
- (d) None of the issued shares in each Borrower is subject to any option to purchase, pre-emption rights or similar rights.

##### 18.4 Binding obligations

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

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

- (a) Each Finance Document to which it is a party does now or, as the case may be, will upon execution and delivery and, where applicable, registration as provided for in that Finance Document create, the Security it purports to create over any assets to which such Security, by its terms, relates, and such Security will, when created or intended to be created, be valid and effective.
- (b) No third party has or will have any Security (except for Permitted Security) over any assets that are the subject of any Transaction Security granted by it.

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- (c) The Transaction Security granted by it to the Security Agent or any other Secured Party has or will when created or intended to be created have first ranking priority or such other priority it is expressed to have in the Finance Documents and is not subject to any prior ranking or *pari passu* ranking Security.
  - (d) No concurrence, consent or authorisation of any person is required for the creation of or otherwise in connection with any Transaction Security.

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

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

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

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

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

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

All Authorisations required or desirable:

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

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

- (a) The choice of governing law of each Transaction Document to which it is a party will be recognised and enforced in its Relevant Jurisdictions.



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

**18.10 Insolvency**

No:

- (a) corporate action, legal proceeding or other procedure or step described in paragraph (a) of Clause 25.8 (*Insolvency proceedings*); or
- (b) creditors' process described in Clause 25.9 (*Creditors' process*),

has been taken or, to its knowledge, threatened in relation to a member of the Group; and none of the circumstances described in Clause 25.7 (*Insolvency*) applies to a member of the Group.

**18.11 No filing or stamp taxes**

Under the laws of its Relevant Jurisdictions it is not necessary that the Finance Documents to which it is a party be registered, filed, recorded, notarised or enrolled with any court or other authority in that jurisdiction or that any stamp, registration, notarial or similar Taxes or fees be paid on or in relation to the Finance Documents to which it is a party or the transactions contemplated by those Finance Documents except any filing, recording or enrolling or any tax or fee payable in relation to any Transaction Obligor which is referred to in any legal opinion delivered pursuant to Clause 4 (*Conditions of Utilisation*) and which will be made or paid promptly after the date of the relevant Finance Document.

**18.12 Deduction of Tax**

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

**18.13 No default**

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

**18.14 No misleading information**

- (a) Any factual information provided by any member of the Group for the purposes of this Agreement was true and accurate in all material respects as at the date it was provided or as at the date (if any) at which it is stated.
- (b) The financial projections contained in any such information have been prepared on the basis of recent historical information and on the basis of reasonable assumptions.

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- (c) Nothing has occurred or been omitted from any such information and no information has been given or withheld that results in any such information being untrue or misleading in any material respect.

#### **18.15 Financial Statements**

- (a) The Original Financial Statements were prepared in accordance with GAAP consistently applied.
- (b) The Original Financial Statements give a true and fair view of the Group's financial condition as at the end of the relevant financial year and its and the Group's results of operations during the relevant financial year.
- (c) There has been no material adverse change in its assets, business or financial condition (or the assets, business or consolidated financial condition of the Group, in the case of the Guarantor) since 24 March 2023 (other than as disclosed to the Facility Agent prior to the date of this Agreement).
- (d) Its and the Guarantor's most recent financial statements delivered pursuant to Clause 19.2 (*Financial statements*):
- (i) have been prepared in accordance with Clause 19.3 (*Requirements as to financial statements*); and
  - (ii) give a true and fair view of (if audited) or fairly represent (if unaudited) its financial condition as at the end of the relevant financial year and operations during the relevant financial year (consolidated in the case of the Guarantor).
- (e) Since the date of the most recent financial statements delivered pursuant to Clause 19.2 (*Financial statements*) there has been no material adverse change in its business, assets or financial condition (or the business or consolidated financial condition of the Group, in the case of the Guarantor).

#### **18.16 *Pari passu* ranking**

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

#### **18.17 No proceedings pending or threatened**

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

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**18.18 Valuations**

- (a) All information supplied by it or on its behalf to an Approved Valuer for the purposes of a valuation delivered to the Facility Agent in accordance with this Agreement was true and accurate as at the date it was supplied or (if appropriate) as at the date (if any) at which it is stated to be given.
- (b) It has not omitted to supply any information to an Approved Valuer which, if disclosed, would adversely affect any valuation prepared by such Approved Valuer.
- (c) There has been no change to the factual information provided pursuant to paragraph (a) above in relation to any valuation between the date such information was provided and the date of that valuation which, in either case, renders that information untrue or misleading in any material respect.

**18.19 No breach of laws**

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

**18.20 No Charter**

No Ship is subject to any Charter other than a Permitted Charter.

**18.21 Compliance with Environmental Laws**

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

**18.22 No Environmental Claim**

No Environmental Claim has been made or threatened against any member of the Group or any Ship which might reasonably be expected to have a Material Adverse Effect.

**18.23 No Environmental Incident**

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

**18.24 ISM and ISPS Code compliance**

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

**18.25 Taxes paid**

- (a) It is not and no other member of the Group is materially overdue in the filing of any Tax returns and it is not (and no other member of the Group is) overdue in the payment of any amount in respect of Tax.
- (b) No claims or investigations are being, or to the best of its knowledge, are reasonably likely to be, made or conducted against it (or any other member of the Group) with respect to Taxes.

#### **18.26 Financial Indebtedness**

No Borrower has any Financial Indebtedness outstanding other than Permitted Financial Indebtedness.

#### **18.27 Overseas companies**

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

#### **18.28 Good title to assets**

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

#### **18.29 Ownership**

- (a) On and from the Release Date, each Borrower will be the sole legal and beneficial owner of the Ship owned by it, its Earnings and its Insurances.
- (b) The Shareholder is the sole legal and beneficial owner of all the issued shares in each Borrower.
- (c) The Guarantor is the indirect beneficial owner of all the issued shares in the Shareholder.
- (d) With effect on and from the date of its creation or intended creation, each Transaction Obligor will be the sole legal and beneficial owner of any asset that is the subject of any Transaction Security created or intended to be created by such Transaction Obligor.
- (e) The constitutional documents of each Borrower do not and could not restrict or inhibit any transfer of the shares of any Borrower on creation or enforcement of the security conferred by the Security Documents.

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

For the purposes of The Council of the European Union Regulation No. 2015/848 on Insolvency Proceedings (recast) (the “**Regulation**”), its centre of main interest (as that term is used in Article 3(1) of the Regulation) is not situated in the US or the United Kingdom and it has no “establishment” (as that term is used in Article 2(10) of the Regulation) in such jurisdiction.

#### **18.31 Place of business**

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

#### **18.32 No employee or pension arrangements**

No Borrower has any employees or any liabilities under any pension scheme.

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**18.33 Sanctions**

No Relevant Person is:

- (a) a Restricted Party;
- (b) in breach of Sanctions; or
- (c) to its knowledge subject to or involved in any complaint, claim, proceeding, formal notice, investigation or other action by any regulatory or enforcement authority or third party concerning any Sanctions.

**18.34 US Tax Obligor**

No Transaction Obligor is a US Tax Obligor.

**18.35 No Money laundering**

- (a) Each Borrower is acting for its own account in relation to the Loan and in relation to the performance and the discharge of its respective obligations and liabilities under the Finance Documents and the transactions and other arrangements effected or contemplated by the Finance Documents to which such Borrower is a party, and 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.
- (b) Without prejudice to any of the foregoing, none of the Transaction Obligors nor any other member of the Group and their respective members directors, officers, Subsidiaries and, to the best of their knowledge, their Affiliates or employees has engaged in any activity or conduct which would violate any applicable anti-bribery, anti-corruption or anti-Money Laundering laws, regulations or rules in any applicable jurisdiction and each of the Transaction Obligors has instituted and maintains policies and procedures designed to prevent violation of such laws, regulations and rules.

**18.36 Validity and completeness of the Deed of Release**

- (a) The Deed of Release constitutes legal, valid, binding and enforceable obligations of the parties thereto.
- (b) No amendments or additions to the Deed of Release have been agreed nor have any rights under the Deed of Release been waived.

**18.37 No immunity**

No Borrower, nor any of its assets is entitled to immunity on the grounds of sovereignty or otherwise from any legal action or proceeding (which shall include, without limitation, suit attachment prior to judgement, execution or other enforcement).

**18.38 Repetition**

The Repeating Representations are deemed to be made by each Borrower by reference to the facts and circumstances then existing on the date of the Utilisation Request, the Release Date and the first day of each Interest Period.

## 19 INFORMATION UNDERTAKINGS`

### 19.1 General

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

### 19.2 Financial statements

The Borrowers procure that the Guarantor shall supply to the Facility Agent in sufficient copies for all the Lenders:

- (a) as soon as they become available, but in any event within 180 days after the end of each of the Guarantor's financial years, commencing with the financial year ended on 31 December 2022, the annual audited consolidated financial statement of the Group for that financial year; and
- (b) as soon as the same become available, but in any event within 90 days after the end of each quarter of each of the Guarantor's financial years (ending 31 March, 30 June and 30 September), the unaudited consolidated quarterly financial statements of the Group for that financial quarter.

### 19.3 Requirements as to financial statements

- (a) Each set of financial statements delivered by the Guarantor pursuant to Clause 19.2 (*Financial statements*) shall be certified by an officer of the company as giving a true and fair view (if audited) or fairly representing (if unaudited) its financial condition and operations as at the date as at which those financial statements were drawn up if it has not been filed with the US Securities and Exchange Commission.
- (b) The Borrowers shall procure that each set of financial statements of the Guarantor delivered pursuant to Clause 19.2 (*Financial statements*) is prepared using GAAP, accounting practices and financial reference periods consistent with those applied in the preparation of the Original Financial Statements for the Group unless, in relation to any set of financial statements, it notifies the Facility Agent that there has been a change in GAAP, the accounting practices or reference periods, unless such change is described in the filings made with the US Securities and Exchange Commission, and its auditors (or, if appropriate, the auditors of the Guarantor) deliver to the Facility Agent:
  - (i) a description of any change necessary for those financial statements to reflect the GAAP, accounting practices and reference periods upon which the Original Financial Statements were prepared; and
  - (ii) sufficient information, in form and substance as may be reasonably required by the Facility Agent, to enable the Lenders to determine whether clause 10 (*financial covenants*) of the Guarantee has been complied with and make an accurate comparison between the financial position indicated in those financial statements and that Obligor's Original Financial Statements.

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

#### 19.4 DAC6

- (a) In this Clause 19.4 (DAC6), “DAC6” means the Council Directive of 25 May 2018 (2018/822/EU) amending Directive 2011/16/EU or any replacement legislation applicable in the United Kingdom.
- (b) The Borrowers shall supply to the Facility Agent (in sufficient copies for all the Lenders, if the Facility Agent so requests):
  - (i) promptly upon the making of such analysis or the obtaining of such advice, any analysis made or advice obtained on whether any transaction contemplated by the Transaction Documents or any transaction carried out (or to be carried out) in connection with any transaction contemplated by the Transaction Documents contains a hallmark as set out in Annex IV of DAC6; and
  - (ii) promptly upon the making of such reporting and to the extent permitted by applicable law and regulation, any reporting made to any governmental or taxation authority by or on behalf of any member of the Group or by any adviser to such member of the Group in relation to DAC6 or any law or regulation which implements DAC6 and any unique identification number issued by any governmental or taxation authority to which any such report has been made (if available).

#### 19.5 Information: miscellaneous

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

- (a) all material documents dispatched by it to its shareholders (or any class of them) or its creditors generally at the same time as they are dispatched unless the contents of such communication have already been disclosed in the filings made with the US Securities and Exchange Commission;
- (b) promptly upon becoming aware of them, the details of any litigation, arbitration or administrative proceedings or investigations (including proceedings or investigations relating to any alleged or actual breach of the ISM Code or of the ISPS Code) which are current, threatened or pending against any member of the Group, and which might, if adversely determined, have a Material Adverse Effect;
- (c) promptly upon becoming aware of them, the details of any judgment or order of a court, arbitral body or agency which is made against any member of the Group and which might have a Material Adverse Effect or which would involve a liability, or a potential or alleged liability, exceeding \$1,000,000 (or its equivalent in any other currency or currencies);
- (d) promptly, its constitutional documents where these have been amended or varied unless, in respect of the Guarantor, these changes have been disclosed in the filings with the US Securities and Exchange Commission;
- (e) promptly, such further information and/or documents regarding:
  - (i) each Ship, goods transported on each Ship, its Earnings or its Insurances;
  - (ii) the Security Assets;

- (iii) compliance of the Transaction Obligors with the terms of the Finance Documents;
  - (iv) the financial condition, business and operations of any member of the Group,
- as any Finance Party (through the Facility Agent) may reasonably request; and
- (f) promptly, such further information and/or documents as any Finance Party (through the Facility Agent) may reasonably request so as to enable such Finance Party to comply with any laws applicable to it or as may be required by any regulatory authority.

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

- (a) Each Borrower shall, and shall procure that each other Transaction Obligor shall, notify the Facility Agent of any 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 Facility Agent, each Borrower shall supply to the Facility Agent a certificate signed by an officer on its behalf certifying that no Default is continuing (or if a Default is continuing, specifying the Default and the steps, if any, being taken to remedy it).

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

- (a) Each Obligor may satisfy its obligation under the Finance Documents to which it is a party to deliver any information in relation to those Lenders (the “**Website Lenders**”) which accept this method of communication by posting this information onto an electronic website designated by the Borrowers and the Facility Agent (the “**Designated Website**”) if:
  - (i) the Facility Agent expressly agrees (after consultation with each of the Lenders) that it will accept communication of the information by this method;
  - (ii) both the relevant Obligor and the Facility Agent are aware of the address of and any relevant password specifications for the Designated Website; and
  - (iii) the information is in a format previously agreed between the relevant Obligor and the Facility Agent.If any Lender (a “**Paper Form Lender**”) does not agree to the delivery of information electronically then the Facility Agent shall notify the Obligors accordingly and each Obligor shall supply the information to the Facility Agent (in sufficient copies for each Paper Form Lender) in paper form. In any event each Obligor shall supply the Facility Agent with at least one copy in paper form of any information required to be provided by it.
- (b) The Facility Agent shall supply each Website Lender with the address of and any relevant password specifications for the Designated Website following designation of that website by the Obligors or any of them and the Facility Agent.
- (c) A Borrower shall promptly upon becoming aware of its occurrence notify the Facility Agent if:
  - (i) the Designated Website cannot be accessed due to technical failure;
  - (ii) the password specifications for the Designated Website change;



- (iii) any new information which is required to be provided under this Agreement is posted onto the Designated Website;
- (iv) any existing information which has been provided under this Agreement and posted onto the Designated Website is amended; or
- (v) if that Obligor becomes aware that the Designated Website or any information posted onto the Designated Website is or has been infected by any electronic virus or similar software.

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

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

#### **19.8 “Know your customer” checks**

- (a) If:
  - (i) the introduction of or any change in (or in the interpretation, administration or application of) any law or regulation made after the date of this Agreement;
  - (ii) any change in the status of a Transaction Obligor (including, without limitation, a change of ownership of a Transaction Obligor save for the Guarantor) after the date of this Agreement; or
  - (iii) a proposed assignment or transfer by a Lender of any of its rights and obligations under this Agreement to a party that is not a Lender prior to such assignment or transfer,

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

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

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## **20 GENERAL UNDERTAKINGS**

### **20.1 General**

The undertakings in this Clause 20 (*General Undertakings*) remain in force throughout the Security Period except as the Facility Agent, acting with the authorisation of the Majority Lenders (or, where specified, all the Lenders) may otherwise permit.

### **20.2 Authorisations**

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

- (a) obtain, comply with and do all that is necessary to maintain in full force and effect; and
- (b) supply certified copies to the Facility Agent of,
  - any Authorisation required under any law or regulation of a Relevant Jurisdiction or the state of the Approved Flag at any time of each Ship to enable it to:
    - (i) perform its obligations under the Transaction Documents to which it is a party;
    - (ii) ensure the legality, validity, enforceability or admissibility in evidence in any Relevant Jurisdiction and in the state of the Approved Flag at any time of each Ship of any Transaction Document to which it is a party; and
    - (iii) own and operate each Ship (in the case of the Borrowers).

### **20.3 Compliance with laws**

Each Borrower shall, and shall procure that each other Transaction Obligor will, comply in all respects with:

- (a) all Sanctions Laws to which it may be subject; and
- (b) all other laws and regulations to which it may be subject, if failure so to comply has or is reasonably likely to have a Material Adverse Effect.

### **20.4 Environmental compliance**

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

- (a) comply with all Environmental Laws;
- (b) obtain, maintain and ensure compliance with all requisite Environmental Approvals;
- (c) implement procedures to monitor compliance with and to prevent liability under any Environmental Law, where failure to do so has or is reasonably likely to have a Material Adverse Effect.

## 20.5 Environmental Claims

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

- (a) any Environmental Claim against any member of the Group which is current, pending or threatened; and
- (b) any facts or circumstances which are reasonably likely to result in any Environmental Claim being commenced or threatened against any member of the Group,

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

## 20.6 Taxation

- (a) Each Borrower shall, and shall procure that each other Transaction Obligor will pay and discharge all Taxes imposed upon it or its assets within the time period allowed without incurring penalties unless and only to the extent that:

- (i) such payment is being contested in good faith;
- (ii) adequate reserves are maintained for those Taxes and the costs required to contest them and both have been disclosed in its latest financial statements delivered to the Facility Agent under Clause 19.2 (*Financial statements*); and
- (iii) such payment can be lawfully withheld and failure to pay those Taxes does not have or is not reasonably likely to have a Material Adverse Effect.

- (b) No Borrower shall change its residence for Tax purposes.

## 20.7 Overseas companies

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

## 20.8 No change to centre of main interests

Each Borrower shall not change the location of its centre of main interest (as that term is used in Article 3(1) of the Regulation) to either jurisdiction referred to in Clause 18.30 (*Centre of main interests and establishments*) and it will create no “**establishment**” (as that term is used in Article 2(10) of the Regulation) in any such jurisdiction.

## 20.9 *Pari passu* ranking

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

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**20.10 Title**

- (a) Each Borrower shall hold the legal title to, and own the entire beneficial interest, with effect from the Release Date, in:
  - (i) the Ship owned by it, its Earnings and its Insurances; and
  - (ii) with effect on and from its creation or intended creation, any other assets the subject of any Transaction Security created or intended to be created by such Borrower.
- (b) Each Borrower shall procure that the Guarantor shall hold the legal title to, and own the entire beneficial interest in with effect on and from its creation or intended creation, any assets the subject of any Transaction Security created or intended to be created by the Guarantor.

**20.11 Negative pledge**

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

**20.12 Disposals**

- (a) No Borrower 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 (including without limitation any Ship, its Earnings or its Insurances).
- (b) Paragraph (a) above does not apply to any Charter as all Charters are subject to Clause 22.16 (*Restrictions on chartering, appointment of managers etc.*).

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**20.13 Merger**

No Borrower shall, and shall procure that the Guarantor shall not enter into any amalgamation, demerger, merger, consolidation or corporate reconstruction except in circumstances where the Guarantor is the surviving entity of any such event and there is no Material Adverse Effect on the Guarantor.

**20.14 Change of business**

- (a) Each Borrower shall procure that no substantial change is made to the general nature of the business of the Guarantor or the Group from that carried on at the date of this Agreement.
- (b) No Borrower shall engage in any business other than the ownership and operation of its Ship.

**20.15 Financial Indebtedness**

No Borrower shall incur or permit to be outstanding any Financial Indebtedness except Permitted Financial Indebtedness.

**20.16 Expenditure**

No Borrower shall incur any expenditure, except for expenditure reasonably incurred in the ordinary course of owning, operating, maintaining and repairing its Ship.

**20.17 Share capital**

No Borrower shall:

- (a) purchase, cancel, redeem or retire any of its issued shares;
- (b) increase or reduce the number of shares that it is authorized to issue or change the par value of such shares or create any new class of shares;
- (c) issue any further shares except to the Shareholder and provided such new shares are made subject to the terms of the Shares Security relevant to it immediately upon the issue of such new shares in a manner satisfactory to the Security Agent and the terms of that Shares Security are complied with; or
- (d) appoint any further director, officer or secretary of that Borrower (unless the provisions of the Shares Security applicable to that Borrower are complied with).

**20.18 Dividends**

- (a) No Borrower shall, and shall procure that the Guarantor shall not following the occurrence of a Default which is continuing or where any of the following would result in the occurrence of an Event of Default:
  - (i) 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 issued shares (or any class of its shares);
  - (ii) repay or distribute any dividend or share premium reserve; or

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- (iii) redeem, repurchase, defease, retire or repay any of its issued shares or resolve to do so.
  - (b) Each Borrower shall procure that the Guarantor will not enter into any other facility agreement pursuant to the terms and conditions of which the Guarantor will be restricted from paying dividends, other than following the occurrence of an Event of Default or where the payment of dividends would result in an Event of Default.

**20.19 Other transactions**

No Borrower shall:

- (a) be the creditor in respect of any loan or any form of credit to any person other than another Obligor and where such loan or form of credit is in the ordinary course of its business and in a manner acceptable to the Facility Agent;
- (b) give or allow to be outstanding any guarantee or indemnity in the ordinary course of its business in aggregate not more than \$500,000 to or for the benefit of any person in respect of any obligation of any other person or enter into any document under which that Borrower assumes any liability of any other person other than any guarantee or indemnity given under the Finance Documents.
- (c) enter into any material agreement other than:
  - (i) the Transaction Documents;
  - (ii) any other agreement expressly allowed under any other term of this Agreement; and
- (d) enter into any transaction on terms which are, in any respect, less favourable to that Borrower than those which it could obtain in a bargain made at arms' length; or
- (e) acquire any shares or other securities other than US or UK Treasury bills and certificates of deposit issued by major North American or European banks.

**20.20 Unlawfulness, invalidity and ranking; Security imperilled**

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

- (a) make it unlawful or contrary to Sanctions for a Transaction Obligor to perform any of its obligations under the Transaction Documents;
- (b) cause any obligation of a Transaction Obligor under the Transaction Documents to cease to be legal, valid, binding or enforceable if that cessation individually or together with any other cessations materially or adversely affects the interests of the Secured Parties under the Finance Documents;
- (c) cause any Transaction Document to cease to be in full force and effect;
- (d) cause any Transaction Security to rank after, or lose its priority to, any other Security; and
- (e) imperil or jeopardise the Transaction Security.

## 20.21 Further assurance

- (a) Each Borrower shall, and shall procure that each other Transaction Obligor will, and in any event within the time period specified by the Security Agent do all such acts (including procuring or arranging any registration, notarisation or authentication or the giving of any notice) or execute or procure execution of all such documents (including assignments, transfers, mortgages, charges, notices, instructions, acknowledgments, proxies and powers of attorney), as the Security Agent may specify (and in such form as the Security Agent may require in favour of the Security Agent or its nominee(s)):
- (i) to create, perfect, vest in favour of the Security Agent or protect the priority of the Security or any right of any kind created or intended to be created under or evidenced by the Finance Documents (which may include the execution of a mortgage, charge, assignment or other Security over all or any of the assets which are, or are intended to be, the subject of the Transaction Security) or for the exercise of any rights, powers and remedies of any of the Secured Parties provided by or pursuant to the Finance Documents or by law;
  - (ii) to confer on the Security Agent or confer on the Secured Parties Security over any property and assets of that Transaction Obligor located in any jurisdiction equivalent or similar to the Security intended to be conferred by or pursuant to the Finance Documents;
  - (iii) to facilitate or expedite the realisation and/or sale of, the transfer of title to or the grant of, any interest in or right relating to the assets which are, or are intended to be, the subject of the Transaction Security or to exercise any power specified in any Finance Document in respect of which the Security has become enforceable; and/or
  - (iv) to enable or assist the Security Agent to enter into any transaction to commence, defend or conduct any proceedings and/or to take any other action relating to any item of the Security Property.
- (b) Each Borrower shall, and shall procure that each other Transaction Obligor will, take all such action as is available to it (including making all filings and registrations) as may be necessary for the purpose of the creation, perfection, protection or maintenance of any Security conferred or intended to be conferred on the Security Agent or the Secured Parties by or pursuant to the Finance Documents.
- (c) At the same time as a Borrower delivers to the Security Agent any document executed by itself or another Transaction Obligor pursuant to this Clause 20.21 (*Further assurance*), that Borrower shall deliver, or shall procure that such other Transaction Obligor will deliver, to the Security Agent a certificate signed by one of that Borrower's or Transaction Obligor's officers which shall:
- (i) set out the text of a resolution of that Borrower's or Transaction Obligor's directors specifically authorising the execution of the document specified by the Security Agent; and
  - (ii) state that either the resolution was duly passed at a meeting of the directors validly convened and held, throughout which a quorum of directors entitled to vote on the resolution was present, or that the resolution has been signed by all the directors or officers and is valid under that Borrower's or Transaction Obligor's articles of incorporation or limited partnership agreement, as applicable.

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#### **20.22 Money Laundering**

The Borrowers undertake throughout the Security Period to:

- (a) provide the Lenders with information, certificates and any documents required by the Lenders to ensure compliance with any law, official requirement or other regulatory measure or procedure implemented to combat Money Laundering; and
- (b) notify the Lenders 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.

#### **20.23 Sanctions**

- (a) No Borrower shall (and the Borrowers shall ensure that no other Relevant Person will) take any action, make any omission or use (directly or indirectly) any proceeds of the Loan, in a manner that:
  - (i) is a breach of Sanctions; and/or
  - (ii) causes (or will cause) a breach of Sanctions by any Finance Party.
- (b) No Borrower shall (and the Borrowers shall ensure that no other Relevant Person will) take any action or make any omission that results, or is reasonably likely to result, in it or any Finance Party becoming a Restricted Party.

#### **20.24 Use of proceeds**

No proceeds of any Advance shall be lent, contributed or otherwise made available, directly or indirectly, to or for the benefit of a Restricted Party (including to fund any activities or business of a Restricted Party) nor shall they be lent, contributed or otherwise made available, directly or indirectly, to any person or otherwise be applied (i) to fund any activities or business in any country or territory, that, at the time of such funding, is a country or territory which is subject to Sanctions Laws or (ii) in any other manner that would result in a violation of Sanctions Laws by any person (including any person participating in the Loan, whether as a Finance Party or otherwise) or otherwise in a manner or for a purpose prohibited by Sanctions Laws including, but not limited to, in using any benefits of any money, proceeds or services provided by, or received from, the Lenders under this Agreement, in business activities (including, but not limited to, entering into any ship finance acquisition agreement, ship refinancing agreement or charter agreement relating to a vessel, project or asset) subject to Sanctions Laws or related to a country which is subject to Sanctions Laws and/or a Restricted Party.

#### **20.25 Anti-corruption law**

- (a) No Transaction Obligor shall directly or indirectly use the proceeds of the Facility for any purpose which would breach the Bribery Act 2010, the United States Foreign Corrupt Practices Act of 1977 or other similar legislation in other jurisdictions.
- (b) Each Transaction Obligor shall:
  - (i) conduct its business in compliance with applicable anti-corruption laws; and



- (ii) maintain policies and procedures designed to promote and achieve compliance with such laws.

## **20.26 Listing of Guarantor**

The Borrowers shall procure that the Guarantor's shares are listed on the New York Stock Exchange or any other stock exchange acceptable to the Facility Agent.

## **20.27 No change in financial year**

The Borrowers shall procure that the Guarantor shall not change the end of its financial year.

## **21 INSURANCE UNDERTAKINGS**

### **21.1 General**

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

### **21.2 Maintenance of obligatory insurances**

Each Borrower shall keep the Ship owned by it insured at its expense against:

- (a) hull and machinery plus freight interest and hull interest and any other usual marine risks (including excess risks);
- (b) war risks, including blocking and trapping and to cover piracy and terrorism if those risks are excluded from fire and usual marine risks cover;
- (c) protection and indemnity risks (including freight, demurrage and defence cover without exclusion of any Environmental Incident) with a protection and indemnity association being a member of the International Group of Protection and Indemnity Clubs; and
- (d) any other risks against which the Facility Agent acting on the instructions of the Majority Lenders considers, having regard to practices and other circumstances prevailing at the relevant time, it would be reasonable for that Borrower to insure and which are specified by the Facility Agent by notice to that Borrower.

### **21.3 Terms of obligatory insurances**

Each Borrower shall effect such insurances:

- (a) in dollars;
- (b) in the case of fire and usual marine risks and war risks (the "**Agreed Insured Value**"), in an amount on an agreed value basis at least the greater of:
  - (i) 120 per cent. of the Tranche relating to that Ship; and
  - (ii) the Market Value of that Ship;

- (c) in the case of hull and machinery insurance, in an amount on an agreed value basis of at least 80 per cent. of the Agreed Insured Value of that Ship with the remainder of that Agreed Insured Value being covered by hull interest and freight interest covers;
- (d) in the case of oil pollution liability risks, for an aggregate amount equal to the highest level of cover from time to time available under basic protection and indemnity club entry and in the international marine insurance market;
- (e) in the case of protection and indemnity risks, in respect of the full tonnage of its Ship;
- (f) on approved terms; and
- (g) 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.

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

In addition to the terms set out in Clause 21.3 (*Terms of obligatory insurances*), each Borrower shall procure that the obligatory insurances shall:

- (a) subject always to paragraph (b), name that Borrower, the Guarantor or any Approved Manager as the named assured or co-assureds unless the interest of every other named assured is limited:
  - (i) in respect of any obligatory insurances for hull and machinery and war risks;
    - (A) to any provable out-of-pocket expenses that it has incurred and which form part of any recoverable claim on underwriters; and
    - (B) to any third party liability claims where cover for such claims is provided by the policy (and then only in respect of discharge of any claims made against it); and
  - (ii) in respect of any obligatory insurances for protection and indemnity risks, to any recoveries it is entitled to make by way of reimbursement following discharge of any third party liability claims made specifically against it;

and every other named insured has undertaken in writing to the Security Agent (in such form as it requires) that any deductible shall be apportioned between that Borrower and every other named insured in proportion to the gross claims made or paid by each of them and that it shall do all things necessary and provide all documents, evidence and information to enable the Security Agent to collect or recover any moneys which at any time become payable in respect of the obligatory insurances;

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

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

#### **21.5 Renewal of obligatory insurances**

Each Borrower shall:

- (a) at least 21 days before the expiry of any obligatory insurance:
  - (i) notify the Facility Agent of the Approved Brokers (or other insurers) and any protection and indemnity or war risks association through or with which it proposes to renew that obligatory insurance and of the proposed terms of renewal; and
  - (ii) obtain the Facility Agents' approval to the matters referred to in sub-paragraph (i) above;
- (b) at least 14 days before the expiry of any obligatory insurance, renew that obligatory insurance in accordance with the Facility Agent's approval pursuant to paragraph (a) above; and
- (c) procure that the Approved Brokers and/or the approved war risks and protection and indemnity associations with which such a renewal is effected shall promptly after the renewal notify the Facility Agent in writing of the terms and conditions of the renewal.

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

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

- (a) *pro forma* copies of all policies relating to the obligatory insurances which they are to effect or renew; and
- (b) a letter or letters of undertaking in a form required by the Facility Agent and including undertakings by the Approved Brokers that:
  - (i) they will have endorsed on each policy, immediately upon issue, a loss payable clause and a notice of assignment complying with the provisions of Clause 21.4 (*Further protections for the Finance Parties*);
  - (ii) they will hold such policies, and the benefit of such insurances, to the order of the Security Agent in accordance with such loss payable clause;
  - (iii) they will advise the Security Agent immediately of any material change to the terms of the obligatory insurances;
  - (iv) they will, if they have not received notice of renewal instructions from the relevant Borrower or its agents, notify the Security Agent not less than 14 days before the expiry of the obligatory insurances;

- (v) if they receive instructions to renew the obligatory insurances, they will promptly notify the Facility Agent of the terms of the instructions;
- (vi) they will not set off against any sum recoverable in respect of a claim relating to that Ship under such obligatory insurances any premiums or other amounts due to them or any other person whether in respect of that Ship or otherwise, they waive any lien on the policies, or any sums received under them, which they might have in respect of such premiums or other amounts and they will not cancel such obligatory insurances by reason of non-payment of such premiums or other amounts; and
- (vii) they will arrange for a separate policy to be issued in respect of that Ship forthwith upon being so requested by the Facility Agent.

#### **21.7 Copies of certificates of entry**

Each Borrower shall ensure that any protection and indemnity and/or war risks associations in which the Ship owned by it is entered provide the Security Agent 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 Facility Agent acting on the instructions of Majority Lenders; and
- (c) a certified copy of each certificate of financial responsibility for pollution by oil or other Environmentally Sensitive Material issued by the relevant certifying authority in relation to that Ship.

#### **21.8 Deposit of original policies**

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

#### **21.9 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 Facility Agent or the Security Agent.

#### **21.10 Guarantees**

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

#### **21.11 Compliance with terms of insurances**

- (a) No Borrower shall do or omit to do (nor permit to be done or not to be done) any act or thing which would or might render any obligatory insurance invalid, void, voidable or unenforceable or render any sum payable under an obligatory insurance repayable in whole or in part.
- (b) Without limiting paragraph (a) above, each Borrower shall:
  - (i) take all necessary action and comply with all requirements which may from time to time be applicable to the obligatory insurances, and (without limiting the obligation

contained in sub-paragraph (iii) of paragraph (b) of Clause 21.6 (*Copies of policies; letters of undertaking*)) ensure that the obligatory insurances are not made subject to any exclusions or qualifications to which the Facility Agent has not given its prior approval;

- (ii) not make any changes relating to the classification or classification society or manager or operator of the Ship owned by it approved by the underwriters of the obligatory insurances;
- (iii) make (and promptly supply copies to the Facility Agent of) all quarterly or other voyage declarations which may be required by the protection and indemnity risks association in which the Ship owned by it is entered to maintain cover for trading to the United States of America and Exclusive Economic Zone (as defined in the United States Oil Pollution Act 1990 or any other applicable legislation); and
- (iv) not employ the Ship owned by it, nor allow it to be employed, otherwise than in conformity with the terms and conditions of the obligatory insurances, without first obtaining the consent of the insurers and complying with any requirements (as to extra premium or otherwise) which the insurers specify.

#### **21.12 Alteration to terms of insurances**

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

#### **21.13 Settlement of claims**

Each Borrower shall:

- (a) not settle, compromise or abandon any claim under any obligatory insurance for Total Loss or for a Major Casualty; and
- (b) do all things necessary and provide all documents, evidence and information to enable the Security Agent to collect or recover any moneys which at any time become payable in respect of the obligatory insurances.

#### **21.14 Provision of copies of communications**

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

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

which relate directly or indirectly to:

- (i) that Borrower's obligations relating to the obligatory insurances including, without limitation, all requisite declarations and payments of additional premiums or calls; and

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- (ii) any credit arrangements made between that Borrower and any of the persons referred to in paragraphs (a) or (b) above relating wholly or partly to the effecting or maintenance of the obligatory insurances.

### **21.15 Provision of information**

Each Borrower shall promptly provide the Facility Agent (or any persons which it may designate) with any information which the Facility Agent (or any such designated person) requests for the purpose of:

- (a) obtaining or preparing any report from an independent marine insurance broker as to the adequacy of the obligatory insurances effected or proposed to be effected; and/or
- (b) effecting, maintaining or renewing any such insurances as are referred to in Clause 21.16 (*Mortgagee's interest and additional perils insurances*) or dealing with or considering any matters relating to any such insurances,

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

### **21.16 Mortgagee's interest and additional perils insurances**

- (a) The Security Agent shall be entitled from time to time to effect, maintain and renew a mortgagee's interest marine insurance and a mortgagee's interest additional perils insurance in such amounts, on such terms, through such insurers and generally in such manner as the Security Agent acting on the instructions of the Majority Lenders may reasonably from time to time consider appropriate.
- (b) Each of the insurances referred to in paragraph (a) above shall be in an amount of not less than 110 per cent. of the aggregate of (i) the Loan and (ii) any Available Facility.
- (c) 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 paragraph (a) above or dealing with, or considering, any matter arising out of any such insurance.

## **22 SHIP UNDERTAKINGS**

### **22.1 General**

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

### **22.2 Ships' names and registration**

Each Borrower shall, in respect of the Ship owned by it:

- (a) keep that Ship registered in its name under the Approved Flag from time to time at its port of registration;

- (b) not do or allow to be done anything as a result of which such registration might be suspended, cancelled or imperilled;
- (c) not enter into any dual flagging arrangement in respect of that Ship; and
- (d) not change the name of that Ship,

**provided that** any change of flag of a Ship shall be subject to:

- (i) that Ship remaining subject to Security securing the Secured Liabilities created by a first priority or preferred ship mortgage on that Ship and, if appropriate, a first priority Deed of Covenant collateral to that mortgage (or equivalent first priority Security) on substantially the same terms as the Mortgage and, if applicable, related Deed of Covenant and on such other terms and in such other form as the Facility Agent, acting with the authorisation of the Majority Lenders, shall approve or require; and
- (ii) the execution of such other documentation amending and supplementing the Finance Documents as the Facility Agent, acting with the authorisation of the Majority Lenders, shall approve or require.

### **22.3 Repair and classification**

Each Borrower 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; and
- (b) so as to maintain the Approved Classification free of overdue recommendations and conditions.

### **22.4 Classification society undertaking**

Each Borrower shall, in respect of the Ship owned by it, instruct the Approved Classification Society:

- (a) to send to the Security Agent, following receipt of a written request from the Security Agent, certified true copies of all original class records held by the Approved Classification Society in relation to that Ship;
- (b) to allow the Security Agent (or its agents), at any time and from time to time, to inspect the original class and related records of that Borrower and that Ship at the offices of the Approved Classification Society and to take copies of them;
- (c) to notify the Security Agent immediately in writing if the Approved Classification Society:
  - (i) receives notification from that Borrower or any person that that Ship's Approved 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 that Ship's class under the rules or terms and conditions of that Borrower or that Ship's membership of the Approved Classification Society;

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- (d) following receipt of a written request from the Security Agent:
- (i) to confirm that that Borrower is not in default of any of its contractual obligations or liabilities to the Approved Classification Society, including confirmation that it has paid in full all fees or other charges due and payable to the Approved Classification Society; or
  - (ii) to confirm that that Borrower is in default of any of its contractual obligations or liabilities to the Approved Classification Society, to specify to the Security Agent in reasonable detail the facts and circumstances of such default, the consequences of such default, and any remedy period agreed or allowed by the Approved Classification Society.

#### **22.5 Modifications**

No Borrower shall make any modification or repairs to, or replacement of, any Ship or equipment installed on it which would or might materially alter the structure, type or performance characteristics of that Ship or materially reduce its value.

#### **22.6 Removal and installation of parts**

- (a) Subject to paragraph (b) below, no Borrower shall remove any material part of any Ship, or any item of equipment installed on any Ship unless:
- (i) the part or item so removed is forthwith replaced by a suitable part or item which is in the same condition as or better condition than the part or item removed;
  - (ii) the replacement part or item is free from any Security in favour of any person other than the Security Agent; and
  - (iii) the replacement part or item becomes, on installation on that Ship, the property of that Borrower and subject to the security constituted by the Mortgage on that Ship and, if applicable, the related Deed of Covenant.
- (b) A Borrower may install equipment owned by a third party if the equipment can be removed without any risk of damage to the Ship owned by that Borrower.

#### **22.7 Surveys**

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

#### **22.8 Inspection**

Each Borrower shall permit the Security Agent (acting through surveyors or other persons appointed by it for that purpose) to board the Ship owned by it at all reasonable times and provided there is no interference with that Ship's operation to inspect its condition or to satisfy themselves about proposed or executed repairs and shall afford all proper facilities for such inspections. The cost of the inspection shall be borne by the Borrowers once per annum, unless an Event of Default has occurred, in which case the cost of all inspections while the Event of Default is continuing shall be borne by the Borrowers.



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**22.9 Prevention of and release from arrest**

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

**22.10 Compliance with laws etc.**

Each Borrower shall:

- (a) comply, or procure compliance with all laws or regulations:
  - (i) relating to its business generally; and
  - (ii) relating to the Ship owned by it, its ownership, employment, operation, management and registration, including, but not limited to, the ISM Code, the ISPS Code, all Environmental Laws, all Sanctions and the laws of the Approved Flag;
- (b) obtain, comply with and do all that is necessary to maintain in full force and effect any Environmental Approvals; and
- (c) without limiting paragraph (a) above, not employ the Ship owned by it nor allow its employment, operation or management in any manner contrary to any law or regulation including but not limited to the ISM Code, the ISPS Code, all Environmental Laws and Sanctions (or which would be contrary to Sanctions if Sanctions were binding on each Transaction Obligor).

**22.11 ISPS Code**

Without limiting paragraph (a) of Clause 22.10 (*Compliance with laws etc.*), each Borrower shall:

- (a) procure that the Ship owned by it and the company responsible for that Ship's compliance with the ISPS Code comply with the ISPS Code; and
- (b) maintain an ISSC for that Ship; and
- (c) notify the Facility Agent immediately in writing of any actual or threatened withdrawal, suspension, cancellation or modification of the ISSC.

## 22.12 Sanctions and Ship trading

Without limiting Clause 22.10 (*Compliance with laws etc.*), each Borrower shall procure:

- (a) that the Ship owned by it shall not be used by or for the benefit of a Restricted Party;
- (b) that the Ship owned by it shall not be used in trading in any manner contrary to Sanctions (or which could be contrary to Sanctions if Sanctions were binding on each Transaction Obligor);
- (c) that the Ship owned by it shall not be traded in any manner which would trigger the operation of any sanctions limitation or exclusion clause (or similar) in the Insurances; and
- (d) that each Charter in respect of the Ship owned by it shall contain, for the benefit of that Borrower, language which gives effect to the provisions of paragraph (c) of Clause 22.10 (*Compliance with laws etc.*) as regards Sanctions and of this Clause 22.12 (*Sanctions and Ship trading*) and which Charter permits refusal of employment or voyage orders if such employment or compliance with such orders results in non-compliance with such provisions or breaches Sanctions (or which would result in a breach of Sanctions if Sanctions were binding on each Borrower).

## 22.13 Trading in war zones

In the event of hostilities in any part of the world (whether war is declared or not), no Borrower shall cause or permit any Ship to enter or trade to any zone which is declared a war zone by any government or by that Ship's war risks insurers unless:

- (a) the prior notification has been given to the Security Agent; and
- (b) the Borrower has (at its expense) effected any special, additional or modified insurance cover which the insurers require to ensure that that Ship remains properly insured in accordance with the Finance Documents (including, without limitation, any requirement for the payment of additional or extra insurance premia).

## 22.14 Provision of information

Without prejudice to Clause 19.5 (*Information: miscellaneous*) each Borrower shall, in respect of the Ship owned by it, promptly provide the Facility Agent with any information which it requests regarding:

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

and, upon the Facility Agent's request, promptly provide copies of any current Charter relating to that Ship, of any current guarantee of any such Charter, the Ship's Safety Management Certificate and any relevant Document of Compliance.

**22.15 Notification of certain events**

Each Borrower shall, in respect of the Ship owned by it, immediately notify the Facility Agent by fax, confirmed forthwith by letter, of:

- (a) any casualty to that Ship which is or is likely to be or to become a Major Casualty;
- (b) any occurrence as a result of which that Ship has become or is, by the passing of time or otherwise, likely to become a Total Loss;
- (c) any requisition of that Ship for hire;
- (d) any requirement or recommendation made in relation to that Ship by any insurer or classification society or by any competent authority which is not immediately complied with;
- (e) any arrest or detention of that Ship or any exercise or purported exercise of any lien on that Ship or the Earnings;
- (f) any intended dry docking of that Ship;
- (g) any Environmental Claim made against that Borrower or in connection with that Ship, or any Environmental Incident;
- (h) any claim for breach of the ISM Code or the ISPS Code being made against that Borrower, an Approved Manager or otherwise in connection with that Ship; or
- (i) any other matter, event or incident, actual or threatened, the effect of which will or could lead to the ISM Code or the ISPS Code not being complied with;
- (j) any notice, or such Borrower becoming aware, of any claim, action, suit, proceedings or investigation against any Transaction Obligor, any of its Subsidiaries or any of their respective directors, officers, employees or agents with respect to Sanctions; or
- (k) any circumstances which could give rise to a breach of any representation or undertaking in this Agreement, or any Event of Default, relating to Sanctions,

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

**22.16 Restrictions on chartering, appointment of managers etc.**

No Borrower shall, in respect of the Ship owned by it:

- (a) let that Ship on demise charter for any period;
- (b) enter into any time, voyage or consecutive voyage charter in respect of that Ship other than a Permitted Charter;
- (c) appoint a manager of that Ship other than an Approved Manager;

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- (d) de activate or lay up that Ship; or
- (e) put that 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) unless the relevant Borrower ensures that that person has first given to the Security Agent and in terms satisfactory to it a written undertaking not to exercise any lien on that Ship or its Earnings for the cost of such work or for any other reason.

#### **22.17 Notice of Mortgage**

Each Borrower shall keep the Mortgage registered against the Ship owned by it as a valid first preferred mortgage, carry on board that Ship a certified copy of the 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 that Borrower to the Security Agent.

#### **22.18 Sharing of Earnings**

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

#### **22.19 Charterparty Assignment**

If any Borrower enters into an Assignable Charter that Borrower shall promptly after the date of such Assignable Charter enter into a Charterparty Assignment and the assignment contemplated thereunder shall be notified to the relevant charterer and any charter guarantor in accordance with the terms of such Charterparty Assignment and that Borrower shall use its commercially reasonable endeavours to obtain an acknowledgment of that Charterparty Assignment from the relevant Charterer and/or charter guarantor, and shall additionally deliver to the Facility Agent such other documents relevant to that Borrower and that Ship equivalent to those referred to at paragraphs 1.2, 1.3, 1.5, 1.8, 2, 6.2 and 6.6 of Part A of Schedule 2 (*Conditions Precedent*) as the Facility Agent may require.

#### **22.20 IHM**

Each Borrower shall ensure that that Ship owned by it carries an IHM classification from the relevant Approved Classification Society from the date of completion of the first dry docking of that Ship after the date of this Agreement and at all times thereafter and shall promptly deliver to the Facility Agent upon its request a copy of the class report noting the same.

#### **22.21 Dismantling of Ships**

The Borrowers confirm that they will procure that each Ship and any other Group Vessel will be (or, if sold to an intermediary with the intention of being scrapped, will use their best endeavours to procure), that such Ship and any other Group Vessel will be 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 or, with regards to any EU flagged vessels, the EU Ship Recycling Regulation.

## 22.22 Poseidon Principles

The Borrowers shall, upon the request of any Lender and at the cost of the Borrowers on or before 31st July in each calendar year, supply or procure the supply (as specified by the relevant Lender) to the Facility Agent (on behalf of that Lender) of all information necessary in order for that Lender to comply with its obligations under the Poseidon Principles in respect of the preceding year, including, without limitation, all ship fuel oil consumption data required to be collected and reported in accordance with Regulation 22A of Annex VI and any Statement of Compliance, in each case relating to the Ship owned by it for the preceding calendar year provided always that, for the avoidance of doubt, such information shall be “Confidential Information” for the purposes of Clause 43 (*Confidential Information*) but the Borrowers acknowledges that, in accordance with the Poseidon Principles, such information will form part of the information published regarding the relevant Lender’s portfolio climate alignment.

## 22.23 Notification of compliance

Each Borrower shall promptly provide the Facility Agent from time to time with evidence (in such form as the Facility Agent requires) that it is complying with this Clause 22 (*Ship Undertakings*).

## 23 SECURITY COVER

### 23.1 Minimum required security cover

Clause 23.2 (*Provision of additional security; prepayment*) applies if the Facility Agent notifies the Borrowers that:

- (a) the aggregate Market Value of the Ships; plus
- (b) the net realisable value of additional Security previously provided under this Clause 23 (*Security Cover*), is below 130 per cent. of the Loan.

### 23.2 Provision of additional security; prepayment

- (a) If the Facility Agent serves a notice on the Borrowers under Clause 23.1 (*Minimum required security cover*), the Borrowers shall, on or before the date falling 30 Business Days after the date on which the Facility Agent’s notice is served (the “**Prepayment Date**”), prepay such part of the Loan as shall eliminate the shortfall.
- (b) The Borrowers may, instead of making a prepayment as described in paragraph (a) above, provide, or ensure that a third party has provided, additional security which, in the opinion of the Facility Agent acting on the instructions of the Majority Lenders:
  - (i) has a net realisable value at least equal to the shortfall; and
  - (ii) is documented in such terms as the Facility Agent may approve or require,before the Prepayment Date; and conditional upon such security being provided in such manner, it shall satisfy such prepayment obligation.

### **23.3 Value of additional vessel security**

The net realisable value of any additional security which is provided under Clause 23.2 (*Provision of additional security; prepayment*) and which consists of Security over a vessel shall be the Market Value of the vessel concerned.

### **23.4 Valuations binding**

Any valuation under this Clause 23 (*Security Cover*) shall be binding and conclusive as regards each Borrower.

### **23.5 Provision of information**

- (a) Each Borrower shall promptly provide the Facility Agent and any shipbroker acting under this Clause 23 (*Security Cover*) with any information which the Facility Agent or the shipbroker may request for the purposes of the valuation.
- (b) If any Borrower fails to provide the information referred to in paragraph (a) above by the date specified in the request, the valuation may be made on any basis and assumptions which the shipbroker or the Facility Agent considers prudent.

### **23.6 Prepayment mechanism**

Any prepayment pursuant to Clause 23.2 (*Provision of additional security; prepayment*) shall be made in accordance with the relevant provisions of Clause 7 (*Prepayment and Cancellation*), and each such prepayment shall reduce each Tranche *pro rata* by reducing the Repayment Instalments and the Balloon Instalment in respect of that falling after such prepayment on a *pro rata* basis by the amount prepaid.

### **23.7 Provision of valuations**

- (a) For the purpose of the Utilisation and subject to paragraph (b) below, the Market Value of any Ship shall be determined by reference to the valuation of that Ship as given by an Approved Valuer selected and appointed by the Borrowers and addressed to the Facility Agent or in the event that the Borrowers fail to do so appointed by the Facility Agent. The Agent shall, in its full discretion be entitled to request a second valuation from an Approved Valuer selected and appointed by the Facility Agent, in which case, the Market Value shall be the arithmetic average of the two valuations.
- (b) If the two valuations in respect of a Ship obtained pursuant to paragraph (a) above differ by at least 10 per cent., then a third valuation for that Ship shall be obtained from a third Approved Valuer selected by the Facility Agent, appointed by the Facility Agent and such valuation shall be addressed to the Facility Agent and the Market Value of that Ship shall be the arithmetic average of all three such valuations.
- (c) The Facility Agent shall be entitled, after the Utilisation Date, to test the security cover requirement under Clause 23.1 (*Minimum required security cover*) by reference to the Market Value of any Ship as determined in accordance with paragraphs (a) to (b) above, semi-annually during the Security Period.
- (d) The Facility Agent shall ascertain compliance with clause 10 (*financial covenants*) of the Guarantee by reference to the market value of the Fleet Vessels as provided in the Latest Accounts (as each such term is defined in the Guarantee).

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- (e) Each of the valuations referred to at paragraphs (a) and (b) above shall be obtained not more than 30 days before the Utilisation Date, while each of the valuations referred to in paragraph (d) above shall be obtained not more than 30 days before the Test Date (as such term is defined in the Guarantee) of the relevant quarter.
  - (f) The Facility Agent may at any time after an Event of Default has occurred and is continuing obtain valuations of any Ship and any other vessel over which additional security has been created in accordance with Clause 23.2 (*Provision of additional security; prepayment*) from Approved Valuers to enable the Facility Agent to determine the Market Value of that Ship and any other vessel and also for the purpose of testing the security cover requirement under Clause 23.1 (*Minimum required security cover*). The Facility Agent shall be entitled to determine the Market Value of any Ship at any other time.
  - (g) The valuations referred to in paragraph (a) to (c) above shall be obtained at the cost and expense of the Borrowers and the Borrowers shall within three Business Days of demand by the Facility Agent pay to the Facility Agent all costs and expenses incurred by it in obtaining any such valuation. The cost of the valuations referred to in paragraph (d) for the Borrowers shall be limited to four times per annum, unless an Event of Default has occurred or the covenant contained in Clause 23.1 (*Minimum required security cover*) is not complied with, in which case the cost of all valuations shall be borne by the Borrowers.

## **24 ACCOUNTS AND APPLICATION OF EARNINGS**

### **24.1 Accounts**

No Borrower may, without the prior consent of the Facility Agent, maintain any bank account other than its Earnings Account.

### **24.2 Payment of Earnings**

Each Borrower shall ensure that subject only to the provisions of the General Assignment to which it is a party, all the Earnings in respect of the Ship owned by it are paid in to its Earnings Account.

### **24.3 Location of Accounts**

Each Borrower shall promptly:

- (a) comply with any requirement of the Facility Agent as to the location or relocation of its Earnings Account; and
- (b) execute any documents which the Facility Agent specifies to create or maintain in favour of the Security Agent Security over (and/or rights of set-off, consolidation or other rights in relation to) its Earnings Account.

### **24.4 Restriction on withdrawal**

During the Security Period a Borrower may withdraw any sum from its Earnings Account provided that (i) no Event of Default has occurred or would occur from such withdrawal and (ii) no notice has been given to that Borrower by the Facility Agent or the Security Agent that such withdrawal is not permitted.

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## 25 EVENTS OF DEFAULT

### 25.1 General

Each of the events or circumstances set out in this Clause 25 (*Events of Default*) is an Event of Default except for Clause 25.20 (*Acceleration*) and Clause 25.21 (*Enforcement of security*).

### 25.2 Non-payment

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

- (a) its failure to pay is caused by:
  - (i) administrative or technical error; or
  - (ii) a Disruption Event; and
- (b) payment is made within three Business Days of its due date.

### 25.3 Specific obligations

A breach occurs of Clause 4.4 (*Waiver of conditions precedent*), clause 10 (*financial covenants*) of the Guarantee, Clause 20.10 (*Title*), Clause 20.11 (*Negative pledge*), Clause 20.20 (*Unlawfulness, invalidity and ranking; Security imperilled*), Clause 21.2 (*Maintenance of obligatory insurances*), Clause 21.3 (*Terms of obligatory insurances*), Clause 21.5 (*Renewal of obligatory insurances*), Clause 22.13 (*Trading in war zones*) or save to the extent such breach is a failure to pay and therefore subject to Clause 25.2 (*Non-payment*), Clause 23 (*Security Cover*).

### 25.4 Other obligations

- (a) A Transaction Obligor does not comply with any provision of the Finance Documents (other than those referred to in Clause 25.2 (*Non-payment*) and Clause 25.3 (*Specific obligations*)).
- (b) No Event of Default under paragraph (a) above will occur if the failure to comply is capable of remedy and is remedied within 15 Business Days of the Facility Agent giving notice to the Borrowers or (if earlier) any Transaction Obligor becoming aware of the failure to comply.

### 25.5 Misrepresentation

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

### 25.6 Cross default

- (a) Any Financial Indebtedness of any Transaction Obligor (other than an Approved Manager) is not paid when due nor within any originally applicable grace period.
- (b) Any Financial Indebtedness of any Transaction Obligor (other than an Approved Manager) is declared to be or otherwise becomes due and payable prior to its specified maturity as a result of an event of default (however described) unless the Transaction Obligor (other than an



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

- (c) Any commitment for any Financial Indebtedness of any Transaction Obligor (other than an Approved Manager) is cancelled or suspended by a creditor of that Transaction Obligor as a result of an event of default (however described).
- (d) Any creditor of any Transaction Obligor (other than an Approved Manager) becomes entitled to declare any Financial Indebtedness of that Transaction Obligor (other than the Approved Manager) due and payable prior to its specified maturity as a result of an event of default (however described).
- (e) No Event of Default will occur under this Clause 25.6 (*Cross default*) in respect of the Guarantor if the aggregate amount of Financial Indebtedness or commitment for Financial Indebtedness falling within paragraphs (a) to (d) above is less than \$20,000,000 (or its equivalent in any other currency).

#### **25.7 Insolvency**

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

#### **25.8 Insolvency proceedings**

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

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- (b) Paragraph (a) above shall not apply to any winding-up petition which is frivolous or vexatious and is discharged, stayed or dismissed within 30 days of commencement.

#### **25.9 Creditors' process**

Any expropriation, attachment, sequestration, distress or execution (or any analogous process in any jurisdiction) affects any asset or assets of a Transaction Obligor (other than any Approved Manager or an arrest or detention of a Ship which, in accordance with Clause 25.14 (*Arrest*), is discharged within 30 days).

#### **25.10 Ownership of the Obligors**

There is in respect of any Borrower, a change in its ownership which results in the Guarantor owning directly or indirectly (but if indirectly only through companies with registered shares), less than 100 per cent. of the shares in that Borrower.

#### **25.11 Unlawfulness, invalidity and ranking**

- (a) It is or becomes unlawful for a Transaction Obligor to perform any of its obligations under the Finance Documents.
- (b) Any obligation of a Transaction Obligor under the Finance Documents is not or ceases to be legal, valid, binding or enforceable.
- (c) Any Finance Document ceases to be in full force and effect or to be continuing or is or purports to be determined or any Transaction Security is alleged by a party to it (other than a Finance Party) to be ineffective.
- (d) Any Transaction Security proves to have ranked after, or loses its priority to, any other Security.

#### **25.12 Security imperilled**

Any Security created or intended to be created by a Finance Document is in any way imperilled or in jeopardy.

#### **25.13 Cessation of business**

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

#### **25.14 Arrest**

Any arrest of a Ship or its detention in the exercise or the purported exercise of any lien or claim unless it is redelivered to the full control of the relevant Borrower within 30 days of such arrest or detention.

#### **25.15 Expropriation**

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

- (a) an arrest or detention of a Ship referred to in Clause 25.14 (*Arrest*); or

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- (b) any Requisition.

#### **25.16 Repudiation and rescission of agreements**

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

#### **25.17 Litigation**

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

#### **25.18 Material adverse change**

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

#### **25.19 Sanctions**

- (a) Any of the Transaction Obligors becomes a Restricted Party or becomes owned or controlled by, or acts directly or indirectly on behalf of, a Restricted Party or any of such persons becomes the owner or controller of a Restricted Party.
- (b) Any proceeds of the Loan is made available, directly or indirectly, to or for the benefit of a Restricted Party or otherwise is, directly or indirectly, applied in a manner or for a purpose prohibited by Sanctions Laws.
- (c) Any Transaction Obligor is not in compliance with all Sanctions Laws.

#### **25.20 Acceleration**

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

- (a) by notice to the Borrowers:
  - (i) cancel the Total Commitments, whereupon they shall immediately be cancelled;
  - (ii) declare that all or part of the Loan, together with accrued interest, and all other amounts accrued or outstanding under the Finance Documents be immediately due and payable, whereupon it shall become immediately due and payable; and/or
  - (iii) declare that all or part of the Loan be payable on demand, whereupon it shall immediately become payable on demand by the Facility Agent acting on the instructions of the Majority Lenders; and/or
- (b) exercise or direct the Security Agent to exercise any or all of its rights, remedies, powers or discretions under the Finance Documents,

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and the Facility Agent may serve notices under sub-paragraphs (i), (ii) and (iii) of paragraph (a) above simultaneously or on different dates and any Servicing Party may take any action referred to in paragraph (b) above or Clause 25.21 (*Enforcement of security*) if no such notice is served or simultaneously with or at any time after the service of any of such notice.

**25.21 Enforcement of security**

On and at any time after the occurrence of an Event of Default the Security Agent may, and shall if so directed by the Majority Lenders, take any action which, as a result of the Event of Default or any notice served under Clause 25.20 (*Acceleration*), the Security Agent is entitled to take under any Finance Document or any applicable law or regulation.

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**SECTION 9**

**CHANGES TO PARTIES**

**26 CHANGES TO THE LENDERS**

**26.1 Assignments and transfers by the Lenders**

Subject to this Clause 26 (*Changes to the Lenders*), a Lender (the “**Existing Lender**”) may:

- (a) assign any of its rights; or
- (b) transfer by novation any of its rights and obligations, under the Finance Documents to another bank or financial institution or to a trust, fund or other entity which is regularly engaged in or established for the purpose of making, purchasing or investing in loans, securities or other financial assets (the “**New Lender**”).

**26.2 Conditions of assignment or transfer**

- (a) The consent of the Borrowers is required for an assignment or transfer by an Existing Lender pursuant to Clause 26.1 (*Assignments and transfers by the Lenders*), unless the assignment or transfer is:
  - (i) to another Lender or an Affiliate of a Lender;
  - (ii) to a fund which is a Related Fund of that Lender or an Affiliate of that Lender; or
  - (iii) made at a time when an Event of Default is continuing.
- (b) The consent of the Borrowers to an assignment or transfer must not be unreasonably withheld or delayed. Each Borrower will be deemed to have given its consent five Business Days after the Existing lender has requested it unless consent is expressly refused by that Borrower within that time.
- (c) An assignment will only be effective on:
  - (i) receipt by the Facility Agent (whether in the Assignment Agreement or otherwise) of written confirmation from the New Lender (in form and substance satisfactory to the Facility Agent) that the New Lender will assume the same obligations to the other Secured Parties as it would have been under if it had been an Original Lender; and
  - (ii) performance by the Facility Agent of all necessary “know your customer” or other similar checks under all applicable laws and regulations in relation to such assignment to a New Lender, the completion of which the Facility Agent shall promptly notify to the Existing Lender and the New Lender.
- (d) Each Borrower on behalf of itself and each Transaction Obligor agrees that all rights and interests (present, future or contingent) which the Existing Lender has under or by virtue of the Finance Documents are assigned to the New Lender absolutely, free of any defects in the Existing Lender’s title and of any rights or equities which a Borrower or any other Transaction Obligor had against the Existing Lender.

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- (e) A transfer will only be effective if the procedure set out in Clause 26.5 (*Procedure for transfer*) is complied with.
- (f) If:
- (i) a Lender assigns or transfers any of its rights or obligations under the Finance Documents or changes its Facility Office; and
  - (ii) as a result of circumstances existing at the date the assignment, transfer or change occurs, a Transaction Obligor would be obliged to make a payment to the New Lender or Lender acting through its new Facility Office under Clause 12 (*Tax Gross Up and Indemnities*) or under that clause as incorporated by reference or in full in any other Finance Document or Clause 13 (*Increased Costs*),
- then the New Lender or Lender acting through its new Facility Office is only entitled to receive payment under those Clauses to the same extent as the Existing Lender or Lender acting through its previous Facility Office would have been if the assignment, transfer or change had not occurred. This paragraph (f) shall not apply in respect of an assignment or transfer made in the ordinary course of the primary syndication of the Facility.
- (g) Each New Lender, by executing the relevant Transfer Certificate or Assignment Agreement, confirms, for the avoidance of doubt, that the Facility Agent has authority to execute on its behalf any amendment or waiver that has been approved by or on behalf of the requisite Lender or Lenders in accordance with this Agreement on or prior to the date on which the transfer or assignment becomes effective in accordance with this Agreement and that it is bound by that decision to the same extent as the Existing Lender would have been had it remained a Lender.

### **26.3 Assignment or transfer fee**

The New Lender shall, on the date upon which an assignment or transfer takes effect, pay to the Facility Agent (for its own account) a fee of \$3,000.

### **26.4 Limitation of responsibility of Existing Lenders**

- (a) Unless expressly agreed to the contrary, an Existing Lender makes no representation or warranty and assumes no responsibility to a New Lender for:
- (i) the legality, validity, effectiveness, adequacy or enforceability of the Transaction Documents, the Transaction Security or any other documents;
  - (ii) the financial condition of any Transaction Obligor;
  - (iii) the performance and observance by any Transaction Obligor of its obligations under the Transaction Documents or any other documents; or
  - (iv) the accuracy of any statements (whether written or oral) made in or in connection with any Transaction Document or any other document,
- and any representations or warranties implied by law are excluded.

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- (b) Each New Lender confirms to the Existing Lender and the other Finance Parties and the Secured Parties that it:
    - (i) has made (and shall continue to make) its own independent investigation and assessment of the financial condition and affairs of each Transaction Obligor and its related entities in connection with its participation in this Agreement and has not relied exclusively on any information provided to it by the Existing Lender or any other Finance Party in connection with any Transaction Document or the Transaction Security; and
    - (ii) will continue to make its own independent appraisal of the creditworthiness of each Transaction Obligor and its related entities throughout the Security Period.
  - (c) Nothing in any Finance Document obliges an Existing Lender to:
    - (i) accept a re-transfer or re-assignment from a New Lender of any of the rights and obligations assigned or transferred under this Clause 26 (*Changes to the Lenders*); or
    - (ii) support any losses directly or indirectly incurred by the New Lender by reason of the non-performance by any Transaction Obligor of its obligations under the Transaction Documents or otherwise.

#### **26.5 Procedure for transfer**

- (a) Subject to the conditions set out in Clause 26.2 (*Conditions of assignment or transfer*), a transfer is effected in accordance with paragraph (c) below when the Facility Agent executes an otherwise duly completed Transfer Certificate delivered to it by the Existing Lender and the New Lender. The Facility Agent shall, subject to paragraph (b) below as soon as reasonably practicable after receipt by it of a duly completed Transfer Certificate appearing on its face to comply with this Agreement and delivered in accordance with this Agreement, execute that Transfer Certificate.
- (b) The Facility Agent shall only be obliged to execute a Transfer Certificate delivered to it by the Existing Lender and the New Lender once it is satisfied it has complied with all necessary “know your customer” or other similar checks under all applicable laws and regulations in relation to the transfer to such New Lender.
- (c) Subject to Clause 26.9 (*Pro rata interest settlement*), on the Transfer Date:
  - (i) to the extent that in the Transfer Certificate the Existing Lender seeks to transfer by novation its rights and obligations under the Finance Documents and in respect of the Transaction Security, each of the Transaction Obligors and the Existing Lender shall be released from further obligations towards one another under the Finance Documents and in respect of the Transaction Security and their respective rights against one another under the Finance Documents and in respect of the Transaction Security shall be cancelled (being the “**Discharged Rights and Obligations**”);
  - (ii) each of the Transaction Obligors and the New Lender shall assume obligations towards one another and/or acquire rights against one another which differ from the Discharged Rights and Obligations only insofar as that Transaction Obligor and the New Lender have assumed and/or acquired the same in place of that Transaction Obligor and the Existing Lender;
  - (iii) the Facility Agent, the Security Agent, the Mandated Lead Arranger, the New Lender and other Lenders shall acquire the same rights and assume the same obligations between themselves and in respect of the Transaction Security as they would have

acquired and assumed had the New Lender been an Original Lender with the rights and/or obligations acquired or assumed by it as a result of the transfer and to that extent the Facility Agent, the Security Agent, the Mandated Lead Arranger and the Existing Lenders shall each be released from further obligations to each other under the Finance Documents; and

- (iv) the New Lender shall become a Party as a “**Lender**”.

## 26.6 Procedure for assignment

- (a) Subject to the conditions set out in Clause 26.2 (*Conditions of assignment or transfer*) an assignment may be effected in accordance with paragraph (c) below when the Facility Agent executes an otherwise duly completed Assignment Agreement delivered to it by the Existing Lender and the New Lender. The Facility Agent shall, subject to paragraph (b) below, as soon as reasonably practicable after receipt by it of a duly completed Assignment Agreement appearing on its face to comply with the terms of this Agreement and delivered in accordance with the terms of this Agreement, execute that Assignment Agreement.
- (b) The Facility Agent shall only be obliged to execute an Assignment Agreement delivered to it by the Existing Lender and the New Lender once it is satisfied it has complied with all necessary “know your customer” or other similar checks under all applicable laws and regulations in relation to the assignment to such New Lender.
- (c) Subject to Clause 26.9 (*Pro rata interest settlement*), on the Transfer Date:
- (i) the Existing Lender will assign absolutely to the New Lender its rights under the Finance Documents and in respect of the Transaction Security expressed to be the subject of the assignment in the Assignment Agreement;
  - (ii) the Existing Lender will be released from the obligations (the “**Relevant Obligations**”) expressed to be the subject of the release in the Assignment Agreement (and any corresponding obligations by which it is bound in respect of the Transaction Security); and
  - (iii) the New Lender shall become a Party as a “Lender” and will be bound by obligations equivalent to the Relevant Obligations.
- (d) Lenders may utilise procedures other than those set out in this Clause 26.6 (*Procedure for assignment*) to assign their rights under the Finance Documents (but not, without the consent of the relevant Transaction Obligor or unless in accordance with Clause 26.5 (*Procedure for transfer*), to obtain a release by that Transaction Obligor from the obligations owed to that Transaction Obligor by the Lenders nor the assumption of equivalent obligations by a New Lender) **provided that** they comply with the conditions set out in Clause 26.2 (*Conditions of assignment or transfer*).

## 26.7 Copy of Transfer Certificate or Assignment Agreement to Borrowers

The Facility 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.



## 26.8 Security over Lenders' rights

In addition to the other rights provided to Lenders under this Clause 26 (*Changes to the Lenders*), each Lender may without consulting with or obtaining consent from any Transaction Obligor, at any time charge, assign or otherwise create Security in or over (whether by way of collateral or otherwise) all or any of its rights under any Finance Document to secure obligations of that Lender including, without limitation:

- (a) any charge, assignment or other Security to secure obligations to a federal reserve or central bank; and
- (b) any charge, assignment or other Security granted to any holders (or trustee or representatives of holders) of obligations owed, or securities issued, by that Lender as security for those obligations or securities,  
except that no such charge, assignment or Security shall:
  - (i) release a Lender from any of its obligations under the Finance Documents or substitute the beneficiary of the relevant charge, assignment or Security for the Lender as a party to any of the Finance Documents; or
  - (ii) require any payments to be made by a Transaction Obligor other than or in excess of, or grant to any person any more extensive rights than, those required to be made or granted to the relevant Lender under the Finance Documents.

## 26.9 Pro rata interest settlement

- (a) If the Facility Agent has notified the Lenders that it is able to distribute interest payments on a “*pro rata* basis” to Existing Lenders and New Lenders then (in respect of any transfer pursuant to Clause 26.5 (*Procedure for transfer*) or any assignment pursuant to Clause 26.6 (*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):
  - (i) any interest or fees in respect of the relevant participation which are expressed to accrue by reference to the lapse of time shall continue to accrue in favour of the Existing Lender up to but excluding the Transfer Date (“**Accrued Amounts**”) and shall become due and payable to the Existing Lender (without further interest accruing on them) on the last day of the current Interest Period (or, if the Interest Period is longer than six Months, on the next of the dates which falls at six Monthly intervals after the first day of that Interest Period); and
  - (ii) 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:
    - (A) when the Accrued Amounts become payable, those Accrued Amounts will be payable to the Existing Lender; and
    - (B) the amount payable to the New Lender on that date will be the amount which would, but for the application of this Clause 26.9 (*Pro rata interest settlement*), have been payable to it on that date, but after deduction of the Accrued Amounts.

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- (b) In this Clause 26.9 (*Pro rata interest settlement*) references to “Interest Period” shall be construed to include a reference to any other period for accrual of fees.
  - (c) An Existing Lender which retains the right to the Accrued Amounts pursuant to this Clause 26.9 (*Pro rata interest settlement*) but which does not have a Commitment shall be deemed not to be a Lender for the purposes of ascertaining whether the agreement of any specified group of Lenders has been obtained to approve any request for a consent, waiver, amendment or other vote of Lenders under the Finance Documents.

## **27 CHANGES TO THE TRANSACTION OBLIGORS**

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

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

### **27.2 Release of security**

- (a) If a disposal of any asset subject to security created by a Security Document is made in the following circumstances:
  - (i) the disposal is permitted by the terms of any Finance Document;
  - (ii) all the Lenders agree to the disposal;
  - (iii) the disposal is being made at the request of the Security Agent in circumstances where any security created by the Security Documents has become enforceable; or
  - (iv) the disposal is being effected by enforcement of a Security Document,the Security Agent may release the asset(s) being disposed of from any security over those assets created by a Security Document. However, the proceeds of any disposal (or an amount corresponding to them) must be applied in accordance with the requirements of the Finance Documents (if any).
- (b) If the Security Agent is satisfied that a release is allowed under this Clause 27.2 (*Release of security*) (at the request and expense of the Borrowers) each Finance Party must enter into any document and do all such other things which are reasonably required to achieve that release. Each other Finance Party irrevocably authorises the Security Agent to enter into any such document. Any release will not affect the obligations of any other Transaction Obligor under the Finance Documents.

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**SECTION 10**

**THE FINANCE PARTIES**

**28 THE FACILITY AGENT AND THE MANDATED LEAD ARRANGER**

**28.1 Appointment of the Facility Agent**

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

**28.2 Instructions**

- (a) The Facility Agent shall:
  - (i) unless a contrary indication appears in a Finance Document, exercise or refrain from exercising any right, power, authority or discretion vested in it as Facility Agent in accordance with any instructions given to it by:
    - (A) all Lenders if the relevant Finance Document stipulates the matter is an all Lender decision; and
    - (B) in all other cases, the Majority Lenders; and
  - (ii) not be liable for any act (or omission) if it acts (or refrains from acting) in accordance with sub-paragraph (i) above (or, if this Agreement stipulates the matter is a decision for any other Finance Party or group of Finance Parties, in accordance with instructions given to it by that Finance Party or group of Finance Parties).
- (b) The Facility Agent shall be entitled to request instructions, or clarification of any instruction, from the Majority Lenders (or, if the relevant Finance Document stipulates the matter is a decision for any other Finance Party or group of Finance Parties, from that Finance Party or group of Finance Parties) as to whether, and in what manner, it should exercise or refrain from exercising any right, power, authority or discretion and the Facility Agent may refrain from acting unless and until it receives any such instructions or clarification that it has requested.
- (c) Save in the case of decisions stipulated to be a matter for any other Finance Party or group of Finance Parties under the relevant Finance Document and unless a contrary indication appears in a Finance Document, any instructions given to the Facility Agent by the Majority Lenders shall override any conflicting instructions given by any other Parties and will be binding on all Finance Parties.
- (d) Paragraph (a) above shall not apply:
  - (i) where a contrary indication appears in a Finance Document;
  - (ii) where a Finance Document requires the Facility Agent to act in a specified manner or to take a specified action;

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- (iii) in respect of any provision which protects the Facility Agent's own position in its personal capacity as opposed to its role of Facility Agent for the relevant Finance Parties.
  - (e) If giving effect to instructions given by the Majority Lenders would in the Facility Agent's opinion have an effect equivalent to an amendment or waiver referred to in Clause 42 (*Amendments and Waivers*), the Facility Agent shall not act in accordance with those instructions unless consent to it so acting is obtained from each Party (other than the Facility Agent) whose consent would have been required in respect of that amendment or waiver.
  - (f) In exercising any discretion to exercise a right, power or authority under the Finance Documents where it has not received any instructions as to the exercise of that discretion the Facility Agent shall do so having regard to the interests of all the Finance Parties.
  - (g) The Facility Agent may refrain from acting in accordance with any instructions of any Finance Party or group of Finance Parties until it has received any indemnification and/or security that it may in its discretion require (which may be greater in extent than that contained in the Finance Documents and which may include payment in advance) for any cost, loss or liability (together with any applicable VAT) which it may incur in complying with those instructions.
  - (h) Without prejudice to the remainder of this Clause 28.2 (*Instructions*), in the absence of instructions, the Facility Agent shall not be obliged to take any action (or refrain from taking action) even if it considers acting or not acting to be in the best interests of the Finance Parties. The Facility Agent may act (or refrain from acting) as it considers to be in the best interest of the Finance Parties.
  - (i) The Facility Agent is not authorised to act on behalf of a Finance Party (without first obtaining that Finance Party's consent) in any legal or arbitration proceedings relating to any Finance Document. This paragraph (i) shall not apply to any legal or arbitration proceeding relating to the perfection, preservation or protection of rights under the Security Documents or enforcement of the Transaction Security or Security Documents.

### **28.3 Duties of the Facility Agent**

- (a) The Facility Agent's duties under the Finance Documents are solely mechanical and administrative in nature.
- (b) Subject to paragraph (c) below, the Facility Agent shall promptly forward to a Party the original or a copy of any document which is delivered to the Facility Agent for that Party by any other Party.
- (c) Without prejudice to Clause 26.7 (*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, the Facility Agent is not obliged to review or check the adequacy, accuracy or completeness of any document it forwards to another Party.
- (e) If the Facility Agent receives notice from a Party referring to any Finance Document, describing a Default and stating that the circumstance described is a Default, it shall promptly notify the other Finance Parties.

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- (f) If the Facility Agent is aware of the non-payment of any principal, interest, commitment fee or other fee payable to a Finance Party (other than the Facility Agent, the Mandated Lead Arranger or the Security Agent) under this Agreement, it shall promptly notify the other Finance Parties.
  - (g) The Facility Agent shall have only those duties, obligations and responsibilities expressly specified in the Finance Documents to which it is expressed to be a party (and no others shall be implied).

#### **28.4 Role of the Mandated Lead Arranger**

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

#### **28.5 No fiduciary duties**

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

#### **28.6 Application of receipts**

Except as expressly stated to the contrary in any Finance Document, any moneys which the Facility Agent receives or recovers in its capacity as Facility Agent shall be applied by the Facility Agent in accordance with Clause 32.5 (*Application of receipts; partial payments*).

#### **28.7 Business with the Group**

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

#### **28.8 Rights and discretions**

- (a) The Facility Agent may:
  - (i) rely on any representation, communication, notice or document believed by it to be genuine, correct and appropriately authorised;
  - (ii) assume that:
    - (A) any instructions received by it from the Majority Lenders, any Finance Parties or any group of Finance Parties are duly given in accordance with the terms of the Finance Documents; and
    - (B) unless it has received notice of revocation, that those instructions have not been revoked; and
  - (iii) rely on a certificate from any person:
    - (A) as to any matter of fact or circumstance which might reasonably be expected to be within the knowledge of that person; or

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(B) to the effect that such person approves of any particular dealing, transaction, step, action or thing, as sufficient evidence that that is the case and, in the case of paragraph (A) above, may assume the truth and accuracy of that certificate.

- (b) The Facility Agent may assume (unless it has received notice to the contrary in its capacity as agent for the Finance Parties) that:
- (i) no Default has occurred (unless it has actual knowledge of a Default arising under Clause 25.2 (*Non-payment*));
  - (ii) any right, power, authority or discretion vested in any Party or any group of Finance Parties has not been exercised; and
  - (iii) any notice or request made by any Borrower (other than the Utilisation Request) is made on behalf of and with the consent and knowledge of all the Transaction Obligors.
- (c) The Facility Agent may engage and pay for the advice or services of any lawyers, accountants, tax advisers, surveyors or other professional advisers or experts.
- (d) Without prejudice to the generality of paragraph (c) above or paragraph (e) below, the Facility Agent may at any time engage and pay for the services of any lawyers to act as independent counsel to the Facility Agent (and so separate from any lawyers instructed by the Lenders) if the Facility Agent in its reasonable opinion deems this to be desirable.
- (e) The Facility Agent may rely on the advice or services of any lawyers, accountants, tax advisers, surveyors or other professional advisers or experts (whether obtained by the Facility Agent or by any other Party) and shall not be liable for any damages, costs or losses to any person, any diminution in value or any liability whatsoever arising as a result of its so relying.
- (f) The Facility Agent may act in relation to the Finance Documents and the Security Property through its officers, employees and agents and shall not:
- (i) be liable for any error of judgment made by any such person; or
  - (ii) be bound to supervise, or be in any way responsible for any loss incurred by reason of misconduct, omission or default on the part of any such person,
- unless such error or such loss was directly caused by the Facility Agent's gross negligence or wilful misconduct.
- (g) Unless a Finance Document expressly provides otherwise the Facility Agent may disclose to any other Party any information it reasonably believes it has received as agent under the Finance Documents.
- (h) Notwithstanding any other provision of any Finance Document to the contrary, neither the Facility Agent nor the Mandated Lead Arranger is obliged to do or omit to do anything if it would or might, in its reasonable opinion, constitute a breach of any law or regulation or a breach of a fiduciary duty or duty of confidentiality.
- (i) Notwithstanding any provision of any Finance Document to the contrary, the Facility Agent is not obliged to expend or risk its own funds or otherwise incur any financial liability in the

performance of its duties, obligations or responsibilities or the exercise of any right, power, authority or discretion if it has grounds for believing the repayment of such funds or adequate indemnity against, or security for, such risk or liability is not reasonably assured to it.

#### **28.9 Responsibility for documentation**

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

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

#### **28.10 No duty to monitor**

The Facility Agent shall not be bound to enquire:

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

#### **28.11 Exclusion of liability**

- (a) Without limiting paragraph (b) below (and without prejudice to paragraph (e) of Clause 32.11 (*Disruption to Payment Systems etc.*) or any other provision of any Finance Document excluding or limiting the liability of the Facility Agent), the Facility Agent will not be liable for (including, without limitation, for negligence or any other category of liability whatsoever):
  - (i) any damages, costs or losses to any person, any diminution in value, or any liability whatsoever arising as a result of taking or not taking any action under or in connection with any Transaction Document or the Security Property, unless directly caused by its gross negligence or wilful misconduct;
  - (ii) exercising, or not exercising, any right, power, authority or discretion given to it by, or in connection with, any Transaction Document, the Security Property or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with, any Transaction Document or the Security Property; or

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- (iii) any shortfall which arises on the enforcement or realisation of the Security Property; or
  - (iv) without prejudice to the generality of sub-paragraphs (i) to (iii) above, any damages, costs or losses to any person, any diminution in value or any liability whatsoever arising as a result of:
    - (A) any act, event or circumstance not reasonably within its control; or
    - (B) the general risks of investment in, or the holding of assets in, any jurisdiction, including (in each case and without limitation) such damages, costs, losses, diminution in value or liability arising as a result of nationalisation, expropriation or other governmental actions; any regulation, currency restriction, devaluation or fluctuation; market conditions affecting the execution or settlement of transactions or the value of assets (including any Disruption Event); breakdown, failure or malfunction of any third party transport, telecommunications, computer services or systems; natural disasters or acts of God; war, terrorism, insurrection or revolution; or strikes or industrial action.
  - (b) No Party other than the Facility Agent may take any proceedings against any officer, employee or agent of the Facility Agent in respect of any claim it might have against the Facility Agent or in respect of any act or omission of any kind by that officer, employee or agent in relation to any Transaction Document or any Security Property and any officer, employee or agent of the Facility Agent may rely on this paragraph (b) subject to Clause 1.5 (*Third party rights*) and the provisions of the Third Parties Act.
  - (c) The Facility Agent will not be liable for any delay (or any related consequences) in crediting an account with an amount required under the Finance Documents to be paid by the Facility Agent if the Facility Agent has taken all necessary steps as soon as reasonably practicable to comply with the regulations or operating procedures of any recognised clearing or settlement system used by the Facility Agent for that purpose.
  - (d) Nothing in this Agreement shall oblige the Facility Agent or the Mandated Lead Arranger carry out:
    - (i) any “know your customer” or other checks in relation to any person; or
    - (ii) any check on the extent to which any transaction contemplated by this Agreement might be unlawful for any Finance Party,on behalf of any Finance Party and each Finance Party confirms to the Facility Agent and the Mandated Lead Arranger that it is solely responsible for any such checks it is required to carry out and that it may not rely on any statement in relation to such checks made by the Facility Agent or the Mandated Lead Arranger.
  - (e) Without prejudice to any provision of any Finance Document excluding or limiting the Facility Agent’s liability, any liability (including, without limitation, for negligence or any other category of liability whatsoever) of the Facility Agent arising under or in connection with any Transaction Document or the Security Property shall be limited to the amount of actual loss which has been finally judicially determined to have been suffered (as determined by reference to the date of default of the Facility Agent or, if later, the date on which the loss arises as a result of such default) but without reference to any special conditions or circumstances known to the Facility



Agent at any time which increase the amount of that loss. In no event shall the Facility Agent be liable for any loss of profits, goodwill, reputation, business opportunity or anticipated saving, or for special, punitive, indirect or consequential damages, whether or not the Facility Agent has been advised of the possibility of such loss or damages.

#### **28.12 Lenders' indemnity to the Facility Agent**

- (a) Each Lender shall (in proportion to its share of the Total Commitments or, if the Total Commitments are then zero, to its share of the Total Commitments immediately prior to their reduction to zero) indemnify the Facility Agent, within three Business Days of demand, against any cost, loss or liability (including, without limitation, for negligence or any other category of liability whatsoever) incurred by the Facility Agent (otherwise than by reason of the Facility Agent's gross negligence or wilful misconduct) (or, in the case of any cost, loss or liability pursuant to Clause 32.11 (*Disruption to Payment Systems etc.*) notwithstanding the Facility Agent's negligence, gross negligence or any other category of liability whatsoever but not including any claim based on the fraud of the Facility Agent) in acting as Facility Agent under the Finance Documents (unless the Facility Agent has been reimbursed by a Transaction Obligor pursuant to a Finance Document).
- (b) Subject to paragraph (c) below, the Borrowers shall immediately on demand reimburse any Lender for any payment that Lender makes to the Facility Agent pursuant to paragraph (a) above.
- (c) Paragraph (b) above shall not apply to the extent that the indemnity payment in respect of which the Lender claims reimbursement relates to a liability of the Facility Agent to an Obligor.

#### **28.13 Resignation of the Facility Agent**

- (a) The Facility Agent may resign and appoint one of its Affiliates as successor by giving notice to the other Finance Parties and the Borrowers.
- (b) Alternatively, the Facility Agent may resign by giving 30 days' notice to the other Finance Parties and the Borrowers, in which case the Majority Lenders may appoint a successor Facility Agent.
- (c) If the Majority Lenders have not appointed a successor Facility Agent in accordance with paragraph (b) above within 20 days after notice of resignation was given, the retiring Facility Agent may appoint a successor Facility Agent.
- (d) If the Facility Agent wishes to resign because (acting reasonably) it has concluded that it is no longer appropriate for it to remain as agent and the Facility Agent is entitled to appoint a successor Facility Agent under paragraph (c) above, the Facility Agent may (if it concludes (acting reasonably) that it is necessary to do so in order to persuade the proposed successor Facility Agent to become a party to this Agreement as Facility Agent) agree with the proposed successor Facility Agent amendments to this Clause 28 (*The Facility Agent and the Mandated Lead Arranger*) and any other term of this Agreement dealing with the rights or obligations of the Facility Agent consistent with then current market practice for the appointment and protection of corporate trustees.
- (e) The retiring Facility Agent shall make available to the successor Facility Agent such documents and records and provide such assistance as the successor Facility Agent may reasonably request for the purposes of performing its functions as Facility Agent under the Finance Documents. The Borrowers shall, within three Business Days of demand, reimburse the retiring Facility Agent for the amount of all costs and expenses (including legal fees) properly incurred by it in making available such documents and records and providing such assistance.

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- (f) The Facility Agent's resignation notice shall only take effect upon the appointment of a successor.
- (g) Upon the appointment of a successor, the retiring Facility Agent shall be discharged from any further obligation in respect of the Finance Documents (other than its obligations under paragraph (e) above) but shall remain entitled to the benefit of Clause 14.4 (*Indemnity to the Facility Agent*) and this Clause 28 (*The Facility Agent and the Mandated Lead Arranger*) and any other provisions of a Finance Document which are expressed to limit or exclude its liability (or to indemnify it) in acting as Facility Agent. Any fees for the account of the retiring Facility Agent shall cease to accrue from (and shall be payable on) that date. Any successor and each of the other Parties shall have the same rights and obligations amongst themselves as they would have had if such successor had been an original Party.
- (h) The Majority Lenders may, by notice to the Facility Agent, require it to resign in accordance with paragraph (b) above. In this event, the Facility Agent shall resign in accordance with paragraph (b) above but the cost referred to in paragraph (e) above shall be for the account of the Borrowers.
- (i) The consent of any Borrower (or any other Transaction Obligor) is not required for an assignment or transfer of rights and/or obligations by the Facility Agent.
- (j) The Facility Agent shall resign in accordance with paragraph (b) above (and, to the extent applicable, shall use reasonable endeavours to appoint a successor Facility Agent pursuant to paragraph (c) above) if on or after the date which is three months before the earliest FATCA Application Date relating to any payment to the Facility Agent under the Finance Documents, either:
- (i) the Facility Agent fails to respond to a request under Clause 12.7 (*FATCA Information*) and a Lender reasonably believes that the Facility Agent will not be (or will have ceased to be) a FATCA Exempt Party on or after that FATCA Application Date;
  - (ii) the information supplied by the Facility Agent pursuant to Clause 12.7 (*FATCA Information*) indicates that the Facility Agent will not be (or will have ceased to be) a FATCA Exempt Party on or after that FATCA Application Date; or
  - (iii) the Facility Agent notifies the Borrowers and the Lenders that the Facility Agent will not be (or will have ceased to be) a FATCA Exempt Party on or after that FATCA Application Date;
- and (in each case) a Lender reasonably believes that a Party will be required to make a FATCA Deduction that would not be required if the Facility Agent were a FATCA Exempt Party, and that Lender, by notice to the Facility Agent, requires it to resign.

#### **28.14 Confidentiality**

- (a) In acting as Facility Agent for the Finance Parties, the Facility Agent shall be regarded as acting through its agency division which shall be treated as a separate entity from any other of its divisions or departments.

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- (b) If information is received by a division or department of the Facility Agent other than the division or department responsible for complying with the obligations assumed by it under the Finance Documents, that information may be treated as confidential to that division or department, and the Facility Agent shall not be deemed to have notice of it nor shall it be obliged to disclose such information to any Party.
  - (c) Notwithstanding any other provision of any Finance Document to the contrary, neither the Facility Agent nor the Mandated Lead Arranger is obliged to disclose to any other person (i) any confidential information or (ii) any other information if the disclosure would, or might in its reasonable opinion, constitute a breach of any law or regulation or a breach of a fiduciary duty.

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

- (a) Subject to Clause 26.9 (*Pro rata interest settlement*), the Facility Agent may treat the person shown in its records as Lender at the opening of business (in the place of the Facility Agent's principal office as notified to the Finance Parties from time to time) as the Lender acting through its Facility Office:
  - (i) entitled to or liable for any payment due under any Finance Document on that day; and
  - (ii) entitled to receive and act upon any notice, request, document or communication or make any decision or determination under any Finance Document made or delivered on that day,

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

- (b) Each Finance Party shall supply the Facility Agent with any information that the Security Agent may reasonably specify (through the Facility Agent) as being necessary or desirable to enable the Security Agent to perform its functions as Security Agent. Each Finance Party shall deal with the Security Agent exclusively through the Facility Agent and shall not deal directly with the Security Agent and any reference to any instructions being given by or sought from any Finance Party or group of Finance Parties to or by the Security Agent in this Agreement must be given or sought through the Facility Agent.
- (c) Any Lender may by notice to the Facility Agent appoint a person to receive on its behalf all notices, communications, information and documents to be made or despatched to that Lender under the Finance Documents. Such notice shall contain the address, fax number and (where communication by electronic mail or other electronic means is permitted under Clause 35.5 (*Electronic communication*)) electronic mail address and/or any other information required to enable the transmission of information by that means (and, in each case, the department or officer, if any, for whose attention communication is to be made) and be treated as a notification of a substitute address, fax number, electronic mail address (or such other information), department and officer by that Lender for the purposes of Clause 35.2 (*Addresses*) and sub-paragraph (ii) of paragraph (a) of Clause 35.5 (*Electronic communication*) and the Facility Agent shall be entitled to treat such person as the person entitled to receive all such notices, communications, information and documents as though that person were that Lender.

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

Without affecting the responsibility of any Transaction Obligor for information supplied by it or on its behalf in connection with any Transaction Document, each Finance Party confirms to the Facility Agent and the Mandated Lead Arranger that it has been, and will continue to be, solely responsible for making its own independent appraisal and investigation of all risks arising under, or in connection with, any Transaction Document including but not limited to:

- (a) the financial condition, status and nature of each member of the Group;
- (b) the legality, validity, effectiveness, adequacy or enforceability of any Transaction Document, the Security Property and any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Transaction Document or the Security Property;
- (c) whether that Finance Party has recourse, and the nature and extent of that recourse, against any Party or any of its respective assets under, or in connection with, any Transaction Document, the Security Property, the transactions contemplated by the Transaction Documents or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Transaction Document or the Security Property;
- (d) the adequacy, accuracy or completeness of any information provided by the Facility Agent, any Party or by any other person under, or in connection with, any Transaction Document, the transactions contemplated by any Transaction Document or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Transaction Document; and
- (e) the right or title of any person in or to or the value or sufficiency of any part of the Security Assets, the priority of any of the Transaction Security or the existence of any Security affecting the Security Assets.

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

Any amount payable to the Facility Agent under Clause 14.4 (*Indemnity to the Facility Agent*), Clause 16 (*Costs and Expenses*) and Clause 28.12 (*Lenders' indemnity to the Facility Agent*) shall include the cost of utilising the Facility Agent's management time or other resources and will be calculated on the basis of such reasonable daily or hourly rates as the Facility Agent may notify to the Borrowers and the other Finance Parties, and is in addition to any fee paid or payable to the Facility Agent under Clause 11 (*Fees*).

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

If any Party owes an amount to the Facility Agent under the Finance Documents, the Facility Agent may, after giving notice to that Party, deduct an amount not exceeding that amount from any payment to that Party which the Facility Agent would otherwise be obliged to make under the Finance Documents and apply the amount deducted in or towards satisfaction of the amount owed. For the purposes of the Finance Documents that Party shall be regarded as having received any amount so deducted.

### **28.19 Reliance and engagement letters**

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

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

Without prejudice to Clause 28.7 (*Business with the Group*) or any other provision of a Finance Document and notwithstanding any rule of law or equity to the contrary, the Facility Agent shall be absolutely entitled:

- (a) to enter into and arrange banking, derivative, investment and/or other transactions of every kind with or affecting any Transaction Obligor or any person who is party to, or referred to in, a Finance Document (including, but not limited to, any interest or currency swap or other transaction, whether related to this Agreement or not, and acting as syndicate agent and/or security agent for, and/or participating in, other facilities to such Transaction Obligor or any person who is party to, or referred to in, a Finance Document);
- (b) to deal in and enter into and arrange transactions relating to:
  - (i) any securities issued or to be issued by any Transaction Obligor or any other person; or
  - (ii) any options or other derivatives in connection with such securities; and
- (c) to provide advice or other services to any Borrower or any person who is a party to, or referred to in, a Finance Document, and, in particular, the Facility Agent shall be absolutely entitled, in proposing, evaluating, negotiating, entering into and arranging all such transactions and in connection with all other matters covered by paragraphs (a), (b) and (c) above, to use (subject only to insider dealing legislation) any information or opportunity, howsoever acquired by it, to pursue its own interests exclusively, to refrain from disclosing such dealings, transactions or other matters or any information acquired in connection with them and to retain for its sole benefit all profits and benefits derived from the dealings transactions or other matters.

### **28.21 Amounts paid in error**

- (a) If the Facility Agent pays an amount to another Party and the Facility Agent notifies that Party that such payment was an Erroneous Payment then the Party to whom that amount was paid by the Facility Agent shall on demand refund the same to the Facility Agent together with interest on that amount from the date of payment to the date of receipt by the Facility Agent, calculated by the Facility Agent to reflect its cost of funds.
- (b) Neither:
  - (i) the obligations of any Party to the Facility Agent; nor

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- (ii) the remedies of the Facility Agent, (whether arising under this Clause 28.21 (*Amounts paid in error*) or otherwise) which relate to an Erroneous Payment will be affected by any act, omission, matter or thing which, but for this paragraph (b), would reduce, release or prejudice any such obligation or remedy (whether or not known by the Facility Agent or any other Party).
  - (c) All payments to be made by a Party to the Facility Agent (whether made pursuant to this Clause 28.21 (*Amounts paid in error*) or otherwise) which relate to an Erroneous Payment shall be calculated and be made without (and free and clear of any deduction for) set-off or counterclaim.
  - (d) In this Agreement, “**Erroneous Payment**” means a payment of an amount by the Facility Agent to another Party which the Facility Agent determines (in its sole discretion) was made in error.

## 29 THE SECURITY AGENT

### 29.1 Trust

- (a) The Security Agent declares that it holds the Security Property on trust for the Secured Parties on the terms contained in this Agreement and shall deal with the Security Property in accordance with this Clause 29 (*The Security Agent*) and the other provisions of the Finance Documents.
- (b) Each other Finance Party authorises the Security Agent to perform the duties, obligations and responsibilities and to exercise the rights, powers, authorities and discretions specifically given to the Security Agent under, or in connection with, the Finance Documents together with any other incidental rights, powers, authorities and discretions.

### 29.2 Parallel Debt (Covenant to pay the Security Agent)

- (a) Each Borrower irrevocably and unconditionally undertakes to pay to the Security Agent its Parallel Debt which shall be amounts equal to, and in the currency or currencies of, its Corresponding Debt.
- (b) The Parallel Debt of a Borrower:
  - (i) shall become due and payable at the same time as its Corresponding Debt;
  - (ii) is independent and separate from, and without prejudice to, its Corresponding Debt.
- (c) For the purposes of this Clause 29.2 (*Parallel Debt (Covenant to pay the Security Agent)*), the Security Agent:
  - (i) is the independent and separate creditor of each Parallel Debt;
  - (ii) acts in its own name and not as agent, representative or trustee of the Finance Parties and its claims in respect of each Parallel Debt shall not be held on trust; and
  - (iii) shall have the independent and separate right to demand payment of each Parallel Debt in its own name (including, without limitation, through any suit, execution, enforcement of security, recovery of guarantees and applications for and voting in any kind of insolvency proceeding).

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- (d) The Parallel Debt of a Borrower shall be:
- (i) decreased to the extent that its Corresponding Debt has been irrevocably and unconditionally paid or discharged; and
  - (ii) increased to the extent that its Corresponding Debt has increased,
- and the Corresponding Debt of a Borrower shall be decreased to the extent that its Parallel Debt has been irrevocably and unconditionally paid or discharged,
- in each case provided that the Parallel Debt of a Borrower shall never exceed its Corresponding Debt.
- (e) All amounts received or recovered by the Security Agent in connection with this Clause 29.2 (*Parallel Debt (Covenant to pay the Security Agent)*) to the extent permitted by applicable law, shall be applied in accordance with Clause 32.5 (*Application of receipts; partial payments*).
- (f) This Clause 29.2 (*Parallel Debt (Covenant to pay the Security Agent)*) shall apply, with any necessary modifications, to each Finance Document.

### 29.3 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.

### 29.4 Instructions

- (a) The Security Agent shall:
- (i) unless a contrary indication appears in a Finance Document, exercise or refrain from exercising any right, power, authority or discretion vested in it as Security Agent in accordance with any instructions given to it by:
    - (A) all Lenders (or the Facility Agent on their behalf) if the relevant Finance Document stipulates the matter is an all Lender decision; and
    - (B) in all other cases, the Majority Lenders (or the Facility Agent on their behalf); and
  - (ii) not be liable for any act (or omission) if it acts (or refrains from acting) in accordance with sub-paragraph (i) above (or if this Agreement stipulates the matter is a decision for any other Finance Party or group of Finance Parties, in accordance with instructions given to it by that Finance Party or group of Finance Parties).
- (b) The Security Agent shall be entitled to request instructions, or clarification of any instruction, from the Majority Lenders (or the Facility Agent on their behalf) (or, if the relevant Finance Document stipulates the matter is a decision for any other Finance Party or group of Finance Parties, from that Finance Party or group of Finance Parties) as to whether, and in what manner, it should exercise or refrain from exercising any right, power, authority or discretion and the Security Agent may refrain from acting unless and until it receives any such instructions or clarification that it has requested.

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- (c) Save in the case of decisions stipulated to be a matter for any other Finance Party or group of Finance Parties under the relevant Finance Document and unless a contrary indication appears in a Finance Document, any instructions given to the Security Agent by the Majority Lenders shall override any conflicting instructions given by any other Parties and will be binding on all Finance Parties.
- (d) Paragraph (a) above shall not apply:
- (i) where a contrary indication appears in a Finance Document;
  - (ii) where a Finance Document requires the Security Agent to act in a specified manner or to take a specified action;
  - (iii) in respect of any provision which protects the Security Agent's own position in its personal capacity as opposed to its role of Security Agent for the relevant Secured Parties.
  - (iv) in respect of the exercise of the Security Agent's discretion to exercise a right, power or authority under any of:
    - (A) Clause 29.28 (*Application of receipts*);
    - (B) Clause 29.29 (*Permitted Deductions*); and
    - (C) Clause 29.30 (*Prospective liabilities*).
- (e) If giving effect to instructions given by the Majority Lenders would in the Security Agent's opinion have an effect equivalent to an amendment or waiver referred to in Clause 42 (*Amendments and Waivers*), the Security Agent shall not act in accordance with those instructions unless consent to it so acting is obtained from each Party (other than the Security Agent) whose consent would have been required in respect of that amendment or waiver.
- (f) In exercising any discretion to exercise a right, power or authority under the Finance Documents where either:
- (i) it has not received any instructions as to the exercise of that discretion; or
  - (ii) the exercise of that discretion is subject to sub-paragraph (iv) of paragraph (d) above,
- the Security Agent shall do so having regard to the interests of all the Secured Parties.
- (g) The Security Agent may refrain from acting in accordance with any instructions of any Finance Party or group of Finance Parties until it has received any indemnification and/or security that it may in its discretion require (which may be greater in extent than that contained in the Finance Documents and which may include payment in advance) for any cost, loss or liability (together with any applicable VAT) which it may incur in complying with those instructions.
- (h) Without prejudice to the remainder of this Clause 29.4 (*Instructions*), in the absence of instructions, the Security Agent may (but shall not be obliged to) take such action in the exercise of its powers and duties under the Finance Documents as it considers in its discretion to be appropriate.



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- (i) The Security Agent is not authorised to act on behalf of a Finance Party (without first obtaining that Finance Party's consent) in any legal or arbitration proceedings relating to any Finance Document. This paragraph (i) shall not apply to any legal or arbitration proceeding relating to the perfection, preservation or protection of rights under the Security Documents or enforcement of the Transaction Security or Security Documents.

#### **29.5 Duties of the Security Agent**

- (a) The Security Agent's duties under the Finance Documents are solely mechanical and administrative in nature.
- (b) The Security Agent shall promptly forward to a Party the original or a copy of any document which is delivered to the Security Agent for that Party by any other Party.
- (c) Except where a Finance Document specifically provides otherwise, the Security Agent is not obliged to review or check the adequacy, accuracy or completeness of any document it forwards to another Party.
- (d) If the Security Agent receives notice from a Party referring to any Finance Document, describing a Default and stating that the circumstance described is a Default, it shall promptly notify the other Finance Parties.
- (e) The Security Agent shall have only those duties, obligations and responsibilities expressly specified in the Finance Documents to which it is expressed to be a party (and no others shall be implied).

#### **29.6 No fiduciary duties**

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

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

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

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

- (a) The Security Agent may:
- (i) rely on any representation, communication, notice or document believed by it to be genuine, correct and appropriately authorised;
- (ii) assume that:
- (A) any instructions received by it from the Majority Lenders, any Finance Parties or any group of Finance Parties are duly given in accordance with the terms of the Finance Documents;

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- (B) unless it has received notice of revocation, that those instructions have not been revoked;
  - (C) if it receives any instructions to act in relation to the Transaction Security, that all applicable conditions under the Finance Documents for so acting have been satisfied; and
- (iii) rely on a certificate from any person:
- (A) as to any matter of fact or circumstance which might reasonably be expected to be within the knowledge of that person; or
  - (B) to the effect that such person approves of any particular dealing, transaction, step, action or thing,  
as sufficient evidence that that is the case and, in the case of paragraph (A) above, may assume the truth and accuracy of that certificate.
- (b) The Security Agent shall be entitled to carry out all dealings with the other Finance Parties through the Facility Agent and may give to the Facility Agent any notice or other communication required to be given by the Security Agent to any Finance Party.
- (c) The Security Agent may assume (unless it has received notice to the contrary in its capacity as security agent for the Secured Parties) that:
- (i) no Default has occurred;
  - (ii) any right, power, authority or discretion vested in any Party or any group of Finance Parties has not been exercised; and
  - (iii) any notice or request made by any Borrower (other than the Utilisation Request) is made on behalf of and with the consent and knowledge of all the Transaction Obligors.
- (d) The Security Agent may engage and pay for the advice or services of any lawyers, accountants, tax advisers, surveyors or other professional advisers or experts.
- (e) Without prejudice to the generality of paragraph (c) above or paragraph (f) below, the Security Agent may at any time engage and pay for the services of any lawyers to act as independent counsel to the Security Agent (and so separate from any lawyers instructed by the Facility Agent or the Lenders) if the Security Agent in its reasonable opinion deems this to be desirable.
- (f) The Security Agent may rely on the advice or services of any lawyers, accountants, tax advisers, surveyors or other professional advisers or experts (whether obtained by the Security Agent or by any other Party) and shall not be liable for any damages, costs or losses to any person, any diminution in value or any liability whatsoever arising as a result of its so relying.
- (g) The Security Agent may act in relation to the Finance Documents and the Security Property through its officers, employees and agents and shall not:
- (i) be liable for any error of judgment made by any such person; or
  - (ii) be bound to supervise, or be in any way responsible for any loss incurred by reason of misconduct, omission or default on the part of any such person,

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unless such error or such loss was directly caused by the Security Agent's gross negligence or wilful misconduct.

- (h) Unless a Finance Document expressly provides otherwise the Security Agent may disclose to any other Party any information it reasonably believes it has received as security agent under the Finance Documents.
- (i) Notwithstanding any other provision of any Finance Document to the contrary, the Security Agent is not obliged to do or omit to do anything if it would or might, in its reasonable opinion, constitute a breach of any law or regulation or a breach of a fiduciary duty or duty of confidentiality.
- (j) Notwithstanding any provision of any Finance Document to the contrary, the Security Agent is not obliged to expend or risk its own funds or otherwise incur any financial liability in the performance of its duties, obligations or responsibilities or the exercise of any right, power, authority or discretion if it has grounds for believing the repayment of such funds or adequate indemnity against, or security for, such risk or liability is not reasonably assured to it.

**29.9 Responsibility for documentation**

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

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

**29.10 No duty to monitor**

The Security Agent shall not be bound to enquire:

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

## 29.11 Exclusion of liability

- (a) Without limiting paragraph (b) below (and without prejudice to any other provision of any Finance Document excluding or limiting the liability of the Security Agent or any Receiver or Delegate), none of the Security Agent nor any Receiver or Delegate will be liable for:
- (i) any damages, costs or losses to any person, any diminution in value, or any liability whatsoever arising as a result of taking or not taking any action under or in connection with any Transaction Document or the Security Property, unless directly caused by its gross negligence or wilful misconduct;
  - (ii) exercising, or not exercising, any right, power, authority or discretion given to it by, or in connection with, any Transaction Document, the Security Property or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with, any Transaction Document or the Security Property; or
  - (iii) any shortfall which arises on the enforcement or realisation of the Security Property; or
  - (iv) without prejudice to the generality of sub-paragraphs (i) to (iii) above, any damages, costs or losses to any person, any diminution in value or any liability whatsoever arising as a result of:
    - (A) any act, event or circumstance not reasonably within its control; or
    - (B) the general risks of investment in, or the holding of assets in, any jurisdiction, including (in each case and without limitation) such damages, costs, losses, diminution in value or liability arising as a result of nationalisation, expropriation or other governmental actions; any regulation, currency restriction, devaluation or fluctuation; market conditions affecting the execution or settlement of transactions or the value of assets (including any Disruption Event); breakdown, failure or malfunction of any third party transport, telecommunications, computer services or systems; natural disasters or acts of God; war, terrorism, insurrection or revolution; or strikes or industrial action.
- (b) No Party other than the Security Agent, that Receiver or that Delegate (as applicable) may take any proceedings against any officer, employee or agent of the Security Agent, a Receiver or a Delegate in respect of any claim it might have against the Security Agent, a Receiver or a Delegate or in respect of any act or omission of any kind by that officer, employee or agent in relation to any Transaction Document or any Security Property and any officer, employee or agent of the Security Agent, a Receiver or a Delegate may rely on this Clause subject to Clause 1.5 (*Third party rights*) and the provisions of the Third Parties Act.
- (c) The Security Agent will not be liable for any delay (or any related consequences) in crediting an account with an amount required under the Finance Documents to be paid by the Security Agent if the Security Agent has taken all necessary steps as soon as reasonably practicable to comply with the regulations or operating procedures of any recognised clearing or settlement system used by the Security Agent for that purpose.

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- (d) Nothing in this Agreement shall oblige the Security Agent to carry out:
- (i) any “know your customer” or other checks in relation to any person; or
  - (ii) any check on the extent to which any transaction contemplated by this Agreement might be unlawful for any Finance Party, on behalf of any Finance Party and each Finance Party confirms to the Security Agent that it is solely responsible for any such checks it is required to carry out and that it may not rely on any statement in relation to such checks made by the Security Agent.
- (e) Without prejudice to any provision of any Finance Document excluding or limiting the liability of the Security Agent or any Receiver or Delegate, any liability of the Security Agent or any Receiver or Delegate arising under or in connection with any Transaction Document or the Security Property shall be limited to the amount of actual loss which has been finally judicially determined to have been suffered (as determined by reference to the date of default of the Security Agent. Receiver or Delegate or, if later, the date on which the loss arises as a result of such default) but without reference to any special conditions or circumstances known to the Security Agent, any Receiver or Delegate at any time which increase the amount of that loss. In no event shall the Security Agent, any Receiver or Delegate be liable for any loss of profits, goodwill, reputation, business opportunity or anticipated saving, or for special, punitive, indirect or consequential damages, whether or not the Security Agent, the Receiver or Delegate has been advised of the possibility of such loss or damages.

#### **29.12 Lenders’ indemnity to the Security Agent**

- (a) Each Lender shall (in proportion to its share of the Total Commitments or, if the Total Commitments are then zero, to its share of the Total Commitments immediately prior to their reduction to zero) indemnify the Security Agent and every Receiver and every Delegate, within three Business Days of demand, against any cost, loss or liability incurred by any of them (otherwise than by reason of the Security Agent’s, Receiver’s or Delegate’s gross negligence or wilful misconduct) in acting as Security Agent, Receiver or Delegate under the Finance Documents (unless the Security Agent, Receiver or Delegate has been reimbursed by a Transaction Obligor pursuant to a Finance Document).
- (b) Subject to paragraph (c) below, the Borrowers shall immediately on demand reimburse any Lender for any payment that Lender makes to the Security Agent pursuant to paragraph (a) above.
- (c) Paragraph (b) above shall not apply to the extent that the indemnity payment in respect of which the Lender claims reimbursement relates to a liability of the Security Agent to a Borrower.

#### **29.13 Resignation of the Security Agent**

- (a) The Security Agent may resign and appoint one of its Affiliates as successor by giving notice to the other Finance Parties and the Borrowers.
- (b) Alternatively, the Security Agent may resign by giving 30 days’ notice to the other Finance Parties and the Borrowers, in which case the Majority Lenders may appoint a successor Security Agent.
- (c) If the Majority Lenders have not appointed a successor Security Agent in accordance with paragraph (b) above within 20 days after notice of resignation was given, the retiring Security Agent may appoint a successor Security Agent.

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- (d) The retiring Security Agent shall make available to the successor Security Agent such documents and records and provide such assistance as the successor Security Agent may reasonably request for the purposes of performing its functions as Security Agent under the Finance Documents. The Borrowers shall, within three Business Days of demand, reimburse the retiring Security Agent for the amount of all costs and expenses (including legal fees) properly incurred by it in making available such documents and records and providing such assistance.
  - (e) The Security Agent's resignation notice shall only take effect upon:
    - (i) the appointment of a successor; and
    - (ii) the transfer, by way of a document expressed as a deed, of all the Security Property to that successor.
  - (f) Upon the appointment of a successor, the retiring Security Agent shall be discharged, by way of a document executed as a deed, from any further obligation in respect of the Finance Documents (other than its obligations under paragraph (b) of Clause 29.25 (*Winding up of trust*) and paragraph (d) above) but shall remain entitled to the benefit of Clause 14.5 (*Indemnity to the Security Agent*) and this Clause 29 (*The Security Agent*) and any other provisions of a Finance Document which are expressed to limit or exclude its liability (or to indemnify it) in acting as Security Agent. Any fees for the account of the retiring Security Agent shall cease to accrue from (and shall be payable on) that date. Any successor and each of the other Parties shall have the same rights and obligations amongst themselves as they would have had if such successor had been an original Party.
  - (g) The Majority Lenders may, by notice to the Security Agent, require it to resign in accordance with paragraph (b) above. In this event, the Security Agent shall resign in accordance with paragraph (b) above but the cost referred to in paragraph (d) above shall be for the account of the Borrowers.
  - (h) The consent of any Borrower (or any other Transaction Obligor) is not required for an assignment or transfer of rights and/or obligations by the Security Agent.

#### **29.14 Confidentiality**

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

### 29.15 Credit appraisal by the Finance Parties

Without affecting the responsibility of any Transaction Obligor for information supplied by it or on its behalf in connection with any Transaction Document, each Finance Party confirms to the Security Agent that it has been, and will continue to be, solely responsible for making its own independent appraisal and investigation of all risks arising under, or in connection with, any Transaction Document including but not limited to:

- (a) the financial condition, status and nature of each member of the Group;
- (b) the legality, validity, effectiveness, adequacy or enforceability of any Transaction Document, the Security Property and any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Transaction Document or the Security Property;
- (c) whether that Finance Party has recourse, and the nature and extent of that recourse, against any Party or any of its respective assets under, or in connection with, any Transaction Document, the Security Property, the transactions contemplated by the Transaction Documents or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Transaction Document or the Security Property;
- (d) the adequacy, accuracy or completeness of any information provided by the Security Agent, any Party or by any other person under, or in connection with, any Transaction Document, the transactions contemplated by any Transaction Document or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Transaction Document; and
- (e) the right or title of any person in or to or the value or sufficiency of any part of the Security Assets, the priority of any of the Transaction Security or the existence of any Security affecting the Security Assets.

### 29.16 Security Agent's management time

- (a) Any amount payable to the Security Agent under Clause 14.5 (*Indemnity to the Security Agent*), Clause 16 (*Costs and Expenses*) and Clause 29.12 (*Lenders' indemnity to the Security Agent*) shall include the cost of utilising the Security Agent's management time or other resources and will be calculated on the basis of such reasonable daily or hourly rates as the Security Agent may notify to the Borrowers and the other Finance Parties, and is in addition to any fee paid or payable to the Security Agent under Clause 11 (*Fees*).
- (b) Without prejudice to paragraph (a) above, in the event of:
  - (i) a Default;
  - (ii) the Security Agent being requested by a Transaction Obligor or the Majority Lenders to undertake duties which the Security Agent and the 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 (together with any applicable VAT) that may be agreed between them or determined pursuant to paragraph (c) below.

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

#### **29.17 Reliance and engagement letters**

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

#### **29.18 No responsibility to perfect Transaction Security**

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

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

#### **29.19 Insurance by Security Agent**

- (a) The Security Agent shall not be obliged:
- (i) to insure any of the Security Assets;
- (ii) to require any other person to maintain any insurance; or



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

#### **29.20 Custodians and nominees**

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

#### **29.21 Delegation by the Security Agent**

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

#### **29.22 Additional Security Agents**

- (a) The Security Agent may at any time appoint (and subsequently remove) any person to act as a separate trustee or as a co-trustee jointly with it:
  - (i) if it considers that appointment to be in the interests of the Secured Parties; or
  - (ii) for the purposes of conforming to any legal requirement, restriction or condition which the Security Agent deems to be relevant; or
  - (iii) for obtaining or enforcing any judgment in any jurisdiction,and the Security Agent shall give prior notice to the 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.

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- (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.

**29.23 Acceptance of title**

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

**29.24 Releases**

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

**29.25 Winding up of trust**

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

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

then

- (i) the trusts set out in this Agreement shall be wound up and the Security Agent shall release, without recourse or warranty, all of the Transaction Security and the rights of the Security Agent under each of the Security Documents; and
- (ii) any Security Agent which has resigned pursuant to Clause 29.13 (*Resignation of the Security Agent*) shall release, without recourse or warranty, all of its rights under each Security Document.

**29.26 Powers supplemental to Trustee Acts**

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

### 29.27 Disapplication of Trustee Acts

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

### 29.28 Application of receipts

All amounts from time to time received or recovered by the Security Agent pursuant to the terms of any Finance Document, under Clause 29.2 (*Parallel Debt (Covenant to pay the Security Agent)*) or in connection with the realisation or enforcement of all or any part of the Security Property (for the purposes of this Clause 29 (*The Security Agent*), the “**Recoveries**”) shall be held by the Security Agent on trust to apply them at any time as the Security Agent (in its discretion) sees fit, to the extent permitted by applicable law (and subject to the remaining provisions of this Clause 29 (*The Security Agent*)), in the following order of priority:

- (a) in discharging any sums owing to the Security Agent (in its capacity as such) other than pursuant to Clause 29.2 (*Parallel Debt (Covenant to pay the Security Agent)*) or any Receiver or Delegate;
- (b) in payment or distribution to the Facility Agent, on its behalf and on behalf of the other Secured Parties, for application towards the discharge of all sums due and payable by any Transaction Obligor under any of the Finance Documents in accordance with Clause 32.5 (*Application of receipts; partial payments*);
- (c) if none of the Transaction Obligors is under any further actual or contingent liability under any Finance Document, in payment or distribution to any person to whom the Security Agent is obliged to pay or distribute in priority to any Transaction Obligor; and
- (d) the balance, if any, in payment or distribution to the relevant Transaction Obligor.

### 29.29 Permitted Deductions

The Security Agent may, in its discretion:

- (a) 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
- (b) 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).

### **29.30 Prospective liabilities**

Following enforcement of any of the Transaction Security, the Security Agent may, in its discretion, or at the request of the Facility Agent, hold any Recoveries in an interest bearing suspense or impersonal account(s) in the name of the Security Agent with such financial institution (including itself) and for so long as the Security Agent shall think fit (the interest being credited to the relevant account) for later payment to the Facility Agent for application in accordance with Clause 29.28 (*Application of receipts*) in respect of:

- (a) any sum to the Security Agent, any Receiver or any Delegate; and
- (b) any part of the Secured Liabilities,

that the Security Agent or, in the case of paragraph (b) only, the Facility Agent, reasonably considers, in each case, might become due or owing at any time in the future.

### **29.31 Investment of proceeds**

Prior to the payment of the proceeds of the Recoveries to the Facility Agent for application in accordance with Clause 29.28 (*Application of receipts*) the Security Agent may, in its discretion, hold all or part of those proceeds in an interest bearing suspense or impersonal account(s) in the name of the Security Agent with such financial institution (including itself) and for so long as the Security Agent shall think fit (the interest being credited to the relevant account) pending the payment from time to time of those moneys in the Security Agent's discretion in accordance with the provisions of Clause 29.28 (*Application of receipts*).

### **29.32 Currency conversion**

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

### **29.33 Good discharge**

- (a) Any payment to be made in respect of the Secured Liabilities by the Security Agent may be made to the Facility Agent on behalf of the Secured Parties and any payment made in that way shall be a good discharge, to the extent of that payment, by the Security Agent.
- (b) The Security Agent is under no obligation to make the payments to the Facility Agent under paragraph (a) above in the same currency as that in which the obligations and liabilities owing to the relevant Finance Party are denominated.

### **29.34 Amounts received by Obligors**

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

### **29.35 Application and consideration**

In consideration for the covenants given to the Security Agent by each Borrower in relation to Clause 29.2 (*Parallel Debt (Covenant to pay the Security Agent)*), the Security Agent agrees with each Borrower to apply all moneys from time to time paid by such Borrower to the Security Agent in accordance with the foregoing provisions of this Clause 29 (*The Security Agent*).

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

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

- (a) to enter into and arrange banking, derivative, investment and/or other transactions of every kind with or affecting any Transaction Obligor or any person who is party to, or referred to in, a Finance Document (including, but not limited to, any interest or currency swap or other transaction, whether related to this Agreement or not, and acting as syndicate agent and/or security agent for, and/or participating in, other facilities to such Transaction Obligor or any person who is party to, or referred to in, a Finance Document);
- (b) to deal in and enter into and arrange transactions relating to:
  - (i) any securities issued or to be issued by any Transaction Obligor or any other person; or
  - (ii) any options or other derivatives in connection with such securities; and
- (c) to provide advice or other services to the Borrowers or any person who is a party to, or referred to in, a Finance Document, and, in particular, the Security Agent shall be absolutely entitled, in proposing, evaluating, negotiating, entering into and arranging all such transactions and in connection with all other matters covered by paragraphs (a), (b) and (c) above, to use (subject only to insider dealing legislation) any information or opportunity, howsoever acquired by it, to pursue its own interests exclusively, to refrain from disclosing such dealings, transactions or other matters or any information acquired in connection with them and to retain for its sole benefit all profits and benefits derived from the dealings transactions or other matters.

### **30 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.

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## 31 SHARING AMONG THE FINANCE PARTIES

### 31.1 Payments to Finance Parties

If a Finance Party (a “**Recovering Finance Party**”) receives or recovers any amount from a Transaction Obligor other than in accordance with Clause 32 (*Payment Mechanics*) (a “**Recovered Amount**”) and applies that amount to a payment due to it under the Finance Documents then:

- (a) the Recovering Finance Party shall, within three Business Days, notify details of the receipt or recovery, to the Facility Agent;
- (b) the Facility Agent shall determine whether the receipt or recovery is in excess of the amount the Recovering Finance Party would have been paid had the receipt or recovery been received or made by the Facility Agent and distributed in accordance with Clause 32 (*Payment Mechanics*), without taking account of any Tax which would be imposed on the Facility Agent in relation to the receipt, recovery or distribution; and
- (c) the Recovering Finance Party shall, within three Business Days of demand by the Facility Agent, pay to the Facility Agent an amount (the “**Sharing Payment**”) equal to such receipt or recovery less any amount which the Facility Agent determines may be retained by the Recovering Finance Party as its share of any payment to be made, in accordance with Clause 32.5 (*Application of receipts; partial payments*).

### 31.2 Redistribution of payments

The Facility Agent shall treat the Sharing Payment as if it had been paid by the relevant Transaction Obligor and distribute it among the Finance Parties (other than the Recovering Finance Party) (the “**Sharing Finance Parties**”) in accordance with Clause 32.5 (*Application of receipts; partial payments*) towards the obligations of that Transaction Obligor to the Sharing Finance Parties.

### 31.3 Recovering Finance Party’s rights

On a distribution by the Facility Agent under Clause 31.2 (*Redistribution of payments*) of a payment received by a Recovering Finance Party from a Transaction Obligor, as between the relevant Transaction Obligor and the Recovering Finance Party, an amount of the Recovered Amount equal to the Sharing Payment will be treated as not having been paid by that Transaction Obligor.

### 31.4 Reversal of redistribution

If any part of the Sharing Payment received or recovered by a Recovering Finance Party becomes repayable and is repaid by that Recovering Finance Party, then:

- (a) each Sharing Finance Party shall, upon request of the Facility Agent, pay to the Facility Agent for the account of that Recovering Finance Party an amount equal to the appropriate part of its share of the Sharing Payment (together with an amount as is necessary to reimburse that Recovering Finance Party for its proportion of any interest on the Sharing Payment which that Recovering Finance Party is required to pay) (the “**Redistributed Amount**”); and

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- (b) as between the relevant Transaction Obligor and each relevant Sharing Finance Party, an amount equal to the relevant Redistributed Amount will be treated as not having been paid by that Transaction Obligor.

### **31.5 Exceptions**

- (a) This Clause 31 (*Sharing among the Finance Parties*) shall not apply to the extent that the Recovering Finance Party would not, after making any payment pursuant to this Clause, have a valid and enforceable claim against the relevant Transaction Obligor.
- (b) A Recovering Finance Party is not obliged to share with any other Finance Party any amount which the Recovering Finance Party has received or recovered as a result of taking legal or arbitration proceedings, if:
- (i) it notified that other Finance Party of the legal or arbitration proceedings; and
  - (ii) that other Finance Party had an opportunity to participate in those legal or arbitration proceedings but did not do so as soon as reasonably practicable having received notice and did not take separate legal or arbitration proceedings.

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## SECTION 11

### ADMINISTRATION

#### 32 PAYMENT MECHANICS

##### 32.1 Payments to the Facility Agent

- (a) On each date on which a Transaction Obligor or a Lender is required to make a payment under a Finance Document, that Transaction Obligor or Lender shall make an amount equal to such payment available to the Facility Agent (unless a contrary indication appears in a Finance Document) for value on the due date at the time and in such funds specified by the Facility Agent as being customary at the time for settlement of transactions in the relevant currency in the place of payment.
- (b) Payment shall be made to such account in the principal financial centre of the country of that currency (or, in relation to euro, in a principal financial centre in such Participating Member State or Stockholm, as specified by the Facility Agent) and with such bank as the Facility Agent, in each case, specifies.

##### 32.2 Distributions by the Facility Agent

Each payment received by the Facility Agent under the Finance Documents for another Party shall, subject to Clause 32.3 (*Distributions to a Transaction Obligor*) and Clause 32.4 (*Clawback and pre-funding*) be made available by the Facility Agent as soon as practicable after receipt to the Party entitled to receive payment in accordance with this Agreement (in the case of a Lender, for the account of its Facility Office), to such account as that Party may notify to the Facility Agent by not less than five Business Days' notice with a bank specified by that Party in the principal financial centre of the country of that currency (or, in relation to euro, in the principal financial centre of a Participating Member State or Stockholm), as specified by that Party or, in the case of an Advance, to such account of such person as may be specified by the Borrowers in the Utilisation Request.

##### 32.3 Distributions to a Transaction Obligor

The Facility Agent may (with the consent of the Transaction Obligor or in accordance with Clause 33 (*Set-Off*)) apply any amount received by it for that Transaction Obligor in or towards payment (on the date and in the currency and funds of receipt) of any amount due from that Transaction Obligor under the Finance Documents or in or towards purchase of any amount of any currency to be so applied.

##### 32.4 Clawback and pre-funding

- (a) Where a sum is to be paid to the Facility Agent under the Finance Documents for another Party, the Facility Agent is not obliged to pay that sum to that other Party (or to enter into or perform any related exchange contract) until it has been able to establish to its satisfaction that it has actually received that sum.
- (b) Unless paragraph (c) below applies, if the Facility Agent pays an amount to another Party and it proves to be the case that the Facility Agent had not actually received that amount, then the Party to whom that amount (or the proceeds of any related exchange contract) was paid by the Facility Agent shall on demand refund the same to the Facility Agent together with interest on that amount from the date of payment to the date of receipt by the Facility Agent, calculated by the Facility Agent to reflect its cost of funds.



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- (c) If the Facility Agent is willing to make available amounts for the account of the Borrowers before receiving funds from the Lenders then if and to the extent that the Facility Agent does so but it proves to be the case that it does not then receive funds from a Lender in respect of a sum which it paid to the Borrowers:
- (i) the Borrowers shall on demand refund it to the Facility Agent; and
  - (ii) the Lender by whom those funds should have been made available or, if the Lender fails to do so, the Borrowers, shall on demand pay to the Facility Agent the amount (as certified by the Facility Agent) which will indemnify the Facility Agent against any funding cost incurred by it as a result of paying out that sum before receiving those funds from that Lender.

### **32.5 Application of receipts; partial payments**

- (a) If the Facility Agent receives a payment that is insufficient to discharge all the amounts then due and payable by a Transaction Obligor under the Finance Documents, the Facility Agent shall apply that payment towards the obligations of that Transaction Obligor under the Finance Documents in the following order:
- (i) **first**, in or towards payment pro rata of any unpaid fees, costs and expenses of, and any other amounts owing to, the Facility Agent, the Security Agent, any Receiver or any Delegate under the Finance Documents;
  - (ii) **secondly**, in or towards payment pro rata of any accrued interest and fees due but unpaid to the Lenders under this Agreement;
  - (iii) **thirdly**, in or towards payment pro rata of any principal due but unpaid to the Lenders under this Agreement; and
  - (iv) **fourthly**, in or towards payment pro rata of any other sum due but unpaid under the Finance Documents.
- (b) The Facility Agent shall, if so directed by the Majority Lenders, vary, or instruct the Security Agent to vary (as applicable) the order set out in sub-paragraphs (ii) to (iv) of paragraph (a) above.
- (c) Paragraphs (a) and (b) above will override any appropriation made by a Transaction Obligor.

### **32.6 No set-off by Transaction Obligors**

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

### **32.7 Business Days**

- (a) Any payment under the Finance Documents which is due to be made on a day that is not a Business Day shall be made on the next Business Day in the same calendar month (if there is one) or the preceding Business Day (if there is not).

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- (b) During any extension of the due date for payment of any principal or an Unpaid Sum under this Agreement interest is payable on the principal or Unpaid Sum at the rate payable on the original due date.

### **32.8 Currency of account**

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

### **32.9 Change of currency**

- (a) Unless otherwise prohibited by law, if more than one currency or currency unit are at the same time recognised by the central bank of any country as the lawful currency of that country, then:
  - (i) any reference in the Finance Documents to, and any obligations arising under the Finance Documents in, the currency of that country shall be translated into, or paid in, the currency or currency unit of that country designated by the Facility Agent (after consultation with the 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 Facility Agent (acting reasonably).
- (b) If a change in any currency of a country occurs, this Agreement will, to the extent the Facility Agent (acting reasonably and after consultation with the Borrowers) specifies to be necessary, be amended to comply with any generally accepted conventions and market practice in the Relevant Market and otherwise to reflect the change in currency.

### **32.10 Currency Conversion**

- (a) For the purpose of, or pending any payment to be made by any Servicing Party under any Finance Document, such Servicing Party may convert any moneys received or recovered by it from one currency to another, at a market rate of exchange.
- (b) The obligations of any Transaction Obligor to pay in the due currency shall only be satisfied to the extent of the amount of the due currency purchased after deducting the costs of conversion.

### **32.11 Disruption to Payment Systems etc.**

If either the Facility Agent determines (in its discretion) that a Disruption Event has occurred or the Facility Agent is notified by a Borrower that a Disruption Event has occurred:

- (a) the Facility Agent may, and shall if requested to do so by a Borrower, consult with the Borrowers with a view to agreeing with the Borrowers such changes to the operation or administration of the Facility as the Facility Agent may deem necessary in the circumstances;

- (b) the Facility Agent shall not be obliged to consult with the Borrowers in relation to any changes mentioned in paragraph (a) above if, in its opinion, it is not practicable to do so in the circumstances and, in any event, shall have no obligation to agree to such changes;
- (c) the Facility Agent may consult with the Finance Parties in relation to any changes mentioned in paragraph (a) above but shall not be obliged to do so if, in its opinion, it is not practicable to do so in the circumstances;
- (d) any such changes agreed upon by the Facility Agent and the Borrowers shall (whether or not it is finally determined that a Disruption Event has occurred) be binding upon the Parties and any Transaction Obligors as an amendment to (or, as the case may be, waiver of) the terms of the Finance Documents notwithstanding the provisions of Clause 42 (*Amendments and Waivers*);
- (e) the Facility Agent shall not be liable for any damages, costs or losses to any person, any diminution in value or any liability whatsoever (including, without limitation for negligence, gross negligence or any other category of liability whatsoever but not including any claim based on the fraud of the Facility Agent) arising as a result of its taking, or failing to take, any actions pursuant to or in connection with this Clause 32.11 (*Disruption to Payment Systems etc.*); and
- (f) the Facility Agent shall notify the Finance Parties of all changes agreed pursuant to paragraph (d) above.

### **33 SET-OFF**

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

### **34 BAIL-IN**

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

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

## 35 NOTICES

### 35.1 Communications in writing

Any communication to be made under or in connection with the Finance Documents shall be made in writing and, unless otherwise stated, may be made by fax or letter.

### 35.2 Addresses

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

- (a) in the case of the Borrowers, that specified in Schedule 1 (*The Parties*);
- (b) in the case of each Lender or any other Borrower, that specified in Schedule 1 (*The Parties*) or, if it becomes a Party after the date of this Agreement, that notified in writing to the Facility Agent on or before the date on which it becomes a Party;
- (c) in the case of the Facility Agent, that specified in Part C of Schedule 1 (*The Parties*);
- (d) in the case of the Security Agent, that specified in Part C of Schedule 1 (*The Parties*);
- (e) in the case of the Mandated Lead Arranger, that specified in Part D of Schedule 1 (*The Parties*);
- (f) in the case of the Account Bank, that specified in Part E of Schedule 1 (*The Parties*),

or any substitute address, fax number or department or officer as the Party may notify to the Facility Agent (or the Facility Agent may notify to the other Parties, if a change is made by the Facility Agent) by not less than five Business Days' notice.

### 35.3 Delivery

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

and, if a particular department or officer is specified as part of its address details provided under Clause 35.2 (*Addresses*), if addressed to that department or officer.

- (b) Any communication or document to be made or delivered to a Servicing Party will be effective only when actually received by that Servicing Party and then only if it is expressly marked for the attention of the department or officer of that Servicing Party specified in Schedule 1 (*The Parties*) (or any substitute department or officer as that Servicing Party shall specify for this purpose).

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- (c) All notices from or to a Transaction Obligor shall be sent through the Facility Agent unless otherwise specified in any Finance Document.
  - (d) Any communication or document made or delivered to the Borrowers in accordance with this Clause will be deemed to have been made or delivered to each of the Transaction Obligors.
  - (e) Any communication or document which becomes effective, in accordance with paragraphs (a) to (d) above, after 5.00 p.m. in the place of receipt shall be deemed only to become effective on the following day.

#### **35.4 Notification of address and fax number**

Promptly upon receipt of notification of an address and fax number or change of address or fax number pursuant to Clause 35.2 (*Addresses*) or changing its own address or fax number, the Facility Agent shall notify the other Parties.

#### **35.5 Electronic communication**

- (a) Any communication to be made between any two Parties under or in connection with the Finance Documents may be made by electronic mail or other electronic means (including, without limitation, by way of posting to a secure website) if those two Parties:
  - (i) notify each other in writing of their electronic mail address and/or any other information required to enable the transmission of information by that means; and
  - (ii) notify each other of any change to their address or any other such information supplied by them by not less than five Business Days' notice.
- (b) Any such electronic communication as specified in paragraph (a) above to be made between a Borrower and a Finance Party may only be made in that way to the extent that those two Parties agree that, unless and until notified to the contrary, this is to be an accepted form of communication.
- (c) Any such electronic communication as specified in paragraph (a) above made between any two Parties will be effective only when actually received (or made available) in readable form and in the case of any electronic communication made by a Party to the Facility Agent or the Security Agent only if it is addressed in such a manner as the Facility Agent or the Security Agent shall specify for this purpose.
- (d) Any electronic communication which becomes effective, in accordance with paragraph (c) above, after 5.00 p.m. in the place in which the Party to whom the relevant communication is sent or made available has its address for the purpose of this Agreement shall be deemed only to become effective on the following day.
- (e) Any reference in a Finance Document to a communication being sent or received shall be construed to include that communication being made available in accordance with this Clause 35.5 (*Electronic communication*).

### **35.6 English language**

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

## **36 CALCULATIONS AND CERTIFICATES**

### **36.1 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.

### **36.2 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.

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

- (a) Any interest, commission or fee accruing under a Finance Document will accrue from day to day and the amount of any such interest, commission or fee is calculated:
  - (i) on the basis of the actual number of days elapsed and a year of 360 days (or, in any case where the practice in the Relevant Market differs, in accordance with that market practice); and
  - (ii) subject to paragraph (b) below, without rounding.
- (b) The aggregate amount of any accrued interest, commission or fee which is, or becomes, payable by an Obligor under a Finance Document shall be rounded to 2 decimal places.

## **37 PARTIAL INVALIDITY**

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

## **38 REMEDIES AND WAIVERS**

- (a) No failure to exercise, nor any delay in exercising, on the part of any Secured Party, any right or remedy under a Finance Document shall operate as a waiver of any such right or remedy or constitute an election to affirm any Finance

Document. No election to affirm any Finance Document on the part of a Secured Party shall be effective unless it is in writing. No single or partial exercise of any right or remedy shall prevent any further or other exercise or the exercise of any other right or remedy. The rights and remedies provided in each Finance Document are cumulative and not exclusive of any rights or remedies provided by law.

- (b) No variation or amendment of a Finance Document shall be valid unless in writing and signed by or on behalf of all the relevant Finance Parties in accordance with the provisions of Clause 42 (*Amendments and Waivers*).

#### **39 ENTIRE AGREEMENT**

- (a) This Agreement, in conjunction with the other Finance Documents, constitutes the entire agreement between the Parties and supersedes all previous agreements, understandings and arrangements between them, whether in writing or oral, in respect of its subject matter.
- (b) Each Borrower acknowledges that it has not entered into this Agreement or any other Finance Document in reliance on, and shall have no remedies in respect of, any representation or warranty that is not expressly set out in this Agreement or in any other Finance Document.

#### **40 SETTLEMENT OR DISCHARGE CONDITIONAL**

Any settlement or discharge under any Finance Document between any Finance Party and any Transaction Obligor shall be conditional upon no security or payment to any Finance Party by any Transaction Obligor or any other person being set aside, adjusted or ordered to be repaid, whether under any insolvency law or otherwise.

#### **41 IRREVOCABLE PAYMENT**

If the Facility Agent considers that an amount paid or discharged by, or on behalf of, a Transaction Obligor or by any other person in purported payment or discharge of an obligation of that Transaction Obligor to a Secured Party under the Finance Documents is capable of being avoided or otherwise set aside on the liquidation or administration of that Transaction Obligor or otherwise, then that amount shall not be considered to have been unconditionally and irrevocably paid or discharged for the purposes of the Finance Documents.

#### **42 AMENDMENTS AND WAIVERS**

##### **42.1 Required consents**

- (a) Subject to Clause 42.2 (*All Lender matters*) and Clause 42.3 (*Other exceptions*) any term of the Finance Documents may be amended or waived only with the consent of the Majority Lenders and, in the case of an amendment, the Borrowers and any such amendment or waiver will be binding on all Parties.
- (b) The Facility Agent may effect, on behalf of any Finance Party, any amendment or waiver permitted by this Clause 42 (*Amendments and Waivers*).
- (c) Without prejudice to the generality of Clause 28.8 (*Rights and discretions*), the Facility Agent may engage, pay for and rely on the services of lawyers in determining the consent level required for and effecting any amendment, waiver or consent under this Agreement.
- (d) Paragraph (c) of Clause 26.9 (*Pro rata interest settlement*) shall apply to this Clause 42 (*Amendments and Waivers*).

## 42.2 All Lender matters

- (a) Subject to Clause 42.4 (*Changes to reference rates*), an amendment of or waiver or consent in relation to any term of any Finance Document that has the effect of changing or which relates to:
- (b) the definitions of “Majority Lenders”, “Sanctions”, “Sanctions Authority”, “Sanctions Laws”, “Sanctions List” and “Restricted Party” in Clause 1.1 (*Definitions*);
- (c) a postponement to or extension of the date of payment of any amount under the Finance Documents;
- (d) a reduction in the Margin or the amount of any payment of principal, interest, fees or commission payable;
- (e) a change in currency of payment of any amount under the Finance Documents;
- (f) 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;
- (g) a change to any Transaction Obligor other than in accordance with Clause 27 (*Changes to the Transaction Obligors*);
- (h) any provision which expressly requires the consent of all the Lenders;
- (i) this Clause 42 (*Amendments and Waivers*);
- (j) any change to the preamble (*Background*), Clause 2 (*The Facility*), Clause 3 (*Purpose*), Clause 5 (*Utilisation*), Clause 6.3 (*Effect of cancellation and prepayment on scheduled repayments*), Clause 7.5 (*Mandatory prepayment on sale, seizure or Total Loss*), Clause 8 (*Interest*), Clause 24 (*Accounts and Application of Earnings*), Clause 26 (*Changes to the Lenders*), Clause 31 (*Sharing among the Finance Parties*), Clause 46 (*Governing Law*) or Clause 47 (*Enforcement*);
- (k) any release of, or material variation to, any Transaction Security, guarantee, indemnity or subordination arrangement set out in a Finance Document (except in the case of a release of Transaction Security as it relates to the disposal of an asset which is the subject of the Transaction Security and where such disposal is expressly permitted by the Majority Lenders or otherwise under a Finance Document);
- (l) any release of, or material variation to, any Transaction Security, guarantee, indemnity or subordination arrangement set out in a Finance Document (except in the case of a release of Transaction Security as it relates to the disposal of an asset which is the subject of the Transaction Security and where such disposal is expressly permitted by the Majority Lenders or otherwise under a Finance Document);
- (m) (other than as expressly permitted by the provisions of any Finance Document) the nature or scope of:
  - (i) the joint and several liability of the Borrowers under Clause 17 (*Joint and Several Liability of the Borrowers*);
  - (ii) the Security Assets; or



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- (iii) the manner in which the proceeds of enforcement of the Transaction Security are distributed, (except in the case of sub-paragraphs (ii) and (iii) above, insofar as it relates to a sale or disposal of an asset which is the subject of the Transaction Security where such sale or disposal is expressly permitted under this Agreement or any other Finance Document);
- (n) the release of any Transaction Security unless permitted under this Agreement or any other Finance Document or relating to a sale or disposal of an asset which is the subject of the Transaction Security where such sale or disposal is expressly permitted under this Agreement or any other Finance Document,
- shall not be made, or given, without the prior consent of all the Lenders.

#### **42.3 Other exceptions**

- (a) An amendment or waiver which relates to the rights or obligations of a Servicing Party or the Mandated Lead Arranger (each in their capacity as such) may not be effected without the consent of that Servicing Party or the Mandated Lead Arranger, as the case may be.
- (b) The Borrowers and the Facility Agent, the Mandated Lead Arranger or the Security Agent, as applicable, may amend or waive a term of a Fee Letter to which they are party.

#### **42.4 Changes to reference rates**

- (a) Subject to Clause 42.3 (*Other exceptions*), if an RFR Replacement Event has occurred any amendment or waiver which relates to:
- (i) providing for the use of a Replacement Reference Rate in place of the RFR; and
- (ii)
- (A) aligning any provision of any Finance Document to the use of that Replacement Reference Rate;
  - (B) enabling that Replacement Reference Rate to be used for the calculation of interest under this Agreement (including, without limitation, any consequential changes required to enable that Replacement Reference Rate to be used for the purposes of this Agreement);
  - (C) implementing market conventions applicable to that Replacement Reference Rate;
  - (D) providing for appropriate fallback (and market disruption) provisions for that Replacement Reference Rate; or
  - (E) adjusting the pricing to reduce or eliminate, to the extent reasonably practicable, any transfer of economic value from one Party to another as a result of the application of that Replacement Reference Rate (and if any adjustment or method for calculating any adjustment has been formally designated, nominated or recommended by the Relevant Nominating Body, the adjustment shall be determined on the basis of that designation, nomination or recommendation),

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

(b) An amendment or waiver that relates to, or has the effect of, aligning the means of calculation of interest on the Loan or any part of the Loan under this Agreement to any recommendation of a Relevant Nominating Body which:

- (i) relates to the use of the RFR on a compounded basis in the international or any relevant domestic syndicated loan markets; and
- (ii) is issued on or after the date of this Agreement,

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

(c) If any Lender fails to respond to a request for an amendment or waiver described in paragraph (a) or (b) above within 5 Business Days (or such longer time period in relation to any request which the Borrowers and the Facility Agent may agree) of that request being made:

- (i) its Commitment or its participation in the Loan (as the case may be) shall not be included for the purpose of calculating the Total Commitments or the amount of the Loan (as applicable) when ascertaining whether any relevant percentage of Total Commitments or the aggregate of participations in the Loan (as applicable) has been obtained to approve that request; and
- (ii) its status as a Lender shall be disregarded for the purpose of ascertaining whether the agreement of any specified group of Lenders has been obtained to approve that request.

(d) In this Clause 42.4 (*Changes to reference rates*):

**“RFR Replacement Event”** means:

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

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

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

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

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

- (a) formally designated, nominated or recommended as the replacement for the RFR by:
  - (i) the administrator of the RFR (provided that the market or economic reality that such reference rate measures is the same as that measured by the RFR); or
  - (ii) any Relevant Nominating Body,and if replacements have, at the relevant time, been formally designated, nominated or recommended under both paragraphs, the “Replacement Reference Rate” will be the replacement under sub-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 or alternative to the RFR; or
- (e) in the opinion of the Majority Lenders and the Borrowers, an appropriate successor or alternative to the RFR.

## 42.5 Borrowers' Intent

Without prejudice to the generality of Clauses 1.2 (*Construction*), each Borrower expressly confirms that it intends that any guarantee contained in this Agreement or any other Finance Document and any Security created by any Finance Document shall extend from time to time to any (however fundamental) variation, increase, extension or addition of or to any of the Finance Documents and/or any facility or amount made available under any of the Finance Documents for the purposes of or in connection with any of the following: business acquisitions of any nature; increasing working capital; enabling investor distributions to be made; carrying out restructurings; refinancing existing facilities; refinancing any other indebtedness; making facilities available to new borrowers; any other variation or extension of the purposes for which any such facility or amount might be made available from time to time; and any fees, costs and/or expenses associated with any of the foregoing.

## 43 CONFIDENTIAL INFORMATION

### 43.1 Confidentiality

Each Finance Party agrees to keep all Confidential Information confidential and not to disclose it to anyone, save to the extent permitted by Clause 43.2 (*Disclosure of Confidential Information*) and Clause 43.4 (*Disclosure to numbering service providers*) and to ensure that all Confidential Information is protected with security measures and a degree of care that would apply to its own confidential information.

### 43.2 Disclosure of Confidential Information

Any Finance Party may disclose:

- (a) to any of its Affiliates and Related Funds and any of its or their officers, directors, employees, professional advisers, auditors, partners, credit insurers and reinsurers, reinsurers, insurance brokers 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 (and in relation to any Confidential Information relating to the Guarantor, if 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) except that there shall be no such requirement to so inform if the recipient is subject to professional obligations to maintain the confidentiality of the information or is otherwise bound by requirements of confidentiality in relation to the Confidential Information;
- (b) to any person:
  - (i) to (or through) whom it assigns or transfers (or may potentially assign or transfer) all or any of its rights and/or obligations under one or more Finance Documents or which succeeds (or which may potentially succeed) it as Facility Agent or Security Agent and, in each case, to any of that person's Affiliates, Related Funds, Representatives and professional advisers;
  - (ii) with (or through) whom it enters into (or may potentially enter into), whether directly or indirectly, any sub-participation in relation to, or any other transaction under which payments are to be made or may be made by reference to, one or more Finance Documents and/or one or more Transaction Obligors and to any of that person's Affiliates, Related Funds, Representatives and professional advisers;

- (iii) appointed by any Finance Party or by a person to whom sub-paragraph (i) or (ii) of paragraph (b) above applies to receive communications, notices, information or documents delivered pursuant to the Finance Documents on its behalf (including, without limitation, any person appointed under paragraph (c) of Clause 28.15 (*Relationship with the other Finance Parties*));
- (iv) who invests in or otherwise finances (or may potentially invest in or otherwise finance), directly or indirectly, any transaction referred to in sub-paragraph (i) or (ii) of paragraph (b) above;
- (v) to whom information is required or requested to be disclosed by any court of competent jurisdiction or any governmental, banking, taxation or other regulatory authority or similar body, the rules of any relevant stock exchange or pursuant to any applicable law or regulation;
- (vi) to whom information is required to be disclosed in connection with, and for the purposes of, any litigation, arbitrations, administrative or other investigations, proceedings or disputes;
- (vii) to whom or for whose benefit that Finance Party charges, assigns or otherwise creates Security (or may do so) pursuant to Clause 26.8 (*Security over Lenders' rights*);
- (viii) which is a classification society or other entity which a Lender has engaged to make the calculations necessary to enable that Lender to comply with its reporting obligations under the Poseidon Principles;
- (ix) who is a Party, a member of the Group or any related entity of a Transaction Obligor;
- (x) as a result of the registration of any Finance Document as contemplated by any Finance Document or any legal opinion obtained in connection with any Finance Document; or
- (xi) with the consent of the Guarantor;

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

- (A) in relation to sub-paragraphs (i), (ii) and (iii) of paragraph (b) above, the person to whom the Confidential Information is to be given has entered into a Confidentiality Undertaking except that there shall be no requirement for a Confidentiality Undertaking if the recipient is a professional adviser and is subject to professional obligations to maintain the confidentiality of the Confidential Information;
- (B) in relation to sub-paragraph (iv) of paragraph (b) above, the person to whom the Confidential Information is to be given has entered into a Confidentiality Undertaking or is otherwise bound by requirements of confidentiality in relation to the Confidential Information they receive and is informed that some or all of such Confidential Information may be price-sensitive information;
- (C) in relation to sub-paragraphs (v), (vi) and (vii) of paragraph (b) above, the person to whom the Confidential Information is to be given is informed of its confidential nature and that some or all of such Confidential Information may be price-sensitive information except that there shall be no requirement to so inform if, in the opinion of that Finance Party, it is not practicable so to do in the circumstances;

- 
- (c) to any person appointed by that Finance Party or by a person to whom sub-paragraph (i) or (ii) of paragraph (b) above applies to provide administration or settlement services in respect of one or more of the Finance Documents including without limitation, in relation to the trading of participations in respect of the Finance Documents, such Confidential Information as may be required to be disclosed to enable such service provider to provide any of the services referred to in this paragraph (c) if the service provider to whom the Confidential Information is to be given has entered 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.

### **43.3 DAC6**

Nothing in any Finance Document shall prevent disclosure of any Confidential Information or other matter to the extent that preventing that disclosure would otherwise cause any transaction contemplated by the Finance Documents or any transaction carried out in connection with any transaction contemplated by the Finance Documents to become an arrangement described in Part II A 1 of Annex IV of Directive 2011/16/EU.

### **43.4 Disclosure to numbering service providers**

- (a) Any Finance Party may disclose to any national or international numbering service provider appointed by that Finance Party to provide identification numbering services in respect of this Agreement, the Facility and/or one or more Transaction Obligors the following information:
  - (i) names of Transaction Obligors;
  - (ii) country of domicile of Transaction Obligors;
  - (iii) place of incorporation of Transaction Obligors;
  - (iv) date of this Agreement;
  - (v) Clause 46 (*Governing Law*);
  - (vi) the names of the Facility Agent and the Mandated Lead Arranger;
  - (vii) date of each amendment and restatement of this Agreement;
  - (viii) amount of Total Commitments;
  - (ix) currency of the Facility;
  - (x) type of Facility;

- 
- (xi) ranking of Facility;
  - (xii) Termination Date;
  - (xiii) changes to any of the information previously supplied pursuant to sub-paragraphs (i) to (xii) above; and
  - (xiv) such other information agreed between such Finance Party and the Borrowers, to enable such numbering service provider to provide its usual syndicated loan numbering identification services.
- (b) The Parties acknowledge and agree that each identification number assigned to this Agreement, the Facility and/or one or more Transaction Obligors by a numbering service provider and the information associated with each such number may be disclosed to users of its services in accordance with the standard terms and conditions of that numbering service provider.
  - (c) Each Obligor represents, on behalf of itself and the other Transaction Obligors, that none of the information set out in sub-paragraphs (i) to (xiv) of paragraph (a) above is, nor will at any time be, unpublished price-sensitive information.
  - (d) The Facility Agent shall notify the Guarantor and the other Finance Parties of:
    - (i) the name of any numbering service provider appointed by the Facility Agent in respect of this Agreement, the Facility and/or one or more Transaction Obligors; and
    - (ii) the number or, as the case may be, numbers assigned to this Agreement, the Facility and/or one or more Transaction Obligors by such numbering service provider.

#### **43.5 Entire agreement**

This Clause 43 (*Confidential Information*) constitutes the entire agreement between the Parties in relation to the obligations of the Finance Parties under the Finance Documents regarding Confidential Information and supersedes any previous agreement, whether express or implied, regarding Confidential Information.

#### **43.6 Inside information**

Each of the Finance Parties acknowledges that some or all of the Confidential Information is or may be price-sensitive information and that the use of such information may be regulated or prohibited by applicable legislation including securities law relating to insider dealing and market abuse and each of the Finance Parties undertakes not to use any Confidential Information for any unlawful purpose.

#### **43.7 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 sub-paragraph (v) of paragraph (b) of Clause 43.2 (*Disclosure of Confidential Information*) except where such disclosure is made to any of the persons referred to in that paragraph during the ordinary course of its supervisory or regulatory function;

- 
- (b) upon becoming aware that Confidential Information has been disclosed in breach of this Clause 43 (*Confidential Information*); and
  - (c) in respect of any publicity regarding the Facility or any of the terms thereof which shall be agreed in advance by the Guarantor and the Facility Agent unless otherwise required in connection with the Guarantor's reporting obligations under or in connection with the rules and regulations of the SEC and any US Stock Exchange applicable to the Guarantor.

#### **43.8 Use of logo and/or trademark**

Subject to the Borrowers' prior written consent (such consent not to be unreasonably withheld), each of the Facility Agent and/or the Mandated Lead Arranger and/or the Sustainability Agent has the right, at its expense, to publish information regarding its participation in, and the agency and arrangement of this Agreement and have the right to use the Borrowers' and/or the Guarantor's logo and trademark in connection with such publication.

#### **43.9 Continuing obligations**

The obligations in this Clause 43 (*Confidential Information*) are continuing and, in particular, shall survive and remain binding on each Finance Party for a period of 12 months from the earlier of:

- (a) the date on which all amounts payable by the Borrowers under or in connection with this Agreement have been paid in full and all Commitments have been cancelled or otherwise cease to be available; and
- (b) the date on which such Finance Party otherwise ceases to be a Finance Party.

### **44 CONFIDENTIALITY OF FUNDING RATES**

#### **44.1 Confidentiality and disclosure**

- (a) The Facility Agent and each Borrower agree to keep each Funding Rate confidential and not to disclose it to anyone, save to the extent permitted by paragraphs (b) and (c) below.
- (b) The Facility Agent may disclose:
  - (i) any Funding Rate to the Borrowers pursuant to Clause 8.4 (*Notifications*); and
  - (ii) any Funding Rate to any person appointed by it to provide administration services in respect of one or more of the Finance Documents to the extent necessary to enable such service provider to provide those services if the service provider to whom that information is to be given has entered into a confidentiality agreement substantially in the form of the LMA Master Confidentiality Undertaking for Use With Administration/Settlement Service Providers or such other form of confidentiality undertaking agreed between the Facility Agent and the relevant Lender.



- 
- (c) The Facility Agent and each Borrower may disclose any Funding Rate, to:
- (i) any of its Affiliates and any of its or their officers, directors, employees, professional advisers, auditors, partners and Representatives if any person to whom that Funding Rate is to be given pursuant to this sub-paragraph (i) is informed in writing of its confidential nature and that it may be price sensitive information except that there shall be no such requirement to so inform if the recipient is subject to professional obligations to maintain the confidentiality of that Funding Rate or is otherwise bound by requirements of confidentiality in relation to it;
  - (ii) any person to whom information is required or requested to be disclosed by any court of competent jurisdiction or any governmental, banking, taxation or other regulatory authority or similar body, the rules of any relevant stock exchange or pursuant to any applicable law or regulation if the person to whom that Funding Rate is to be given is informed in writing of its confidential nature and that it may be price sensitive information except that there shall be no requirement to so inform if, in the opinion of the Facility Agent or the relevant Borrower, as the case may be, it is not practicable to do so in the circumstances;
  - (iii) any person to whom information is required to be disclosed in connection with, and for the purposes of, any litigation, arbitration, administrative or other investigations, proceedings or disputes if the person to whom that Funding Rate is to be given is informed in writing of its confidential nature and that it may be price sensitive information except that there shall be no requirement to so inform if, in the opinion of the Facility Agent or the relevant Borrower, as the case may be, it is not practicable to do so in the circumstances; and
  - (iv) any person with the consent of the relevant Lender.

#### **44.2 Related obligations**

- (a) The Facility Agent and each Borrower acknowledge that each Funding Rate is or may be price sensitive information and that its use may be regulated or prohibited by applicable legislation including securities law relating to insider dealing and market abuse and the Facility Agent and each Borrower undertake not to use any Funding Rate for any unlawful purpose.
- (b) The Facility Agent and each Borrower agree (to the extent permitted by law and regulation) to inform the relevant Lender:
  - (i) of the circumstances of any disclosure made pursuant to sub-paragraph (ii) of paragraph (c) of Clause 44.1 (*Confidentiality and disclosure*) except where such disclosure is made to any of the persons referred to in that paragraph during the ordinary course of its supervisory or regulatory function; and
  - (ii) upon becoming aware that any information has been disclosed in breach of this Clause 44 (*Confidentiality of Funding Rates*).

#### **44.3 No Event of Default**

No Event of Default will occur under Clause 25.4 (*Other obligations*) by reason only of a Borrower's failure to comply with this Clause 44 (*Confidentiality of Funding Rates*).

---

**45 COUNTERPARTS**

Each Finance Document may be executed in any number of counterparts, and this has the same effect as if the signatures on the counterparts were on a single copy of the Finance Document.

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## SECTION 12

### GOVERNING LAW AND ENFORCEMENT

#### 46 GOVERNING LAW

This Agreement and any non-contractual obligations arising out of or in connection with it are governed by English law.

#### 47 ENFORCEMENT

##### 47.1 Jurisdiction

- (a) Unless specifically provided in another Finance Document in relation to that Finance Document, the courts of England have exclusive jurisdiction to settle any dispute arising out of or in connection with any Finance Document (including a dispute regarding the existence, validity or termination of any Finance Document or any non-contractual obligation arising out of or in connection with any Finance Document) (a “**Dispute**”).
- (b) The Borrowers accept that the courts of England are the most appropriate and convenient courts to settle Disputes and accordingly no Borrower will argue to the contrary.
- (c) This Clause 47.1 (*Jurisdiction*) is for the benefit of the Secured Parties only. As a result, no Secured Party shall be prevented from taking proceedings relating to a Dispute in any other courts with jurisdiction. To the extent allowed by law, the Secured Parties may take concurrent proceedings in any number of jurisdictions.

##### 47.2 Service of process

- (a) Without prejudice to any other mode of service allowed under any relevant law, each Borrower (other than an Borrower incorporated in England and Wales):
  - (i) irrevocably appoints Hill Dickinson Services (London) Limited at its current address at 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 Borrower 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 must immediately (and in any event within 5 days of such event taking place) appoint another agent on terms acceptable to the Facility Agent. Failing this, the Facility Agent may appoint another agent for this purpose.

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

EXECUTION PAGES

**BORROWERS**

**SIGNED** by ) /s/ Alexandra Kontaxi  
)  
as attorney-in-fact )  
for and on behalf of )  
**FOLEGANDROS SHIPPING CORPORATION** )  
in the presence of: )  
  
Witness' signature: )  
Witness' name: ) /s/ Aikaterina Dimitriou  
) Solicitor  
Witness' address: ) Watson Farley & Williams LLP  
348 Syngrou Avenue  
Kallithea 176 74  
Athens, Greece

**SIGNED** by ) /s/ Alexandra Kontaxi  
)  
as attorney-in-fact )  
for and on behalf of )  
**SERIFOS SHIPPING CORPORATION** )  
in the presence of: )  
  
Witness' signature: )  
Witness' name: ) /s/ Aikaterina Dimitriou  
) Solicitor  
Witness' address: ) Watson Farley & Williams LLP  
348 Syngrou Avenue  
Kallithea 176 74  
Athens, Greece

**SIGNED** by ) /s/ Alexandra Kontaxi  
)  
as attorney-in-fact )  
for and on behalf of )  
**SIFNOS SHIPPING CORPORATION** )  
in the presence of: )  
  
Witness' signature: )  
Witness' name: ) /s/ Aikaterina Dimitriou  
) Solicitor  
Witness' address: ) Watson Farley & Williams LLP  
348 Syngrou Avenue  
Kallithea 176 74  
Athens, Greece

**SIGNED** by ) /s/ Alexandra Kontaxi  
)  
as attorney-in-fact )  
for and on behalf of )  
**SKIATHOS SHIPPING CORPORATION** )  
in the presence of: )  
  
Witness' signature: )  
Witness' name: ) /s/ Aikaterina Dimitriou  
) Solicitor  
Witness' address: ) Watson Farley & Williams LLP  
348 Syngrou Avenue  
Kallithea 176 74  
Athens, Greece

**SIGNED** by ) /s/ Alexandra Kontaxi  
)  
as attorney-in-fact )  
for and on behalf of )  
**SYROS SHIPPING CORPORATION** )  
in the presence of: )  
  
Witness' signature: )  
Witness' name: ) /s/ Aikaterina Dimitriou  
) Solicitor  
Witness' address: ) Watson Farley & Williams LLP  
348 Syngrou Avenue  
Kallithea 176 74  
Athens, Greece

**ORIGINAL LENDERS**

**SIGNED** by ) /s/ Marianna Psarrov  
)  
duly authorised )  
for and on behalf of )  
**SKANDINAVISKA ENSKILDA** )  
**BANKEN AB (PUBL)** )  
in the presence of: )  
  
Witness' signature: )  
Witness' name: ) /s/ Aikaterina Dimitriou  
) Solicitor  
Witness' address: ) Watson Farley & Williams LLP  
348 Syngrou Avenue  
Kallithea 176 74  
Athens, Greece

**MANDATED LEAD ARRANGER**

**SIGNED** by ) /s/ Marianna Psarrov  
)  
duly authorised )  
for and on behalf of )  
**SKANDINAVISKA ENSKILDA** )  
**BANKEN AB (PUBL)** )  
in the presence of: )  
  
Witness' signature: )  
Witness' name: ) /s/ Aikaterina Dimitriou  
) Solicitor  
Witness' address: ) Watson Farley & Williams LLP  
348 Syngrou Avenue  
Kallithea 176 74  
Athens, Greece

**FACILITY AGENT**

**SIGNED** by ) /s/ Marianna Psarrov  
)  
duly authorised )  
for and on behalf of )  
**SKANDINAVISKA ENSKILDA** )  
**BANKEN AB (PUBL)** )  
in the presence of: )  
  
Witness' signature: )  
Witness' name: ) /s/ Aikaterina Dimitriou  
) Solicitor  
Witness' address: ) Watson Farley & Williams LLP  
348 Syngrou Avenue  
Kallithea 176 74  
Athens, Greece

**SECURITY AGENT**

**SIGNED** by ) /s/ Marianna Psarrov  
)  
duly authorised )  
for and on behalf of )  
**SKANDINAVISKA ENSKILDA** )  
**BANKEN AB (PUBL)** )  
in the presence of: )  
  
Witness' signature: )  
Witness' name: ) /s/ Aikaterina Dimitriou  
) Solicitor  
Witness' address: ) Watson Farley & Williams LLP  
348 Syngrou Avenue  
Kallithea 176 74  
Athens, Greece

**ACCOUNT BANK**

**SIGNED** by ) /s/ Marianna Psarrov  
)  
duly authorised )  
for and on behalf of )  
**SKANDINAVISKA ENSKILDA** )  
**BANKEN AB (PUBL) OSLO BRANCH** )  
in the presence of: )  
  
Witness' signature: )  
Witness' name: ) /s/ Aikaterina Dimitriou  
) Solicitor  
Witness' address: ) Watson Farley & Williams LLP  
348 Syngrou Avenue  
Kallithea 176 74  
Athens, Greece

Dated 25 April 2023

\$165,637,635.08

**TERM LOAN FACILITY**

**KARPATHOS SHIPPING CORPORATION**  
**PATMOS SHIPPING CORPORATION**  
as joint and several Borrowers

and

**THE BANKS AND FINANCIAL INSTITUTIONS**  
listed in Schedule 1  
as Lenders

and

**KFW IPEX-BANK GMBH**  
as Mandated Lead Arranger

and

**KFW IPEX-BANK GMBH**  
as Facility Agent

and

**KFW IPEX-BANK GMBH**  
as Security Agent

and

**KFW IPEX-BANK GMBH**  
as K-SURE Agent

**FACILITY AGREEMENT**

relating to  
the financing of two 7,700 TEU container vessels

WATSON FARLEY  
&  
WILLIAMS

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## PARTIES

- (1) **KARPATOS SHIPPING CORPORATION**, a corporation incorporated in the Republic of the Marshall Islands whose registered address is at Trust Company Complex, Ajeltake Road, Ajeltake Island, Majuro, Marshall Islands MH96960 as a borrower (“**Borrower A**”)
- (2) **PATMOS SHIPPING CORPORATION**, a corporation incorporated in the Republic of the Marshall Islands whose registered address is at Trust Company Complex, Ajeltake Road, Ajeltake Island, Majuro, Marshall Islands MH96960 as a borrower (“**Borrower B**”)
- (3) **THE BANKS AND THE FINANCIAL INSTITUTIONS** listed in Part B of Schedule 1 (*The Parties*) as lenders (the “**Original Lenders**”)
- (4) **KFW IPEX-BANK GMBH** as mandated lead arranger (the “**Mandated Lead Arranger**”)
- (5) **KFW IPEX-BANK GMBH** as agent of the other Finance Parties (the “**Facility Agent**”)
- (6) **KFW IPEX-BANK GMBH** as security agent for the Secured Parties (the “**Security Agent**”)
- (7) **KFW IPEX-BANK GMBH** as agent of the other Finance Parties with respect to the K-SURE Insurance Policies (the “**K-SURE Agent**”)

## BACKGROUND

The Lenders have agreed to make available to the Borrowers a senior secured term loan facility not exceeding the lower of (i) \$165,637,635.08 and (ii) the aggregate of 70 per cent. of the Contract Price of the Ships and 100 per cent. of each K-SURE Premium to partly finance, or as the case may be, refinance the Contract Price of the Ships, which are under construction by the Builder for, and purchased by, each Borrower pursuant to the Shipbuilding Contract relevant to that Ship and the relevant K-SURE Premium, divided into four Tranches as follows:

- (A) the K-SURE Secured Pre-delivery Tranche in a principal amount not exceeding \$84,780,635.08;
- (B) the Commercial Pre-delivery Tranche in a principal amount not exceeding \$34,653,000;
- (C) the K-SURE Secured Delivery Tranche in a principal amount not exceeding \$117,123,435.08; and
- (D) the Commercial Delivery Tranche in a principal amount not exceeding \$48,514,200.

## OPERATIVE PROVISIONS

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## SECTION 1

### INTERPRETATION

#### 1 DEFINITIONS AND INTERPRETATION

##### 1.1 Definitions

In this Agreement:

“**Account Bank**” means Hamburg Commercial Bank AG acting through its office at Gerhart-Hauptmann-Platz 50, 20095 Hamburg, Germany or any replacement bank or other financial institution as may be approved by the Facility Agent acting with the authorisation of the Majority Lenders.

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

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

“**Advance**” means a borrowing of all or part of a Tranche under this Agreement being any Pre-Delivery Advance or Delivery Advance.

“**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.

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

“**Anti-Money Laundering Laws**” means any applicable laws or regulations in any jurisdictions in which a Borrower or the relevant member of the Group is located or doing business that relate to anti-money laundering or any predicate crime to money laundering.

“**Approved Brokers**” means any firm or firms of insurance brokers approved in writing by the Facility Agent (acting on the instructions of the Majority Lenders).

“**Approved Classification**” means, in relation to a Ship, as at the date of this Agreement, the classification in relation to that Ship specified in Schedule 7 (*Details of the Ships and other Definitions*) with the relevant Approved Classification Society or the equivalent classification with another Approved Classification Society.

“**Approved Classification Society**” means, in relation to a Ship, as at the date of this Agreement, the classification society in relation to that Ship specified in Schedule 7 (*Details of the Ships and other Definitions*) or any other classification society and who is a member of the International Association of Classification Societies (other than the China Classification Society and the Russian Maritime Registry of Shipping) approved in writing by the Facility Agent acting with the authorisation of the Majority Lenders.

“**Approved Flag**” means, in relation to a Ship, the flag of Liberia, the Marshall Islands, Panama, Cayman Islands or such other flag approved in writing by the Facility Agent acting with the authorisation of the Lenders, such authorisation not to be unreasonably withheld and a reference to “the Approved Flag” shall be a reference to the flag under which that Ship is then flagged with the agreement of the Facility Agent acting with the authorisation of the Lenders, such authorisation not to be unreasonably withheld.

“**Approved Manager**” means, in relation to a Ship:

- (a) Navios Shipmanagement Inc., a corporation domesticated under the laws of the Republic of the Marshall Islands having its registered address at Trust Company Complex, Ajeltake Road, Ajeltake Island, Majuro, Marshall Islands MH96960 as commercial and technical manager; and/or
- (b) any Affiliate of Navios Shipmanagement Inc. or of Mrs. Angeliki Frangou or any other person approved in writing by the Facility Agent acting with the authorisation of the Majority Lenders, such authorisation not to be unreasonably withheld, as the commercial and technical manager of any Ship.

“**Approved Valuer**” means Arrow Sale and Purchase (UK) Limited, Braemar Seascope Shipping Limited, Clarkson Valuations Limited, Fearnleys AS, Simpson Spence Young Ltd, Galbraith’s Limited, Barry Rogliano Salles, Maersk Broker K/S, Howe Robinson, VesselsValue Limited (or any Affiliate of such person through which valuations are commonly issued) and any other firm or firms of independent sale and purchase shipbrokers agreed between the Facility Agent, acting with the authorisation of the Majority Lenders and the Borrowers from time to time and selected and appointed by the Borrowers and approved in writing by the K-SURE Agent acting with the authorisation of K-SURE.

“**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.

“**Assignable Charter**” means any time charterparty, consecutive voyage charter or contract of affreightment in respect of a Ship of a duration (or capable of exceeding a duration) of 12 months or more or any bareboat charter entered into in accordance with Clauses 23.16 (*Restrictions on chartering, appointment of managers etc.*) and 23.19 (*Charterparty Assignment*).

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

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

“**Availability Period**” means the period from and including the date of this Agreement to and including, in relation each Tranche, the earlier of (i) the Delivery Date of the relevant Ship and (ii) 28 August 2025.

“**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 any Advance that is due to be made on or before the proposed Utilisation Date.

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

---

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

**“Bail-In Legislation”** means:

- (a) in relation to an EEA Member Country which has implemented, or which at any time implements, Article 55 BRRD, the relevant implementing law or regulation as described in the EU Bail-In Legislation Schedule from time to time;
- (b) in relation to any state other than such an EEA Member Country and the United Kingdom, any analogous law or regulation from time to time which requires contractual recognition of any Write-down and Conversion Powers contained in that law or regulation; and
- (c) in relation to the United Kingdom, the UK Bail in Legislation.

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

**“Borrower”** means Borrower A or Borrower B.

**“Builder”** means HJ Shipbuilding & Construction Co., Ltd., a company organised and existing under the laws of the Republic of Korea, having its principal office at 233 Taejong-ro (29, 5-Ga, Bongnae-Dong), Yeongdo-Gu, Busan (606-796), Korea.

**“Business Day”** means a day (other than a Saturday or Sunday) on which banks are open for general business in Frankfurt am Main, Athens, Hamburg and New York and in relation to Clause 5.7 (*Payment to K-SURE and Builder*), Seoul, and in relation to:

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

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

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

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

**“Change of Control”** has the meaning given to it in Clause 7.2 (*Change of control*).

**“Charter”** means, in relation to a Ship, any charter relating to that Ship, or other contract for its employment, whether or not already in existence (including without limitation, any Initial Charter and an Assignable Charter).

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

**“Charterparty Assignment”** means, in relation to an Assignable Charter, a first priority assignment of the rights of the relevant Borrower under that Assignable Charter and any related Charter Guarantee executed or to be executed by that Borrower in favour of the Security Agent in agreed form.

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

“**Commercial Delivery Advance**” means, an Advance under the Commercial Delivery Tranche, in a principal amount not exceeding, in relation to each Ship, \$24,257,100 made or to be made available to the Borrowers in accordance with Clause 5.3 (*Currency and amount*) for the purpose set out in paragraph (d) of Clause 3.1 (*Purpose*).

“**Commercial Delivery Tranche**” means that part of the Loan made or to be made available to the Borrowers to finance or, as the case may be, refinance part of the Contract Price of the Ships in an aggregate principal amount not exceeding \$48,514,200.

“**Commercial Pre-delivery Advance**” means Commercial Pre-delivery Advance A, Commercial Pre-delivery Advance B or Commercial Pre-delivery Advance C.

“**Commercial Pre-delivery Advance A**” means, an Advance under the Commercial Pre-delivery Tranche, in a principal amount not exceeding, in relation to each Ship, \$3,465,300 made or to be made available to the Borrowers in accordance with Clause 5.3 (*Currency and amount*) for the purpose set out in paragraph (a) of Clause 3.1 (*Purpose*).

“**Commercial Pre-delivery Advance B**” means, an Advance under the Commercial Pre-delivery Tranche, in a principal amount not exceeding, in relation to each Ship, \$8,663,250 made or to be made available to the Borrowers in accordance with Clause 5.3 (*Currency and amount*) for the purpose set out in paragraph (b) of Clause 3.1 (*Purpose*).

“**Commercial Pre-delivery Advance C**” means, an Advance under the Commercial Pre-delivery Tranche, in a principal amount not exceeding, in relation to each Ship, \$5,197,950 made or to be made available to the Borrowers in accordance with Clause 5.3 (*Currency and amount*) for the purpose set out in paragraph (c) of Clause 3.1 (*Purpose*).

“**Commercial Pre-delivery Tranche**” means that part of the Loan made or to be made available to the Borrowers to finance or, as the case may be, refinance part of the Contract Price of the Ships in an aggregate principal amount not exceeding \$34,653,000.

“**Commitment**” means:

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

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

“**Compounded Reference Rate**” means, in relation to any Interest Period of the Loan or any part of the Loan, the percentage rate per annum which is the Cumulative Compounded RFR Rate for that Interest Period.

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**“Compounding Methodology Supplement”** means, in relation to the Cumulative Compounded RFR Rate, a document which:

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

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

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

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

- (i) information that:
  - (A) is or becomes public information other than as a direct or indirect result of any breach by that Finance Party of Clause 45 (*Confidential Information*); or
  - (B) is identified in writing at the time of delivery as non-confidential by any member of the Group or any of its advisers; or
  - (C) is known by that Finance Party before the date the information is disclosed to it in accordance with paragraphs (a) or (b) above or is lawfully obtained by that Finance Party after that date, from a source which is, as far as that Finance Party is aware, unconnected with the Group and which, in either case, as far as that Finance Party is aware, has not been obtained in breach of, and is not otherwise subject to, any obligation of confidentiality; or
  - (D) in relation to the Guarantor such information as the Guarantor is entitled to disclose by rules and regulations of the US Stock Exchange Commission and any US Stock Exchange applicable to the Guarantor; and
- (ii) any Funding Rate.

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

“**Contract Price**” means the price payable for each Ship under Article II (*contract price*) of the relevant Shipbuilding Contract, plus any other amounts further to adjustment as provided in Article III (*adjustment of the contract price*) of the relevant Shipbuilding Contract.

“**Contract Price Instalment**” means each instalment of the Contract Price for each Ship payable under Article X (*payment*) of the relevant Shipbuilding Contract

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

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

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

“**Debt Service**” means any sums incurred by a Borrower pursuant to the relevant Tranche relating to its Ship in respect of the payment of principal of, and any interest accrued on, the Loan.

“**Deed of Covenant**” means, in relation to a Ship, if required by the laws of the Approved Flag of that Ship, a deed of covenant collateral to the Mortgage over that Ship and creating Security over that Ship in agreed form.

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

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

“**Delivery Advance**” means any Commercial Delivery Advance or any K-SURE Secured Delivery Advance.

“**Delivery Tranche**” means any Commercial Delivery Tranche or any K-SURE Secured Delivery Tranche.

“**Delivery Date**” means, in relation to a Ship, the date on which that Ship is delivered by the Builder to the relevant Borrower under the relevant Shipbuilding Contract.

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

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



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- (ii) from communicating with other Parties or, if applicable, any Transaction Obligor in accordance with the terms of the Finance Documents,

and which (in either such case) is not caused by, and is beyond the control of, the Party or, if applicable, any Transaction Obligor whose operations are disrupted.

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

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

“**DSCR**” means the ratio calculated in relation to each Ship of:

- (a) Revenues minus Operating Expenses to:
- (b) Debt Service.

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

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

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**“Earnings Account”** means, in relation to a Borrower:

- (a) an account in the name of that Borrower with the Account Bank designated “Earnings Account”;
- (b) any other account in the name of that Borrower with the Account Bank which may, with the prior written consent of the Facility Agent, be opened in the place of the account referred to in paragraph (a) above, irrespective of the number or designation of such replacement account; or
- (c) any sub-account of any account referred to in paragraphs (a) or (b) above.

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

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

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

**“Environmental Incident”** means:

- (a) any release, emission, spill or discharge of Environmentally Sensitive Material whether within a Ship or from a Ship into any other vessel or into or upon the air, water, land or soils (including the seabed) or surface water; or
- (b) any incident in which Environmentally Sensitive Material is released, emitted, spilled or discharged into or upon the air, water, land or soils (including the seabed) or surface water from a vessel other than any Ship and which involves a collision between any 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 any Transaction Obligor 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; or
- (c) any other incident in which Environmentally Sensitive Material is released, emitted, spilled or discharged into or upon the air, water, land or soils (including the seabed) or surface water otherwise than from a Ship and in connection with which a Ship is actually or potentially liable to be arrested and/or where any Transaction Obligor 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 present or future law relating to pollution or protection of human health or the environment, to conditions in the workplace, to the carriage, generation, handling, storage, use, release or spillage of Environmentally Sensitive Material or to actual or threatened releases of Environmentally Sensitive Material.

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

**“EU Bail-In Legislation Schedule”** means the document described as such and published by the LMA from time to time.

**“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.

**“Event of Default”** means any event or circumstance specified as such in Clause 26 (*Events of Default*).

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

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

**“FATCA”** means:

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

**“FATCA Application Date”** means:

- (a) in relation to a “withholdable payment” described in section 1473(1)(A)(i) of the Code (which relates to payments of interest and certain other payments from sources within the US), 1 July 2014; 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 any of the Mandated Lead Arranger, the Facility Agent, the Security Agent and any Obligor setting out any of the fees referred to in Clause 11 (*Fees and K-SURE Premium*).

**“Finance Document”** means:

- (a) this Agreement;
- (b) any Fee Letter;
- (c) the Guarantee;
- (d) each Utilisation Request;
- (e) any Reference Rate Supplement;
- (f) any Compounding Methodology Supplement;
- (g) any Security Document;
- (h) any Manager’s Undertaking;
- (i) any other document which is executed for the purpose of establishing any priority or subordination arrangement in relation to the Secured Liabilities; or
- (j) any other document designated as such by the Facility Agent and the Borrowers.

**“Finance Party”** means the Facility Agent, the Security Agent, the K-SURE Agent, the Mandated Lead Arranger or a Lender.

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

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

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

“**Funding Rate**” means any individual rate notified by a Lender to the Facility Agent pursuant to sub-paragraph (ii) of paragraph (a) of Clause 10.3 (*Cost of funds*).

“**GAAP**” means generally accepted accounting principles in the US.

“**General Assignment**” means, in relation to a Ship, the general assignment creating Security over:

- (a) that Ship’s Earnings, its Insurances and any Requisition Compensation in relation to that Ship; and
- (b) any Charter and any Charter Guarantee in relation to that Ship; and
- (c) the benefit of any warranties of quality in favour of a Borrower under the relevant Shipbuilding Contract of that Ship,

in agreed form.

“**Group**” means the Guarantor and its Subsidiaries for the time being (excluding any Subsidiaries whose shares are listed on any public stock exchange and whose financial statements are not consolidated into the financial statements of the Guarantor) and “**member of the Group**” shall be construed accordingly.

“**Guarantee**” means a guarantee executed by the Guarantor in agreed form.

“**Guarantor**” means Navios Maritime Partners L.P., a limited partnership formed in the Republic of the Marshall Islands whose registered address is at Trust Company Complex, Ajeltake Road, Ajeltake Island, Majuro, Marshall Islands MH96960.

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

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

“**Initial Charter**” has the meaning given to that term in Schedule 7 (*Details of the Ships and other Definitions*).

“**Initial Charterer**” has the meaning given to that term in Schedule 7 (*Details of the Ships and other Definitions*).

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

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- (a) all policies and contracts of insurance, including entries of that Ship in any protection and indemnity or war risks association, effected in relation to that Ship, that Ship's Earnings or otherwise in relation to that Ship; and
- (b) all rights and other assets relating to, or derived from, any of such policies, contracts or entries, including any rights to a return of premium.

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

**"Interest Payment Date"** has the meaning given to it in Clause 8.2 (*Payment of interest*).

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

**"Inventory of Hazardous Materials"** means an inventory certificate or statement of compliance (as applicable) issued by the relevant Approved Classification Society or shipyard authority which is supplemented by a list of any and all materials known to be potentially hazardous utilised in the construction of, otherwise installed on, that Ship, pursuant to the requirements of the EU Ship Recycling Regulation.

**"ISM Code"** means the International Safety Management Code for the Safe Operation of Ships and for Pollution Prevention (including the guidelines on its implementation), adopted by the International Maritime Organisation, as the same may be amended or supplemented from time to time.

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

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

**"K-SURE"** means Korea Trade Insurance Corporation of 3-17<sup>th</sup> Floors, Korea Trade Insurance Corporation Bldg, 14, Jong-ro, Jongno-gu, Seoul, 03187, Republic of Korea.

**"K-SURE Insurance Policy"** means an insurance policy issued or to be issued by K-SURE in relation to each Ship in favour of the Lenders together with the General Terms and Conditions of Medium and Long Term Export Insurance (Buyer's Credit, Standard Type) and the special terms and conditions each attached to the relevant insurance policy providing political and commercial risks cover and otherwise setting out the terms and conditions of K-SURE's insurance cover for an amount of (i) up to 95 per cent. of the aggregate of the K-SURE Secured Pre-delivery Advances relating to that Ship or, as the case may be, (ii) up to 95 per cent. of the K-SURE Secured Delivery Advance relating to that Ship and accrued interest on each such Advance (but excluding default interest).

**"K-SURE Premium"** means the premium payable in dollars to K-SURE under the relevant K-SURE Insurance Policy in respect of the cover provided by K-SURE under the relevant K-SURE Insurance Policy, as such premium is notified by K-SURE to the Facility Agent.

**"K-SURE Secured Delivery Advance"** means, an Advance under the K-SURE Secured Delivery Tranche, in a principal amount not exceeding, in relation to each Ship, \$58,561,717.54 made or to be made available to the Borrowers in accordance with Clause 5.3 (*Currency and amount*) for the purpose set out in paragraph (d) of Clause 3.1 (*Purpose*).

**“K-SURE Secured Delivery Tranche”** means that part of the Loan made or to be made available to the Borrowers to finance or, as the case may be, refinance part of the Contract Price of each Ship and the relevant K-SURE Premium in an aggregate principal amount not exceeding \$117,123,435.08.

**“K-SURE Secured Pre-delivery Advance”** means K-SURE Secured Pre-delivery Advance A, K-SURE Secured Pre-delivery Advance B or K-SURE Secured Pre-delivery Advance C.

**“K-SURE Secured Pre-delivery Advance A”** means, an Advance under the K-SURE Secured Pre-delivery Tranche, an amount not exceeding, in relation to each Ship, in \$10,047,517.54 made or to be made available to the Borrowers in accordance with Clause 5.3 (*Currency and amount*) for the purpose set out in paragraph (a) of Clause 3.1 (*Purpose*).

**“K-SURE Secured Pre-delivery Advance B”** means, an Advance under the K-SURE Secured Pre-delivery Tranche, an amount not exceeding, in relation to each Ship, in \$20,214,250 made or to be made available to the Borrowers in accordance with Clause 5.3 (*Currency and amount*) for the purpose set out in paragraph (b) of Clause 3.1 (*Purpose*).

**“K-SURE Secured Pre-delivery Advance C”** means, an Advance under the K-SURE Secured Pre-delivery Tranche, an amount not exceeding, in relation to each Ship, in \$12,128,550 made or to be made available to the Borrowers in accordance with Clause 5.3 (*Currency and amount*) for the purpose set out in paragraph (c) of Clause 3.1 (*Purpose*).

**“K-SURE Secured Pre-delivery Tranche”** means that part of the Loan made or to be made available to the Borrowers to finance or, as the case may be refinance, part of the Contract Price of each Ship and the K-SURE Premium for that Ship in an aggregate principal amount not exceeding \$84,780,635.08.

**“Lender”** means:

- (a) any Original Lender; and
- (b) any bank, financial institution, trust, fund or other entity which has become a Party as a Lender in accordance with Clause 27 (*Changes to the Lenders*),

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

**“LMA”** means the Loan Market Association or any successor organisation.

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

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

**“Major Casualty”** means, in relation to a Ship, any casualty to that Ship in relation to which the claim or the aggregate of the claims against all insurers, before adjustment for any relevant franchise or deductible, exceeds \$1,000,000 or the equivalent in any other currency.

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**“Majority Lenders”** means:

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

**“Management Agreement”** means, in relation to a Ship, any agreement entered into with an Approved Manager regarding the commercial and technical management of that Ship.

**“Manager’s Undertaking”** means, in relation to a Ship, the letter of undertaking from the Approved Manager relating to that Ship subordinating the rights of the Approved Manager respectively against that Ship and the relevant Borrower to the rights of the Finance Parties in agreed form.

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

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

- (a) unless otherwise specified by the Facility Agent, as at a date not more than 14 days previously;
- (b) by an Approved Valuer or Approved Valuers;
- (c) with or without physical inspection of that Ship or vessel (as the Facility Agent may require); and
- (d) on the basis of a sale for prompt delivery for cash on normal arm’s length commercial terms as between a willing seller and a willing buyer, free of any Charter.

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

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

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



**“Mortgage”** means, in relation to a Ship, a first preferred Liberian ship mortgage on that Ship in agreed form or any replacement first preferred or first priority ship mortgage on that Ship under the laws of an Approved Flag in agreed form.

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

**“Operating Expenses”** means, in relation to a Ship, the aggregate of the costs and expenses of operating that Ship including expenses for crewing, victualling, insuring, maintenance excluding drydocking expenses, operation, voyage related costs and commissions in respect of that Ship.

**“Original Financial Statements”** means the annual audited consolidated financial statements of the Group for its financial year ended 31 December 2022.

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

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

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

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

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

**“Permitted Charter”** means, in relation to a Ship, a Charter:

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

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

**“Permitted Financial Indebtedness”** means:

- (a) any Financial Indebtedness incurred under the Finance Documents; and
- (b) any Financial Indebtedness (including without limitation, any shareholder or intra-Group loans made available to the Borrowers (or any of them) in the normal course of its business of trading and operating any of Ship) that is subordinated to all Financial Indebtedness incurred under the Finance Documents in writing in a manner acceptable to the Facility Agent in all respects.

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**“Permitted Security”** means:

- (a) Security created by the Finance Documents;
- (b) liens for unpaid master’s and crew’s wages in accordance with first class ship ownership and management practice and not being enforced through arrest;
- (c) liens for salvage;
- (d) liens for master’s disbursements incurred in the ordinary course of trading in accordance with first class ship ownership and management practice and not being enforced through arrest; and
- (e) any other lien arising by operation of law or otherwise in the ordinary course of the operation, repair or maintenance of any Ship:
  - (i) not as a result of any default or omission by any Borrower;
  - (ii) not being enforced through arrest; and
  - (iii) subject, in the case of liens for repair or maintenance, to Clause 23.16 (*Restrictions on chartering, appointment of managers etc.*),

provided such lien does not secure amounts more than 30 days overdue (unless the overdue amount is being contested in good faith by appropriate steps).

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

**“Potential Event of Default”** means any event or circumstance specified in Clause 26 (*Events of Default*) which would (with the expiry of a grace period, the giving of notice, the making of any determination under the Finance Documents or any combination of any of the foregoing) be an Event of Default.

**“Pre-delivery Advance”** means any Commercial Pre-delivery Advance or any K-SURE Secured Pre-delivery Advance.

**“Pre-delivery Contract”** means each Shipbuilding Contract and each Refund Guarantee.

**“Pre-delivery Security”** means, in relation to a Ship, the document creating Security over the relevant Pre-delivery Contracts relating to that Ship in agreed form.

**“Pre-delivery Tranche”** means any Commercial Pre-delivery Tranche or any K-SURE Secured Pre-delivery Tranche.

**“Prohibited Person”** means any person who is the subject of Sanctions (whether designated by name or by reason of being included in a class of persons to whom the applicable Sanctions apply in accordance with their terms) provided that, in the case of a person:

- (a) who is not themselves a Transaction Obligor, a Subsidiary of a Transaction Obligor or one of their respective directors, officers or employees or an agent of any of them; and
- (b) who is targeted only by “sectoral sanctions,” or other Sanctions that do not generally prohibit transactions with such person, such person shall be a Prohibited Person with respect to a transaction only to the extent that:

- (i) an Transaction Obligor, a Finance Party or any other person organised or resident in the US, UK or EU would be prohibited by the law of such jurisdiction from entering into, directly or indirectly, such transaction with such person; or
- (ii) the transaction involving such person would require a specific Authorisation by an applicable Sanctions authority.

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

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

**“Reference Rate Supplement”** means a document which:

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

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

**“Refund Guarantee”** means each guarantee issued or to be issued by a Refund Guarantor in favour of the relevant Borrower pursuant to the relevant Shipbuilding Contract in the form set out in Exhibit A (*letter of guarantee*) to the relevant Shipbuilding Contract (or in such other form as the Borrower, the Facility Agent (acting on the instructions of all of the Lenders) and the K-SURE Agent (acting on the instructions of K-SURE) shall agree).

**“Refund Guarantor”** means The Korea Development Bank, a company incorporated in Korea whose registered office is at 14 Eunhaeng-ro, Yeongdeungpo-gu, Seoul 07242, Korea or any other financial institution acceptable to the Facility Agent in its sole discretion.

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

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

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

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

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

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

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

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

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

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

**“Requisition”** means in relation to a Ship:

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

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

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

**“Revenues”** means, as at the Test Date (as defined in the Guarantee) for the relevant six-month period ending on that Test Date (as defined in the Guarantee), the total revenues of the relevant Borrower relating to such six-month period.

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

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

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

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

**“Sanctioned Country”** means a country or territory that is subject to comprehensive country-wide or territory-wide Sanctions.

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

- (a) imposed by law or regulation of the United Kingdom, the Council of the European Union, the United Nations or its Security Council or the United States of America; or
- (b) otherwise imposed by any law or regulation binding on a Transaction Obligor or to which a Transaction Obligor is subject.

**“Sanctioned Ship”** means a ship which is the subject of Sanctions.

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

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

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

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

**“Security Document”** means:

- (a) any Pre-Delivery Security;
- (b) any Shares Security;
- (c) any Mortgage;
- (d) any Deed of Covenant;

- (e) any General Assignment;
- (f) any Charterparty Assignment;
- (g) any Account Security;
- (h) any other document (whether or not it creates Security) which is executed as security for the Secured Liabilities; or
- (i) any other document designated as such by the Facility Agent and the Borrowers.

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

“**Security Property**” means:

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

except:

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

“**Servicing Party**” means the Facility Agent, the Security Agent or the K-SURE Agent.

“**Shareholder**” means Navios Maritime Operating L.L.C., a limited liability company formed and existing in the Republic of the Marshall Islands whose registered address is at Trust Company Complex, Ajeltake Road, Ajeltake Island, Majuro, Marshall Islands MH96960.

“**Shares Security**” means, in relation to a Borrower, a document creating Security over the issued shares in that Borrower in agreed form.

“**Ship**” means Ship A or Ship B.

“**Ship A**” has the meaning given to that term in Schedule 7 (*Details of the Ships and other Definitions*).

“**Ship B**” has the meaning given to that term in Schedule 7 (*Details of the Ships and other Definitions*).

“**Shipbuilding Contract**” means:

- (a) in relation to Ship A, the shipbuilding contract dated 17 October 2022 and made between (i) the Builder and (ii) Borrower A for the construction by the Builder of Ship A and its purchase by Borrower A, as amended and supplemented from time to time; and
- (b) in relation to Ship B, the shipbuilding contract dated 17 October 2022 and made between (i) the Builder and (ii) Borrower B for the construction by the Builder of Ship B and its purchase by Borrower B, as amended and supplemented from time to time.

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

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

“**Subsidiary**” means that a company (S) is a subsidiary of another company (P) if:

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

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

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

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

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

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

“**Termination Date**” means:

- (a) in relation to each Pre-delivery Tranche, the earlier of (i) the Utilisation Date of the Delivery Advances relating to the relevant Ship and (ii) 28 August 2025; and
- (b) in relation to each Delivery Tranche, the earlier of (i) the date falling on the 12<sup>th</sup> anniversary of the Delivery Date of that Ship and (ii) 28 August 2037.

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

**“Total Commitments”** means the aggregate of the Commitments, being in an amount not exceeding the lesser of (i) \$165,637,635.08 and (ii) 70 per cent. of the Contract Price of the Ships and 100 per cent. of each K-SURE Premium.

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

- (a) actual, constructive, compromised, agreed or arranged total loss of that Ship; or
- (b) in the case of any of the events described in paragraph (a) of the definition “Requisition”, any such Requisition of a Ship unless that Ship is returned to the full control of the relevant Borrower within 60 days of such Requisition; and
- (c) in the case of any of the events described in paragraph (b) of the definition “Requisition”, any such Requisition of a Ship unless that Ship is returned to the full control of the relevant Borrower within 90 days of such Requisition, provided that in the event of piracy if the relevant underwriters confirm to the Facility Agent in writing (in customary terms) prior to the end of the 90-day period that the relevant Ship is subject to an approved piracy insurance cover, the earlier of 12 Months after the date on which that Ship is captured by pirates and the date on which the piracy insurance cover expires.

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

- (a) in the case of an actual loss of that Ship, the date on which it occurred or, if that is unknown, the date when that Ship was last heard of;
- (b) in the case of a constructive, compromised, agreed or arranged total loss of that Ship, the earlier of:
  - (i) the date on which a notice of abandonment is given (or deemed or agreed to be given) to the insurers; and
  - (ii) the date of any compromise, arrangement or agreement made by or on behalf of the relevant Borrower with that Ship’s insurers in which the insurers agree to treat that Ship as a total loss; and
- (c) in the case of any other type of Total Loss, the date (or the most likely date) on which it appears to the Facility Agent that the event constituting the total loss occurred.

**“Tranche”** means a Delivery Tranche or a Pre-delivery Tranche.

**“Transaction Document”** means:

- (a) a Finance Document;
- (b) a Pre-delivery Contract;
- (c) an Initial Charter;
- (d) any Assignable Charter;
- (e) any Charter Guarantee relating to an Assignable Charter; or
- (f) any other document designated as such by the Facility Agent and a Borrower.



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

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

**“Transfer Certificate”** means a certificate substantially in the form set out in Schedule 4 (*Form of Transfer Certificate*) or any other form agreed between the Facility 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 Facility Agent executes the relevant Assignment Agreement or Transfer Certificate.

**“UK Bail-In Legislation”** means Part 1 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 institutes or their affiliates (otherwise than through liquidation, administration or other insolvency proceedings).

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

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

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

**“US Tax Obligor”** means:

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

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

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

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

**“VAT”** means:

- (a) any value added tax imposed by the Value Added Tax Act 1994;
- (b) any tax imposed in compliance with the Council Directive of 28 November 2006 on the common system of value added tax (EC Directive 2006/112); and

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

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

## 1.2 Construction

- (a) Unless a contrary indication appears, a reference in this Agreement to:
- (i) the **“Account Bank”**, the **“Mandated Lead Arranger”**, the **“Facility Agent”**, any **“Finance Party”**, any **“Lender”**, any **“Obligor”**, any **“Party”**, any **“Secured Party”**, the **“Security Agent”**, the **“K-SURE Agent”**, any **“Transaction Obligor”** or any other person shall be construed so as to include its successors in title, permitted assigns and permitted transferees to, or of, its rights and/or obligations under the Finance Documents;
- (ii) **“assets”** includes present and future properties, revenues and rights of every description;
- (iii) a liability which is **“contingent”** means a liability which is not certain to arise and/or the amount of which remains unascertained;

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- (iv) “**document**” includes a deed and also a letter, fax, email or telex;
  - (v) “**expense**” means any kind of cost, charge or expense (including all legal costs, charges and expenses) and any applicable Tax including VAT;
  - (vi) a Lender’s “**cost of funds**” in relation to its participation in the Loan or any part of the Loan is a reference to the average cost (determined either on an actual or a notional basis) which that Lender would incur if it were to fund, from whatever source(s) it may reasonably select, an amount equal to the amount of that participation in the Loan or that part of the Loan for a period equal in length to the Interest Period of the Loan or that part of the Loan;
  - (vii) a “**Finance Document**”, a “**Security Document**” or “**Transaction Document**” or any other agreement or instrument is a reference to that Finance Document, Security Document or Transaction Document or other agreement or instrument as amended, replaced, novated, supplemented, extended or restated;
  - (viii) a “**group of Lenders**” includes all the Lenders;
  - (ix) “**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;
  - (x) “**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;
  - (xi) “**proceedings**” means, in relation to any enforcement provision of a Finance Document, proceedings of any kind, including an application for a provisional or protective measure;
  - (xii) a “**person**” includes any individual, firm, company, corporation, government, state or agency of a state or any association, trust, joint venture, consortium, partnership or other entity (whether or not having separate legal personality);
  - (xiii) a “**regulation**” includes any regulation, rule, official directive, request or guideline (whether or not having the force of law) of any governmental, intergovernmental or supranational body, agency, department or regulatory, self-regulatory or other authority or organisation;
  - (xiv) a reference to a “**Ship**”, its name, its flag and, if applicable, its port of registry shall include any replacement name, flag and, if applicable, replacement port of registry, in each case, as may be approved in writing from time to time by the Facility Agent acting with the authorisation of the Majority Lenders;
  - (xv) a provision of law is a reference to that provision as amended or re-enacted from time to time;
  - (xvi) a time of day is a reference to Frankfurt am Main time;
  - (xvii) any English legal term for any action, remedy, method of judicial proceeding, legal document, legal status, court, official or any legal concept or thing shall, in respect of a jurisdiction other than England, be deemed to include that which most nearly approximates in that jurisdiction to the English legal term;

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- (xviii) words denoting the singular number shall include the plural and vice versa; and
- (xix) “**including**” and “**in particular**” (and other similar expressions) shall be construed as not limiting any general words or expressions in connection with which they are used.
- (b) Section, Clause and Schedule headings are for ease of reference only and are not to be used for the purposes of construction or interpretation of the Finance Documents.
- (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 reference in this Agreement to a page or screen of an information service displaying a rate shall include:
- (i) any replacement page of that information service which displays that rate; and
  - (ii) the appropriate page of such other information service which displays that rate from time to time in place of that information service,
  - (iii) and, if such page or service ceases to be available, shall include any other page or service displaying that rate specified by the Facility Agent after consultation with the Borrowers.
- (e) A reference in this Agreement to a Central Bank Rate shall include any successor rate to, or replacement rate for, that rate.
- (f) Any Reference Rate Supplement overrides anything in:
- (i) Schedule 8 (*Reference Rate Terms*); or
  - (ii) any earlier Reference Rate Supplement.
- (g) A Compounding Methodology Supplement relating to the Cumulative Compounded RFR Rate overrides anything relating to that rate in:
- (i) Schedule 9 (Cumulative Compounded RFR Rate); or
  - (ii) any earlier Compounding Methodology Supplement.
- (h) 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.
- (i) Any consent, approval, authorisation or instruction to be given by any Finance Party pursuant to any provision of a Finance Document and which by virtue of the provisions of any K-SURE Insurance Policy also requires the consent of K-SURE pursuant to such K-SURE Insurance Policy shall be deemed to have been given reasonably and without unreasonable delay if given as directed by K-SURE promptly after K-SURE notifies the K-SURE Agent of its decision.

### 1.3 Construction of insurance terms

In this Agreement:

“**approved**” means, for the purposes of Clause 21 (*Insurance Undertakings*), approved in writing by the Facility Agent and the K-SURE Agent.

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

“**obligatory insurances**” means all insurances effected, or which any Borrower is obliged to effect, under Clause 21 (*Insurance Undertakings*) or any other provision of this Agreement or of another Finance Document.

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

“**protection and indemnity risks**” means the usual risks covered by a protection and indemnity association managed in London, including pollution risks and the proportion (if any) of any sums payable to any other person or persons in case of collision which are not recoverable under the hull and machinery policies by reason of the incorporation in them of clause 6 of the International Hull Clauses (1/11/02) (1/11/03), clause 8 of the Institute Time Clauses (Hulls) (1/10/83) (1/11/95) or the Institute Amended Running Down Clause (1/10/71) or any equivalent provision.

“**war risks**” includes the risk of mines and all risks excluded by clauses 29, 30 or 31 of the International Hull Clauses (1/11/02), clauses 29 or 30 of the International Hull Clauses (1/11/03), clauses 24, 25 or 26 of the Institute Time Clauses (Hulls) (1/11/95) or clauses 23, 24 or 25 of the Institute Time Clauses (Hulls) (1/10/83) or any equivalent provision.

### 1.4 Agreed forms of Finance Documents

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

- (a) in a form attached to a certificate dated the same date as this Agreement (and signed by the Borrowers, the Facility Agent and the K-SURE Agent); or
- (b) in any other form agreed in writing between the Borrowers, the Facility Agent acting with the authorisation of the Majority Lenders or, where Clause 44.2 (*All Lender matters*) applies, all the Lenders and the K-SURE Agent acting with the authorisation of K-SURE.

### 1.5 Third party rights

- (a) Subject to paragraph (b) below or unless expressly provided to the contrary in a Finance Document, a person who is not a Party has no right under the any other provision of 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) K-SURE may enforce and may enjoy the benefit (including, pursuant to the Third Parties Act) of Clause 11.4 (*K-SURE Premium*), Clause 12 (*Tax Gross Up and Indemnities*), Clause 14 (*Other Indemnities*), Clause 16 (*Costs and Expenses*), Clause 27 (*Changes to the Lenders*), Clause 44 (*Amendments and Waivers*), Clause 48 (*Governing Law*) and Clause 49 (*Enforcement*) and any Clause of this Agreement which expressly confers rights on it.

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- (c) Except where the consent of K-SURE is expressly required pursuant to any term of any Finance Document or implicitly required under any K-SURE Policy and related Terms and Conditions, notwithstanding any other 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.
  - (d) Any Affiliate, Receiver, Delegate or any other person described in paragraph (d) of Clause 14.2 (*Other indemnities*), paragraph (b) of Clause 29.11 (*Exclusion of liability*), or paragraph (b) of Clause 30.11 (*Exclusion of liability*) may, subject to this Clause 1.5 (*Third party rights*) and the Third Parties Act, rely on any Clause of this Agreement which expressly confers rights on it.

#### **1.6 Sanctions exceptions**

- (a) In relation to a Lender that is incorporated in Germany (each a “**Restricted Lender**”), Clause 18.35 (*Sanctions*), Clause 20.21 (*Sanctions undertakings*), Clause 23.10 (*Compliance with laws etc.*), Clause 23.12 (*Sanctions and Ship trading*) and any provision in this Agreement making (directly or indirectly) reference to the definition of “Sanctions” (together, the “**Sanctions Provisions**”) will not apply for the benefit of that Restricted Lender to the extent that the Sanctions Provisions would result in any violation of or liability under (i) Council Regulation (EC) No 2271/96 of 22 November 1996 and/or (ii) section 7 of the German Foreign Trade Regulation (*Außenwirtschaftsverordnung—AWV*) in connection with the German Foreign Trade Law (*Außenwirtschaftsgesetz—AWG*) and/or (iii) similar legislation imposed by the European Union or the Federal Republic of Germany, in each case protecting against the effects of the extra-territorial application of legislation adopted by a third country, and actions based thereon or resulting therefrom.
- (b) A Restricted Lender will not, in the event of and on the sole basis of, a breach of any Sanctions imposed by any Sanctions Authority other than the United Nations, European Union or Germany (a “**Sanctions Breach**”) be entitled to:
  - (i) declare that the Commitment is cancelled or require a mandatory prepayment in accordance with Clause 7.1 (*Illegality and Sanctions affecting a Lender*); or
  - (ii) assert any other rights under the Finance Documents on the sole basis of such Sanctions Breach.

#### **1.7 Independence of the Finance Documents**

The obligations of the Transaction Obligors under the Finance Documents are separate from, and not in any way conditional upon, the performance of any Shipbuilding Contract by the Builder and the relevant Borrower shall not be discharged from any of its obligations under any Finance Document by any matter relating to any Shipbuilding Contract including, without limitation:

- (a) the failure of the Builder to perform its obligations under any Shipbuilding Contract; or
- (b) the frustration or invalidity of any Shipbuilding Contract; or
- (c) the destruction, non-compliance or non-functioning of the relevant Ship delivered under the relevant Shipbuilding Contract; or
- (d) the liquidation or bankruptcy of a Transaction Obligor; or
- (e) any claim a Transaction Obligor has under or in respect of any Shipbuilding Contract.

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## SECTION 2

### THE FACILITY

#### 2 THE FACILITY

##### 2.1 The Facility

Subject to the terms of this Agreement, the Lenders make available to the Borrowers a senior secured dollar term loan facility in four Tranches in an aggregate amount not exceeding the Total Commitments.

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

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

##### 2.3 No obligations imposed on K-SURE

K-SURE shall not have any obligations or liabilities under this Agreement unless and until it becomes a Lender in accordance with the terms of this Agreement in which event its obligations and liabilities shall be limited to those it has as a Lender.

#### 3 PURPOSE

##### 3.1 Purpose

Each Borrower shall apply all amounts borrowed by it under the Facility only for the purpose stated in the preamble (*Background*) to this Agreement and each Advance as follows:

- (a) the relevant Commercial Pre-delivery Advance A and the relevant K-SURE Secured Pre-delivery Advance A shall be made available to the Borrowers for each Ship for the purpose of financing or, as the case may be, refinancing part of the second Contract Price Instalment payable pursuant to paragraph 2(b) of Article X (*payment*) of the Shipbuilding Contract in respect of the Ship and the relevant K-SURE Premium to be financed by the relevant Pre-delivery Advances;

- (b) the relevant Commercial Pre-delivery Advance B and the relevant K-SURE Secured Pre-delivery Advance B shall be made available to the Borrowers for each Ship for the purpose of financing or, as the case may be, refinancing in full the third Contract Price Instalment payable pursuant to paragraph 2(c) of Article X (*payment*) of the Shipbuilding Contract in respect of the Ship to be financed by the relevant Pre-delivery Advances upon completion of the steel cutting of the relevant Ship;
- (c) the relevant Commercial Pre-delivery Advance C and the relevant K-SURE Secured Pre-delivery Advance C shall be made available to the Borrowers for each Ship for the purpose of financing or, as the case may be, refinancing in full the fourth Contract Price Instalment payable pursuant to paragraph 2(d) of Article X (*payment*) of the Shipbuilding Contract in respect of the Ship to be financed by the relevant Pre-delivery Advances upon completion of the launching of the relevant Ship; and
- (d) the relevant Commercial Delivery Advance and the relevant K-SURE Secured Delivery Advance shall be made available to the Borrowers for each Ship for the purpose of (i) repayment of the Pre-delivery Advances in relation to each Ship and (ii) financing the fifth Contract Price Instalment payable pursuant to paragraph 2(e) of Article X (*payment*) of the Shipbuilding Contract in respect of the Ship to be financed by the relevant Delivery Advances on the relevant Delivery Date and refinancing the relevant K-SURE Premium.

### **3.2 Monitoring**

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

## **4 CONDITIONS OF UTILISATION**

### **4.1 Initial conditions precedent**

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

### **4.2 Further conditions precedent**

The Lenders will only be obliged to comply with Clause 5.5 (*Lenders' participation*) if:

- (a) on the date of any Utilisation Request and on the proposed relevant Utilisation Date and before any Advance is made available:
  - (i) no Default is continuing or would result from the proposed Advance; and
  - (ii) the Repeating Representations to be made by each Transaction Obligor are true;
- (b) in the case of a Pre-delivery Advance under a Pre-delivery Tranche, the Facility Agent has received on or before the relevant Utilisation Date, or is satisfied it will receive when such Pre-delivery Advance is made available, all of the documents and other evidence listed in Part B of Schedule 2 (*Conditions Precedent*) in form and substance satisfactory to the Facility Agent;



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- (c) in the case of a Delivery Advance under a Delivery Tranche, the Facility Agent has received on or before the relevant Utilisation Date, or is satisfied that it will receive when such Delivery Advance is made available, all of the documents and other evidence listed in Part C of Schedule 2 (*Conditions Precedent*) in form and substance satisfactory to the Facility Agent; and
  - (d) the Facility Agent has not received, through the K-SURE Agent, any notice from K-SURE requesting the Lenders to suspend the utilisation of the Facility.

#### **4.3 Notification of satisfaction of conditions precedent**

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

#### **4.4 Waiver of conditions precedent**

- (a) Subject to paragraph (b) below, if the Majority Lenders, at their discretion, permit an Advance to be borrowed before any of the conditions precedent referred to in Clause 4.1 (*Initial conditions precedent*) or Clause 4.2 (*Further conditions precedent*) has been satisfied, the Borrowers shall ensure that that condition is satisfied within five Business Days after the relevant Utilisation Date or such later date as the Facility Agent, acting with the authorisation of the Majority Lenders, may agree in writing with the Borrowers.
- (b) If a Refund Guarantee is not furnished by the Builder in relation to the fourth Contract Price Instalment of either Ship pursuant to paragraph 8 of Article X (*payment*) of the relevant Shipbuilding Contract and such fourth Contract Price Instalment is payable to the Builder on the relevant Delivery Date, the Majority Lenders shall waive the conditions precedent listed in paragraphs 3 to 6 of Part B of Schedule 2 (*Conditions Precedent*).

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## SECTION 3

### UTILISATION

#### 5 UTILISATION

##### 5.1 Delivery of a Utilisation Request

- (a) The Borrowers may utilise the Facility by delivery to the Facility Agent of a duly completed Utilisation Request not later than the Specified Time.
- (b) The Borrowers may not deliver more than one Utilisation Request under each Tranche in respect of the same Contract Price Instalment for the relevant Ship and, if applicable, the relevant K-SURE Premium to be financed by the relevant Advance.
- (c) The Borrowers may not deliver a Utilisation Request if, as a result of the proposed Utilisation:
  - (i) more than six Advances would have been made under the Commercial Pre-delivery Tranche;
  - (ii) more than six Advances would have been made under the K-SURE Secured Pre-delivery Tranche;
  - (iii) more than two Advances would have been under the Commercial Delivery Tranche; and
  - (iv) more than two Advances would have been under the K-SURE Secured Delivery Tranche.

##### 5.2 Completion of a Utilisation Request

Each 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 relevant Availability Period;
- (b) the currency and amount of the Utilisation comply with Clause 5.3 (*Currency and amount*); and
- (c) the proposed Interest Period complies with Clause 9 (*Interest Periods*).

##### 5.3 Currency and amount

- (a) The currency specified in a Utilisation Request must be dollars.
- (b) The amount of the proposed Advance must be an amount which is not more than:
  - (i) in respect of each Commercial Pre-delivery Advance A, the lower of (A) \$3,465,300 and (B) 15 per cent. of the relevant Contract Price Instalment;
  - (ii) in respect of each Commercial Pre-delivery Advance B, the lower of (A) \$8,663,250 and (B) 30 per cent. of the relevant Contract Price Instalment;
  - (iii) in respect of each Commercial Pre-delivery Advance C, the lower of (A) \$5,197,950 and (B) 30 per cent. of the relevant Contract Price Instalment;

- (iv) in respect of each K-SURE Secured Pre-delivery Advance A, the lower of (A) \$10,047,517.54 and (B) the aggregate of 35 per cent. of the relevant Contract Price Instalment and 100 per cent. of the relevant K-SURE Premium;
- (v) in respect of each K-SURE Secured Pre-delivery Advance B, the lower of (A) \$20,214,250 and (B) 70 per cent. of the relevant Contract Price Instalment;
- (vi) in respect of each K-SURE Secured Pre-delivery Advance C, the lower of (A) \$12,128,550 and (B) 70 per cent. of the relevant Contract Price Instalment;
- (vii) in respect of each Commercial Delivery Advance, the lower of (A) \$24,257,100 per Ship and (B) the aggregate of 30 per cent. of the relevant Contract Price Instalment and the outstanding principal amount of each Commercial Pre-delivery Advance relating to that Ship; and
- (viii) in respect of each K-SURE Secured Delivery Advance, the lower of (A) \$58,561,717.54 per Ship and (B) the aggregate of 70 per cent. of the relevant Contract Price Instalment and the outstanding principal amount of each K-SURE Secured Pre-delivery Advance relating to that Ship and the relevant K-SURE Premium,

due to the Builder under the relevant Shipbuilding Contract or, as the case may be, K-SURE and to be financed by this Agreement on the proposed Utilisation Date.

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

#### **5.4 Cancellation of Commitments**

The Commitments in respect of any Tranche which are unutilised at the end of the Availability Period for such Tranche shall then be cancelled.

#### **5.5 Lenders' participation**

- (a) If the conditions set out in this Agreement have been met, each Lender shall make its participation in each Advance available by the Utilisation Date through its Facility Office.
- (b) The amount of each Lender's participation in each Advance will be equal to the proportion borne by its Available Commitment to the Available Facility immediately before making that Advance.
- (c) The Facility Agent shall notify each Lender of the amount of each Advance and the amount of its participation in that Advance by the Specified Time.

#### **5.6 Notice to K-SURE**

The Facility Agent shall promptly after each Utilisation notify the K-SURE Agent and K-SURE of the amount of the relevant Advance and of the Utilisation Date.

## 5.7 Payment to K-SURE and Builder

- (a) The Borrowers irrevocably authorise the Facility Agent on each Utilisation Date to pay to, or for the account of, the Borrowers the amounts which the Facility Agent receives from the Lenders in respect of the relevant Advance.
- (b) The relevant part of an Advance, which constitutes a payment to the Builder shall be made to the account of the Builder which the Borrowers specify in the relevant Utilisation Request, **provided that** (i) there is a SWIFT key between the Facility Agent and the Builder's bank, (ii) the Facility Agent has carried out at least 10 Business Days before the relevant Utilisation Date and is satisfied with all necessary "know your customer" requirements in respect of the Builder and (iii) that bank has a credit rating of BBB or higher assigned by Standard & Poor's or Baa2 or higher assigned by Moody's or is otherwise acceptable to the Lenders.
- (c) Each Commercial Pre-delivery Advance A and each K-SURE Secured Pre-delivery Advance A, as reimbursement for payments already made by the relevant Borrower to the Builder in accordance with Article X (*payment*) of the relevant Shipbuilding Contract shall be made to the account of that Borrower which the Borrowers specify in the relevant Utilisation Request.
- (d) The relevant part of an Advance, which constitutes payment of the relevant K-SURE Premium, as reimbursement for payments already made by the relevant Borrower to K-SURE in accordance with the relevant K-SURE Insurance Policy shall be made to the account of that Borrower which the Borrowers specify in the relevant Utilisation Request.

## 5.8 Disbursement of Advance to third party

Payment by the Facility Agent under Clause 5.7 (*Payment to K-SURE and Builder*) to K-SURE or, as the case may be, a person other than a Borrower shall constitute the making of the relevant Advance and the Borrowers shall at that time become indebted, as principal and director obligors, to each Lender in an amount equal to that Lender's participation in that Advance.

## 5.9 Prepositioning of funds

If, in respect of any proposed Advance, the Lenders, at the request of the Borrowers and on terms acceptable to all the Lenders and in their absolute discretion, subject to Clause 5.7 (*Payment to K-SURE and Builder*), preposition funds with the Builder's or any other bank, each Borrower:

- (a) agrees to pay interest on the amount of the funds so prepositioned at the rate described in Clause 8.1 (*Calculation of interest*) on the basis of successive interest periods of one day and so that interest shall be paid together with the first payment of interest on such Advance after the Utilisation Date in respect of it or, if such Utilisation Date does not occur, within three Business Days of demand by the Facility Agent; and
- (b) shall, without duplication, indemnify each Finance Party against any costs, loss or liability it may incur in connection with such arrangement.

## SECTION 4

### REPAYMENT, PREPAYMENT AND CANCELLATION

#### 6 REPAYMENT

##### 6.1 Repayment of Loan

The Borrowers shall repay the Loan as follows:

- (a) each Pre-delivery Tranche in respect of a Ship shall be repaid in full in one instalment (each a “**Pre-delivery Repayment Instalment**”) on the relevant Termination Date, by applying part of the proceeds of the relevant Delivery Advances relating to such Ship in an amount equal to the principal outstanding amount of the relevant Pre-delivery Tranches; and
- (b) each Delivery Tranche in respect of a Ship shall be repaid as follows:
  - (i) each K-SURE Secured Delivery Tranche shall be repaid by 24 consecutive semi-annual instalments (each a “**K-SURE Secured Delivery Repayment Instalment**”), the first 23 K-SURE Secured Delivery Repayment Instalments being each in an amount of \$2,440,071.56 and the final 24<sup>th</sup> K-SURE Secured Delivery Repayment Instalment being in an amount of \$2,440,071.66; and
  - (ii) each Commercial Delivery Tranche shall be repaid by 16 equal consecutive semi-annual instalments (each a “**Commercial Delivery Repayment Instalment**”) and together with the Pre-delivery Repayment Instalments and the K-SURE Delivery Repayment Instalments, the “**Repayment Instalments**” and each a “**Repayment Instalment**”), each in an amount of \$1,000,000 and a balloon instalment in the amount of \$8,257,100 (each a “**Balloon Instalment**”).

##### 6.2 Repayment Dates

The first Repayment Instalment in relation to each Delivery Tranche shall be repaid on the date falling six Months from the Delivery Date of the Ship relevant to such Delivery Tranche, each subsequent Repayment Instalment in relation to such Delivery Tranche shall be repaid at semi-annual intervals thereafter and the relevant Balloon Instalment shall be repaid on the Termination Date relating to such Delivery Tranche.

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

- (a) If the Borrowers cancel the whole or any part of any Available Commitment in accordance with Clause 7.7 (*Right of repayment and cancellation in relation to a single Lender*) or if the Available Commitment of any Lender is cancelled under Clause 7.1 (*Illegality and Sanctions affecting a Lender*) then the Repayment Instalments and, where applicable, the Balloon Instalments falling after that cancellation will be reduced *pro rata* by the amount of the Available Commitments so cancelled.
- (b) If the whole or part of any Commitment is cancelled pursuant to Clause 5.4 (*Cancellation of Commitments*) or Clause 7.3 (*Voluntary and automatic cancellation*), the Repayment Instalments and, where applicable, the Balloon Instalments for each Repayment Date falling after that cancellation will be reduced *pro rata* by the amount of the Commitments so cancelled.

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- (c) If any part of the Loan is repaid or prepaid in accordance with Clause 7.7 (*Right of repayment and cancellation in relation to a single Lender*) or Clause 7.1 (*Illegality and Sanctions affecting a Lender*), then such prepayment shall be applied *pro rata* against each Tranche and the Repayment Instalments and, where applicable, the Balloon Instalments for each Repayment Date falling after that repayment or prepayment (as applicable) will be reduced *pro rata* by the amount of the Loan repaid or prepaid.
  - (d) If any part of the Loan is prepaid in accordance with Clause 7.4 (*Voluntary prepayment of Loan*), then such prepayment shall be applied *pro rata* against each Tranche and the amount of the Repayment Instalments and, where applicable, the Balloon Instalments for each Repayment Date falling after that repayment or prepayment will be reduced in chronological order of maturity by the amount of the Loan repaid or prepaid.
  - (e) If any part of the Loan is prepaid in accordance with Clause 7.5 (*Mandatory prepayment on default under Shipbuilding Contract*) or Clause 7.6 (*Mandatory prepayment on sale or Total Loss*), then the amount of the relevant Repayment Instalments and the relevant Balloon Instalment for the relevant Tranche for each Repayment Date falling after that repayment or prepayment will be reduced *pro rata* by the amount of the Loan repaid or prepaid, unless such mandatory prepayment is made against the full amount of such Tranche and any balance after the prepayment of the relevant Tranche in full shall reduce the Repayment Instalments and the Balloon Instalment of the other outstanding Tranches *pro rata*.

#### **6.4 Termination Date**

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

#### **6.5 Reborrowing**

No Borrower may reborrow any part of the Facility which is repaid.

### **7 PREPAYMENT AND CANCELLATION**

#### **7.1 Illegality and Sanctions affecting a Lender**

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

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

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- (d) accrued interest and all other amounts accrued for that Lender under the Finance Documents shall be immediately due and payable.

## 7.2 Change of control

If there is a Change of Control:

- (a) the Borrowers shall and shall procure that the Guarantor shall promptly notify the Facility Agent upon becoming aware of that event; and
- (b) if the Majority Lenders so require, the Facility Agent shall, by not less than 10 Business Days' notice to the Borrowers, cancel the Facility and declare the Loan, together with accrued interest, and all other amounts accrued under the Finance Documents immediately due and payable, whereupon the Facility will be cancelled and the Loan and all such outstanding interest and other amounts will become immediately due and payable.
- (c) In this Clause 7.2 (*Change of control*):

“**Change of Control**” means a change which results in:

- (a) Navios Maritime Holdings Inc. and/or Mrs. Angeliki Frangou and her direct descendants (either directly or indirectly) (through entities owned and controlled by her or trusts or foundations of which she is a beneficiary) ceasing to be the owner of, or having ultimate control of the voting rights attaching to more than five per cent. of all the units (including for the avoidance of doubt both general partner units and common units) in the Guarantor; or
- (b) Mrs. Angeliki Frangou and her direct descendants (either directly or indirectly) (through entities owned and controlled by her or trusts or foundations of which she is a beneficiary), ceasing to be the owner of, or having ultimate control of the voting rights attaching to all the issued shares in the general partner of the Guarantor, which is currently Olympos Maritime Ltd; or
- (c) Mrs. Angeliki Frangou ceasing to act as chairman or chief executive officer of the Guarantor and Olympos Maritime Ltd ceasing to be the general partner of the Guarantor; or
- (d) any person or group of persons acting in concert, other than Navios Maritime Holdings Inc., Mrs Angeliki Frangou and her direct descendants (either directly or indirectly), gaining control of the Guarantor; or
- (e) the Guarantor ceasing to be the owner of, directly or indirectly, the issued shares in each Borrower;

For the purpose of paragraph (d) above “**control**” means the holding beneficially issued units of the Guarantor representing 50 per cent. or more of the voting rights.

For the purpose of paragraph (d) above “**acting in concert**” means a group of persons who, pursuant to an agreement or understanding (whether formal or informal), actively co-operate, through the acquisition directly or indirectly of shares in the Guarantor by any of them, either directly or indirectly, to obtain or consolidate control of the Guarantor.

### **7.3 Voluntary and automatic cancellation**

- (a) The Borrowers may, if they give the Facility Agent not less than five Business Days' (or such shorter period as the Majority Lenders may agree) prior written notice, cancel the whole or any part (being a minimum amount of \$1,000,000 or an integral multiple of that amount or such lesser amount as may be acceptable to the Majority Lenders) of the Available Facility. Any cancellation under this Clause 7.3 (*Voluntary and automatic cancellation*) shall reduce the Commitments of the Lenders rateably and the amount of the relevant Tranche(s).
- (b) The unutilised Commitment (if any) of each Lender shall be automatically cancelled at close of business on the date on which the last Advance is made available.

### **7.4 Voluntary prepayment of Loan**

The Borrowers may, if they give the Facility Agent no less than five RFR Banking Days (or such shorter period as the Majority Lenders may agree) prior notice, prepay the whole or any part of the Loan (but, if in part, being an amount that reduces the amount of the Loan by a minimum amount of \$1,000,000 or an integral multiple of that amount or such lesser amount as may be acceptable to the Majority Lenders).

### **7.5 Mandatory prepayment on default under Shipbuilding Contract**

If:

- (a) any of the events specified in Clause 26.7 (*Insolvency*), Clause 26.8 (*Insolvency proceedings*) or Clause 26.9 (*Creditors' process*) occur in relation to the Builder or a Refund Guarantor;
  - (b) a Pre-delivery Contract is cancelled, rescinded or frustrated for any reason whatsoever; or
  - (c) the relevant Ship has not been delivered to, and accepted by, the relevant Borrower by the last date of the Availability Period,
- then:
- (i) the Borrowers shall promptly notify the Facility Agent upon becoming aware of that event; and
  - (ii) if the Majority Lenders so require, the Facility Agent shall, by not less than 10 days' notice to the Borrowers, cancel the Pre-delivery Tranche applicable to that Ship and declare an amount of the Loan equal to the Pre-delivery Advances under the relevant Pre-delivery Tranche then utilised, together with interest accrued on it, and all other amounts relating to it and accrued under the Finance Documents immediately due and payable, whereupon the relevant Pre-delivery Tranche will be cancelled and all such outstanding amounts will become immediately due and payable.

### **7.6 Mandatory prepayment on sale or Total Loss**

If a Ship is sold (without prejudice to paragraph (a) of Clause 20.12 (*Disposals*)) or becomes a Total Loss, the Borrowers shall repay an amount equal to (i) the Tranche applicable to that Ship and (ii) such amount, if applicable, to eliminate any shortfall arising in the ratio set out in Clause 24 (*Security Cover*) immediately following the prepayment. Such repayment shall be made:



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- (a) in the case of a sale of a Ship, on or before the date on which the sale is completed by delivery of the Ship to the buyer; or
  - (b) in the case of a Total Loss, on the earlier of (i) the date falling 90 days after the Total Loss Date and (ii) the date of receipt by the Security Agent of the proceeds of insurance relating to such Total Loss.

#### **7.7 Right of repayment and cancellation in relation to a single Lender**

- (a) If:
  - (i) any sum payable to any Lender by a Borrower is required to be increased under paragraph (c) of Clause 12.2 (*Tax gross-up*); or
  - (ii) any Lender claims indemnification from a Borrower under Clause 12.3 (*Tax indemnity*) or Clause 13 (*Increased costs*),the Borrowers may give the Facility Agent notice of cancellation of the Commitment of that Lender and their intention to procure the repayment of that Lender's participation in the Loan.
- (b) On receipt of a notice of cancellation referred to in paragraph (a) above, the Commitment of that Lender shall immediately be reduced to zero.
- (c) On the last day of each Interest Period which ends after the Borrowers have given notice of cancellation under paragraph (a) above in relation to a Lender (or, if earlier, the date specified by the Borrowers in that notice), the Borrowers shall repay that Lender's participation in the Loan.
- (d) The Borrowers may, in the circumstances set out in paragraph (a) above, on 15 Business Days' prior notice to the Facility Agent and that Lender, replace that Lender by requiring that Lender to (and, to the extent permitted by law, that Lender shall) transfer pursuant to Clause 27 (*Changes to the Lenders*) (and not part only) of its rights and obligations under this Agreement to a Lender or other bank, financial institution, trust, fund or other entity selected by the Borrowers which confirms its willingness to assume and does assume all the obligations of the transferring Lender in accordance with Clause 27 (*Changes to the Lenders*) for a purchase price in cash or other cash payment payable at the time of the transfer equal to the outstanding principal amount of such Lender's participation in the Loan and all accrued interest (to the extent that the Facility Agent has not given a notification under Clause 27.8 (*Pro rata interest settlement*)) and other amounts payable in relation thereto under the Finance Documents.
- (e) The replacement of a Lender pursuant to paragraph (d) above shall be subject to the following conditions:
  - (i) the Borrowers shall have no right to replace a Lender acting in its capacity as a Servicing Party;
  - (ii) neither the Facility Agent nor any Lender shall have any obligation to find a replacement Lender;
  - (iii) in no event shall the Lender replaced under paragraph (d) above be required to pay or surrender any of the fees received by such Lender pursuant to the Finance Documents; and

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- (iv) the Lender shall only be obliged to transfer its rights and obligations pursuant to paragraph (d) above once it is satisfied that it has complied with all necessary “know your customer” or other similar checks under all applicable laws and regulations in relation to that transfer.
  - (f) A Lender shall perform the checks described in sub-paragraph (iv) of paragraph (e) above as soon as reasonably practicable following delivery of a notice referred to in paragraph (d) above and shall notify the Facility Agent and the Borrowers when it is satisfied that it has complied with those checks.

#### **7.8 Termination of K-SURE Insurance Policy**

If at any time during the Security Period:

- (a) any K-SURE Insurance Policy or any obligation of K-SURE under any K-SURE Insurance Policy is terminated, cancelled, becomes invalid or unenforceable or otherwise ceases to be in full force and effect; or
- (b) it becomes unlawful or impossible for K-SURE to fulfil any of the obligations expressed to be assumed by it in any K-SURE Insurance Policy or for the K-SURE Agent or a Lender to exercise their rights or any of them under any K-SURE Insurance Policy; or
- (c) the K-SURE Agent or any Lender is informed of K-SURE’s intention to, or K-SURE has stated its intention to, repudiate, terminate, cancel or suspend the application of any K-SURE Insurance Policy; or
- (d) any of the events or circumstances set out in Clause 26.7 (*Insolvency*) and 26.8 (*Insolvency proceedings*) occurs in relation to K-SURE, then as of the time such event occurs:
  - (i) the Lenders shall not be obliged to make any further Advance;
  - (ii) the Total Commitments shall be automatically cancelled; and
  - (iii) the Loan shall be immediately due and payable.

#### **7.9 Mandatory prepayment**

If at any time during the Security Period a Finance Party or a Borrower receives a refund of any K-SURE Premium from K-SURE, the Borrowers shall prepay the relevant Tranche in an amount equal to such refund.

#### **7.10 Mandatory prepayment – Time Charters**

- (a) Subject to paragraph (b), if an Initial Charter is terminated or is cancelled, rescinded or frustrated for any reason whatsoever before the time that such Initial Charter was scheduled to expire (the “**Charter Termination Event**”) any utilised Commitment of each Lender in respect of the Tranche relating to that Ship shall be automatically cancelled and the Borrowers shall prepay the Tranches relating to that Ship in full.

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- (b) No cancellation or prepayment under paragraph (a) above will be required if within 90 days from such Charter Termination Event, the relevant Borrower has provided the Facility Agent with a Charter in all respects acceptable to the Facility Agent acting on the authorisation of the Majority Lenders and, if applicable, the relevant Borrower has complied with its obligations under Clause 23.19 (*Charterparty Assignment*).

#### **7.11 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 and, if relevant, the part of the Loan to be prepaid or cancelled.
- (b) Any prepayment under this Agreement shall be made together with accrued interest on the amount prepaid and without premium or penalty.
- (c) No Borrower may reborrow any part of the Facility which is prepaid.
- (d) No Borrower shall 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.
- (e) No amount of the Total Commitments cancelled under this Agreement may be subsequently reinstated.
- (f) If the Facility Agent receives a notice under this Clause 7 (*Prepayment and Cancellation*) it shall promptly forward a copy of that notice to either the Borrowers or the affected Lenders, as appropriate.
- (g) If all or part of any Lender's participation in the Loan is repaid or prepaid, an amount of that Lender's Commitment (equal to the amount of the participation which is repaid or prepaid) will be deemed to be cancelled on the date of repayment or prepayment.

#### **7.12 Application of prepayments**

Any prepayment of any part of the Loan (other than a prepayment pursuant to Clause 7.1 (*Illegality and Sanctions affecting a Lender*) or Clause 7.7 (*Right of repayment and cancellation in relation to a single Lender*)) shall be applied *pro rata* to each Lender's participation in that part of the Loan.

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## SECTION 5

### COSTS OF UTILISATION

#### 8 INTEREST

##### 8.1 Calculation of interest

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

- (a) the Margin; and
- (b) the Compounded Reference Rate.

##### 8.2 Payment of interest

The Borrowers shall pay accrued interest on the Loan or any part of the Loan on the last day of each Interest Period (each an “**Interest Payment Date**”).

##### 8.3 Default interest

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

##### 8.4 Notifications

- (a) The Facility Agent shall no later than 3 Business Days prior to each Interest Payment Date, notify:
  - (i) the Borrowers of that Interest Payment;
  - (ii) the Borrowers and the Lenders of the applicable Compounded Reference Rate and Cumulative Compounded RFR Rate; and
  - (iii) if requested in writing by the Borrowers not less than 5 Business Days before the end of the relevant Interest Period, the Borrowers of each applicable rate of interest relating to the determination of that Interest Payment.

This paragraph (a) shall not apply to any Interest Payment determined pursuant to Clause 10.3 (*Cost of funds*).

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- (b) The Facility Agent shall promptly notify the Borrowers of each Funding Rate relating to the Loan or any part of the Loan.
  - (c) The Facility Agent shall promptly notify the Lenders and the Borrowers of the determination of a rate of interest relating to the Loan or any part of the Loan to which Clause 10.3 (*Cost of funds*) applies.
  - (d) This Clause 8.4 (*Notifications*) shall not require the Facility Agent to make any notification to any Party on a day which is not a Business Day.

## **9 INTEREST PERIODS**

### **9.1 Interest Periods**

- (a) Subject to this Clause 9 (*Interest Periods*), each Interest Period in respect of each Tranche shall be the period specified in the Reference Rate Terms or any other period agreed between the Borrowers, the Facility Agent and the Lenders.
- (b) An Interest Period in respect of the Loan or any part of the Loan shall not extend beyond the Termination Date.
- (c) The first Interest Period for each Tranche shall start on the Utilisation Date of such Tranche and each subsequent Interest Period shall start on the last day of the preceding Interest Period.
- (d) No Interest Period shall be longer than six Months.

### **9.2 Changes to Interest Periods**

- (a) In respect of a Repayment Instalment, before the first day of an Interest Period for the Loan, the Facility Agent may establish an Interest Period for a part of the Loan equal to such Repayment Instalment to end on the Repayment Date relating to it and the remaining part of the Loan shall have the Interest Period specified in the Reference Rate Terms.
- (b) If the Facility Agent makes any change to an Interest Period referred to in this Clause 9.2 (*Changes to Interest Periods*), it shall promptly notify the Borrowers, the Lenders.
- (c) If, pursuant to this Agreement, any accrued interest on the Loan or any part of the Loan or an Unpaid Sum becomes payable prior to the last day of an Interest Period for the Loan or that part of the Loan or Unpaid Sum, that Interest Period shall:
  - (i) for the purposes only of calculating that accrued interest, and in relation only to the Loan or such part of the Loan or Unpaid Sum, be treated as ending on the day on which that accrued interest becomes payable pursuant to this Agreement; and
  - (ii) for all other purposes under this Agreement, continue to end, and shall be treated as ending, on the last day of that Interest Period.

### **9.3 Non-Business Days**

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

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## **10 CHANGES TO THE CALCULATION OF INTEREST**

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

If:

- (a) there is no RFR or Central Bank Rate for an RFR Banking Day during an Interest Period for the Loan or any part of the Loan for the purposes of calculating the Cumulative Compounded RFR Rate; and
- (b) “Cost of funds will apply as a fallback” is specified in the Reference Rate Terms,  
Clause 10.3 (*Cost of funds*) shall apply to the Loan or that part of the Loan (as applicable) for that Interest Period.

### **10.2 Market disruption**

If before the Reporting Time for the Loan or any part of the Loan, the Facility Agent receives notifications from a Lender or Lenders (whose participations in the Loan or the relevant part of the Loan exceed 50 per cent. of the Loan or the relevant part of the Loan as appropriate) that its cost of funds relating to its participation in the Loan or that part of the Loan would be in excess of the Compounded Reference Rate, then Clause 10.3 (*Cost of funds*) shall apply to the Loan or that part of the Loan (as applicable) for the relevant Interest Period.

### **10.3 Cost of funds**

- (a) If this Clause 10.3 (*Cost of funds*) applies to the Loan or part of the Loan for an Interest Period, Clause 8.1 (*Calculation of interest*) shall not apply to the Loan or that part of the Loan for that Interest Period and the rate of interest on the Loan or that part of the Loan for that Interest Period shall be the percentage rate per annum which is the sum of:
  - (i) the Margin; and
  - (ii) the weighted average of the rates notified to the Facility Agent by each Lender as soon as practicable and in any event by the Reporting Time for the Loan or that part of the Loan to be that which expresses as a percentage rate per annum its cost of funds relating to its participation in the Loan or that part of the Loan.
- (b) If this Clause 10.3 (*Cost of funds*) applies and the Facility Agent or the Borrowers so require, the Facility Agent and the Borrowers shall enter into negotiations (for a period of not more than 30 days) with a view to agreeing a substitute basis for determining the rate of interest or (as the case may be) an alternative basis for funding.
- (c) Subject to Clause 44.4 (*Changes to reference rates*), any substitute or alternative basis agreed pursuant to paragraph (b) above shall, with the prior consent of all the Lenders and the Borrowers, be binding on all Parties.
- (d) If the rate notified to the Facility Agent under sub-paragraph (ii) of paragraph (a) above is less than zero, the relevant rate shall be deemed to be zero.
- (e) If this Clause 10.3 (*Cost of funds*) applies but any Lender does not supply a quotation by the time specified in sub-paragraph (ii) of paragraph (a) above, the rate of interest shall be calculated on the basis of the rates notified by the remaining Lenders.

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- (f) If this Clause 10.3 (*Cost of funds*) applies, the Facility Agent shall, as soon as is practicable, notify the Borrowers.

## **11 FEES AND K-SURE PREMIUM**

### **11.1 Commitment fee**

- (a) The Borrowers shall pay to the Facility Agent (for the account of each Lender) a fee computed at the rate of 0.50 per cent. per annum on that Lender's Available Commitment from time to time for the Availability Period.
- (b) The accrued commitment fee is payable quarterly in arrears during the period commencing from the date of this Agreement to the last day of the Availability Period on the last day of such period and, if cancelled, on the cancelled amount of the relevant Lender's Commitment at the time the cancellation is effective.

### **11.2 Arrangement fee**

The Borrowers shall pay to the Mandated Lead Arranger a non-refundable arrangement fee as set out in the relevant Fee Letter.

### **11.3 Agency fee**

The Borrowers shall pay to the Facility Agent (for its own account) a non-refundable agency fee of \$18,000 which shall be payable to the Facility Agent on the date of this Agreement and following that annually on each anniversary of the date of this Agreement until and including the Termination Date.

### **11.4 K-SURE Premium**

- (a) The Borrowers shall pay to the K-SURE Agent (for the account of K-SURE) the K-SURE Premium prior to the Utilisation Date in relation to each K-SURE Secured Pre-delivery Advance A.
- (b) The obligation of the Borrowers to pay the relevant K-SURE Premium shall be an absolute obligation and shall not be affected by any matter whatsoever (including the failure of the Borrowers to utilise the Facility). No part of each K-SURE Premium shall be refundable except in accordance with the terms of the relevant K-SURE Insurance Policy and K-SURE's internal regulations.
- (c) The Borrowers acknowledge that the amount of each K-SURE Premium will be determined solely by K-SURE and no Finance Party is in any way involved in the determination of the amount of each K-SURE Premium and agrees that the Borrowers shall have no claim or defence against any Finance Party in connection with the amount of such K-SURE Premium.
- (d) The Borrowers shall pay to the K-SURE Agent on demand (for the account of K-SURE) any additional premium payable in respect of any amendment or waiver permitted by Clause 44 (*Amendments and Waivers*) pursuant to the terms of any K-SURE Insurance Policy.

## SECTION 6

### ADDITIONAL PAYMENT OBLIGATIONS

#### 12 TAX GROSS UP AND INDEMNITIES

##### 12.1 Definitions

(a) In this Agreement:

“**Protected Party**” means K-SURE and a Finance Party which is or will be subject to any liability, or required to make any payment, for or on account of Tax in relation to a sum received or receivable (or any sum deemed for the purposes of Tax to be received or receivable) under a Finance Document.

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

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

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

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

##### 12.2 Tax gross-up

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

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

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

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

(e) Within 30 days of making either a Tax Deduction or any payment required in connection with that Tax Deduction, the Borrower making that Tax Deduction shall deliver to the Facility Agent for the Finance Party entitled to the payment evidence reasonably satisfactory to that Finance Party that the Tax Deduction has been made or (as applicable) any appropriate payment paid to the relevant taxing authority.



### 12.3 Tax indemnity

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

### 12.4 Tax Credit

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

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

### 12.5 Stamp taxes

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

## 12.6 VAT

- (a) All amounts expressed to be payable under a Finance Document by any Party to a Finance Party which (in whole or in part) constitute the consideration for any supply for VAT purposes are deemed to be exclusive of any VAT which is chargeable on that supply, and accordingly, subject to paragraph (b) below, if VAT is or becomes chargeable on any supply made by any Finance Party to any Party under a Finance Document and such Finance Party is required to account to the relevant tax authority for the VAT, that Party must pay to such Finance Party (in addition to and at the same time as paying any other consideration for such supply) an amount equal to the amount of the VAT (and such Finance Party must promptly provide an appropriate VAT invoice to that Party).
- (b) If VAT is or becomes chargeable on any supply made by any Finance Party (the “**Supplier**”) to any other Finance Party (the “**Recipient**”) under a Finance Document, and any Party other than the Recipient (the “**Relevant Party**”) is required by the terms of any Finance Document to pay an amount equal to the consideration for that supply to the Supplier (rather than being required to reimburse or indemnify the Recipient in respect of that consideration):
- (i) (where the Supplier is the person required to account to the relevant tax authority for the VAT) the Relevant Party must also pay to the Supplier (at the same time as paying that amount) an additional amount equal to the amount of the VAT. The Recipient must (where this sub-paragraph (i) applies) promptly pay to the Relevant Party an amount equal to any credit or repayment the Recipient receives from the relevant tax authority which the Recipient reasonably determines relates to the VAT chargeable on that supply; and
  - (ii) (where the Recipient is the person required to account to the relevant tax authority for the VAT) the Relevant Party must promptly, following demand from the Recipient, pay to the Recipient an amount equal to the VAT chargeable on that supply but only to the extent that the Recipient reasonably determines that it is not entitled to credit or repayment from the relevant tax authority in respect of that VAT.
- (c) Where a Finance Document requires any Party to reimburse or indemnify a Finance Party for any cost or expense, that Party shall reimburse or indemnify (as the case may be) such Finance Party for the full amount of such cost or expense, including such part of it as represents VAT, save to the extent that such Finance Party reasonably determines that it is entitled to credit or repayment in respect of such VAT from the relevant tax authority.
- (d) Any reference in this Clause 12.6 (VAT) to any Party shall, at any time when that Party is treated as a member of a group or unity (or fiscal unity) for VAT purposes, include (where appropriate and unless the context otherwise requires) a reference to the person who is treated at that time as making the supply, or (as appropriate) receiving the supply, under the grouping rules provided for in Article 11 of Council Directive 2006/112/EC (or as implemented by the relevant member state of the European Union or equivalent provisions imposed elsewhere) so that a reference to a Party shall be construed as a reference to that Party or the relevant group or unity (or fiscal unity) of which that Party is a member for VAT purposes at the relevant time or the relevant representative member (or representative or head) of that group or unity at the relevant time (as the case may be).

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- (e) In relation to any supply made by a Finance Party to any Party under a Finance Document, if reasonably requested by such Finance Party, that Party must promptly provide such Finance Party with details of that Party's VAT registration and such other information as is reasonably requested in connection with such Finance Party's VAT reporting requirements in relation to such supply.

#### 12.7 FATCA Information

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

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- (ii) where a Borrower is a US Tax Obligor on a Transfer Date and the relevant Lender is a New Lender, the relevant Transfer Date; or
  - (iii) where a Borrower is not a US Tax Obligor, the date of a request from the Facility Agent, supply to the Facility Agent:
    - (iv) a withholding certificate on Form W-8, Form W-9 or any other relevant form; or
    - (v) any withholding statement or other document, authorisation or waiver as the Facility Agent may require to certify or establish the status of such Lender under FATCA or that other law or regulation.
  - (f) The Facility Agent shall provide any withholding certificate, withholding statement, document, authorisation or waiver it receives from a Lender pursuant to paragraph (e) above to the Borrowers.
  - (g) If any withholding certificate, withholding statement, document, authorisation or waiver provided to the Facility Agent by a Lender pursuant to paragraph (e) above is or becomes materially inaccurate or incomplete, that Lender shall promptly update it and provide such updated withholding certificate, withholding statement, document, authorisation or waiver to the Facility Agent unless it is unlawful for the Lender to do so (in which case the Lender shall promptly notify the Facility Agent). The Facility Agent shall provide any such updated withholding certificate, withholding statement, document, authorisation or waiver to the Borrowers.
  - (h) The Facility Agent may rely on any withholding certificate, withholding statement, document, authorisation or waiver it receives from a Lender pursuant to paragraph (e) or (g) above without further verification. The Facility Agent shall not be liable for any action taken by it under or in connection with paragraphs (e), (f) or (g) above.

## **12.8 FATCA Deduction**

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

## **13 INCREASED COSTS**

### **13.1 Increased costs**

- (a) Subject to Clause 13.3 (*Exceptions*), the Borrowers shall, within three Business Days of a demand by the Facility Agent, pay for the account of a Finance Party the amount of any Increased Costs incurred by that Finance Party or any of its Affiliates as a result of:
  - (i) the introduction of or any change in (or in the interpretation, administration or application of) any law or regulation; or

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- (ii) compliance with any law or regulation made,  
in each case after the date of this Agreement; or
  - (iii) the implementation, application of or compliance with Basel III or CRD IV or any law or regulation that implements or applies Basel III or CRD IV.
- (b) In this Agreement:
- (i) **“Basel III”** means:
    - (A) the agreements on capital requirements, a leverage ratio and liquidity standards contained in “Basel III: A global regulatory framework for more resilient banks and banking systems”, “Basel III: International framework for liquidity risk measurement, standards and monitoring” and “Guidance for national authorities operating the countercyclical capital buffer” published by the Basel Committee on Banking Supervision in December 2010, each as amended, supplemented or restated;
    - (B) the rules for global systemically important banks contained in “Global systemically important banks: assessment methodology and the additional loss absorbency requirement – Rules text” published by the Basel Committee on Banking Supervision in November 2011, as amended, supplemented or restated; and
    - (C) any further guidance or standards published by the Basel Committee on Banking Supervision relating to “Basel III”.
  - (ii) **“CRD IV”** means:
    - (A) Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending regulation (EU) No. 648/2012, as amended by Regulation (EU) 2019/876;
    - (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, as amended by Directive (EU) 2019/878; and
    - (C) any other law or regulation which implements Basel III.
  - (iii) **“Increased Costs”** means:
    - (A) a reduction in the rate of return from the Facility or on a Finance Party’s (or its Affiliate’s) overall capital;
    - (B) an additional or increased cost; or
    - (C) a reduction of any amount due and payable under any Finance Document,

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

### 13.2 Increased cost claims

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

### 13.3 Exceptions

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

- (a) attributable to a Tax Deduction required by law to be made by a Borrower;
- (b) attributable to a FATCA Deduction required to be made by a Party;
- (c) compensated for by Clause 12.3 (*Tax indemnity*) (or would have been compensated for under Clause 12.3 (*Tax indemnity*) but was not so compensated solely because any of the exclusions in paragraph (b) of Clause 12.3 (*Tax indemnity*) applied);
- (d) compensated for by any payment made pursuant to Clause 14.3 (*Mandatory Cost*); or
- (e) attributable to the wilful breach by the relevant Finance Party or its Affiliates of any law or regulation.

## 14 OTHER INDEMNITIES

### 14.1 Currency indemnity

- (a) If any sum due from a Borrower 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 Borrower; or
  - (ii) obtaining or enforcing an order, judgment or award in relation to any litigation or arbitration proceedings,that Borrower shall, as an independent obligation, on demand, indemnify each Secured Party and K-SURE to which that Sum is due against any cost, loss or liability arising out of or as a result of the conversion including any discrepancy between (A) the rate of exchange used to convert that Sum from the First Currency into the Second Currency and (B) the rate or rates of exchange available to that person at the time of its receipt of that Sum.
- (b) Each Borrower 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 Borrower shall, on demand, indemnify each Secured Party and K-SURE against any cost, loss or liability incurred by it as a result of:
- (i) the occurrence of any Event of Default;
  - (ii) a failure by a Transaction Obligor to pay any amount due under a Finance Document on its due date, including without limitation, any cost, loss or liability arising as a result of Clause 33 (*Sharing among the Finance Parties*);
  - (iii) funding, or making arrangements to fund, its participation in an Advance 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 Secured Party alone); or
  - (iv) the Loan (or part of the Loan) not being prepaid in accordance with a notice of prepayment given by the Borrowers.
- (b) Each Borrower shall, on demand, indemnify each Finance Party, each Affiliate of a Finance Party, K-SURE and each officer or employee of a Finance Party or its Affiliate or K-SURE (each such person for the purposes of this Clause 14.2 (*Other indemnities*) an “**Indemnified Person**”), against any cost, loss or liability (including, without limitation, for negligence or any other category of liability whatsoever) 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 Ship 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 or of K-SURE may rely on this Clause 14.2 (*Other indemnities*) subject to Clause 1.5 (*Third party rights*) and the provisions of the Third Parties Act.

#### 14.3 Mandatory Cost

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

- (a) in the case of a Lender lending from a Facility Office in a Participating Member State, the minimum reserve requirements (or other requirements having the same or similar purpose) of the European Central Bank (or any other authority or agency which replaces all or any of its functions) in respect of loans made from that Facility Office; and

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

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

#### **14.4 Indemnity to the Facility Agent, K-SURE Agent and K-SURE**

Each Borrower shall, on demand, indemnify the Facility Agent, the K-SURE Agent and K-SURE against:

- (a) any cost, loss or liability incurred by it (acting reasonably) as a result of:
- (i) investigating any event which it reasonably believes is a Default; or
  - (ii) acting or relying on any notice, request or instruction which it reasonably believes to be genuine, correct and appropriately authorised; or
  - (iii) instructing lawyers, accountants, tax advisers, surveyors or other professional advisers or experts as permitted under the Finance Documents; and
- (b) any cost, loss or liability (including, without limitation, for negligence or any other category of liability whatsoever) incurred by the Facility Agent (otherwise than by reason of the Facility Agent's gross negligence or wilful misconduct) or, in the case of any cost, loss or liability pursuant to Clause 34.11 (*Disruption to Payment Systems etc.*) notwithstanding the Facility Agent's negligence, gross negligence or any other category of liability whatsoever but not including any claim based on fraud of the Facility Agent in acting as Facility Agent under the Finance Documents.

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

- (a) Each Borrower shall, on demand, indemnify the Security Agent and every Receiver and Delegate against any cost, loss or liability (including, without limitation, for negligence or any other category of liability whatsoever) incurred by any of them:
- (i) in relation to or as a result of:
    - (A) any failure by a Borrower to comply with its obligations under Clause 16 (*Costs and Expenses*);
    - (B) acting or relying on any notice, request or instruction which it reasonably believes to be genuine, correct and appropriately authorised;
    - (C) the taking, holding, protection or enforcement of the Finance Documents and the Transaction Security;



- (D) the exercise of any of the rights, powers, discretions, authorities and remedies vested in the Security Agent and each Receiver and Delegate by the Finance Documents or by law;
  - (E) any default by any Transaction Obligor in the performance of any of the obligations expressed to be assumed by it in the Finance Documents;
  - (F) any action by any Transaction Obligor which vitiates, reduces the value of, or is otherwise prejudicial to, the Transaction Security; and
  - (G) instructing lawyers, accountants, tax advisers, surveyors or other professional advisers or experts as permitted under the Finance Documents,
- (ii) acting as Security Agent, Receiver or Delegate under the Finance Documents or which otherwise relates to any of the Security Property or the performance of the terms of this Agreement or the other Finance Documents (otherwise, in each case, than by reason of the relevant Security Agent's, Receiver's or Delegate's gross negligence or wilful misconduct).
- (b) The Security Agent and every Receiver and Delegate may, in priority to any payment to the Secured Parties, indemnify itself out of the Security Assets in respect of, and pay and retain, all sums necessary to give effect to the indemnity in this Clause 14.5 (*Indemnity to the Security Agent*) and shall have a lien on the Transaction Security and the proceeds of the enforcement of the Transaction Security for all monies payable to it.

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

### **15.1 Mitigation**

- (a) Each Finance Party shall, in consultation with the 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 and Sanctions affecting a Lender), Clause 12 (*Tax Gross Up and Indemnities*), Clause 13 (*Increased Costs*) or paragraph (a) of Clause 14.3 (*Mandatory Cost*) including (but not limited to) transferring its rights and obligations under the Finance Documents to another Affiliate or Facility Office.
- (b) Paragraph (a) above does not in any way limit the obligations of any Transaction Obligor under the Finance Documents.

### **15.2 Limitation of liability**

- (a) Each Borrower shall, on demand, indemnify each Finance Party for all costs and expenses reasonably incurred by that Finance Party as a result of steps taken by it under Clause 15.1 (*Mitigation*).
- (b) A Finance Party is not obliged to take any steps under Clause 15.1 (*Mitigation*) if either:
- (i) a Default has occurred and is continuing; or
  - (ii) in the opinion of that Finance Party (acting reasonably), to do so might be prejudicial to it.

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## **16 COSTS AND EXPENSES**

### **16.1 Transaction expenses**

The Borrowers shall, on demand, reimburse each Secured Party and K-SURE for the amount of all costs and expenses (including legal fees and VAT) reasonably incurred by each of them in connection with the negotiation, preparation, printing, execution, syndication and perfection of:

- (a) this Agreement and any other documents referred to in this Agreement or in a Security Document; and
- (b) any other Finance Documents executed after the date of this Agreement.

### **16.2 Amendment costs**

Subject to Clause 16.4 (*Reference rate transition costs*), if:

- (a) a Transaction Obligor requests an amendment, waiver or consent; or
- (b) an amendment is required pursuant to Clause 34.9 (*Change of currency*); or
- (c) a Transaction Obligor requests, and the Security Agent agrees to, the release of all or any part of the Security Assets from the Transaction Security,

the Borrowers shall, on demand, reimburse Secured Party and K-SURE for the amount of all costs and expenses (including legal fees and VAT) reasonably incurred by each of them in responding to, evaluating, negotiating or complying with that request or requirement.

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

The Borrowers shall, on demand, pay to each Secured Party and K-SURE the amount of all costs and expenses (including legal fees and VAT) incurred by that Secured Party or, as the case may be, by K-SURE 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 Secured Party as a consequence of it entering into a Finance Document, taking or holding the Transaction Security, or enforcing those rights.

### **16.4 Reference rate transition costs**

The Borrowers shall on demand reimburse each of the Facility Agent and the Security Agent for the amount of all documented costs and expenses (including legal fees and VAT) reasonably incurred by each Secured Party in connection with:

- (a) the negotiation or entry into of any Reference Rate Supplement or Compounding Methodology Supplement; or
- (b) any amendment, waiver or consent relating to:
  - (i) any Reference Rate Supplement or Compounding Methodology Supplement; or
  - (ii) any change arising as a result of an amendment required under Clause 44.4 (*Changes to reference rates*).

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**SECTION 7**

**JOINT AND SEVERAL LIABILITY OF BORROWERS**

**17 JOINT AND SEVERAL LIABILITY OF THE BORROWERS**

**17.1 Joint and several liability**

All liabilities and obligations of the Borrowers under this Agreement shall, whether expressed to be so or not, be joint and several.

**17.2 Waiver of defences**

The liabilities and obligations of a Borrower shall not be impaired by:

- (a) this Agreement being or later becoming void, unenforceable or illegal as regards the other Borrower;
- (b) any Lender or the Security Agent entering into any rescheduling, refinancing or other arrangement of any kind with the other Borrower;
- (c) any Lender or the Security Agent releasing the other Borrower or any Security created by a Finance Document; or
- (d) any time, waiver or consent granted to, or composition with the other Borrower or other person;
- (e) the release of the other Borrower or any other person under the terms of any composition or arrangement with any creditor of any member of the Group;
- (f) 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, the 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;
- (g) any incapacity or lack of power, authority or legal personality of or dissolution or change in the members or status of the other Borrower or any other person;
- (h) any amendment, novation, supplement, extension, restatement (however fundamental, and whether or not more onerous) or replacement of a Finance Document or any other document or security 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;
- (i) any unenforceability, illegality or invalidity of any obligation or any person under any Finance Document or any other document or security; or
- (j) any insolvency or similar proceedings.

**17.3 Principal Debtor**

Each Borrower declares that it is and will, throughout the Security Period, remain a principal debtor for all amounts owing under this Agreement and the Finance Documents and no Borrower shall, in any circumstances, be construed to be a surety for the obligations of the other Borrower under this Agreement.

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**17.4 Borrower restrictions**

- (a) Subject to paragraph (b) below, during the Security Period no Borrower shall:
- (i) claim any amount which may be due to it from the other Borrower whether in respect of a payment made under, or matter arising out of, this Agreement or any Finance Document, or any matter unconnected with this Agreement or any Finance Document; or
  - (ii) take or enforce any form of security from the other Borrower for such an amount, or in any way seek to have recourse in respect of such an amount against any asset of the other Borrower; or
  - (iii) set off such an amount against any sum due from it to the other Borrower; or
  - (iv) prove or claim for such an amount in any liquidation, administration, arrangement or similar procedure involving the other Borrower; or
  - (v) exercise or assert any combination of the foregoing.
- (b) If during the Security Period, the Facility Agent, by notice to a Borrower, requires it to take any action referred to in paragraph (a) above in relation to the other Borrower, that Borrower shall take that action as soon as practicable after receiving the Facility Agent's notice.

**17.5 Deferral of Borrowers' rights**

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 Facility 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:

- (a) to be indemnified by the other Borrower; or
- (b) to claim any contribution from the other Borrower in relation to any payment made by it under the Finance Documents.

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## SECTION 8

### REPRESENTATIONS, UNDERTAKINGS AND EVENTS OF DEFAULT

#### 18 REPRESENTATIONS

##### 18.1 General

Each Borrower makes the representations and warranties set out in this Clause 18 (*Representations*) to each Finance Party on the date of this Agreement.

##### 18.2 Status

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

##### 18.3 Share capital and ownership

- (a) Each Borrower is authorised to issue 500 registered shares of no par value common stock, all of which shares have been issued in registered form and are fully paid and non-assessable.
- (b) The legal title to and beneficial interest in the issued shares in each Borrower is held free of any Security or any other claim by the Shareholder and each Borrower is 100 per cent. owned indirectly by the Guarantor.
- (c) None of the issued shares in any Borrower is subject to any option to purchase, pre-emption rights or similar rights.

##### 18.4 Binding obligations

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

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

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

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- (d) No concurrence, consent or authorisation of any person is required for the creation of or otherwise in connection with any Transaction Security.

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

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

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

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

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

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

All Authorisations required or desirable:

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

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

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

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**18.10 Insolvency**

No:

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

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

**18.11 No filing or stamp taxes**

Under the laws of its Relevant Jurisdictions it is not necessary that the Finance Documents to which it is a party be registered, filed, recorded, notarised or enrolled with any court or other authority in that jurisdiction or that any stamp, registration, notarial or similar Taxes or fees be paid on or in relation to the Finance Documents to which it is a party or the transactions contemplated by those Finance Documents except any filing, recording or enrolling or any tax or fee payable in relation to any Transaction Obligor which is referred to in any legal opinion delivered pursuant to Clause 4 (*Conditions of Utilisation*) and which will be made or paid promptly after the date of the relevant Finance Document.

**18.12 Deduction of Tax**

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

**18.13 No default**

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

**18.14 No misleading information**

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

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**18.15 Financial Statements**

- (a) The Original Financial Statements were prepared in accordance with GAAP consistently applied.
- (b) The Original Financial Statements give a true and fair view of the Group's financial condition as at the end of the relevant financial year and its and the Group's results of operations during the relevant financial year.
- (c) There has been no material adverse change in its assets, business or financial condition (or the assets, business or consolidated financial condition of the Group, in the case of the Guarantor) since the date of the Group's most recent financial statements delivered pursuant to Clause 19.2 (*Financial statements*) (other than as disclosed to the Facility Agent prior to the date of this Agreement).
- (d) The Group's most recent financial statements delivered pursuant to Clause 19.2 (*Financial statements*):
  - (i) have been prepared in accordance with Clause 19.3 (*Requirements as to financial statements*); and
  - (ii) give a true and fair view of (if audited) or fairly represent (if unaudited) its financial condition as at the end of the relevant financial year and operations during the relevant financial year (consolidated in the case of the Guarantor).
- (e) Since the date of the most recent financial statements delivered pursuant to Clause 19.2 (*Financial statements*) there has been no material adverse change in its business, assets or financial condition (or the business or consolidated financial condition of the Group, in the case of the Guarantor).

**18.16 *Pari passu* ranking**

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

**18.17 No proceedings pending or threatened**

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



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**18.18 Validity and completeness of the Pre-delivery Contracts**

- (a) Each Shipbuilding Contract and each Refund Guarantee constitute legal, valid, binding and enforceable obligations of the Builder and the relevant Refund Guarantor respectively.
- (b) The copies of the Pre-delivery Contracts delivered to the Facility Agent before the date of this Agreement are true and complete copies.
- (c) No amendments or additions to any Pre-delivery Contracts have been agreed nor have any rights under any Pre-delivery Contract been waived.

**18.19 No rebates etc.**

There is no agreement or understanding to allow or pay any rebate, premium, inducement, commission, discount or other benefit or payment (however described) to either Borrower or any other member of the Group, the Builder or a third party in connection with the purchase by a Borrower of a Ship, other than as disclosed to the Facility Agent in writing on or before the date of this Agreement.

**18.20 Valuations**

- (a) All information supplied by it or on its behalf to an Approved Valuer for the purposes of a valuation delivered to the Facility Agent in accordance with this Agreement was true and accurate as at the date it was supplied or (if appropriate) as at the date (if any) at which it is stated to be given.
- (b) It has not omitted to supply any information to an Approved Valuer which, if disclosed, would adversely affect any valuation prepared by such Approved Valuer.
- (c) There has been no change to the factual information provided pursuant to paragraph (a) above in relation to any valuation between the date such information was provided and the date of that valuation which, in either case, renders that information untrue or misleading in any material respect.

**18.21 No breach of laws**

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

**18.22 No Charter**

No Ship is subject to any Charter other than a Permitted Charter.

**18.23 Compliance with Environmental Laws**

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

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**18.24 No Environmental Claim**

No Environmental Claim has been made or threatened against any member of the Group or any Ship which might reasonably be expected to have a Material Adverse Effect.

**18.25 No Environmental Incident**

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

**18.26 ISM and ISPS Code compliance**

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

**18.27 Taxes paid**

- (a) It is not and no other member of the Group is materially overdue in the filing of any Tax returns and it is not (and no other member of the Group is) overdue in the payment of any amount in respect of Tax.
- (b) No claims or investigations are being, or to a Borrower's knowledge are reasonably likely to be, made or conducted against it (or any other member of the Group) with respect to Taxes.

**18.28 Financial Indebtedness**

No Borrower has any Financial Indebtedness outstanding other than Permitted Financial Indebtedness.

**18.29 Overseas companies**

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

**18.30 Good title to assets**

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

**18.31 Ownership**

- (a) Each Borrower is the sole legal and beneficial owner of all rights and interests which each of the Pre-delivery Contracts creates in favour of that Borrower.
- (b) With effect on and from each Delivery Date, each Borrower will be the sole legal and beneficial owner of each relevant Ship, its Earnings and its Insurances.
- (c) The Shareholder is the sole legal and beneficial owner of all the shares in each Borrower.
- (d) The Guarantor is the sole legal and beneficial owner of all the issued shares in the Shareholder.

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- (e) With effect on and from the date of its creation or intended creation, each Transaction Obligor will be the sole legal and beneficial owner of any asset that is the subject of any Transaction Security created or intended to be created by such Transaction Obligor.
  - (f) The constitutional documents of each Borrower do not and could not restrict or inhibit any transfer of the shares of the Borrowers on creation or enforcement of the security conferred by the Security Documents.

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

For the purposes of The Council of the European Union Regulation No. 2015/848 on Insolvency Proceedings (recast) (the “**Regulation**”), its centre of main interest (as that term is used in Article 3(1) of the Regulation) is situated within the European Union and/or the state of Approved Flag and it has no “establishment” (as that term is used in Article 2(10) of the Regulation) in any other jurisdiction.

#### **18.33 Place of business**

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

#### **18.34 No employee or pension arrangements**

No Borrower has any employees or any liabilities under any pension scheme.

#### **18.35 Sanctions**

- (a) No Transaction Obligor, and none of its Subsidiaries and none of their respective directors or officers:
  - (i) is a Prohibited Person or is otherwise owned or controlled by or acting directly or indirectly on behalf of or for the benefit of, a Prohibited Person;
  - (ii) owns or controls or is an Affiliate of a Prohibited Person; or
  - (iii) has received notice of or is aware of any claim, action, suit, proceedings or investigation against it with respect to Sanctions.
- (b) Each Transaction Obligor, its Subsidiaries and their respective directors and officers are in compliance with Sanctions in all material respects and are not knowingly engaged in any activity that would reasonably be expected to result in such Transaction Obligor being designated as a Prohibited Person.
- (c) Each Borrower has instituted and maintains adequate policies and procedures designed to promote and achieve compliance by the members of the Group with applicable Sanctions.
- (d) None of the Ships is a Sanctioned Ship.

### **18.36 Anti-money laundering**

- (a) Each Borrower and each other member of the Group has conducted and conduct its businesses in compliance with anti-fraud, anti-bribery, anti-corruption and anti-terrorism laws and Anti-Money Laundering Laws applicable to it.
- (b) Each Borrower has instituted and maintains adequate general policies and procedures designed to promote and achieve compliance by it and the other members of the Group with the laws referred to in paragraph (a) above.
- (c) Neither Borrower nor any other member of the Group (nor any director or officer nor, to the best of its knowledge, any employee of any member of the Group) is subject to or involved in any inquiry, claim, action, suit, proceeding or investigation against it, in each case in relation to any the laws referred to in paragraph (a) above.

### **18.37 US Tax Obligor**

No Transaction Obligor is a US Tax Obligor.

### **18.38 Repetition**

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

## **19 INFORMATION UNDERTAKINGS**

### **19.1 General**

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

### **19.2 Financial statements**

The Borrowers procure that the Guarantor shall supply to the Facility Agent in sufficient copies for all the Lenders and K-SURE:

- (a) as soon as they become available, but in any event within 180 days after the end of each of the Guarantor's financial years, commencing with the financial year ended on 31 December 2022, the annual audited consolidated financial statements of the Group for that financial year; and
- (b) as soon as the same become available, but in any event within 90 days after the end of each quarter of each of the Guarantor's financial years (ending 31 March, 30 June and 30 September), the unaudited consolidated quarterly financial statements of the Group for that financial quarter starting with the quarter ended 31 March 2023.

### **19.3 Requirements as to financial statements**

- (a) Each set of financial statements delivered by the Guarantor pursuant to Clause 19.2 (*Financial statements*) shall be certified by an officer of the company as giving a true and fair view (if audited) or fairly representing (if unaudited) its financial condition and operations as at the date as at which those financial statements were drawn up if it has not been filed with the US Securities and Exchange Commission.

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- (b) The Borrowers shall procure that each set of financial statements of the Guarantor delivered pursuant to Clause 19.2 (*Financial statements*) is prepared using GAAP, accounting practices and financial reference periods consistent with those applied in the preparation of the Original Financial Statements for the Group unless, in relation to any set of financial statements, it notifies the Facility Agent that there has been a change in GAAP, the accounting practices or reference periods, unless such change is described in the filings made with the US Securities and Exchange Commission, and its auditors (or, if appropriate, the auditors of the Guarantor) deliver to the Facility Agent:
- (i) a description of any change necessary for those financial statements to reflect the GAAP, accounting practices and reference periods upon which the Original Financial Statements were prepared; and
  - (ii) sufficient information, in form and substance as may be reasonably required by the Facility Agent, to enable the Lenders to determine whether clause 10 (*financial covenants*) of the Guarantee has been complied with and make an accurate comparison between the financial position indicated in those financial statements and the Guarantor's Original Financial Statements.

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

#### **19.4 DAC6**

- (a) In this Clause 19.4 (*DAC6*), "DAC6" means the Council Directive of 25 May 2018 (2018/822/EU) amending Directive 2011/16/EU or any replacement legislation applicable in the United Kingdom.
- (b) The Borrowers shall supply to the Facility Agent (in sufficient copies for all the Lenders, if the Facility Agent so requests):
- (i) promptly upon the making of such analysis or the obtaining of such advice, any analysis made or advice obtained on whether any transaction contemplated by the Transaction Documents or any transaction carried out (or to be carried out) in connection with any transaction contemplated by the Transaction Documents contains a hallmark as set out in Annex IV of DAC6; and
  - (ii) promptly upon the making of such reporting and to the extent permitted by applicable law and regulation, any reporting made to any governmental or taxation authority by or on behalf of any member of the Group or by any adviser to such member of the Group in relation to DAC6 or any law or regulation which implements DAC6 and any unique identification number issued by any governmental or taxation authority to which any such report has been made (if available).

#### **19.5 Debt Service Cover Ratio**

- (a) The Borrowers shall ensure that at all times during the Security Period, the DSCR shall be at least 1:1 in respect of each period of six Months, on a trailing two quarter basis.

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- (b) The first Test Date (as defined in the Guarantee) on which the DSCR shall be calculated will be on the first Test Date (as defined in the Guarantee) falling at least six Months from the Utilisation Date of the Delivery Advances relating to Ship A and thereafter on each Test Date (as defined in the Guarantee) falling at semi-annual intervals for the duration of the Security Period.
  - (c) Compliance with the undertaking contained in Clause 19.5 (*Debt Service Cover Ratio*) shall be determined on the relevant Test Date (as defined in the Guarantee) as per paragraph (b) above and evidenced by a Compliance Certificate (as defined in the Guarantee).
  - (d) If upon any calculation in accordance with paragraph (a) of Clause 19.5 (*Debt Service Cover Ratio*) above, the DSCR is less than 1:1:
    - (i) no Borrower shall proceed to do any action set out in paragraphs (a) to (c) of Clause 20.18 (*Dividends*); and
    - (ii) each Borrower shall maintain, within 30 days of such shortfall in the DSCR, an amount equal to at least \$500,000 per Ship in the relevant Earnings Account to be released to the relevant Borrower upon satisfaction of the Facility Agent that the DSCR complies with the undertaking in paragraph (a) of Clause 19.5 (*Debt Service Cover Ratio*). For the avoidance of doubt, after the Borrowers' deposit at least \$500,000 on the relevant Earnings Account, such amount shall be held and blocked in a sub-account of the relevant Earnings Account and the relevant Borrower shall not transfer or withdraw such amount until it is released in accordance with this sub-paragraph. Within five Business Days from the deposit of such amount, the Borrowers shall procure a confirmation from the Account Bank holding such Earnings Account that that amount is being held and blocked in a sub-account of the relevant Earnings Account and will not be transferred or withdrawn until the Facility Agent confirms to the Account Bank that the relevant amount may be released to the relevant Borrower under this Agreement. For the sake of clarity, the additional cash deposited pursuant to sub-paragraph (ii) of paragraph (d) of Clause 19.5 (*Debt Service Cover Ratio*) shall not be taken into account in any calculation of the DSCR.

#### **19.6 Information: miscellaneous**

Each Obligor shall, and shall procure that each other Transaction Obligor shall, supply to the Facility Agent (in sufficient copies for all the Lenders, if the Facility Agent so requests) or the K-SURE Agent (for the account of K-SURE, if K-SURE so reasonably requests):

- (a) all material documents dispatched by it to its shareholders (or any class of them) or its creditors generally at the same time as they are dispatched unless the contents of such communication have already been disclosed in the filings made with the US Securities and Exchange Commission;
- (b) promptly upon becoming aware of them, the details of any litigation, arbitration or administrative proceedings or investigations (including proceedings or investigations relating to any alleged or actual breach of the ISM Code or of the ISPS Code) which are current, threatened or pending against any member of the Group, and which might, if adversely determined, have a Material Adverse Effect;
- (c) promptly upon becoming aware of them, the details of any judgment or order of a court, arbitral body or agency which is made against any member of the Group and which might have a Material Adverse Effect or which would involve a liability, or a potential or alleged liability, exceeding \$1,000,000 (or its equivalent in any other currency);

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- (d) promptly, its constitutional documents where these have been amended or varied unless, in respect of the Guarantor, these changes have been disclosed in the filings with the US Securities and Exchange Commission;
  - (e) promptly, such further information and/or documents regarding:
    - (i) each Ship, goods transported on each Ship, its Earnings and its Insurances;
    - (ii) the Security Assets;
    - (iii) compliance of the Transaction Obligors with the terms of the Finance Documents;
    - (iv) the financial condition, business and operations of any member of the Group, as any Finance Party (through the Facility Agent) may reasonably request; and
  - (f) promptly, such further information and/or documents as any Finance Party (through the Facility Agent) or K-SURE (through the K-SURE Agent) may reasonably request.

#### **19.7 Notification of Default**

- (a) Each Borrower shall, and shall procure that each other Transaction Obligor shall, notify the Facility Agent of any 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 Facility Agent, each Borrower shall supply to the Facility Agent a certificate signed by an officer on its behalf certifying that no Default is continuing (or if a Default is continuing, specifying the Default and the steps, if any, being taken to remedy it).

#### **19.8 Use of websites**

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

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

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

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

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

#### **19.9 “Know your customer” checks**

- (a) If:
  - (i) the introduction of or any change in (or in the interpretation, administration or application of) any law or regulation made after the date of this Agreement;
  - (ii) any change in the status of a Transaction Obligor (including, without limitation, a change of ownership of a Transaction Obligor save for the Guarantor) after the date of this Agreement; or
  - (iii) a proposed assignment or transfer by a Lender of any of its rights and obligations under this Agreement to a party that is not a Lender prior to such assignment or transfer,

obliges a Finance Party (or, in the case of sub-paragraph (iii) above, any prospective new Lender) to comply with “know your customer” or similar identification procedures in circumstances where the necessary information is not already available to it, each Borrower shall promptly upon the request of any Finance Party supply, or procure the supply of, such documentation and other evidence as is reasonably requested by a Servicing Party (for itself



or on behalf of any other Finance Party) or any Lender (for itself or, in the case of the event described in sub-paragraph (iii) above, on behalf of any prospective new Lender) in order for such Finance Party or, in the case of the event described in sub-paragraph (iii) above, any prospective new Lender to carry out and be satisfied it has complied with all necessary “know your customer” or other similar checks under all applicable laws and regulations pursuant to the transactions contemplated in the Finance Documents.

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

#### **19.10 K-SURE notification and information**

- (a) The Borrowers shall promptly notify the Facility Agent and the K-SURE Agent by email confirmed by letter of the occurrence of any event involving a political or commercial risk covered by any K-SURE Insurance Policy and any anti-bribery policy and shall cooperate with the Facility Agent and the K-SURE Agent on its request to take all steps necessary on the part of the Borrowers to ensure each K-SURE Insurance Policy remains in full force and effect throughout the Security Period.
- (b) The Borrowers shall promptly provide the Facility Agent and the K-SURE Agent with copies of all available financial or other information required by the K-SURE Agent to satisfy any request for information by K-SURE pursuant to each K-SURE Insurance Policy.

### **20 GENERAL UNDERTAKINGS**

#### **20.1 General**

The undertakings in this Clause 20 (*General Undertakings*) remain in force throughout the Security Period except as the Facility Agent, acting with the authorisation of the Majority Lenders (or, where specified, all the Lenders) may otherwise permit.

#### **20.2 Authorisations**

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

- (a) obtain, comply with and do all that is necessary to maintain in full force and effect;
- (b) supply certified copies to the Facility Agent of,
  - any Authorisation required under any law or regulation of a Relevant Jurisdiction or the state of the Approved Flag at any time of each Ship to enable it to:
    - (i) perform its obligations under the Transaction Documents to which it is a party;
    - (ii) ensure the legality, validity, enforceability or admissibility in evidence in any Relevant Jurisdiction and in the state of the Approved Flag at any time of each Ship of any Transaction Document to which it is a party;
    - (iii) own and operate each Ship (in the case of the Borrowers); and

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- (c) without prejudice to the generality of the above, ensure that if, but for the obtaining of an Authorisation, an Obligor would be in breach of any of the provisions of this Agreement which relate to Sanctions or, by reason of Sanctions, would be prohibited from performing any provision of this Agreement, such an Authorisation is obtained so as to avoid such breach or to enable such performance.

### **20.3 Compliance with laws**

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

### **20.4 Environmental compliance**

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

- (a) comply with all Environmental Laws;
- (b) obtain, maintain and ensure compliance with all requisite Environmental Approvals;
- (c) implement procedures to monitor compliance with and to prevent liability under any Environmental Law, where failure to do so has or is reasonably likely to have a Material Adverse Effect.

### **20.5 Environmental Claims**

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

- (a) any Environmental Claim against any member of the Group which is current, pending or threatened; and
- (b) any facts or circumstances which are reasonably likely to result in any Environmental Claim being commenced or threatened against any member of the Group,

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

### **20.6 Taxation**

- (a) Each Borrower shall, and shall procure that each other Transaction Obligor will pay and discharge all Taxes imposed upon it or its assets within the time period allowed without incurring penalties unless and only to the extent that:
  - (i) such payment is being contested in good faith;
  - (ii) adequate reserves are maintained for those Taxes and the costs required to contest them and both have been disclosed in its latest financial statements delivered to the Facility Agent under Clause 19.2 (*Financial statements*); and
  - (iii) such payment can be lawfully withheld and failure to pay those Taxes does not have or is not reasonably likely to have a Material Adverse Effect.
- (b) No Borrower shall change its residence for Tax purposes.

## 20.7 Overseas companies

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

## 20.8 No change to centre of main interests

Each Borrower shall not change the location of its centre of main interest (as that term is used in Article 3(1) of the Regulation) from either jurisdiction referred to in Clause 18.32 (*Centre of main interests and establishments*) and it will create no “**establishment**” (as that term is used in Article 2(10) of the Regulation) in any jurisdiction.

## 20.9 *Pari passu* ranking

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

## 20.10 Title

- (a) Each Borrower shall hold the legal title to, and own the entire beneficial interest in:
- (i) each Pre-delivery Contract;
  - (ii) with effect from the Delivery Date, each Ship, its Earnings and its Insurances.
- (b) With effect on and from its creation or intended creation, each Borrower shall, and shall procure that each Transaction Obligor shall, hold the legal title to, and own the entire beneficial interest in any other assets the subject of any Transaction Security created or intended to be created by such Borrower or Transaction Obligor.

## 20.11 Negative pledge

- (a) No Borrower shall, and shall procure that no other Transaction Obligor will create or permit to subsist any Security over any of its assets which are, in the case of members of the Group other than the Borrowers, the subject of the Security created or intended to be created by the Finance Documents.
- (b) No Borrower shall:
- (i) sell, transfer or otherwise dispose of any of its assets on terms whereby they are or may be leased to or re-acquired by a Transaction Obligor or any other member of the Group;
  - (ii) sell, transfer or otherwise dispose of any of its receivables on recourse terms;

- (iii) enter into any arrangement under which money or the benefit of a bank or other account may be applied, set-off or made subject to a combination of accounts; or
  - (iv) enter into any other preferential arrangement having a similar effect,  
in circumstances where the arrangement or transaction is entered into primarily as a method of raising Financial Indebtedness or of financing the acquisition of an asset.
- (c) Paragraphs (a) and (b) above do not apply to any Permitted Security.

#### **20.12 Disposals**

- (a) No Borrower 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 (including without limitation any Ship, its Earnings or its Insurances).
- (b) Paragraph (a) above does not apply to any Charter as all Charters are subject to Clause 23.16 (*Restrictions on chartering, appointment of managers etc.*).

#### **20.13 Merger**

No Borrower shall, and shall procure that the Guarantor shall not enter into any amalgamation, demerger, merger, consolidation or corporate reconstruction except in circumstances where the Guarantor is the surviving entity of any such event and there is no Material Adverse Effect on the Guarantor.

#### **20.14 Change of business**

- (a) Each Borrower shall procure that no substantial change is made to the general nature of the business of the Guarantor or the Group from that carried on at the date of this Agreement.
- (b) No Borrower shall engage in any business other than the ownership and operation of its Ship.

#### **20.15 Financial Indebtedness**

No Borrower shall incur or permit to be outstanding any Financial Indebtedness except Permitted Financial Indebtedness.

#### **20.16 Expenditure**

No Borrower shall incur any expenditure, except for expenditure reasonably incurred in the ordinary course of owning, operating, maintaining and repairing its Ship.

#### **20.17 Share capital**

No Borrower shall:

- (a) purchase, cancel, redeem or retire any of its issued shares;
- (b) increase or reduce the number of shares that it is authorized to issue or change the par value of such shares or create any new class of shares;
- (c) issue any further shares except to the Shareholder and provided such new shares are made subject to the terms of the Shares Security applicable to that Borrower immediately upon the issue of such new shares in a manner satisfactory to the Security Agent and the terms of that Shares Security are complied with; or

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- (d) appoint any further director, officer or secretary of that Borrower (unless the provisions of the Shares Security applicable to that Borrower are complied with).

#### **20.18 Dividends**

No Borrower shall, and shall procure that the Guarantor shall not following the occurrence of a Default which is continuing or where any of the following would result in the occurrence of an Event of Default:

- (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 issued shares (or any class of its shares);
- (b) repay or distribute any dividend or share premium reserve; or
- (c) redeem, repurchase, defease, retire or repay any of its issued shares or resolve to do so.

#### **20.19 Other transactions**

No Borrower shall:

- (a) be the creditor in respect of any loan or any form of credit to any person other than another Obligor and where such loan or form of credit is in the ordinary course of its business and in a manner acceptable to the Facility Agent;
- (b) give or allow to be outstanding any guarantee or indemnity in the ordinary course of its business in aggregate not more than \$500,000 to or for the benefit of any person in respect of any obligation of any other person or enter into any document under which that Borrower assumes any liability of any other person other than any guarantee or indemnity given under the Finance Documents;
- (c) enter into any material agreement other than:
  - (i) the Transaction Documents;
  - (ii) any other agreement expressly allowed under any other term of this Agreement; and
- (d) enter into any transaction on terms which are, in any respect, less favourable to that Borrower than those which it could obtain in a bargain made at arms' length; or
- (e) acquire any shares or other securities other than US or UK Treasury bills and certificates of deposit issued by major North American or European banks.

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

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

- (a) make it unlawful or contrary to Sanctions for a Transaction Obligor to perform any of its obligations under the Transaction Documents;

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- (b) cause any obligation of a Transaction Obligor under the Transaction Documents to cease to be legal, valid, binding or enforceable if that cessation individually or together with any other cessations materially or adversely affects the interests of the Secured Parties under the Finance Documents;
  - (c) cause any Transaction Document to cease to be in full force and effect;
  - (d) cause any Transaction Security to rank after, or lose its priority to, any other Security; and
  - (e) imperil or jeopardise the Transaction Security.

#### **20.21 Sanctions undertakings**

- (a) No proceeds of the Loan or any part of the Loan shall be made available, directly or indirectly, to or for the benefit of a Prohibited Person nor shall they be otherwise, directly or indirectly, applied in a manner or for a purpose prohibited by Sanctions, or to fund any activity in a Sanctioned Country or in any manner which would cause any Finance Party to be in breach of or made subject to Sanctions, or at risk of being in breach of or made subject to Sanctions.
- (b) No Transaction Obligor shall fund all or any part of any payment or repayment under the Loan out of proceeds directly or indirectly derived from any activity in a Sanctioned Country or any transaction with a Prohibited Person, or out of proceeds directly or indirectly derived from any other transactions which would be prohibited by Sanctions or in any other manner which would cause any Finance Party to be in breach of or made subject to Sanctions, or at risk of being in breach of or made subject to Sanctions and no such proceeds shall be paid into any Account.
- (c) No Transaction Obligor shall directly or indirectly engage in any transaction, activity or conduct that would cause a Finance Party to be in breach of Sanctions or that could reasonably be expected to result in it being designated as a Prohibited Person.
- (d) Each of the Transaction Obligors has implemented and shall maintain in effect a Sanctions compliance policy which is designed to ensure compliance by each such Transaction Obligor, its Subsidiaries and their respective directors, officers, employees and agents with Sanctions.

#### **20.22 Anti-corruption, anti-bribery, anti-money laundering and anti-terror financing**

- (a) Neither Borrower nor the Guarantor shall (and each Borrower shall procure that no other member of the Group will) directly or indirectly use the proceeds of the Facility for any purpose which would breach any applicable anti-fraud, anti-bribery, anti-corruption and/or anti-terrorism laws or Anti-Money Laundering Laws.
- (b) Each Borrower shall maintain adequate policies and procedures designed to promote and achieve compliance by it and the other members of the Group with any applicable anti-fraud, anti-bribery, anti-corruption and anti-terrorism laws and Anti-Money Laundering Laws.

#### **20.23 Further assurance**

- (a) Each Borrower shall, and shall procure that each other Transaction Obligor will, and in any event within the time period specified by the Security Agent do all such acts (including procuring or arranging any registration, notarisation or authentication or the giving of any notice) or execute or procure execution of all such documents (including assignments, transfers, mortgages, charges, notices, instructions, acknowledgments, proxies and powers of attorney), as the Security Agent may specify (and in such form as the Security Agent may require in favour of the Security Agent or its nominee(s)):

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- (i) to create, perfect, vest in favour of the Security Agent or protect the priority of the Security or any right of any kind created or intended to be created under or evidenced by the Finance Documents (which may include the execution of a mortgage, charge, assignment or other Security over all or any of the assets which are, or are intended to be, the subject of the Transaction Security) or for the exercise of any rights, powers and remedies of any of the Secured Parties provided by or pursuant to the Finance Documents or by law;
  - (ii) to confer on the Security Agent or confer on the Secured Parties Security over any property and assets of that Transaction Obligor located in any jurisdiction equivalent or similar to the Security intended to be conferred by or pursuant to the Finance Documents;
  - (iii) to facilitate or expedite the realisation and/or sale of, the transfer of title to or the grant of, any interest in or right relating to the assets which are, or are intended to be, the subject of the Transaction Security or to exercise any power specified in any Finance Document in respect of which the Security has become enforceable; and/or
  - (iv) to enable or assist the Security Agent to enter into any transaction to commence, defend or conduct any proceedings and/or to take any other action relating to any item of the Security Property.
- (b) Each Borrower shall, and shall procure that each other Transaction Obligor will, take all such action as is available to it (including making all filings and registrations) as may be necessary for the purpose of the creation, perfection, protection or maintenance of any Security conferred or intended to be conferred on the Security Agent or the Secured Parties by or pursuant to the Finance Documents.
- (c) At the same time as a Borrower delivers to the Security Agent any document executed by itself or another Transaction Obligor pursuant to this Clause 20.23 (*Further assurance*), that Borrower shall deliver, or shall procure that such other Transaction Obligor will deliver, to the Security Agent a certificate signed by one of that Borrower's or Transaction Obligor's officers which shall:
- (i) set out the text of a resolution of that Borrower's or Transaction Obligor's directors specifically authorising the execution of the document specified by the Security Agent; and
  - (ii) state that either the resolution was duly passed at a meeting of the directors validly convened and held, throughout which a quorum of directors entitled to vote on the resolution was present, or that the resolution has been signed by all the directors or officers and is valid under that Borrower's or Transaction Obligor's articles of incorporation or limited partnership agreement, as applicable.

**20.24 No change in financial year**

The Borrowers shall procure that the Guarantor shall not change the end of its financial year.

#### 20.25 K-SURE requirements

No Borrower shall, and shall procure that no Guarantor will, act (or omit to act) in a manner that is inconsistent with any requirement of K-SURE under or in connection with any K-SURE Insurance Policy and, in particular:

- (a) each Borrower shall, and shall procure that the Guarantor will, do all that is necessary to ensure that all requirements of K-SURE under or in connection with each K-SURE Insurance Policy are complied with; and
- (b) each Borrower will, and shall procure that the Guarantor will, refrain from acting in any manner which could result in a breach of any requirements of K-SURE under or in connection with each K-SURE Insurance Policy or affect the validity of it.

#### 20.26 K-SURE Insurance Policy protection

If at any time, in the opinion of the K-SURE Agent, any provision of a Finance Document contradicts or conflicts with any provision of any K-SURE Insurance Policy, the Borrowers will:

- (a) take all steps as the Facility Agent, the K-SURE Agent and/or K-SURE shall require to remove such contradiction or conflict; and
- (b) take all steps as the Facility Agent, the K-SURE Agent and/or K-SURE shall require to ensure that each K-SURE Insurance Policy remains in full force and effect.

#### 20.27 K-SURE Override Clause

- (a) Notwithstanding anything to the contrary in any Finance Document, nothing in any Finance Document shall oblige any Lender under the K-SURE Secured Delivery Tranche or the K-SURE Secured Pre-delivery Tranche or a Servicing Party (collectively, the “**K-SURE Secured Finance Parties**” and each a “**K-SURE Secured Finance Party**”) to act (or omit to act) in a manner that is inconsistent with any requirement of K-SURE under or in connection with the relevant K-SURE Insurance Policy and, in particular, each K-SURE Secured Finance Party shall:
  - (i) be authorised to take all such actions as it may consider necessary to ensure that all requirements of K-SURE under or in connection with the relevant K-SURE Insurance Policy are complied with; and
  - (ii) not be obliged to do anything if, in its opinion, to do so could (A) result in a breach of any requirement of K-SURE under or in connection with the relevant K-SURE Insurance Policy, (B) affect the validity of the relevant K-SURE Insurance Policy or (C) otherwise result in a mandatory prepayment event set out in Clause 7.8 (*Termination of K-SURE Insurance Policy*).
- (b) It is acknowledged between the K-SURE Secured Finance Parties that, in the event of any inconsistency between the Finance Documents and the relevant K-SURE Insurance Policy, the relevant K-SURE Insurance Policy shall prevail, as between the K-SURE Secured Finance Parties.
- (c) Nothing in this Clause 20.27 (*K-SURE Override Clause*) shall affect the obligations of the Borrowers under the Finance Documents.



## **20.28 Compliance with terms of the K-SURE Insurance Policy**

With respect to the K-SURE Secured Pre-delivery Tranche and K-SURE Secured Delivery Tranche, each K-SURE Secured Finance Party will cooperate with the Facility Agent and each other Lender and take such action and/or refrain from taking such action as may be reasonably necessary, to ensure that the relevant K-SURE Insurance Policy continue in full force and effect.

## **20.29 Assistance by the Borrowers**

The Borrowers shall provide all information and other assistance reasonably requested by the K-SURE Agent in connection with the relevant K-SURE Insurance Policy.

## **20.30 Instructions from K-SURE**

- (a) The Parties acknowledge and agree that, in accordance with the terms of the relevant K-SURE Insurance Policy, K-SURE may, at any time, instruct a K-SURE Secured Finance Party (whether directly or by notice to the K-SURE Agent) to suspend or to cease to perform any or all of its obligations under this Agreement or any other Finance Document. That K-SURE Secured Finance Party will be required to comply with any such instruction. Each Party agrees that it will not hold any K-SURE Secured Finance Party responsible for complying with any such instruction.
- (b) The Borrowers acknowledge and agree that:
  - (i) a K-SURE Secured Finance Party may be required to exercise, or to refrain from exercising, its rights, powers, authorities and discretions under, and performing its obligations under, or in connection with, the Finance Documents, in accordance with any instructions given to it by K-SURE acting reasonably and in order to ensure the continued effectiveness of the relevant K-SURE Insurance Policy and the protection of its rights thereunder and under the Finance Documents in accordance with the provisions of the relevant K-SURE Insurance Policy; and
  - (ii) a K-SURE Secured Finance Party will not be acting or making any determination unreasonably if such action or such determination is made in accordance with the relevant K-SURE Insurance Policy, or any instructions given to it by K-SURE in accordance with sub-paragraph (i) of paragraph (b) of Clause 20.30 (*Instructions from K-SURE*).

## **21 INSURANCE UNDERTAKINGS**

### **21.1 General**

The undertakings in this Clause 21 (*Insurance Undertakings*) remain in force on and from the relevant Delivery Date throughout the rest of the Security Period except as the Facility Agent, acting with the authorisation of the Majority Lenders (or, where specified, all the Lenders) may otherwise permit.

### **21.2 Maintenance of obligatory insurances**

Each Borrower shall keep the Ship owned by it insured at its expense against:

- (a) fire and usual marine risks (including hull and machinery plus freight interest and hull interest and excess risks);

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- (b) war risks (including terrorism and piracy);
  - (c) protection and indemnity risks; and
  - (d) any other risks against which the Facility Agent acting on the instructions of the Majority Lenders considers, having regard to practices and other circumstances prevailing at the relevant time, it would be reasonable for that Borrower to insure and which are specified by the Facility Agent by notice to that Borrower.

### **21.3 Terms of obligatory insurances**

Each Borrower shall effect such insurances:

- (a) in dollars;
- (b) in the case of fire and usual marine risks and war risks, in an amount on an agreed value basis at least the greater of:
  - (i) 120 per cent. of the Loan; and
  - (ii) the Market Value of the Ship owned by it;
- (c) in the case of oil pollution liability risks, for an aggregate amount equal to the highest level of cover from time to time available under basic protection and indemnity club entry and in the international marine insurance market;
- (d) in the case of protection and indemnity risks, in respect of the full tonnage of its Ship;
- (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.

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

In addition to the terms set out in Clause 21.3 (*Terms of obligatory insurances*), each Borrower shall procure that the obligatory insurances effected by it shall:

- (a) subject always to paragraph (b), name that Borrower, the Guarantor or any Approved Manager as the named assured or co-assured unless the interest of every other named assured is limited:
  - (i) in respect of any obligatory insurances for hull and machinery and war risks;
    - (A) to any provable out-of-pocket expenses that it has incurred and which form part of any recoverable claim on underwriters; and
    - (B) to any third party liability claims where cover for such claims is provided by the policy (and then only in respect of discharge of any claims made against it); and

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- (ii) in respect of any obligatory insurances for protection and indemnity risks, to any recoveries it is entitled to make by way of reimbursement following discharge of any third party liability claims made specifically against it;

and every other named insured has undertaken in writing to the Security Agent (in such form as it requires) that any deductible shall be apportioned between that Borrower and every other named insured in proportion to the gross claims made or paid by each of them and that it shall do all things necessary and provide all documents, evidence and information to enable the Security Agent to collect or recover any moneys which at any time become payable in respect of the obligatory insurances;

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

#### **21.5 Renewal of obligatory insurances**

Each Borrower shall:

- (a) at least 21 days before the expiry of any obligatory insurance effected by it:
  - (i) notify the Facility Agent of the Approved Brokers (or other insurers) and any protection and indemnity or war risks association through or with which it proposes to renew that obligatory insurance and of the proposed terms of renewal; and
  - (ii) obtain the Facility Agents' approval to the matters referred to in sub-paragraph (i) above;
- (b) at least 14 days before the expiry of any obligatory insurance, renew that obligatory insurance in accordance with the Facility Agent's approval pursuant to paragraph (a) above; and
- (c) procure that the Approved Brokers and/or the approved war risks and protection and indemnity associations with which such a renewal is effected shall promptly after the renewal notify the Facility Agent in writing of the terms and conditions of the renewal.

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

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

- 
- (a) *pro forma* copies of all policies relating to the obligatory insurances which they are to effect or renew; and
  - (b) a letter or letters of undertaking in a form required by the Facility Agent and including undertakings by the Approved Brokers that:
    - (i) they will have endorsed on each policy, immediately upon issue, a loss payable clause and a notice of assignment complying with the provisions of Clause 21.4 (*Further protections for the Finance Parties*);
    - (ii) they will hold such policies, and the benefit of such insurances, to the order of the Security Agent in accordance with such loss payable clause;
    - (iii) they will advise the Security Agent immediately of any material change to the terms of the obligatory insurances;
    - (iv) they will, if they have not received notice of renewal instructions from the relevant Borrower or its agents, notify the Security Agent not less than 14 days before the expiry of the obligatory insurances;
    - (v) if they receive instructions to renew the obligatory insurances, they will promptly notify the Facility Agent of the terms of the instructions;
    - (vi) they will not set off against any sum recoverable in respect of a claim relating to the Ship 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 Ship or otherwise, they waive any lien on the policies, or any sums received under them, which they might have in respect of such premiums or other amounts and they will not cancel such obligatory insurances by reason of non-payment of such premiums or other amounts; and
    - (vii) they will arrange for a separate policy to be issued in respect of the Ship owned by that Borrower forthwith upon being so requested by the Facility Agent.

#### **21.7 Copies of certificates of entry**

Each Borrower shall ensure that any protection and indemnity and/or war risks associations in which the Ship owned by it is entered provide the Security Agent 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 Facility Agent acting on the instructions of Majority Lenders; and
- (c) a certified copy of each certificate of financial responsibility for pollution by oil or other Environmentally Sensitive Material issued by the relevant certifying authority in relation to that Ship.

#### **21.8 Deposit of original policies**

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

### **21.9 Payment of premiums**

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

### **21.10 Guarantees**

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

### **21.11 Compliance with terms of insurances**

- (a) No Borrower shall do or omit to do (nor permit to be done or not to be done) any act or thing which would or might render any obligatory insurance invalid, void, voidable or unenforceable or render any sum payable under an obligatory insurance repayable in whole or in part.
- (b) Without limiting paragraph (a) above, each Borrower shall:
  - (i) take all necessary action and comply with all requirements which may from time to time be applicable to the obligatory insurances, and (without limiting the obligation contained in sub-paragraph (iii) of paragraph (b) of Clause 21.6 (*Copies of policies; letters of undertaking*)) ensure that the obligatory insurances are not made subject to any exclusions or qualifications to which the Facility Agent has not given its prior approval;
  - (ii) not make any changes relating to the classification or classification society or manager or operator of the Ship owned by it approved by the underwriters of the obligatory insurances;
  - (iii) make (and promptly supply copies to the Facility Agent of) all quarterly or other voyage declarations which may be required by the protection and indemnity risks association in which the Ship owned by it is entered to maintain cover for trading to the United States of America and Exclusive Economic Zone (as defined in the United States Oil Pollution Act 1990 or any other applicable legislation); and
  - (iv) not employ the Ship owned by it, nor allow it to be employed, otherwise than in conformity with the terms and conditions of the obligatory insurances, without first obtaining the consent of the insurers and complying with any requirements (as to extra premium or otherwise) which the insurers specify.

### **21.12 Alteration to terms of insurances**

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

### **21.13 Settlement of claims**

Each Borrower shall:

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

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- (b) do all things necessary and provide all documents, evidence and information to enable the Security Agent to collect or recover any moneys which at any time become payable in respect of the obligatory insurances.

#### **21.14 Provision of copies of communications**

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

- (a) the Approved Brokers;
- (b) the approved protection and indemnity and/or war risks associations; and
- (c) the approved insurance companies and/or underwriters,  
which relate directly or indirectly to:
  - (i) 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) above relating wholly or partly to the effecting or maintenance of the obligatory insurances.

#### **21.15 Provision of information**

Each Borrower shall promptly provide the Facility Agent (or any persons which it may designate) with any information which the Facility Agent (or any such designated person) requests for the purpose of:

- (a) obtaining or preparing any report from an independent marine insurance broker as to the adequacy of the obligatory insurances effected or proposed to be effected; and/or
- (b) effecting, maintaining or renewing any such insurances as are referred to in Clause 21.16 (*Mortgagee's interest and additional perils insurances*) or dealing with or considering any matters relating to any such insurances,  
and the Borrowers shall, forthwith upon demand, indemnify the Security Agent in respect of all fees and other expenses incurred by or for the account of the Security Agent in connection with any such report as is referred to in paragraph (a) above.

#### **21.16 Mortgagee's interest and additional perils insurances**

- (a) The Security Agent shall be entitled from time to time to effect, maintain and renew a mortgagee's interest marine insurance, in an amount which equals 110 per cent. of the Loan, and a mortgagee's interest additional perils insurance, in an amount which equals 100 per cent. of the Loan, on such terms, through such insurers and generally in such manner as the Security Agent acting on the instructions of the Majority Lenders may reasonably from time to time consider appropriate.
- (b) 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 paragraph (a) above or dealing with, or considering, any matter arising out of any such insurance.

## **22 PRE-DELIVERY CONTRACT UNDERTAKINGS**

### **22.1 General**

The undertakings in this Clause 22 (*Pre-delivery Contract Undertakings*) remain in force throughout the Security Period except as the Facility Agent, acting with the authorisation of the Majority Lenders (or, where specified, all the Lenders) may otherwise permit.

### **22.2 Performance of Pre-delivery Contracts**

Each Borrower shall:

- (a) observe and perform all its obligations and meet all its liabilities under or in connection with each Pre-delivery Contract;
- (b) use its best endeavours to ensure performance and observance by the other parties of their obligations and liabilities under each Pre-delivery Contract; and
- (c) take any action, or refrain from taking any action, which the Facility Agent may specify in connection with any breach, or possible future breach, of a Pre-delivery Contract by that Borrower or any other party or with any other matter which arises or may later arise out of or in connection with a Pre-delivery Contract.

### **22.3 No variation, release etc. of Pre-delivery Contracts**

Each Borrower shall not, whether by a document, by conduct, by acquiescence or in any other way:

- (a) vary any Pre-delivery Contract in any material way without the consent of the Facility Agent acting with the authorisation of the Majority Lenders and K-SURE;
- (b) release, waive, suspend, subordinate or permit to be lost or impaired any interest or right of any kind which each Borrower has at any time to, in or in connection with each of the Pre-delivery Contracts or in relation to any matter arising out of or in connection with any Pre-delivery Contract;
- (c) waive any person's breach of any Pre-delivery Contract; or
- (d) rescind or terminate any Pre-delivery Contract or treat itself as discharged or relieved from further performance of any of its obligations or liabilities under a Pre-delivery Contract.

### **22.4 Action to protect validity of Pre-delivery Contracts**

Each Borrower shall use its reasonable endeavours to ensure that all interests and rights conferred by each relevant Pre-delivery Contract remain valid and enforceable in all respects and retain the priority which they were intended to have.

### **22.5 No assignment etc. of Pre-delivery Contracts**

Save as permitted by the Finance Documents, each Borrower shall not assign, novate, transfer or dispose of any of its rights or obligations under any Pre-delivery Contract.

## 22.6 Provision of information relating to Pre-delivery Contract

Without prejudice to Clause 19.6 (*Information: miscellaneous*) each Borrower shall:

- (a) immediately inform the Facility Agent if any breach of any Pre-delivery Contract occurs or a serious risk of such a breach arises and of any other event or matter affecting a Pre-delivery Contract which has or is reasonably likely to have a Material Adverse Effect;
- (b) provide the Facility Agent, promptly after service, with copies of all notices served on or by that Borrower under or in connection with any Pre-delivery Contract; and
- (c) provide the Facility Agent with any information which it requires about any interest or right of any kind which that Borrower has at any time to, in or in connection with, each of the Pre-delivery Contracts or in relation to any matter arising out of or in connection with any Pre-delivery Contract including the progress of the construction of the relevant Ship.

## 23 SHIP UNDERTAKINGS

### 23.1 General

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

### 23.2 Ships' names and registration

Each Borrower shall, in respect of the Ship owned by it:

- (a) keep that Ship registered in its name under the Approved Flag from time to time at its port of registration;
- (b) not do or allow to be done anything as a result of which such registration might be suspended, cancelled or imperilled;
- (c) not enter into any dual flagging arrangement in respect of that Ship; and
- (d) not change the name of that Ship,

**provided that** any change of name or flag of a Ship shall be subject to:

- (i) that Ship remaining subject to Security securing the Secured Liabilities created by a first priority or preferred ship mortgage on that Ship and, if appropriate, a first priority deed of covenant collateral to that mortgage (or equivalent first priority Security) on substantially the same terms as the Mortgage on that Ship and, if applicable, related Deed of Covenant and on such other terms and in such other form as the Facility Agent, acting with the authorisation of the Majority Lenders, shall approve or require; and
- (ii) the execution of such other documentation amending and supplementing the Finance Documents as the Facility Agent, acting with the authorisation of the Majority Lenders, shall approve or require.



### **23.3 Repair and classification**

Each Borrower 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; and
- (b) so as to maintain the Approved Classification free of overdue recommendations and conditions.

### **23.4 Classification society undertaking**

Each Borrower shall, in respect of the Ship owned by it, instruct the Approved Classification Society (and procure (and in relation to paragraph (a) below, use reasonable endeavours to procure) that the Approved Classification Society undertakes with the Security Agent):

- (a) to send to the Security Agent, following receipt of a written request from the Security Agent, certified true copies of all original class records held by the Approved Classification Society in relation to that Ship;
- (b) to allow the Security Agent (or its agents), at any time and from time to time, to inspect the original class and related records of that Borrower and that Ship at the offices of the Approved Classification Society and to take copies of them;
- (c) to notify the Security Agent immediately in writing if the Approved Classification Society:
  - (i) receives notification from that Borrower or any person that that Ship's Approved 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 that Ship's class under the rules or terms and conditions of that Borrower or that Ship's membership of the Approved Classification Society;
- (d) following receipt of a written request from the Security Agent:
  - (i) to confirm that that Borrower is not in default of any of its contractual obligations or liabilities to the Approved Classification Society, including confirmation that it has paid in full all fees or other charges due and payable to the Approved Classification Society; or
  - (ii) to confirm that that Borrower is in default of any of its contractual obligations or liabilities to the Approved Classification Society, to specify to the Security Agent in reasonable detail the facts and circumstances of such default, the consequences of such default, and any remedy period agreed or allowed by the Approved Classification Society.

### **23.5 Modifications**

No Borrower shall make any modification or repairs to, or replacement of, any Ship or equipment installed on it which would or might materially alter the structure, type or performance characteristics of that Ship or materially reduce its value.

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### **23.6 Removal and installation of parts**

- (a) Subject to paragraph (b) below, no Borrower shall remove any material part of any Ship, or any item of equipment installed on any Ship unless:
- (i) the part or item so removed is forthwith replaced by a suitable part or item which is in the same condition as or better condition than the part or item removed;
  - (ii) the replacement part or item is free from any Security in favour of any person other than the Security Agent; and
  - (iii) the replacement part or item becomes, on installation on that Ship, the property of that Borrower and subject to the security constituted by the Mortgage on that Ship and, if applicable, the related Deed of Covenant.
- (b) A Borrower may install equipment owned by a third party if the equipment can be removed without any risk of damage to the Ship owned by that Borrower.

### **23.7 Surveys**

Each Borrower shall submit the Ship owned by it regularly to all periodic or other surveys which may be required for classification purposes and, if so required by the Facility Agent acting on the instructions of the Majority Lenders, provide the Facility Agent, with copies of all survey reports.

### **23.8 Inspection**

Each Borrower shall permit the Security Agent (acting through surveyors or other persons appointed by it for that purpose) to board the Ship owned by it at all reasonable times and provided there is no interference with that Ship's operation to inspect its condition or to satisfy themselves about proposed or executed repairs and shall afford all proper facilities for such inspections. The cost of the inspection shall be borne by the Borrowers once per annum, unless an Event of Default has occurred, in which case the cost of all inspections while the Event of Default is continuing shall be borne by the Borrowers.

### **23.9 Prevention of and release from arrest**

- (a) Each Borrower shall, in respect of the Ship owned by it, promptly discharge:
- (i) all liabilities which give or may give rise to maritime or possessory liens on or claims enforceable against that Ship, its Earnings or its Insurances;
  - (ii) all Taxes, dues and other amounts charged in respect of that Ship, its Earnings or its Insurances; and
  - (iii) all other outgoings whatsoever in respect of that Ship, its Earnings or its Insurances.
- (b) Each Borrower shall immediately upon receiving notice of the arrest of the Ship owned by it or of its detention in exercise or purported exercise of any lien or claim, take all steps necessary to procure its release by providing bail or otherwise as the circumstances may require.

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**23.10 Compliance with laws etc.**

Each Borrower shall:

- (a) comply, or procure compliance with all laws or regulations:
  - (i) relating to its business generally; and
  - (ii) relating to the Ship owned by it, its ownership, employment, operation, management and registration, including, but not limited to, the ISM Code, the ISPS Code, all Environmental Laws, all Sanctions and the laws of the Approved Flag; and
- (b) obtain, comply with and do all that is necessary to maintain in full force and effect any Environmental Approvals; and

**23.11 ISPS Code**

Without limiting paragraph (a) of Clause 23.10 (*Compliance with laws etc.*), each Borrower shall:

- (a) procure that the Ship owned by it and the company responsible for that Ship's compliance with the ISPS Code comply with the ISPS Code; and
- (b) maintain an ISSC for that Ship; and
- (c) notify the Facility Agent immediately in writing of any actual or threatened withdrawal, suspension, cancellation or modification of the ISSC.

**23.12 Sanctions and Ship trading**

Without limiting Clause 23.10 (*Compliance with laws etc.*), each Borrower shall procure:

- (a) that the Ship owned by it shall not be used by or for the benefit of a Prohibited Person or in trading to or from a Sanctioned Country;
- (b) that the Ship owned by it shall not otherwise be used in any manner contrary to Sanctions or in a manner that a Transaction Obligor will become a Prohibited Person;
- (c) that the Ship owned by it shall not be used in trading in any manner that such Ship will become a Sanctioned Ship;
- (d) that the Ship owned by it shall not be traded in any manner which would trigger the operation of any sanctions limitation or exclusion clause (or similar) in the Insurances; and
- (e) without prejudice to the above provisions of this Clause 23.12 (*Sanctions and Ship trading*), that each time charterparty in respect of the Ship owned by it shall contain, for the benefit of that Borrower, language which gives effect to the provisions of paragraph (a) of Clause 23.10 (*Compliance with laws etc.*) as regards Sanctions and paragraph (b) and (c) of this Clause 23.12 (*Sanctions and Ship trading*) and which charterparty permits refusal of employment or voyage orders if such employment or compliance with such orders either results in non-compliance with such provisions or breaches Sanctions (or which would result in a breach of Sanctions if Sanctions were binding on each Borrower).

### 23.13 Trading in war zones or excluded areas

No Borrower shall cause or permit any Ship to enter or trade to any zone which is declared a war zone by any government or by that Ship's war risks insurers or which is otherwise excluded from the scope of coverage of the obligatory insurances unless that Borrower has (at its expense) effected any special, additional or modified insurance cover which the insurers require to ensure that that Ship remains properly insured in accordance with the Finance Documents (including, without limitation, any requirement for the payment of additional or extra insurance premia).

### 23.14 Provision of information

Without prejudice to Clause 19.6 (*Information: miscellaneous*) each Borrower shall, in respect of the Ship owned by it, promptly provide the Facility Agent or K-SURE with any information which they reasonably request regarding:

- (a) that Ship, its employment, position and engagements;
- (b) the Earnings and payments and amounts due to its master and crew;
- (c) any expenditure incurred, or likely to be incurred, in connection with the operation, maintenance or repair of that Ship and any payments made by it in respect of that Ship;
- (d) any towages and salvages; and
- (e) its compliance, the Approved Manager's compliance and the compliance of that Ship with the ISM Code and the ISPS Code, and, upon the Facility Agent's request, promptly provide copies of any current Charter relating to that Ship, of any current guarantee of any such Charter, the Ship's Safety Management Certificate and any relevant Document of Compliance.

### 23.15 Notification of certain events

Each Borrower shall, in respect of the Ship owned by it, immediately notify the Facility Agent by fax, confirmed forthwith by letter, of:

- (a) any casualty to that Ship which is or is likely to be or to become a Major Casualty;
- (b) any occurrence as a result of which that Ship has become or is, by the passing of time or otherwise, likely to become a Total Loss;
- (c) any requisition of that Ship for hire;
- (d) any requirement or recommendation made in relation to that Ship by any insurer or classification society or by any competent authority which is not immediately complied with;
- (e) any arrest or detention of that Ship or any exercise or purported exercise of any lien on that Ship or the Earnings;
- (f) any intended dry docking of that Ship;
- (g) any Environmental Claim made against that Borrower or in connection with that Ship, or any Environmental Incident;

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- (h) any claim for breach of the ISM Code or the ISPS Code being made against that Borrower, an Approved Manager or otherwise in connection with that Ship; or
  - (i) any other matter, event or incident, actual or threatened, the effect of which will or could lead to the ISM Code or the ISPS Code not being complied with;
  - (j) any notice, or such Borrower becoming aware, of any claim, action, suit, proceeding or investigation against any Transaction Obligor, any of its Subsidiaries or any of their respective directors, officers, employees or agents with respect to Sanctions; or
  - (k) any circumstances which could give rise to a breach of any representation or undertaking in this Agreement, or any Event of Default, relating to Sanctions,

and each Borrower shall keep the Facility Agent advised in writing on a regular basis and in such detail as the Facility Agent shall require as to that Borrower's, any such Approved Manager's or any other person's response to any of those events or matters.

#### **23.16 Restrictions on chartering, appointment of managers etc.**

No Borrower shall, in relation to the Ship owned by it:

- (a) let that Ship on demise charter for any period;
- (b) enter into any time, voyage or consecutive voyage charter in respect of that Ship other than a Permitted Charter;
- (c) amend and/or supplement a Management Agreement in any way that would lead to an Event of Default or terminate a Management Agreement;
- (d) appoint a manager of that Ship other than an Approved Manager;
- (e) de activate or lay up that Ship; or
- (f) put that 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) unless the relevant Borrower ensures that that person has first given to the Security Agent and in terms satisfactory to it a written undertaking not to exercise any lien on that Ship or its Earnings for the cost of such work or for any other reason.

#### **23.17 Notice of Mortgage**

Each Borrower shall keep the Mortgage registered against the Ship owned by it as a valid first preferred mortgage, carry on board that Ship a certified copy of the 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 that Borrower to the Security Agent.

#### **23.18 Sharing of Earnings**

No Borrower shall enter into any agreement or arrangement for the sharing of any Earnings other than any profit-sharing arrangements on arm's length terms.

### **23.19 Charterparty Assignment**

If any Borrower enters into an Assignable Charter that Borrower shall promptly after the date of such Assignable Charter enter into a Charterparty Assignment and the assignment contemplated thereunder shall be notified to the relevant charterer and any charter guarantor in accordance with the terms of such Charterparty Assignment and that Borrower shall use its commercially reasonable endeavours to obtain an acknowledgment of that Charterparty Assignment from the relevant Charterer and/or charter guarantor, and shall additionally deliver to the Facility Agent such other documents relevant to that Borrower and that Ship equivalent to those referred to at paragraphs 1.2, 1.3, 1.5, 1.8, 2, 7.1 and 7.6 of Part A of Schedule 2 (*Conditions Precedent*) as the Facility Agent may require.

### **23.20 Poseidon Principles**

The Borrowers shall, upon the request of any Lender and at the cost of the Borrowers, on or before 31st July in each calendar year, supply or procure the supply by the Approved Classification Society (as specified by the relevant Lender) to the Facility Agent of all information necessary in order for any Lender to comply with their obligations under the Poseidon Principles in respect of the preceding year, including, without limitation, all ship fuel oil consumption data required to be collected and reported in accordance with Regulation 22A of Annex VI and any Statement of Compliance, in each case relating to the Ships for the preceding calendar year provided always that, for the avoidance of doubt, such information shall be “Confidential Information” for the purposes of Clause 45 (*Confidential Information*) but the Borrowers acknowledge that, in accordance with the Poseidon Principles, such information will form part of the information published regarding the relevant Lender’s portfolio climate alignment.

### **23.21 Inventory of Hazardous Materials**

Each Borrower shall procure that the Ship owned by it has, from the Delivery Date and/or next dry dock of that Ship, obtained an Inventory of Hazardous Materials, in respect of such Ship which shall be maintained until the Loan has been fully repaid.

### **23.22 Sustainable and socially responsible dismantling of Ships**

Each Borrower confirms that it will procure that the Ship owned by it shall be dismantled in a safe, sustainable and socially and environmentally responsible way and shall include, without limitation, the requirement that such Ship is recycled at a recycling yard which conducts its recycling business in a safely, socially and environmentally responsible manner and, to the extent applicable, in accordance with the provisions of The Hong Kong International Convention for the Safe and Environmentally Sound Recycling of Ships, 2009 and/or EU Ship Recycling Regulation.

### **23.23 Event of Default which is continuing**

Following the occurrence of an Event of Default which is continuing, each Borrower shall navigate its Ship to such areas as the Facility Agent acting on the instructions of the Majority Lenders may request.

#### **23.24 Notification of compliance**

Each Borrower shall promptly provide the Facility Agent from time to time with evidence (in such form as the Facility Agent requires) that it is complying with this Clause 23 (*Ship Undertakings*).

### **24 SECURITY COVER**

#### **24.1 Minimum required security cover**

Clause 24.2 (*Provision of additional security; prepayment*) applies if the Facility Agent notifies the Borrowers that:

- (a) the aggregate Market Value of the Ships; plus
  - (b) the net realisable value of additional Security previously provided under this Clause 24 (*Security Cover*),
- is below 120 per cent. of the Loan.

#### **24.2 Provision of additional security; prepayment**

- (a) If the Facility Agent serves a notice on the Borrowers under Clause 24.1 (*Minimum required security cover*), the Borrowers shall, on or before the date falling 30 Business Days after the date on which the Facility Agent's notice is served (the "**Prepayment Date**"), prepay such part of the Loan as shall eliminate the shortfall.
- (b) The Borrowers may, instead of making a prepayment as described in paragraph (a) above, provide, or ensure that a third party has provided, additional security which, in the opinion of the Facility Agent acting on the instructions of the Majority Lenders:
  - (i) has a net realisable value at least equal to the shortfall; and
  - (ii) is documented in such terms as the Facility Agent may approve or require,before the Prepayment Date; and conditional upon such security being provided in such manner, it shall satisfy such prepayment obligation.

#### **24.3 Value of additional vessel security**

The net realisable value of any additional security which is provided under Clause 24.2 (*Provision of additional security; prepayment*) and which consists of Security over a vessel shall be the Market Value of the vessel concerned.

#### **24.4 Valuations binding**

Any valuation under this Clause 24 (*Security Cover*) shall be binding and conclusive as regards each Borrower.

#### **24.5 Provision of information**

- (a) Each Borrower shall promptly provide the Facility Agent and any shipbroker acting under this Clause 24 (*Security Cover*) with any information which the Facility Agent or the shipbroker may request for the purposes of the valuation.

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- (b) If any Borrower fails to provide the information referred to in paragraph (a) above by the date specified in the request, the valuation may be made on any basis and assumptions which the shipbroker or the Facility Agent considers prudent.

#### **24.6 Prepayment mechanism**

Any prepayment pursuant to Clause 24.2 (*Provision of additional security; prepayment*) shall be made in accordance with the relevant provisions of Clause 7 (*Prepayment and Cancellation*), and each such prepayment shall reduce each Tranche *pro rata* by reducing the Repayment Instalments and the Balloon Instalment in respect of that falling after such prepayment on a *pro rata* basis by the amount prepaid.

#### **24.7 Provision of valuations**

- (a) For the purpose of obtaining a valuation and subject to paragraphs (b) and (c) below, the Market Value of any Ship shall be determined by reference to the valuation of that Ship as given by an Approved Valuer selected and appointed by the Borrowers and addressed to the Facility Agent or in the event that the Borrowers fail to do so appointed by the Facility Agent. The Facility Agent and K-SURE shall, in their full discretion be entitled to request a second valuation from an Approved Valuer selected and appointed by the Facility Agent, in which case, the Market Value shall be the arithmetic average of the two valuations.
- (b) For the purpose of a Utilisation under each Delivery Tranche, the Market Value of any Ship shall be determined by reference to two valuations of that Ship as given by an Approved Valuer selected and appointed by the Borrowers and addressed to the Facility Agent or in the event that the Borrowers fail to do so appointed by the Facility Agent, in which case, the Market Value shall be the arithmetic average of the two valuations.
- (c) If the two valuations in respect of a Ship obtained pursuant to paragraphs (a) and (b) above differ by at least 10 per cent., then a third valuation for that Ship shall be obtained from a third Approved Valuer selected by the Facility Agent, appointed by the Facility Agent and such valuation shall be addressed to the Facility Agent and the Market Value of that Ship shall be the arithmetic average of all three such valuations.
- (d) The Facility Agent shall be entitled, after the Utilisation Date, to test the security cover requirement under Clause 24.1 (*Minimum required security cover*) by reference to the Market Value of any Ship as determined in accordance with paragraphs (a) and (c) above, semi-annually during the Security Period.
- (e) The Facility Agent shall ascertain compliance with clause 10 (*financial covenants*) of the Guarantee by reference to the market value of the Fleet Vessels as provided in the Latest Accounts (as each such term is defined in the Guarantee).
- (f) Each of the valuations referred to at paragraphs (a), (b) and (c) above shall be obtained not more than 14 days before the Utilisation Date, while each of the valuations referred to in paragraph (e) above shall be obtained not more than 30 days before the Test Date (as such term is defined in the Guarantee) of the relevant quarter.
- (g) The Facility Agent may at any time after an Event of Default has occurred and is continuing obtain valuations of any Ship and any other vessel over which additional security has been created in accordance with Clause 24.2 (*Provision of additional security; prepayment*) from Approved Valuers to enable the Facility Agent to determine the Market Value of that Ship and any other vessel and also for the purpose of testing the security cover requirement under Clause 24.1 (*Minimum required security cover*). The Facility Agent shall be entitled to determine the Market Value of any Ship at any other time.



- (h) The valuations referred to in paragraph (a) to (d) above shall be obtained at the cost and expense of the Borrowers and the Borrowers shall within three Business Days of demand by the Facility Agent pay to the Facility Agent all costs and expenses incurred by it in obtaining any such valuation. The cost of the valuations referred to in paragraph (e) for the Borrowers shall be limited to four times per annum, unless an Event of Default has occurred or the covenant contained in Clause 24.1 (*Minimum required security cover*) is not complied with, in which case the cost of all valuations shall be borne by the Borrowers.

## **25 ACCOUNTS AND APPLICATION OF EARNINGS**

### **25.1 Accounts**

No Borrower may, without the prior consent of the Facility Agent, maintain any bank account other than its Earnings Account.

### **25.2 Payment of Earnings**

Each Borrower shall ensure that subject only to the provisions of the General Assignment to which it is a party, all the Earnings in respect of the Ship owned by it are paid in to its Earnings Account.

### **25.3 Location of Accounts**

Each Borrower shall promptly:

- (a) comply with any requirement of the Facility Agent as to the location or relocation of its Earnings Account; and
- (b) execute any documents which the Facility Agent specifies to create or maintain in favour of the Security Agent Security over (and/or rights of set-off, consolidation or other rights in relation to) its Earnings Account.

### **25.4 Restriction on withdrawal**

During the Security Period each Borrower may withdraw any sum from its Earnings Account provided that (i) no Event of Default has occurred from such withdrawal and (ii) no notice has been given to that Borrower by the Facility Agent or the Security Agent that such withdrawal is not permitted.

## **26 EVENTS OF DEFAULT**

### **26.1 General**

Each of the events or circumstances set out in this Clause 26 (*Events of Default*) is an Event of Default except for Clause 26.20 (*Acceleration*) and Clause 26.21 (*Enforcement of security*).

### **26.2 Non-payment**

A Transaction Obligor does not pay on the due date any amount payable pursuant to a Finance Document at the place at and in the currency in which it is expressed to be payable unless:

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- (a) its failure to pay is caused by:
    - (i) administrative or technical error; or
    - (ii) a Disruption Event; and
  - (b) payment is made within three Business Days of its due date.

### **26.3 Specific obligations**

A breach occurs of Clause 4.4 (*Waiver of conditions precedent*), clause 10 (*financial covenants*) of the Guarantee, Clause 19.5 (*Debt Service Cover Ratio*), Clause 20.10 (*Title*), Clause 20.11 (*Negative pledge*), Clause 20.20 (*Unlawfulness, invalidity and ranking; Security imperilled*), Clause 21.2 (*Maintenance of obligatory insurances*), Clause 21.3 (*Terms of obligatory insurances*), Clause 21.5 (*Renewal of obligatory insurances*), Clause 23.13 (*Trading in war zones*) or save to the extent such breach is a failure to pay and therefore subject to Clause 26.2 (*Non-payment*), Clause 24 (*Security Cover*).

### **26.4 Other obligations**

- (a) A Transaction Obligor does not comply with any provision of the Finance Documents (other than those referred to in Clause 26.2 (*Non-payment*) and Clause 26.3 (*Specific obligations*)).
- (b) No Event of Default under paragraph (a) above will occur if the failure to comply is capable of remedy and is remedied within 15 Business Days of the Facility Agent giving notice to the Borrowers or (if earlier) any Transaction Obligor becoming aware of the failure to comply.

### **26.5 Misrepresentation**

Any representation or statement made or deemed to be made by a Transaction Obligor in the Finance Documents or any other document delivered by or on behalf of any Transaction Obligor under or in connection with any Finance Document is or proves to have been incorrect or misleading when made or deemed to be made.

### **26.6 Cross default**

- (a) Any Financial Indebtedness of any Transaction Obligor (other than an Approved Manager) is not paid when due nor within any originally applicable grace period.
- (b) Any Financial Indebtedness of any Transaction Obligor (other than an Approved Manager) is declared to be or otherwise becomes due and payable prior to its specified maturity as a result of an event of default (however described).
- (c) Any creditor of any Transaction Obligor (other than an Approved Manager) becomes entitled to declare any Financial Indebtedness of any Transaction Obligor (other than the Approved Manager) due and payable prior to its specified maturity as a result of an event of default (however described).
- (d) No Event of Default will occur under this Clause 26.6 (*Cross default*) in respect of the Guarantor if the aggregate amount of Financial Indebtedness or commitment for Financial Indebtedness falling within paragraphs (a) to (b) above is less than \$20,000,000 (or its equivalent in any other currency).

## **26.7 Insolvency**

- (a) A Transaction Obligor (other than an Approved Manager):
  - (i) is unable or admits inability to pay its debts as they fall due; or
  - (ii) is deemed to, or is declared to, be unable to pay its debts under applicable law; or
  - (iii) suspends or threatens to suspend marking payments on, any of its debts.
- (b) The value of the assets of either Borrower is less than its liabilities (taking into account contingent and prospective liabilities).
- (c) A moratorium is declared in respect of any indebtedness of any Transaction Obligor (other than an Approved Manager). If a moratorium occurs, the ending of the moratorium will not remedy any Event of Default caused by that moratorium.

## **26.8 Insolvency proceedings**

- (a) Any corporate action, legal proceedings or other procedure or step is taken in relation to:
  - (i) the suspension of payments, a moratorium of any indebtedness, winding-up, dissolution, administration or reorganisation (by way of voluntary arrangement, scheme of arrangement or otherwise) of any Transaction Obligor (other than an Approved Manager);
  - (ii) a composition, compromise, assignment or arrangement with any creditor of any Transaction Obligor (other than an Approved Manager);
  - (iii) the appointment of a liquidator, receiver, administrator, administrative receiver, compulsory manager or other similar officer in respect of any Transaction Obligor (other than an Approved Manager) or any of its assets; or
  - (iv) enforcement of any Security over any assets of any Transaction Obligor (other than an Approved Manager),or any analogous procedure or step is taken in any jurisdiction.
- (b) Paragraph (a) above shall not apply to any winding-up petition which is frivolous or vexatious and is discharged, stayed or dismissed within 14 days of commencement.

## **26.9 Creditors' process**

Any expropriation, attachment, sequestration, distress or execution (or any analogous process in any jurisdiction) affects any asset or assets of a Transaction Obligor (other than any Approved Manager or an arrest or detention of a Ship which, in accordance with Clause 26.14 (*Arrest*), is discharged within 30 days).

## **26.10 Ownership of the Obligors**

There is in respect of any Borrower, a change in its ownership which results in the Guarantor owning directly or indirectly (but if indirectly only through companies with registered shares), less than 100 per cent. of the shares in that Borrower.

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**26.11 Unlawfulness, invalidity and ranking**

- (a) It is or becomes unlawful for a Transaction Obligor to perform any of its obligations under the Finance Documents.
- (b) Any obligation of a Transaction Obligor under the Finance Documents is not or ceases to be legal, valid, binding or enforceable.
- (c) Any Finance Document ceases to be in full force and effect or to be continuing or is or purports to be determined or any Transaction Security is alleged by a party to it (other than a Finance Party) to be ineffective.
- (d) Any Transaction Security proves to have ranked after, or loses its priority to, any other Security.

**26.12 Security imperilled**

Any Security created or intended to be created by a Finance Document is in any way imperilled or in jeopardy.

**26.13 Cessation of business**

Any Transaction Obligor suspends or ceases to carry on (or threatens to suspend or cease to carry on) all or a material part of its business.

**26.14 Arrest**

Any arrest of a Ship or its detention in the exercise or the purported exercise of any lien or claim unless it is redelivered to the full control of the relevant Borrower within 30 days of such arrest or detention.

**26.15 Expropriation**

The authority or ability of any member of the Group to conduct its business is limited or wholly or substantially curtailed by any seizure, expropriation, nationalisation, intervention, restriction or other action by or on behalf of any governmental, regulatory or other authority or other person in relation to any member of the Group or any of its assets other than:

- (a) an arrest or detention of a Ship referred to in Clause 26.14 (*Arrest*); or
- (b) any Requisition.

**26.16 Repudiation and rescission of agreements**

A Transaction Obligor (or any other relevant party) rescinds or purports to rescind or repudiates or purports to repudiate a Transaction Document or any of the Transaction Security or evidences an intention to rescind or repudiate a Transaction Document or any Transaction Security.

**26.17 Litigation**

Any litigation, arbitration or administrative proceedings or investigations of, or before, any court, arbitral body or agency are started or threatened, or any judgment or order of a court, arbitral body or agency is made, in relation to any of the Transaction Documents or the transactions contemplated in any of the Transaction Documents or against any member of the Group or its assets which has or is reasonably likely to have a Material Adverse Effect.

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**26.18 Sanctions**

- (a) Any Transaction Obligor or any of their respective Subsidiaries, directors, officers, employees or agents is designated a Prohibited Person or a Ship is designated a Sanctioned Ship.
- (b) This Clause 26.18 (*Sanctions*) is without prejudice to any other Event of Default which may occur by reason of breach of, or non-compliance with, any of the other provisions of this Agreement which relate to Sanctions.

**26.19 Material adverse change**

Any event or circumstance occurs which has or is reasonably likely to have a Material Adverse Effect.

**26.20 Acceleration**

On and at any time after the occurrence of an Event of Default which is continuing the Facility Agent may, and shall if so directed by the Majority Lenders:

- (a) by notice to the Borrowers:
  - (i) cancel the Available Commitment of each Lender, whereupon they shall immediately be cancelled;
  - (ii) declare that all or part of the Loan, together with accrued interest, and all other amounts accrued or outstanding under the Finance Documents be immediately due and payable, whereupon it shall become immediately due and payable; and/or
  - (iii) declare that all or part of the Loan be payable on demand, whereupon it shall immediately become payable on demand by the Facility Agent acting on the instructions of the Majority Lenders; and/or
- (b) exercise or direct the Security Agent to exercise any or all of its rights, remedies, powers or discretions under the Finance Documents, and the Facility Agent may serve notices under sub-paragraphs (i), (ii) or (iii) of paragraph (a) above simultaneously or on different dates and any Servicing Party may take any action referred to in paragraph (b) above or Clause 26.21 (*Enforcement of security*) if no such notice is served or simultaneously with or at any time after the service of any of such notice.

**26.21 Enforcement of security**

On and at any time after the occurrence of an Event of Default the Security Agent may, and shall if so directed by the Majority Lenders, take any action which, as a result of the Event of Default or any notice served under Clause 26.20 (*Acceleration*), the Security Agent is entitled to take under any Finance Document or any applicable law or regulation.

## SECTION 9

### CHANGES TO PARTIES

#### 27 CHANGES TO THE LENDERS

##### 27.1 Assignments and transfers by the Lenders

Subject to this Clause 27 (*Changes to the Lenders*) and without prejudice to any requirement for the consent of K-SURE under the terms of any K-SURE Insurance Policy, 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 K-SURE, 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 shipping loans (the “**New Lender**”) after prior consultation with the Borrowers and receiving the consent of K-SURE to such assignment or transfer.

##### 27.2 Conditions of assignment or transfer

- (a) The consultation of the Borrowers is required for an assignment or transfer by an Existing Lender pursuant to Clause 27.1 (*Assignments and transfers by the Lenders*), unless the assignment or transfer is:
  - (i) to K-SURE;
  - (ii) to another Lender or an Affiliate of a Lender;
  - (iii) to a fund which is a Related Fund of that Lender or an Affiliate of that Lender; or
  - (iv) made at a time when an Event of Default is continuing, in which case the Existing Lender may assign any of its rights or transfer by novation any of its rights and obligations without the consultation of the Borrowers to any 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.
- (b) An assignment will only be effective on:
  - (i) receipt by the Facility Agent (whether in the Assignment Agreement or otherwise) of written confirmation from the New Lender (in form and substance satisfactory to the Facility Agent) that the New Lender will assume the same obligations to the other Secured Parties as it would have been under if it had been an Original Lender; and
  - (ii) performance by the Facility Agent of all necessary “know your customer” or other similar checks under all applicable laws and regulations in relation to such assignment to a New Lender, the completion of which the Facility Agent shall promptly notify to the Existing Lender and the New Lender.

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- (c) Each Borrower on behalf of itself and each Transaction Obligor agrees that all rights and interests (present, future or contingent) which the Existing Lender has under or by virtue of the Finance Documents are assigned to the New Lender absolutely, free of any defects in the Existing Lender's title and of any rights or equities which a Borrower or any other Transaction Obligor had against the Existing Lender.
- (d) A transfer will only be effective if the procedure set out in Clause 27.4 (*Procedure for transfer*) is complied with.
- (e) If:
- (i) a Lender assigns or transfers any of its rights or obligations under the Finance Documents to a person other than K-SURE or changes its Facility Office; and
  - (ii) as a result of circumstances existing at the date the assignment, transfer or change occurs, a Transaction Obligor would be obliged to make a payment to the New Lender or Lender acting through its new Facility Office under Clause 12 (*Tax Gross Up and Indemnities*) or under that clause as incorporated by reference or in full in any other Finance Document or Clause 13 (*Increased Costs*),
- then the New Lender or Lender acting through its new Facility Office is only entitled to receive payment under those Clauses to the same extent as the Existing Lender or Lender acting through its previous Facility Office would have been if the assignment, transfer or change had not occurred. This paragraph (e) shall not apply in respect of an assignment or transfer made in the ordinary course of the primary syndication of the Facility.
- (f) Each New Lender, by executing the relevant Transfer Certificate or Assignment Agreement, confirms, for the avoidance of doubt, that the Facility Agent has authority to execute on its behalf any amendment or waiver that has been approved by or on behalf of the requisite Lender or Lenders in accordance with this Agreement on or prior to the date on which the transfer or assignment becomes effective in accordance with this Agreement and that it is bound by that decision to the same extent as the Existing Lender would have been had it remained a Lender.

### **27.3 Limitation of responsibility of Existing Lenders**

- (a) Unless expressly agreed to the contrary, an Existing Lender makes no representation or warranty and assumes no responsibility to a New Lender for:
- (i) the legality, validity, effectiveness, adequacy or enforceability of the Transaction Documents, the Transaction Security or any other documents;
  - (ii) the financial condition of any Transaction Obligor;
  - (iii) the performance and observance by any Transaction Obligor of its obligations under the Transaction Documents or any other documents; or
  - (iv) the accuracy of any statements (whether written or oral) made in or in connection with any Transaction Document or any other document,
- and any representations or warranties implied by law are excluded.

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- (b) Each New Lender confirms to the Existing Lender and the other Finance Parties and the Secured Parties that it:
    - (i) has made (and shall continue to make) its own independent investigation and assessment of the financial condition and affairs of each Transaction Obligor and its related entities in connection with its participation in this Agreement and has not relied exclusively on any information provided to it by the Existing Lender or any other Finance Party in connection with any Transaction Document or the Transaction Security; and
    - (ii) will continue to make its own independent appraisal of the creditworthiness of each Transaction Obligor and its related entities throughout the Security Period.
  - (c) Nothing in any Finance Document obliges an Existing Lender to:
    - (i) accept a re-transfer or re-assignment from a New Lender of any of the rights and obligations assigned or transferred under this Clause 27 (*Changes to the Lenders*); or
    - (ii) support any losses directly or indirectly incurred by the New Lender by reason of the non-performance by any Transaction Obligor of its obligations under the Transaction Documents or otherwise.

#### **27.4 Procedure for transfer**

- (a) Subject to the conditions set out in Clause 27.2 (*Conditions of assignment or transfer*), a transfer is effected in accordance with paragraph (c) below when the Facility Agent executes an otherwise duly completed Transfer Certificate delivered to it by the Existing Lender and the New Lender. The Facility Agent shall, subject to paragraph (b) below as soon as reasonably practicable after receipt by it of a duly completed Transfer Certificate appearing on its face to comply with this Agreement and delivered in accordance with this Agreement, execute that Transfer Certificate.
- (b) The Facility Agent shall only be obliged to execute a Transfer Certificate delivered to it by the Existing Lender and the New Lender once it is satisfied it has complied with all necessary “know your customer” or other similar checks under all applicable laws and regulations in relation to the transfer to such New Lender.
- (c) Subject to Clause 27.8 (*Pro rata interest settlement*), on the Transfer Date:
  - (i) to the extent that in the Transfer Certificate the Existing Lender seeks to transfer by novation its rights and obligations under the Finance Documents and in respect of the Transaction Security, each of the Transaction Obligors and the Existing Lender shall be released from further obligations towards one another under the Finance Documents and in respect of the Transaction Security and their respective rights against one another under the Finance Documents and in respect of the Transaction Security shall be cancelled (being the “**Discharged Rights and Obligations**”);
  - (ii) each of the Transaction Obligors and the New Lender shall assume obligations towards one another and/or acquire rights against one another which differ from the Discharged Rights and Obligations only insofar as that Transaction Obligor and the New Lender have assumed and/or acquired the same in place of that Transaction Obligor and the Existing Lender;



- (iii) the Facility Agent, the Security Agent, the Mandated Lead Arranger, the New Lender and other Lenders shall acquire the same rights and assume the same obligations between themselves and in respect of the Transaction Security as they would have acquired and assumed had the New Lender been an Original Lender with the rights and/or obligations acquired or assumed by it as a result of the transfer and to that extent the Facility Agent, the Security Agent, the Mandated Lead Arranger and the Existing Lenders shall each be released from further obligations to each other under the Finance Documents; and
- (iv) the New Lender shall become a Party as a “**Lender**”.

#### 27.5 Procedure for assignment

- (a) Subject to the conditions set out in Clause 27.2 (*Conditions of assignment or transfer*) an assignment may be effected in accordance with paragraph (c) below when the Facility Agent executes an otherwise duly completed Assignment Agreement delivered to it by the Existing Lender and the New Lender. The Facility Agent shall, subject to paragraph (b) below, as soon as reasonably practicable after receipt by it of a duly completed Assignment Agreement appearing on its face to comply with the terms of this Agreement and delivered in accordance with the terms of this Agreement, execute that Assignment Agreement.
- (b) The Facility Agent shall only be obliged to execute an Assignment Agreement delivered to it by the Existing Lender and the New Lender once it is satisfied it has complied with all necessary “know your customer” or other similar checks under all applicable laws and regulations in relation to the assignment to such New Lender.
- (c) Subject to Clause 27.8 (*Pro rata interest settlement*), on the Transfer Date:
  - (i) the Existing Lender will assign absolutely to the New Lender its rights under the Finance Documents and in respect of the Transaction Security expressed to be the subject of the assignment in the Assignment Agreement;
  - (ii) the Existing Lender will be released from the obligations (the “**Relevant Obligations**”) expressed to be the subject of the release in the Assignment Agreement (and any corresponding obligations by which it is bound in respect of the Transaction Security); and
  - (iii) the New Lender shall become a Party as a “Lender” and will be bound by obligations equivalent to the Relevant Obligations.
- (d) Lenders may utilise procedures other than those set out in this Clause 27.5 (*Procedure for assignment*) to assign their rights under the Finance Documents (but not, without the consent of the relevant Transaction Obligor or unless in accordance with Clause 27.4 (*Procedure for transfer*), to obtain a release by that Transaction Obligor from the obligations owed to that Transaction Obligor by the Lenders nor the assumption of equivalent obligations by a New Lender) **provided that** they comply with the conditions set out in Clause 27.2 (*Conditions of assignment or transfer*).

#### 27.6 Copy of Transfer Certificate or Assignment Agreement to Borrowers

The Facility 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.

## 27.7 Security over Lenders' rights

In addition to the other rights provided to Lenders under this Clause 27 (*Changes to the Lenders*), each Lender may without consulting with or obtaining consent from any Transaction Obligor, at any time charge, assign or otherwise create Security in or over (whether by way of collateral or otherwise) all or any of its rights under any Finance Document to secure obligations of that Lender including, without limitation:

- (a) any charge, assignment or other Security to secure obligations to a federal reserve or central bank; and
- (b) any charge, assignment or other Security granted to any holders (or trustee or representatives of holders) of obligations owed, or securities issued, by that Lender as security for those obligations or securities, except that no such charge, assignment or Security shall:
  - (i) release a Lender from any of its obligations under the Finance Documents or substitute the beneficiary of the relevant charge, assignment or Security for the Lender as a party to any of the Finance Documents; or
  - (ii) require any payments to be made by a Transaction Obligor other than or in excess of, or grant to any person any more extensive rights than, those required to be made or granted to the relevant Lender under the Finance Documents.

## 27.8 Pro rata interest settlement

- (a) If the Facility Agent has notified the Lenders that it is able to distribute interest payments on a “*pro rata* basis” to Existing Lenders and New Lenders then (in respect of any transfer pursuant to Clause 27.4 (*Procedure for transfer*) or any assignment pursuant to Clause 27.5 (*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):
  - (i) any interest or fees in respect of the relevant participation which are expressed to accrue by reference to the lapse of time shall continue to accrue in favour of the Existing Lender up to but excluding the Transfer Date (“**Accrued Amounts**”) and shall become due and payable to the Existing Lender (without further interest accruing on them) on the last day of the current Interest Period (or, if the Interest Period is longer than six Months, on the next of the dates which falls at six Monthly intervals after the first day of that Interest Period); and
  - (ii) 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:
    - (A) when the Accrued Amounts become payable, those Accrued Amounts will be payable to the Existing Lender; and
    - (B) the amount payable to the New Lender on that date will be the amount which would, but for the application of this Clause 27.8 (*Pro rata interest settlement*), have been payable to it on that date, but after deduction of the Accrued Amounts.

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- (b) In this Clause 27.8 (*Pro rata interest settlement*) references to “Interest Period” shall be construed to include a reference to any other period for accrual of fees.
  - (c) An Existing Lender which retains the right to the Accrued Amounts pursuant to this Clause 27.8 (*Pro rata interest settlement*) but which does not have a Commitment shall be deemed not to be a Lender for the purposes of ascertaining whether the agreement of any specified group of Lenders has been obtained to approve any request for a consent, waiver, amendment or other vote of Lenders under the Finance Documents.

#### **27.9 Transfers to K-SURE**

- (a) If a Lender receives a payment from K-SURE under any K-SURE Insurance Policy in respect of its participation in the Loan, then, to the extent that it is required to do so by K-SURE pursuant to the terms of such K-SURE Insurance Policy, that Lender shall, at the cost of the Borrowers and without any requirement for the consent of the Borrowers, transfer to K-SURE (in accordance with, and subject to, Clause 27 (*Changes to the Lenders*)) a part of its participation in the Loan equal to the amount paid to it by K-SURE.
- (b) A transfer pursuant to paragraph (a) above shall not limit the rights of the relevant Lender to recover any remaining part of its participation in the Loan or any other moneys owing to it under this Agreement or any other Finance Documents.

#### **27.10 Subrogation**

- (a) In addition, and without prejudice to Clause 27.11 (*Reimbursement*) and any right of indemnification or subrogation K-SURE may have at law, in equity or otherwise, each Party agrees that upon any payment by K-SURE pursuant to the relevant K-SURE Insurance Policy, the following shall apply:
  - (i) the obligations and liabilities of the Borrowers against the Lenders under this Agreement and each of the other Finance Documents shall not be reduced, discharged nor affected in any way;
  - (ii) each K-SURE Secured Finance Party agrees that after payment by K-SURE of amounts due under the relevant K-SURE Insurance Policy, upon K-SURE ‘s request, the relevant K-SURE Secured Finance Party shall assign to K-SURE its rights to recover against the Borrowers under this Agreement and the other Finance Documents and until the assignment referred to in this subparagraph (ii) is completed, the relevant K-SURE Secured Finance Party shall hold on trust for K-SURE any payments made under this Agreement and the other Finance Documents and pay or transfer them to K-SURE in accordance with the relevant K-SURE Insurance Policy; and
  - (iii) notwithstanding anything to the contrary, K-SURE shall be entitled to the extent it has made payment under the relevant K-SURE Insurance Policy to exercise the rights of that K-SURE Secured Finance Party against the Borrowers under this Agreement and each of the other Finance Documents or any relevant laws and/or regulations unless and until such payment and the interest accrued thereon are fully reimbursed to K-SURE.
- (b) The Borrowers agree to co-operate with K-SURE, the K-SURE Agent and any K-SURE Secured Finance Party, as the case may be, in giving effect to any assignment referred to in this clause, and to take all actions requested by K-SURE, the K-SURE Agent or any such K-SURE Secured Finance Party, in each case to implement or give effect to such assignment.

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- (c) The Borrowers shall indemnify K-SURE in respect of any costs or expenses (including legal fees) and withholdings suffered or incurred by K-SURE in connection with any assignment referred to above or payments by the relevant Lender to K-SURE under this Agreement, any other Finance Documents or the relevant K-SURE Insurance Policy.

#### 27.11 Reimbursement

- (a) Without prejudice to Clause 27.10 (*Subrogation*), the Borrowers agree that they will promptly upon receipt of notice thereof reimburse K-SURE for any payment made by K-SURE under the relevant K-SURE Insurance Policy, whether by direct payment or offset, in respect of, and to the extent of, the Borrowers' obligations to the Lenders under this Agreement (such amounts, the "**K-SURE Insurance Policy Payments**").
- (b) The obligations of the Borrowers to reimburse K-SURE will be due and payable in the currency of payment by K-SURE within five Business Days of written demand in an amount equal to (without double counting):
- (i) the K-SURE Insurance Policy Payments; and
  - (ii) all previously paid K-SURE Insurance Policy Payments which remain unreimbursed, together with any commission on any and all amounts remaining unreimbursed from and including the date on which such amounts become due until and including the date on which such amounts are paid in full determined in accordance with Clause 8.3 (*Default interest*).
- (c) For the avoidance of doubt, Clause 12 (*Tax Gross Up and Indemnities*) will apply in respect of any reimbursement made pursuant to this Clause 27.11 (*Reimbursement*).

#### 27.12 Satisfaction of Obligations

- (a) The Parties acknowledge and agree that the K-SURE Insurance Policy Payments that are reimbursed by the Borrowers to K-SURE pursuant to this Clause 27.10 (*Subrogation*) and Clause 27.11 (*Reimbursement*) shall satisfy the obligation of the Borrowers to make payments to the K-SURE Secured Finance Parties under this Agreement of the corresponding amounts of principal and interest in respect of which the K-SURE Insurance Policy Payments were paid to the K-SURE Secured Finance Party by K-SURE.
- (b) Paragraph (a) above applies to default interest accruing under Clause 8.3 (*Default interest*) (*Default interest*) in respect of any amount remaining unpaid by the Borrowers to a K-SURE Secured Finance Party (the "**Relevant Unpaid Amount**") after such outstanding amount has been paid to the K-SURE Secured Finance Parties by K-SURE under the relevant K-SURE Insurance Policy which will be satisfied if the Borrowers pay the equivalent amount of default interest to K-SURE under Clause 27.11 (*Reimbursement*) in respect of an unreimbursed K-SURE Insurance Policy Payment paid by K-SURE in respect of the Relevant Unpaid Amount. For the sake of good order, any default interest accruing under Clause 8.3 (*Default interest*) in respect of any amount which remains unpaid by the Borrowers under this Facility which has not been paid by K-SURE to the K-SURE Secured Finance Parties shall be payable to the Finance Parties in accordance with this Agreement.

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## **28 CHANGES TO THE TRANSACTION OBLIGORS**

### **28.1 Assignment or transfer by Transaction Obligors**

No Transaction Obligor may assign any of its rights or transfer any of its rights or obligations under the Finance Documents.

### **28.2 Release of security**

(a) If a disposal of any asset subject to security created by a Security Document is made in the following circumstances:

- (i) the disposal is permitted by the terms of any Finance Document;
- (ii) all the Lenders agree to the disposal;
- (iii) the disposal is being made at the request of the Security Agent in circumstances where any security created by the Security Documents has become enforceable; or
- (iv) the disposal is being effected by enforcement of a Security Document,

the Security Agent may release the asset(s) being disposed of from any security over those assets created by a Security Document. However, the proceeds of any disposal (or an amount corresponding to them) must be applied in accordance with the requirements of the Finance Documents (if any).

(b) If the Security Agent is satisfied that a release is allowed under this Clause 28.2 (*Release of security*) (at the request and expense of the Borrowers) each Finance Party must enter into any document and do all such other things which are reasonably required to achieve that release. Each other Finance Party irrevocably authorises the Security Agent to enter into any such document. Any release will not affect the obligations of any other Transaction Obligor under the Finance Documents.

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**SECTION 10**

**THE FINANCE PARTIES**

**29 THE FACILITY AGENT AND THE MANDATED LEAD ARRANGER**

**29.1 Appointment of the Facility Agent**

- (a) Each of the Mandated Lead Arranger and the Lenders appoints the Facility Agent to act as its agent under and in connection with the Finance Documents.
- (b) Each of the Mandated Lead Arranger and the Lenders authorises the Facility Agent to perform the duties, obligations and responsibilities and to exercise the rights, powers, authorities and discretions specifically given to the Facility Agent under, or in connection with, the Finance Documents together with any other incidental rights, powers, authorities and discretions.

**29.2 Instructions**

- (a) The Facility Agent shall:
  - (i) unless a contrary indication appears in a Finance Document, exercise or refrain from exercising any right, power, authority or discretion vested in it as Facility Agent in accordance with any instructions given to it by:
    - (A) all Lenders if the relevant Finance Document stipulates the matter is an all Lender decision; and
    - (B) in all other cases, the Majority Lenders; and
  - (ii) not be liable for any act (or omission) if it acts (or refrains from acting) in accordance with sub-paragraph (i) above (or, if this Agreement stipulates the matter is a decision for any other Finance Party or group of Finance Parties, in accordance with instructions given to it by that Finance Party or group of Finance Parties).
- (b) The Facility Agent shall be entitled to request instructions, or clarification of any instruction, from the Majority Lenders (or, if the relevant Finance Document stipulates the matter is a decision for any other Finance Party or group of Finance Parties, from that Finance Party or group of Finance Parties) as to whether, and in what manner, it should exercise or refrain from exercising any right, power, authority or discretion and the Facility Agent may refrain from acting unless and until it receives any such instructions or clarification that it has requested.
- (c) Save in the case of decisions stipulated to be a matter for any other Finance Party or group of Finance Parties under the relevant Finance Document and unless a contrary indication appears in a Finance Document, any instructions given to the Facility Agent by the Majority Lenders shall override any conflicting instructions given by any other Parties and will be binding on all Finance Parties.
- (d) Paragraph (a) above shall not apply:
  - (i) where a contrary indication appears in a Finance Document;
  - (ii) where a Finance Document requires the Facility Agent to act in a specified manner or to take a specified action;

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- (iii) in respect of any provision which protects the Facility Agent's own position in its personal capacity as opposed to its role of Facility Agent for the relevant Finance Parties.
  - (e) If giving effect to instructions given by the Majority Lenders would in the Facility Agent's opinion have an effect equivalent to an amendment or waiver referred to in Clause 44 (*Amendments and Waivers*), the Facility Agent shall not act in accordance with those instructions unless consent to it so acting is obtained from each Party (other than the Facility Agent) whose consent would have been required in respect of that amendment or waiver.
  - (f) In exercising any discretion to exercise a right, power or authority under the Finance Documents where it has not received any instructions as to the exercise of that discretion the Facility Agent shall do so having regard to the interests of all the Finance Parties.
  - (g) The Facility Agent may refrain from acting in accordance with any instructions of any Finance Party or group of Finance Parties until it has received any indemnification and/or security that it may in its discretion require (which may be greater in extent than that contained in the Finance Documents and which may include payment in advance) for any cost, loss or liability (together with any applicable VAT) which it may incur in complying with those instructions.
  - (h) Without prejudice to the remainder of this Clause 29.2 (*Instructions*), in the absence of instructions, the Facility Agent shall not be obliged to take any action (or refrain from taking action) even if it considers acting or not acting to be in the best interests of the Finance Parties. The Facility Agent may act (or refrain from acting) as it considers to be in the best interest of the Finance Parties.
  - (i) The Facility Agent is not authorised to act on behalf of a Finance Party (without first obtaining that Finance Party's consent) in any legal or arbitration proceedings relating to any Finance Document. This paragraph (i) shall not apply to any legal or arbitration proceeding relating to the perfection, preservation or protection of rights under the Security Documents or enforcement of the Transaction Security or Security Documents.

### **29.3 Duties of the Facility Agent**

- (a) The Facility Agent's duties under the Finance Documents are solely mechanical and administrative in nature.
- (b) Subject to paragraph (c) below, the Facility Agent shall promptly forward to a Party the original or a copy of any document which is delivered to the Facility Agent for that Party by any other Party.
- (c) Without prejudice to Clause 27.6 (*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, the Facility Agent is not obliged to review or check the adequacy, accuracy or completeness of any document it forwards to another Party.
- (e) If the Facility Agent receives notice from a Party referring to any Finance Document, describing a Default and stating that the circumstance described is a Default, it shall promptly notify the other Finance Parties.

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- (f) If the Facility Agent is aware of the non-payment of any principal, interest, commitment fee or other fee payable to a Finance Party (other than the Facility Agent, the Mandated Lead Arranger or the Security Agent) under this Agreement, it shall promptly notify the other Finance Parties.
  - (g) The Facility Agent shall have only those duties, obligations and responsibilities expressly specified in the Finance Documents to which it is expressed to be a party (and no others shall be implied).

#### **29.4 Role of the Mandated Lead Arranger**

Except as specifically provided in the Finance Documents, the Mandated Lead Arranger has no obligations of any kind to any other Party under or in connection with any Finance Document.

#### **29.5 No fiduciary duties**

- (a) Nothing in any Finance Document constitutes the Facility Agent or the Mandated Lead Arranger as a trustee or fiduciary of any other person.
- (b) Neither the Facility Agent nor the Mandated Lead Arranger shall be bound to account to other Finance Party for any sum or the profit element of any sum received by it for its own account.

#### **29.6 Application of receipts**

Except as expressly stated to the contrary in any Finance Document, any moneys which the Facility Agent receives or recovers in its capacity as Facility Agent shall be applied by the Facility Agent in accordance with Clause 34.5 (*Application of receipts; partial payments*).

#### **29.7 Business with the Group**

The Facility Agent and the Mandated Lead Arranger may accept deposits from, lend money to, and generally engage in any kind of banking or other business with, any member of the Group.

#### **29.8 Rights and discretions**

- (a) The Facility Agent may:
  - (i) rely on any representation, communication, notice or document believed by it to be genuine, correct and appropriately authorised;
  - (ii) assume that:
    - (A) any instructions received by it from the Majority Lenders, any Finance Parties or any group of Finance Parties are duly given in accordance with the terms of the Finance Documents; and
    - (B) unless it has received notice of revocation, that those instructions have not been revoked; and
  - (iii) rely on a certificate from any person:
    - (A) as to any matter of fact or circumstance which might reasonably be expected to be within the knowledge of that person; or



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(B) to the effect that such person approves of any particular dealing, transaction, step, action or thing, as sufficient evidence that that is the case and, in the case of paragraph (A) above, may assume the truth and accuracy of that certificate.

- (b) The Facility Agent may assume (unless it has received notice to the contrary in its capacity as agent for the Finance Parties) that:
- (i) no Default has occurred (unless it has actual knowledge of a Default arising under Clause 26.2 (*Non-payment*));
  - (ii) any right, power, authority or discretion vested in any Party or any group of Finance Parties has not been exercised; and
  - (iii) any notice or request made by any Borrower (other than a Utilisation Request) is made on behalf of and with the consent and knowledge of all the Transaction Obligors.
- (c) The Facility Agent may engage and pay for the advice or services of any lawyers, accountants, tax advisers, surveyors or other professional advisers or experts.
- (d) Without prejudice to the generality of paragraph (c) above or paragraph (e) below, the Facility Agent may at any time engage and pay for the services of any lawyers to act as independent counsel to the Facility Agent (and so separate from any lawyers instructed by the Lenders) if the Facility Agent in its reasonable opinion deems this to be desirable.
- (e) The Facility Agent may rely on the advice or services of any lawyers, accountants, tax advisers, surveyors or other professional advisers or experts (whether obtained by the Facility Agent or by any other Party) and shall not be liable for any damages, costs or losses to any person, any diminution in value or any liability whatsoever arising as a result of its so relying.
- (f) The Facility Agent may act in relation to the Finance Documents and the Security Property through its officers, employees and agents and shall not:
- (i) be liable for any error of judgment made by any such person; or
  - (ii) be bound to supervise, or be in any way responsible for any loss incurred by reason of misconduct, omission or default on the part of any such person,
- unless such error or such loss was directly caused by the Facility Agent's gross negligence or wilful misconduct.
- (g) Unless a Finance Document expressly provides otherwise the Facility Agent may disclose to any other Party any information it reasonably believes it has received as agent under the Finance Documents.
- (h) Notwithstanding any other provision of any Finance Document to the contrary, neither the Facility Agent nor the Mandated Lead Arranger is obliged to do or omit to do anything if it would or might, in its reasonable opinion, constitute a breach of any law or regulation or a breach of a fiduciary duty or duty of confidentiality.

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- (i) Notwithstanding any provision of any Finance Document to the contrary, the Facility Agent is not obliged to expend or risk its own funds or otherwise incur any financial liability in the performance of its duties, obligations or responsibilities or the exercise of any right, power, authority or discretion if it has grounds for believing the repayment of such funds or adequate indemnity against, or security for, such risk or liability is not reasonably assured to it.

#### **29.9 Responsibility for documentation**

Neither the Facility Agent nor the Mandated Lead Arranger is responsible or liable for:

- (a) the adequacy, accuracy or completeness of any information (whether oral or written) supplied by the Facility Agent, the Security Agent, the Mandated Lead Arranger, a Transaction Obligor or any other person in, or in connection with, any Transaction Document or the transactions contemplated in the Transaction Documents or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Transaction Document;
- (b) the legality, validity, effectiveness, adequacy or enforceability of any Transaction Document or the Security Property or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with, any Transaction Document or the Security Property; or
- (c) any determination as to whether any information provided or to be provided to any Finance Party or 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.

#### **29.10 No duty to monitor**

The Facility Agent shall not be bound to enquire:

- (a) whether or not any Default has occurred;
- (b) as to the performance, default or any breach by any Transaction Obligor of its obligations under any Transaction Document; or
- (c) whether any other event specified in any Transaction Document has occurred.

#### **29.11 Exclusion of liability**

- (a) Without limiting paragraph (b) below (and without prejudice to paragraph (e) of Clause 34.11 (*Disruption to Payment Systems etc.*) or any other provision of any Finance Document excluding or limiting the liability of the Facility Agent), the Facility Agent will not be liable (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 Transaction Document or the Security Property, unless directly caused by its gross negligence or wilful misconduct;
  - (ii) exercising, or not exercising, any right, power, authority or discretion given to it by, or in connection with, any Transaction Document, the Security Property or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with, any Transaction Document or the Security Property; or

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- (iii) any shortfall which arises on the enforcement or realisation of the Security Property; or
  - (iv) without prejudice to the generality of sub-paragraphs (i) to (iii) above, any damages, costs or losses to any person, any diminution in value or any liability whatsoever arising as a result of:
    - (A) any act, event or circumstance not reasonably within its control; or
    - (B) the general risks of investment in, or the holding of assets in, any jurisdiction, including (in each case and without limitation) such damages, costs, losses, diminution in value or liability arising as a result of nationalisation, expropriation or other governmental actions; any regulation, currency restriction, devaluation or fluctuation; market conditions affecting the execution or settlement of transactions or the value of assets (including any Disruption Event); breakdown, failure or malfunction of any third party transport, telecommunications, computer services or systems; natural disasters or acts of God; war, terrorism, insurrection or revolution; or strikes or industrial action.
  - (b) No Party other than the Facility Agent may take any proceedings against any officer, employee or agent of the Facility Agent in respect of any claim it might have against the Facility Agent or in respect of any act or omission of any kind by that officer, employee or agent in relation to any Transaction Document or any Security Property and any officer, employee or agent of the Facility Agent may rely on this paragraph (b) subject to Clause 1.5 (*Third party rights*) and the provisions of the Third Parties Act.
  - (c) The Facility Agent will not be liable for any delay (or any related consequences) in crediting an account with an amount required under the Finance Documents to be paid by the Facility Agent if the Facility Agent has taken all necessary steps as soon as reasonably practicable to comply with the regulations or operating procedures of any recognised clearing or settlement system used by the Facility Agent for that purpose.
  - (d) Nothing in this Agreement shall oblige the Facility Agent or the Mandated Lead Arranger carry out:
    - (i) any “know your customer” or other checks in relation to any person; or
    - (ii) any check on the extent to which any transaction contemplated by this Agreement might be unlawful for any Finance Party,on behalf of any Finance Party and each Finance Party confirms to the Facility Agent and the Mandated Lead Arranger that it is solely responsible for any such checks it is required to carry out and that it may not rely on any statement in relation to such checks made by the Facility Agent or the Mandated Lead Arranger.
  - (e) Without prejudice to any provision of any Finance Document excluding or limiting the Facility Agent’s liability, any liability (including, without limitation, for negligence or any other category of liability whatsoever) of the Facility Agent arising under or in connection with any Transaction Document or the Security Property shall be limited to the amount of actual loss which has been finally judicially determined to have been suffered (as determined by reference to the date of default of the Facility Agent or, if later, the date on which the loss arises as a result of such default) but without reference to any special conditions or circumstances known to the Facility

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Agent at any time which increase the amount of that loss. In no event shall the Facility Agent be liable for any loss of profits, goodwill, reputation, business opportunity or anticipated saving, or for special, punitive, indirect or consequential damages, whether or not the Facility Agent has been advised of the possibility of such loss or damages.

**29.12 Lenders' indemnity to the Facility Agent**

- (a) Each Lender shall (in proportion to its share of the Total Commitments or, if the Total Commitments are then zero, to its share of the Total Commitments immediately prior to their reduction to zero) indemnify the Facility Agent, within three Business Days of demand, against any cost, loss or liability (including, without limitation, for negligence or any other category of liability whatsoever) incurred by the Facility Agent (otherwise than by reason of the Facility Agent's gross negligence or wilful misconduct) (or, in the case of any cost, loss or liability pursuant to Clause 34.11 (*Disruption to Payment Systems etc.*) notwithstanding the Facility Agent's negligence, gross negligence or any other category of liability whatsoever but not including any claim based on the fraud of the Facility Agent) in acting as Facility Agent under the Finance Documents (unless the Facility Agent has been reimbursed by a Transaction Obligor pursuant to a Finance Document).
- (b) Subject to paragraph (c) below, the Borrowers shall immediately on demand reimburse any Lender for any payment that Lender makes to the Facility Agent pursuant to paragraph (a) above.
- (c) Paragraph (b) above shall not apply to the extent that the indemnity payment in respect of which the Lender claims reimbursement relates to a liability of the Facility Agent to an Obligor.

**29.13 Resignation of the Facility Agent**

- (a) The Facility Agent may resign and appoint one of its Affiliates as successor by giving notice to the other Finance Parties and the Borrowers.
- (b) Alternatively, the Facility Agent may resign by giving 30 days' notice to the other Finance Parties and the Borrowers, in which case the Majority Lenders may appoint a successor Facility Agent.
- (c) If the Majority Lenders have not appointed a successor Facility Agent in accordance with paragraph (b) above within 20 days after notice of resignation was given, the retiring Facility Agent may appoint a successor Facility Agent.
- (d) If the Facility Agent wishes to resign because (acting reasonably) it has concluded that it is no longer appropriate for it to remain as agent and the Facility Agent is entitled to appoint a successor Facility Agent under paragraph (c) above, the Facility Agent may (if it concludes (acting reasonably) that it is necessary to do so in order to persuade the proposed successor Facility Agent to become a party to this Agreement as Facility Agent) agree with the proposed successor Facility Agent amendments to this Clause 29 (*The Facility Agent and the Mandated Lead Arranger*) and any other term of this Agreement dealing with the rights or obligations of the Facility Agent consistent with then current market practice for the appointment and protection of corporate trustees.
- (e) The retiring Facility Agent shall make available to the successor Facility Agent such documents and records and provide such assistance as the successor Facility Agent may reasonably request for the purposes of performing its functions as Facility Agent under the Finance Documents. The Borrowers shall, within three Business Days of demand, reimburse the retiring Facility Agent for the amount of all costs and expenses (including legal fees) properly incurred by it in making available such documents and records and providing such assistance.

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- (f) The Facility Agent's resignation notice shall only take effect upon the appointment of a successor.
- (g) Upon the appointment of a successor, the retiring Facility Agent shall be discharged from any further obligation in respect of the Finance Documents (other than its obligations under paragraph (e) above) but shall remain entitled to the benefit of Clause 14.4 (*Indemnity to the Facility Agent*) and this Clause 29 (*The Facility Agent and the Mandated Lead Arranger*) and any other provisions of a Finance Document which are expressed to limit or exclude its liability (or to indemnify it) in acting as Facility Agent. Any fees for the account of the retiring Facility Agent shall cease to accrue from (and shall be payable on) that date. Any successor and each of the other Parties shall have the same rights and obligations amongst themselves as they would have had if such successor had been an original Party.
- (h) The Majority Lenders may, by notice to the Facility Agent, require it to resign in accordance with paragraph (b) above. In this event, the Facility Agent shall resign in accordance with paragraph (b) above but the cost referred to in paragraph (e) above shall be for the account of the Borrowers.
- (i) The consent of any Borrower (or any other Transaction Obligor) is not required for an assignment or transfer of rights and/or obligations by the Facility Agent.
- (j) The Facility Agent shall resign in accordance with paragraph (b) above (and, to the extent applicable, shall use reasonable endeavours to appoint a successor Facility Agent pursuant to paragraph (c) above) if on or after the date which is three months before the earliest FATCA Application Date relating to any payment to the Facility Agent under the Finance Documents, either:
- (i) the Facility Agent fails to respond to a request under Clause 12.7 (*FATCA Information*) and a Lender reasonably believes that the Facility Agent will not be (or will have ceased to be) a FATCA Exempt Party on or after that FATCA Application Date;
  - (ii) the information supplied by the Facility Agent pursuant to Clause 12.7 (*FATCA Information*) indicates that the Facility Agent will not be (or will have ceased to be) a FATCA Exempt Party on or after that FATCA Application Date; or
  - (iii) the Facility Agent notifies the Borrowers and the Lenders that the Facility Agent will not be (or will have ceased to be) a FATCA Exempt Party on or after that FATCA Application Date;
- and (in each case) a Lender reasonably believes that a Party will be required to make a FATCA Deduction that would not be required if the Facility Agent were a FATCA Exempt Party, and that Lender, by notice to the Facility Agent, requires it to resign.

#### **29.14 Confidentiality**

- (a) In acting as Facility Agent for the Finance Parties, the Facility Agent shall be regarded as acting through its agency division which shall be treated as a separate entity from any other of its divisions or departments.

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- (b) If information is received by a division or department of the Facility Agent other than the division or department responsible for complying with the obligations assumed by it under the Finance Documents, that information may be treated as confidential to that division or department, and the Facility Agent shall not be deemed to have notice of it nor shall it be obliged to disclose such information to any Party.
  - (c) Notwithstanding any other provision of any Finance Document to the contrary, neither the Facility Agent nor the Mandated Lead Arranger is obliged to disclose to any other person (i) any confidential information or (ii) any other information if the disclosure would, or might in its reasonable opinion, constitute a breach of any law or regulation or a breach of a fiduciary duty.

#### **29.15 Relationship with the other Finance Parties**

- (a) Subject to Clause 27.8 (*Pro rata interest settlement*), the Facility Agent may treat the person shown in its records as Lender at the opening of business (in the place of the Facility Agent's principal office as notified to the Finance Parties from time to time) as the Lender acting through its Facility Office:
  - (i) entitled to or liable for any payment due under any Finance Document on that day; and
  - (ii) entitled to receive and act upon any notice, request, document or communication or make any decision or determination under any Finance Document made or delivered on that day,

unless it has received not less than five Business Days' prior notice from that Lender to the contrary in accordance with the terms of this Agreement.

- (b) Each Finance Party shall supply the Facility Agent with any information that the Security Agent may reasonably specify (through the Facility Agent) as being necessary or desirable to enable the Security Agent to perform its functions as Security Agent. Each Finance Party shall deal with the Security Agent exclusively through the Facility Agent and shall not deal directly with the Security Agent and any reference to any instructions being given by or sought from any Finance Party or group of Finance Parties by or to the Security Agent in this Agreement must be given or sought through the Facility Agent.
- (c) Any Lender may by notice to the Facility Agent appoint a person to receive on its behalf all notices, communications, information and documents to be made or despatched to that Lender under the Finance Documents. Such notice shall contain the address, fax number and (where communication by electronic mail or other electronic means is permitted under Clause 37.5 (*Electronic communication*)) electronic mail address and/or any other information required to enable the transmission of information by that means (and, in each case, the department or officer, if any, for whose attention communication is to be made) and be treated as a notification of a substitute address, fax number, electronic mail address (or such other information), department and officer by that Lender for the purposes of Clause 37.2 (*Addresses*) and sub-paragraph (ii) of paragraph (a) of Clause 37.5 (*Electronic communication*) and the Facility Agent shall be entitled to treat such person as the person entitled to receive all such notices, communications, information and documents as though that person were that Lender.

#### **29.16 Credit appraisal by the Finance Parties**

Without affecting the responsibility of any Transaction Obligor for information supplied by it or on its behalf in connection with any Transaction Document, each Finance Party confirms to the Facility Agent and the Mandated Lead Arranger that it has been, and will continue to be, solely responsible for making its own independent appraisal and investigation of all risks arising under, or in connection with, any Transaction Document including but not limited to:

- (a) the financial condition, status and nature of each member of the Group;
- (b) the legality, validity, effectiveness, adequacy or enforceability of any Transaction Document, the Security Property and any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Transaction Document or the Security Property;
- (c) whether that Finance Party has recourse, and the nature and extent of that recourse, against any Party or any of its respective assets under, or in connection with, any Transaction Document, the Security Property, the transactions contemplated by the Transaction Documents or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Transaction Document or the Security Property;
- (d) the adequacy, accuracy or completeness of any information provided by the Facility Agent, any Party or by any other person under, or in connection with, any Transaction Document, the transactions contemplated by any Transaction Document or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Transaction Document; and
- (e) the right or title of any person in or to or the value or sufficiency of any part of the Security Assets, the priority of any of the Transaction Security or the existence of any Security affecting the Security Assets.

#### **29.17 Facility Agent's management time**

Any amount payable to the Facility Agent under Clause 14.4 (*Indemnity to the Facility Agent*), Clause 16 (*Costs and Expenses*) and Clause 29.12 (*Lenders' indemnity to the Facility Agent*) shall include the cost of utilising the Facility Agent's management time or other resources and will be calculated on the basis of such reasonable daily or hourly rates as the Facility Agent may notify to the Borrowers and the other Finance Parties, and is in addition to any fee paid or payable to the Facility Agent under Clause 11 (*Fees and K-SURE Premium*).

#### **29.18 Deduction from amounts payable by the Facility Agent**

If any Party owes an amount to the Facility Agent under the Finance Documents, the Facility Agent may, after giving notice to that Party, deduct an amount not exceeding that amount from any payment to that Party which the Facility Agent would otherwise be obliged to make under the Finance Documents and apply the amount deducted in or towards satisfaction of the amount owed. For the purposes of the Finance Documents that Party shall be regarded as having received any amount so deducted.

### **29.19 Reliance and engagement letters**

Each Secured Party confirms that each of the Mandated Lead Arranger and the Facility Agent has authority to accept on its behalf (and ratifies the acceptance on its behalf of any letters or reports already accepted by the Mandated Lead Arranger or the Facility Agent) the terms of any reliance letter or engagement letters or any reports or letters provided by accountants, auditors or providers of due diligence reports in connection with the Finance Documents or the transactions contemplated in the Finance Documents and to bind it in respect of those, reports or letters and to sign such letters on its behalf and further confirms that it accepts the terms and qualifications set out in such letters.

### **29.20 Full freedom to enter into transactions**

Without prejudice to Clause 29.7 (*Business with the Group*) or any other provision of a Finance Document and notwithstanding any rule of law or equity to the contrary, the Facility Agent shall be absolutely entitled:

- (a) to enter into and arrange banking, derivative, investment and/or other transactions of every kind with or affecting any Transaction Obligor or any person who is party to, or referred to in, a Finance Document (including, but not limited to, any interest or currency swap or other transaction, whether related to this Agreement or not, and acting as syndicate agent and/or security agent for, and/or participating in, other facilities to such Transaction Obligor or any person who is party to, or referred to in, a Finance Document);
- (b) to deal in and enter into and arrange transactions relating to:
  - (i) any securities issued or to be issued by any Transaction Obligor or any other person; or
  - (ii) any options or other derivatives in connection with such securities; and
- (c) to provide advice or other services to any Borrower or any person who is a party to, or referred to in, a Finance Document, and, in particular, the Facility Agent shall be absolutely entitled, in proposing, evaluating, negotiating, entering into and arranging all such transactions and in connection with all other matters covered by paragraphs (a), (b) and (c) above, to use (subject only to insider dealing legislation) any information or opportunity, howsoever acquired by it, to pursue its own interests exclusively, to refrain from disclosing such dealings, transactions or other matters or any information acquired in connection with them and to retain for its sole benefit all profits and benefits derived from the dealings transactions or other matters.

### **29.21 Amounts paid in error**

- (a) If the Facility Agent pays an amount to another Party and the Facility Agent notifies that Party that such payment was an Erroneous Payment then the Party to whom that amount was paid by the Facility Agent shall on demand refund the same to the Facility Agent together with interest on that amount from the date of payment to the date of receipt by the Facility Agent, calculated by the Facility Agent to reflect its cost of funds.
- (b) Neither:
  - (i) the obligations of any Party to the Facility Agent; nor



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- (ii) the remedies of the Facility Agent, (whether arising under this Clause 29.21 (*Amounts paid in error*) or otherwise) which relate to an Erroneous Payment will be affected by any act, omission, matter or thing which, but for this paragraph (b), would reduce, release or prejudice any such obligation or remedy (whether or not known by the Facility Agent or any other Party).
  - (c) All payments to be made by a Party to the Facility Agent (whether made pursuant to this Clause 29.21 (*Amounts paid in error*) or otherwise) which relate to an Erroneous Payment shall be calculated and be made without (and free and clear of any deduction for) set-off or counterclaim.
  - (d) In this Agreement, “**Erroneous Payment**” means a payment of an amount by the Facility Agent to another Party which the Facility Agent determines (in its sole discretion) was made in error.

### **30 THE SECURITY AGENT**

#### **30.1 Trust**

- (a) The Security Agent declares that it holds the Security Property on trust for the Secured Parties on the terms contained in this Agreement and shall deal with the Security Property in accordance with this Clause 30 (*The Security Agent*) and the other provisions of the Finance Documents.
- (b) Each other Finance Party authorises the Security Agent to perform the duties, obligations and responsibilities and to exercise the rights, powers, authorities and discretions specifically given to the Security Agent under, or in connection with, the Finance Documents together with any other incidental rights, powers, authorities and discretions.

#### **30.2 Parallel Debt (Covenant to pay the Security Agent)**

- (a) Each Borrower irrevocably and unconditionally undertakes to pay to the Security Agent its Parallel Debt which shall be amounts equal to, and in the currency or currencies of, its Corresponding Debt.
- (b) The Parallel Debt of a Borrower:
  - (i) shall become due and payable at the same time as its Corresponding Debt;
  - (ii) is independent and separate from, and without prejudice to, its Corresponding Debt.
- (c) For the purposes of this Clause 30.2 (*Parallel Debt (Covenant to pay the Security Agent)*), the Security Agent:
  - (i) is the independent and separate creditor of each Parallel Debt;
  - (ii) acts in its own name and not as agent, representative or trustee of the Finance Parties and its claims in respect of each Parallel Debt shall not be held on trust; and
  - (iii) shall have the independent and separate right to demand payment of each Parallel Debt in its own name (including, without limitation, through any suit, execution, enforcement of security, recovery of guarantees and applications for and voting in any kind of insolvency proceeding).

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- (d) The Parallel Debt of a Borrower shall be:
- (i) decreased to the extent that its Corresponding Debt has been irrevocably and unconditionally paid or discharged; and
  - (ii) increased to the extent that its Corresponding Debt has increased,
- and the Corresponding Debt of a Borrower shall be decreased to the extent that its Parallel Debt has been irrevocably and unconditionally paid or discharged,
- in each case provided that the Parallel Debt of a Borrower shall never exceed its Corresponding Debt.
- (e) All amounts received or recovered by the Security Agent in connection with this Clause 30.2 (*Parallel Debt (Covenant to pay the Security Agent)*) to the extent permitted by applicable law, shall be applied in accordance with Clause 34.5 (*Application of receipts; partial payments*).
- (f) This Clause 30.2 (*Parallel Debt (Covenant to pay the Security Agent)*) shall apply, with any necessary modifications, to each Finance Document.

### **30.3 Enforcement through Security Agent only**

The 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.

### **30.4 Instructions**

- (a) The Security Agent shall:
- (i) unless a contrary indication appears in a Finance Document, exercise or refrain from exercising any right, power, authority or discretion vested in it as Security Agent in accordance with any instructions given to it by:
    - (A) all Lenders (or the Facility Agent on their behalf) if the relevant Finance Document stipulates the matter is an all Lender decision; and
    - (B) in all other cases, the Majority Lenders (or the Facility Agent on their behalf); and
  - (ii) not be liable for any act (or omission) if it acts (or refrains from acting) in accordance with sub-paragraph (i) above (or if this Agreement stipulates the matter is a decision for any other Finance Party or group of Finance Parties, in accordance with instructions given to it by that Finance Party or group of Finance Parties).
- (b) The Security Agent shall be entitled to request instructions, or clarification of any instruction, from the Majority Lenders (or the Facility Agent on their behalf) (or, if the relevant Finance Document stipulates the matter is a decision for any other Finance Party or group of Finance Parties, from that Finance Party or group of Finance Parties) as to whether, and in what manner, it should exercise or refrain from exercising any right, power, authority or discretion and the Security Agent may refrain from acting unless and until it receives any such instructions or clarification that it has requested.

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- (c) Save in the case of decisions stipulated to be a matter for any other Finance Party or group of Finance Parties under the relevant Finance Document and unless a contrary indication appears in a Finance Document, any instructions given to the Security Agent by the Majority Lenders shall override any conflicting instructions given by any other Parties and will be binding on all Finance Parties.
- (d) Paragraph (a) above shall not apply:
- (i) where a contrary indication appears in a Finance Document;
  - (ii) where a Finance Document requires the Security Agent to act in a specified manner or to take a specified action;
  - (iii) in respect of any provision which protects the Security Agent's own position in its personal capacity as opposed to its role of Security Agent for the relevant Secured Parties.
  - (iv) in respect of the exercise of the Security Agent's discretion to exercise a right, power or authority under any of:
    - (A) Clause 30.28 (*Application of receipts*);
    - (B) Clause 30.29 (*Permitted Deductions*); and
    - (C) Clause 30.30 (*Prospective liabilities*).
- (e) If giving effect to instructions given by the Majority Lenders would in the Security Agent's opinion have an effect equivalent to an amendment or waiver referred to in Clause 44 (*Amendments and Waivers*), the Security Agent shall not act in accordance with those instructions unless consent to it so acting is obtained from each Party (other than the Security Agent) whose consent would have been required in respect of that amendment or waiver.
- (f) In exercising any discretion to exercise a right, power or authority under the Finance Documents where either:
- (i) it has not received any instructions as to the exercise of that discretion; or
  - (ii) the exercise of that discretion is subject to sub-paragraph (iv) of paragraph (d) above,
- the Security Agent shall do so having regard to the interests of all the Secured Parties.
- (g) The Security Agent may refrain from acting in accordance with any instructions of any Finance Party or group of Finance Parties until it has received any indemnification and/or security that it may in its discretion require (which may be greater in extent than that contained in the Finance Documents and which may include payment in advance) for any cost, loss or liability (together with any applicable VAT) which it may incur in complying with those instructions.
- (h) Without prejudice to the remainder of this Clause 30.4 (*Instructions*), in the absence of instructions, the Security Agent may (but shall not be obliged to) take such action in the exercise of its powers and duties under the Finance Documents as it considers in its discretion to be appropriate.

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- (i) The Security Agent is not authorised to act on behalf of a Finance Party (without first obtaining that Finance Party's consent) in any legal or arbitration proceedings relating to any Finance Document. This paragraph (i) shall not apply to any legal or arbitration proceeding relating to the perfection, preservation or protection of rights under the Security Documents or enforcement of the Transaction Security or Security Documents.

### **30.5 Duties of the Security Agent**

- (a) The Security Agent's duties under the Finance Documents are solely mechanical and administrative in nature.
- (b) The Security Agent shall promptly forward to a Party the original or a copy of any document which is delivered to the Security Agent for that Party by any other Party.
- (c) Except where a Finance Document specifically provides otherwise, the Security Agent is not obliged to review or check the adequacy, accuracy or completeness of any document it forwards to another Party.
- (d) If the Security Agent receives notice from a Party referring to any Finance Document, describing a Default and stating that the circumstance described is a Default, it shall promptly notify the other Finance Parties.
- (e) The Security Agent shall have only those duties, obligations and responsibilities expressly specified in the Finance Documents to which it is expressed to be a party (and no others shall be implied).

### **30.6 No fiduciary duties**

- (a) Nothing in any Finance Document constitutes the Security Agent as an agent, trustee or fiduciary of any Transaction Obligor.
- (b) The Security Agent shall not be bound to account to any other Secured Party for any sum or the profit element of any sum received by it for its own account.

### **30.7 Business with the Group**

The Security Agent may accept deposits from, lend money to, and generally engage in any kind of banking or other business with, any member of the Group.

### **30.8 Rights and discretions**

- (a) The Security Agent may:
  - (i) rely on any representation, communication, notice or document believed by it to be genuine, correct and appropriately authorised;
  - (ii) assume that:
    - (A) any instructions received by it from the Majority Lenders, any Finance Parties or any group of Finance Parties are duly given in accordance with the terms of the Finance Documents;

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- (B) unless it has received notice of revocation, that those instructions have not been revoked;
  - (C) if it receives any instructions to act in relation to the Transaction Security, that all applicable conditions under the Finance Documents for so acting have been satisfied; and
- (iii) rely on a certificate from any person:
- (A) as to any matter of fact or circumstance which might reasonably be expected to be within the knowledge of that person; or
  - (B) to the effect that such person approves of any particular dealing, transaction, step, action or thing,  
as sufficient evidence that that is the case and, in the case of paragraph (A) above, may assume the truth and accuracy of that certificate.
- (b) The Security Agent shall be entitled to carry out all dealings with the other Finance Parties through the Facility Agent and may give to the Facility Agent any notice or other communication required to be given by the Security Agent to any Finance Party.
- (c) The Security Agent may assume (unless it has received notice to the contrary in its capacity as security agent for the Secured Parties) that:
- (i) no Default has occurred;
  - (ii) any right, power, authority or discretion vested in any Party or any group of Finance Parties has not been exercised; and
  - (iii) any notice or request made by any Borrower (other than a Utilisation Request) is made on behalf of and with the consent and knowledge of all the Transaction Obligors.
- (d) The Security Agent may engage and pay for the advice or services of any lawyers, accountants, tax advisers, surveyors or other professional advisers or experts.
- (e) Without prejudice to the generality of paragraph (c) above or paragraph (f) below, the Security Agent may at any time engage and pay for the services of any lawyers to act as independent counsel to the Security Agent (and so separate from any lawyers instructed by the Facility Agent or the Lenders) if the Security Agent in its reasonable opinion deems this to be desirable.
- (f) The Security Agent may rely on the advice or services of any lawyers, accountants, tax advisers, surveyors or other professional advisers or experts (whether obtained by the Security Agent or by any other Party) and shall not be liable for any damages, costs or losses to any person, any diminution in value or any liability whatsoever arising as a result of its so relying.
- (g) The Security Agent may act in relation to the Finance Documents and the Security Property through its officers, employees and agents and shall not:
- (i) be liable for any error of judgment made by any such person; or
  - (ii) be bound to supervise, or be in any way responsible for any loss incurred by reason of misconduct, omission or default on the part of any such person, unless such error or such loss was directly caused by the Security Agent's gross negligence or wilful misconduct.

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- (h) Unless a Finance Document expressly provides otherwise the Security Agent may disclose to any other Party any information it reasonably believes it has received as security agent under the Finance Documents.
  - (i) Notwithstanding any other provision of any Finance Document to the contrary, the Security Agent is not obliged to do or omit to do anything if it would or might, in its reasonable opinion, constitute a breach of any law or regulation or a breach of a fiduciary duty or duty of confidentiality.
  - (j) Notwithstanding any provision of any Finance Document to the contrary, the Security Agent is not obliged to expend or risk its own funds or otherwise incur any financial liability in the performance of its duties, obligations or responsibilities or the exercise of any right, power, authority or discretion if it has grounds for believing the repayment of such funds or adequate indemnity against, or security for, such risk or liability is not reasonably assured to it.

### **30.9 Responsibility for documentation**

None of the Security Agent, any Receiver or Delegate is responsible or liable for:

- (a) the adequacy, accuracy or completeness of any information (whether oral or written) supplied by the Facility Agent, the Security Agent, the Mandated Lead Arranger, a Transaction Obligor or any other person in, or in connection with, any Transaction Document or the transactions contemplated in the Transaction Documents or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Transaction Document;
- (b) the legality, validity, effectiveness, adequacy or enforceability of any Transaction Document or the Security Property or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with, any Transaction Document or the Security Property; or
- (c) any determination as to whether any information provided or to be provided to any 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.

### **30.10 No duty to monitor**

The Security Agent shall not be bound to enquire:

- (a) whether or not any Default has occurred;
- (b) as to the performance, default or any breach by any Transaction Obligor of its obligations under any Transaction Document; or
- (c) whether any other event specified in any Transaction Document has occurred.

### 30.11 Exclusion of liability

- (a) Without limiting paragraph (b) below (and without prejudice to any other provision of any Finance Document excluding or limiting the liability of the Security Agent or any Receiver or Delegate), none of the Security Agent nor any Receiver or Delegate will be liable (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 Transaction Document or the Security Property, unless directly caused by its gross negligence or wilful misconduct;
  - (ii) exercising, or not exercising, any right, power, authority or discretion given to it by, or in connection with, any Transaction Document, the Security Property or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with, any Transaction Document or the Security Property; or
  - (iii) any shortfall which arises on the enforcement or realisation of the Security Property; or
  - (iv) without prejudice to the generality of sub-paragraphs (i) to (iii) above, any damages, costs or losses to any person, any diminution in value or any liability whatsoever arising as a result of:
    - (A) any act, event or circumstance not reasonably within its control; or
    - (B) the general risks of investment in, or the holding of assets in, any jurisdiction, including (in each case and without limitation) such damages, costs, losses, diminution in value or liability arising as a result of nationalisation, expropriation or other governmental actions; any regulation, currency restriction, devaluation or fluctuation; market conditions affecting the execution or settlement of transactions or the value of assets (including any Disruption Event); breakdown, failure or malfunction of any third party transport, telecommunications, computer services or systems; natural disasters or acts of God; war, terrorism, insurrection or revolution; or strikes or industrial action.
- (b) No Party other than the Security Agent, that Receiver or that Delegate (as applicable) may take any proceedings against any officer, employee or agent of the Security Agent, a Receiver or a Delegate in respect of any claim it might have against the Security Agent, a Receiver or a Delegate or in respect of any act or omission of any kind by that officer, employee or agent in relation to any Transaction Document or any Security Property and any officer, employee or agent of the Security Agent, a Receiver or a Delegate may rely on this Clause subject to Clause 1.5 (*Third party rights*) and the provisions of the Third Parties Act.
- (c) The Security Agent will not be liable for any delay (or any related consequences) in crediting an account with an amount required under the Finance Documents to be paid by the Security Agent if the Security Agent has taken all necessary steps as soon as reasonably practicable to comply with the regulations or operating procedures of any recognised clearing or settlement system used by the Security Agent for that purpose.
- (d) Nothing in this Agreement shall oblige the Security Agent to carry out:
- (i) any “know your customer” or other checks in relation to any person; or

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- (ii) any check on the extent to which any transaction contemplated by this Agreement might be unlawful for any Finance Party, on behalf of any Finance Party and each Finance Party confirms to the Security Agent that it is solely responsible for any such checks it is required to carry out and that it may not rely on any statement in relation to such checks made by the Security Agent.
- (e) Without prejudice to any provision of any Finance Document excluding or limiting the liability of the Security Agent or any Receiver or Delegate, any liability (including, without limitation, for negligence or any other category of liability whatsoever) of the Security Agent or any Receiver or Delegate arising under or in connection with any Transaction Document or the Security Property shall be limited to the amount of actual loss which has been finally judicially determined to have been suffered (as determined by reference to the date of default of the Security Agent. Receiver or Delegate or, if later, the date on which the loss arises as a result of such default) but without reference to any special conditions or circumstances known to the Security Agent, any Receiver or Delegate at any time which increase the amount of that loss. In no event shall the Security Agent, any Receiver or Delegate be liable for any loss of profits, goodwill, reputation, business opportunity or anticipated saving, or for special, punitive, indirect or consequential damages, whether or not the Security Agent, the Receiver or Delegate has been advised of the possibility of such loss or damages.

### **30.12 Lenders' indemnity to the Security Agent**

- (a) Each Lender shall (in proportion to its share of the Total Commitments or, if the Total Commitments are then zero, to its share of the Total Commitments immediately prior to their reduction to zero) indemnify the Security Agent and every Receiver, within three 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 Security Agent's or Receiver's gross negligence or wilful misconduct) in acting as Security Agent or Receiver under the Finance Documents (unless the Security Agent or Receiver has been reimbursed by a Transaction Obligor pursuant to a Finance Document).
- (b) Subject to paragraph (c) below, the Borrowers shall immediately on demand reimburse any Lender for any payment that Lender makes to the Security Agent pursuant to paragraph (a) above.
- (c) Paragraph (b) above shall not apply to the extent that the indemnity payment in respect of which the Lender claims reimbursement relates to a liability of the Security Agent to a Borrower.

### **30.13 Resignation of the Security Agent**

- (a) The Security Agent may resign and appoint one of its Affiliates as successor by giving notice to the other Finance Parties and the Borrowers.
- (b) Alternatively, the Security Agent may resign by giving 30 days' notice to the other Finance Parties and the Borrowers, in which case the Majority Lenders may appoint a successor Security Agent.
- (c) If the Majority Lenders have not appointed a successor Security Agent in accordance with paragraph (b) above within 20 days after notice of resignation was given, the retiring Security Agent may appoint a successor Security Agent.



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- (d) The retiring Security Agent shall make available to the successor Security Agent such documents and records and provide such assistance as the successor Security Agent may reasonably request for the purposes of performing its functions as Security Agent under the Finance Documents. The Borrowers shall, within three Business Days of demand, reimburse the retiring Security Agent for the amount of all costs and expenses (including legal fees) properly incurred by it in making available such documents and records and providing such assistance.
  - (e) The Security Agent's resignation notice shall only take effect upon:
    - (i) the appointment of a successor; and
    - (ii) the transfer, by way of a document expressed as a deed, of all the Security Property to that successor.
  - (f) Upon the appointment of a successor, the retiring Security Agent shall be discharged, by way of a document executed as a deed, from any further obligation in respect of the Finance Documents (other than its obligations under paragraph (b) of Clause 30.25 (*Winding up of trust*) and paragraph (d) above) but shall remain entitled to the benefit of Clause 14.5 (*Indemnity to the Security Agent*) and this Clause 30 (*The Security Agent*) and any other provisions of a Finance Document which are expressed to limit or exclude its liability (or to indemnify it) in acting as Security Agent. Any fees for the account of the retiring Security Agent shall cease to accrue from (and shall be payable on) that date. Any successor and each of the other Parties shall have the same rights and obligations amongst themselves as they would have had if such successor had been an original Party.
  - (g) The Majority Lenders may, by notice to the Security Agent, require it to resign in accordance with paragraph (b) above. In this event, the Security Agent shall resign in accordance with paragraph (b) above but the cost referred to in paragraph (d) above shall be for the account of the Borrowers.
  - (h) The consent of any Borrower (or any other Transaction Obligor) is not required for an assignment or transfer of rights and/or obligations by the Security Agent.

#### **30.14 Confidentiality**

- (a) In acting as Security Agent for the Finance Parties, the Security Agent shall be regarded as acting through its trustee division which shall be treated as a separate entity from any other of its divisions or departments.
- (b) If information is received by a division or department of the Security Agent other than the division or department responsible for complying with the obligations assumed by it under the Finance Documents, that information may be treated as confidential to that division or department, and the Security Agent shall not be deemed to have notice of it nor shall it be obliged to disclose such information to any Party.
- (c) Notwithstanding any other provision of any Finance Document to the contrary, the Security Agent is not obliged to disclose to any other person (i) any confidential information or (ii) any other information if the disclosure would, or might in its reasonable opinion, constitute a breach of any law or regulation or a breach of a fiduciary duty.

### 30.15 Credit appraisal by the Finance Parties

Without affecting the responsibility of any Transaction Obligor for information supplied by it or on its behalf in connection with any Transaction Document, each Finance Party confirms to the Security Agent that it has been, and will continue to be, solely responsible for making its own independent appraisal and investigation of all risks arising under, or in connection with, any Transaction Document including but not limited to:

- (a) the financial condition, status and nature of each member of the Group;
- (b) the legality, validity, effectiveness, adequacy or enforceability of any Transaction Document, the Security Property and any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Transaction Document or the Security Property;
- (c) whether that Finance Party has recourse, and the nature and extent of that recourse, against any Party or any of its respective assets under, or in connection with, any Transaction Document, the Security Property, the transactions contemplated by the Transaction Documents or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Transaction Document or the Security Property;
- (d) the adequacy, accuracy or completeness of any information provided by the Security Agent, any Party or by any other person under, or in connection with, any Transaction Document, the transactions contemplated by any Transaction Document or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Transaction Document; and
- (e) the right or title of any person in or to or the value or sufficiency of any part of the Security Assets, the priority of any of the Transaction Security or the existence of any Security affecting the Security Assets.

### 30.16 Security Agent's management time

- (a) Any amount payable to the Security Agent under Clause 14.5 (*Indemnity to the Security Agent*), Clause 16 (*Costs and Expenses*) and Clause 30.12 (*Lenders' indemnity to the Security Agent*) shall include the cost of utilising the Security Agent's management time or other resources and will be calculated on the basis of such reasonable daily or hourly rates as the Security Agent may notify to the Borrowers and the other Finance Parties, and is in addition to any fee paid or payable to the Security Agent under Clause 11 (*Fees and K-SURE Premium*).
- (b) Without prejudice to paragraph (a) above, in the event of:
  - (i) a Default;
  - (ii) the Security Agent being requested by a Transaction Obligor or the Majority Lenders to undertake duties which the Security Agent and the Borrowers agree to be of an exceptional nature or outside the scope of the normal duties of the Security Agent under the Finance Documents; or
  - (iii) the Security Agent and the Borrowers agreeing that it is otherwise appropriate in the circumstances,

the Borrowers shall pay to the Security Agent any additional remuneration (together with any applicable VAT) that may be agreed between them or determined pursuant to paragraph (c) below.

- (c) If the Security Agent and the Borrowers fail to agree upon the nature of the duties, or upon the additional remuneration referred to in paragraph (b) above or whether additional remuneration is appropriate in the circumstances, any dispute shall be determined by an investment bank (acting as an expert and not as an arbitrator) selected by the Security Agent and approved by the Borrowers or, failing approval, nominated (on the application of the Security Agent) by the President for the time being of the Law Society of England and Wales (the costs of the nomination and of the investment bank being payable by the Borrowers) and the determination of any investment bank shall be final and binding upon the Parties.

### **30.17 Reliance and engagement letters**

Each Secured Party confirms that the Security Agent has authority to accept on its behalf (and ratifies the acceptance on its behalf of any letters or reports already accepted by the Security Agent) the terms of any reliance letter or engagement letters or any reports or letters provided by accountants, auditors or providers of due diligence reports in connection with the Finance Documents or the transactions contemplated in the Finance Documents and to bind it in respect of those, reports or letters and to sign such letters on its behalf and further confirms that it accepts the terms and qualifications set out in such letters.

### **30.18 No responsibility to perfect Transaction Security**

The Security Agent shall not be liable for any failure to:

- (a) require the deposit with it of any deed or document certifying, representing or constituting the title of any Transaction Obligor to any of the Security Assets;
- (b) obtain any licence, consent or other authority for the execution, delivery, legality, validity, enforceability or admissibility in evidence of any Finance Document or the Transaction Security;
- (c) register, file or record or otherwise protect any of the Transaction Security (or the priority of any of the Transaction Security) under any law or regulation or to give notice to any person of the execution of any Finance Document or of the Transaction Security;
- (d) take, or to require any Transaction Obligor to take, any step to perfect its title to any of the Security Assets or to render the Transaction Security effective or to secure the creation of any ancillary Security under any law or regulation; or
- (e) require any further assurance in relation to any Finance Document.

### **30.19 Insurance by Security Agent**

- (a) The Security Agent shall not be obliged:
- (i) to insure any of the Security Assets;
- (ii) to require any other person to maintain any insurance; or

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- (iii) to verify any obligation to arrange or maintain insurance contained in any Finance Document, and the Security Agent shall not be liable for any damages, costs or losses to any person as a result of the lack of, or inadequacy of, any such insurance.
  - (b) Where the Security Agent is named on any insurance policy as an insured party, it shall not be liable for any damages, costs or losses to any person as a result of its failure to notify the insurers of any material fact relating to the risk assumed by such insurers or any other information of any kind, unless the Majority Lenders request it to do so in writing and the Security Agent fails to do so within 14 days after receipt of that request.

### **30.20 Custodians and nominees**

The Security Agent may appoint and pay any person to act as a custodian or nominee on any terms in relation to any asset of the trust as the Security Agent may determine, including for the purpose of depositing with a custodian this Agreement or any document relating to the trust created under this Agreement and the Security Agent shall not be responsible for any loss, liability, expense, demand, cost, claim or proceedings incurred by reason of the misconduct, omission or default on the part of any person appointed by it under this Agreement or be bound to supervise the proceedings or acts of any person.

### **30.21 Delegation by the Security Agent**

- (a) Each of the Security Agent, any Receiver and any Delegate may, at any time, delegate by power of attorney or otherwise to any person for any period, all or any right, power, authority or discretion vested in it in its capacity as such.
- (b) That delegation may be made upon any terms and conditions (including the power to sub delegate) and subject to any restrictions that the Security Agent, that Receiver or that Delegate (as the case may be) may, in its discretion, think fit in the interests of the 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.

### **30.22 Additional Security Agents**

- (a) The Security Agent may at any time appoint (and subsequently remove) any person to act as a separate trustee or as a co-trustee jointly with it:
  - (i) if it considers that appointment to be in the interests of the Secured Parties; or
  - (ii) for the purposes of conforming to any legal requirement, restriction or condition which the Security Agent deems to be relevant; or
  - (iii) for obtaining or enforcing any judgment in any jurisdiction,and the Security Agent shall give prior notice to the 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.

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- (c) The remuneration that the Security Agent may pay to that person, and any costs and expenses (together with any applicable VAT) incurred by that person in performing its functions pursuant to that appointment shall, for the purposes of this Agreement, be treated as costs and expenses incurred by the Security Agent.

### **30.23 Acceptance of title**

The Security Agent shall be entitled to accept without enquiry, and shall not be obliged to investigate, any right and title that any Transaction Obligor may have to any of the Security Assets and shall not be liable for or bound to require any Transaction Obligor to remedy any defect in its right or title.

### **30.24 Releases**

Upon a disposal of any of the Security Assets pursuant to the enforcement of the Transaction Security by a Receiver, a Delegate or the Security Agent, the Security Agent is irrevocably authorised (at the cost of the Borrowers and without any consent, sanction, authority or further confirmation from any other Secured Party) to release, without recourse or warranty, that property from the Transaction Security and to execute any release of the Transaction Security or other claim over that asset and to issue any certificates of non-crystallisation of floating charges that may be required or desirable.

### **30.25 Winding up of trust**

If the Security Agent, with the approval of the Facility Agent determines that:

- (a) all of the Secured Liabilities and all other obligations secured by the Security Documents have been fully and finally discharged; and
- (b) no Secured Party is under any commitment, obligation or liability (actual or contingent) to make advances or provide other financial accommodation to any Transaction Obligor pursuant to the Finance Documents,

then

- (i) the trusts set out in this Agreement shall be wound up and the Security Agent shall release, without recourse or warranty, all of the Transaction Security and the rights of the Security Agent under each of the Security Documents; and
- (ii) any Security Agent which has resigned pursuant to Clause 30.13 (*Resignation of the Security Agent*) shall release, without recourse or warranty, all of its rights under each Security Document.

### **30.26 Powers supplemental to Trustee Acts**

The rights, powers, authorities and discretions given to the Security Agent under or in connection with the Finance Documents shall be supplemental to the Trustee Act 1925 and the Trustee Act 2000 and in addition to any which may be vested in the Security Agent by law or regulation or otherwise.

### 30.27 Disapplication of Trustee Acts

Section 1 of the Trustee Act 2000 shall not apply to the duties of the Security Agent in relation to the trusts constituted by this Agreement and the other Finance Documents. Where there are any inconsistencies between (i) the Trustee Acts 1925 and 2000 and (ii) the provisions of this Agreement and any other Finance Document, the provisions of this Agreement and any other Finance Document shall, to the extent permitted by law and regulation, prevail and, in the case of any inconsistency with the Trustee Act 2000, the provisions of this Agreement and any other Finance Document shall constitute a restriction or exclusion for the purposes of the Trustee Act 2000.

### 30.28 Application of receipts

All amounts from time to time received or recovered by the Security Agent pursuant to the terms of any Finance Document, under Clause 30.2 (*Parallel Debt (Covenant to pay the Security Agent)*) or in connection with the realisation or enforcement of all or any part of the Security Property (for the purposes of this Clause 30 (*The Security Agent*)), the “**Recoveries**”) shall be held by the Security Agent on trust to apply them at any time as the Security Agent (in its discretion) sees fit, to the extent permitted by applicable law (and subject to the remaining provisions of this Clause 30 (*The Security Agent*)), in the following order of priority:

- (a) in discharging any sums owing to the Security Agent (in its capacity as such) other than pursuant to Clause 30.2 (*Parallel Debt (Covenant to pay the Security Agent)*) or any Receiver or Delegate;
- (b) in payment or distribution to the Facility Agent, on its behalf and on behalf of the other Secured Parties, for application towards the discharge of all sums due and payable by any Transaction Obligor under any of the Finance Documents in accordance with Clause 34.5 (*Application of receipts; partial payments*);
- (c) if none of the Transaction Obligors is under any further actual or contingent liability under any Finance Document, in payment or distribution to any person to whom the Security Agent is obliged to pay or distribute in priority to any Transaction Obligor; and
- (d) the balance, if any, in payment or distribution to the relevant Transaction Obligor.

### 30.29 Permitted Deductions

The Security Agent may, in its discretion:

- (a) 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
- (b) 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).

### **30.30 Prospective liabilities**

Following enforcement of any of the Transaction Security, the Security Agent may, in its discretion, or at the request of the Facility Agent, hold any Recoveries in an interest bearing suspense or impersonal account(s) in the name of the Security Agent with such financial institution (including itself) and for so long as the Security Agent shall think fit (the interest being credited to the relevant account) for later payment to the Facility Agent for application in accordance with Clause 30.28 (*Application of receipts*) in respect of:

- (a) any sum to the Security Agent, any Receiver or any Delegate; and
- (b) any part of the Secured Liabilities,

that the Security Agent or, in the case of paragraph (b) only, the Facility Agent, reasonably considers, in each case, might become due or owing at any time in the future.

### **30.31 Investment of proceeds**

Prior to the payment of the proceeds of the Recoveries to the Facility Agent for application in accordance with Clause 30.28 (*Application of receipts*) the Security Agent may, in its discretion, hold all or part of those proceeds in an interest bearing suspense or impersonal account(s) in the name of the Security Agent with such financial institution (including itself) and for so long as the Security Agent shall think fit (the interest being credited to the relevant account) pending the payment from time to time of those moneys in the Security Agent's discretion in accordance with the provisions of Clause 30.28 (*Application of receipts*).

### **30.32 Currency conversion**

- (a) For the purpose of, or pending the discharge of, any of the Secured Liabilities the Security Agent may convert any moneys received or recovered by the Security Agent from one currency to another, at a market rate of exchange.
- (b) The obligations of any Transaction Obligor to pay in the due currency shall only be satisfied to the extent of the amount of the due currency purchased after deducting the costs of conversion.

### **30.33 Good discharge**

- (a) Any payment to be made in respect of the Secured Liabilities by the Security Agent may be made to the Facility Agent on behalf of the Secured Parties and any payment made in that way shall be a good discharge, to the extent of that payment, by the Security Agent.
- (b) The Security Agent is under no obligation to make the payments to the Facility Agent under paragraph (a) above in the same currency as that in which the obligations and liabilities owing to the relevant Finance Party are denominated.

### **30.34 Amounts received by Obligors**

If any of the Obligors receives or recovers any amount which, under the terms of any of the Finance Documents, should have been paid to the Security Agent, the Borrowers will ensure that such amount received or recovered is held on trust for the Security Agent and promptly pay that amount to the Security Agent for application in accordance with the terms of this Agreement.

### **30.35 Application and consideration**

In consideration for the covenants given to the Security Agent by each Borrower in relation to Clause 30.2 (*Parallel Debt (Covenant to pay the Security Agent)*), the Security Agent agrees with each Borrower to apply all moneys from time to time paid by such Borrower to the Security Agent in accordance with the foregoing provisions of this Clause 30 (*The Security Agent*).

### **30.36 Full freedom to enter into transactions**

Without prejudice to Clause 30.7 (*Business with the Group*) or any other provision of a Finance Document and notwithstanding any rule of law or equity to the contrary, the Security Agent shall be absolutely entitled:

- (a) to enter into and arrange banking, derivative, investment and/or other transactions of every kind with or affecting any Transaction Obligor or any person who is party to, or referred to in, a Finance Document (including, but not limited to, any interest or currency swap or other transaction, whether related to this Agreement or not, and acting as syndicate agent and/or security agent for, and/or participating in, other facilities to such Transaction Obligor or any person who is party to, or referred to in, a Finance Document);
- (b) to deal in and enter into and arrange transactions relating to:
  - (i) any securities issued or to be issued by any Transaction Obligor or any other person; or
  - (ii) any options or other derivatives in connection with such securities; and
- (c) to provide advice or other services to the Borrowers or any person who is a party to, or referred to in, a Finance Document, and, in particular, the Security Agent shall be absolutely entitled, in proposing, evaluating, negotiating, entering into and arranging all such transactions and in connection with all other matters covered by paragraphs (a), (b) and (c) above, to use (subject only to insider dealing legislation) any information or opportunity, howsoever acquired by it, to pursue its own interests exclusively, to refrain from disclosing such dealings, transactions or other matters or any information acquired in connection with them and to retain for its sole benefit all profits and benefits derived from the dealings transactions or other matters.

## **31 K-SURE AGENT**

### **31.1 Appointment and duties of K-SURE Agent**

- (a) Each Lender appoints the K-SURE Agent to act as its agent under and in connection with each K-SURE Insurance Policy and the Finance Documents.
- (b) Each Lender authorises the K-SURE Agent to exercise the rights, powers, authorities and discretions specifically given to the K-SURE Agent under, or in connection with, each K-SURE Insurance Policy and the Finance Documents together with any other incidental rights, powers, authorities and discretions.
- (c) The K-SURE Agent shall promptly forward to each Lender the original or a copy of any document which is delivered to the K-SURE Agent for that Lender by any other Party or by K-SURE.



- (d) Except where a K-SURE Insurance Policy or a Finance Document specifically provides otherwise, the K-SURE Agent is not obliged to review or check the adequacy, accuracy or completeness of any document it forwards to another Party.
- (e) The K-SURE Agent's duties under each K-SURE Insurance Policy and the Finance Documents are solely mechanical and administrative in nature.

### **31.2 Application of certain Clauses**

The provisions of Clauses 29.2 (Instructions), 29.7 (*Business with the Group*), 29.8 (*Rights and discretions*), 29.9 (*Responsibility for documentation*), 29.11 (*Exclusion of liability*), 29.12 (*Lenders' indemnity to the Facility Agent*), 29.13 (*Resignation of the Facility Agent*), 29.14 (*Confidentiality*), 29.15 (*Relationship with the other Finance Parties*), 29.16 (*Credit appraisal by the Finance Parties*) and 29.20 (*Full freedom to enter into transactions*) shall apply in respect of the K-SURE Agent in its capacity as such as if each reference to the Facility Agent were a reference to the K-SURE Agent and each reference to the Finance Documents or Transaction Documents included a reference to a K-SURE Insurance Policy.

### **31.3 K-SURE Secured Tranche Lenders' representations**

Each Lender represents and warrants to the K-SURE Agent that:

- (a) no information provided by it in writing to the K-SURE Agent or to K-SURE prior to the date of this Agreement was untrue or incorrect in any material respect except to the extent that it, in the exercise of reasonable care and due diligence prior to giving such information, could not have discovered the error or omission;
- (b) it has not taken (or failed to take), and agrees that it shall not take (or fail to take), any action that would result in the K-SURE Agent being in breach of any of its obligations in its capacity as K-SURE Agent under any K-SURE Insurance Policy or any of the Finance Documents, or result in the Lenders being in breach of any of their respective obligations as insured parties under any K-SURE Insurance Policy, or which would otherwise prejudice the K-SURE Agent's ability to make a claim on behalf of the Lenders under any K-SURE Insurance Policy;
- (c) it has reviewed each K-SURE Insurance Policy and is aware of its provisions; and
- (d) the representations and warranties made by the K-SURE Agent on its behalf under each K-SURE Insurance Policy are true and correct with respect to it in all respects.

### **31.4 Claims under K-SURE Insurance Policy**

- (a) All communication between the Finance Parties and K-SURE shall be carried out exclusively through the K-SURE Agent.
- (b) Each Lender acknowledges and agrees that it shall have no entitlement to make any claim or to take any action whatsoever under or in connection with any K-SURE Insurance Policy except through the K-SURE Agent and that all of the rights of the Lenders under each K-SURE Insurance Policy shall only be exercised by the K-SURE Agent.

### **31.5 Application of receipts to K-SURE Premium**

The Parties agree that any unpaid K-SURE Premium and any unpaid fees, costs and expenses of K-SURE shall constitute amounts then due and payable in respect of the Loan under the Finance Documents for the purposes of the amounts then due and payable in respect of paragraph (a) or (b) of Clause 34.5 (*Application of receipts; partial payments*).

## 32 CONDUCT OF BUSINESS BY THE FINANCE PARTIES

No provision of this Agreement will:

- (a) interfere with the right of any Finance Party to arrange its affairs (tax or otherwise) in whatever manner it thinks fit;
- (b) oblige any Finance Party to investigate or claim any credit, relief, remission or repayment available to it or the extent, order and manner of any claim; or
- (c) oblige any Finance Party to disclose any information relating to its affairs (tax or otherwise) or any computations in respect of Tax.

## 33 SHARING AMONG THE FINANCE PARTIES

### 33.1 Payments to Finance Parties

If a Finance Party (a “**Recovering Finance Party**”) receives or recovers any amount from a Transaction Obligor other than in accordance with Clause 34 (*Payment Mechanics*) (a “**Recovered Amount**”) and applies that amount to a payment due to it under the Finance Documents then:

- (a) the Recovering Finance Party shall, within three Business Days, notify details of the receipt or recovery, to the Facility Agent;
- (b) the Facility Agent shall determine whether the receipt or recovery is in excess of the amount the Recovering Finance Party would have been paid had the receipt or recovery been received or made by the Facility Agent and distributed in accordance with Clause 34 (*Payment Mechanics*), without taking account of any Tax which would be imposed on the Facility Agent in relation to the receipt, recovery or distribution; and
- (c) the Recovering Finance Party shall, within three Business Days of demand by the Facility Agent, pay to the Facility Agent an amount (the “**Sharing Payment**”) equal to such receipt or recovery less any amount which the Facility Agent determines may be retained by the Recovering Finance Party as its share of any payment to be made, in accordance with Clause 34.5 (*Application of receipts; partial payments*).

### 33.2 Redistribution of payments

The Facility Agent shall treat the Sharing Payment as if it had been paid by the relevant Transaction Obligor and distribute it among the Finance Parties (other than the Recovering Finance Party) (the “**Sharing Finance Parties**”) in accordance with Clause 34.5 (*Application of receipts; partial payments*) towards the obligations of that Transaction Obligor to the Sharing Finance Parties.

### 33.3 Recovering Finance Party’s rights

On a distribution by the Facility Agent under Clause 33.2 (*Redistribution of payments*) of a payment received by a Recovering Finance Party from a Transaction Obligor, as between the relevant Transaction Obligor and the Recovering Finance Party, an amount of the Recovered Amount equal to the Sharing Payment will be treated as not having been paid by that Transaction Obligor.

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### 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 Facility Agent, pay to the Facility Agent for the account of that Recovering Finance Party an amount equal to the appropriate part of its share of the Sharing Payment (together with an amount as is necessary to reimburse that Recovering Finance Party for its proportion of any interest on the Sharing Payment which that Recovering Finance Party is required to pay) (the “**Redistributed Amount**”); and
- (b) as between the relevant Transaction Obligor and each relevant Sharing Finance Party, an amount equal to the relevant Redistributed Amount will be treated as not having been paid by that Transaction Obligor.

### 33.5 Exceptions

- (a) This Clause 33 (*Sharing among the Finance Parties*) shall not apply to the extent that the Recovering Finance Party would not, after making any payment pursuant to this Clause, have a valid and enforceable claim against the relevant Transaction Obligor.
- (b) A Recovering Finance Party is not obliged to share with any other Finance Party any amount which the Recovering Finance Party has received or recovered as a result of taking legal or arbitration proceedings, if:
  - (i) it notified that other Finance Party of the legal or arbitration proceedings; and
  - (ii) that other Finance Party had an opportunity to participate in those legal or arbitration proceedings but did not do so as soon as reasonably practicable having received notice and did not take separate legal or arbitration proceedings.

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## SECTION 11

### ADMINISTRATION

#### 34 PAYMENT MECHANICS

##### 34.1 Payments to the Facility Agent

- (a) On each date on which a Transaction Obligor or a Lender is required to make a payment under a Finance Document, that Transaction Obligor or Lender shall make an amount equal to such payment available to the Facility Agent (unless a contrary indication appears in a Finance Document) for value on the due date at the time and in such funds specified by the Facility Agent as being customary at the time for settlement of transactions in the relevant currency in the place of payment.
- (b) Payment shall be made to such account in the principal financial centre of the country of that currency (or, in relation to euro, in a principal financial centre in such Participating Member State or Frankfurt, as specified by the Facility Agent) and with such bank as the Facility Agent, in each case, specifies.

##### 34.2 Distributions by the Facility Agent

Each payment received by the Facility Agent under the Finance Documents for another Party shall, subject to Clause 34.3 (*Distributions to a Transaction Obligor*) and Clause 34.4 (*Clawback and pre-funding*) be made available by the Facility Agent as soon as practicable after receipt to the Party entitled to receive payment in accordance with this Agreement (in the case of a Lender, for the account of its Facility Office), to such account as that Party may notify to the Facility Agent by not less than five Business Days' notice with a bank specified by that Party in the principal financial centre of the country of that currency (or, in relation to euro, in the principal financial centre of a Participating Member State or Frankfurt), as specified by that Party or, in the case of an Advance, to such account of such person as may be specified by the Borrowers in a Utilisation Request.

##### 34.3 Distributions to a Transaction Obligor

The Facility Agent may (with the consent of the Transaction Obligor or in accordance with Clause 35 (*Set-Off*)) apply any amount received by it for that Transaction Obligor in or towards payment (on the date and in the currency and funds of receipt) of any amount due from that Transaction Obligor under the Finance Documents or in or towards purchase of any amount of any currency to be so applied.

##### 34.4 Clawback and pre-funding

- (a) Where a sum is to be paid to the Facility Agent under the Finance Documents for another Party, the Facility Agent is not obliged to pay that sum to that other Party (or to enter into or perform any related exchange contract) until it has been able to establish to its satisfaction that it has actually received that sum.
- (b) Unless paragraph (c) below applies, if the Facility Agent pays an amount to another Party and it proves to be the case that the Facility Agent had not actually received that amount, then the Party to whom that amount (or the proceeds of any related exchange contract) was paid by the Facility Agent shall on demand refund the same to the Facility Agent together with interest on that amount from the date of payment to the date of receipt by the Facility Agent, calculated by the Facility Agent to reflect its cost of funds.

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- (c) If the Facility Agent is willing to make available amounts for the account of the Borrowers before receiving funds from the Lenders then if and to the extent that the Facility Agent does so but it proves to be the case that it does not then receive funds from a Lender in respect of a sum which it paid to the Borrowers:
- (i) the Borrowers shall on demand refund it to the Facility Agent; and
  - (ii) the Lender by whom those funds should have been made available or, if the Lender fails to do so, the Borrowers, shall on demand pay to the Facility Agent the amount (as certified by the Facility Agent) which will indemnify the Facility Agent against any funding cost incurred by it as a result of paying out that sum before receiving those funds from that Lender.

#### **34.5 Application of receipts; partial payments**

- (a) If the Facility Agent receives a payment that is insufficient to discharge all the amounts then due and payable by a Transaction Obligor under the Finance Documents, the Facility Agent shall apply that payment towards the obligations of that Transaction Obligor under the Finance Documents in the following order:
- (i) **first**, in or towards payment pro rata of any unpaid fees, costs and expenses of, and any other amounts owing to, the Facility Agent, the Security Agent, any Receiver or any Delegate under the Finance Documents;
  - (ii) **secondly**, in or towards payment pro rata of any accrued interest and fees due but unpaid to the Lenders under this Agreement;
  - (iii) **thirdly**, in or towards payment pro rata of any principal due but unpaid to the Lenders under this Agreement; and
  - (iv) **fourthly**, in or towards payment pro rata of any other sum due but unpaid under the Finance Documents.
- (b) The Facility Agent shall, if so directed by the Majority Lenders, vary, or instruct the Security Agent to vary (as applicable) the order set out in sub-paragraphs (ii) to (iv) of paragraph (a) above.
- (c) Paragraphs (a) and (b) above will override any appropriation made by a Transaction Obligor.

#### **34.6 No set-off by Transaction Obligors**

All payments to be made by a Transaction Obligor under the Finance Documents shall be calculated and be made without (and free and clear of any deduction for) set-off or counterclaim.

#### **34.7 Business Days**

- (a) Any payment under the Finance Documents which is due to be made on a day that is not a Business Day shall be made on the next Business Day in the same calendar month (if there is one) or the preceding Business Day (if there is not).

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- (b) During any extension of the due date for payment of any principal or an Unpaid Sum under this Agreement interest is payable on the principal or Unpaid Sum at the rate payable on the original due date.

#### **34.8 Currency of account**

- (a) Subject to paragraphs (b) and (c) below, dollars is the currency of account and payment for any sum due from a Transaction Obligor under any Finance Document.
- (b) Each payment in respect of costs, expenses or Taxes shall be made in the currency in which the costs, expenses or Taxes are incurred.
- (c) Any amount expressed to be payable in a currency other than dollars shall be paid in that other currency.

#### **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 Facility 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 Facility Agent (acting reasonably).
- (b) If a change in any currency of a country occurs, this Agreement will, to the extent the Facility Agent (acting reasonably and after consultation with the Borrowers) specifies to be necessary, be amended to comply with any generally accepted conventions and market practice in the Relevant Market and otherwise to reflect the change in currency.

#### **34.10 Currency Conversion**

- (a) For the purpose of, or pending any payment to be made by any Servicing Party under any Finance Document, such Servicing Party may convert any moneys received or recovered by it from one currency to another, at a market rate of exchange.
- (b) The obligations of any Transaction Obligor to pay in the due currency shall only be satisfied to the extent of the amount of the due currency purchased after deducting the costs of conversion.

#### **34.11 Disruption to Payment Systems etc.**

If either the Facility Agent determines (in its discretion) that a Disruption Event has occurred or the Facility Agent is notified by a Borrower that a Disruption Event has occurred:

- (a) the Facility Agent may, and shall if requested to do so by a Borrower, consult with the Borrowers with a view to agreeing with the Borrowers such changes to the operation or administration of the Facility as the Facility Agent may deem necessary in the circumstances;

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- (b) the Facility Agent shall not be obliged to consult with the Borrowers in relation to any changes mentioned in paragraph (a) above if, in its opinion, it is not practicable to do so in the circumstances and, in any event, shall have no obligation to agree to such changes;
  - (c) the Facility Agent may consult with the Finance Parties in relation to any changes mentioned in paragraph (a) above but shall not be obliged to do so if, in its opinion, it is not practicable to do so in the circumstances;
  - (d) any such changes agreed upon by the Facility Agent and the Borrowers shall (whether or not it is finally determined that a Disruption Event has occurred) be binding upon the Parties and any Transaction Obligors as an amendment to (or, as the case may be, waiver of) the terms of the Finance Documents notwithstanding the provisions of Clause 44 (*Amendments and Waivers*);
  - (e) the Facility Agent shall not be liable for any damages, costs or losses to any person, any diminution in value or any liability whatsoever (including, without limitation for negligence, gross negligence or any other category of liability whatsoever but not including any claim based on the fraud of the Facility Agent) arising as a result of its taking, or failing to take, any actions pursuant to or in connection with this Clause 34.11 (*Disruption to Payment Systems etc.*); and
  - (f) the Facility Agent shall notify the Finance Parties of all changes agreed pursuant to paragraph (d) above.

**35 SET-OFF**

A Finance Party may set off any matured obligation due from a Transaction Obligor under the Finance Documents (to the extent beneficially owned by that Finance Party) against any matured obligation owed by that Finance Party to that Transaction Obligor, regardless of the place of payment, booking branch or currency of either obligation. If the obligations are in different currencies, the Finance Party may convert either obligation at a market rate of exchange in its usual course of business for the purpose of the set-off.

**36 BAIL-IN**

Notwithstanding any other term of any Finance Document or any other agreement, arrangement or understanding between the parties to a Finance Document, each Party acknowledges and accepts that any liability of any party to a Finance Document under or in connection with the Finance Documents may be subject to Bail-In Action by the relevant Resolution Authority and acknowledges and accepts to be bound by the effect of:

- (a) any Bail-In Action in relation to any such liability, including (without limitation):
  - (i) a reduction, in full or in part, in the principal amount, or outstanding amount due (including any accrued but unpaid interest) in respect of any such liability;
  - (ii) a conversion of all, or part of, any such liability into shares or other instruments of ownership that may be issued to, or conferred on, it; and
  - (iii) a cancellation of any such liability; and
- (b) a variation of any term of any Finance Document to the extent necessary to give effect to any Bail-In Action in relation to any such liability.

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## 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 fax or letter.

### 37.2 Addresses

The address and fax number (and the department or officer, if any, for whose attention the communication is to be made) of each Party for any communication or document to be made or delivered under or in connection with the Finance Documents are:

- (a) in the case of the Borrowers, that specified in Schedule 1 (*The Parties*);
- (b) in the case of each Lender or the other Borrower, that specified in Schedule 1 (*The Parties*) or, if it becomes a Party after the date of this Agreement, that notified in writing to the Facility Agent on or before the date on which it becomes a Party;
- (c) in the case of the Facility Agent, that specified in Part C of Schedule 1 (*The Parties*);
- (d) in the case of the Security Agent, that specified in Part C of Schedule 1 (*The Parties*);
- (e) in the case of the K-SURE Agent, that specified in Part C of Schedule 1 (*The Parties*); and
- (f) in the case of the Mandated Lead Arranger, that specified in Part D of Schedule 1 (*The Parties*),

or any substitute address, fax number or department or officer as the Party may notify to the Facility Agent (or the Facility Agent may notify to the other Parties, if a change is made by the Facility Agent) by not less than five Business Days' notice.

### 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 fax, when received in legible form; or
  - (ii) if by way of letter, when it has been left at the relevant address or five Business Days after being deposited in the post postage prepaid in an envelope addressed to it at that address,and, if a particular department or officer is specified as part of its address details provided under Clause 37.2 (*Addresses*), if addressed to that department or officer.
- (b) Any communication or document to be made or delivered to a Servicing Party will be effective only when actually received by that Servicing Party and then only if it is expressly marked for the attention of the department or officer of that Servicing Party specified in Schedule 1 (*The Parties*) (or any substitute department or officer as that Servicing Party shall specify for this purpose).



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- (c) All notices from or to a Transaction Obligor shall be sent through the Facility Agent unless otherwise specified in any Finance Document.
  - (d) Any communication or document made or delivered to the Borrowers in accordance with this Clause will be deemed to have been made or delivered to each of the Transaction Obligors.
  - (e) Any communication or document which becomes effective, in accordance with paragraphs (a) to (d) above, after 5.00 p.m. in the place of receipt shall be deemed only to become effective on the following day.

#### **37.4 Notification of address and fax number**

Promptly upon receipt of notification of an address and fax number or change of address or fax number pursuant to Clause 37.2 (*Addresses*) or changing its own address or fax number, the Facility Agent shall notify the other Parties.

#### **37.5 Electronic communication**

- (a) Any communication to be made or document to be delivered by one Party to another under or in connection with the Finance Documents may be made or delivered by electronic mail or other electronic means (including, without limitation, by way of posting to a secure website) if those two Parties:
  - (i) notify each other in writing of their electronic mail address and/or any other information required to enable the transmission of information by that means; and
  - (ii) notify each other of any change to their address or any other such information supplied by them by not less than five Business Days' notice.
- (b) Any such electronic communication or delivery as specified in paragraph (a) above to be made between a Borrower 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 or delivery.
- (c) Any such electronic communication or document as specified in paragraph (a) above made or delivered by one Party to another will be effective only when actually received (or made available) in readable form and in the case of any electronic communication or document made or delivered by a Party to the Facility Agent or the Security Agent only if it is addressed in such a manner as the Facility Agent or the Security Agent shall specify for this purpose.
- (d) Any electronic communication or document 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 or document 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 or a document being delivered shall be construed to include that communication or document being made available in accordance with this Clause 37.5 (*Electronic communication*).

### **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 Facility Agent, accompanied by a certified English translation prepared by a translator approved by the Facility Agent and, in this case, the English translation will prevail unless the document is a constitutional, statutory or other official document.

## **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 and interest calculation**

- (a) Any interest, commission or fee accruing under a Finance Document will accrue from day to day and the amount of any such interest, commission or fee is calculated:
  - (i) on the basis of the actual number of days elapsed and a year of 360 days (or, in any case where the practice in the Relevant Market differs, in accordance with that market practice); and
  - (ii) subject to paragraph (b) below, without rounding.
- (b) The aggregate amount of any accrued interest, commission or fee which is, or becomes, payable by an Obligor under a Finance Document shall be rounded to 2 decimal places.

## **39 PARTIAL INVALIDITY**

If, at any time, any provision of a Finance Document is or becomes illegal, invalid or unenforceable in any respect under any law of any jurisdiction, neither the legality, validity or enforceability of the remaining provisions under the law of that jurisdiction nor the legality, validity or enforceability of such provision under the law of any other jurisdiction will in any way be affected or impaired.

## **40 REMEDIES AND WAIVERS**

- (a) No failure to exercise, nor any delay in exercising, on the part of any Secured Party, any right or remedy under a Finance Document shall operate as a waiver of any such right or remedy or constitute an election to affirm any Finance Document. No election to affirm any Finance Document on the part of a Secured Party shall be effective unless it is in writing. No single or partial exercise of any right or remedy shall prevent any further or other exercise or the exercise of any other right or remedy. The rights and remedies provided in each Finance Document are cumulative and not exclusive of any rights or remedies provided by law.

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- (b) No variation or amendment of a Finance Document shall be valid unless in writing and signed by or on behalf of all the relevant Finance Parties in accordance with the provisions of Clause 44 (*Amendments and Waivers*).

#### **41 ENTIRE AGREEMENT**

- (a) This Agreement, in conjunction with the other Finance Documents, constitutes the entire agreement between the Parties and supersedes all previous agreements, understandings and arrangements between them, whether in writing or oral, in respect of its subject matter.
- (b) Each Borrower acknowledges that it has not entered into this Agreement or any other Finance Document in reliance on, and shall have no remedies in respect of, any representation or warranty that is not expressly set out in this Agreement or in any other Finance Document.

#### **42 SETTLEMENT OR DISCHARGE CONDITIONAL**

Any settlement or discharge under any Finance Document between any Finance Party and any Transaction Obligor shall be conditional upon no security or payment to any Finance Party by any Transaction Obligor or any other person being set aside, adjusted or ordered to be repaid, whether under any insolvency law or otherwise.

#### **43 AMENDMENTS AND WAIVERS**

##### **43.1 Required consents**

- (a) Subject to Clause 44.2 (*All Lender matters*) and Clause 44.3 (*Other exceptions*) any term of the Finance Documents may be amended or waived only with the consent of the Majority Lenders, K-SURE and, in the case of an amendment, the Borrowers and any such amendment or waiver will be binding on all Parties.
- (b) The Facility Agent may effect, on behalf of any Finance Party, any amendment or waiver permitted by this Clause 44 (*Amendments and Waivers*).
- (c) Without prejudice to the generality of Clause 29.8 (*Rights and discretions*), the Facility Agent may engage, pay for and rely on the services of lawyers in determining the consent level required for and effecting any amendment, waiver or consent under this Agreement.
- (d) Paragraph (c) of Clause 27.8 (*Pro rata interest settlement*) shall apply to this Clause 44 (*Amendments and Waivers*).
- (e) The K-SURE Agent shall notify K-SURE of any amendment or waiver effected pursuant to this Clause 44 (*Amendments and Waivers*) and will obtain K-SURE's consent, if required.

##### **43.2 All Lender matters**

Subject to Clause 44.4 (*Changes to reference rates*), an amendment of or waiver or consent in relation to any term of any Finance Document that has the effect of changing or which relates to:

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- (a) the definition of “Majority Lenders” in Clause 1.1 (*Definitions*);
  - (b) a postponement to or extension of the date of payment of any amount under the Finance Documents;
  - (c) a reduction in the Margin or the amount of any payment of principal, interest, fees or commission payable;
  - (d) a change in currency of payment of any amount under the Finance Documents;
  - (e) an increase in any Commitment or the Total Commitments, an extension of any Availability Period or any requirement that a cancellation of Commitments reduces the Commitments rateably under the Facility;
  - (f) a change to any Transaction Obligor other than in accordance with Clause 28 (*Changes to the Transaction Obligors*);
  - (g) any provision which expressly requires the consent of all the Lenders;
  - (h) this Clause 44 (*Amendments and Waivers*);
  - (i) any change to the preamble (*Background*), Clause 2 (*The Facility*), Clause 3 (*Purpose*), Clause 5 (*Utilisation*), Clause 6.3 (*Effect of cancellation and prepayment on scheduled repayments*), Clause 7.5 (*Mandatory prepayment on default under Shipbuilding Contract*) or Clause 7.6 (*Mandatory prepayment on sale or Total Loss*), Clause 8 (*Interest*), Clause 20.25 (*K-SURE requirements*), Clause 20.26 (*K-SURE Insurance Policy protection*), Clause 20.27 (*K-SURE Override Clause*), Clause 23.10 (*Compliance with laws etc.*), Clause 23.12 (*Sanctions and Ship trading*), Clause 25 (*Accounts and Application of Earnings*), Clause 27 (*Changes to the Lenders*), Clause 33 (*Sharing among the Finance Parties*), Clause 48 (*Governing Law*) or Clause 49 (*Enforcement*);
  - (j) (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 2.1 (*guarantee and indemnity*) of the Guarantee or any other guarantee and indemnity forming part of the Finance Documents;
    - (ii) the joint and several liability of the Borrowers under Clause 17 (*Joint and Several Liability of the Borrowers*);
    - (iii) the Security Assets; or
    - (iv) the manner in which the proceeds of enforcement of the Transaction Security are distributed,  
(except in the case of sub-paragraphs (iii) and (iv) 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);
  - (k) the release or any material variation of the guarantee and indemnity granted under clause 2.1 (*guarantee and indemnity*) of the Guarantee, the joint and several liability of the Borrowers under Clause 17 (*Joint and Several Liability of the Borrowers*) or of any Transaction Security or

any guarantee, indemnity or subordination arrangement set out in a Finance Document unless permitted under this Agreement or any other Finance Document or relating to a sale or disposal of an asset which is the subject of the Transaction Security where such sale or disposal is expressly permitted under this Agreement or any other Finance Document,

shall not be made, or given, without the prior consent of all the Lenders and without the prior consent of K-SURE, save that in relation to paragraphs (b), (c), (d) and (e) the consent of K-SURE will only be required in relation to the K-SURE Secured Pre-delivery Tranche and the K-SURE Secured Delivery Tranche.

#### **43.3 Other exceptions**

- (a) An amendment or waiver which relates to the rights or obligations of a Servicing Party or the Mandated Lead Arranger (each in their capacity as such) may not be effected without the consent of that Servicing Party or the Mandated Lead Arranger, as the case may be.
- (b) The Borrowers and the Facility Agent, the Mandated Lead Arranger, the Security Agent or the K-SURE Agent, as applicable, may amend or waive a term of a Fee Letter to which they are party.

#### **43.4 Changes to reference rates**

- (a) Subject to Clause 44.3 (*Other exceptions*), if an RFR Replacement Event has occurred any amendment or waiver which relates to:
  - (i) providing for the use of a Replacement Reference Rate in place of the RFR; and
  - (ii)
    - (A) aligning any provision of any Finance Document to the use of that Replacement Reference Rate;
    - (B) enabling that Replacement Reference Rate to be used for the calculation of interest under this Agreement (including, without limitation, any consequential changes required to enable that Replacement Reference Rate to be used for the purposes of this Agreement);
    - (C) implementing market conventions applicable to that Replacement Reference Rate;
    - (D) providing for appropriate fallback (and market disruption) provisions for that Replacement Reference Rate; or
    - (E) adjusting the pricing to reduce or eliminate, to the extent reasonably practicable, any transfer of economic value from one Party to another as a result of the application of that Replacement Reference Rate (and if any adjustment or method for calculating any adjustment has been formally designated, nominated or recommended by the Relevant Nominating Body, the adjustment shall be determined on the basis of that designation, nomination or recommendation),

may be made with the consent of the Facility Agent (acting on the instructions of the Majority Lenders) and the Borrowers.

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- (b) An amendment or waiver that relates to, or has the effect of, aligning the means of calculation of interest on the Loan or any part of the Loan under this Agreement to any recommendation of a Relevant Nominating Body which:
- (i) relates to the use of the RFR on a compounded basis in the international or any relevant domestic syndicated loan markets; and
  - (ii) is issued on or after the date of this Agreement,
- may be made with the consent of the Facility Agent (acting on the instructions of the Majority Lenders) and the Borrowers.
- (c) If any Lender fails to respond to a request for an amendment or waiver described in paragraph (a) or (b) above within 5 Business Days (or such longer time period in relation to any request which the Borrowers and the Facility Agent may agree) of that request being made:
- (i) its Commitment or its participation in the Loan (as the case may be) shall not be included for the purpose of calculating the Total Commitments or the amount of the Loan (as applicable) when ascertaining whether any relevant percentage of Total Commitments or the aggregate of participations in the Loan (as applicable) has been obtained to approve that request; and
  - (ii) its status as a Lender shall be disregarded for the purpose of ascertaining whether the agreement of any specified group of Lenders has been obtained to approve that request.
- (d) In this Clause 44.4 (*Changes to reference rates*):
- “RFR Replacement Event”** means:
- (a) the methodology, formula or other means of determining the RFR has, in the opinion of the Majority Lenders, and the Borrowers materially changed;
  - (b)
    - (i)
      - (A) the administrator of the RFR or its supervisor publicly announces that such administrator is insolvent; or
      - (B) information is published in any order, decree, notice, petition or filing, however described, of or filed with a court, tribunal, exchange, regulatory authority or similar administrative, regulatory or judicial body which reasonably confirms that the administrator of the RFR is insolvent,

**provided that**, in each case, at that time, there is no successor administrator to continue to provide the RFR;
    - (ii) the administrator of the RFR publicly announces that it has ceased or will cease, to provide the RFR permanently or indefinitely and, at that time, there is no successor administrator to continue to provide the RFR;

- (iii) the supervisor of the administrator of the RFR publicly announces that the RFR has been or will be permanently or indefinitely discontinued; or
- (iv) the administrator of the RFR or its supervisor announces that the RFR may no longer be used; or
- (c) the administrator of the RFR determines that the RFR should be calculated in accordance with its reduced submissions or other contingency or fallback policies or arrangements and either:
  - (i) the circumstance(s) or event(s) leading to such determination are not (in the opinion of the Majority Lenders and the Borrower) temporary; or
  - (ii) the RFR is calculated in accordance with any such policy or arrangement for a period no less than the period specified as the “RFR Contingency Period” in the Reference Rate Terms; or
- (d) in the opinion of the Majority Lenders and the Borrower, the RFR is otherwise no longer appropriate for the purposes of calculating interest under this Agreement.

“**Relevant Nominating Body**” means any applicable central bank, regulator or other supervisory authority or a group of them, or any working group or committee sponsored or chaired by, or constituted at the request of, any of them or the Financial Stability Board.

“**Replacement Reference Rate**” means a reference rate which is:

- (a) formally designated, nominated or recommended as the replacement for the RFR by:
  - (i) the administrator of the RFR (provided that the market or economic reality that such reference rate measures is the same as that measured by the RFR); or
  - (ii) any Relevant Nominating Body,

and if replacements have, at the relevant time, been formally designated, nominated or recommended under both paragraphs, the “Replacement Reference Rate” will be the replacement under sub-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 or alternative to the RFR; or
- (e) in the opinion of the Majority Lenders and the Borrower, an appropriate successor or alternative to the RFR.

#### **43.5 Borrower Intent**

Without prejudice to the generality of Clauses 1.2 (*Construction*), each Borrower expressly confirms that it intends that any guarantee contained in this Agreement or any other Finance Document and any Security created by any Finance Document shall extend from time to time to any (however fundamental) variation, increase, extension or addition of or to any of the Finance Documents and/or any facility or amount made available under any of the Finance Documents for the purposes of or in connection with any of the following: business

acquisitions of any nature; increasing working capital; enabling investor distributions to be made; carrying out restructurings; refinancing existing facilities; refinancing any other indebtedness; making facilities available to new borrowers; any other variation or extension of the purposes for which any such facility or amount might be made available from time to time; and any fees, costs and/or expenses associated with any of the foregoing.

**44 IRREVOCABLE PAYMENT**

If the Facility Agent considers that an amount paid or discharged by, or on behalf of, a Transaction Obligor or by any other person in purported payment or discharge of an obligation of that Transaction Obligor to a Secured Party under the Finance Documents is capable of being avoided or otherwise set aside on the liquidation or administration of that Transaction Obligor or otherwise, then that amount shall not be considered to have been unconditionally and irrevocably paid or discharged for the purposes of the Finance Documents.

**45 CONFIDENTIAL INFORMATION**

**45.1 Confidentiality**

Each Finance Party agrees to keep all Confidential Information confidential and not to disclose it to anyone, save to the extent permitted by Clause 45.2 (*Disclosure of Confidential Information*) and Clause 45.4 (*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.

**45.2 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, insurers, reinsurers, insurance advisors, insurance brokers, 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 (and in relation to any Confidential Information relating to the Guarantor, if 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) except that there shall be no such requirement to so inform if the recipient is subject to professional obligations to maintain the confidentiality of the information or is otherwise bound by requirements of confidentiality in relation to the Confidential Information;
- (b) to any person:
  - (i) to (or through) whom it assigns or transfers (or may potentially assign or transfer) all or any of its rights and/or obligations under one or more Finance Documents or which succeeds (or which may potentially succeed) it as Facility Agent or Security Agent and, in each case, to any of that person's Affiliates, Related Funds, Representatives and professional advisers;



- (ii) with (or through) whom it enters into (or may potentially enter into), whether directly or indirectly, any sub-participation in relation to, or any other transaction under which payments are to be made or may be made by reference to, one or more Finance Documents and/or one or more Transaction Obligors and to any of that person's Affiliates, Related Funds, Representatives and professional advisers;
- (iii) appointed by any Finance Party or by a person to whom sub-paragraph (i) or (ii) of paragraph (b) above applies to receive communications, notices, information or documents delivered pursuant to the Finance Documents on its behalf (including, without limitation, any person appointed under paragraph (c) of Clause 29.15 (*Relationship with the other Finance Parties*));
- (iv) who invests in or otherwise finances (or may potentially invest in or otherwise finance), directly or indirectly, any transaction referred to in sub-paragraph (i) or (ii) of paragraph (b) above;
- (v) to whom information is required or requested to be disclosed by any court of competent jurisdiction or any governmental, banking, taxation or other regulatory authority or similar body, the rules of any relevant stock exchange or pursuant to any applicable law or regulation;
- (vi) to whom information is required to be disclosed in connection with, and for the purposes of, any litigation, arbitrations, administrative or other investigations, proceedings or disputes;
- (vii) to whom or for whose benefit that Finance Party charges, assigns or otherwise creates Security (or may do so) pursuant to Clause 27.7 (*Security over Lenders' rights*);
- (viii) which is a classification society or other entity which a Lender has engaged to make the calculations necessary to enable that Lender to comply with its reporting obligations under the Poseidon Principles;
- (ix) who is a Party, a member of the Group or any related entity of a Transaction Obligor;
- (x) as a result of the registration of any Finance Document as contemplated by any Finance Document or any legal opinion obtained in connection with any Finance Document; or
- (xi) with the consent of the Guarantor;

in each case, such Confidential Information as that Finance Party shall consider appropriate if:

- (A) in relation to sub-paragraphs (i), (ii) and (iii) of paragraph (b) above, the person to whom the Confidential Information is to be given has entered into a Confidentiality Undertaking except that there shall be no requirement for a Confidentiality Undertaking if the recipient is a professional adviser and is subject to professional obligations to maintain the confidentiality of the Confidential Information;
- (B) in relation to sub-paragraphs (iv) and (viii) of paragraph (b) above, the person to whom the Confidential Information is to be given has entered into a Confidentiality Undertaking or is otherwise bound by requirements of confidentiality in relation to the Confidential Information they receive and is informed that some or all of such Confidential Information may be price-sensitive information;

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- (C) in relation to sub-paragraphs (v), (vi) and (vii) of paragraph (b) above, the person to whom the Confidential Information is to be given is informed of its confidential nature and that some or all of such Confidential Information may be price-sensitive information except that there shall be no requirement to so inform if, in the opinion of that Finance Party, it is not practicable so to do in the circumstances;
- (c) to any person appointed by that Finance Party or by a person to whom sub-paragraph (i) or (ii) of paragraph (b) above applies to provide administration or settlement services in respect of one or more of the Finance Documents including without limitation, in relation to the trading of participations in respect of the Finance Documents, such Confidential Information as may be required to be disclosed to enable such service provider to provide any of the services referred to in this paragraph (c) if the service provider to whom the Confidential Information is to be given has entered in to a confidentiality agreement substantially in the form of the LMA Master Confidentiality Undertaking for Use With Administration/ Settlement Service Providers or such other form of confidentiality undertaking agreed between the 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.

#### **45.3 DAC6**

Nothing in any Finance Document shall prevent disclosure of any Confidential Information or other matter to the extent that preventing that disclosure would otherwise cause any transaction contemplated by the Finance Documents or any transaction carried out in connection with any transaction contemplated by the Finance Documents to become an arrangement described in Part II A 1 of Annex IV of Directive 2011/16/EU.

#### **45.4 Disclosure to numbering service providers**

- (a) Any Finance Party may disclose to any national or international numbering service provider appointed by that Finance Party to provide identification numbering services in respect of this Agreement, the Facility and/or one or more Transaction Obligors the following information:
- (i) names of Transaction Obligors;
  - (ii) country of domicile of Transaction Obligors;
  - (iii) place of incorporation of Transaction Obligors;
  - (iv) date of this Agreement;
  - (v) Clause 48 (*Governing Law*);
  - (vi) the names of the Facility Agent and the Mandated Lead Arranger;

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- (vii) date of each amendment and restatement of this Agreement;
  - (viii) amount of Total Commitments;
  - (ix) currency of the Facility;
  - (x) type of Facility;
  - (xi) ranking of Facility;
  - (xii) Termination Date;
  - (xiii) changes to any of the information previously supplied pursuant to sub-paragraphs (i) to (xii) above; and
  - (xiv) such other information agreed between such Finance Party and the Borrowers,
- to enable such numbering service provider to provide its usual syndicated loan numbering identification services.
- (b) The Parties acknowledge and agree that each identification number assigned to this Agreement, the Facility and/or one or more Transaction Obligors by a numbering service provider and the information associated with each such number may be disclosed to users of its services in accordance with the standard terms and conditions of that numbering service provider.
  - (c) Each Obligor represents, on behalf of itself and the other Transaction Obligors, that none of the information set out in sub-paragraphs (i) to (xiv) of paragraph (a) above is, nor will at any time be, unpublished price-sensitive information.
  - (d) The Facility Agent shall notify the Guarantor and the other Finance Parties of:
    - (i) the name of any numbering service provider appointed by the Facility Agent in respect of this Agreement, the Facility and/or one or more Transaction Obligors; and
    - (ii) the number or, as the case may be, numbers assigned to this Agreement, the Facility and/or one or more Transaction Obligors by such numbering service provider.

#### **45.5 Entire agreement**

This Clause 45 (*Confidential Information*) constitutes the entire agreement between the Parties in relation to the obligations of the Finance Parties under the Finance Documents regarding Confidential Information and supersedes any previous agreement, whether express or implied, regarding Confidential Information.

#### **45.6 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.

#### **45.7 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 sub-paragraph (v) of paragraph (b) of Clause 45.2 (*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;
- (b) upon becoming aware that Confidential Information has been disclosed in breach of this Clause 45 (*Confidential Information*); and
- (c) in respect of any publicity regarding the Facility or any of the terms thereof which shall be agreed in advance by the Guarantor and the Facility Agent unless otherwise required in connection with the Guarantor's reporting obligations under or in connection with the rules and regulations of the US Stock Exchange Commission and any US Stock Exchange applicable to the Guarantor.

#### **45.8 Use of logo and/or trademark**

Subject to the Borrowers' prior written consent (such consent not to be unreasonably withheld), each of the Facility Agent and/or the Mandated Lead Arranger has the right, at its expense, to publish information regarding its participation in, and the agency and arrangement of this Agreement and have the right to use the Borrowers' and/or the Guarantor's logo and trademark in connection with such publication.

#### **45.9 Continuing obligations**

The obligations in this Clause 45 (*Confidential Information*) are continuing and, in particular, shall survive and remain binding on each Finance Party for a period of 12 months from the earlier of:

- (a) the date on which all amounts payable by the Borrowers under or in connection with this Agreement have been paid in full and all Commitments have been cancelled or otherwise cease to be available; and
- (b) the date on which such Finance Party otherwise ceases to be a Finance Party.

### **46 CONFIDENTIALITY OF FUNDING RATES**

#### **46.1 Confidentiality and disclosure**

- (a) The Facility Agent and each Borrower agree to keep each Funding Rate confidential and not to disclose it to anyone, save to the extent permitted by paragraphs (b) and (c) below.
- (b) The Facility Agent may disclose:
  - (i) any Funding Rate to the Borrowers pursuant to Clause 8.4 (*Notifications*); and
  - (ii) any Funding Rate to any person appointed by it to provide administration services in respect of one or more of the Finance Documents to the extent necessary to enable such service provider to provide those services if the service provider to whom that

information is to be given has entered into a confidentiality agreement substantially in the form of the LMA Master Confidentiality Undertaking for Use With Administration/Settlement Service Providers or such other form of confidentiality undertaking agreed between the Facility Agent and the relevant Lender.

- (c) The Facility Agent and each Borrower may disclose any Funding Rate, to:
- (i) any of its Affiliates and any of its or their officers, directors, employees, professional advisers, auditors, partners and Representatives if any person to whom that Funding Rate is to be given pursuant to this sub-paragraph (i) is informed in writing of its confidential nature and that it may be price sensitive information except that there shall be no such requirement to so inform if the recipient is subject to professional obligations to maintain the confidentiality of that Funding Rate or is otherwise bound by requirements of confidentiality in relation to it;
  - (ii) any person to whom information is required or requested to be disclosed by any court of competent jurisdiction or any governmental, banking, taxation or other regulatory authority or similar body, the rules of any relevant stock exchange or pursuant to any applicable law or regulation if the person to whom that Funding Rate is to be given is informed in writing of its confidential nature and that it may be price sensitive information except that there shall be no requirement to so inform if, in the opinion of the Facility Agent or the relevant Borrower, as the case may be, it is not practicable to do so in the circumstances;
  - (iii) any person to whom information is required to be disclosed in connection with, and for the purposes of, any litigation, arbitration, administrative or other investigations, proceedings or disputes if the person to whom that Funding Rate is to be given is informed in writing of its confidential nature and that it may be price sensitive information except that there shall be no requirement to so inform if, in the opinion of the Facility Agent or the relevant Borrower, as the case may be, it is not practicable to do so in the circumstances; and
  - (iv) any person with the consent of the relevant Lender.

#### **46.2 Related obligations**

- (a) The Facility Agent and each Borrower acknowledge that each Funding Rate is or may be price sensitive information and that its use may be regulated or prohibited by applicable legislation including securities law relating to insider dealing and market abuse and the Facility Agent and each Borrower undertake not to use any Funding Rate for any unlawful purpose.
- (b) The Facility Agent and each Borrower agree (to the extent permitted by law and regulation) to inform the relevant Lender:
- (i) of the circumstances of any disclosure made pursuant to sub-paragraph (ii) of paragraph (c) of Clause 46.1 (*Confidentiality and disclosure*) except where such disclosure is made to any of the persons referred to in that paragraph during the ordinary course of its supervisory or regulatory function; and
  - (ii) upon becoming aware that any information has been disclosed in breach of this Clause 46 (*Confidentiality of Funding Rates*).

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**46.3 No Event of Default**

No Event of Default will occur under Clause 26.4 (*Other obligations*) by reason only of a Borrower's failure to comply with this Clause 46 (*Confidentiality of Funding Rates*).

**47 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.

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## SECTION 12

### GOVERNING LAW AND ENFORCEMENT

#### 48 GOVERNING LAW

This Agreement and any non-contractual obligations arising out of or in connection with it are governed by English law.

#### 49 ENFORCEMENT

##### 49.1 Jurisdiction

- (a) Unless specifically provided in another Finance Document in relation to that Finance Document, the courts of England have exclusive jurisdiction to settle any dispute arising out of or in connection with any Finance Document (including a dispute regarding the existence, validity or termination of any Finance Document or any non-contractual obligation arising out of or in connection with any Finance Document) (a “**Dispute**”).
- (b) The Borrowers accept that the courts of England are the most appropriate and convenient courts to settle Disputes and accordingly no Borrower will argue to the contrary.
- (c) This Clause 49.1 (*Jurisdiction*) is for the benefit of the Secured Parties only. As a result, no Secured Party shall be prevented from taking proceedings relating to a Dispute in any other courts with jurisdiction. To the extent allowed by law, the Secured Parties may take concurrent proceedings in any number of jurisdictions.

##### 49.2 Service of process

- (a) Without prejudice to any other mode of service allowed under any relevant law, each Borrower (other than a Borrower incorporated in England and Wales):
  - (i) irrevocably appoints Hill Dickinson Services (London) Limited at its current address at 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 Borrower 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 must immediately (and in any event within 5 days of such event taking place) appoint another agent on terms acceptable to the Facility Agent. Failing this, the Facility Agent may appoint another agent for this purpose.

**This Agreement has been entered into on the date stated at the beginning of this Agreement.**

EXECUTION PAGES

**BORROWERS**

SIGNED by )  
)  
)  
as attorney-in-fact )  
for and on behalf of )/s/ Alexandra Kontaxi  
**KARPATHOS SHIPPING** )  
**CORPORATION** )  
in the presence of: )  
  
Witness' signature: )  
Witness' name: )/s/ Christina Economides  
) Solicitor  
  
Witness' address: ) Watson Farley & Williams LLP  
) 348 Syngrou Avenue  
) Kallithea 176 74  
) Athens, Greece

SIGNED by )/s/ Alexandra Kontaxi  
)  
)  
as attorney-in-fact )  
for and on behalf of )  
**PATMOS SHIPPING CORPORATION** )  
in the presence of: )  
  
Witness' signature: )  
Witness' name: )/s/ Christina Economides  
) Solicitor  
  
Witness' address: ) Watson Farley & Williams LLP  
) 348 Syngrou Avenue  
) Kallithea 176 74  
) Athens, Greece

**ORIGINAL LENDERS**

SIGNED by )  
)  
)  
duly authorised )  
for and on behalf of )/s/ Charalampos Kazantzis  
**KFW IPEX-BANK GMBH** )  
in the presence of: )  
  
Witness' signature: )  
Witness' name: )/s/ Christina Economides  
) Solicitor  
  
Witness' address: ) Watson Farley & Williams LLP  
) 348 Syngrou Avenue  
) Kallithea 176 74  
) Athens, Greece



**MANDATED LEAD ARRANGER**

**SIGNED** by )  
)  
duly authorised ) /s/ Charalampos Kazantzis  
for and on behalf of )  
**KFW IPEX-BANK GMBH** )  
in the presence of: )  
  
Witness' signature: )  
Witness' name: ) /s/ Christina Economides  
  
) Solicitor  
  
Witness' address: ) Watson Farley & Williams LLP  
  
) 348 Syngrou Avenue  
) Kallithea 176 74  
) Athens, Greece

**FACILITY AGENT**

**SIGNED** by )  
)  
duly authorised ) /s/ Charalampos Kazantzis  
for and on behalf of )  
**KFW IPEX-BANK GMBH** )  
in the presence of: )  
  
Witness' signature: )  
Witness' name: ) /s/ Christina Economides  
  
) Solicitor  
  
Witness' address: ) Watson Farley & Williams LLP  
  
) 348 Syngrou Avenue  
) Kallithea 176 74  
) Athens, Greece

**SECURITY AGENT**

**SIGNED** by )  
)  
duly authorised ) /s/ Charalampos Kazantzis  
for and on behalf of )  
**KFW IPEX-BANK GMBH** )  
in the presence of: )  
  
Witness' signature: )  
Witness' name: ) /s/ Christina Economides  
  
) Solicitor  
  
Witness' address: ) Watson Farley & Williams LLP  
  
) 348 Syngrou Avenue  
) Kallithea 176 74  
) Athens, Greece

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**K-SURE AGENT**

**SIGNED** by )  
 )  
duly authorised ) /s/ Charalampos Kazantzis  
for and on behalf of )  
**KFW IPEX-BANK GMBH** )  
in the presence of: )  
  
Witness' signature: )  
Witness' name: ) /s/ Christina Economides  
 ) Solicitor  
  
Witness' address: ) Watson Farley & Williams LLP  
 ) 348 Syngrou Avenue  
 ) Kallithea 176 74  
 ) Athens, Greece

Date 2 May 2023

**ANTIPSARA SHIPPING CORPORATION**  
**KITHIRA SHIPPING CORPORATION**

- and -

**THASOS SHIPPING CORPORATION**

as joint and several Borrowers

- and -

**THE BANKS AND FINANCIAL INSTITUTIONS**

**listed in Schedule 1**

as Lenders

- and -

**EUROBANK S.A.**

as Agent, Arranger and Security Agent

- and -

**EUROBANK CYPRUS LTD**

as Account Bank

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**LOAN AGREEMENT**

**(No. 404/ 02/05/ 2023)**

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relating to a loan facility of up to \$30,000,000

**Ince**  
**PIRAEUS**

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**BETWEEN:**

- (1) **ANTIPSARA SHIPPING CORPORATION, KITHIRA SHIPPING CORPORATION and THASOS SHIPPING CORPORATION**, each being a corporation incorporated and existing under the laws of the Republic of Marshall Islands whose registered address is at Trust Company Complex, Ajeltake Road Ajeltake Islands, Majuro, MH96960, Marshall Islands, as joint and several **Borrowers**;
- (2) **THE BANKS AND FINANCIAL INSTITUTIONS** listed in Schedule 1 (*Lenders and Commitments*), as **Lenders**;
- (3) **EUROBANK S.A.** a banking société anonyme duly incorporated under the laws of Greece, having its registered office at 8 Othonos Street, Athens, Greece, acting for the purposes of this Agreement through its office at 83 Akti Miaouli & Flessa Street, 5th floor, 185 38 Piraeus, Greece, as **Agent**;
- (4) **EUROBANK S.A.** a banking société anonyme duly incorporated under the laws of Greece, having its registered office at 8 Othonos Street, Athens, Greece, acting for the purposes of this Agreement through its office at 83 Akti Miaouli & Flessa Street, 5th floor, 185 38 Piraeus, Greece, as **Arranger**;
- (5) **EUROBANK S.A.** a banking société anonyme duly incorporated under the laws of Greece, having its registered office at 8 Othonos Street, Athens, Greece, acting for the purposes of this Agreement through its office at 83 Akti Miaouli & Flessa Street, 5th floor, 185 38 Piraeus, Greece, as **Security Agent**; and
- (6) **EUROBANK CYPRUS LTD** a company duly incorporated under the laws of Cyprus, having its registered office at 41, Arch. Makarios III Ave, 1065 Nicosia, Cyprus, as **Account Bank**.

**WHEREAS**

The Lenders have agreed to make available to the Borrowers, jointly and severally, a loan of up to the lesser of (i) \$30,000,000 and (ii) an amount equal to 45% of the aggregate Market Value of the Ships to be determined no more than one month prior to the Drawdown Date, in a single advance for the purpose of assisting the Borrowers to buy back the Ships pursuant to existing lease finance arrangements under the Existing Bareboat Charters and for general corporate purposes, upon and subject to the terms and conditions contained in this Agreement.

**IT IS AGREED** as follows:

**1 INTERPRETATION**

**1.1 Definitions**

Subject to Clause 1.5 (*General Interpretation.*) in this Agreement:

**“Account Bank”** means Eurobank Cyprus Ltd, acting through its office at 41, Arch. Makarios III Ave, 1065 Nicosia, Cyprus and/or Eurobank S.A. a banking société anonyme duly incorporated under the laws of Greece, having its registered office at 8 Othonos Street, Athens, Greece, acting for the purposes of this Agreement through its office at 83 Akti Miaouli & Flessa Street, 5th floor, 185 38 Piraeus, Greece or such other bank as the Agent may agree shall be an Account Bank for the purposes of this Agreement;

**“Accounts Pledges”** means the deeds of pledge of the Earnings Accounts, the Retention Account and the Cash Collateral Account in such form as the Agent may approve or require, as security for the Secured Liabilities and in the singular means any one of them;

**“Agency and Trust Deed”** means the agency and trust deed executed or to be executed between the Borrowers, the Lenders, the Agent, the Security Agent, the Account Bank and the Arranger in such form as the Lenders may approve or require;

**“Agent”** means Eurobank S.A. a banking société anonyme duly incorporated under the laws of Greece, having its registered office at 8 Othonos Street, Athens, Greece, acting for the purposes of this Agreement through its office at 83 Akti Miaouli & Flessa Street, 5th floor, 185 38 Piraeus, Greece or any successor appointed under clause 5 of the Agency and Trust Deed;

**“Antipsara”** means Antipsara Shipping Corporation, a corporation incorporated and existing under the laws of the Republic of Marshall Islands whose registered address is at Trust Company Complex, Ajeltake Road Ajeltake Islands, Majuro, MH96960;

**“Approved Broker”** means, Clarkson Valuation Limited (UK), Maersk Brokers (DEN), Galbraiths Limited Shipbrokers (UK), Arrow Shipbroking Group (UK), Allied Shipbroking Inc. (GR), Braemar ACM Shipbroking (UK), Simpson Spence & Young Ltd, SSV Valuations Services Ltd (UK) and Fearnleys (NOR) and any other reputable, independent and first class marine sale and purchase broker as the Agent may agree should be an Approved Broker for the purposes of this Agreement, provided that the Agent may remove any broker named above from this definition of “Approved Broker”;

**“Approved Charter”** means each of:

- (a) in respect of Ship A, a time charterparty dated 17 September 2021 and entered into between Kithira as owner and Agistri Shipping Limited of Malta as time charterer, having a duration of not less than 18 months after 26 March 2023 and providing for a net hire rate of not less than \$15,306 per day;
- (b) in respect of Ship B, a time charterparty dated 9 September 2021 as amended by an addendum no.1 dated 28 September 2021, an addendum no.2 dated 26 August 2022 and an addendum no.3 dated 20 April 2023 and entered into between Thasos as owner and PB Tankers SPA of Italy as time charterer, having a duration of not less than 24 months after 12 September 2022 and providing for a net hire rate of not less than \$20,392 per day; and
- (c) in respect of Ship C, a time charterparty dated 12 May 2021 and entered into between Antipsara as owner and Chevron Transport Corporation Ltd of Bermuda as time charterer, having a duration of not less than three years after 1 October 2021 and providing for a net hire rate of not less than \$15,553 per day,

and in the plural means all of them;

“**Approved Flag**” means the Marshall Islands flag, the Liberian flag, the Cypriot flag, the Panamanian flag or such other flag as the Lenders may, in their sole and absolute discretion, approve as the flag on which a Ship shall be registered;

“**Approved Flag State**” means the Republic of the Marshall Islands, the Republic of Liberia, the Republic of Cyprus, the Republic of Panama or any other country in which the Lenders may in their sole and absolute discretion, approve that a Ship be registered;

“**Approved Manager**” means, in relation to each Ship, Navios Tankers Management Inc., a corporation incorporated under the laws of the Republic of the Marshall Islands whose registered address is at Trust Company Complex, Ajeltake Road, Ajeltake Island, Majuro, Marshall Islands MH 96960 or any other parent or subsidiary or Related Person of the Approved Manager and/or any ship-management company affiliated to Navios Shipmanagement Inc. of the Marshall Islands or any other entity 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);

“**Approved Manager’s Undertakings**” means the letters of undertaking and assignment of insurances executed by the Approved Manager in respect of each Ship in favour of the Security Agent incorporating a subordination of their respective rights against each Ship and the relevant Owner to the rights of the Creditor Parties under the Finance Documents, in such form as the Agent may approve or require and in the singular means any one of them;

“**Article 55 BRRD**” means Articles 55 of Directive 2014/59/EU establishing a framework for the recovery and resolution of credit institutions and investments firms;

“**Asset Cover Ratio**” means, on any day, the ratio of the Security Value to the Loan on that day;

“**Availability Period**” means the period commencing on the date of this Agreement and ending on the earlier of:

- (a) 30 June 2023 or such later date as the Lenders may agree with the Borrowers; and
- (b) the date on which the Total Commitments are fully borrowed, cancelled or terminated;

“**Bail-In Action**” means the exercise of any Write-down and Conversion Powers;

“**Bail-In Legislation**” means:

- (a) in relation to an EEA Member Country which has implemented, or which at any time implements, Article 55 BRRD, the relevant implementing law or regulation as described in the EU Bail-In Legislation Schedule from time to time;
- (b) in relation to any state other than such an EEA Member Country and the United Kingdom, any analogous law or regulation from time to time which requires contractual recognition of any Write-down and Conversion Powers contained in that law or regulation; and



(c) in relation to the United Kingdom, the UK Bail-In Legislation;

**“Balloon Instalment”** means, in relation to the Loan, the repayment instalment referred to as the “Balloon Instalment” in Clause 8.1 (*Amount of repayment instalments*);

**“Borrower”** means each of Antipsara, Kithira and Thasos and in the plural means all of them;

**“Breakage Costs”** means the amount (if any) by which:

- (a) the interest, which a Lender should have received for the period from the date of receipt of all or any part of its participation in an Advance, the Loan or Unpaid Sum to the last day of the current Interest Period in respect of that Advance, the 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 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 Saturday and Sunday) on which banks are open for general business in Athens, Nicosia, Piraeus and New York City and, in relation to the fixing of an interest rate, which is a US Government Securities Business Day;

**“Cash Collateral”** means, in respect of an Interest Period, the amount standing to the credit of the Cash Collateral Account in accordance with Clause 11.19 (*Cash Collateral*) as at the date on which the Borrowers give a notice under Clause 6.6 (*Reduced Margin*);

**“Cash Collateral Account”** means an account in the joint names of the Borrowers with the Account Bank which is designated by the Agent as the Cash Collateral Account for the purposes of this Agreement;

**“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 Corporate Guarantor which would reduce the proportion of issued voting shares owned by them either directly or indirectly in aggregate in the Corporate Guarantor to below 5%; or
- (b) the Corporate Guarantor issues further shares which would reduce the proportion of issued voting units in the Corporate Guarantor owned by the Permitted Owners either directly or indirectly in aggregate to below 5%; or
- (c) a Borrower is not or ceases to be wholly-owned (including beneficially owned) or controlled by the Corporate Guarantor;

“**Charter**” means any time charter (including, without limitation, each Approved Charter) or other contract of employment (including any entry in a pool) in respect of a Ship which is of 12 months or more in duration, or is capable (through the exercise of options) of exceeding 12 months in duration, in form and substance acceptable to the Agent;

“**Charterer**” means any charterer who may enter into a Charter with a Borrower in respect of its Ship;

“**Charterparty Assignment**” means, with respect to any Charter, an assignment of the relevant Owner’s rights under such Charter (and any guarantee issued in respect of the performance of the Charterer under such Charter) to be executed by such Borrower in favour of the Security Agent (including any notices and/or acknowledgments and/or undertakings associated therewith) in such form as the Agent may approve or require and, in the plural, means all of them;

“**Code**” means the US Internal Revenue Code of 1986, as amended, and the regulations promulgated and rulings issued thereunder;

“**Commitment**” means, in relation to a Lender, the amount set opposite its name in Schedule 1 (*Lenders and Commitments*), 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 6 (*Form of Compliance Certificate*) (or in any other form which the Agent, acting with the authorisation of all the Lenders, approves or requires);

“**Contractual Currency**” has the meaning given in Clause 21.5 (*Currency indemnity*);

“**control**” means, in respect of a company:

- (a) the power (whether by way of ownership of shares, proxy, contract, agency or otherwise) to cast, or control the casting of, more than one-half of the maximum number of votes that might be cast at a general meeting of that company or to appoint or remove all, or the majority, of the directors or other equivalent officers of that company or to give directions with respect to the operating and financial policies of that company which the directors or other equivalent officers of that company are obliged to comply with; or
- (b) the holding of more than one-half of the issued share capital of that company (excluding any part of that issued share capital that carries no right to participate beyond a specified amount in a distribution of either profits or capital), and references to controlling and controlled shall be construed accordingly;

“**Contribution**” means, in relation to a Lender, the part of the Loan which is owing to that Lender;

“**Corporate Guarantee**” means the guarantee and indemnity of the Borrowers’ obligations under this Agreement and the other Finance Documents to be given by the Corporate Guarantor in such form as the Agent may approve or require;

**“Corporate Guarantor”** means Navios Maritime Partners L.P., a limited partnership listed on NYSE and formed and existing in the Marshall Islands, whose registered address is at Trust Company Complex, Ajeltake Road, Ajeltake Island, Majuro, Marshall Islands, MH96960;

**“Creditor Party”** means the Agent, the Arranger, the Security Agent and the Account Bank or any Lender, whether as at the date of this Agreement or at any later time and in the plural means all of them;

**“Deed of Release”** means, in relation to an Existing Bareboat Charter a deed releasing all obligations and Existing Security Interests in relation to that Existing Bareboat Charter in such form as the Agent may approve or require;

**“Dollars”** and **“\$”** means the lawful currency for the time being of the United States of America;

**“Drawdown Date”** means, the date requested by the Borrowers for the Loan to be made available, or (as the context requires) the date on which the Loan is actually advanced;

**“Drawdown Notice”** means a notice in the form set out in Schedule 2 (*Drawdown Notice*) (or in any other form which the Agent approves or reasonably requires);

**“Earnings”** means, in respect of each Ship, all moneys whatsoever which are now, or later become, payable (actually or contingently) to a Borrower or the Security Agent and which arise out of the use or operation of such Ship, including (but not limited to):

- (a) all freight, hire and passage moneys, compensation payable to the relevant Owner or the Security Agent in the event of requisition of its Ship for hire, 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 such Ship;
- (b) all moneys which are at any time payable under Insurances in respect of loss of earnings; and
- (c) if and whenever such Ship is employed on terms whereby any moneys falling within paragraphs (a) or (b) above are pooled or shared with any other person, that proportion of the net receipts of the relevant pooling or sharing arrangement which is attributable to such Ship;

**“Earnings Account”** means, with respect to each Borrower, an account in the name of such Borrower with the Account Bank which is designated by the Agent in writing as the Earnings Account of such Borrower for the purposes of this Agreement;

**“EBITDA”** means the aggregate amount of combined pre-tax profits of the Corporate Guarantor before extraordinary or exceptional items, interest, depreciation and amortisation as shown by the Latest Accounts on the relevant Testing Date;

**“EEA Member Country”** means any member state of the European Union, Iceland, Liechtenstein and Norway;

**“EIAPP Certificate”** means the Engine International Air Pollution Prevention Certificate issued or to be issued pursuant to Annex VI of the International Convention for the Prevention of Pollution from Ship, MARPOL 73/78 (Regulations for the Prevention of Air Pollution from Ships) (as currently in force and as the same may be amended from time to time) in relation to a Ship;

**“Environmental Affiliate”** means any agent or employee of a Borrower or any person having a contractual relationship with a Borrower in connection with its Ship or its operation or the carriage of cargo and/or passengers thereon and/or the provision of goods and/or services on or from such Ship;

**“Environmental Approvals”** means all authorisations, consents, licences, permits, exemptions or other approvals whatsoever required under applicable Environmental Laws;

**“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 or a Borrower 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; 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 a Borrower 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;

**“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 of the events or circumstances described in Clause 19.1 (*Events of Default*);

**“Existing Bareboat Charter”** means each of Existing Bareboat Charter A, Existing Bareboat Charter B and Existing Bareboat Charter C and in the plural means all of them;

**“Existing Bareboat Charter A”** means a bareboat charter dated 26 September 2019 as amended from time to time and made between, inter alios, (i) Kithira as bareboat charterer and (ii) Great Kithira Limited as owner in relation to the lease finance in relation to Ship A;

**“Existing Bareboat Charter B”** means a bareboat charter dated 26 September 2019 as amended from time to time and made between, inter alios, (i) Thasos as bareboat charterer and (ii) Great Thasos Limited as owner in relation to the lease finance in relation to Ship B;

**“Existing Bareboat Charter C”** means a bareboat charter dated 26 September 2019 as amended from time to time and made between, inter alios, (i) Antipsara as bareboat charterer and (ii) Great Antipsara Limited as owner in relation to the lease finance in relation to Ship C;

**“Existing Indebtedness”** means, at any date in relation to an Existing Bareboat Charter, the outstanding Financial Indebtedness of each Borrower on that date under that Existing Bareboat Charter;

**“Existing Indebtedness Grace Period”** means the period commencing on the date of this Agreement and ending on the Drawdown Date;

**“Existing Security Interests”** means, in relation to an Existing Bareboat Charter, any Security Interests created to secure the Existing Indebtedness under that Existing Bareboat Charter;

**“FATCA”** means:

- (a) sections 1471 to 1474 of the Code or any associated regulations or other official guidance;
- (b) any treaty, law, regulation or other official guidance enacted in any other jurisdiction, or relating to an intergovernmental agreement between the US and any other jurisdiction, which (in either case) facilitates the implementation of paragraph (a) above; or
- (c) any agreement pursuant to the implementation of 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 Deduction”** means a deduction or withholding from a payment under a Finance Document required by FATCA;

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**“FATCA Exempt Party”** means a party to a Finance Document that is entitled to receive payments free from any FATCA Deduction;

**“Finance Documents”** means:

- (a) this Agreement;
- (b) the Agency and Trust Deed;
- (c) the Corporate Guarantee;
- (d) the Mortgages;
- (e) the General Assignments;
- (f) the Accounts Pledges;
- (g) the Approved Manager’s Undertakings;
- (h) the Third Party Manager’s Undertakings;
- (i) the Charterparty Assignments;
- (j) any Insurances Assignment; and
- (k) any other document (whether creating a Security Interest or not) which is executed at any time by the Borrowers, the Corporate Guarantor, an Approved Manager, a Third Party Manager 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 Lenders under this Agreement or any of the documents referred to in this definition;

**“Final Maturity Date”** means the date falling 60 months following the Drawdown Date;

**“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 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 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 (a) to (e) if the references to the debtor referred to the other person;

“**Funding Rate**” means any individual rate notified by a Lender to the Agent pursuant to paragraph (a)(ii) of Clause 5.7 (*Cost of funds*);

“**General Assignment**” means in relation to a Ship the general assignment of the Earnings, the Insurances and any Requisition Compensation of that Ship executed or to be executed by the relevant Owner in favour of the Security Agent, in such form as the Agent may approve or require;

“**Group**” means at any relevant time the Borrowers, their parents, the Corporate Guarantor and its subsidiaries and “**member of the Group**” shall be construed accordingly;

“**Historic Term SOFR**” means, in relation to the Loan or any part of the Loan, the most recent applicable Term SOFR for a period equal in length to the Interest Period of the Loan or that part of the Loan and which is as of a day which is no more than three US Government Securities Business Days before the Quotation Day;

“**IACS**” means the International Association of Classification Societies;

“**IAPP Certificate**” means the International Air Pollution Prevention Certificate issued or to be issued pursuant to Annex VI of the International Convention for the Prevention of Pollution from Ship, MARPOL 73/78 (Regulations for the Prevention of Air Pollution from Ships) (as currently in force and as the same may be amended from time to time) in relation to a Ship;

“**Insurances**” means, in relation to a Ship:

- (a) all policies and contracts of insurance, including entries of such Ship in any protection and indemnity or war risks association, which are effected in respect of such Ship, her Earnings or otherwise in relation to her; 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 the assignment of Insurances of a Ship executed or to be executed by any co-assured (other than a Borrower, the Approved Manager and the Third Party Managers) in such form as the Agent may approve or require;

“**Interest Expense**” means, for any relevant financial period, the aggregate interest paid or payable by the Corporate Guarantor on any indebtedness during such period;

“**Interest Period**” means a period determined in accordance with Clause 6 (*Interest Periods*);

“**Interpolated Historic Term SOFR**” means, in relation to the Loan or any part of the Loan, the rate (rounded to the same number of decimal places as Term SOFR) which results from interpolating on a linear basis between:

- (a) either:

- (i) the most recent applicable Term SOFR (as of a day which is not more than three US Government Securities Business Days before the Quotation Day) for the longest period (for which Term SOFR is available) which is less than the Interest Period of the Loan or that part of the Loan; or
  - (ii) if no such Term SOFR is available for a period which is less than the Interest Period of the Loan or that part of the Loan, SOFR for a day which is no more than six US Government Securities Business Days (and no less than three US Government Securities Business Days before the Quotation Day); and
- (b) the most recent applicable Term SOFR (as of a day which is not more than three US Government Securities Business Days before the Quotation Day) for the shortest period (for which Term SOFR is available) which exceeds the Interest Period of the Loan or that part of the Loan;

**“Interpolated Term SOFR”** means, in relation to the Loan or any part of the Loan, the rate (rounded to the same number of decimal places as Term SOFR) which results from interpolating on a linear basis between:

- (a) either:
- (i) the applicable Term SOFR (as of the Quotation Day) for the longest period (for which Term SOFR is available) which is less than the Interest Period of the Loan or that part of the Loan; or
  - (ii) if no such Term SOFR is available for a period which is less than the Interest Period of the Loan or that part of the Loan, SOFR for the day which is three US Government Securities Business Days before the Quotation Day; and
- (b) the applicable Term SOFR (as of the Quotation Day) for the shortest period (for which Term SOFR is available) which exceeds the Interest Period of the Loan or that part of the Loan;

**“ISM Code”** means, in relation to its application to each Borrower, an Approved Manager, a Third Party Manager, its Ship and its operation:

- (a) ‘The International Management Code for the Safe Operation of Ship and for Pollution Prevention’, currently known or referred to as the ‘ISM Code’, adopted by the Assembly of the International Maritime Organisation by Resolution A.741(18) on 4 November 1993 and incorporated on 19 May 1994 into chapter IX of the International Convention for the Safety of Life at Sea 1974 (SOLAS 1974); and
- (b) all further resolutions, circulars, codes, guidelines, regulations and recommendations which are now or in the future issued by or on behalf of the International Maritime Organisation or any other entity with responsibility for implementing the ISM Code, including without limitation, the ‘Guidelines on implementation or administering of the International Safety Management (ISM) Code by Administrations’ produced by the International Maritime Organisations pursuant to Resolution A.788(19) adopted on 25 November 1995,

as the same may be amended, supplemented or replaced from time to time;



**“ISM Code Documentation”** includes:

- (a) the document of compliance (DOC) and safety management certificate (SMC) issued pursuant to the ISM Code in relation to the Ships or any of them within the periods specified by the ISM Code; and
- (b) all other documents and data which are relevant to the ISM SMS and its implementation and verification which the Agent may require; and
- (c) any other documents which are prepared or which, are otherwise relevant to establish and maintain the Ships’ or the Borrowers’ or the Approved Managers’ or a Third Party Manager’s compliance with the ISM Code which the Agent may require;

**“ISM SMS”** means the safety management system for each Ship which is required to be developed, implemented and maintained under the ISM Code;

**“ISPS Code”** means the International Ship and Port Facility Security Code constituted pursuant to resolution A.924(22) of the International Maritime Organisation (“IMO”) now set out in Chapter XI-2 of the Safety of Life at Sea Convention (SOLAS) 1974 (as amended) and the mandatory ISPS Code as adopted by a Diplomatic Conference of the IMO on Maritime Security in December 2002 and includes any amendments or extensions to it and any regulation issued pursuant to it but shall only apply to a Ship insofar as it is applicable law in that Ship’s flag state and any jurisdiction on which such Ship is operated;

**“ISPS Code Documentation”** includes:

- (a) the International Ship Security Certificate issued pursuant to the ISPS Code in relation to each Ship within the period specified in the ISPS Code; and
- (b) all other documents and data which are relevant to the ISPS Code and its implementation and verification which the Agent may require;

**“Kithira”** means Kithira Shipping Corporation, a corporation incorporated and existing under the laws of the Republic of Marshall Islands whose registered address is at Trust Company Complex, Ajeltake Road Ajeltake Islands, Majuro, MH96960;

**“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 Corporate Guarantor which the Corporate Guarantor is obliged to deliver to the Agent pursuant to Clause 11.7 (*Provision 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 (*Lenders and Commitments*) and acting through its branch indicated in Schedule 1 (*Lenders and Commitments*) (or through another branch notified to the Borrowers under Clause 26.14 (*Change of lending office*)) and/or any nominated subsidiary of its banking group) unless it has delivered a Transfer Certificate or Certificates covering the entire amounts of its Commitment and its Contribution; and

- 
- (b) any bank, financial institution or other entity which has become a Party in accordance with Clause 26 (*Transfers and Changes in Lending Offices*),

which in each case has not ceased to be a Party as such in accordance with the terms of this Agreement;

“**Liquidity**” means:

- (a) cash in hand legally and beneficially owned by any member of the Group; and
- (b) cash deposits legally and beneficially owned by any member of the Group 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 Corporate Guarantor, including any funds held with the Account Bank or any bank from time to time to satisfy minimum liquidity requirements;

“**Loan**” means the amount of up to \$30,000,000 to be made available by the Lenders to the Borrowers or, as the context requires, the principal amount for the time being outstanding under this Agreement;

“**Major Casualty**” means any casualty to a 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 \$750,000 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;

“**Margin**” means:

- (a) at all times, subject to paragraph (b) below, two point twenty five per cent (2.25%) per annum; and
- (b) if the Borrowers exercise their option pursuant to Clause 11.19 (*Cash Collateral*), one per cent (1%) per annum in respect of the amount of the Loan which is equal to the Cash Collateral (the “**Reduced Margin**”);

“**Market Value**” means, in respect of a Ship, the market value of such Ship determined from time to time in accordance with Clause 15.2 (*Valuation of a Ship*);

“**Material Adverse Effect**” means, in the reasonable opinion of the Majority Lenders, a material adverse effect on:

- (a) the business, operations, property, condition (financial or otherwise) or prospects of any Security Party taken as a whole; or

- (b) the ability of a Security Party to perform its obligations under the Finance Documents; or
- (c) the legality, validity or enforceability of, or the effectiveness or ranking of, any Security Interest granted or purporting to be granted pursuant to any of the Finance Documents, or the rights or remedies of any Creditor Party under any of the Finance Documents;

“**Money Laundering**” has the meaning given to it in Article 1 of the Directive (2015/849/EC) of the European Parliament and of the Council of the European Union of 20 May 2015;

“**Mortgage**” means, in respect of each Ship, a first preferred Panamanian ship mortgage executed or to be executed by the relevant Owner in favour of the Security Agent, in such form as the Agent may approve or require and in the plural means all of them;

“**Net Total Debt**” means total debt as evidenced at any relevant time by the Latest Accounts, in which they shall have been calculated in accordance with US GAAP less the value of the liabilities relating to operating leases as defined under rule ASC 842 of the US GAAP and cash (which shall have the meaning given thereto under US GAAP) of the Corporate Guarantor;

“**Net Worth**” means, at any relevant time, the Total Assets less Total Liabilities;

“**NYSE**” means the stock exchange run by NYSE Euronext with the main exchange located in the United States of America, originally an acronym for the New York Stock Exchange;

“**Notifying Lender**” has the meaning given in Clause 5.6 (*Market disruption*), Clause 23.1 (*Illegality*) or Clause 24.1 (*Increased costs*) as the context requires;

“**Owner**” means, in respect of each Ship, the Borrower which is at any relevant time the owner thereof;

“**Party**” means a party to this Agreement;

“**Payment Currency**” has the meaning given in Clause 21.5 (*Currency indemnity*);

“**Permitted Owners**” means (i) Angeliki Frangou directly or indirectly (“**AF**”) and (ii) the beneficiaries, estate and legal representatives of AF;

“**Permitted Security Interests**” means:

- (a) Security Interests created by the Finance Documents;
- (b) liens for unpaid 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 (including any lien for bunkers and port disbursements at any time in aggregate not

exceeding \$500,000), repair or maintenance of a Ship, provided such liens do not secure amounts more than 30 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 Clause 14.12(h) (*Restrictions on chartering, appointment of managers etc.*);

- (f) any Security Interest created in favour of a claimant or defendant in any action of the court or tribunal before whom such action is brought as security for costs and expenses where a Borrower is prosecuting or defending such action in good faith by appropriate steps;
- (g) Security Interests arising by operation of law in respect of taxes which are not overdue for payment other than taxes being contested in good faith by appropriate steps and in respect of which appropriate reserves have been made;
- (h) any guarantees granted by the Corporate Guarantor in the ordinary course of its business; and
- (i) for the duration of the Existing Indebtedness Grace Period, any Existing Security Interests;

**“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’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) above;

**“Potential Event of Default”** means an event or circumstance which, with the giving of any notice, the lapse of time, a reasonable determination of the Majority Lenders and/or the satisfaction of any other condition, would constitute an Event of Default;

**“Published Rate”** means:

- (a) SOFR; or

(b) the Term SOFR for any Quoted Tenor;

**“Published Rate Replacement Event”** means, in relation to a Published Rate:

- (a) the methodology, formula or other means of determining that Published Rate has, in the opinion of the Majority Lenders and the Borrowers, materially changed;
- (b) (i)
  - (A) the administrator of that Published 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, or filed with a court, tribunal, exchange, regulatory authority or similar administrative, regulatory or judicial body which reasonably confirms that the administrator of that Published Rate is insolvent,provided that, in each case, at that time, there is no successor administrator to continue to provide that Published Rate;
- (ii) the administrator of that Published Rate publicly announces that it has ceased or will cease, to provide that Published Rate permanently or indefinitely and, at that time, there is no successor administrator to continue to provide that Published Rate;
- (iii) the supervisor of the administrator of that Published Rate publicly announces that such Published Rate has been or will be permanently or indefinitely discontinued; or
- (iv) the administrator of that Published Rate or its supervisor announces that that Published Rate may no longer be used; or
- (c) in the opinion of the Majority Lenders and the Borrowers, that Published Rate is otherwise no longer appropriate for the purposes of calculating interest under this Agreement;

**“Quotation Day”** means, in relation to any period for which an interest rate is to be determined, two US Government Securities Business Days before the first day of that period (unless market practice differs in the relevant syndicated loan market, in which case the Quotation Day will be determined by the Agent in accordance with that market practice (and if quotations would normally be given on more than one day, the Quotation Day will be the last of those days);

**“Quoted Tenor”** means, in relation to Term SOFR, any period for which that rate is customarily displayed on the relevant page or screen of an information service;

**“Reference Rate”** means, in relation to the Loan or any part of the Loan:

- (a) the applicable Term SOFR as of the Quotation Day and for a period equal in length to the Interest Period of the Loan or that part of the Loan; or

(b) as otherwise determined pursuant to Clause 5.5 (*Unavailability of Term SOFR*),

“**Related Person**” of a person means any subsidiary of such person, any company or other entity of which such person is a subsidiary and any subsidiary of any such company or entity, including any publicly listed subsidiaries;

“**Relevant Market**” means the market for overnight cash borrowing collateralised by US Government securities;

“**Relevant Nominating Body**” means any applicable central bank, regulator or other supervisory authority or a group of them, or any working group or committee sponsored or chaired by, or constituted at the request of, any of them or the Financial Stability Board;

“**Relevant Person**” has the meaning given in Clause 19.9 (*Relevant Persons*);

“**Repayment Date**” means a date on which a repayment is required to be made under Clause 8 (*Repayment and Prepayment*);

“**Replacement Reference Rate**” means a reference rate which is:

- (a) formally designated, nominated or recommended as the replacement for a Published Rate by:
  - (i) the administrator of that Published Rate (provided that the market or economic reality that such reference rate measures is the same as that measured by that Published 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 Reference Rate**” will be the replacement under paragraph (ii) above;

- (b) if paragraph (a) does not apply, 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 or alternative to a Published Rate; or
- (c) if paragraphs (a) and (b) do not apply, in the opinion of the Majority Lenders and the Borrowers, an appropriate successor or alternative to a Published Rate;

“**Required Security Amount**” means the amount in \$ (as certified by the Agent) which is 120% of the 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”;

“**Resolution Authority**” means any body which has authority to exercise any Write-down and Conversion Powers;

**“Restricted Person”** means a person that is (i) listed on, or owned or controlled by a person listed on any Sanctions List; (ii) 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 (including, without limitation, at the date of this Agreement, the Crimea Region of Ukraine, Iran, Myanmar (Burma), North Korea, Syria, Sudan, Donetsk People’s Republic and Luhansk People’s Republic regions of Ukraine); or (iii) otherwise a target of Sanctions;

**“Retention Account”** means the account in the name of the Borrowers with the Account Bank which is designated by the Agent in writing as the Retention Account for the purposes of this Agreement;

**“Sanctions”** means any economic sanctions laws, regulations, embargoes or restrictive measures administered, enacted or enforced by: (i) the United States government; (ii) the United Nations; (iii) the European Union or its Member States; (iv) the United Kingdom; (v) any country to which any Security Party or an Approved Manager or any other member of the Group or any Related Person of any of them is bound; or (vi) 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 His Majesty’s Treasury (“**HMT**”) (together, “**Sanctions Authorities**” and each a “**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;

**“Secured Liabilities”** means all liabilities which the Borrowers, the other Security Parties, the Approved Managers, the Third Party Managers or any of them have, at the date of this Agreement or at any later time or times, under or by virtue of the Finance Documents or any judgment relating to the Finance Documents; 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 Agent”** means Eurobank S.A. a banking société anonyme duly incorporated under the laws of Greece, having its registered office at 8 Othonos Street, Athens, Greece, acting for the purposes of this Agreement through its office at 83 Akti Miaouli & Flessa Street, 5th floor, 185 38 Piraeus, Greece or any successor appointed under clause 5 of the Agency and Trust Deed;

**“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 rights of the claimant under an action *in rem* in which the vessel concerned has been arrested or a writ has been issued or similar step taken; 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 (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 Parties**” means together the Borrowers, the Corporate Guarantor and any other person (except a Creditor Party, the Approved Manager and the Third Party Managers) who, as a surety or mortgagor, as a party to any subordination or priorities arrangement, or in any similar capacity, executes a Finance Document and “**Security Party**” means any one of them;

“**Security Period**” means the period commencing on the date of this Agreement and ending on the date on which the Agent notifies the Security Parties and the Lenders that:

- (a) all amounts which have become due for payment by the Borrowers 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) no Borrower nor any Security Party has any future or contingent liability under Clause 20 (*Fees and Expenses*), 21 (*Indemnities*) or 22 (*No Set-Off or Tax Deduction*) below or any other provision of this Agreement or another Finance Document; and
- (d) the Agent and the Security Agent do not consider that there is a significant risk that any payment or transaction under a Finance Document would be set aside, or would have to be reversed or adjusted, in any present or possible future bankruptcy of a Borrower or a Security Party or in any present or possible future proceeding relating to a Finance Document or any asset covered (or previously covered) by a Security Interest created by a Finance Document;

“**Security Value**” means, at any time, the amount in Dollars which, at that time, is the aggregate of (a) the Market Value of all the Ships subject to a Mortgage at the relevant time and (b) the net realisable value of any additional security then held by the Security Agent provided under Clause 15 (*Security Cover*);

“**Ships**” means together Ship A, Ship B and Ship C and in the singular means any one of them;

“**SOFR**” means the secured overnight financing rate (SOFR) administered by the Federal Reserve Bank of New York (or any other person which takes over the administration of that rate) published (before any correction, recalculation or republication by the administrator) by the Federal Reserve Bank of New York (or any other person which takes over the publication of that rate);

“**Term SOFR**” means the term SOFR reference rate administered by CME Group Benchmark Administration Limited (or any other person which takes over the administration of that rate) for the relevant period published (before any correction, recalculation or republication by the administrator) by CME Group Benchmark Administration Limited (or any other person which takes over the publication of that rate);



“**Testing Date**” means the date on which the audited statements referred to in Clause 11.7 (*Provision of financial statements*) are delivered to the Agent;

“**Thasos**” means Thasos Shipping Corporation, a corporation incorporated and existing under the laws of the Republic of Marshall Islands whose registered address is at Trust Company Complex, Ajeltake Road Ajeltake Islands, Majuro, MH96960;

“**Third Party Manager**” means, in relation to a Ship, the technical manager specified in Schedule 5 (Ship and Third Party Manager Details) as at the date of this Agreement and in the plural means all of them;

“**Third Party Manager’s Undertakings**” means the letters of undertaking and assignment of insurances executed by the Third Party Managers in respect of a Ship in favour of the Security Agent, in such form as the Agent may approve or require and in the singular means any one of them;

“**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 but excluding the effect of the application of ASU 2016-02 “Leases (Topic 842)” effective for any financial years beginning after 15 December 2018) of the Corporate Guarantor 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 but excluding the effect of the application of ASU 2016-02 “Leases (Topic 842)” effective for any financial years beginning after 15 December 2018) of the Corporate Guarantor as at that date or for that period as shown in the Latest Accounts;

“**Total Loss**” means, in relation to a Ship:

- (a) actual, constructive, compromised, agreed or arranged total loss of such Ship;
- (b) any expropriation, confiscation, requisition or acquisition of such Ship, whether for full consideration, a consideration less than her proper value, a nominal consideration or without any consideration, which is effected by any government or official authority or by any person or persons claiming to be or to represent a government or official authority, excluding a requisition for hire for a fixed period not exceeding one year without any right to an extension;
- (c) any condemnation of such Ship by any tribunal or by any person or person claiming to be a tribunal;
- (d) in the case of any arrest, capture, seizure, confiscation or detention of such Ship (including any hijacking or theft), other than piracy, within 90 days and in the case of piracy, if the relevant underwriters confirm to the Agent in writing prior to the end of such 90-day period that such Ship is subject to an approved piracy insurance cover, the earlier of 270 days after the date on which the Ship is captured by pirates and the date on which the piracy insurance cover expires.

**“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 relevant Owner, with such Ship’s insurers in which the insurers agree to treat the 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*);

**“Trust Property”** has the meaning given in clause 3.1 of the Agency and Trust Deed;

**“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);

**“Unpaid Sum”** means any sum due and payable but unpaid by a Security Party under the Finance Documents;

**“US GAAP”** means the generally accepted accounting principles applied from time to time in the United States of America;

**“US Government Securities Business Day”** means any day other than:

- (a) a Saturday or a Sunday; and
- (b) a day on which the Securities Industry and Financial Markets Association (or any successor organisation) recommends that the fixed income departments of its members be closed for the entire day for purposes of trading in US Government securities; 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 other than the UK Bail-In Legislation:

- (i) any powers under that Bail-In Legislation to cancel, transfer or dilute shares issued by a person that is a bank or investment firm or other financial institution or affiliate of a bank, investment firm or other financial institution, to cancel, reduce, modify or change the form of a liability of such a person or any contract or instrument under which that liability arises, to convert all or part of that liability into shares, securities or obligations of that person or any other person, to provide that any such contract or instrument is to have effect as if a right had been exercised under it or to suspend any obligation in respect of that liability or any of the powers under that Bail-In Legislation that are related to or ancillary to any of those powers; and
- (ii) any similar or analogous powers under that Bail-In Legislation; and
- (c) in relation to any UK Bail-In Legislation any powers under that UK Bail-In Legislation to cancel, transfer or dilute shares issued by a person that is a bank or investment firm or other financial institution or affiliate of a bank, investment firm or other financial institution, to cancel, reduce, modify or change the form of a liability of such a person or any contract or instrument under which that liability arises, to convert all or part of that liability into shares, securities or obligations of that person or any other person, to provide that any such contract or instrument is to have effect as if a right had been exercised under it or to suspend any obligation in respect of that liability or any of the powers under that UK Bail-In Legislation that are related to or ancillary to any of those powers.

Words and expressions defined in Schedule 5 (*Ship and Third Party Manager Details*) when used in this Agreement shall have the meanings given to them in Schedule 5 (*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:

“**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, permission, permit and legalisation;

“**contingent liability**” means a liability which is not certain to arise and/or the amount of which remains unascertained;

“**cost of funds**” of a Lender in relation to its participation in the Loan or any part of the Loan is a reference to the average cost which that Lender would incur if it were to fund, from whatever source(s) it may reasonably select in accordance with market practice, an amount equal to the amount of that participation in the Loan or that part of the Loan for a period equal in length to the Interest Period of the Loan or any part of the Loan;

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“**document**” includes a deed; also a letter, fax or telex;

“**excess risks**” means the proportion of claims for general average, salvage and salvage charges not recoverable under the hull and machinery policies in respect of a Ship in consequence of her insured value being less than the value at which that Ship is assessed for the purpose of such claims;

“**expense**” means any kind of cost, charge or expense (including all legal costs, charges and expenses) and any applicable value added or other tax;

“**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;

“**law**” includes any form of delegated legislation, any order or decree, 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;

“**material**” means material in the sole opinion of the Security Agent and/or the Agent;

“**months**” shall be construed in accordance with Clause 1.3 (*Meaning of “month”*);

“**obligatory insurances**” means all insurances effected, or which a Borrower is obliged to effect in relation to its Ship under Clause 13 (*Insurance*) below 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 (including oil pollution and freight, demurrage and defence cover) covered by a protection and indemnity association managed in London which is a member of the International Group of P&I Clubs (or, if the International Group of P&I Clubs ceases to exist, any other leading protection and indemnity association or other leading provider of protection and indemnity insurance), including (without limitation) 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 therein of clause 1 (*Interpretation*) of the Institute Time Clauses (Hulls)(1/10/83) or clause 8 of the Institute Time Clauses (Hulls) (1/11/1995) or the Institute Amended Running Down clause (1/10/71) or any equivalent provision and including, without limitation, protection and indemnity war risks with a separate limit and in excess of the amount for war risks (hull);

“**regulation**” references to a “regulation” include 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: International framework for liquidity risk measurement, standards and monitoring*” and “*Basel III: A global regulatory framework for more resilient banks and banking systems*”, published by the Basel Committee on Banking Supervision in December 2010, in the form existing on the date of this Agreement (“**Basel III**”), (3) any amendment, replacement or refinement of Basel III (“**Basel IV**” and (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 Directive 2013/36/EU on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms (“**CRD IV**”) and Regulation (EU) No 575/2013 on prudential requirements for credit institutions and investment firms (“**CRR**”)), and whether such implementation, application or compliance is by a Government Entity, a lender or any company affiliated to it);

“**subsidiary**” has the meaning given in Clause 1.4 (*Meaning of “subsidiary”*);

“**successor**” includes any person who is entitled (by assignment, novation, merger or otherwise) to any other person’s rights under this Agreement or any other Finance Document (or any interest in those rights) or who, as administrator, liquidator or otherwise, is entitled to exercise those rights; and in particular references to a successor include a person to whom those rights (or any interest in those rights) are transferred or pass as a result of a merger, division, reconstruction or other reorganisation of it or any other person;

“**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**” means the risks according to Institute War and Strike Clauses (Hull Time) (1/10/83) or (1/11/95), or equivalent conditions, including, but not limited to risk of mines, blocking and trapping, missing vessel, confiscation excess risks and the risk of war and terrorism excluded from protection and indemnity with a separate limit and all risks excluded from the standard form of English or other marine policy.

### 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”

A company (S) is a subsidiary of another company (P) if

a majority of the issued shares in S (or a majority of the issued shares in S which carry unlimited rights to capital and income distributions) are directly owned by P or are indirectly attributable to P.

### 1.5 General Interpretation.

- (a) In this Agreement:
  - (i) 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;
  - (ii) 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; and
  - (iii) words denoting the singular number shall include the plural and vice versa.
- (b) Clauses 1.1 (*Definitions*) to 1.4 (*Meaning of “subsidiary”*) and paragraph (a) of this Clause 1.5 (*General Interpretation.*) apply unless the contrary intention appears; and
- (c) references in Clause 1.1 (*Definitions*) to a document being in the form of a particular Schedule include references to that form with any modifications to that form which the Agent approves or reasonably requires; and
- (d) the clause headings shall not affect the interpretation of this Agreement.

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## **2 LOAN FACILITY**

### **2.1 Amount of facility**

Subject to the other provisions of this Agreement, the Lenders shall make available to the Borrowers a loan facility in an amount of up to the lesser of (i) \$30,000,000 and (ii) an amount equal to 45% of the aggregate Market Value of the Ships to be determined no more than one month prior to the Drawdown Date in one advance.

### **2.2 Lenders' participations in the Loan**

Subject to the other provisions of this Agreement, each Lender shall participate in the Loan in the amounts set out in Schedule 1.

### **2.3 Purpose of Loan**

Each Borrower undertakes with each Creditor Party to borrow the Loan only for the purpose stated in the preamble to this Agreement and in accordance with the terms of Clause 4.2 (*Availability*).

### **2.4 Use of Proceeds.**

- (a) Without prejudice to the Borrowers' obligations under Clause 13.9 (*Payment of premiums*), the Lenders shall have no responsibility for the Borrowers' use of the proceeds of any part of the Loan.
- (b) The Borrowers shall not, and shall procure that each Security Party and each other member of the Group and any subsidiary of any of them shall not, permit or authorise any other person to, directly or indirectly, use, lend, make payments of, contribute or otherwise make available, all or any part of the proceeds of any part 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 a Borrower, any other Security Party or any Creditor Party being in breach of any Sanctions or becoming a Restricted Person.

### **2.5 Cancellation of Commitment**

The Borrowers may, at any time request, in writing to the Agent by giving no less than 5 Business Days prior notice, the reduction of all or any part of the Total Commitments, whereupon such cancelled part shall cease to be available, and the Commitment of each Lender shall be reduced according to such cancellation, provided that such cancellation shall be irrevocable.

### **2.6 Borrowers' rights and obligations**

- (a) The obligations of each Borrower under this Agreement are joint and several and shall continue until all amounts which may be or become payable by the Borrowers under or in connection with the Finance Documents have been irrevocably and unconditionally paid or discharged in full, regardless of any intermediate payment or discharge in whole or in part. Each Borrower declares that it is and will remain, throughout the Security

Period, a principal debtor for all amounts owing hereunder and under the other Finance Documents and that it shall be construed to be a surety for the obligations of any other Borrower hereunder.

- (b) The obligations of each Borrower shall not be impaired by (i) any obligation under this agreement being or becoming void, unenforceable or illegal as regards any other Borrower (ii) any amendment of any Finance Document (iii) any rescheduling, refinancing or similar arrangement of any kind with any other Borrower (iv) the release (in whole or in part) of any other Security Party from its obligations under, or the release of any Security Interest created by, any Finance Document.
- (c) If any payment by a Borrower or any discharge given by a Creditor Party (whether in respect of the obligations of any Borrower or any security for those obligations or otherwise) is avoided or reduced as a result of insolvency or any similar event then (i) the liability of each Borrower under the Finance Documents shall continue as if the payment, release, avoidance or reduction had not occurred and (ii) each Finance Party shall be entitled to recover the value or amount of that security or payment from each Borrower, as if the payment, release, avoidance or reduction had not occurred.
- (d) No Borrower shall, during the Security Period (i) claim any amount due to it from any other Borrower, or (ii) prove for any such amount in any liquidation, administration, arrangement or similar procedure or (iii) take or enforce any security from or against any other Borrower.
- (e) Each Borrower waives any right it may have of first requiring any Creditor Party to proceed against or enforce any other rights or security or claim payment from any person before claiming from that Borrower under a Finance Document.

### **3 POSITION OF THE LENDERS ETC**

#### **3.1 Interests of Lenders several**

The rights of the Lenders under this Agreement are several; accordingly each Lender shall be entitled to sue for any amount which has become due and payable by a Borrower to it under this Agreement without joining any other Creditor Party as additional parties in the proceedings.

#### **3.2 Proceedings requiring Majority Lenders' consent**

However, without the prior written consent of the Majority Lenders, no Lender may bring proceedings in respect of:

- (a) any other liability or obligation of a Borrower or a Security Party under or connected with a Finance Document; or
- (b) any misrepresentation or breach of warranty by a Borrower or a Security Party in or connected with a Finance Document.



### **3.3 Obligations of Lenders 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) any Borrower, any Security Party or 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.

### **3.4 Parties bound by certain actions of Agent**

Every Lender, each Borrower and each Security Party shall be bound by any determination made, or action taken, by the Agent or the Security Agent under any provision of a Finance Document;

- (a) any instruction or authorisation given by the Lenders to the Agent or the Security Agent under or in connection with any Finance Document;
- (b) any action taken (or in good faith purportedly taken) by the Agent or the Security Agent in accordance with such an instruction or authorisation.

### **3.5 Reliance on action of Agent**

However, the Borrowers and each Security Party:

- (a) shall be entitled to assume that the Lenders have duly given any instruction or authorisation which, under any provision of a Finance Document, is required in relation to any action which the Agent has taken or is about to take; and
- (b) shall not be entitled to require any evidence that such an instruction or authorisation has been given.

### **3.6 Construction**

In Clauses 3.4 (*Parties bound by certain actions of Agent*) and 3.5 (*Reliance on action of Agent*) references to action taken include (without limitation) the granting of any waiver or consent, an approval of any document and an agreement to any matter.

## **4 DRAWDOWN**

### **4.1 Request for the Loan**

Subject to the following conditions, the Borrowers may request the Loan to be made available by ensuring that the Agent receives a completed Drawdown Notice not later than 11.00 a.m. (Athens time) 3 Business Days prior to the intended Drawdown Date.

#### **4.2 Availability**

The conditions referred to in Clause 4.1 (*Request for the Loan*) are that:

- (a) the Drawdown Date is a Business Day during the Availability Period; and
- (b) the amount of the aggregate of the Loan shall not exceed \$30,000,000.

#### **4.3 Notification to Lenders of receipt of a 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 to be borrowed and the Drawdown Date;
- (b) the amount of that Lender's participation in the Loan; and
- (c) the duration of the first Interest Period.

#### **4.4 Drawdown Notice irrevocable**

The Drawdown Notice must be signed by a director, officer or other authorised person of each Borrower and once served, such Drawdown Notice cannot be revoked without the prior written 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 either, at its option, (i) make available to the Agent for the account of the Borrowers or (ii) make available directly to the Borrowers to the account or accounts which the Borrowers specify in the Drawdown Notice, the amount due from that Lender on the Drawdown Date under Clause 4.3 (*Notification to Lenders of receipt of a Drawdown Notice*).

#### **4.6 Disbursement of the Loan**

Subject to the provisions of this Agreement, the Agent shall on the Drawdown Date pay to the Borrowers the amounts which the Agent receives from the Lenders under Clause 4.5 (*Lenders to make available Contributions*); and that payment to the Borrowers shall be made:

- (a) to the account or accounts which the Borrowers specify in the Drawdown Notice; and
- (b) in the like funds as the Agent received the payments from the Lenders.

#### **4.7 Disbursement of the Loan to third party**

The payment by the Agent under Clause 4.6 (*Disbursement of the Loan*) and a Lender under Clause 4.5 (*Lenders to make available Contributions*) shall constitute the making of the Loan and the Borrowers shall thereupon become indebted as principal and direct obligor, to each Lender in an amount equal to that Lender's Contribution.

#### **4.8 Restricted Persons**

The Borrowers undertake that they shall not, and shall procure that no Security Party, an Approved Manager, a Third Party Manager or other member of the Group or any subsidiary of any of them shall, permit or authorise any other person to, directly or indirectly, use, lend, make payments of, contribute, effect payment by use of accounts held with the Account Bank 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 a Borrower, any other Security Party, an Approved Manager, a Third Party Manager or a Creditor Party being in breach of any Sanctions or becoming a Restricted Person.

### **5 INTEREST**

#### **5.1 Payment of normal interest**

Subject to the provisions of this Agreement, interest on the Loan in respect of each Interest Period shall be paid by the Borrowers on the last day of that Interest Period.

#### **5.2 Normal rate of interest**

Subject to the provisions of this Agreement:

- (a) the rate of interest on a part of the Loan equal to the Cash Collateral in respect of an Interest Period shall be the aggregate of the Reduced Margin and the Reference Rate for that Interest Period; and
- (b) the rate of interest on a part of the Loan equal to the Loan less the amount of the Cash Collateral (if any) in respect of an Interest Period shall be the aggregate of the Margin and the Reference Rate for that Interest Period.

#### **5.3 Payment of accrued interest**

In the case of an Interest Period 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 interest**

(a) The Agent shall notify the Borrowers and each Lender of:

- (i) each rate of interest; and
- (ii) the duration of each Interest Period,

as soon as reasonably practicable after each is determined.

(b) The Agent shall promptly notify the Borrowers of each Funding Rate relating to the Loan, any part of the Loan or any Unpaid Sum.

## 5.5 Unavailability of Term SOFR

- (a) *Interpolated Term SOFR*: If no Term SOFR is available for the Interest Period of the Loan or any part of the Loan, the applicable Reference Rate shall be the Interpolated Term SOFR for a period equal in length to the Interest Period of the Loan or that part of the Loan.
- (b) *Historic Term SOFR*: If no Term SOFR is available for the Interest Period of the Loan or any part of the Loan and it is not possible to calculate the Interpolated Term SOFR, the applicable Reference Rate shall be the Historic Term SOFR for the Loan or that part of the Loan.
- (c) *Interpolated Historic Term SOFR*: If paragraph (b) above applies but no Historic Term SOFR is available for the Interest Period of the Loan or any part of the Loan, the applicable Reference Rate shall be the Interpolated Historic Term SOFR for a period equal in length to the Interest Period of the Loan or that part of the Loan.
- (d) *Cost of funds*: If paragraph (c) above applies but it is not possible to calculate the Interpolated Historic Term SOFR, there shall be no Reference Rate for the Loan or that part of the Loan (as applicable) and Clause 5.7 (*Cost of funds*) shall apply to the Loan or that part of the Loan for that Interest Period.

## 5.6 Market disruption

If before close of business in London on the Quotation Day for the relevant Interest Period the Agent receives notification from a Lender or Lenders (whose participations in the Loan or the relevant part of the Loan exceed 35 per cent. of the Loan or that part of the Loan as appropriate) (each a "Notifying Lender") that its cost of funds relating to its participation in the Loan or that part of the Loan would be in excess of the Reference Rate then Clause 5.7 (*Cost of funds*) shall apply to the Loan or that part of the Loan (as applicable) for the relevant Interest Period.

## 5.7 Cost of funds

- (a) If this Clause 5.7 (*Cost of funds*) applies, the rate of interest on the Loan or the relevant part of the Loan for the relevant Interest Period shall be the percentage rate per annum which is the sum of:
  - (i) the applicable Margin; and
  - (ii) the rate notified to the Agent (and the Borrowers) 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 its cost of funds relating to its participation in the Loan or that part of the Loan.
- (b) If this Clause 5.7 (*Cost of funds*) applies and the Agent or the Borrowers so require, the Agent and the Borrowers shall enter into negotiations (for a period of not more than 30 days) with a view to agreeing a substitute basis for determining the rate of interest or (as the case may be) an alternative basis for funding.

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- (c) Subject to Clause 27.4 (*Changes to reference rates.*), any substitute or alternative basis agreed pursuant to paragraph (b) above shall, with the prior consent of all the Lenders and the Borrowers, be binding on all parties hereto.
  - (d) If paragraph (e) below does not apply and any rate notified to the Agent under subparagraph (ii) of paragraph (a) above is less than zero, the relevant rate shall be deemed to be zero.
  - (e) If this Clause 5.7 (*Cost of funds*) applies pursuant to Clause 5.6 (*Market disruption*) and:
    - (i) a Lender's Funding Rate is less than the Reference Rate; or
    - (ii) a Lender does not notify a rate by the time specified in subparagraph (ii) of paragraph (a) above,

that Lender's cost of funds relating to its participation in the Loan or the relevant part of the Loan for that Interest Period shall be deemed, for the purposes of paragraph (a) above, to be the Reference Rate.

- (f) If this Clause 5.7 (*Cost of funds*) applies but any Lender does not notify a rate to the Agent by the time specified in sub-paragraph (ii) of paragraph (a) above, the rate of interest shall be calculated on the basis of the quotations of the remaining Lenders.

#### **5.8 Notice of prepayment**

If the Borrowers do not agree with an interest rate set by the Agent under Clause 5.7 (*Cost of funds*), the Borrowers may give the Agent not less than 5 Business Days' notice of their intention to prepay the Loan at the end of the interest period set by the Agent.

#### **5.9 Prepayment; termination of Commitments**

A notice under Clause 5.8 (*Notice of prepayment*) shall be irrevocable; the Agent shall promptly notify the Lenders or (as the case may require) the Notifying Lender of the Borrowers' 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 Notifying Lender shall be cancelled; and
- (b) on the date specified in its notice of intended prepayment, the Borrowers shall prepay (without premium or penalty) the Loan or, as the case may be, the Notifying Lender's Contribution, together with accrued interest thereon at the applicable rate plus the Margin and, if the prepayment or repayment is not made on the last day of the interest period set by the Agent, any sums payable in respect of Breakage Costs.

#### **5.10 Application of prepayment**

The provisions of Clause 8 (*Repayment and Prepayment*) shall apply in relation to the prepayment.

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## **6 INTEREST PERIODS**

### **6.1 Commencement of Interest Periods**

The first Interest Period applicable to the Loan shall commence on the Drawdown Date in respect of the Loan and each subsequent Interest Period shall commence on the expiry of the preceding Interest Period.

### **6.2 Duration of normal Interest Periods**

Subject to Clauses 6.3 (*Duration of Interest Periods for repayment instalments*) and 6.4 (*Non-availability of matching deposits for Interest Period selected*), each Interest Period for the Loan shall be:

- (a) 3 or 6 months as notified by the Borrowers to the Agent (subject to availability in the Relevant Market (as determined by the Agent)) not later than 11.00 a.m. Athens time) on the Quotation Date for that Interest Period; or
- (b) 3 months, if the Borrowers fail to notify the Agent by the time specified in paragraph (a) above; or
- (c) such other period as the Agent, at its sole discretion, may, subject to availability, agree with the Borrowers.

### **6.3 Duration of Interest Periods for repayment instalments**

In respect of an amount due to be repaid under Clause 8 (*Repayment and Prepayment*) on a particular Repayment Date, an Interest Period in relation to the amount to be repaid in respect of the Loan shall end on that Repayment Date.

### **6.4 Non-availability of matching deposits for Interest Period selected**

If, after the Borrowers have selected an Interest Period longer than 3 months, any Lender notifies the Agent by 11.00 a.m. (Athens time) on the second Business Day before the commencement of the Interest Period that it is not satisfied that deposits in Dollars for a period equal to the Interest Period will be available to it in the Relevant Market when the Interest Period commences, the Interest Period shall be of 3 months.

### **6.5 Interest Rate Hedging**

A Borrower may not hedge interest payable under this Agreement.

### **6.6 Reduced Margin**

If the Borrowers wish the Reduced Margin to apply for an Interest Period to a part of the Loan equal to the amount of the Cash Collateral as at the first day of such Interest Period, they must give notice thereof to the Agent at the same time as giving notice under Clause 6.2(a) and such Cash Collateral shall remain on the Cash Collateral Account for the duration of that Interest Period (subject always to the provisions of Clause 11.19 (*Cash Collateral*)).

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## **7 DEFAULT INTEREST**

### **7.1 Payment of default interest on overdue amounts**

The Borrowers shall pay interest in accordance with the following provisions of this Clause 7 (*Default Interest*) on any amount payable by the Borrowers under any Finance Document which the Agent, the Security Agent 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 Loan*), 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 (i) two point five per cent. (2.5%) above the rate set out at paragraph (b) of clause 7.3 (*Calculation of default rate of interest*) and (ii) in the case of Eurobank Cyprus Ltd and in relation to its Contribution only, two per cent. (2%) above the rate set out at paragraph (b) of Clause 7.3 (*Calculation of default rate of interest*) and for the remaining of any Contributions default interest under (i) above will apply.

### **7.3 Calculation of default rate of interest**

The rate referred to in Clause 7.2 (*Default rate of interest*) is the Margin plus, in respect of successive periods of any three (3) months or longer duration which the Agent may select from time to time:

- (a) the Reference Rate; or
- (b) if the Agent determines that Dollar deposits for any such period are not being made available to a Lender or (as the case may be) Lenders by leading banks in the Relevant 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 Agent from such other sources as the Agent may from time to time determine;

### **7.4 Notification of interest periods and default rates**

The Agent shall promptly notify the Lenders and the Borrowers of each interest rate determined by the Agent under Clause 7.3 (*Calculation of default rate of interest*) 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 Borrowers are 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 Security 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 be compounded every six months.

### **8 REPAYMENT AND PREPAYMENT**

#### **8.1 Amount of repayment instalments**

The Borrowers shall repay the Loan by (i) twenty (20) consecutive quarterly instalments of \$900,000 each followed by (ii) a Balloon Instalment of \$12,000,000 payable together with the last instalment Provided that if the amount of the Loan is less than \$30,000,000, the amount of each repayment instalment including the Balloon Instalment shall be reduced pro rata by an amount equal to such undrawn amount.

#### **8.2 Repayment Dates**

The first instalment shall be repaid on the date falling three (3) months after the Drawdown Date and the last instalment, along with the Balloon Instalment, shall be repaid on the earlier of (a) 30 June 2028 and (b) 60 months after the Drawdown Date.

#### **8.3 Final Maturity Date**

On the Final Maturity Date, the Borrowers shall additionally pay to the Security 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 Borrowers may prepay the whole or any part of the Loan on the last day of an Interest Period and may prepay the whole Loan at any time if any of the situations described in Clauses 21.1(f) (*Indemnities regarding borrowing and repayment of Loan*), 22.2 (*Grossing-up for taxes*) or 24.1 (*Increased costs*) arise, without prejudice to the Borrowers' obligations under those Clauses.

#### **8.5 Conditions for voluntary prepayment**

The conditions referred to in Clause 8.4 (*Voluntary prepayment*) are that:

- (a) a partial prepayment shall be \$450,000 or a higher multiple thereof;



- (b) the Agent has received from the Borrowers at least 10 Business Days' prior written notice specifying the amount to be prepaid and the date on which the prepayment is to be made;
- (c) the Borrowers have provided evidence satisfactory to the Agent that any consent required by any 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 any Borrower or any Security Party has been complied with; and
- (d) each partial prepayment shall be applied against the Loan in reducing the repayment instalments and the Balloon Instalment under Clause 8.1 (*Amount of repayment instalments*) in a manner determined at the Borrowers' 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 Borrowers 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 Borrowers under clause 8.5(c) (*Conditions for voluntary prepayment*).

#### **8.8 Mandatory prepayment – sale/Total Loss**

Upon the sale of a Ship, which sale shall be subject to prior notification to the Agent and provided that no Event of Default has occurred, or Total Loss of a Ship, the Borrowers shall be obliged to prepay the Loan by the Relevant Amount:

- (a) in the case of a sale, on or before the date on which the sale is completed by delivery of such Ship to the buyer; or
- (b) in the case of a Total Loss, on the earlier of the date falling 180 days after the relevant Total Loss Date and the date of receipt by the Security Agent of the proceeds of insurance relating to such Total Loss,

which prepayment shall be applied towards prepayment of the Loan in pro rata reduction of the remaining repayment instalments under Clause 8.1 (*Amount of repayment instalments*) including the Balloon Instalment,

where

“**Relevant Amount**” means an amount which is the higher of:

- (a) the amount required so that the Asset Cover Ratio immediately following such prepayment is equal to the Asset Cover Ratio before such sale or Total Loss; and

- 
- (b) such amount which will ensure that the Security Value, immediately following such prepayment is no less than the Required Security Amount at that time.

### **8.9 Mandatory prepayment – Illegality**

Upon the circumstances referred to in Clause 23 (*Illegality, etc*) arising, the Borrowers shall be obliged to prepay the whole Loan in accordance with that Clause, and any undrawn part of the Total Commitment shall be cancelled.

### **8.10 Amounts payable on prepayment**

A prepayment shall be made together with accrued interest (and any other amount payable under Clause 21 (*Indemnities*) in respect of the Loan and, if the prepayment is not made on the last day of an Interest Period, together with any **Breakage Costs**.

### **8.11 No reborrowing**

No amount prepaid or repaid may be reborrowed.

## **9 CONDITIONS PRECEDENT**

### **9.1 Documents, fees and no default**

Each Lender's obligation to make the Loan available to the Borrowers is subject to the following conditions precedent:

- (a) that, on or before the service of the Drawdown Notice, the Agent receives the documents described in Part A of Schedule 3 (*Condition Precedent Documents*) in form and substance satisfactory to the Agent and its lawyers;
- (b) that, on or before drawdown of the Loan but prior to advancing it, the Agent receives the documents described in Part B of Schedule 3 (*Condition Precedent Documents*) in form and substance satisfactory to the Agent and its lawyers;
- (c) that, on or before the service of the Drawdown Notice, the Agent has received payment of the fees and expenses payable pursuant to Clause 20 (*Fees and Expenses*);
- (d) that both at the date of each Drawdown Notice and at 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;
  - (ii) the representations and warranties in Clause 10 (*Representations and Warranties*) and those of a 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;

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- (iii) none of the circumstances contemplated by Clauses 5.6 (*Market disruption*) or 19.1(y) has occurred and is continuing;
  - (e) that, if the ratio set out in Clause 15.1 (*Provision of additional security cover; prepayment of Loan*) were applied immediately following the making of the Loan, the Borrowers 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 Borrowers 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 Borrowers shall ensure that those conditions are satisfied within 10 Business days after the Drawdown Date (or such longer period as the Agent may specify).

## **9.3 Conditions Subsequent**

The Borrowers undertake to deliver or to cause to be delivered to the Agent on, or as soon as practicable after, each Drawdown Date the additional documents and other evidence listed in Part C of Schedule 3 (*Condition Subsequent Part C*).

## **10 REPRESENTATIONS AND WARRANTIES**

### **10.1 General**

Each Borrower represents and warrants to each Creditor Party as follows.

### **10.2 Status**

Each Borrower is duly incorporated and validly existing and in good standing under the laws of Marshall Islands.

### **10.3 Share capital and ownership**

Each of Antipsara and Kithira have an authorised share capital of 500 hundred registered shares with a par value of \$1.00 each, all of which shares have been issued in registered form and are fully paid. Thasos has an authorised share capital of 100 hundred registered shares with a par value of \$1.00 each, all of which shares have been issued in registered form and are fully paid.

### **10.4 Corporate power**

Each Borrower has the corporate capacity, and has taken all corporate action and obtained all consents necessary for it:

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- (a) to register the Ship in its name under the Approved Flag;
  - (b) to execute the Finance Documents to which such Borrower is a party;
  - (c) to borrow under this Agreement; and
  - (d) to make all the payments contemplated by, and to comply with, those Finance Documents to which that Borrower is a party.

#### **10.5 Consents in force**

All the consents referred to in Clause 10.4 (*Corporate power*) remain in force and nothing has occurred which makes any of them liable to revocation

#### **10.6 Ownership of Borrowers**

All the shares in each Borrower are legally and beneficially owned and controlled by the persons disclosed to the Lenders prior to the date of this Agreement (including without limitation the Permitted Owners).

#### **10.7 Legal validity; effective Security Interests**

The Finance Documents to which each Borrower 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 the relevant Borrower's legal, valid and binding obligations enforceable against that Borrower in accordance with their respective terms and admissible in evidence; 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.

#### **10.8 No third party Security Interests**

Without limiting the generality of Clause 10.7 (*Legal validity; effective Security Interests*), at the time of the execution and delivery of each Finance Document:

- (a) each Borrower 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.

#### **10.9 No conflicts**

The execution by the Borrowers of each Finance Document to which each is a party, and the borrowing by the Borrowers of the Loan and their compliance with each Finance Document to which each is a party will not involve or lead to a contravention of:

- (a) any law or regulation; or
- (b) the constitutional documents of the Borrowers; or
- (c) any contractual or other obligation or restriction which is binding on the Borrowers or any of their assets.

#### **10.10 No withholding taxes**

- (a) All payments which the Borrowers are liable to make under the Finance Documents may be made without deduction or withholding for or on account of any tax payable under any law of any Pertinent Jurisdiction.
- (b) No taxes anywhere are imposed whatsoever by withholding or deduction or otherwise on any payment to be made by any Security Party under the Finance Documents to which such Security Party is or is to be a party or are imposed on or by virtue of the execution or delivery by the Security Parties of the Finance Documents or any other document or instrument to be executed or delivered under any of the Finance Documents.

#### **10.11 No default**

No Event of Default or Potential Event of Default has occurred and is continuing or might reasonably be expected to result from the making of the Loan or any part thereof available or the entry into, the performance of, or any transaction contemplated by, any Finance Document. No other event or circumstance is outstanding which constitutes a default or a termination event (however described) under any other agreement or instrument which is binding on a Security Party, or to which its assets are subject, which would be expected to have a Material Adverse Effect (i) on the business, assets or financial condition of any Security Party or (ii) on the security constituted by any of the Finance Documents or the enforceability of that security in accordance with its terms.

#### **10.12 Information**

All information which has been provided in writing by or on behalf of the Borrowers or any Security Party or an Approved Manager to any Creditor Party in connection with any Finance Document satisfied the requirements of Clause 11.6 (*Information provided to be accurate*); all audited and unaudited accounts which have been so provided satisfied the requirements of Clause 11.7 (*Provision of financial statements*); and there has been no material adverse change in the financial position or state of affairs of the Borrowers and/or the Corporate Guarantor and/or the Approved Managers from that disclosed in the latest of those accounts.

#### **10.13 No litigation**

No legal or administrative action involving a Borrower has been commenced or taken or, to a Borrower's knowledge, is likely to be commenced or taken which, in either case, would be likely to have a Material Adverse Effect.

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**10.14 Compliance with certain undertakings**

At the date of this Agreement, each Borrower is in compliance with Clauses 11.2 (*Title; negative pledge*), 11.3 (*No disposal of assets*), 11.4 (*No other liabilities or obligations to be incurred*), 11.10 (*Consents*), 11.13 (*Principal place of business*), 12.5 (*Ownership*) and 12.6 (*Sanctions*).

**10.15 Taxes paid**

Each Borrower has paid all taxes applicable to, or imposed on or in relation to such Borrower, its business or its Ship.

**10.16 Ranking of Borrowers' obligations**

Each Borrower's obligations to make payments under this Agreement rank ahead of any obligation owed by such Borrower to any other person, except as the same may be preferred by any applicable law or regulation.

**10.17 Insolvency etc.**

- (a) No bankruptcy, insolvency, administration or similar proceedings have been commenced against a Borrower with a view to winding up such Borrower.
- (b) None of the Security Parties is unable or has admitted inability to pay its debts as they fall due; has suspended making payments on any of its debts or has announced an intention to do so; is or has become insolvent; or has suffered the declaration of a moratorium in respect of any of its Financial Indebtedness.

**10.18 Anti-bribery**

None of the improper or illegal acts referred to in Clause 12.7 (*Anti-bribery*) have occurred prior to the date of execution of this Agreement

**10.19 ISM Code and ISPS Code compliance**

The Borrowers, the Approved Managers and the Third Party Managers have obtained all necessary ISM Code Documentation and ISPS Code Documentation in connection with each Ship and are in full compliance with the ISM Code and the ISPS Code.

**10.20 Restricted Persons, unlawful activity.**

- (a) None of the shares in the Borrowers or in the Ships are or will be at any time during the Security Period legally and beneficially owned and controlled by a Restricted Person;
- (b) no Restricted Person has or will have at any time during the Security Period any legal or beneficial interest of any nature whatsoever in any of the shares of any of the Security Parties (other than the Corporate Guarantor) or an Approved Manager or a Third Party Manager or to the best of the Borrowers' knowledge and belief, in any of the shares of the Corporate Guarantor;

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- (c) to the best of the Borrowers' knowledge and belief, no title in any property or other assets subject to a Security Interest created by a Finance Document has been obtained in breach of any existing applicable law, statute, rule or regulation.

#### **10.21 Choice of law**

The choice of English law to govern the Finance Documents (other than the choice of (i) the law of the Approved Flag State to govern the Mortgage and (ii) the *lex loci* to govern the Accounts Pledge) and the submissions by the Security Parties to the jurisdiction of the English courts and the obligations of such Security Parties associated therewith, are valid and binding other than as otherwise provided in any legal opinions delivered to the Agent under Clause 9 (*Conditions Precedent*).

#### **10.22 No filings required**

Except for the registration of each Mortgage in the relevant register under the laws of the Approved Flag State, it is not necessary to ensure the legality, validity, enforceability or admissibility in evidence of any of the Finance Documents that they or any other instrument be notarised, filed, recorded, registered or enrolled in any court, public office or elsewhere in any Pertinent Jurisdiction or that any stamp, registration or similar tax or charge be paid in any Pertinent Jurisdiction on or in relation to any of the Finance Documents and each of the Finance Documents is in proper form for its enforcement in the courts of each Pertinent Jurisdiction.

#### **10.23 Pari passu**

The obligations of the Borrowers under this Agreement and the obligations of the Corporate Guarantor under the Corporate Guarantee are direct, general and unconditional obligations of the Borrowers and the Corporate Guarantor respectively and rank at least *pari passu* with all other present and future unsecured and unsubordinated indebtedness of the Borrowers and the Corporate Guarantor except for obligations which are mandatorily preferred by operation of law and not by contract.

#### **10.24 Accounting reference date**

The Borrowers' and the Corporate Guarantor's accounting reference date is 31 December.

#### **10.25 Environmental Matters**

Except as may already have been disclosed by the Borrowers in writing to, and acknowledged and accepted in writing by, the Lenders:

- (a) the Borrowers and, to the best of the Borrowers' knowledge and belief (having made due enquiry), their Environmental Affiliates have complied with the provisions of all Environmental Laws;
- (b) the Borrowers and, to the best of the Borrowers' knowledge and belief (having made due enquiry), their Environmental Affiliates have obtained all Environmental Approvals and are in compliance with all such Environmental Approvals;

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- (c) no Environmental Claim has been made or threatened or pending against any Borrower or, to the best of any Borrower's knowledge and belief (having made due enquiry), any of their Environmental Affiliates; and
  - (d) there has been no Environmental Incident;

#### **10.26 Adverse consequences**

The jurisdiction of incorporation of each Borrower will not in any way adversely affect the Lenders or their rights under the Finance Documents.

#### **10.27 Immunity**

No Security Party nor any of their assets is entitled to immunity on the grounds of sovereignty or otherwise from any legal or administrative proceedings whatsoever.

#### **10.28 Legal compliance**

No Security Party has in any way contravened any applicable law, statute, rule or regulation (including, but not limited to, the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, the Foreign Corrupt Practices Act of 1977 of the USA and all such as relate to Money Laundering, terrorism and/or bribery).

#### **10.29 Money laundering**

In relation to the borrowing by the Borrowers of the Loan, the performance and discharge of their obligations and liabilities under this Agreement or any of the Finance Documents and the transactions and other arrangements effected or contemplated by this Agreement or any of the Finance Documents to which any Borrower is a party, each Borrower is acting for its own account and that the foregoing will not involve or lead to a contravention of any law, official requirement or other regulatory measure or procedure which has been implemented to combat Money Laundering.

#### **10.30 Sanctions**

No Security Party, nor any member of the Group nor any director, officer, agent, employee of any Security Party or any member of the Group or any person acting on behalf of any Security Party or a member of the Group, is a Restricted Person nor acts directly or indirectly on behalf of a Restricted Person.

#### **10.31 Centre of main interests and establishments**

For the purposes of Regulation (EU) 2015/848 of 20 May 2015 on insolvency proceedings (recast) (the "Regulation"), its centre of main interest (as that term is used in Article 3(1) of the Regulation) is situated in Greece and it has no "establishment" (as that term is used in Article 2(10) of the Regulation) in any other jurisdiction.



### **10.32 Labour laws**

Each Borrower is in compliance in all material respects with any law or regulation applicable to it and pertaining to the labour and employment conditions, the occupational health and safety and the public health, safety and security and implement the necessary measures and carry out any necessary and designated action for the effective dealing with and remedy of the issues which, in the course of ordinary audits, are indicated to each Borrower either from the competent authorities of its jurisdiction of incorporation or from advisors specialised in this field having the required expertise.

### **10.33 Personal data**

Each Borrower is in compliance in all material respects with any law or regulation applicable to it and pertaining on the protection of the individual from the processing of personal data and no claim, notice or other communication is received by it in respect of any actual or alleged breach of, or liability under, any such law or regulation which have or are reasonably likely to have a Material Adverse Effect.

### **10.34 Validity and completeness of a Deed of Release**

The Deed of Release constitutes valid, binding and enforceable obligations of the parties thereto in accordance with its terms and:

- (a) each of the copies of the Deed of Release delivered to the Agent on the Drawdown Date is a true and complete copy; and
- (b) no amendments or additions to the Deed of Release have been agreed nor has any party which is the party to the Deed of Release waived any of its respective rights thereunder.

### **10.35 Repetition of representations**

The representations and warranties set out in this Clause 10 (*Representations and Warranties*) are complete, true, accurate and not misleading (whether by omission of any material fact or consideration or otherwise) and the same, including this Clause 10.35 (*Repetition of representations*), shall be deemed to be repeated on the date of the Drawdown Notice, on the Drawdown Date and on the first day of each Interest Period.

## **11 GENERAL UNDERTAKINGS**

### **11.1 General**

Each Borrower undertakes with each Creditor Party to comply with the following provisions of this Clause 11 (*General Undertakings*) at all times during the Security Period except as the Agent may, with the authorisation of the Majority Lenders, otherwise permit in writing.

### **11.2 Title; negative pledge**

Each Borrower will:

- (a) hold the legal title to, and own the entire beneficial interest in its Ship and its 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

- (b) not create or permit to arise any Security Interest (except for Permitted Security Interests) over any other asset, present or future.

### **11.3 No disposal of assets**

No Borrower will transfer, lease or otherwise dispose of:

- (a) all or a substantial part of its 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.

### **11.4 No other liabilities or obligations to be incurred**

No Borrower will incur any liability or obligation except:

- (a) until the Drawdown Date, the Existing Indebtedness;
- (b) liabilities and obligations under the Finance Documents to which it is a party; and
- (c) liabilities or obligations reasonably incurred in the ordinary course of operating and chartering its Ship.

### **11.5 Subordination**

Each Borrower shall ensure that all indebtedness of such Borrower to any of its Related Persons is fully subordinated, and to subordinate any indebtedness issued to it by any of its Related Persons, all in a form acceptable to the Lenders.

### **11.6 Information provided to be accurate**

All financial and other information which is provided in writing by or on behalf of the Borrowers under or in connection with any Finance Document will be true and not misleading and will not omit any material fact or consideration.

### **11.7 Provision of financial statements**

The Borrowers will, and shall procure that the Corporate Guarantor will, send to the Agent:

- (a) as soon as possible, but in no event later than 180 days after the end of each of its financial year (commencing with the financial year ending 31 December 2022), the annual audited consolidated financial statements of the Corporate Guarantor for that financial year;
- (b) as soon as possible, but in no event later than 90 days after the end of each financial half-year (commencing with the financial half-year ending 30 June 2023) of the Corporate Guarantor, the consolidated management-prepared accounts of the Corporate Guarantor for that financial half-year, duly certified as to their correctness by the chief financial officer of the Corporate Guarantor; and

- 
- (c) promptly after each request by the Agent, such further financial information about the Borrowers, the Corporate Guarantor, the Group and/or the Ships, their respective affairs, activities, financial standing and operations including, but not limited to, charter arrangements, Financial Indebtedness, balance sheet, financial condition, operating expenses, commitments and loan repayment profiles, the purchase or sale of any substantial assets (including ships) by any of them, sale and leaseback transactions, and/or the restructuring of any loan of which any of them is a borrower, as the Agent may request.

#### **11.8 Form of financial statements**

All financial statements (audited and unaudited) delivered under Clause 11.7 (*Provision of financial statements*) will:

- (a) be prepared in accordance with all applicable laws and generally US GAAP (or other accounting standards acceptable to the Agent) consistently applied;
- (b) give a true and fair view of the state of affairs of the Borrowers and the Corporate Guarantor at the date of those financial statements and of their profit for the period to which those financial statements relate; and
- (c) fully disclose or provide for all significant liabilities of the Borrowers and the Corporate Guarantor.

#### **11.9 Creditor notices**

Following the written request of the Agent, the Borrowers will send to the Agent, at the same time as they are despatched, copies of all communications which are despatched to the Borrowers' creditors or any class of them.

#### **11.10 Consents**

The Borrowers will maintain in force and promptly obtain or renew, and will promptly send copies to the Agent of, all consents required:

- (a) for the Borrowers to perform their obligations under any Finance Document to which each is a party;
- (b) for the validity or enforceability of any Finance Document to which each is a party;
- (c) for each Borrower to continue to own and operate its Ship,

and the Borrowers will comply with the terms of all such consents.

#### **11.11 Maintenance of Security Interests**

Each Borrower will:

- 
- (a) at its own cost, do all that it reasonably can to ensure that any Finance Document validly creates the obligations and the Security Interests which it purports to create; and
  - (b) without limiting the generality of paragraph (a) above, 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 (including any duties or taxes payable by any of the Creditor Parties but excluding any FATCA Deduction), give any notice or take any other step 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 it creates.

#### **11.12 Notification of litigation**

Each Borrower will provide the Agent with details of any legal or administrative action involving a Borrower, any Security Party, the Approved Managers or a Ship, its Earnings or Insurances as soon as such action is instituted or it becomes apparent to a 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.

#### **11.13 Principal place of business**

Each Borrower will maintain its place of business, and keep its corporate documents and records in Greece (though it may change its place of business with the prior approval of the Agent), and no Borrower will establish, or do anything as a result of which it would be deemed to have, a place of business in either the United Kingdom or the United States of America.

#### **11.14 Confirmation of no default**

The Borrowers will, within 5 Business Days after service by the Agent of a written request, serve on the Agent a notice which is signed by a director of each Borrower and which:

- (a) states that no Event of Default has occurred and is continuing; or
- (b) states that no Event of Default has occurred and is continuing, except for a specified event or matter, of which all material details are given.

#### **11.15 Notification of default**

The Borrowers will notify the Agent as soon as any of them become aware of:

- (a) the occurrence of an Event of Default or a Potential Event of Default which is continuing; or
  - (b) any matter which indicates that an Event of Default or a Potential Event of Default may have occurred and is continuing,
- and will thereafter keep the Agent fully up-to-date with all developments.

#### 11.16 Provision of further information

The Borrowers will, and shall procure that the Corporate Guarantor and the Approved Managers will, as soon as practicable after receiving a request from the Agent, provide the Agent with:

- (a) any additional financial or other information relating:
  - (i) to the Borrowers, the Ships, the Insurances or the Earnings, the Corporate Guarantor, the Approved Managers or any member of the Group;
  - (ii) to the financial condition of any of the Borrowers and the Corporate Guarantor;
  - (iii) to any other matter relevant to, or to any provision of, a Finance Document which may be requested by the Lenders at any time; and
- (b) all other documentation and information as any Lender may from time to time require in order to comply with its, and all other relevant, know-your-customer regulations, including, but not limited to, evidence acceptable to that Lender confirming the beneficial ownership and control of the Borrowers and the Corporate Guarantor; and
- (c) all other documentation and information as any Creditor Party may reasonably request, and will keep the Agent, and shall procure that the Corporate Guarantor keeps the Agent, advised, without the need for any request therefor, of any major financial developments relating to any member of the Group, including, but not limited to, any sale or purchase of vessels, the incurrence of any new Financial Indebtedness, any restructuring or rescheduling of any Financial Indebtedness and the entry into any long term employment of any vessel owned by such member.

#### 11.17 Provision of copies and translation of documents

The Borrowers will supply the Agent (if it so requires) with a sufficient number of copies of the documents referred to above to provide one copy for each Creditor Party; and if the Agent so requires in respect of any of those documents, the Borrowers will provide a certified English translation prepared by a translator approved by the Agent.

#### 11.18 Unencumbered Liquidity

The Borrowers shall ensure that there shall be maintained at all times in an account or accounts with the Account Bank (including but not limited to any amount standing to the credit of the Retention Account, the Earnings Accounts and the Cash Collateral Account) in the names of the Borrowers and/or the Corporate Guarantor and/or any other member of the Group and/or any other entity acceptable to the Lenders, free of any Security Interest (other than any created by the Finance Documents) an average aggregate amount of no less than \$500,000 multiplied by the number of Ships which are at any relevant time subject to a Mortgage (the “**Minimum Liquidity**”), which shall be assessed by the Agent on an average quarterly basis commencing on the Drawdown Date.

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**11.19 Cash Collateral**

The Borrowers shall have the option to credit the Cash Collateral Account with an amount of up to 70% of the Loan at any time during the Security Period (the "Cash Collateral"). The Cash Collateral (or any part thereof) may be released by the Borrowers on an interest payment date or at any other date provided that (i) the Agent has received at least 5 Business Days' prior written notice from the Borrowers and any accrued interest (including any Breakage Costs) have been paid and (ii) no Event of Default has occurred which is continuing, or will occur as a result of such release.

**11.20 Know your Customer**

The Borrowers will provide, and will procure that the Corporate Guarantor and any other member of the Group which maintains an account with the Account Bank will, prior to the Drawdown Date to occur, provide all information and documentation as the Agent may in its sole discretion require in order to satisfy its "Know Your Customer" procedures.

**11.21 Restricted Persons**

Each Borrower shall not, and each Borrower shall procure that neither the Corporate Guarantor nor any shipowning company whose ships operate under the management of the Approved Manager (other than an Approved Manager which is not affiliated to the Corporate Guarantor) will, have any course of dealings, directly or indirectly, with any Restricted Person.

**11.22 Change in constitutional documents**

Each Borrower shall not, and each Borrower shall procure that the Corporate Guarantor will not, amend or vary its constitutional documents in a way which is likely to have Material Adverse Effect.

**11.23 Use of proceeds**

The Borrowers shall use the Loan and/or any part thereof exclusively for the purposes specified in Clause 2.3 (*Purpose of Loan*).

**11.24 Labour laws**

Each Borrower shall comply with the applicable from time to time legislation which relates to the labor and employment conditions, the occupational health and safety and the public health, safety and security, in each case, where failure to do so has or is reasonably likely to have a Material Adverse Effect. Each Borrower shall ensure that no claim, notice or other communication is received by it in respect of any actual or alleged breach of, or liability under, any such law or regulation where any such breach or liability has or is reasonably likely to have a Material Adverse Effect. The Borrowers shall promptly upon becoming aware of the same, inform the Agent in writing of any claim against a Borrower which is current, pending or threatened or any communication, notice or the imposition of any fine against a Borrower in respect of any actual or alleged breach of, or liability under, any such law or regulation. The Borrowers must deliver to the Agent, as soon as requested, all the documents and details deemed necessary by the latter, in order to ascertain that each Borrower complies with its obligations as stated in this clause. Similarly to the above, each Borrower is obliged to accept whenever deemed necessary (in the reasonable opinion of the Agent), any inspection carried

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out by the Agent's directors, officers or employees or by third parties having the desired and necessary expertise and provide to the aforementioned persons every required assistance for the purposes of this clause. The relevant cost shall be borne by the Borrowers. For any action taken by the Agent under this clause, the Agent may be entitled but not obliged to request the prior written consent of the Majority Lenders.

#### **11.25 Personal data**

Each Borrower shall comply with any law or regulation applicable to it and pertaining on the protection of the individual from the processing of personal data where failure to do so has or is reasonably likely to have a Material Adverse Effect. Each Borrower shall ensure that no claim, notice or other communication is received by it in respect of any actual or alleged breach of, or liability under, any such law or regulation where any such breach or liability has or is reasonably likely to have a Material Adverse Effect. Each Borrower shall promptly upon becoming aware of the same, inform the Agent in writing of any claim against a Borrower which is current, pending or threatened or any communication, notice or the imposition of any fine against a Borrower in respect of any actual or alleged breach of, or liability under, any such law or regulation.

#### **11.26 Additional Covenants**

The Borrowers shall procure that, if the Corporate Guarantor is required by any other contract to which any of them is a party to comply with (i) any financial covenants or (ii) any covenants which are equivalent or similar to the ones set out in this Clause 11 or Clause 11 of the Corporate Guarantee but which, in either case, impose greater obligations, the Corporate Guarantor shall comply with those covenants as amended and/or waived from time to time as if the same were set out (up-dated *mutatis mutandis*) in full in this Clause 11 and Clause 11 of the Corporate Guarantee respectively.

#### **11.27 Further assurance**

Each Borrower undertakes with the Lenders to ensure that, throughout the Security Period, the Finance Documents shall be valid and binding obligations of the respective parties thereto and the rights of the Creditor Parties enforceable in accordance with their respective terms and that it will, at its expense, execute, sign, perfect and do, and will procure the execution, signing, perfecting and doing by each of the other Security Parties of, any and every such further assurance, document, act or thing as in the reasonable opinion of the Agent may be necessary or desirable for perfecting the security contemplated or constituted by the Finance Documents.

#### **11.28 Insolvency**

The Borrowers shall procure that neither the Corporate Guarantor nor any material creditor of any Borrower presents a petition, gives notice or takes any other step which could result in any Borrower being declared insolvent or being dissolved or in the appointment of an administrator of any Borrower or have an effect equivalent or similar thereto.

## **11.29 DAC 6**

In this Clause 11.29, "DAC6" means the Council Directive of 25 May 2018 (2018/822/EU) amending Directive 2011/16/EU or any replacement legislation applicable in the United Kingdom.

The Borrowers shall comply with any reporting obligations arising from DAC6 or any law implementing DAC6.

## **12 CORPORATE UNDERTAKINGS**

### **12.1 General**

The Borrowers also undertake with each Creditor Party to comply with the following provisions of this Clause 12 (*Corporate Undertakings*) at all times during the Security Period except as the Agent, with the authorisation of the Majority Lenders, may otherwise permit in writing.

### **12.2 Maintenance of status**

Each Borrower will maintain its separate corporate existence and remain in good standing under the laws of Marshall Islands.

### **12.3 Negative undertakings**

No Borrower will:

- (a) carry on any business other than the ownership, chartering and operation of its Ship; or
- (b) pay any dividend or make any other form of distribution or effect any form of redemption, purchase or return of share capital, if there has occurred an Event of Default which is continuing, or an Event of Default would thereby be caused to occur; or
- (c) provide any form of credit or financial assistance to any person or company (without the prior written consent of the Agent, such consent not to be unreasonably withheld); or
- (d) open or maintain any account with any bank or financial institution except accounts with a bank or financial institution already opened or maintained or accounts approved by the Agent for the purposes of the Finance Documents; or
- (e) issue, allot or grant any person a right to any shares in its capital or repurchase or reduce its issued share capital; or
- (f) acquire any shares or other securities or enter into any transaction in a derivative; or
- (g) enter into any form of amalgamation, merger or de-merger or any form of reconstruction or reorganisation which would (in the case of the Borrower) give rise to a Change of Control Event (without the prior written consent of the Agent, such consent not to be unreasonably withheld); or



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- (h) incur any Financial Indebtedness (including issuing any guarantee or making any loans or advances) other than in the ordinary course of owning and operating its Ship or as otherwise contemplated by this Agreement, except on terms that the same shall, in the case of unsecured indebtedness, rank no higher than *pari passu* with the Borrowers' obligations under this Agreement and, in the case of any Financial Indebtedness incurred to any parent or affiliate of a Borrower is fully subordinated to the Borrowers' and or the Corporate Guarantor's obligations under the Finance Documents:

#### **12.4 Inter-company Loans**

Each Borrower shall procure that any Financial Indebtedness incurred from any of their respective shareholders or any other company which is controlled (directly or indirectly) by the Corporate Guarantor or the Borrowers is so incurred on terms that the same is fully subordinated to the Borrowers' obligations under the Finance Documents in form and substance acceptable to the Agent.

#### **12.5 Ownership**

The Borrowers will ensure that throughout the Security Period there is no change in the legal ownership of the Borrowers or in the beneficial ownership of the Borrowers from that which has been disclosed to the Lenders prior to the execution of this Agreement.

#### **12.6 Sanctions**

Each Borrower undertakes that it shall:

- (a) not be, and shall procure that any Security Party and other member of the Group and an Approved Manager, a Third Party Manager or any Related Person of any of them, or 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 or have a course of dealings with a Restricted Person;
- (b) and shall procure that each Security Party, each Approved Manager, each Third Party Manager and each other member of the Group and each Related Person of any of them shall, not 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) and shall procure that each Security Party, each Approved Manager, each Third Party Manager and each other member of the Group and each Related Person of any of them shall not take any action, make any omission or use (directly or indirectly) any proceeds of the Loan in a manner that is a breach of Sanctions; and/or causes (or will cause) a breach of Sanctions by any Creditor Party;
- (d) 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 Related Person of any of them;
- (e) take, and shall procure that each Security Party, each Approved Manager, each Third Party Manager and each other member of the Group and each Related Person of any of them has taken, reasonable measures to ensure compliance with Sanctions;

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- (f) and shall procure that each Security Party, each Approved Manager, each Third Party Manager and each other member of the Group 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 investigation against it with respect to Sanctions by any Sanctions Authority; and
  - (g) not accept, obtain or receive any goods or services from any Restricted Person, except (without limiting Clause 12.6(b)), to the extent relating to any warranties and/or guarantees given and/or liabilities incurred in respect of an activity or dealing with a Restricted Person by a Borrower, any other Security Party, an Approved Manager, a Third Party Manager or any other member of the Group in accordance with this Agreement.

#### **12.7 Anti-bribery**

The Borrowers shall ensure that no Security Party nor any of their respective affiliates, officers, directors, employees or agents acting on their 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.

#### **12.8 Money Laundering**

Each Borrower shall:

- (a) provide the Lenders with information, certificates and any documents required by the Lenders to ensure compliance with any law, official requirement or other regulatory measure or procedure implemented to combat Money Laundering; and
- (b) notify the Lenders 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.

#### **12.9 FATCA Information**

- (a) Subject to paragraph (c) below, the Borrowers shall, within 10 Business Days of a reasonable request by the Agent:
  - (i) confirm to the Agent whether it or any Security Party is:
    - (A) a FATCA Exempt Party; or
    - (B) not a FATCA Exempt Party; and
  - (ii) supply to the requesting party such forms, documentation and other information relating to its status, or the status of such Security Party, under FATCA as the Agent reasonably requests for the purposes of its compliance with FATCA.

- (b) If a Borrower confirms pursuant to this Clause 12.9(a)(i) that it, or a Security Party, is a FATCA Exempt Party and it subsequently becomes aware that it is not, or has ceased to be a FATCA Exempt Party, such Borrower shall notify the Agent reasonably promptly.
- (c) If a Borrower fails to confirm its status, or the status of a Security Party, or to supply forms, documentation or other information requested in accordance with subclause (a) above, then such Security 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 (in each case) such time as a Borrower provides the requested confirmation, forms, documentation or other information.

#### **12.10 Listing**

The Borrowers shall procure that, at all times during the Security Period, the Corporate Guarantor maintains its listing as a public limited company on NYSE or any other stock exchange in the United States of America acceptable to the Agent.

#### **12.11 Business and ownership**

The Borrowers shall procure that at all time during the Security Period (i) the Corporate Guarantor owns, directly or indirectly, inter alia, companies owning and operating ocean-going vessels, (ii) the Permitted Owners are directly involved in the management of the ships directly or indirectly owned by the Corporate Guarantor and (iii) the Permitted Owners own at least 5% of the issued voting units in the Corporate Guarantor.

#### **12.12 Financial covenants**

At all times during the Security Period, by reference to the Latest Accounts, the Borrowers shall procure that the Corporate Guarantor shall ensure that:

- (a) at no time shall the Liquidity be less than \$500,000 multiplied by the number of ships owned by the Corporate Guarantor;
- (b) the ratio of EBITDA to Interest Expense shall be at least 2 to 1;
- (c) the Net Total Debt divided by the Total Assets (adjusted (i) for market values of vessels owned and (ii) by deducting (A) the value of the assets relating to operating leases as defined under rule ASC 842 of the US GAAP and (B) cash (which shall have the meaning given thereto under US GAAP meaning both restricted and freely available cash) shall be less than 75%; and
- (d) the Net Worth shall at all times be equal to or more than \$135,000,000.

#### **12.13 Compliance Check**

Compliance with the undertakings contained in Clause 12.12 (*Financial covenants*) shall be determined by reference to the audited consolidated accounts for each Financial Year of the Corporate Guarantor and commencing with the Financial Year ending 31 December 2022, each delivered to the Agent pursuant to Clause 11.7 (*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 Financial Year, the Corporate Guarantor shall deliver to the Agent a Compliance Certificate, signed by the chief financial officer of the Corporate Guarantor, evidencing calculations and compliance with the financial covenants.

## **13 INSURANCE**

### **13.1 General**

The Borrowers undertake with each Creditor Party to comply with the following provisions of this Clause 13 (*Insurance*) at all times during the Security Period except as the Agent, with the authority of the Majority Lenders, may otherwise permit in writing.

### **13.2 Maintenance of obligatory insurances**

Each Borrower shall keep the Ship owned by it insured at the expense of that Borrower against:

- (a) fire and usual marine risks (including hull and machinery, hull interest and excess risks);
- (b) war risks (including war P & I liabilities and the London Blocking and Trapping Addendum or similar arrangement); and
- (c) protection and indemnity risks (which cover shall include freight, demurrage and defence) in excess of the limit of cover for oil pollution liability risks included within the protection and indemnity risks;
- (d) 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 that Borrower.

### **13.3 Terms of obligatory insurances**

Each Borrower shall effect such insurances:

- (a) in Dollars;
- (b) in the case of fire and usual marine risks and war risks, in an amount on an agreed value basis at least the greater of (i) such amount, which when aggregated with the amount for which any other Ship then subject to a Mortgage is insured, is at least equal to 120 per cent of the Loan and (ii) the Market Value of the Ship owned by it;
- (c) in the case of oil pollution liability risks, for an aggregate amount equal to the highest level of cover from time to time available under basic protection and indemnity club entry (with the international group of protection and indemnity clubs) and the international marine insurance market (for the time being \$1,000,000,000);
- (d) in relation to protection and indemnity risks in respect of the full value and tonnage of the Ship owned by it;

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- (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 association (which is of a rating acceptable to the Agent) and protection and indemnity risks association (which is of a rating acceptable to the Agent and is a signatory to the International Group Agreement 1985).

#### **13.4 Further protections for the Creditor Parties**

In addition to the terms set out in Clause 13.3 (*Terms of obligatory insurances*), each Borrower shall procure that the obligatory insurances shall:

- (a) (except in relation to risks referred to in Clause 13.2(c) (*Maintenance of obligatory insurances*) (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, 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);
- (b) name the Security Agent as sole loss payee on such terms and with such directions for payment as the Security Agent may specify (and in particular on terms that the deductible in respect of the hull and machinery insurances shall not exceed the amount agreed upon and stated in the loss payable clause);
- (c) 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;
- (d) provide that the insurers shall waive, to the fullest extent permitted by English law, their entitlement (if any) (whether by statute, common law, equity, or otherwise) to be subrogated to the rights and remedies of the Security Agent in respect of any rights or interests (secured or not) held by or available to the Security Agent in respect of the Secured Liabilities, until the Secured Liabilities shall have been fully repaid and discharged, except that the insurers shall not be restricted by the terms of this paragraph (d) from making personal claims against persons (other than the Borrowers or any Creditor Party) in circumstances where the insurers have fully discharged their liabilities and obligations under the relevant obligatory insurances;
- (e) provide that such obligatory insurances shall be primary without right of contribution from other insurances which may be carried by the Security Agent;
- (f) provide that the Security Agent may make proof of loss if the Borrowers fail to do so; and
- (g) provide that if any obligatory insurance is validly cancelled, or if any substantial change is made in the coverage which adversely affects the interest of the Security Agent, or if any obligatory insurance is allowed to lapse for non-payment of premium, such cancellation, charge or lapse shall not be effective with respect to the Security Agent for 14 days (or 7 days in the case of war risks) after receipt by the Security Agent of prior written notice from the insurers of such cancellation, change or lapse.

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### 13.5 Renewal of obligatory insurances

Each Borrower shall:

- (a) at least 21 days (or such shorter period as the Agent may agree) before the expiry of any obligatory insurance:
  - (i) notify the Security Agent of the brokers (or other insurers) and any protection and indemnity or war risks association through or with whom such Borrower proposes to renew that insurance and of the proposed terms of renewal; and
  - (ii) in case of any substantial change in insurance cover, obtain the Agent's approval to the matters referred to in paragraph (i) above;
- (b) at least 14 days (or such shorter period as the Agent may agree) before the expiry of any obligatory insurance, renew the insurance; 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 Agent in writing of the terms and conditions of the renewal.

### 13.6 Copies of policies; letters of undertaking

Each Borrower shall ensure that all approved brokers provide the Security Agent with copies of all policies relating to the obligatory insurances which they effect or renew and of a letter or letters or undertaking in a form required by the 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 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 Agent in accordance with the said loss payable clause;
- (c) they will advise the Security Agent without undue delay of any material change to the terms of the obligatory insurances;
- (d) they will notify the Security Agent, not less than 14 days before the expiry of the obligatory insurances, in the event of their not having received notice of renewal instructions from the relevant Owner 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 any Ship under such obligatory insurances any premiums or other amounts due to them or any other person whether in respect of a Ship or otherwise, they waive any lien on the policies

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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 each Ship forthwith upon being so requested by the Security Agent.

### **13.7 Copies of certificates of entry**

Each Borrower shall ensure that any protection and indemnity and/or war risks associations in which the Ship owned by it is entered provide to the Security Agent:

- (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 Agent; and
- (c) where required to be issued under the terms of insurance/indemnity provided by the relevant Owner's protection and indemnity association, a certified copy of each United States of America voyage quarterly declaration (or other similar document or documents) made by such Borrower in relation to its Ship in accordance with the requirements of such protection and indemnity association; and
- (d) if applicable, 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**

Each Borrower shall ensure that all policies relating to obligatory insurances are deposited with the approved brokers through which the insurances are effected or renewed.

### **13.9 Payment of premiums**

Each Borrower shall punctually pay all premiums or other sums payable in respect of the obligatory insurances and produce certified copies of all relevant receipts when so required by the Security Agent.

### **13.10 Guarantees**

Each Borrower shall ensure that any guarantees required by a protection and indemnity or war risks association are promptly issued and remain in full force and effect.

### **13.11 Restrictions on employment**

No Borrower shall employ its Ship, nor permit her to be employed, outside the cover provided by any obligatory insurances.

### **13.12 Compliance with terms of 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 thereunder 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 13.7(c) above) (*Copies of certificates of entry*) ensure that the obligatory insurances are not made subject to any exclusions or qualifications to which the Security Agent has not given its prior approval;
- (b) no Borrower shall make any changes relating to the classification or classification society (unless the new classification society is a member of IACS) or manager or operator of its Ship unless approved by the underwriters of the obligatory insurances;
- (c) each Borrower shall make 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) no Borrower shall employ its Ship, nor allow her 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.

### **13.13 Alteration to terms of insurances**

No Borrower shall make, or 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.

### **13.14 Settlement of claims**

No Borrower shall settle, except with the prior written consent of the Security Agent, 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 Agent to collect or recover any moneys which at any time become payable in respect of the obligatory insurances.

### **13.15 Provision of copies of communications**

Each Borrower shall on the Agent's written request, provide the Agent, with copies of all written communications between that Borrower and:

- (a) the approved brokers;
- (b) the approved protection and indemnity and/or war risks associations; and



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- (c) the approved insurance companies and/or underwriters, which relate directly or indirectly to:
  - (d) that Borrower's obligations relating to the obligatory insurances including, without limitation, all requisite declarations and payments of additional premiums or calls; and
  - (e) any credit arrangements made between that Borrower and any of the persons referred to in paragraphs (a) or (b) above relating wholly or partly to the effecting or maintenance of the obligatory insurances.

### 13.16 Provision of information

In addition, each Borrower shall promptly provide the Agent (or any persons which it may designate) with any information which the Agent (or any such designated person) reasonably 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 13.17 (*Mortgagee's interest*) below or dealing with or considering any matters relating to any such insurances,

and the Borrowers shall, forthwith upon demand, indemnify the Security Agent in respect of all reasonable fees and other reasonable expenses incurred by or for the account of the Security Agent in connection with any such report as is referred to in paragraph (a) above.

### 13.17 Mortgagee's interest

The Security Agent shall be entitled from time to time to effect, maintain and renew all or any of the following insurances in such amounts, on such terms, through such insurers and generally in such manner as the Agent may from time to time reasonably consider appropriate:

- (a) a mortgagee's interest marine insurance (in an amount of no less than 110% of the Loan at any relevant time) providing for the indemnification of the Creditor Parties for any losses under or in connection with any Finance Document which directly or indirectly result from loss of or damage to any Ship or a liability of any Ship or of any Borrower, being a loss or damage which is prima facie covered by an obligatory insurance but in respect of which there is a non-payment (or reduced payment) by the underwriters by reason of, or on the basis of an allegation concerning:
  - (i) any act or omission on the part of a Borrower, of any operator, charterer, manager or sub-manager of the Ship owned by it or of any officer, employee or agent of a Borrower or of any such person, including any breach of warranty or condition or any non-disclosure relating to such obligatory insurance;
  - (ii) any act or omission, whether deliberate, negligent or accidental, or any knowledge or privity of a Borrower, any other person referred to in paragraph (i) above, or of any officer, employee or agent of that Borrower or of such a person, including the casting away or damaging of the Ship owned by it and/or the Ship owned by it being unseaworthy; and/or

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- (iii) any other matter capable of being insured against under a mortgagee's interest marine insurance policy whether or not similar to the foregoing; and
- (b) if required, a mortgagee's interest additional perils policy (in an amount of no less than 110% of the Loan at any relevant time) providing for the indemnification of the Creditor Parties against, among other things, any possible losses or other consequences of any Environmental Claim, including the risk of expropriation, arrest or any form of detention of a Ship, the imposition of any Security Interest over a Ship and/or any other matter capable of being insured against under a mortgagee's interest additional perils policy whether or not similar to the foregoing, 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 such insurance or dealing with, or considering, any matter arising out of any such insurance.

### **13.18 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 a Borrower or a Ship and its insurance (including, without limitation, changes in the availability or the cost of insurance coverage or the risks to which the Borrowers may be subject), and may appoint insurance consultants in relation to this review at the cost of the Borrowers.

### **13.19 Modification of insurance requirements**

The Agent shall notify the Borrowers of any proposed modification under Clause 13.18 (*Review of insurance requirements*) to the requirements of this Clause 13 (*Insurance*) which the Majority Lenders reasonably consider appropriate in the circumstances, and such modification shall take effect without undue delay on and from the date it is notified in writing to the Borrowers as an amendment to this Clause 13 (*Insurance*) and shall bind the Borrowers accordingly.

### **13.20 Compliance with mortgagee's instructions**

The Agent 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 Agent until the Borrowers implement 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 (*Review of insurance requirements*).

## **14 SHIP COVENANTS**

### **14.1 General**

Each Borrower also undertakes with each Creditor Party to comply with the following provisions of this Clause 14 (*Ship Covenants*) at all times during the Security Period except as the Agent, with the authority of the Majority Lenders, may otherwise reasonably permit in writing.

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**14.2 Ship's name, registration and classification**

Each Borrower shall keep its Ship registered in its name under the Approved Flag; shall not do or allow to be done anything as a result of which such registration might be cancelled or imperilled; and shall not change the name or port of registry of its Ship; and shall not make any changes relating to the classification or classification society of its Ship (unless the new classification society is a member of IACS) (without the prior written consent of the Agent, such consent not to be unreasonably withheld).

**14.3 Repair and classification**

Each Borrower shall keep its Ship in a good and safe condition and state of repair:

- (a) consistent with first-class ship operation and management practice;
- (b) so as to maintain the highest class applicable to vessels of the same age, type and specification as such Ship at American Bureau of Shipping (or an equivalent IACS classification society acceptable to the Agent in its reasonable discretion) free of overdue recommendations and conditions affecting class that ship's class that have not been complied with in accordance with their terms class; and
- (c) so as to comply with all laws and regulations applicable to vessels registered at ports in the Approved Flag State or to vessels trading to any jurisdiction to which such Ship may trade from time to time, including but not limited to the ISM Code and the ISPS Code and the ISM Code Documentation and the ISPS Code Documentation.

**14.4 Modification**

No Borrower shall, and shall procure that no Approve Managers shall, make any modification or repairs to, or replacement of, its Ship or equipment installed on her which would or might materially alter the structure, type or performance characteristics of such Ship or materially reduce her value.

**14.5 Removal of parts**

No Borrower shall, and shall procure that no Approve Managers shall, remove any material part of its Ship or any item of equipment installed on such 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 Agent and becomes on installation on such Ship the property of the relevant Owner and subject to the security constituted by the Mortgage Provided that the relevant Owner may install equipment owned by a third party if the equipment can be removed without any risk of damage to its Ship.

#### **14.6 Survey**

Each Borrower shall submit its Ship 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; the Agent will consider a Borrower's written justification for refusing to provide such survey and the Agent may, at its sole discretion, withdraw such request.

#### **14.7 Inspection**

Each Borrower shall permit the Agent (by surveyors or other persons appointed by it for that purpose) to board its Ship once per year and at a place where it is practically convenient based on the Ship's schedule and without interfering with the operation of such Ship or causing her delay, to inspect her about proposed or executed repairs and shall afford all proper facilities for such inspections and shall make available to the Agent or its surveyor on request all records (on board or on shore) relating to its Ship. All reasonable fees and expenses reasonably incurred in relation to the appointment of the surveyor or surveyors once per year and the preparation and issue of all technical reports pursuant to this Clause 14.7 (*Inspection*) shall be for the account of the Borrowers.

#### **14.8 Prevention of and release from arrest**

Each Borrower shall promptly discharge:

- (a) all liabilities which give or may give rise to maritime or possessory liens on or claims enforceable against its Ship or such Ship's Earnings or Insurances;
- (b) all taxes, dues and other amounts charged in respect of its Ship or such Ship's Earnings or Insurances; and
- (c) all other outgoings whatsoever in respect of its Ship or such Ship's Earnings or Insurances

and, forthwith upon receiving notice of the arrest of its Ship, or of her detention in exercise or purported exercise of any lien or claim, the relevant Owner shall procure her release by providing bail or otherwise as the circumstances may require.

#### **14.9 Compliance with laws etc.**

The Borrowers shall (and shall procure that the Approved Managers and their Related Persons and the Third Party Managers shall):

- (a) comply, or procure compliance with the ISM Code, the ISPS Code, all Environmental Laws and all other laws or regulations relating to the Ships, each Ship's ownership, operation and management or to the business of the Borrowers (including, but not limited to, the International Management Code for the Safe Operation of Ships and for Pollution Prevention) and all relevant national or international laws, statutes, regulations, directives, decrees or analogous rules (including, but not limited to, laws relating to any trading prohibition imposed by the Approved Flag State, the country of incorporation of the relevant Owner or the country of nationality of any crew member of the Ship owned by it by which that Borrower is bound in connection with such crew members or any rules relating to international sanctions) and pay all taxes for which it is liable as they fall due under any applicable law;

- (b) not employ the Ships nor allow their 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;
- (c) and will procure that each Security Party, each Approved Manager, each Third Party Manager and each other member of the Group and any Related Person of any of them will, comply in all respects with all Sanctions;
- (d) in the event of hostilities in any part of the world (whether war is declared or not), not cause or permit the Ships to enter or trade to any zone which is declared a war zone by any government or by a Ship's war risks insurers unless the prior written consent of the Agent has been given and the relevant Owner has (at its expense) effected any special, additional or modified insurance cover which the Agent may require; and
- (e) be, with respect to any Ship, in compliance with the price cap framework ("**Price Cap**") regarding Russian Federation-origin crude oil and petroleum products ("**Russian oil**") and any other restrictions applicable to any Ship and any Borrower and its business related to Russian oil, including, but not limited to, the prohibition to import seaborne Russian oil to the U.S., EU or the UK and if a Borrower deals with Russian oil, or provides services to third parties who deal with Russian oil, the Borrowers undertake that, without prejudice to any other obligations of the Borrowers under any Applicable Sanctions, they shall obtain from such third-parties prior to each such dealing with Russian oil:
  - (i) an attestation (in a form conforming with the Price Cap requirements or other equivalent evidence acceptable to the Agent) that the Russian oil is purchased at or below the Price Cap; or (if applicable); and
  - (ii) an attestation (in a form conforming with the Price Cap requirements or other equivalent evidence acceptable to the Agent) that the purchase of Russian Oil is done pursuant to a valid license or a derogation.

#### **14.10 Provision of information**

Each Borrower shall promptly provide the Security Agent with any information and/or evidence which the Security Agent requests regarding:

- (a) its Ship, her employment, position and engagements;
- (b) payments and amounts due to the master and crew of its Ship;
- (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 such Ship;
- (d) any towages and salvages; and
- (e) its compliance, the Approved Managers' compliance, the Third Party Managers' compliance or the compliance of its Ship with the ISM Code and the ISPS Code;
- (f) the class and classification society of its Ship;

and, upon the Agent's request, provide copies of any current charter relating to its Ship, of any current charter guarantee and, of the ISM Code Documentation and the ISPS Code Documentation.

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**14.11 Notification of certain events**

Each Borrower shall immediately notify the Agent 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 its 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 within the time limit, if any, imposed by any insurer or classification society or by any competent authority;
- (d) any arrest or detention of its Ship, any exercise or purported exercise of any lien on such Ship or her Earnings or any requisition of such Ship for hire;
- (e) any intended dry docking of its Ship which is not routine;
- (f) any Environmental Claim made against a Borrower or in connection with its Ship, or any Environmental Incident;
- (g) any claim for breach of the ISM Code or the ISPS Code being made against a Borrower, an Approved Manager, a Third Party Manager or otherwise in connection with a Ship; or
- (h) any other matter, event or incident, actual or threatened, the effect of which will or could lead to the ISM Code and/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 reasonably require of the Borrowers', the affected Approved Managers', the affected Third Party Manager's or any other person's response to any of those events or matters.

**14.12 Restrictions on chartering, appointment of managers etc.**

No Borrower shall:

- (a) let its Ship on demise charter for any period;
- (b) (without the prior written consent of the Agent, such consent not to be unreasonably withheld), subject to Clause 14.15 (*Charter Assignment*), enter into any time or consecutive voyage charter in respect of its Ship for a term which exceeds 12 months in duration (or which by virtue of any optional renewals may exceed 12 months);
- (c) enter into any charter in relation to its Ship under which more than 4 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 such Ship is fixed;

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- (e) appoint a manager of its Ship other than the Approved Managers or the Third Party Managers or agree to any substantial alteration to the terms of the Approved Manager's or the Third Party Manager's appointment;
  - (f) make any changes relating to the classification or classification society of its Ship (unless the new classification society is a member of IACS);
  - (g) de-activate or lay up its Ship; or
  - (h) agree to amend or vary any material terms of the Approved Charter (including, but not limited to, charterhire, duration and identity of the parties) relating to the Ship owned by it; or
  - (i) put its Ship into the possession of any person for the purpose of work being done upon her in an amount exceeding or likely to exceed \$500, 000 (or the equivalent in any other currency).

#### **14.13 Notice of Mortgage**

Each Borrower shall keep the Mortgage registered against its Ship as a valid first priority mortgage and if required by the Approved Flag State, carry on board such Ship a certified copy of the Mortgage and place and maintain in a conspicuous place in the navigation room and the Master's cabin of such Ship a framed printed notice stating that that Ship is mortgaged by the relevant Owner to the Security Agent.

#### **14.14 Sharing of Earnings**

No Borrower shall:

- (a) enter into any agreement or arrangement for the sharing of any Earnings;
- (b) enter into any agreement or arrangement for the postponement of any date on which any Earnings are due; the reduction of the amount of any Earnings or otherwise for the release or adverse alteration of any rights of a Borrower to any Earnings; apart from any profit sharing arrangements with a Charterer which are permitted on arm's length basis and at normal market rates; or
- (c) enter into any agreement or arrangement for the release of, or adverse alteration to, any guarantee or Security Interest relating to any Earnings.

#### **14.15 Charter Assignment**

If a Borrower enters into any Charter in respect of its Ship such Borrower shall, at the request of the Agent:

- (a) execute (i) in favour of the Security Agent a Charter Assignment in respect of such Charter in the form and upon the terms and conditions required by the Agent (ii) any notice of assignment required in connection therewith and use commercial reasonable efforts to procure the acknowledgement of any such notice of assignment by the relevant charterer and (iii) (if any Mortgaged Vessel is subject to a bareboat charter) procure execution by the relevant Borrower and the charterer of a tripartite deed, together with all notices required to be determined thereunder; and

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- (b) shall deliver to the Agent such corporate authorities and corporate documents as the Agent may require along with a certified true copy of such Charter or its recap provided that such notice will only be served to the relevant Charterer if there is an Event of Default which is continuing.

**14.16 Insurance opinion**

Each Borrower shall provide the Agent (i) in case of any alteration to the terms of any obligatory insurances in respect of its Ship or any change in the brokers and/or insurance companies and/or underwriters through which such insurances are effected and (ii) otherwise on request, at the Borrowers' cost, with an opinion from insurance consultants on the insurances effected or to be effected in respect of such Ship, confirming that such 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.

**14.17 Nuclear waste, nuclear material**

Each Borrower shall ensure that its Ship will not, under any circumstances, carry any nuclear material or nuclear waste at any time

**14.18 Trading**

No Borrower shall permit its Ship to trade in any area prohibited by (i) the government of the Approved Flag State of its Ship, (ii) the country of incorporation or domicile of the relevant Owner or (iii) the country of which any officer and crew member on board such Ship is a national.

**14.19 Sale or other disposal of Ships**

No Borrower will, or will agree to, sell, transfer, abandon or otherwise dispose of the Ship owned by it or any share or interest in it except:

- (a) with the written approval of the Agent; and
- (b) if no Default has occurred or will occur due to such sale.

**14.20 Annex VI**

Each Borrower shall, upon the request of any Lender and at the cost of the Borrowers, on or before 31st July in each calendar year, supply or procure the supply by the relevant Classification Society (as specified by the relevant Lender) to the Agent of all ship fuel oil consumption data required to be collected and reported in accordance with Regulation 22A of Annex VI and any Statement of Compliance relating to its Ship for the preceding calendar year provided that such information shall be kept confidential at all times.



For the purposes of this Clause 14.20 (*Annex VI*):

“**Annex VI**” means Annex VI of the Protocol of 1997 (as subsequently amended from time to time) to amend the International Convention for the Prevention of Pollution from Ships 1973 (“**MARPOL**”), as modified by the Protocol of 1978 relating thereto.

“**Recognised Organisation**” means, in respect of a Ship, the Classification Society representing such Ship’s flag state and, for the purposes of Clause 14.20 (*Annex VI*), duly authorised to determine whether the relevant Borrower has complied with regulation 22A of Annex VI.

“**Statement of Compliance**” means a Statement of Compliance related to fuel oil consumption pursuant to regulations 6.6 and 6.7 of Annex VI.

#### **14.21 Russian oil price cap**

- (a) Each Borrower undertakes to each Creditor Party that it will at all times comply (to the extent it relates to the Ship owned by it) and require compliance by all charterers and sub-charterers of the Ship owned by it and by all parties with whom that Borrower or any Security Party, a charterer or a sub-charterer enters into a contract of carriage, with the Russian oil price cap restrictions requirements imposed by law or regulation of the United Kingdom, the Council of the European Union and the United States of America and any other similar restrictions on the supply or delivery of Russian oil and/or oil products or petroleum products applicable to any Party (the “**Russian Oil Price Cap Measures**”).
- (b) Without prejudice to the generality of paragraph (a) above, each Borrower undertakes to each Creditor Party that prior to the Ship owned by it commencing loading of Russian oil and/or petroleum products (within the meaning of and as determined under applicable Russian Oil Price Cap Measures):
- (i) it will provide to the Agent price information demonstrating that the Russian oil and/or petroleum products was/were purchased at or below the applicable price cap; or
  - (ii) if it has received but is not able to pass on the price information referred to in (a) above by reason of being bound by confidentiality obligations, it will attest that it has received and retained price information demonstrating that the oil/petroleum products is/was purchased at or below the applicable price cap; or
  - (iii) if neither (i) nor (ii) applies, it will provide its signed attestation, attaching and relying on a signed attestation from its applicable counterparty (or other equivalent evidence acceptable to the Agent), that the Russian oil and/or petroleum products is/was purchased at or below the applicable price cap; or
  - (iv) to the extent it becomes available to a Borrower, that Borrower will provide documentary evidence that the purchase of the Russian oil and/or petroleum products was pursuant to a licence or an exception granted by the relevant authority in each applicable jurisdiction or subject to a derogation; or
  - (v) it will attest or provide a signed attestation that the Russian oil was loaded onto the Ship at the port of loading prior to 5 December 2022 and was or will be offloaded at the port of destination prior to 19 January 2023 or that the Russian petroleum product(s) was/were loaded onto the Ship at the port of loading prior to 5 February 2023 and was/were or will be offloaded at the port of destination prior to 1 April 2023.

- (c) Neither Borrower nor any Security Party shall commence loading of Russian oil and/or petroleum products, or permit loading to be commenced on a Ship, unless the requirements of paragraph (b) above have been satisfied.
- (d) Each Borrower undertakes that it will:
  - (i) provide the Agent with such information in relation to compliance with the Russia Price Cap Measures as the Agent may from time to time require in writing, acting reasonably; and
  - (ii) comply with such further or additional requirements as the Agent may from time to time require in writing, acting reasonably, in response to changes to any of the Russian Oil Price Cap Measures or changes to guidance, application, interpretation or market practice.
- (e) Each Borrower shall undertake appropriate due diligence on its counterparties to satisfy itself, based on the information available, of the reliability and accuracy of any information provided by its counterparties for the purposes of or relating to satisfying the requirements at Clause 14.21 (*Russian oil price cap*) above.

## 15 SECURITY COVER

### 15.1 Provision of additional security cover; prepayment of Loan

The Borrowers undertake with each Creditor Party that if the Agent notifies the Borrowers in writing that after the Drawdown Date the Security Value (including any Cash Collateral) is less than the Required Security Amount, the Borrowers will, within 45 days after the date on which the Agent's notice is served, either:

- (a) provide, or ensure that there is provided, additional security (including, but not limited to, a first or second preferred mortgage over a ship) which, in the opinion of the Agent, has a net realisable value (calculated in the case of a ship in accordance with Clause 15.2 (*Valuation of a Ship*)) at least equal to the shortfall and which covers such asset or assets, and is documented in such terms, as the Agent may approve or require
- (b) prepay in accordance with Clause 8 (*Repayment and Prepayment*) such part (at least) of the Loan as will eliminate the shortfall; or
- (c) pledge to the Agent by way of security an amount of cash of no less than the amount of the shortfall.

The provisions of Clauses 8.8 (*Mandatory prepayment – sale/Total Loss*) and 8.10 (*Amounts payable on prepayment*) shall apply to prepayments under Clause 15(b) provided that the Agent shall apply such prepayments against reduction of the repayment instalments under Clause 8.1 (*Amount of repayment instalments*) (including the Balloon Instalments) pro rata and the amounts of the Loan prepaid hereunder shall not be available to be re-borrowed.

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**15.2 Valuation of a Ship**

A Ship shall, for the purposes of this Agreement, be valued in Dollars by taking the valuation prepared by an Approved Broker selected by the Borrowers and addressed to the Agent, such valuation to be made without physical inspection, and on the basis of a sale for prompt delivery for cash at arms' length, on normal commercial terms, as between a willing buyer and a willing seller without taking into account the benefit or burden of any charterparty or other engagement concerning such Ship and shall be no older than 30 days as at any relevant date. Valuations shall be obtained:

- (a) prior to the Drawdown Date and annually thereafter; and
- (b) (in addition to (a) above) at any other time as the Agent shall require (in its reasonable discretion).

The valuations for a Ship on each such occasion shall constitute the Market Value of a Ship for the purposes of this Agreement until superseded by the next such valuation.

**15.3 Valuations binding**

Any valuation under Clause 15.2 (*Valuation of a Ship*) shall be binding and conclusive as regards the Borrowers, as shall be any valuation which the Agent makes of a security which does not consist of or include a Security Interest.

**15.4 Provision of information**

The Borrowers shall promptly provide the Agent and any shipbroker or expert acting under Clause 15.2 (*Valuation of a Ship*) with any reasonable information which the Agent or the shipbroker or expert may request for the purposes of the valuations; and, if a 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 shipbroker or the Agent (or the expert appointed by it) considers prudent.

**15.5 Payment of valuation expenses**

All costs in connection with obtaining and determining (i) any Market Value pursuant to clause 15.2(a) (*Valuation of a Ship*), (ii) any Market Value pursuant to Clause 15.2(b) (*Valuation of a Ship*) after the occurrence of an Event of Default, (iii) any Market Value which obliges the Borrowers to make a prepayment of the Loan or provide additional security in accordance with Clause 15.1 (*Provision of additional security cover; prepayment of Loan*), and (iv) any valuation either of any additional security for the purposes of ascertaining the Market Value at any time or necessitated by the Borrowers electing to constitute additional security pursuant to Clause 15.1 (*Provision of additional security cover; prepayment of Loan*), must be paid by the Borrowers.

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## **16 PAYMENTS AND CALCULATIONS**

### **16.1 Currency and method of payments**

All payments to be made:

- (a) by the Lenders to the Agent; or
- (b) by any Borrower to the Agent, the Security Agent or any Lender, under a Finance Document shall be made to the Agent or to the Security Agent, in the case of an amount payable to it:
  - (i) by not later than 11.00 a.m. (New York City time) on the due date;
  - (ii) 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); and
  - (iii) if in Dollars, to the account of the Agent at (SWIFT address: ERBKGRAA) with Deutsche Bank Trust Company Americas, New York, USA (SWIFT address: BKTRUS33), or to such other account with such other bank as the Agent may from time to time notify to the Borrowers and the other Creditor Parties or to such other account with such other bank as the Security Agent may from time to time notify to the Borrowers and the other Creditor Parties.

### **16.2 Payment on non-Business Day**

If any payment by the Borrowers 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,

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 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 or the Security Agent under a Finance Document for distribution or remittance to a Lender or the Security Agent shall be made available by the Agent to that Lender or, as the case may be to the Security Agent by payment, with funds having the same value as the funds received, to such account as that Lender or the Security Agent may have notified to the Agent not less than 5 Business Days previously; and

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- (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 provisions 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 Borrowers or any Lender any sum which the Agent is expecting to receive for remittance or distribution to the Borrowers or 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 Borrowers or a Lender, without first having received that sum, the Borrowers 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 Borrowers and each Security Party under the Finance Documents and all payments in respect of those amounts made by the Borrowers 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 the Creditor Parties from the Borrowers and each Security Party under the Finance Documents and all payments in respect of those amounts made by the Borrowers 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 Borrowers or a Security Party to a Creditor Party, those accounts shall, absent manifest error, be prima facie evidence that that amount is owing to that Creditor Party.

### **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 satisfaction of any amounts then due and payable under the Finance Documents in the following order and proportions:
  - (i) first, in or towards satisfaction pro rata of all amounts then due and payable to the Creditor Parties under the Finance Documents other than those amounts referred to at paragraphs (ii) and (iii) (including, but without limitation, all amounts payable by the Borrowers under Clauses 20 (*Fees and Expenses*), 21 (*Indemnities*) and 22 (*No Set-Off or Tax Deduction*) of this Agreement or by the Borrowers or any Security Party under any corresponding or similar provision in any other Finance Document);
  - (ii) secondly, in or towards satisfaction pro rata of interest and default interest payable to the Creditor Parties under the Finance Documents; and
  - (iii) thirdly, in or towards satisfaction of the Loan;
- (b) **SECONDLY:** in retention of an amount equal to any amount not then due and payable under any Finance Document but which the Agent, by notice to the Borrowers, the Security Parties and the other Creditor 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 foregoing provisions of this Clause; and
- (c) **THIRDLY:** any surplus shall, provided that there is no continuing Event of Default, be paid to the Borrowers.

## **17.2 Variation of order of application**

The Security Agent may by notice to the Borrowers, 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 Security 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 (*Application of Receipts*) and any notice which the Security Agent gives under Clause 17.2 (*Variation of order of application*) shall override any right of appropriation possessed, and any appropriation made, by any Borrower or any Security Party.

## **18 APPLICATION OF EARNINGS**

### **18.1 Payment of Earnings**

Each Borrower undertakes with each Creditor Party to ensure that, throughout the Security Period (and subject only to the provisions of the General Assignment), all the Earnings of its Ship are paid to the relevant Earnings Account.

### **18.2 Application of Earnings**

Each Borrower undertakes with the Lenders 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 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) FIRST: in or towards meeting the costs, fees and expenses payable by the Borrowers under the Finance Documents;
- (b) SECONDLY: *pari passu* in or towards making payments of interest due to the Lenders pursuant to this Agreement;
- (c) THIRDLY: *pari passu* in or towards making payments of the repayment instalments due but unpaid under Clause 8.1 (*Amount of repayment instalments*);
- (d) FOURTHLY: in or towards making the transfers to the Retention Account required pursuant to Clause 18.3 (*Monthly retentions*); and

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- (e) FIFTHLY: as to any surplus from time to time arising on an Earnings Account following application as aforesaid, to be paid to the relevant Borrower or to whomsoever it may direct and be used towards the operating and general expenses of its Ship.

### 18.3 Monthly retentions

The Borrowers undertake with each Creditor Party to ensure that, throughout the Security Period and commencing on the date falling one (1) month after the Drawdown Date, and thereafter on the same day in each subsequent month, there is transferred to the Retention Account out of the aggregate Earnings received in the Earnings Account during the preceding calendar month:

- (a) one-third of the amount of the repayment instalment falling due under Clause 8 (*Repayment and Prepayment*) on the next Repayment Date; and
- (b) the relevant fraction of the amount of interest which is payable on the next due date for payment of interest under this Agreement.

18.4 The “**relevant fraction**” is a fraction of which the numerator is 1 and the denominator the number of months comprised in the current Interest Period (or, if the current Interest Period ends after the next date for payment of interest under this, 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).

### 18.5 Shortfall in Earnings

If the aggregate Earnings received in the Earnings Accounts are insufficient at any time for the required amount to be transferred to the Retention Account under Clause 18.3 (*Monthly retentions*), the Borrowers shall make up the amount of the insufficiency on demand from the Lenders; but, without thereby prejudicing the Lenders’ right to make such demand at any time, the Lenders may permit the Borrowers to make up all or part of the insufficiency by increasing the amount of any transfer under Clause 18.3 (*Monthly retentions*) from the Earnings received in the next or subsequent months.

### 18.6 Application of retentions

Until an Event of Default occurs, the Lenders shall on each Repayment Date and on each due date for the payment of interest under this Agreement distribute to the Lenders so much of the then balance on the Retention Account as equals:

- (a) the repayment instalment due on that Repayment Date; or
- (b) the amount of interest payable on that interest payment date,

in discharge of the Borrowers’ liability for that repayment instalment or that interest.

### 18.7 Interest accrued on Retention Account

Any credit balance on the Retention Account shall bear interest at the rate from time to time offered by the Lenders to its customers for Dollar deposits of similar amounts and for periods similar to those for which such balances appear to the Lenders likely to remain on the Retention Account.



## **18.8 Release of accrued interest**

Interest accruing under Clause 18.6 (*Application of retentions*) on the Retention Account shall remain on the Retention Account and shall not be released to the Borrowers until the end of the Security Period.

## **18.9 Location of accounts**

Each Borrower shall promptly:

- (a) comply with any requirement of the Agent as to the location or re-location of its Earnings Account and/or the Retention Account or any of them; and
- (b) execute any documents which the Agent specifies to create or maintain in favour of the Security Agent a Security Interest over the Earnings Accounts and/or the Retention Account or any of them.

## **18.10 Borrowers' obligations unaffected**

The provisions of this Clause 18 (*Application of Earnings*) do not affect:

- (a) the liability of the Borrowers to make payments of principal and interest on the due dates; or
- (b) any other liability or obligation of the Borrowers or any Security Party under any Finance Document.

## **18.11 Other accounts**

Each Lender is hereby authorised to open and maintain as many Loan and/or contingent and/or suspense and/or intermediary accounts as necessary for the purpose of facilitating the accounting monitoring of the Loan in its books. In this respect each Lender is authorised to merge and/or divide and/or transfer the balances of any such accounts to other such accounts. In any litigation proceedings arising out of or in connection with a Finance Document, the entries made in the accounts maintained by the relevant Lender in accordance with its usual practice are conclusive evidence of the matters to which they relate save in the case of manifest error.

## **19 EVENTS OF DEFAULT**

### **19.1 Events of Default**

An Event of Default occurs if:

- (a) Any Borrower or any Relevant Person fails to pay when due or (if so payable) on demand any sum payable under a Finance Document or under any document relating to a Finance Document unless (i) its failure to pay is caused by administrative or technical error or a Disruption Event and (ii) payment is made within three Business Days of its due date; or

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- (b) any breach occurs of Clause 9.3 (*Conditions Subsequent*), 11.2 (*Title; negative pledge*), 11.3 (*No disposal of assets*), 12.2 (*Maintenance of status*), 12.3 (*Negative undertakings*), 12.6 (*Sanctions*), 13.2 (*Maintenance of obligatory insurances*), 13.3 (*Terms of obligatory insurances*) or 15.1 (*Provision of additional security cover; prepayment of Loan*); or
  - (c) any breach by any Borrower or any Relevant Person occurs of any provision of a Finance Document (other than a breach covered by paragraphs (a) or (b) above) if, in the opinion of the Majority Lenders, such default is capable of remedy, and such default continues unremedied 20 days after written notice from the Agent requesting action to remedy the same; or
  - (d) (subject to any applicable grace period specified in the Finance Document) any breach by any Borrower or any Relevant Person occurs of any provision of a Finance Document (other than a breach covered by paragraphs (a), (b) or (c) above); or
  - (e) any representation, warranty or statement made by, or by an officer of, a Borrower or a Relevant Person 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 Corporate Guarantor, \$500,000 in respect of a Borrower and \$1,000,000 in respect of all other Relevant Persons) of a Relevant Person:
    - (i) any Financial Indebtedness of any Relevant Person is not paid when due or, if so payable, on demand; or
    - (ii) any Financial Indebtedness of any Relevant Person becomes due and payable or capable of being declared due and payable prior to its stated maturity date as a consequence of any event of default; or
    - (iii) a lease, hire purchase agreement or charter creating any Financial Indebtedness of any Relevant Person is terminated by the lessor or owner or becomes capable of being terminated as a consequence of any termination event; or
    - (iv) 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 any 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
    - (v) any Security Interest securing any Financial Indebtedness of any Relevant Person becomes enforceable; or

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- (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 in respect of a sum of, or sums aggregating, \$10,000,000 or more in respect of the Corporate Guarantor, \$500,000 or more in respect of a 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 unless contested in good faith and on substantial grounds; or
  - (iv) a Relevant Person makes any formal declaration of bankruptcy or any formal statement to the effect that it is insolvent or likely to become insolvent, or a winding up or administration order is made in relation to a Relevant Person, or the members or directors of a Relevant Person pass a resolution to the effect that it should be wound up, placed in administration or cease to carry on business, save that this paragraph does not apply to a fully solvent winding up of a Relevant Person 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 3 months after the commencement of the winding up; or
  - (v) a petition is presented in any Pertinent Jurisdiction for the winding up or administration, or the appointment of a provisional liquidator, of a Relevant Person unless the petition is being contested in good faith and on substantial grounds and is dismissed or withdrawn within 30 banking days of the presentation of the petition; or
  - (vi) a Relevant Person petitions a court, or presents any proposal for, any form of judicial or non-judicial suspension or deferral of payments, reorganisation of its debt (or certain of its debt) or arrangement with all or a substantial proportion (by number or value) of its creditors or of any class of them or any such suspension or deferral of payments, reorganisation or arrangement is effected by court order, contract or otherwise other than any re-organisation required pursuant to any new legislation passed by a relevant government; or
  - (vii) any meeting of the members or directors of a Relevant Person is summoned for the purpose of considering a resolution or proposal to authorise or take any action of a type described in paragraphs (iii), (iv), (v) or (vi) above; or
  - (viii) in a Pertinent Jurisdiction other than England, any event occurs or any procedure is commenced which, in the reasonable opinion of the Agent, is similar to any of the foregoing; or
- (h) any Relevant Person 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

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- (i) it becomes unlawful in any Pertinent Jurisdiction or impossible:
    - (i) for any Relevant Person 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 any Creditor Party to exercise or enforce any right under, or to enforce any Security Interest created by, a Finance Document; or
  - (j) any official consent necessary to enable a Borrower to own, operate or charter the Ship owned by it or to enable a Borrower to comply with any provision which the Agent considers material of a Finance Document 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
  - (k) any provision which the Majority Lenders 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 interest; or
  - (l) the security constituted by a Finance Document is in any way imperilled or in jeopardy; or
  - (m) any Security Party is in breach of or fails to observe any law, requirement, measure or procedure implemented to combat Money Laundering; or
  - (n) the classification of a Ship is withdrawn by its classification society the Ship is not immediately granted a new classification by another classification society; or
  - (o) any Ship is expropriated, confiscated, requisitioned or acquired, whether for full consideration, a consideration less than her proper value, a nominal consideration or without any consideration, by any government or official authority or by any person or persons claiming to be or to represent a government or official authority; or
  - (p) any arrest of a Ship or its detention in the exercise or the purported exercise of any lien or claim unless it redelivered to the full control of the Borrower who is the owner thereof within 30 Business Days of such arrest or detention; or
  - (q) any legal or administrative proceedings of any kind whatsoever have been commenced against a Borrower which could, in the opinion of the Majority Lenders be expected to have a Material Adverse Effect; or
  - (r) an Environmental Incident occurs which gives rise, or may give rise, to an Environmental Claim which could, in the opinion of the Majority Lenders be expected to have a Material Adverse Effect; or
  - (s) any other event occurs or circumstance arises (including, but not limited to, any global economic or political events, or events related to the international money or capital markets) which, in the opinion of the Agent, is likely materially and adversely to affect either (i) the ability of any Security Party to perform all or any of its obligations under or otherwise to comply with the terms of any of the Finance Documents or (ii) the security created by any of the Finance Documents; or

- (t) the Approved Flag State of a Ship or the country in which any Security Party is incorporated or domiciled becomes involved in hostilities or civil war or there is a seizure of power in an Approved Flag State by unconstitutional means unless such Ship registered in such Approved Flag State shall have been transferred onto a new Approved Flag acceptable to the Lenders within thirty (30) days of the start of such hostilities or civil war or seizure of power; or
- (u) there shall occur a Change of Control Event; or
- (v) AF ceases to be Chairman and CEO of the Corporate Guarantor; or
- (w) any Security Party repudiates any of the Finance Documents or does or causes or permits to be done any act or thing evidencing an intention to repudiate any of the Finance Documents; or
- (x) the Corporate Guarantor ceases to be (aa) the holding company of ocean-going vessels, and (bb) listed and trading at NYSE or other exchange in the United States of America; or
- (y) any other event occurs or any other circumstances arise or develop including, without limitation a material adverse change in the financial position, state of affairs or prospects of a Borrower or the Corporate Guarantor which affects its payment obligations under the Finance Documents to which it is a party in the light of which the Majority Lenders reasonably consider that a Borrower or any Relevant Person is, or will later become, unable to discharge its liabilities under the Finance Documents as they fall due.

## **19.2 Actions following an Event of Default**

On, or at any time after, the occurrence of an Event of Default which is continuing:

- (a) the Agent may and if so instructed by the Majority Lenders, the Agent shall:
  - (i) serve on the Borrowers a notice stating that the Commitments and all other obligations of each Lender to the Borrowers under this Agreement are terminated; and/or
  - (ii) serve on the Borrowers a notice stating that the Loan, all accrued interest and all other amounts accrued or owing under this Agreement are immediately due and payable; it may credit the same to a suspense account in the name of the Agent for application either immediately or in due course in satisfaction of the Borrowers' payment obligations under this Agreement; 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) above, the Agent and/or the Lenders are entitled to take under any Finance Document or any applicable law; and/or

- (b) the Security Agent may, and if so instructed by the Agent, the Security Agent shall, take any action which, as a result of the Event of Default or any notice served under paragraph (a)(i) or (ii) above the Security Agent, the Agent and/or the Lenders are entitled to take under any Finance Document or any applicable law.

### **19.3 Termination of Commitments**

On the service of a notice under paragraph (a)(i) of Clause 19.2 (*Actions following an Event of Default*), the Commitments and all other obligations of each Lender to the Borrowers under this Agreement shall terminate.

### **19.4 Acceleration of Loan**

On the service of a notice under paragraph (a)(ii) of Clause 19.2 (*Actions following an Event of Default*), the Loan, all accrued interest and all other amounts accrued or owing from the Borrowers or any Relevant Person 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 paragraphs (a)(i) and (ii) of Clause 19.2 (*Actions following an Event of Default*) simultaneously or on different dates and it and/or the Security Agent may take any action referred to in that Clause 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 Relevant Persons**

The Agent shall send to each Lender, the Security Agent and each Relevant Person a copy or the text of any notice which the Agent serves on the Borrowers under Clause 19.2 (*Actions following an Event of Default*); but the notice shall become effective when it is served on the Borrowers, 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 any Borrower or any Relevant Person with any form of claim or defence.

### **19.7 Lender's 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 of Lenders several*).

### **19.8 Exclusion of Creditor Party Liability**

No Creditor Party, and no receiver or manager appointed by the Security Agent, shall have any liability to the Borrowers or a Relevant Person:

- (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

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- (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 caused by the gross negligence 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 (*Events of Default*) a "Relevant Person" means the Borrowers and the Corporate Guarantor or any other person who provides a mortgage, charge, pledge, maritime or other lien or other security interest of any kind as security for the Borrowers' obligations under this Agreement and the Finance Documents.

## **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 FEES AND EXPENSES**

### **20.1 Evaluation Costs and Expenses**

The Borrowers shall pay to the Agent on the Drawdown Date an amount of 0.75% of the Loan representing its costs and expenses for the evaluation of the loan facility to be made available under this Agreement and the terms on which it shall be made available (as outlined in this Agreement) and the arrangement of the advance of the Loan, whether in whole or in part, together with any tax thereon (if applicable). The evaluation costs and expenses referred to in this Clause must be paid by the Borrowers to the Arranger, whether or not any part of the Commitment is ever advanced and shall be non-refundable.

### **20.2 Commitment fee**

- (a) The Borrowers shall pay to the Agent (for the account of the Lenders in proportion to their Commitment) a commitment fee computed quarterly in arrears, at the rate of 0.50% per annum on the undrawn amount of the Total Commitment commencing on the date hereof and ending on the last day of the Availability Period.
- (b) The Borrowers shall pay the accrued commitment fee on the last day of each successive period of three (3) months which ends during the Availability Period, on the last day of the Availability Period, on the Drawdown Date and (on any cancelled amount of the relevant Lender's Commitment) at the time such cancellation is effective, whichever occurs earlier.

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- (c) The fee referred to in this Clause 20.2 (*Commitment fee*) must be paid by the Borrowers to the Agent, whether or not any part of the Commitment is ever advanced and shall be non-refundable.

### **20.3 Costs of negotiation, preparation etc**

The Borrowers shall pay to the Agent on its demand the amount of all expenses incurred by the Agent or the Security Agent 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.

### **20.4 Costs of variations, amendments, enforcement etc**

The Borrowers shall pay to the Agent, on the Agent's demand, the amount of all expenses incurred by any 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 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;
- (d) where the Agent, in its opinion, considers that there has been a material change to the insurances in respect of a Ship, the review of the insurances or a Ship pursuant to Clause 13.18 (*Review of insurance requirements*);
- (e) any step taken by any Lender 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.

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.

### **20.5 Documentary taxes**

The Borrowers 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 liabilities and expenses resulting from any failure or delay by the Borrowers to pay such a tax.

### **20.6 Certification of amounts**

A notice which is signed by two officers of a Creditor Party, which states that a specified amount, or aggregate amount, is due to that Creditor Party under this Clause 20 (*Fees and Expenses*) and which indicates (without necessarily specifying a detailed breakdown) the matters in respect of which the amount, or aggregate amount, is due shall, save for manifest error, be prima facie evidence that the amount, or aggregate amount, is due.



## 21 INDEMNITIES

### 21.1 Indemnities regarding borrowing and repayment of Loan

The Borrowers shall fully indemnify the Agent and each Lender on the Agent's demand and the Security Agent on its demand in respect of all expenses, liabilities and losses which are 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 a Lender claiming the indemnity;
- (b) Breakage Costs;
- (c) 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;
- (d) any failure by the Borrowers 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 Borrowers on the amount concerned under Clause 7 (*Default Interest*));
- (e) 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 under Clause 19 (*Events of Default*); and
- (f) in respect of 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 liability, expense 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 the Loan and/or any overdue amount (or an aggregate amount which includes the Loan 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 Borrowers shall fully indemnify each Creditor Party severally on their respective demands in respect of all claims, demands, proceedings, liabilities, taxes, losses and expenses of every kind (“liability items”) which may be made or brought against, or incurred by, any Creditor Party, in any country, in relation to:

- (a) any action taken, or omitted or neglected to be taken, under or in connection with any Finance Document by the Agent, the Security Agent or any other Creditor Party or by any receiver appointed under a Finance Document;
- (b) any other event, matter or question which occurs or arises at any time during the Security Period and which has any connection with, or any bearing on, any Finance Document, any payment or other transaction relating to a Finance Document or any asset covered (or previously covered) by a Security Interest created (or intended to be created) by a Finance Document,

other than liability items which are shown to have been caused by the gross negligence or the wilful misconduct of the Agent’s or (as the case may be) the Security Agent’s own officers or employees.

### 21.4 Extension of indemnities; environmental indemnity

Without prejudice to its generality, Clause 21.3 (*Miscellaneous indemnities*) covers:

- (a) any liability items which arise, or are asserted, under or in connection with any law or any regulation relating to safety at sea, pollution or the protection of the environment, including but not limited to the ISM Code and the ISPS Code; and
- (b) any expenses incurred by a Creditor Party as a result of any fax or email communication purporting to have been sent by the Borrowers to that Creditor Party fraudulently or without proper authorisation.

### 21.5 Currency indemnity

If any sum due from the Borrowers 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 Borrowers 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 Borrowers 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 21.5 (*Currency indemnity*), the “**available rate of exchange**” means the rate at which the Creditor Party concerned is able at the opening of business (London time) on the Business Day after it receives the sum concerned to purchase the Contractual Currency with the Payment Currency.

This Clause 21.5 (*Currency indemnity*) creates a separate liability of the Borrowers which is distinct from its other liabilities under the Finance Documents and which shall not be merged in any judgment or order relating to those other liabilities.

#### **21.6 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 (*Indemnities*) and which indicates the matters in respect of which the amount, or aggregate amount, is due shall, save for manifest error, be prima facie evidence that the amount, or aggregate amount, is due.

#### **21.7 Sums deemed due to a Lender**

For the purposes of this Clause 21 (*Indemnities*), a sum payable by the Borrowers to the Agent or the Security Agent for distribution to a Lender shall be treated as a sum due to that Lender.

#### **21.8 Notice of prepayment**

If the Borrowers are not willing to continue to pay an indemnity in respect of Tax under Clause 21.1 (*Indemnities regarding borrowing and repayment of Loan*), the Borrowers may give to the Agent no less than 30 days' notice of their intention to prepay the Contribution of any Lender whose Contribution is giving rise to such tax indemnity (a "Relevant Tax Lender"), at the end of an Interest Period.

#### **21.9 Prepayment; termination of Commitment**

A notice under Clause 21.8 (*Notice of prepayment*) shall be irrevocable; the Agent shall promptly notify the Relevant Tax Lender of the Borrowers' notice of intended prepayment; and:

- (a) on the date on which the Agent serves that notice, the Commitment of the Relevant Tax Lender shall be cancelled; and
- (b) on the date specified in its notice of intended prepayment, the Borrowers shall prepay (without premium or penalty) the Relevant Tax Lender's Contribution, together with accrued interest thereon at the applicable rate plus the relevant Margin.

### **22 NO SET-OFF OR TAX DEDUCTION**

#### **22.1 No deductions**

All amounts due from the Borrowers 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 Borrowers are required by law to make.

## 22.2 Grossing-up for taxes

If a Borrower is required by law to make a tax deduction from any payment:

- (a) that Borrower shall notify the Agent as soon as it becomes aware of the requirement;
- (b) that Borrower shall pay the tax deducted to the appropriate taxation authority promptly, and in any event before any fine or penalty arises; and
- (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 (*No Set-Off or Tax Deduction*) “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.

## 22.5 Notice of prepayment

If the Borrowers are not willing to continue to pay an increased amount under Clause 22.2 (*Grossing-up for taxes*), the Borrowers may give the Agent not less than 30 days’ notice of their intention to prepay the Contribution of any Lender whose Contribution is giving rise to such increased payment (a “Relevant Lender”), at the end of an Interest Period.

## 22.6 Prepayment; termination of Commitment

A notice under Clause 22.5 (*Notice of prepayment*) shall be irrevocable; the Agent shall promptly notify the Relevant Lender of the Borrowers’ notice of intended prepayment; and:

- (a) on the date on which the Agent serves that notice, the Commitment of the Relevant Lender shall be cancelled; and
- (b) on the date specified in its notice of intended prepayment, the Borrowers shall prepay (without premium or penalty) the Relevant Lender’s Contribution, together with accrued interest thereon at the applicable rate plus the relevant Margin

## 22.7 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;

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- (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 Borrowers, the Agent and the other Creditor Parties.

## **23 ILLEGALITY, ETC**

### **23.1 Illegality**

This Clause 23 (*Illegality, etc*) 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 Borrowers, the Security Parties, the Security Agent and the other Lenders 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 Borrowers under Clause 23.2 (*Notification of illegality*), the Lenders’ 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 Borrowers shall prepay the Loan in full 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 (*Increased Costs*) 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 that Lender’s overall net income); or
- (b) the effect of complying with any regulation (including, but not limited to, the “International Convergence of Capital Standards, a Revised Framework” published by the Basle Committee on Banking Supervision in June 2004 as implemented in the EU by the Capital Requirements Directive (2006/48/EC and 2006/49/EC) (or any subsequent amendment or substitute agreement) or pursuant to Basel III, CRD IV and CRR and any other 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, is that the Notifying Lender (or a parent company of it) has incurred or will incur an “**increased cost**”, that is to say:
  - (i) 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; or
  - (ii) 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;
  - (iii) 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
  - (iv) 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 and repayment of Loan*) or by Clause 22 (*No Set-Off or Tax Deduction*).

For the purposes of this Clause 24.1 (*Increased costs*) the Notifying Lender may in good faith allocate or spread costs and/or losses among its assets and liabilities (or any class thereof) on such basis as it considers appropriate.

Provided that the Notifying Lender shall try to ensure that any loss suffered by the Borrowers as a result of the circumstances referred to in this Clause 24 (*Increased Costs*) are kept to a minimum.

**24.2 Notification to Borrowers of claim for increased costs**

The Agent shall promptly notify the Borrowers and the Security Parties of the notice which the Agent received from the Notifying Lender under Clause 24.1 (*Increased costs*).

**24.3 Payment of increased costs**

The Borrowers 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 Borrowers that the Notifying Lender has specified to be necessary to compensate the Notifying Lender for the increased cost.

**24.4 Notice of prepayment**

If the Borrowers are not willing to continue to compensate the Notifying Lender for the increased cost under Clause 24.3 (*Payment of increased costs*), the Borrowers may give the Agent not less than 30 days' notice of its intention to prepay the Notifying Lender's Contribution at the end of an Interest Period.

**24.5 Prepayment; termination of Commitment**

A notice under Clause 24.4 (*Notice of prepayment*) shall be irrevocable; the Agent shall promptly notify the Notifying Lender of the Borrowers' notice of intended prepayment; and:

- (a) on the date on which the Agent serves that notice, the Commitment of the Notifying Lender shall be cancelled; and
- (b) on the date specified in its notice of intended prepayment, the Borrowers shall prepay (without premium or penalty) the Notifying Lender's Contribution, together with accrued interest thereon at the applicable rate plus the Margin.

**24.6 Application of prepayment**

Clause 8 (*Repayment and Prepayment*) shall apply in relation to the prepayment.

**25 SET-OFF/BAIL-IN**

**25.1 Application of credit balances**

Each Creditor Party may 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 a Borrower at any office in any country of that Creditor Party in or towards satisfaction of any sum then due from the Borrowers to that Creditor Party under any of the Finance Documents; and

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- (b) for that purpose:
    - (i) break, or alter the maturity of, all or any part of a deposit of a Borrower;
    - (ii) convert or translate all or any part of a deposit or other credit balance into Dollars;
    - (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 Lender**

For the purposes of this Clause 25 (*Set-Off/Bail-In*), a sum payable by the Borrowers to the Agent or the Security Agent for distribution to, or for the account of, a Lender shall be treated as a sum due to that Lender; and each Lender's proportion of a sum so payable for distribution to, or for the account of, the Lenders shall be treated as a sum due to such Lender.

#### **25.4 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.



## 26 TRANSFERS AND CHANGES IN LENDING OFFICES

### 26.1 Transfer by a Borrower

No Borrower may, without the consent of the Agent, given on the instructions of all the Lenders:

- (a) transfer any of its rights, liabilities or obligations under any Finance Document; or
- (b) enter into any merger, de-merger or other reorganisation, or carry out any other act, as a result of which any of its rights or liabilities would vest in, or pass to, another person.

### 26.2 Transfer by a Lender

Subject to Clause 26.4 (*Effective Date of Transfer Certificate*), a Lender (the "Transferor Lender") may at any time, without the consent of, but with at least 30 days' prior notice to, the Borrowers and at no cost of the Borrowers, transfer:

- (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 which is regularly engaged in or established for the purpose of making, purchasing or investing in loans, securities or financial assets (a "**Transferee Lender**") by delivering to the Agent a completed certificate in the form set out in Schedule 4 (*Transfer Certificate*) 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 Agent 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 Borrowers, the Security Parties, the Approved Managers and each of the Creditor Parties;
- (b) on behalf of the Transferee Lender, send to the Borrowers, each Approved Manager and each Security Party letters or faxes or e-mails notifying them of the Transfer Certificate and attaching a copy of it; and
- (c) send to the Transferee Lender copies of the letters or faxes or e-mails sent under paragraph (b) above.

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**26.4 Effective Date of Transfer Certificate**

A Transfer Certificate shall become 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 shall be binding on, or effective in relation to, the Borrowers, any Security Party, an Approved Manager the Agent or the Security Agent 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 Borrowers and the Security Agent 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 shall take 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 shall be assigned to the Transferee Lender absolutely, free of any defects in the Transferor Lender’s title and of any rights or equities which a Borrower or any Security Party or an Approved Manager had against the Transferor Lender;
- (b) the Transferor Lender’s Commitment shall be discharged to the extent specified in the Transfer Certificate;
- (c) the Transferee Lender shall become 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 shall become 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 Agent and, to the extent that the Transferee Lender becomes bound by those provisions (other than those relating to exclusion of liability), the Transferor Lender shall cease to be bound by them;
- (e) any part of the Loan which the Transferee Lender advances after the Transfer Certificate’s effective date shall rank in point of priority and security in the same way as it would have ranked had it been advanced by the transferor, assuming that any defects in the transferor’s title and any rights or equities of the Borrowers or any Security Party or an Approved Manager against the Transferor Lender had not existed;

- (f) the Transferee Lender shall become 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 5.6 (*Market Disruption*) and Clause 20 (*Fees and Expenses*), and to the extent that the Transferee Lender becomes entitled to such rights, the Transferor Lender shall cease 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 Borrowers or any Security Party or an Approved Manager 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 Lender, the Security Agent and the Borrowers 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 Borrowers, the Security Agent and each Lender 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 \$2,500 from 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 the Borrowers, any Security Party, an Approved Manager, the Agent or the Security Agent (but with prior notice of at least 30 days to the Borrowers); and the Lenders may assign, in any manner and terms agreed by the Agent and the Security Agent, all or any part of those rights to an insurer or surety who has become subrogated to them.

### **26.13 Disclosure of information**

The Borrowers irrevocably authorise each Creditor Party to give, divulge and reveal from time to time information and details relating to its accounts, the Ships, the Corporate Guarantor, the Finance Documents, the Loan and Commitment and any other agreement entered into by the Borrowers and/or the Corporate Guarantor or information provided by the Borrowers and/or the Corporate Guarantor in connection with the Finance Documents to:

- (a) any public or internationally recognised authorities that are entitled to and have requested to obtain such information and to whom it is mandatory to provide such information;
- (b) that Creditor Party's head office, branches and affiliates and professional advisors;
- (c) any other parties to the Finance Documents;
- (d) a rating agency or their professional advisers;
- (e) any person with whom they propose to enter (or contemplate entering) into contractual relations in relation to the Loan and/or Commitment; and
- (f) any other person regarding the funding, refinancing, transfer, assignment, sale, sub-participation or operational arrangement or other transaction in relation thereto, including without limitation, for purposes in connection with a securitisation (or similar transaction) or any enforcement, preservation, assignment, transfer, sale or sub-participation of any of that Creditor Party's rights and obligations.

In relation to paragraphs (b) to (f) (inclusive) above of this Clause 26.13 (*Disclosure of information*) the Creditor Parties undertake that a confidentiality agreement will be entered into between the Creditor Parties and such relevant persons.

Nothing in any Finance Document shall prevent disclosure of any confidential information or other matter to the extent that preventing that disclosure would otherwise cause any transaction contemplated by the Finance Documents or any transaction carried out in connection with any transaction contemplated by the Finance Documents to become an arrangement described in Part II A 1 of Annex IV of Directive 2011/16/EU.

### **26.14 Change of lending office**

A Lender may change its lending office 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.

## **26.15 Notification**

On receiving such a notice, the Agent shall notify the Borrowers and the Security Agent; and, until the Agent receives such a notice, it shall be entitled to assume that a Lender is acting through the lending office of which the Agent last had notice.

## **26.16 Securitisation**

A Lender may include all or any part of its Contributions in a securitisation or similar transaction without the consent of the Borrowers or any Security Party or an Approved Manager. The Borrowers will (and shall procure that any Security Party and any Approved Manager will) assist that Lender as necessary to achieve a successful securitisation (or similar transaction) Provided that the Borrowers shall not be required to bear any costs related to any such securitisation and need only provide such information which any third parties may reasonably request.

## **26.17 Security over Lenders' rights**

In addition to the other rights provided to Lenders under this Clause 26 (*Transfers and Changes in Lending Offices*), each Lender may without consulting with or obtaining consent from the Borrowers or any Security Party or an Approved Manager, at any time charge, assign or otherwise create a Security Interest in or over (whether by way of collateral or otherwise) all or any of its rights under any Finance Document to secure obligations of that Lender including, without limitation:

- (a) any charge, assignment or other Security Interest to secure obligations to a federal reserve or central bank; and
- (b) in the case of any Lender which is a fund, any charge, assignment or other Security Interest granted to any holders (or trustee or representatives of holders) of obligations owed, or securities issued, by that Lender as security for those obligations or securities, except that no such charge, assignment or Security Interest shall:
  - (i) release a Lender from any of its obligations under the Finance Documents or substitute the beneficiary of the relevant charge, assignment or Security Interest for that Lender as a party to any of the Finance Documents; or
  - (ii) require any payments to be made by the Borrowers or any Security Party or an Approved Manager or grant to any person any more extensive rights than those required to be made or granted to the relevant Lender under the Finance Documents.

## **27 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 fax, by the Borrowers, by the Agent on behalf of the Majority Lenders, by the Agent and the Security Agent in their own rights, and, if the document relates to a Finance Document to which a Security Party is party, by that Security Party or the Approved Manager (as applicable).

## **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 Clauses 2 (*Loan Facility*), 3 (*Position of the Lenders etc.*), 4 (*Drawdown*), 5.1 (*Payment of normal interest*), 17 (*Application of Receipts*), 18 (*Application of Earnings*) or 30 (*Law and Jurisdiction*);
- (g) a change to this Clause 27 (*Variations and Waivers*);
- (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 a Borrower or a Security Party or an Approved Manager of an obligation under a Finance Document or the general law; or

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(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 Changes to reference rates.

If a Published Rate Replacement Event has occurred in relation to Published Rate for dollars, any amendment or waiver which relates to:

- (a) providing for the use of a Replacement Reference Rate in place of that Published Rate; and
- (b)
  - (i) aligning any provision of any Finance Document to the use of that Replacement Reference Rate;
  - (ii) enabling that Replacement Reference Rate to be used for the calculation of interest under this Agreement (including, without limitation, any consequential changes required to enable that Replacement Reference Rate to be used for the purposes of this Agreement);
  - (iii) implementing market conventions applicable to that Replacement Reference Rate;
  - (iv) providing for appropriate fallback (and market disruption) provisions for that Replacement Reference Rate; or
  - (v) adjusting the pricing to reduce or eliminate, to the extent reasonably practicable, any transfer of economic value from one party hereto to another as a result of the application of that Replacement Reference Rate (and if any adjustment or method for calculating any adjustment has been formally designated, nominated or recommended by the Relevant Nominating Body, the adjustment shall be determined on the basis of that designation, nomination or recommendation),

may be made with the consent of the Lenders and the Borrowers.

If any Lender fails to respond to a request for an amendment or waiver described in clause 27.4(a) above within 5 Business Days (or such longer period in relation to any request which the Borrower and the Agent may agree) of that request being made:

- (a) its Commitment shall not be included for the purpose of calculating the Total Commitments when ascertaining whether any relevant percentage of Total Commitments has been obtained to approve that request; and
- (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.

## 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 email; 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 Borrowers: c/o Navios Tankers Management Inc.  
85 Akti Miaouli  
Piraeus  
Greece  
Attn: Vasiliki Papaefthymiou  
Fax No: 30 210 453 1984  
Email: legal\_corp@Navios.com
- (b) to a Lender: At the address below its name in Schedule 1 (*Lenders and Commitments*) or (as the case may require) in the relevant Transfer Certificate.
- (c) to the Agent, Arranger, and the Security Agent  
Eurobank S.A.  
83 Akti Miaouli & Flessa Street  
5th floor  
185 38 Piraeus  
Greece  
Attn: Shipping Unit  
Fax no: 210 458 7877  
Email: ShippingLoansAdministration@eurobank.gr
- (d) to the Account Bank  
Eurobank Cyprus Ltd  
41, Arch. Makarios III Ave,  
1065 Nicosia,  
Cyprus  
Attn: Shipping Finance Unit  
Fax no: +357 22 375011  
Email: cmilios@eurobank.com.cy  
CyLoanAdminSystemUnit@eurobank.com.cy

or to such other address, email address or fax number as the relevant party may notify the Agent or, if the relevant party is the Agent or the Security Agent, the Borrowers, the Lenders and the Security Parties.



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**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; and
- (b) a notice which is sent by fax or email 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 one 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.

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**28.8 Meaning of “notice”**

In this Clause “notice” includes any demand, consent, authorisation, approval, instruction, waiver or other communication.

**29 SUPPLEMENTAL****29.1 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.

**29.2 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.

**29.3 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.

**29.4 Counterparts**

A Finance Document may be executed in any number of counterparts.

**30 LAW AND JURISDICTION****30.1 English law**

This Agreement and any non-contractual obligations arising out of or in connection with it shall be governed by, and construed in accordance with, English law.

**30.2 Exclusive English jurisdiction**

Subject to Clause 30.3 (*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 (or any non-contractual obligation arising out of or in connection with this Agreement).

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### 30.3 Choice of forum for the exclusive benefit of the Creditor Parties

Clause 30.2 (*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 Borrowers 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.

### 30.4 Process agent

Each 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.

### 30.5 Creditor Party rights unaffected

Nothing in this Clause 30 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.

### 30.6 Meaning of “proceedings”

In this Clause 30 (*Law and Jurisdiction*), “proceedings” means proceedings of any kind, including an application for a provisional or protective measure.

**AS WITNESS** the hands of the duly authorised officers or attorneys of the parties the day and year first before written.

EXECUTION PAGE

**BORROWERS**

**SIGNED** by **GEORGIOS PANAGAKIS** ) /s/ Georgios Panagakis  
as attorney-in-fact )  
for and on behalf of )  
**ANTIPSARA SHIPPING CORPORATION** )

in the presence of: ) Eirini-Chrysi Aretaki  
Ince  
Akti Miaouli 47-49  
Piraeus 185 36 Greece

**SIGNED** by **GEORGIOS PANAGAKIS** ) /s/ Georgios Panagakis  
as attorney-in-fact )  
for and on behalf of )  
**KITHIRA SHIPPING CORPORATION** )

in the presence of: ) Eirini-Chrysi Aretaki  
Ince  
Akti Miaouli 47-49  
Piraeus 185 36 Greece

**SIGNED** by **GEORGIOS PANAGAKIS** ) /s/ Georgios Panagakis  
as attorney-in-fact )  
for and on behalf of )  
**THASOS SHIPPING CORPORATION** )

in the presence of: ) Eirini-Chrysi Aretaki  
Ince  
Akti Miaouli 47-49  
Piraeus 185 36 Greece

**LENDERS**

**SIGNED** by )  
and by )  
for and on behalf of ) /s/ Krikor Tzanikian /s/ Panoraia Kotsi  
**EUROBANK S.A.** )

in the presence of: ) Eirini-Chrysi Aretaki  
Ince  
Akti Miaouli 47-49  
Piraeus 185 36 Greece

**SIGNED** by )  
and by )  
for and on behalf of ) /s/ Domniki Dimitriadou  
**EUROBANK CYPRUS LTD** )

in the presence of: ) Eirini-Chrysi Aretaki  
Ince  
Akti Miaouli 47-49  
Piraeus 185 36 Greece

**ARRANGER**

**SIGNED** by )  
and by )  
for and on behalf of ) /s/ Krikor Tzanikian /s/ Panoraia Kotsi  
**EUROBANK S.A.** )

in the presence of: ) Eirini-Chrysi Aretaki  
Ince  
Akti Miaouli 47-49  
Piraeus 185 36 Greece

**AGENT**

**SIGNED** by )  
and by )  
for and on behalf of ) /s/ Krikor Tzanikian /s/ Panoraia Kotsi  
**EUROBANK S.A.** )

in the presence of: ) Eirini-Chrysi Aretaki  
Ince  
Akti Miaouli 47-49  
Piraeus 185 36 Greece

**SECURITY AGENT**

**SIGNED** by )  
and by )  
for and on behalf of ) /s/ Krikor Tzanikian /s/ Panoraia Kotsi  
**EUROBANK S.A.** )

in the presence of: ) Eirini-Chrysi Aretaki  
Ince  
Akti Miaouli 47-49  
Piraeus 185 36 Greece

**ACCOUNT BANK**

**SIGNED** by )  
and by )  
for and on behalf of ) /s/ Domniki Dimitriadou  
**EUROBANK CYPRUS LTD** )

in the presence of: ) Eirini-Chrysi Aretaki  
Ince  
Akti Miaouli 47-49  
Piraeus 185 36 Greece



# BARECON 2001

STANDARD BAREBOAT CHARTER

PART I

1. Shipbroker N/A	2. Place and date	
3. Owners/Place of business (Cl. 1) <b>XIANG H145 INTERNATIONAL SHIP LEASE CO., LIMITED, a company incorporated under the laws of Hong Kong and whose registered office is at 17/F, Beautiful Group Tower, 77 Connaught Road Central, Hong Kong</b>	4. Bareboat Charterers/Place of business (Cl. 1) <b>POLYMNIA SHIPPING CORPORATION, a corporation incorporated and existing under the laws of the Republic of the Marshall Islands whose registered address at Trust Company Complex, Ajeltake Road, Ajeltake Island, Majuro, Marshall Islands MH 96960</b>	
5. Vessel's name, call sign and flag (Cl. 1 and 3) <b>Vessel's name: TBA Hull number: CHB2015 Flag: Liberia</b>		
6. Type of Vessel <b>Container Vessel</b>	7. GT/NT <b>As per the Shipbuilding Contract</b>	
8. When/Where built <b>Expected 2024 / Jiangyin Xiangang Changjiang Shipbreaking Co., Ltd. and Zhoushan Changhong International Shipyard Co., Ltd.</b>	9. Total DWT (abt.) in metric tons on summer freeboard <b>As per the Shipbuilding Contract</b>	
10. Classification Society (Cl. 3) <b>As per the Shipbuilding Contract</b>	11. Date of last special survey by the Vessel's classification society N/A	
12. Further particulars of Vessel (also indicate minimum number of months' validity of class certificates agreed acc. to Cl. 3) N/A		
13. Port or Place of delivery (Cl. 3) <b>The place of delivery specified under the MOA</b>	14. Time for delivery (Cl. 4) <b>See Clause 34 (Delivery of Vessel)</b>	15. Cancelling date (Cl. 5) N/A
16. Port or Place of redelivery (Cl. 15) <b>See Clause 40 (Termination, Redelivery and Total Loss)</b>	17. No. of months' validity of trading and class certificates upon redelivery (Cl. 15) <b>See Clause 40 (Termination, Redelivery and Total Loss)</b>	
18. Running days' notice if other than stated in Cl. 4 N/A	19. Frequency of dry-docking (Cl. 10(g)) <b>In accordance with Classification Society or Flag State requirements</b>	
20. Trading limits (Cl. 6) <b>Worldwide within International Navigating Limits</b>		
21. Charter period (Cl. 2) <b>See Clause 32 (Charter Period)</b>	22. Charter hire (Cl. 11) <b>See Clause 36 (Charterhire and Upfront Charterhire)</b>	
23. New class and other safety requirements (state percentage of Vessel's insurance value acc. to Box 29)(Cl. 10(a)(ii)) N/A		
24. Rate of interest payable acc. to Cl. 11 (f) and, if applicable, acc. to PART IV <b>See Clause 36 (Charterhire and Upfront Charterhire) - neither Clause 11 (f) nor Part IV applies</b>	25. Currency and method of payment (Cl. 11) <b>Dollars/bank transfer</b>	
26. Place of payment; also state beneficiary and bank account (Cl. 11) <b>See Clause 36 (Charterhire and Upfront Charterhire)</b>	27. Bank guarantee/bond (sum and place) (Cl. 24) (optional) <b>See Clause 24 (Corporate Guarantee)</b>	
28. Mortgage(s), if any (state whether 12(a) or (b) applies; if 12(b) applies state date of Financial Instrument and name of Mortgagee(s)/Place of business) (Cl. 12) <b>See Clause 35 (Quiet Enjoyment) - Clause 12 does not apply</b>	29. Insurance (hull and machinery and war risks) (state value acc. to Cl. 13(f) or, if applicable, acc. to Cl. 14(k)) (also state if Cl. 14 applies) <b>See Clause 38 (Insurance) - Clause 14 does not apply</b>	
30. Additional insurance cover, if any, for Owners' account limited to (Cl. 13(b) or, if applicable, Cl. 14(g)) <b>See Clause 38 (Insurance)</b>	31. Additional insurance cover, if any, for Charterers' account limited to (Cl. 13(b) or, if applicable, Cl. 14(g)) <b>See Clause 38 (Insurance)</b>	
32. Latent defects (only to be filled in if period other than stated in Cl. 3) N/A	33. Brokerage commission and to whom payable (Cl. 27) N/A	



34. Grace period (state number of clear banking days) (Cl. 28)  <b>See Clause 44 (Termination Events)</b>	35. Dispute Resolution (state 30(a), 30(b) or 30(c); if 30(c) agreed Place of Arbitration must be stated (Cl. 30)(c)  <b>See Clause 30(a)</b>
36. War cancellation (indicate countries agreed) (Cl. 26(f))  <b>N/A</b>	
37. Newbuilding Vessel (indicate with "yes" or "no" whether PART III applies) (optional)  <b>No, Part III does not apply</b>	38. Name and place of Builders (only to be filled in if PART III applies)  <b>N/A</b>
39. Vessel's Yard Building No. (only to be filled in if PART III applies)  <b>N/A</b>	40. Date of Building Contract (only to be filled in if PART III applies)  <b>N/A</b>
41. Liquidated damages and costs shall accrue to (state party acc. to Cl. 1) a) <b>N/A</b> b) <b>N/A</b> c) <b>N/A</b>	
42. Hire/Purchase agreement (indicate with "yes" or "no" whether PART IV applies) (optional)  <b>No, Part IV does not apply</b>	43. Bareboat Charter Registry (indicate with "yes" or "no" whether PART V applies) (optional)  <b>No, Part V does not apply</b>
44. Flag and Country of the Bareboat Charter Registry (only to be filled in if PART V applies)  <b>N/A</b>	45. Country of the Underlying Registry (only to be filled in if PART V applies)  <b>N/A</b>
46. Number of additional clauses covering special provisions, if agreed  <b>Clause 32 (Charter Period) to Clause 60 (Definitions)</b>	

PREAMBLE - It is mutually agreed that this Contract shall be performed subject to the conditions contained in this Charter which shall include PART I and PART II. In the event of a conflict of conditions, the provisions of PART I shall prevail over those of PART II to the extent of such conflict but no further. It is further mutually agreed that PART III and/or PART IV and/or PART V shall only apply and only form part of this Charter if expressly agreed and stated in Boxes 37, 42 and 43. If PART III and/or PART IV and/or PART V apply, it is further agreed that in the event of a conflict of conditions, the provisions of PART I and PART II shall prevail over those of PART III and/or PART IV and/or PART V to the extent of such conflict but no further.

Signature (Owners)  
**For and on behalf of the Owners**

**Name:** /s/ Chi Chao  
**Title:** Director

Signature (Charterers)  
**For and on behalf of the Charterers**

**Name:** /s/ Eleni Georgiou  
**Title:** Attorney-in-Fact

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**1. Definitions See also Clause 60 (Definitions)**

In this Charter, the following terms shall have the meanings hereby assigned to them:

“The Owners” shall mean the party identified in Box 3;

“The Charterers” shall mean the party identified in Box 4;

~~“The Vessel” shall mean the vessel named in Box 5 and with particulars as stated in Boxes 6 to 12.~~

~~“Financial Instrument” means the mortgage, deed of covenant or other such financial security instrument as annexed to this Charter and stated in Box 28.~~

**2 Charter Period**

In consideration of the hire detailed in Box 22, the Owners have agreed to let and the Charterers have agreed to hire the Vessel for the period stated in Box 21.

~~“The Charter Period”~~: **See also Clause 32 (Charter Period) and Clause 36 (Charterhire and Upfront Charterhire)**.

**3. Delivery**

*(not applicable when Part III applies, as indicated in Box 37)*

~~(a) The Owners shall before and at the time of delivery exercise due diligence to make the Vessel seaworthy And in every respect ready in hull, machinery and equipment for service under this Charter.~~

The Vessel shall be delivered by the Owners and taken over by the Charterers at the port or place indicated in Box 13, ~~in such ready safe berth as the Charterers may direct.~~

~~(b) The Vessel is shall be properly documented on delivery in accordance with the laws of the flag State indicated in Box 5 and the requirements of the eClassification sSociety stated in Box 10. The Vessel upon delivery shall have her survey cycles up to date and trading and class certificates valid for at least the number of months agreed in Box 12.~~

~~(c) The delivery of the Vessel by the Owners and the taking over of the Vessel by the Charterers shall constitute a full performance by the Owners of all the Owners’ obligations under this Clause 3, and thereafter the Charterers shall not be entitled to make or assert any claim against the Owners on account of any conditions, representations or warranties expressed or implied with respect to the Vessel, but the Owners shall be liable for the cost of but not the time for repairs or renewals occasioned by latent defects in the Vessel, her machinery or appurtenances, existing at the time of delivery under this Charter, provided such defects have manifested themselves within twelve (12) months after delivery unless otherwise provided in Box 32.~~

**4. Time for Delivery See Clauses 32 (Charter Period) and 34 (Delivery of Vessel)**

*(not applicable when Part III applies, as indicated in Box 37)*

The Vessel shall not be delivered before the date indicated in Box 14 without the Charterers’ consent and the Owners shall exercise due diligence to deliver the Vessel not later than the date indicated in Box 15. Unless otherwise agreed in Box 18, the Owners shall give the Charterers not less than thirty (30) running days’ preliminary and not less than fourteen (14) running days’ definite notice of the date on which the Vessel is expected to be ready for delivery.

The Owners shall keep the Charterers closely advised of possible changes in the Vessel’s position.

**5. Cancelling See Clause 33 (Cancellation)**

*(not applicable when Part III applies, as indicated in Box 37)*

~~(a) Should the Vessel not be delivered latest by the cancelling date indicated in Box 15, the Charterers shall have the option of cancelling this Charter by giving the Owners notice of cancellation within thirty-six (36) running hours after the cancelling date stated in Box 15, failing which this Charter shall remain in full force and effect.~~

~~(b) If it appears that the Vessel will be delayed beyond the cancelling date, the Owners may, as soon as they are in a position to state with reasonable certainty the day on which the Vessel should be ready, give notice thereof to the Charterers asking whether they will exercise their option of cancelling, and the option must then be declared within one hundred and sixty-eight (168) running hours of the receipt by the Charterers of such notice or within thirty-six (36) running hours after the cancelling date, whichever is the earlier. If the Charterers do not then exercise their option of cancelling, the seventh day after the readiness date stated in the Owners’ notice shall be substituted for the cancelling date indicated in Box 15 for the purpose of this Clause 5.~~

~~(c) Cancellation under this Clause 5 shall be without prejudice to any claim the Charterers may otherwise have on the Owners under this Charter.~~

**6. Trading Restrictions See also Clauses 46.1 (n) and 46.1(o)**

The Vessel shall be employed in lawful trades for the carriage of suitable lawful merchandise within the trading limits indicated in Box 20.

The Charterers undertake not to employ the Vessel or suffer the Vessel to be employed otherwise than in conformity with the terms of the contracts of insurance (including any warranties expressed or implied therein) without first obtaining the consent of the insurers **and the Owners** to such employment and complying with such requirements as to extra premium or otherwise as the insurers may prescribe.

The Charterers also undertake not to employ the Vessel or suffer her employment in any trade or business which is forbidden by the law of any country to which the Vessel may sail or is otherwise illicit or in carrying illicit or prohibited goods or in any manner whatsoever which may render her liable to condemnation, destruction, seizure or confiscation.

Notwithstanding any other provisions contained in this Charter it is agreed that nuclear fuels or radioactive products or waste are specifically excluded from the cargo permitted to be loaded or carried under this Charter. This exclusion does not apply to radio-isotopes used or intended to be used for any industrial, commercial, agricultural, medical or scientific purposes provided the Owners' prior approval has been obtained to loading thereof.

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**7. Surveys on Delivery and Redelivery**

*(not applicable when Part III applies, as indicated in Box 37)*

The Owners and Charterers shall each appoint surveyors for the purpose of determining and agreeing in writing the condition of the Vessel at the time of delivery and redelivery **pursuant to Clause 40 (Termination, Redelivery and Total Loss) (with the relevant costs paid by the Charterers)** hereunder. The Owners shall bear all expenses of the On-hire Survey including loss of time, if any, and the Charterers shall bear all expenses of the Off-hire Survey including loss of time, if any, at the daily equivalent to the rate of hire or pro rata thereof.

**8. Inspection**

The Owners shall have the right at any time **either (i) once every calendar year provided no Potential Termination Event or Termination Event has occurred (after giving reasonable notice to the Charterers and provided that the Owners do not unduly interfere with or cause delay to the commercial operation of the Vessel) or (ii) at any time following the occurrence of a Potential Termination Event or Termination Event), after giving reasonable notice to the Charterers** to inspect or survey the Vessel or instruct a duly authorised surveyor to carry out such survey on their behalf:-

(a) to ascertain the condition of the Vessel and satisfy themselves that the Vessel is being properly repaired and maintained. The costs and fees for such inspection or survey shall be paid by the **Charterers; Owners unless the Vessel is found to require repairs or maintenance in order to achieve the condition so provided;**

(b) in dry-dock if the Charterers have not dry-docked Her in accordance with Clause 10(g). The costs and fees for such inspection or survey shall be paid by the Charterers; and

(c) for any other commercial reason they consider necessary (provided it does not unduly interfere with the commercial operation of the Vessel). The costs and fees for such inspection and survey shall be paid by the Owners.

All time used in respect of inspection, survey or repairs shall be for the Charterers' account and form part of the Charter Period.

The Charterers shall also permit the Owners to inspect the Vessel's log books whenever requested and shall whenever required by the Owners furnish them with full information regarding any casualties or other accidents or damage to the Vessel.

**The Charterers shall provide all necessary assistance to the Owners, their representatives or agents in respect of any inspection and/or survey referred to hereunder.**

**9. Inventories, Oil and Stores See Clause 34.6**

A complete inventory of the Vessel's entire equipment, outfit including spare parts, appliances and of all consumable stores on board the Vessel shall be made by the Charterers in conjunction with the Owners on delivery and again on redelivery of the Vessel. The Charterers and the Owners, respectively, shall at the time of delivery and redelivery take over and pay for all bunkers, lubricating oil, unbroached provisions, paints, ropes and other consumable stores (excluding spare parts) in the said Vessel at the then current market prices at the ports of delivery and redelivery, respectively. The Charterers shall ensure that all spare parts listed in the inventory and used during the Charter Period are replaced at their expense prior to redelivery of the Vessel.

**10. Maintenance and Operation**

(a)(i) Maintenance and Repairs - During the Charter Period the Vessel shall be in the full possession and at the absolute disposal for all purposes of the Charterers and under their complete control in every respect. The Charterers shall maintain the Vessel, her machinery, boilers, appurtenances and spare parts in a good state of repair, in efficient operating condition and in accordance with good commercial maintenance practice and, **except as provided for in Clause 14(f)**; if applicable, at their own expense they shall at all times keep the Vessel's **classification Class** fully up to date with the Classification Society indicated in Box 10 and maintain all other necessary certificates in force at all times.

(ii) **New Class and Other Safety Requirements** - In the event of any improvement, structural changes or new equipment becoming necessary for the continued operation of the Vessel by reason of new class requirements or by compulsory legislation, **the Charterers shall ensure that the same are complied with and the time and costs of compliance shall be for the Charterers' account.** costing (excluding the Charterers' loss of time) more than the percentage stated in Box 23, or if Box 23 is left blank, 5 per cent. of the Vessel's insurance value as stated in Box 29, then the extent, if any, to which the rate of hire shall be varied and the ratio in which the cost of compliance shall be shared between the parties concerned in order to achieve a reasonable distribution thereof as between the Owners and the Charterers having regard, inter alia, to the length of the period remaining under this Charter shall, in the absence of agreement, be referred to the dispute resolution method agreed in Clause 30.

(iii) **Financial Security** - The Charterers shall maintain financial security or responsibility in respect of third party liabilities as required by any government, including federal, state or municipal or other division or authority thereof, to enable the Vessel, without penalty or charge, lawfully to enter, remain at, or leave any port, place, territorial or contiguous waters of any country, state or municipality in performance of this Charter without any delay. This obligation shall apply whether or not such requirements have been lawfully imposed by such government or division or authority thereof. The Charterers shall make and maintain all arrangements by bond or otherwise as may be necessary to satisfy such requirements at the Charterers' sole expense and the Charterers shall indemnify the Owners against all consequences whatsoever (including loss of time) for any failure or inability to do so.

(b) **Operation of the Vessel** - The Charterers shall at their own expense and by their own procurement man, victual, navigate, operate, supply, fuel and, whenever required, repair the Vessel during the Charter Period and they shall pay all charges and expenses of every kind and nature whatsoever incidental to their use and operation of the Vessel under this Charter, including annual flag State fees and any foreign general municipality and/or state taxes. The Master, officers and crew of the Vessel shall be the servants of the Charterers for all purposes whatsoever, even if for any reason appointed by the Owners.

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Charterers shall comply with the regulations regarding officers and crew in force in the country of the Vessel's flag or any other applicable law.

**(c) The Charterers shall keep the Owners and the mortgagee(s) advised of the intended employment, planned dry-docking (other than the periodical dry-docking referred to under paragraph (g) below) and major repairs of the Vessel, as reasonably required.**

**(d) Flag and Name of Vessel** – During the Charter Period, the Charterers shall have the liberty to paint the Vessel in their own colours, install and display their funnel insignia and fly their own house flag (**with all fees, costs and expenses arising in relation thereto for the Charterers' account**). The Charterers shall also have the liberty, with the Owners' consent, ~~which shall not be unreasonably withheld,~~ to change the flag **of the Vessel to that of another Flag State (with all fees, costs and expenses arising in relation thereto for the Charterers' account) and/or with the Owners' consent,** the name of the Vessel (**with all fees, costs and expenses arising in relation thereto for the Charterers' account**) during the Charter Period. ~~Any~~ **Painting and re-painting, instalment and re-instalment, registration (including maintenance and renewal therefore) and re-registration, if required by the Owners, shall be at the Charterers' expense and time. If the Flag State requires the Owners to register itself for establish a physical presence or office in the jurisdiction of such Flag State, all fees, costs and expenses payable by the Owners to register itself, establish and maintain such physical presence or office shall be for the account of the Charterers.**

**(e) Changes to the Vessel** – Subject to Clause 10(a)(ii) **and Clause 10(b)**, the Charterers shall make no structural changes in the Vessel ~~or changes~~ **which materially adversely affect the Vessel's classification or value** in the machinery, boilers, ~~or~~ **appurtenances or spare parts thereof** without in each instance first securing the Owners' approval thereof. If the Owners so agree, the Charterers shall, if the Owners so require, restore the Vessel to its former condition, ~~before the termination of this Charter.~~

**(f) Use of the Vessel's Outfit, Equipment and Appliances** - The Charterers shall have the use of all outfit, equipment, and appliances on board the Vessel at the time of delivery, provided the same or their substantial equivalent shall be returned to the Owners on redelivery (**without prejudice to Clauses 40.6 and 40.7 and if redelivery is required pursuant to this Charter**) in the same good order and condition as when received, ordinary wear and tear excepted. The Charterers shall from time to time during the Charter Period replace such items of equipment as shall be so damaged or worn as to be unfit for use. The Charterers are to procure that all repairs to or replacement of any damaged, worn or lost parts or equipment be effected in such manner (both as regards workmanship and quality of materials) as not to diminish the value of the Vessel. **Title of any equipment so replaced shall vest in and remain with the Owners.** The Charterers have the right to fit additional equipment at their expense and risk (**provided that no permanent structural damage is caused to the Vessel by reason of such installation**) ~~and~~ **but the Charterers shall, at their expense, remove such equipment and make good any damage caused by the fitting or removal of such additional equipment before the Vessel is redelivered to the Owners pursuant to Clause 40.4 and without prejudice to Clauses 40.6 and 40.7,** at the end of the period if requested by the Owners. Any equipment including radio equipment on hire on the Vessel at time of delivery shall be kept and maintained by the Charterers and the Charterers shall assume the obligations and liabilities of the Owners under any lease contracts in connection therewith and shall reimburse the Owners for all expenses incurred in connection therewith, also for any new equipment required in order to comply with radio regulations.

**(g) Periodical Dry-Docking** - The Charterers shall dry-dock the Vessel and clean and paint her underwater parts whenever the same may be necessary, but not less than once during the period stated in Box 19 or, if Box 19 has been left blank, every sixty (60) calendar months after delivery or such other period as may be required by the Classification Society or ~~F~~flag State.

**11. Hire See Clause 36 (Charterhire and Upfront Charterhire)**

**(a) The Charterers shall pay hire due to the Owners punctually in accordance with the terms of this Charter in respect of which time shall be of the essence:**

**(b) The Charterers shall pay to the Owners for the hire of the Vessel a lump sum in the amount indicated in Box 22 which shall be payable not later than every thirty (30) running days in advance, the first lump sum being payable on the date and hour of the Vessel's delivery to the Charterers. Hire shall be paid continuously throughout the Charter Period:**

**(c) Payment of hire shall be made in cash without discount in the currency and in the manner indicated in Box 25 and at the place mentioned in Box 26:**

**(d) Final payment of hire, if for a period of less than thirty (30) running days, shall be calculated proportionally according to the number of days and hours remaining before redelivery and advance payment to be effected accordingly:**

**(e) Should the Vessel be lost or missing, hire shall cease from the date and time when she was lost or last heard of. The date upon which the Vessel is to be treated as lost or missing shall be ten (10) days after the Vessel was last reported or when the Vessel is posted as missing by Lloyd's, whichever occurs first. Any hire paid in advance to be adjusted accordingly:**

**(f) Any delay in payment of hire shall entitle the Owners to interest at the rate per annum as agreed in Box 24. If Box 24 has not been filled in, the three months Interbank offered rate in London (LIBOR or its successor) for the currency stated in Box 25, as quoted by the British Bankers' Association (BBA) on the date when the hire fell due, increased by 2 per cent., shall apply:**

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~~(g) Payment of interest due under sub-clause 11(f) shall be made within seven (7) running days of the date of the Owners' invoice specifying the amount payable or, in the absence of an invoice, at the time of the next hire payment date.~~

**12. Mortgage See Clause 35 (Quiet Enjoyment)**

~~(only to apply if Box 28 has been appropriately filled in) \*) (a) The Owners warrant that they have not effected any mortgage(s) of the Vessel and that they shall not effect any mortgage(s) without the prior consent of the Charterers, which shall not be unreasonably withheld.~~

~~\*) (b) The Vessel chartered under this Charter is financed by a mortgage according to the Financial Instrument. The Charterers undertake to comply, and provide such information and documents to enable the Owners to comply, with all such instructions or directions in regard to the employment, insurances, operation, repairs and maintenance of the Vessel as laid down in the Financial Instrument or as may be directed from time to time during the currency of the Charter by the mortgagee(s) in conformity with the Financial Instrument. The Charterers confirm that, for this purpose, they have acquainted themselves with all relevant terms, conditions and provisions of the Financial Instrument and agree to acknowledge this in writing in any form that may be required by the mortgagee(s). The Owners warrant that they have not effected any mortgage(s) other than stated in Box 28 and that they shall not agree to any amendment of the mortgage(s) referred to in Box 28 or effect any other mortgage(s) without the prior consent of the Charterers, which shall not be unreasonably withheld.~~

~~\*) (Optional, Clauses 12(a) and 12(b) are alternatives; indicate alternative agreed in Box 28).~~

**13. Insurance and Repairs See also Clause 38 (Insurance)**

~~(a) Subject and without prejudice to Clause 38 (Insurance) During the Charter Period the Vessel shall be kept insured by the Charterers at their expense against hull and machinery, ~~marine and~~ war (**including blocking and trapping**) and Protection and Indemnity risks **and freight, demurrage and defence risks** (and any risks against which it is compulsory to insure for the operation of the Vessel, including **but not limited to** maintaining financial security in accordance with sub-clause 10(a)(iii)) ~~in such form as the Owners shall in writing approve, which approval shall not be unreasonably withheld.~~ Such insurances **as specified in this Clause 13** shall be arranged by the Charterers to protect the interests of both the Owners and the Charterers and the ~~m~~**M**ortgagee(s) (if any), ~~and~~ The Charterers shall be at liberty to protect under such insurances the interests of any managers they may appoint. Insurance policies shall cover the Owners and the Charterers **and the Mortgagees (if any)**, according to their respective interests.~~

~~Subject to the provisions of the Financial Instruments, (if any), **and the agreed loss payable clauses**, and the approval of the Owners and the insurers, the Charterers shall effect all insured repairs and shall undertake settlement and reimbursement from the insurers of all costs in connection with such repairs as well as insured charges, expenses and liabilities to the extent of coverage under the insurances herein provided for.~~

~~The Charterers also to remain responsible for and to effect repairs and settlement of costs and expenses incurred thereby in respect of all other repairs not covered by the insurances and/or not exceeding any possible franchise(s) or deductibles provided for in the insurances.~~

~~All time used for repairs under the provisions of sub-clause 13(a) **and for repairs of latent defects according to Clause 3(c) above**, including any deviation, shall be for the Charterers' account.~~

~~(b) If the conditions of the above insurances permit additional insurance to be placed by the parties, such cover shall be limited to the amount for each party set out in Box 30 and Box 31, respectively. The Owners or the Charterers as the case may be shall immediately furnish the **Owners other party** with particulars of any additional insurance effected, including copies of any cover notes or policies and the written consent of the insurers of any such required insurance in any case where the consent of such insurers is necessary.~~

~~(c) The Charterers shall upon the request of the Owners, provide information and promptly execute such documents as may be required to enable the Owners to comply with the insurance provisions of ~~the each~~ Financial Instrument (**if any**).~~

~~(d) Subject to the provisions of the Financial Instruments, if any, **and Clause 38 (Insurance) and Clause 40 (Termination, Redelivery and Total Loss)**, should the Vessel become an actual, constructive, compromised or agreed ~~a~~ **Total Loss** under the insurances required under sub-clause 13(a), all insurance payments for such loss shall be paid to the Owners (**if applicable, their financiers**) **in accordance with the agreed loss payable clauses** who shall distribute the moneys between the Owners and the Charterers according to their respective interests. The Charterers undertake to notify the Owners and the ~~m~~**M**ortgagee(s), if any, of any occurrences in consequence of which the Vessel is likely to become a ~~£~~ **Total Loss**, ~~as defined in this Clause.~~~~

~~(e) The Owners shall upon the request of the Charterers **and subject to the Owners' approval of such request**, promptly execute such documents as may be required to enable the Charterers to abandon the Vessel to insurers and claim a constructive total loss.~~

~~(f) For the purpose of insurance coverage against hull and machinery and war risks under the provisions of sub-clause 13(a), the value of the Vessel is the sum indicated in ~~Box 29~~ **Clause 38 (Insurance)**.~~

**14. Insurance, Repairs and Classification - intentionally omitted**

~~(Optional, only to apply if expressly agreed and stated in Box 29, in which event Clause 13 shall be considered deleted).~~

~~(a) During the Charter Period the Vessel shall be kept insured by the Owners at their expense against hull and machinery and war risks under the form of policy or policies attached hereto. The Owners and/or insurers shall not have any right of recovery or subrogation against the Charterers on account of loss of or any damage to the Vessel or her machinery or appurtenances covered by such insurance, or on account of payments made to discharge claims against or liabilities of the Vessel or the Owners covered by such insurance. Insurance policies shall cover the Owners and the Charterers according to their respective interests.~~

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**(b)** During the Charter Period the Vessel shall be kept insured by the Charterers at their expense against Protection and Indemnity risks (and any risks against which it is compulsory to insure for the operation of the Vessel, including maintaining financial security in accordance with sub-clause 10(a)(iii)) in such form as the Owners shall in writing approve which approval shall not be unreasonably withheld:

**(c)** In the event that any act or negligence of the Charterers shall vitiate any of the insurance herein provided, the Charterers shall pay to the Owners all losses and indemnify the Owners against all claims and demands which would otherwise have been covered by such insurance:

**(d)** The Charterers shall, subject to the approval of the Owners or Owners' Underwriters, effect all insured repairs, and the Charterers shall undertake settlement of all miscellaneous expenses in connection with such repairs as well as all insured charges, expenses and liabilities, to the extent of coverage under the insurances provided for under the provisions of sub-clause 14(a). The Charterers to be secured reimbursement through the Owners' Underwriters for such expenditures upon presentation of accounts:

**(e)** The Charterers to remain responsible for and to effect repairs and settlement of costs and expenses incurred thereby in respect of all other repairs not covered by the insurances and/or not exceeding any possible franchise(s) or deductibles provided for in the insurances:

**(f)** All time used for repairs under the provisions of sub-clauses 14(d) and 14(e) and for repairs of latent defects according to Clause 3 above, including any deviation, shall be for the Charterers' account and shall form part of the Charter Period:

The Owners shall not be responsible for any expenses as are incident to the use and operation of the Vessel for such time as may be required to make such repairs:

**(g)** If the conditions of the above insurances permit additional insurance to be placed by the parties such cover shall be limited to the amount for each party set out in Box 30 and Box 31, respectively. The Owners or the Charterers as the case may be shall immediately furnish the other party with particulars of any additional insurance effected, including copies of any cover notes or policies and the written consent of the insurers of any such required insurance in any case where the consent of such insurers is necessary:

**(h)** Should the Vessel become an actual, constructive, compromised or agreed total loss under the insurances required under sub-clause 14(a), all insurance payments for such loss shall be paid to the Owners, who shall distribute the moneys between themselves and the Charterers according to their respective interests:

**(i)** If the Vessel becomes an actual, constructive, compromised or agreed total loss under the insurances arranged by the Owners in accordance with sub-clause 14(a), this Charter shall terminate as of the date of such loss:

**(j)** The Charterers shall upon the request of the Owners, promptly execute such documents as may be required to enable the Owners to abandon the Vessel to the insurers and claim a constructive total loss:

**(k)** For the purpose of insurance coverage against hull and machinery and war risks under the provisions of sub-clause 14(a), the value of the Vessel is the sum indicated in Box 29:

**(l)** Notwithstanding anything contained in sub-clause 10(a), it is agreed that under the provisions of Clause 14, if applicable, the Owners shall keep the Vessel's Class fully up to date with the Classification Society indicated in Box 10 and maintain all other necessary certificates in force at all times:

**15. Redelivery See Clause 40 (Termination, Redelivery and Total Loss)**

At the expiration of the Charter Period the Vessel shall be redelivered by the Charterers to the Owners at a safe and ice-free port or place as indicated in Box 16, in such ready safe berth as the Owners may direct. The Charterers shall give the Owners not less than thirty (30) running days' preliminary notice of expected date, range of ports of redelivery or port or place of redelivery and not less than fourteen (14) running days' definite notice of expected date and port or place of redelivery. Any changes thereafter in the Vessel's position shall be notified immediately to the Owners:

The Charterers warrant that they will not permit the Vessel to commence a voyage (including any preceding ballast voyage) which cannot reasonably be expected to be completed in time to allow redelivery of the Vessel within the Charter Period. Notwithstanding the above, should the Charterers fail to redeliver the Vessel within The Charter Period, the Charterers shall pay the daily equivalent to the rate of hire stated in Box 22 plus 10 per cent. or to the market rate, whichever is the higher, for the number of days by which the Charter Period is exceeded. All other terms, conditions and provisions of this Charter shall continue to apply:

Subject to the provisions of Clause 10, the Vessel shall be redelivered to the Owners in the same or as good structure, state, condition and class as that in which she was delivered, fair wear and tear not affecting class excepted:

The Vessel upon redelivery shall have her survey cycles up to date and trading and class certificates valid for at least the number of months agreed in Box 17:

**16. Non-Lien**

**Other than Permitted Security Interests,** The Charterers will not suffer, nor permit to be continued, any lien or encumbrance incurred by them or their agents, which might have priority over the title and interest of the Owners in the Vessel. The Charterers further agree to fasten to the Vessel in a conspicuous place and to keep so fastened during the Charter Period a notice reading as follows:

"This Vessel is the property of (name of Owners). It is under charter to (name of Charterers) and by the terms of the Charter Party neither the Charterers nor the Master have any right, power or authority to create, incur or permit to be imposed on the Vessel any lien whatsoever."



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**Or a notice in such form as required by any Mortgagee(s)**

**17. Indemnity See Clauses 37.4, 38.15, 38.16, 40.5, 41.2-3 and 51**

~~(a) The Charterers shall indemnify the Owners against any loss, damage or expense incurred by the Owners arising out of or in relation to the operation of the Vessel by the Charterers, and against any lien of whatsoever nature arising out of an event occurring during the Charter Period. If the Vessel be arrested or otherwise detained by reason of claims or liens arising out of her operation hereunder by the Charterers, the Charterers shall at their own expense take all reasonable steps to secure that within a reasonable time the Vessel is released, including the provision of bail.~~

~~Without prejudice to the generality of the foregoing, the Charterers agree to indemnify the Owners against all consequences or liabilities arising from the Master, officers or agents signing Bills of Lading or other documents.~~

~~(b) If the Vessel be arrested or otherwise detained by reason of a claim or claims against the Owners, the Owners shall at their own expense take all reasonable steps to secure that within a reasonable time the Vessel is released, including the provision of bail. In such circumstances the Owners shall indemnify the Charterers against any loss, damage or expense incurred by the Charterers (including hire paid under this Charter) as a direct consequence of such arrest or detention.~~

**18. Lien**

The Owners to have a lien upon all cargoes, sub-hires and sub-freights belonging or due to the Charterers or any sub-charterers and any Bill of Lading freight for all claims under this Charter, ~~and the Charterers to have a lien on the Vessel for all moneys paid in advance and not earned.~~

**19. Salvage**

All salvage and towage performed by the Vessel shall be for the Charterers' benefit and the cost of repairing damage occasioned thereby shall be borne by the Charterers.

**20. Wreck Removal**

In the event of the Vessel becoming a wreck or obstruction to navigation the Charterers shall indemnify the Owners against any sums whatsoever which the Owners shall become liable to pay and shall pay in consequence of the Vessel becoming a wreck or obstruction to navigation.

**21. General Average**

The Owners shall not contribute to General Average.

**22. Assignment, Sub-Charter and Sale**

~~(a) The Charterers shall not assign this Charter nor sub-charter the Vessel on a bareboat basis except with the prior consent in writing of the Owners, which shall not be unreasonably withheld, and subject to such terms and conditions as the Owners shall approve.~~

~~(b) The Owners shall not sell the Vessel during the currency of this Charter except with the prior written consent of the Charterers, which shall not be unreasonably withheld, and subject to the buyer accepting an assignment of this Charter.~~

**23. Contracts of Carriage**

~~\*) (a) The Charterers are to procure that all documents issued during the Charter Period evidencing the terms and conditions agreed in respect of carriage of goods shall contain a paramount clause incorporating any legislation relating to carrier's liability for cargo compulsorily applicable in the trade; if no such legislation exists, the documents shall incorporate the Hague-Visby Rules. The documents shall also contain the New Jason Clause and the Both-to-Blame Collision Clause.~~

~~\*) (b) The Charterers are to procure that all passenger tickets issued during the Charter Period for the carriage of passengers and their luggage under this Charter shall contain a paramount clause incorporating any legislation relating to carrier's liability for passengers and their luggage compulsorily applicable in the trade; if no such legislation exists, the passenger tickets shall incorporate the Athens Convention Relating to the Carriage of Passengers and their Luggage by Sea, 1974, and any protocol thereto.~~

~~\*) Delete as applicable.~~

**24. Bank Corporate Guarantee**

*(Optional, only to apply if Box 27 filled in)*

The Charterers undertake to furnish **on or about the date of this Charter**, before delivery of the Vessel, a first class bank **a corporate guarantee from the Guarantor** or bond in the sum and at the place as indicated in Box 27 as guarantee **and on or about the date of this Charter the other Security Documents (as the case may be) as security, in each case** for full performance of their obligations under this Charter.

**25. Requisition/Acquisition**

**(a) Subject to the provisions of the Financial Instruments (if any) and the General Assignment, in** the event of the Requisition for Hire of the Vessel by any governmental or other competent authority (hereinafter referred to as "Requisition for Hire") irrespective of the date during the Charter Period when "Requisition for Hire" may occur and irrespective of the length thereof and whether or not it be for an indefinite or a limited period of time, and irrespective of whether it may or will remain in force for the remainder of the Charter Period, this Charter shall not be deemed thereby or thereupon to be frustrated or otherwise terminated and the Charterers shall continue to pay the stipulated ~~hire~~ **Charterhire** in the manner provided by this Charter



until the time when the Charter would have terminated pursuant to any of the provisions hereof always, ~~provided however that in the event of "Requisition for Hire" any Requisition Hire or compensation received or receivable by the Owners shall be payable to the Charterers during the remainder of the Charter Period or the period of the "Requisition for Hire" whichever be the shorter.~~

~~(b) In the event of the Owners being deprived of their ownership in the Vessel by any Compulsory Acquisition of the Vessel or requisition for title by any governmental or other competent authority (hereinafter referred to as "Compulsory Acquisition"), then, irrespective of the date during the Charter Period when "Compulsory Acquisition" may occur, this Charter shall be deemed terminated as of the date of such "Compulsory Acquisition". In such event Charter Hire to be considered as earned and to be paid up to the date and time of such "Compulsory Acquisition".~~

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**PART II**  
**BARECON 2001 Standard Bareboat Charter**

**26. War**

**(a) Subject to the provisions of the Financial Instruments (if any),** For the purpose of this Clause, the words “War Risks” shall include any war (whether actual or threatened), act of war, civil war, hostilities, revolution, rebellion, civil commotion, warlike operations, the laying of mines (whether actual or reported), acts of piracy, acts of terrorists, acts of hostility or malicious damage, blockades (whether imposed against all vessels or imposed selectively against vessels of certain flags or ownership, or against certain cargoes or crews or otherwise howsoever), by any person, body, terrorist or political group, or the Government of any state whatsoever, which may be dangerous or are likely to be or to become dangerous to the Vessel, her cargo, crew or other persons on board the Vessel.

**(b) Without first obtaining (i) the written consent of the Owners and (ii) the consent of the insurers to such employment and complying with the terms of Clause 38 (Insurance) and such other requirements as to extra insurance premiums or any other requirements as may be prescribed by the insurers,** The Vessel, unless the written consent of the Owners be first obtained, shall not continue to or go through any port, place, area or zone (whether of land or sea), or any waterway or canal, where it reasonably appears that the Vessel, her cargo, crew or other persons on board the Vessel, in the reasonable judgement of the Owners, may be, or are likely to be, exposed to War Risks. Should the Vessel be within any such place as aforesaid, which only becomes dangerous, or is likely to be or to become dangerous, after her entry into it, the Owners shall have the right to require the Vessel to leave such area.

**(c)** The Vessel shall not load contraband cargo, or to pass through any blockade, whether such blockade be imposed on all vessels, or is imposed selectively in any way whatsoever against vessels of certain flags or ownership, or against certain cargoes or crews or otherwise howsoever, or to proceed to an area where she shall be subject, or is likely to be subject to a belligerent’s right of search and/or confiscation.

~~**(d)** If the insurers of the war risks insurance, when Clause 14 is applicable, should require payment of premiums and/or calls because, pursuant to the Charterers’ orders, the Vessel is within, or is due to enter and remain within, any area or areas which are specified by such insurers as being subject to additional premiums because of War Risks, then such premiums and/or calls shall be reimbursed by the Charterers to the Owners at the same time as the next payment of hire is due.~~

**(e)** The Charterers shall have the liberty:

**(i)** to comply with all orders, directions, recommendations or advice as to departure, arrival, routes, sailing in convoy, ports of call, stoppages, destinations, discharge of cargo, delivery, or in any other way whatsoever, which are given by the Government of the Nation under whose flag the Vessel sails, or any other Government, body or group whatsoever acting with the power to compel compliance with their orders or directions;

**(ii)** to comply with the orders, directions or recommendations of any war risks underwriters who have the authority to give the same under the terms of the war risks insurance;

**(iii)** to comply with the terms of any resolution of the Security Council of the United Nations, any directives of the European Community, the effective orders of any other Supranational body which has the right to issue and give the same, and with national laws aimed at enforcing the same to which the Owners are subject, and to obey the orders and directions of those who are charged with their enforcement.

~~**(f)** In the event of outbreak of war (whether there be a declaration of war or not) (i) between any two or more of the following countries: the United States of America; Russia; the United Kingdom; France; and the People’s Republic of China, (ii) between any two or more of the countries stated in Box 36, both the Owners and the Charterers shall have the right to cancel this Charter, whereupon the Charterers shall redeliver the Vessel to the Owners in accordance with Clause 15, if the Vessel has cargo on board after discharge thereof at destination, or if debarred under this Clause from reaching or entering it at a near, open and safe port as directed by the Owners, or if the Vessel has no cargo on board, at the port at which the Vessel then is or if at sea at a near, open and safe port as directed by the Owners. In all cases hire/Charterhire shall continue to be paid in accordance with Clause 11 and except as aforesaid all other provisions of this Charter shall apply until redelivery/the end of the Charter Period.~~

**27. Commission - intentionally omitted**

~~The Owners to pay a commission at the rate indicated in Box 33 to the Brokers named in Box 33 on any hire paid under the Charter. If no rate is indicated in Box 33, the commission to be paid by the Owners shall cover the actual expenses of the Brokers and a reasonable fee for their work.~~

~~If the full hire is not paid owing to breach of the Charter by either of the parties the party liable therefor shall indemnify the Brokers against their loss of commission. Should the parties agree to cancel the Charter, the Owners shall indemnify the Brokers against any loss of commission but in such case the commission shall not exceed the brokerage on one year’s hire.~~

**28. Termination See Clauses 40 (Termination, Redelivery and Total Loss) and 44 (Termination Events)**

**~~(a) Charterers’ Default~~**

~~The Owners shall be entitled to withdraw the Vessel from the service of the Charterers and terminate the Charter with immediate effect by written notice to the Charterers if:~~

~~**(i)** the Charterers fail to pay hire in accordance with Clause 11. However, where there is a failure to make punctual payment of hire due to oversight, negligence, errors or omissions on the part of the Charterers or their bankers, the Owners shall give the Charterers written notice of the number of clear banking days stated in Box 34 (as recognised at the agreed place of payment) in which to rectify the failure, and when so rectified within such number of days following the Owners’ notice, the payment shall stand as regular and punctual.~~

**PART II**  
**BARECON 2001 Standard Bareboat Charter**

Failure by the Charterers to pay hire within the number of days stated in Box 34 of their receiving the Owners' notice as provided herein, shall entitle the Owners to withdraw the Vessel from the service of the Charterers and terminate the Charter without further notice;

(ii) the Charterers fail to comply with the requirements of:

(1) Clause 6 (Trading Restrictions)

(2) Clause 13(a) (Insurance and Repairs) provided that the Owners shall have the option, by written notice to the Charterers, to give the Charterers a specified number of days grace within which to rectify the failure without prejudice to the Owners' right to withdraw and terminate under this Clause if the Charterers fail to comply with such notice;

(iii) the Charterers fail to rectify any failure to comply with the requirements of sub-clause 10(a)(i) (Maintenance and Repairs) as soon as practically possible after the Owners have requested them in writing so to do and in any event so that the Vessel's insurance cover is not prejudiced.

(b) Owners' Default

If the Owners shall by any act or omission be in breach of their obligations under this Charter to the extent that the Charterers are deprived of the use of the Vessel and such breach continues for a period of fourteen (14) running days after written notice thereof has been given by the Charterers to the Owners, the Charterers shall be entitled to terminate this Charter with immediate effect by written notice to the Owners.

(c) Loss of Vessel

This Charter shall be deemed to be terminated if the Vessel becomes a total loss or is declared as a constructive or compromised or arranged total loss. For the purpose of this sub-clause, the Vessel shall not be deemed to be lost unless she has either become an actual total loss or agreement has been reached with her underwriters in respect of her constructive, compromised or arranged total loss or if such agreement with her underwriters is not reached it is adjudged by a competent tribunal that a constructive loss of the Vessel has occurred.

(d) Either party shall be entitled to terminate this Charter with immediate effect by written notice to the other party in the event of an order being made or resolution passed for the winding up, dissolution, liquidation or bankruptcy of the other party (otherwise than for the purpose of reconstruction or amalgamation) or if a receiver is appointed, or if it suspends payment, ceases to carry on business or makes any special arrangement or composition with its creditors.

(e) The termination of this Charter shall be without prejudice to all rights accrued due between the parties prior to the date of termination and to any claim that either party might have.

## 29. Repossession

In the event of the **Owners have made a request for redelivery of the Vessel** termination of this Charter in accordance with the applicable provisions of Clause ~~29~~ **40.3**, the Owners shall **in addition** have the right to repossess the Vessel from the Charterers at her current or next port of call, or at a port or place convenient to them without hindrance or interference by the Charterers, courts or local authorities. Pending physical repossession of the Vessel in accordance with this Clause 29 **and/or Clause 40**, the Charterers shall hold the Vessel as gratuitous bailee only to the Owners **and the Charterers shall procure that the master and crew follow the orders and directions of the Owners.**

The Owners shall arrange for an authorised representative to board the Vessel as soon as reasonably practicable following the termination of the Charter. The Vessel shall be deemed to be repossessed by the Owners from the Charterers upon the boarding of the Vessel by the Owners' representative. All arrangements and expenses relating to the settling of wages, disembarkation and repatriation of the Charterers' Master, officers and crew shall be the sole responsibility of the Charterers.

## 30. Dispute Resolution

\*) (a) This ~~Contract Charter~~ **and any non-contractual obligations arising out of or in connection with it** shall be governed by and construed in accordance with English law and any dispute arising out of or in connection with this ~~Contract Charter~~ shall be referred to arbitration in London in accordance with the Arbitration Act 1996 or any statutory modification or re-enactment thereof save to the extent necessary to give effect to the provisions of this Clause.

The arbitration shall be conducted in accordance with the London Maritime Arbitrators Association (LMAA) Terms current at the time when the arbitration proceedings are commenced.

The reference shall be to three arbitrators. A party wishing to refer a dispute to arbitration shall appoint its arbitrator and send notice of such appointment in writing to the other party requiring the other party to appoint its own arbitrator within 14 calendar days of that notice and stating that it will appoint its arbitrator as sole arbitrator unless the other party appoints its own arbitrator and gives notice that it has done so within the 14 days specified. If the other party does not appoint its own arbitrator and give notice that it has done so within the 14 days specified, the party referring a dispute to arbitration may, without the requirement of any further prior notice to the other party, appoint its arbitrator as sole arbitrator and shall advise the other party accordingly. The award of a sole arbitrator shall be binding on both parties as if he had been appointed by agreement.

Nothing herein shall prevent the parties agreeing in writing to vary these provisions to provide for the appointment of a sole arbitrator.

In cases where neither the claim nor any counterclaim exceeds the sum of US\$~~50~~**100,000** (or such other sum as the parties may agree) the arbitration shall be conducted in accordance with the LMAA Small Claims Procedure current at the time when the arbitration proceedings are commenced. **The language or any arbitration proceedings shall be English.**



**PART II**  
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~~\*) (b) This Contract shall be governed by and construed in accordance with Title 9 of the United States Code and the Maritime Law of the United States and any dispute arising out of or in connection with this Contract shall be referred to three persons at New York, one to be appointed by each of the parties hereto, and the third by the two so chosen; their decision or that of any two of them shall be final, and for the purposes of enforcing any award, judgement may be entered on an award by any court of competent jurisdiction. The proceedings shall be conducted in accordance with the rules of the Society of Maritime Arbitrators, Inc.~~

~~In cases where neither the claim nor any counterclaim exceeds the sum of US\$50,000 (or such other sum as the parties may agree) the arbitration shall be conducted in accordance with the Shortened Arbitration Procedure of the Society of Maritime Arbitrators, Inc. current at the time when the arbitration proceedings are commenced.~~

~~\*) (c) This Contract shall be governed by and construed in accordance with the laws of the place mutually agreed by the parties and any dispute arising out of or in connection with this Contract shall be referred to arbitration at a mutually agreed place, subject to the procedures applicable there:~~

~~(d) Notwithstanding (a), (b) or (c) above, the parties may agree at any time to refer to mediation any difference and/or dispute arising out of or in connection with this Contract.~~

~~In the case of a dispute in respect of which arbitration has been commenced under (a), (b) or (c) above, the following shall apply:-~~

~~(i) Either party may at any time and from time to time elect to refer the dispute or part of the dispute to mediation by service on the other party of a written notice (the "Mediation Notice") calling on the other party to agree to mediation:~~

~~(ii) The other party shall thereupon within 14 calendar days of receipt of the Mediation Notice confirm that they agree to mediation, in which case the parties shall thereafter agree a mediator within a further 14 calendar days, failing which on the application of either party a mediator will be appointed promptly by the Arbitration Tribunal ("the Tribunal") or such person as the Tribunal may designate for that purpose. The mediation shall be conducted in such place and in accordance with such procedure and on such terms as the parties may agree or, in the event of disagreement, as may be set by the mediator:~~

~~(iii) If the other party does not agree to mediate, that fact may be brought to the attention of the Tribunal and may be taken into account by the Tribunal when allocating the costs of the arbitration as between the parties:~~

~~(iv) The mediation shall not affect the right of either party to seek such relief or take such steps as it considers necessary to protect its interest:~~

~~(v) Either party may advise the Tribunal that they have agreed to mediation. The arbitration procedure shall continue during the conduct of the mediation but the Tribunal may take the mediation timetable into account when setting the timetable for steps in the arbitration:~~

~~(vi) Unless otherwise agreed or specified in the mediation terms, each party shall bear its own costs incurred in the mediation and the parties shall share equally the mediator's costs and expenses:~~

~~(vii) The mediation process shall be without prejudice and confidential and no information or documents disclosed during it shall be revealed to the Tribunal except to the extent that they are disclosable under the law and procedure governing the arbitration:~~

~~(Note: The parties should be aware that the mediation process may not necessarily interrupt time limits.)~~

~~(e) If Box 35 in Part I is not appropriately filled in, sub-clause 30(a) of this Clause shall apply. Sub-clause 30(d) shall apply in all cases:~~

~~\*) Sub-clauses 30(a), 30(b) and 30(c) are alternatives; indicate alternative agreed in Box 35.~~

**31. Notices See Clause 43 (Notices)**

~~(a) Any notice to be given by either party to the other party shall be in writing and may be sent by fax, telex, registered or recorded mail or by personal service:~~

~~(b) The address of the Parties for service of such communication shall be as stated in Boxes 3 and 4 respectively.~~

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**PART III**  
**PROVISIONS TO APPLY FOR NEWBUILDING VESSELS ONLY**  
(Optional, only to apply if expressly agreed and stated in Box 37)

**Specifications and Building Contract**

**(a)** The Vessel shall be constructed in accordance with the Building Contract (hereafter called "the Building Contract") as annexed to this Charter, made between the Builders and the Owners and in accordance with the specifications and plans annexed thereto, such Building Contract, specifications and plans having been countersigned as approved by the Charterers:

**(b)** No change shall be made in the Building Contract or in the specifications or plans of the Vessel as approved by the Charterers as aforesaid, without the Charterers' consent:

**(c)** The Charterers shall have the right to send their representative to the Builders' Yard to inspect the Vessel during the course of her construction to satisfy themselves that construction is in accordance with such approved specifications and plans as referred to under sub-clause (a) of this Clause:

**(d)** The Vessel shall be built in accordance with the Building Contract and shall be of the description set out therein. Subject to the provisions of sub-clause 2(c)(ii) hereunder, the Charterers shall be bound to accept the Vessel from the Owners, completed and constructed in accordance with the Building Contract, on the date of delivery by the Builders. The Charterers undertake that having accepted the Vessel they will not thereafter raise any claims against the Owners in respect of the Vessel's performance or specification or defects, if any. Nevertheless, in respect of any repairs, replacements or defects which appear within the first 12 months from delivery by the Builders, the Owners shall endeavour to compel the Builders to repair, replace or remedy any defects or to recover from the Builders any expenditure incurred in carrying out such repairs, replacements or remedies. However, the Owners' liability to the Charterers shall be limited to the extent the Owners have a valid claim against the Builders under the guarantee clause of the Building Contract (a copy whereof has been supplied to the Charterers). The Charterers shall be bound to accept such sums as the Owners are reasonably able to recover under this Clause and shall make no further claim on the Owners for the difference between the amount(s) so recovered and the actual expenditure on repairs, replacement or remedying defects or for any loss of time incurred. Any liquidated damages for physical defects or deficiencies shall accrue to the account of the party stated in Box 41(a) or if not filled in shall be shared equally between the parties. The costs of pursuing a claim or claims against the Builders under this Clause (including any liability to the Builders) shall be borne by the party stated in Box 41(b) or if not filled in shall be shared equally between the parties:

**2. Time and Place of Delivery**

**(a)** Subject to the Vessel having completed her acceptance trials including trials of cargo equipment in accordance with the Building Contract and specifications to the satisfaction of the Charterers, the Owners shall give and the Charterers shall take delivery of the Vessel afloat when ready for delivery and properly documented at the Builders' Yard or some other safe and readily accessible dock, wharf or place as may be agreed between the parties hereto and the Builders. Under the Building Contract the Builders have estimated that the Vessel will be ready for delivery to the Owners as therein provided but the delivery date for the purpose of this Charter shall be the date when the Vessel is in fact ready for delivery by the Builders after completion of trials whether that be before or after as indicated in the Building Contract. The Charterers shall not be entitled to refuse acceptance of delivery of the Vessel and upon and after such acceptance, subject to Clause 1(d), the Charterers shall not be entitled to make any claim against the Owners in respect of any conditions, representations or warranties, whether express or implied, as to the seaworthiness of the Vessel or in respect of delay in delivery:

**(b)** If for any reason other than a default by the Owners under the Building Contract, the Builders become entitled under that Contract not to deliver the Vessel to the Owners, the Owners shall upon giving to the Charterers written notice of Builders becoming so entitled, be excused from giving delivery of the Vessel to the Charterers and upon receipt of such notice by the Charterers this Charter shall cease to have effect:

**(c)** If for any reason the Owners become entitled under the Building Contract to reject the Vessel the Owners shall, before exercising such right of rejection, consult the Charterers and thereupon

**(i)** if the Charterers do not wish to take delivery of the Vessel they shall inform the Owners within seven (7) running days by notice in writing and upon receipt by the Owners of such notice this Charter shall cease to have effect; or

**(ii)** if the Charterers wish to take delivery of the Vessel they may by notice in writing within seven (7) running days require the Owners to negotiate with the Builders as to the terms on which delivery should be taken and/or refrain from exercising their right to rejection and upon receipt of such notice the Owners shall commence such negotiations and/ or take delivery of the Vessel from the Builders and deliver her to the Charterers;

**(iii)** in no circumstances shall the Charterers be entitled to reject the Vessel unless the Owners are able to reject the Vessel from the Builders;

**(iv)** if this Charter terminates under sub-clause (b) or (c) of this Clause, the Owners shall thereafter not be liable to the Charterers for any claim under or arising out of this Charter or its termination:

**(d)** Any liquidated damages for delay in delivery under the Building Contract and any costs incurred in pursuing a claim therefor shall accrue to the account of the party stated in Box 41(c) or if not filled in shall be shared equally between the parties:

**3. Guarantee Works**

If not otherwise agreed, the Owners authorise the Charterers to arrange for the guarantee works to be performed in accordance with the building contract terms, and hire to continue during the period of guarantee works. The Charterers have to advise the Owners about the performance to the extent the Owners may request:

**4. Name of Vessel**

The name of the Vessel shall be mutually agreed between the Owners and the Charterers and the Vessel shall be painted in the colours, display the funnel insignia and fly the house flag as required by the Charterers:



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**PART III**  
**PROVISIONS TO APPLY FOR NEWBUILDING VESSELS ONLY**  
(Optional, only to apply if expressly agreed and stated in Box 37)

**5. Survey on Redelivery**

~~The Owners and the Charterers shall appoint surveyors for the purpose of determining and agreeing in writing the condition of the Vessel at the time of re-delivery.~~

~~Without prejudice to Clause 15 (Part II), the Charterers shall bear all survey expenses and all other costs, if any, including the cost of docking and undocking, if required, as well as all repair costs incurred. The Charterers shall also bear all loss of time spent in connection with any docking and undocking as well as repairs, which shall be paid at the rate of hire per day or pro rata.~~

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**PART IV**  
**HIRE/PURCHASE AGREEMENT**

(Optional, only to apply if expressly agreed and stated in Box 42)

~~On expiration of this Charter and provided the Charterers have fulfilled their obligations according to Part I and II as well as Part III, if applicable, it is agreed, that on payment of the final payment of hire as per Clause 11 the Charterers have purchased the Vessel with everything belonging to her and the Vessel is fully paid for.~~

~~In the following paragraphs the Owners are referred to as the Sellers and the Charterers as the Buyers: The Vessel shall be delivered by the Sellers and taken over by the Buyers on expiration of the Charter:~~

~~The Sellers guarantee that the Vessel, at the time of delivery, is free from all encumbrances and maritime liens or any debts whatsoever other than those arising from anything done or not done by the Buyers or any existing mortgage agreed not to be paid off by the time of delivery. Should any claims, which have been incurred prior to the time of delivery be made against the Vessel, the Sellers hereby undertake to indemnify the Buyers against all consequences of such claims to the extent it can be proved that the Sellers are responsible for such claims. Any taxes, notarial, consular and other charges and expenses connected with the purchase and registration under Buyers' flag, shall be for Buyers' account. Any taxes, consular and other charges and expenses connected with closing of the Sellers' register, shall be for Sellers' account.~~

~~In exchange for payment of the last month's hire instalment the Sellers shall furnish the Buyers with a Bill of Sale duly attested and legalized, together with a certificate setting out the registered encumbrances, if any. On delivery of the Vessel the Sellers shall provide for deletion of the Vessel from the Ship's Register and deliver a certificate of deletion to the Buyers.~~

~~The Sellers shall, at the time of delivery, hand to the Buyers all classification certificates (for hull, engines, anchors, chains, etc.), as well as all plans which may be in Sellers' possession.~~

~~The Wireless Installation and Nautical Instruments, unless on hire, shall be included in the sale without any extra payment.~~

~~The Vessel with everything belonging to her shall be at Sellers' risk and expense until she is delivered to the Buyers, subject to the conditions of this Contract and the Vessel with everything belonging to her shall be delivered and taken over as she is at the time of delivery, after which the Sellers shall have no responsibility for possible faults or deficiencies of any description.~~

~~The Buyers undertake to pay for the repatriation of the Master, officers and other personnel if appointed by the Sellers to the port where the Vessel entered the Bareboat Charter as per Clause 3 (Part II) or to pay the equivalent cost for their journey to any other place.~~

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**PART V**  
**PROVISIONS TO APPLY FOR VESSELS REGISTERED IN A BAREBOAT CHARTER REGISTRY**

(Optional, only to apply if expressly agreed and stated in Box 43)

**1. Definitions**

For the purpose of this PART V, the following terms shall have the meanings hereby assigned to them:

~~“The Bareboat Charter Registry” shall mean the registry of the State whose flag the Vessel will fly and in which the Charterers are registered as the bareboat charterers during the period of the Bareboat Charter.~~

~~“The Underlying Registry” shall mean the registry of the state in which the Owners of the Vessel are registered as Owners and to which jurisdiction and control of the Vessel will revert upon termination of the Bareboat Charter Registration.~~

**2. Mortgage**

~~The Vessel chartered under this Charter is financed by a mortgage and the provisions of Clause 12(b) (Part II) shall apply.~~

**3. Termination of Charter by Default**

~~If the Vessel chartered under this Charter is registered in a Bareboat Charter Registry as stated in Box 44, and if the Owners shall default in the payment of any amounts due under the mortgage(s) specified in Box 28, the Charterers shall, if so required by the mortgagee, direct the Owners to re-register the Vessel in the Underlying Registry as shown in Box 45.~~

~~In the event of the Vessel being deleted from the Bareboat Charter Registry as stated in Box 44, due to a default by the Owners in the payment of any amounts due under the mortgage(s), the Charterers shall have the right to terminate this Charter forthwith and without prejudice to any other claim they may have against the Owners under this Charter.~~

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under this Charter or the other Leasing Documents and any default interest in relation thereto, is acknowledged by the Charterers to be proportionate as to amount, having regard to the legitimate interest of the Owners, in protecting against the Owners' risk of the Charterers failing to perform their obligations under this Charter.

**Clause 34 – DELIVERY OF VESSEL**

34.1

- (a) This Charter is part of a transaction involving the sale, purchase and charter back of the Vessel and constitutes one of the Leasing Documents.
  - (b) The obligation of the Owners to charter the Vessel to the Charterers hereunder is subject to and conditional upon:
    - (i) the delivery of the Vessel by the Charterers (in their capacity as sellers) to the Owners (in their capacity as buyers) in accordance with the terms of the MOA with such delivery occurring on or before the Cancelling Date (and, for the purposes of this Charter, the Vessel shall be deemed delivered to the Charterers simultaneously with delivery of the Vessel to the Owners pursuant to the MOA);
    - (ii) no Potential Termination Event or Termination Event has occurred and is continuing at the relevant time;
    - (iii) the representations and warranties contained in Clause 45 (Representations and warranties) being true and correct on the date of this Charter and each day thereafter until and including the last day of the Charter Period; and
    - (iv) the Owners having received from the Charterers:
      - (A) on or prior to Delivery, the documents or evidence set out in Part A, Part B, Part C and Part D of Schedule II in form and substance satisfactory to them; and
      - (B) after Delivery, the documents or evidence set out in Part E of Schedule II in form and substance satisfactory to them within the time periods set out thereunder;
- and if any of the documents listed in sub-paragraph (iv) above are not in the English language then they shall be accompanied by a certified English translation.

34.2 The conditions precedent and conditions subsequent specified in Clause 34.1(b) are for the sole benefit of the Owners.

34.3 On delivery to and acceptance by the Owners (in their capacity as buyers) of the Vessel under the MOA from the Charterers (in their capacity as sellers) and subject to the provisions of this Clause 34 (*Delivery of Vessel*), the Vessel shall be deemed to have been delivered to, and accepted without reservation by, the Charterers under this Charter and the Charterers shall become and be entitled to the possession and use of the Vessel on and subject to the terms and conditions of this Charter.

- 34.4 On Delivery, as evidence of the commencement of the Charter Period, the Charterers shall sign and deliver to the Owners, the Acceptance Certificate. Without prejudice to this Clause 34.4, the Charterers shall be deemed to have accepted the Vessel under this Charter and the commencement of the Charter Period having started, on Delivery even if for whatever reason, the Acceptance Certificate is not signed and/or the Charterers do not take actual possession of the Vessel at that time.
- 34.5 The Charterers shall not be entitled for any reason whatsoever to refuse to accept delivery of the Vessel under this Charter once the Vessel has been delivered to and accepted by the Owners (in their capacity as buyers) under the MOA from the Charterers (in their capacity as sellers), and the Owners shall not be liable for any losses, costs or expenses whatsoever or howsoever arising including, without limitation, any loss of profit or any loss or otherwise:
- (a) resulting directly or indirectly from any defect or alleged defect in the Vessel or any failure of the Vessel; or
  - (b) arising from any delay in the commencement of the Charter Period or any failure of the Charter Period to commence.
- 34.6 The Owners will not and shall not be obliged to deliver the Vessel to the Charterers with any bunkers and unused lubricating oils and greases (whether in storage tanks and unopened drums or otherwise) except such items (including bunkers, lubricating oils, un-broached provisions, paints, ropes and other consumable stores) as are on the Vessel on Delivery.
- 34.7 The Charterers shall, following the Owners' delivery of items on board the Vessel on Delivery pursuant to Clause 34.6, keep all such items on board the Vessel for the Charterers' own use.

#### **Clause 35 – QUIET ENJOYMENT**

- 35.1 Provided that no Potential Termination Event or Termination Event has occurred and is continuing, the Owners hereby agree not to disturb or interfere (or instruct another party to disturb or interfere) with the Charterers' lawful use, possession and quiet enjoyment of the Vessel during the Charter Period.
- 35.2 Subject to Clause 35.1 above, the Charterers acknowledge that, at any time during the Charter Period:
- (a) the Owners are entitled to enter into certain funding arrangements with their financier(s) (the "**Mortgagee**") in order to finance in part or in full of the Purchase Price, which funding arrangements may be secured, *inter alia*, by the relevant Financial Instruments;
  - (b) the Owners may do any of the following as security for the funding arrangements referred to in paragraph (a) above, in each case, without the prior consent of the Charterers:
    - (i) execute a ship mortgage over the Vessel or any other Financial Instrument in favour of the Mortgagee;
    - (ii) assign their rights and interests to, in or in connection with this Charter and any other Leasing Document in favour of the Mortgagee;
    - (iii) assign their rights and interests to, in or in connection with the Insurances, the Earnings and the Requisition Compensation of the Vessel in favour of the Mortgagee; and
    - (iv) enter into any other document or arrangement which is necessary to give effect to such financing arrangements; and

- (c) the Charterers undertake to comply, and provide such information and documents reasonably required to enable the Owners to comply, with all such instructions or directions in regard to the employment, insurances, operation, repairs and maintenance of the Vessel as laid down in any Financial Instrument or as may be directed from time to time during the currency of this Charter by the Mortgagee in conformity with any Financial Instrument. The Charterers further agree and acknowledge all relevant terms, conditions and provisions of each Financial Instrument (if any) and agree to acknowledge this in writing in any form that may be reasonably required by the Mortgagee.
- 35.3 The Owners shall use best endeavours to procure that their financier(s) enter into a quiet enjoyment agreement with the Charterers on such terms as may be agreed between the Owners, the Mortgagee and the Charterers.

**Clause 36 – CHARTERHIRE AND UPFRONT CHARTERHIRE**

- 36.1 In consideration of the Owners agreeing to charter the Vessel to the Charterers under this Charter at the request of the Charterers, the Charterers hereby irrevocably and unconditionally agree to pay to the Owners the Charterhire, the Upfront Charterhire and if applicable, the Expiry Purchase Option Price or the Ballast Bonus, in accordance with the terms of this Charter.
- 36.2 The Charterers shall pay to the Owners on the Delivery Date, the Upfront Charterhire.
- 36.3 The Charterers shall have the option (which may be exercisable by notifying the Owners in writing at least five (5) Business Days (or such shorter period acceptable to the Owners) prior to the date the Payment Notice is issued by the Charterers (in their capacity as sellers) under the MOA of their intention to so exercise the same) of setting off on the Delivery Date, their obligation to pay the Upfront Charterhire to the Owners against the Owners' obligation to pay to the Charterers such portion of the Purchase Price in an amount equal to the Upfront Charterhire, payable by the Owners (in their capacity as buyers) to the Charterers (in their capacity as sellers) under the MOA. If such option is exercised by the Charterers in accordance with this Clause, the Charterers shall be deemed to have paid the Upfront Charterhire to the Owners on the Delivery Date by virtue of the Owners setting off an amount equal to the Upfront Charterhire from the Purchase Price payable by the Owners under the MOA against the Charterers' obligation to pay the Upfront Charterhire under this Charter.
- 36.4 The Upfront Charterhire shall not be refundable to the Charterers and shall not bear any interest.
- 36.5 Subject to the terms of this Clause 36 (*Charterhire and Upfront Charterhire*) the Charterers shall pay to the Owners, the Charterhire monthly in advance in 120 consecutive instalments, provided that:
- (a) the first instalment of the Charterhire shall be payable on the Delivery Date;
- (b) the Charterers shall have the option (which may be exercisable by notifying the Owners in writing at least five (5) Business Days (or such shorter period acceptable to the Owners) prior to the date the Payment Notice is issued by the Charterers (in their capacity as sellers) under the MOA, of their intention to so exercise the same) of setting off, on the Delivery Date, their obligation to pay such first instalment of Charterhire against the Owners' obligation to pay

such portion of the Purchase Price in an amount equal to that first instalment of Charterhire, payable by the Owners (in their capacity as buyers) to the Charterers (in their capacity as sellers) under the MOA and if such option is exercised by the Charterers, the Charterers shall be deemed to have paid the first instalment of Charterhire to the Owners on the Delivery Date by virtue of the Owners setting off an amount equal to the first instalment of Charterhire from the Purchase Price payable by the Owners under the MOA against the Charterers' obligation to pay such first instalment of Charterhire under this Charter;

- (c) the second instalment of Charterhire shall be payable on the date falling on the 15th day of next calendar month falling immediately after the calendar month in which the Delivery Date occurs;
  - (d) each subsequent instalment of Charterhire shall be payable on the 15th day of the calendar month falling immediately after the previous Payment Date; and
  - (e) the final instalment of the Charterhire shall be payable on the 15th day of the 119th calendar month falling after the Delivery Date.
- 36.6 The Vessel shall not at any time be deemed off-hire and the Charterers' obligation to pay all Charterhire, the Upfront Charterhire and other amounts payable under the Leasing Documents shall be absolute and unconditional under any and all circumstances and shall not be affected by any circumstances of any nature whatsoever including but not limited to:
- (a) any set-off (other than any set-off referred to in Clause 36.3 or Clause 36.5(b)), counterclaim, recoupment, defence, claim or other right which the Charterers may at any time have against the Owners or any other person for any reason whatsoever including, without limitation, any act, omission or breach on the part of the Owners under this Charter or any other agreement at any time existing between the Owners and the Charterers;
  - (b) any change, extension, indulgence or other act or omission in respect of any indebtedness or obligation of the Charterers, or any sale, exchange, release or surrender of, or other dealing in, any security for any such indebtedness or obligation;
  - (c) any title defect or encumbrance or any dispossession of the Vessel by title paramount or otherwise;
  - (d) any defect in the seaworthiness, condition, value, design, merchantability, operation or fitness for use of the Vessel or the ineligibility of the Vessel for any particular trade;
  - (e) the Total Loss or any damage to or forfeiture or court marshal or other sale of the Vessel;
  - (f) any libel, attachment, levy, detention, sequestration or taking into custody of the Vessel or any restriction or prevention of or interference with or interruption or cessation in, the use or possession thereof by the Charterers;
  - (g) any insolvency, bankruptcy, reorganization, arrangement, readjustment, dissolution, striking-off, liquidation or similar proceedings by or against the Charterers;
  - (h) any invalidity, unenforceability, lack of due authorization or other defects, or any failure or delay in performing or complying with any of the terms and provisions of this Charter or the other Leasing Documents by any party to this Charter or any other person;

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- (i) any enforcement or attempted enforcement by the Owners of their rights under this Charter or any of the Leasing Documents executed or to be executed pursuant to this Charter; or
  - (j) any loss of use of the Vessel due to deficiency or default or strike of officers or crew, fire, breakdown, damage, accident, defective cargo or any other cause which would or might but for this provision have the effect of terminating or in any way affecting any obligation of the Charterers under this Charter.
- 36.7 Time of payment of the Charterhire, the Upfront Charterhire and other payments by the Charterers shall be of the essence of this Charter and the other Leasing Documents.
- 36.8 All payments of the Charterhire, the Upfront Charterhire and any other amounts payable under the Leasing Documents shall be made in Dollars and shall be received by the Owners in same day available funds and by not later than 4.00p.m. (Shanghai time) on the due date thereof.
- 36.9 All Charterhire and any moneys payable hereunder shall be payable by the Charterers to the Owners to such account as the Owners may notify the Charterers in writing.
- 36.10 Payment of the Charterhire, the Upfront Charterhire and any other amounts payable to the Owners under the Leasing Documents shall be at the Charterers' risk until receipt by the Owners.
- 36.11 All stamp duty, value added tax, withholding or other taxes (excluding taxes levied on the overall income of the Owners) and import and export duties and all other similar types of charges which may be levied or assessed on or in connection with:
- (a) the operation of this Charter in respect of the hire and all other payments to be made pursuant to this Charter and the remittance thereof to the Owners; and
  - (b) the import, export, purchase, delivery and re-delivery of the Vessel, shall be borne by the Charterers. The Charterers shall pay, if applicable, value added tax and other similar tax levied on any Charterhire, the Upfront Charterhire and any other payments payable under this Charter by addition to, and at the time of payment of, such amounts.
- 36.12 If the Charterers fail to make any payment due under this Charter on the due date, they shall pay interest on such late payment at the default rate of two per cent. (2%) plus the Interest Rate per annum from the date on which such payment became due until the date of payment thereof.
- 36.13 All default interest and any other payments under this Charter 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.
- 36.14 Any payment which is due to be made on a day which is not a Business Day, shall be made on the preceding Business Day.

**Clause 37 – POSSESSION OF VESSEL**

- 37.1 The Charterers shall not, without the prior written consent of the Owners, assign, mortgage or pledge the Vessel or any interest therein, its Earnings, Insurances and Requisition Compensation and/or any of its rights and interests under any Permitted Sub-Charter, and shall not permit the creation of any Security Interest thereon other than the Permitted Security Interests.

- 37.2 The Charterers shall promptly notify each Permitted Sub-Charterer or such other party as the Owners may request, in writing that the Vessel is the property of the Owners and the Charterers shall provide the Owners with a copy of such written acknowledgement in such form and substance satisfactory to the Owners evidencing that such party has received such written notification.
- 37.3 If the Vessel is arrested, seized, impounded, forfeited, detained or taken out of their possession or control (whether or not pursuant to any distress, execution or other legal process), the Charterers shall procure the immediate release of the Vessel (whether by providing bail or procuring the provision of security or otherwise do such lawful things as the circumstances may require) and shall immediately notify the Owners of such event and shall indemnify the Owners against all documented losses, costs or charges incurred by the Owners by reason thereof in re-taking possession or otherwise in re-acquiring the Vessel. Without prejudice to the generality of the foregoing, the Charterers agree to indemnify the Owners against all consequences or liabilities arising from the master, officers or agents signing bills of lading or other documents.
- 37.4 The Charterers shall pay and discharge or cause that any sub-charterer of the Vessel shall promptly pay and discharge all obligations and liabilities whatsoever which have given or may give rise to liens on or claims enforceable against the Vessel and take all steps to prevent an arrest (threatened or otherwise) of the Vessel.

#### **Clause 38 – INSURANCE**

- 38.1 The Charterers shall procure that insurances are effected in form and substance satisfactory to the Owners and their financiers (if any):
- (a) in Dollars;
  - (b) in the case of fire and usual hull and machinery, marine risks and war risks (including blocking and trapping), on an agreed value basis in an amount no less than the higher from time to time of (i) 120% of the then Outstanding Principal Balance and (ii) the prevailing Market Value;
  - (c) in the case of oil pollution liability risks for the Vessel, for an aggregate amount equal to the highest level of cover from time to time available under protection and indemnity club entry and in the international marine insurance market and for an amount of not less than US\$1,000,000,000;
  - (d) in relation to protection and indemnity risks in respect of the full tonnage of the Vessel;
  - (e) through approved brokers and with first class international insurers and/or underwriters acceptable to the Owners (acting reasonably) and their financiers (if any) (including having a Standard & Poor's rating of BBB+ or above, a Moody's rating of A or above or an AM Best rating of A- or above) or, in the case of war risks and protection and indemnity risks, in a war risks and protection and indemnity risks association acceptable to the Owners (acting reasonably) and their financiers (if any) (including being a member of the International Group of Protection and Indemnity Clubs);



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- (f) on no less favourable terms which the Charterers may be under an obligation (if any) to maintain under the terms of any Permitted Sub-Charter; and
- (g) otherwise on such terms as may be acceptable to the Owners and their financiers (if any).
- 38.2 In addition to the terms set out in Clause 13(a), the Charterers shall procure that the obligatory insurances shall:
- (a) subject always to paragraph (b), name the Charterers, the Approved Managers and the Owners (if so required by the Owners) as the only named assureds unless the interest of every other named assured or co-assured is limited:
- (i) in respect of any obligatory insurances for hull and machinery and war risks;
- (A) to any provable out-of-pocket expenses that they have incurred and which form part of any recoverable claim on underwriters; and
- (B) to any third party liability claims where cover for such claims is provided by the policy (and then only in respect of discharge of any claims made against them); and
- (ii) in respect of any obligatory insurances for protection and indemnity risks, to any recoveries they are entitled to make by way of reimbursement following discharge of any third party liability claims made specifically against them,
- and every other named assured or co-assured has undertaken in writing to the Owners or their financiers in such form as they may require, that any deductible shall be apportioned between the Charterers and every other named assured or co-assured in proportion to the gross claims made by or paid to each of them and that they shall do all things necessary and provide all documents, evidence and information to enable the Owners and their financiers (if any) in accordance with the terms of the loss payable clause, to collect or recover any moneys which at any time become payable in respect of the obligatory insurances;
- (b) whenever the Owners or a financier of the Owners requires:
- (i) in respect of fire and other usual marine risks and war risks, name (or be amended to name) the same as additional named assured for their rights and interests, warranted no operational interest and with full waiver of rights of subrogation against such financiers, but without such financiers thereby being liable to pay (but having the right to pay) premiums, calls or other assessments in respect of such insurance;
- (ii) in relation to protection and indemnity risks, name (or be amended to name) the same as additional insured or co-assured for their rights and interests to the extent permissible under the relevant protection and indemnity club rules; and
- (iii) name the Owners' financiers (as applicable) and the Owners (as applicable) as the first ranking loss payee and the second ranking loss payee respectively (and in the absence of any financiers, the Owners as first ranking loss payee) in accordance with the terms of the relevant loss payable clauses approved by the Owners' financiers and the Owners (such approval not to be unreasonably withheld) with such directions for payment in accordance with the terms of such relevant loss payable clause, as the Owners and their financiers (if any) may specify;

- (c) provide that all payments by or on behalf of the insurers under the obligatory insurances to the Owners and/or their financiers (as applicable) 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 Owners or their financiers (if any);
- (e) provide that the Owners and/or their financiers (if any) may make proof of loss if the Charterers fail to do so; and
- (f) provide that if any obligatory insurance is cancelled, or if any substantial change is made in the coverage which adversely affects the interest of the Owners, or if any obligatory insurance is allowed to lapse for non-payment of premium, such cancellation, change or lapse shall not be effective with respect to the Owners and/or their financiers (if any) for fourteen (14) days (or seven (7) days in the case of war risks), or such other period as may be agreed by the Owners and/or their financiers (if any), after receipt by the Owners and/or their financiers (if any) of prior written notice from the insurers of such cancellation, change or lapse.

38.3 The Charterers shall:

- (a) at least fourteen (14) days prior to Delivery (or such shorter period agreed by the parties), notify in writing the Owners (copied to their financiers (if any)) of the terms and conditions of all Insurances;
- (b) at least fourteen (14) days before the expiry of any obligatory insurance, notify the Owners (copied to their financiers (if any)) of the brokers (or other insurers) and any protection and indemnity or war risks association through or with whom the Charterers propose to renew that obligatory insurance and of the proposed terms of renewal and obtain the Owners' approval (such approval not to be unreasonably withheld and in any event, having regard to the requirements on insurance cover referred to under this Charter);
- (c) at least seven (7) days before the expiry of any obligatory insurance, procure that such obligatory insurance is renewed or to be renewed on its expiry date in accordance with the provisions of this Charter;
- (d) 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 or the effective date of the new insurance and protection and indemnity cover notify the Owners (copied to their financiers (if any)) in writing of the terms and conditions of the renewal; and
- (e) as soon as practicable after the expiry of any obligatory insurance, deliver to the Owners a letter of undertaking as required by this Charter in respect of such Insurances for the Vessel as renewed pursuant to this Clause 38.3 together with copies of the relevant policies or cover notes or entry certificates duly endorsed with the interest of the Owners and/or their financiers (if any).

38.4 The Charterers shall ensure that all insurance companies and/or underwriters, and/or (if any) insurance brokers provide the Owners with all copies of policies, cover notes and certificates of entry (or originals where so requested by the Owners following the occurrence of a Termination Event or Potential Termination Event) relating to the obligatory insurances which they are to effect or renew and of a letter or letters or undertaking in a form required by the Owners and/or their financiers (if any) (which the Charterers shall procure the relevant

insurance companies, underwriters and/or insurance brokers to provide upon renewal or receipt of the insurance companies, underwriters and/or insurance brokers or an executed notice of assignment), and such letter or letters of undertaking shall include undertakings by the insurance companies and/or underwriters 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 this Charter and the Financial Instruments;
  - (b) they will hold the benefit of such policies and such insurances, to the order of the Owners and/or their financiers (if any) and/or such other party in accordance with the said loss payable clause;
  - (c) they will advise the Owners and their financiers (if any) promptly of any material change to the terms of the obligatory insurances of which they are aware;
  - (d) (i) they will indicate in the letters of undertaking that they will immediately notify the Owners and their financiers (if any) when any cancellation, charge or lapse of the relevant obligatory insurance occurs and (ii) following a written application from the Owners and/or their financiers (if any) not later than one (1) month before the expiry of the obligatory insurances they will notify the Owners and their financiers (if any) not less than fourteen (14) days before the expiry of the obligatory insurances, in the event of their not having received notice of renewal instructions from the Charterers and, in the event of their receiving instructions to renew, they will promptly notify the Owners and their financiers (if any) of the terms of the instructions; and
  - (e) if any of the obligatory insurances form part of any fleet cover, the Charterers shall procure that the insurance broker(s), or leading insurer, as the case may be, undertakes to the Owners and their financiers (if any) that such insurance broker or insurer will not set off against any sum recoverable in respect of a claim relating to the Vessel under such obligatory insurances any premiums due in respect of any other vessel under any fleet cover of which the Vessel forms a part or any premium due for other insurances, they waive any lien on the policies, or any sums received under them, which they might have in respect of such premiums, 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 Vessel forthwith upon being so requested by the Owners and/or their financiers (if any) and where practicable.
- 38.5 The Charterers shall ensure that any protection and indemnity and/or war risks associations in which the Vessel is entered provides the Owners and their financiers (if any) with:
- (a) a copy of the certificate of entry for the Vessel as soon as such certificate of entry is issued;
  - (b) a letter or letters of undertaking in such form as may be required by the Owners and their financiers (if any) or in such association's standard form; and
  - (c) a 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.
- 38.6 The Charterers shall ensure that all policies relating to obligatory insurances are deposited with the approved brokers through which the insurances are effected or renewed.

- 38.7 The Charterers shall procure that all premiums or other sums payable in respect of the obligatory insurances are punctually paid and produce all relevant receipts when so required by the Owners.
- 38.8 The Charterers 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.
- 38.9 The Charterers shall neither do nor omit to do (nor permit to be done or not to be done) any act or thing which would or might render any obligatory insurance invalid, void, voidable or unenforceable or render any sum payable under an obligatory insurance repayable in whole or in part; and, in particular:
- (a) the Charterers shall procure that all necessary action is taken and all requirements are complied with which may from time to time be applicable to the obligatory insurances, and (without limiting the obligations contained in this Clause 38 (Insurance)) ensure that the obligatory insurances are not made subject to any exclusions or qualifications to which the Owners have not given their prior approval (unless such exclusions or qualifications are made in accordance with the rules of a protection and indemnity association which is a member of the International Group of protection and indemnity associations) (such approval not to be unreasonably withheld);
  - (b) the Charterers shall not make or permit any changes relating to the classification or classification society or manager or operator of the Vessel unless such changes have first been approved by the underwriters of the obligatory insurances or the Owners (such approval not to be unreasonably withheld, and subject always to the Owners receiving credit approval on such changes);
  - (c) the Charterers shall procure that all quarterly or other voyage declarations which may be required by the protection and indemnity risks association in which the Vessel 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) are made and the Charterers shall promptly provide the Owners with copies of such declarations and a copy of the certificate of financial responsibility; and
  - (d) the Charterers shall not employ the Vessel, nor allow it to be employed, otherwise than in conformity with the terms and conditions of the obligatory insurances, without first obtaining the consent of the insurers and complying with any requirements (as to extra premium or otherwise) which the insurers specify.
- 38.10 The Charterers shall not make or agree to any material alteration to the terms of any obligatory insurance nor waive any right relating to any obligatory insurance which would or would potentially have an adverse effect on the rights of the Owners under the Leasing Documents, in each case without the prior written consent (such consent not to be unreasonably withheld) of the Owners and their financiers (if any), and for the purposes of this Clause 38.10, “**material**” alterations shall include, without limitation, any change to the identity of the beneficiaries under such insurances or scope of cover, reduction to the insured amount, limitation on the scope of the cover and any other amendment which would cause a breach under the terms of this Charter, any Permitted Sub-charter or any other Leasing Document.
- 38.11 The Charterers shall not settle, compromise or abandon any claim under any obligatory insurance for a Total Loss or for a Major Casualty, and shall do all things necessary and provide all documents, evidence and information to enable the Owners to collect or recover any moneys which at any time become payable in respect of the obligatory insurances.

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- 38.12 The Charterers shall provide the Owners, promptly upon the Owners' written request, copies of:
- (a) all communications between the Charterers and:
    - (i) the approved brokers; and
    - (ii) the approved protection and indemnity and/or war risks associations; and
    - (iii) the approved international insurers and/or underwriters, which relate directly or indirectly to:
      - (A) the Charterers' obligations relating to the obligatory insurances including, without limitation, all requisite declarations and payments of additional premiums or calls; and
      - (B) any credit arrangements made between the Charterers and any of the persons referred to in paragraphs (i) or (ii) relating wholly or partly to the effecting or maintenance of the obligatory insurances; and
  - (b) any communication with all parties involved in case of a claim under any of the Vessel's insurances.
- 38.13 The Charterers shall promptly provide the Owners (or any persons which they may designate) with any information which the Owners or their financiers (if any) may request 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 13(a) or this Clause 38 (Insurance) or dealing with or considering any matters relating to any such insurances.
- 38.14 If one or more of the obligatory insurances are not effected and maintained with first class international insurers or are effected with an insurance or captive subsidiary of the Owners or the Charterers, then the Charterers shall procure, at their own expense, that the relevant insurers maintain in full force and effect facultative reinsurances with reinsurers and through brokers, in each case, of recognised standing and acceptable in all respects to the Owners and their financiers (if any). Any reinsurance policy shall include, if and when permitted by law, a cut-through clause in a form acceptable to the Owners. The Charterers shall procure that underwriters of the primary insurances assign each reinsurance to the relevant financiers in full, if required.
- 38.15 The Charterers shall upon demand fully indemnify the Owners in respect of all premiums and other expenses which are incurred by (i) the Owners (in their absolute discretion) in connection with or with a view to effecting, maintaining or renewing any lessor / innocent owners' interest insurance, lessor / innocent owners' additional perils (pollution) insurance, mortgagee's interest insurance and a mortgagee's additional perils (pollution) insurance that may be taken out in respect of the Vessel and/or (ii) the financier(s) of the Owners (if any) (in their absolute

discretion) in connection with or with a view to effecting, maintaining or renewing a mortgagee's interest insurance and a mortgagee's additional perils (pollution) insurance that may be taken out in respect of the Vessel, in each case, on such terms, through such insurers and generally in such manner as the Owners may from time to time consider appropriate, and the amount of the cover under the insurances referred to this Clause 38.15 shall be equal to at least equal to the higher of (i) 120% of the then prevailing Outstanding Principal Balance and (ii) the prevailing Market Value.

- 38.16 The Charterers shall be solely responsible for and indemnify the Owners in respect of all loss or damage to the Vessel (insofar as the Owners shall not be reimbursed by the proceeds of any insurance in respect thereof) however caused occurring at any time or times before physical possession thereof is retaken by the Owners, reasonable wear and tear to the Vessel only excepted.
- 38.17 The Charterers shall:
- (a) reimburse the Owners any expenses incurred by the Owners in obtaining the reports described in Clause 38.13; and
  - (b) procure that there is delivered to the brokers, insurers, underwriters, associations described in Clause 38.1(e) such information in relation to the Insurances as they may require.
- 38.18 The Charterers shall keep the Vessel insured at their expense against such other risks which the Owners consider reasonable for a prudent shipowner or operator to insure against at the relevant time (as notified by the Owners) and which are, at that time, generally insured against by owners or operators of vessels similar to the Vessel.
- 38.19 The Charterers shall, in the event that an Approved Manager makes a claim under any obligatory insurances taken out in connection with this Clause 38 (*Insurance*) but is unable to or otherwise fails to pay in full any deductible in connection with such claim (in an amount as apportioned between the Charterers and every other assured in proportion to the gross claims made by or paid to each of them), pay such shortfall in deductible payable on behalf of that Approved Manager.

### **Clause 39 – WARRANTIES RELATING TO VESSEL**

- 39.1 It is expressly agreed and acknowledged that the Owners are not the manufacturer or original supplier of the Vessel which has been purchased by the Owners from the Charterers (in their capacity as sellers) pursuant to the MOA for the purpose of then chartering the Vessel to the Charterers hereunder and that no condition, term, warranty or representation of any kind is or has been given to the Charterers by or on behalf of the Owners in respect of the Vessel (or any part thereof).
- 39.2 All conditions, terms or warranties express or implied by the law relating to the specifications, quality, description, merchantability or fitness for any purpose of the Vessel (or any part thereof) or otherwise are hereby expressly excluded.
- 39.3 The Charterers agree and acknowledge that the Owners shall not be liable for any claim, loss, damage, expense or other liability of any kind or nature caused directly or indirectly by the Vessel or by any inadequacy thereof or the use or performance thereof or any repairs thereto or servicing thereof and the Charterers shall not by reason thereof be released from any liability to pay any Charterhire, the Upfront Charterhire or other payment due under this Charter or the other Leasing Documents.

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**Clause 40 – TERMINATION, REDELIVERY AND TOTAL LOSS**

- 40.1 If the Termination Purchase Price becomes payable in accordance with Clause 44.2, the same shall be payable in consideration of:
- (a) prior to Delivery, the termination of the sale from the Charterers (in their capacity as sellers) and the purchase by the Owners (in their capacity as buyers) of the Vessel pursuant to the MOA;
  - (b) on or after Delivery (save in the event of a Total Loss or where ownership of the Vessel has already been or agreed to be transferred pursuant to Clause 40.3), the purchase and transfer of the legal and beneficial title of the Vessel pursuant to Clause 40.4,
- and it is hereby agreed by the parties hereto that payment of the Termination Purchase Price is proportionate as to amount, having regard to the legitimate interest of the Owners, in protecting against the Owners' risk of the Charterers failing to perform their obligations under this Charter.
- 40.2 Upon the full and irrevocable receipt by the Owners of the Termination Purchase Price pursuant to Clause 40.1 in full on the Termination Date, this Charter shall terminate and in the case where such termination occurs on or after Delivery, the Owners shall (save in the event of a Total Loss or where ownership of the Vessel has already been or agreed to be transferred pursuant to Clause 40.3) transfer the legal and beneficial title in the Vessel to the Charterers on the Termination Date pursuant to Clause 40.4.
- 40.3
- (a) If the Charterers fail to make full payment of the Termination Purchase Price on the Termination Date:
    - (i) Clauses 36.12 and 36.13 shall apply; and
    - (ii) in the case where the Termination Date occurs on or after Delivery, the Charterers' right to possess and operate the Vessel shall cease on a date that the Owners advise the Charterers of and (without in any way affecting the Charterers' obligation to pay the Termination Purchase Price and Charterhire hereunder and any other moneys under this Charter) the Charterers shall, upon the Owners' request (at Owners' sole discretion), be obliged to immediately (and at the Charterers' own cost) redeliver the Vessel to the Owners on such date as the Owners may require at such ready and safe port as the Owners may require.
  - (b) Without prejudice to any rights which the Owners may have in the capacity as owner of the Vessel, the Owners shall concurrently with their right to require redelivery of the Vessel pursuant to Clause 40.3(a)(ii) or Clause 44.2(b), be entitled (but not obliged) to sell the Vessel on terms they deem fit and/or to otherwise operate the Vessel on such terms as they may require and may create whatsoever interests thereon, including without limitation, charterparties or any other form of employment contracts and shall apply all such proceeds and earnings (after deducting all fees, taxes, disbursements and any other costs and expenses incurred by the Owners) towards satisfying the Termination Purchase Price.

- (c) Following any sale of the Vessel by the Owners to a third party following the Charterers' failure to pay the Termination Purchase Price, the Net Sale Proceeds shall be applied towards satisfying amounts owing under the Charter and the Other Charters in accordance with the provisions of the Trust Deed and any excess shall thereafter be paid to the Charterers but if there is a shortfall, the Charterers shall be obliged to pay such shortfall within ten (10) days of the Owners' demand. The Owners and the Charterers hereby agree that unless the Owners have not exercised reasonable care to obtain the best price reasonably obtainable for the Vessel at the time it is sold in the relevant jurisdiction, the Charterers shall not have any claim or recourse against the Owners in relation to their power of sale.
- 40.4 Immediately upon receipt by the Owners of irrevocable payment of the Termination Purchase Price in full pursuant to the terms of this Charter, the Owners shall (save in the event of Total Loss or where ownership has already been or agreed to be transferred pursuant to Clause 40.3) transfer the legal and beneficial ownership of the Vessel on an "as is where is" basis (and, for the avoidance of doubt but without prejudice to Clause 50.1(b)), and otherwise in accordance with the terms and conditions set out at Clause 50.1(a) and (b)), to the Charterers (or their nominee) and shall (at the cost of the Charterers) execute a bill of sale and a protocol of delivery and acceptance evidencing the same and the Vessel shall be deemed to have been delivered to the Charterers (or their nominee) on the date and time set out in such protocol of delivery and acceptance (and to the extent required for such purposes, the Vessel shall be deemed first to have been redelivered to the Owners).
- 40.5 The Charterers hereby undertake to indemnify the Owners against any claims incurred in relation to the Vessel as a result of the Charterers' action or performance prior to such transfer of ownership. Any taxes, notarial, consular and other costs, charges and expenses connected with closing of the Owners' register shall be for the Charterers' account.
- 40.6 If the Charterers are required to redeliver the Vessel to the Owners pursuant to Clause 40.3(a)(ii) or following a direction of the Owners under Clause 44.2(b) or the Vessel is not purchased by the Charterers at the end of the Charter Period pursuant to Clause 49 (*Expiry Purchase Option*), the Charterers shall ensure that the Vessel shall, at the time of redelivery to the Owners (at the Charterers' cost and expense including any dry-docking expenses):
- (a) be in compliance with its Insurances;
  - (b) be in an equivalent classification as she was as at the Delivery Date without any recommendation or condition, and with valid, un-extended certificates for not less than six (6) months and free of average damage affecting the Vessel's classification and in the same or as good structure, state, condition and classification as that in which she was deemed on the Delivery Date, fair wear and tear not affecting the Vessel's classification excepted;
  - (c) have passed her 5-year and, if applicable, 10-year special surveys, and any subsequent intermediate surveys without any condition or outstanding issue and to the satisfaction of the Classification Society and with all the Vessel's classification, trading, national and international certificates that the Vessel had when she was delivered under this Charter and the log book and whatsoever necessary relating to the operation of the Vessel, valid and un-extended without conditions or recommendation falling due;
  - (d) have her survey cycles up to date and trading and classification certificate valid for at least six (6) months;



- (e) be redelivered to the Owners together with all spare parts and spare equipment as were on board at the time of Delivery (but only to the extent they have not already been used in the operation of the Vessel), and any such spare parts and spare equipment on board at the time of re-delivery shall be taken over by the Owners free of charge;
  - (f) be free of any Security Interest (save for the Security Interests granted pursuant to the Financial Instruments) and free of any cargo;
  - (g) be redelivered to the Owners together with all material information generated during the Charter Period in respect of the use, possession, operation, navigation, utilization of lubricating oil and the physical condition of the Vessel, whether or not such information is contained in the Charterers' equipment, computer or property;
  - (h) be free of any charter (unless the Owners wish to retain the continuance of any then existing charter);
  - (i) be free of officers and crew (unless otherwise agreed by the Owners); and
  - (j) shall have had her underwater parts treated with ample anti-fouling to last for the ensuing period up to the next scheduled dry docking of the Vessel.
- 40.7 The Owners shall, at the time of the redelivery of the Vessel, take over all bunkers, lubricating oil, unbroached provisions, paints, ropes and other consumable stores in the Vessel at no cost to the Owners.
- 40.8 At the expiration of the Charter Period the Vessel shall be redelivered by the Charterers to the Owners at a safe and ice free port in China or Europe (or other port or place (including without limitation, at sea) the parties may agree in writing). The Charterers shall give the Owners not less than thirty (30) running days' preliminary notice of expected date and port of redelivery and not less than fourteen (14) running days' definite notice of expected date and port of redelivery.
- 40.9 If the Vessel, for any reason, becomes a Total Loss after Delivery, the Charterers shall pay the Termination Purchase Price to the Owners on the earlier of:
- (a) the date falling one hundred and twenty (120) days after such Total Loss has occurred; and
  - (b) the date of receipt by the Owners and/or their financiers (if any), in accordance with the terms of the relevant loss payable clause, of the proceeds of insurance relating to such Total Loss,

provided that it is hereby agreed that any insurance proceeds in respect of the Vessel received by the Owners and/or their financiers (if any) shall be applied in or towards discharging the Charterers' obligation to pay the Termination Purchase Price and any interest accrued thereon (and such application shall be deemed satisfaction of the Charterers' obligation to pay the Termination Purchase Price to the extent so satisfied) and in the event that the insurance proceeds received from the insurers exceed the Termination Purchase Price due (and any interest accrued thereon), the excess shall be firstly paid towards satisfying any amounts outstanding and owing by the Charterers or any of their Affiliates under any Other Charter and thereafter paid to the Charterers.

For the avoidance of doubt, in the event that the Vessel becomes a Total Loss:

- (i) payment of the Charterhire and all other sums payable under the Leasing Documents during such period shall continue to be made by the Charterers in accordance with the terms thereof unless and until the Owners receive in full the Termination Purchase Price;
- (ii) should insurance proceeds be received by the Owners from the insurers, the Charterers' obligations to pay the Termination Purchase Price shall be accordingly reduced by an amount corresponding to such insurance proceeds but in the event that such insurance proceeds are less than the amount of the Termination Purchase Price together with any interest accrued thereon, the Charterers remain obliged to pay to the Owners the balance so that the full amount of the Termination Purchase Price due together with any interest accrued thereon is received by the Owners; and
- (iii) the obligation of the Charterers to pay the Termination Purchase Price shall remain unaffected and exist regardless of whether any of the insurers have agreed or refused to meet or have disputed in good faith, the claim for Total Loss.

40.10 The Owners shall have no obligation to supply to the Charterers with a replacement vessel following the occurrence of a Total Loss.

#### **Clause 41 – FEES AND EXPENSES**

- 41.1 In consideration of the Owners entering into this Charter, the Charterers shall pay, (subject to Clause **Error! Reference source not found.**) without set-off, deduction or counterclaim, to the Owners or their nominee a non-refundable upfront fee equal to 0.8% of the Net Purchase Price (the "**Upfront Fee**") on or before the date falling 5 Business Days from the date of this Charter.
- 41.2 Without prejudice to any other rights of the Owners under this Charter, the Charterers shall promptly pay to the Owners on written demand on a full indemnity basis:
- (a) all costs, charges and expenses incurred by the Owners in collecting any Charterhire, the Upfront Charterhire or other payments not paid on the due date under this Charter, in remedying any other failure of the Charterers to observe the terms and conditions of this Charter and in enforcing the Owners' rights under any Leasing Document; and
  - (b) all costs and expenses (including, but not limited to, legal costs) reasonably incurred by the Owners in the negotiation and execution of all documentation in relation to this Charter and the other Leasing Documents including, but not limited to, all costs incurred by the Owners and all legal costs, expenses and other disbursements incurred by the Owners' legal counsels in connection with the same.

#### **Clause 42 – NO WAIVER OF RIGHTS**

- 42.1 No neglect, delay, act, omission or indulgence on the part of either party in enforcing the terms and conditions of this Charter shall prejudice the strict rights of that party or be construed as a waiver thereof nor shall any single or partial exercise of any right of either party preclude any other or further exercise thereof.
- 42.2 No right or remedy conferred upon either party by this Charter shall be exclusive of any other right or remedy provided for herein or by law and all such rights and remedies shall be cumulative.

## Clause 43 – NOTICES

43.1 Any notice, certificate, demand or other communication to be served, given made or sent under or in relation to this Charter shall be in English and in writing and (without prejudice to any other valid method or giving making or sending the same) shall be deemed sufficiently given or made or sent if sent by registered post, fax or by email to the following respective addresses:

(a) to the Owners: **c/o BANK OF COMMUNICATIONS FINANCIAL LEASING CO., LTD.**

Room 03-04,  
27/F, 333 Lujiazui Ring Road, Pudong New Area,  
Shanghai 200120,  
The People's Republic of China

Attention: FAN Linna / WANG Changzhen  
Email: [fan.ln@bocommleasing.com](mailto:fan.ln@bocommleasing.com) /  
[wang.changzhen@bocommleasing.com](mailto:wang.changzhen@bocommleasing.com)

(b) to the Charterers: **c/o NAVIOS CONTAINERS MANAGEMENT INC.**

85 Akti Miaouli, 18535, Piraeus, Greece

Attention: Vasiliki Papaefthymiou  
Email: [vpapaefthymiou@navios.com](mailto:vpapaefthymiou@navios.com) /  
[legal\\_corp@navios.com](mailto:legal_corp@navios.com)  
Fax: +30 210 41 72 070

or, if a party hereto changes its address or fax number, to such other address or fax number as that party may notify to the other.

## Clause 44 – TERMINATION EVENTS

44.1 The Owners and the Charterers hereby agree that any of the following events shall constitute a Termination Event:

(a) any of the Relevant Persons (other than the Builder) fail to make any payment:

- (i) on its due date, in respect of any Charterhire; or
- (ii) within five (5) days of its due date, in respect of any other amount payable,

in each case, under this Charter or any other Leasing Document to which they are a party; or

(b) the Charterers breach or omit to observe or perform any of their undertakings in Clauses 46.1 (f), (m), (n), (n), (o), (p) or (u) or the Guarantor breaches or omits to observe or perform its financial covenants contained in clause 12.21 (*financial covenants*) of the Guarantee; or

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- (c) the Charterers fail to obtain and/or maintain the Insurances required under Clause 38 (*Insurance*) in accordance with the provisions thereof or any insurer in respect of such Insurances cancels the Insurances or disclaims liability with respect thereto; or
- (d) any of the Relevant Persons (other than the Builder) commits any other breach of, or omits to observe or perform, any of their other obligations or undertakings in this Charter or any Leasing Document (other than a breach referred to in paragraph (a) or (b) above) unless such breach or omission is, in the reasonable opinion of the Owners, remediable and such Relevant Person remedies such breach or omission to the satisfaction of the Owners within fourteen (14) Business Days (or in the case of Clause 46.1(l), ten (10) Business Days) of the earlier of (i) notice thereof from the Owner or (ii) upon such Relevant Person becoming aware of the same; or
- (e) any representation or warranty made by any Relevant Person (other than the Builder) in or pursuant to any Leasing Document proves to be untrue or misleading in any material way when made; or
- (f) at any time after any representation or warranty in connection with a Non-subsiary Manager or made by a Non-subsiary Manager in or pursuant to any Leasing Document proves to be untrue or misleading in any material way when made and the Charterers fail to comply with the request of the Owners to change or appoint a new manager for the Vessel within the prescribed timeline; or
- (g) any of the following occurs in relation to any Financial Indebtedness of a Relevant Person (other than the Builder):
- (i) any Financial Indebtedness of such Relevant Person is not paid when due or, if so payable, on demand after any applicable grace period has expired; or
  - (ii) any Financial Indebtedness of such Relevant Person becomes due and payable, or capable of being declared due and payable, prior to its stated maturity date as a consequence of any event of default and not as a consequence of the exercise of any voluntary right of prepayment; or
  - (iii) a lease, hire purchase agreement or charter creating any Financial Indebtedness of such Relevant Person is terminated by the lessor or owner as a consequence of any termination event or event of default (howsoever defined); or
  - (iv) 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 such Relevant Person ceases to be available or becomes capable of being terminated or declared due and payable or cash cover is required or becomes capable of being required, as a result of any termination event or event of default (howsoever defined),

provided that no Termination Event will occur under this Clause 44.1(g) in respect of such Relevant Person if:

- (1) the aggregate amount of Financial Indebtedness or commitment for Financial Indebtedness for such Relevant Person falling within paragraphs (i) to (iv) above is less than:
    - (A) in the case of such Relevant Person (other than the Charterers or the Guarantor), US\$1,000,000 (or its equivalent in any other currency) in aggregate;
    - (B) in the case of the Guarantor, less than US\$20,000,000 (or its equivalent in any other currency) in aggregate;and
  - (2) such event has, in the opinion of the Owners, arisen solely and directly from a claim which is frivolous or vexatious and such claim is discharged, stayed or dismissed within fourteen (14) days of commencement; or
- (h) any of the following occurs in relation to a Relevant Person:
- (i) such Relevant Person becomes, in the reasonable opinion of the Owners, unable to pay their debts as they fall due; or
  - (ii) the value of the assets of such Relevant Person (other than the Builder) is less than their liabilities; or
  - (iii) (1) any assets of the Charterers, (2) any assets of the Guarantor exceeding the value of US\$20,000,000 (or its equivalent in any other currency) in aggregate or (3) any assets of any other Relevant Person (other than the Builder) exceeding US\$1,000,000 (or its equivalent in any other currency) in aggregate are subject to any form of execution, attachment, arrest, sequestration or distress which is not discharged within thirty (30) days (or such longer period agreed by the Owners); or
  - (iv) any administrative or other receiver is appointed over all or a substantial part of the assets of such Relevant Person unless as part of a solvent reorganisation which has been approved by the Owners; or
  - (v) such Relevant Person makes any formal declaration of bankruptcy or any formal statement to the effect that they are insolvent or likely to become insolvent, or a winding up or administration order is made in relation to such Relevant Person, or the members, partners or directors of such Relevant Person pass a resolution to the effect that they should be wound up, placed in administration or cease to carry on business; or
  - (vi) a petition is presented or any other step is taken in any Relevant Jurisdiction for the dissolution, winding up or administration, or the appointment of a provisional liquidator, of such Relevant Person unless the petition is being contested in good faith and on substantial grounds and is dismissed or withdrawn within twenty-one (21) days of the presentation of the petition; or
  - (vii) such Relevant Person petitions a court, or presents any proposal for, any form of judicial or non-judicial suspension or deferral of payments, reorganisation of their debt (or certain of their debt) or arrangement with all or a substantial proportion (by number or value) of their creditors or of any class of them or any such suspension or deferral of payments, reorganisation or arrangement is effected by court order, contract or otherwise; or

- (viii) any meeting of the partners, members or directors of such Relevant Person is summoned for the purpose of considering a resolution or proposal or resolving or proposing to authorise or take any action of a type described in paragraphs (iv) to (vii); or
  - (ix) in a country or a territory other than England and Wales, any event occurs or any procedure is commenced which, in the opinion of the Owners, is similar to any of the foregoing referred to in (ii) to (vii) above inclusive; or
  - (x) any expropriation, attachment, sequestration, distress or execution (or any analogous process in any jurisdiction) affects any asset or assets of such Relevant Person; or
- (i) a Relevant Person suspends or ceases (or threatens to suspend or cease) carrying on all or a material part of its business; or
  - (j) any consent, approval, authorisation, license or permit necessary to enable the Builder (in their capacity as seller under the Shipbuilding Contract) to sell or construct the Vessel, the Charterers (in their capacity as buyers under the Shipbuilding Contract) to purchase the Vessel or any Relevant Person to operate or charter the Vessel or otherwise to enable them to comply with any provision of any Leasing Document or to ensure that the obligations of such Relevant Person are legal, valid, binding or enforceable is not granted, expires without being renewed, is revoked or becomes liable to revocation or any condition of such a consent, approval, authorisation, license or permit is not fulfilled; or
  - (k) any event or circumstance occurs which has or is likely to have a Material Adverse Effect; or
  - (l) the Vessel is subject to any form of execution, attachment, arrest, sequestration or distress which is not discharged within thirty (30) days (or such longer period as the Owners may agree); or
  - (m) this Charter or any Leasing Document or any Security Interest created by a Leasing Document is cancelled, terminated, rescinded or suspended or otherwise ceases to remain in full force and effect for any reason or no longer constitutes valid, binding and enforceable obligations of any party to that document for any reason whatsoever; or
  - (n) any Relevant Person (other than the Builder) rescinds or purports to rescind or repudiates or purports to repudiate a Leasing Document; or
  - (o) it is or has become:
    - (i) unlawful or prohibited, whether 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
    - (ii) contrary to, or inconsistent with, any regulation,

for any Relevant Person to maintain or give effect to any of its obligations under the Shipbuilding Contract, this Charter or any of the other Leasing Documents to which it is a party in the manner it is contemplated under the Shipbuilding Contract or such Leasing Document or any of the obligations of such Relevant Person under the Shipbuilding Contract and/or any Leasing Document to which it is a party are not or cease to be legal, valid, binding and enforceable; or

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- (p) the Security Interest constituted by any Security Document is in any way imperilled or in jeopardy; or
- (q) the Vessel is not delivered latest by the Cancelling Date or the Purchase Price (or any part thereof) is not released by the Builder's Bank in accordance with the terms of the Conditional Payment Instructions; or
- (r) there is a merger, amalgamation, demerger, consolidation or corporation reconstruction of a Relevant Person (other than the Builder)(other than where, in the case of the Guarantor, the Guarantor remains the surviving legal entity following the occurrence of such event) or a change of control or legal or beneficial ownership of the Charterers from that set out in Clause 45.1(a) and (b) without the Owners' prior written consent; or
- (s) there is a change in control of the Guarantor from that set out in Clause 45.1(c) without the Owners' prior written consent; or
- (t) save with the prior written consent of the Owners, the Guarantor is de-listed from the New York Stock Exchange or the trading of its units on the New York Stock Exchange is suspended for any reason for a period of exceeding twenty (20) consecutive days; or
- (u) any Termination Event (as defined in any Other Charter)(other than a Termination Event referred to under clause 44.1(q) and/or clause 44.1(v) of such Other Charter) occurs under such Other Charter; or
- (v) on or prior to the Delivery Date, any of the following events occur:
- (i) the Shipbuilding Contract is terminated, cancelled, repudiated or ceases to be legal, valid and/or binding, in full force and in effect in any respect;
  - (ii) any party to the Shipbuilding Contract exercises or purports to exercise any of their rights to cancel, terminate and/or repudiate the Shipbuilding Contract;
  - (iii) any event entitling the Charterers (in their capacity as buyers under the Shipbuilding Contract) to terminate or cancel the Shipbuilding Contract occurs, and is not unconditionally waived by the Charterers (in their capacity as buyers under the Shipbuilding Contract) with the consent of the Owners; or
  - (iv) any of the events referred to in paragraph 1 (*buyer's default*) of article XI (*default of the buyer*) of the Shipbuilding Contract or any other event entitling the Builder (in their capacity as builders under the Shipbuilding Contract) to terminate or cancel the Shipbuilding Contract occurs, and is not unconditionally waived by the Builder.
- 44.2 At any time after the occurrence of a Termination Event which is continuing, the Owners may in their absolute discretion issue a written notice to the Charterers advising the Charterers of the Owners' intention to terminate this Charter on the date specified in such notice (the "**Termination Date**") and requiring the Charterers to pay to the Owners the Termination Purchase Price on the Termination Date, whereupon the Charterers shall be obliged to pay the Termination Purchase Price on such date; and it is hereby agreed that:
- (a) the Charterers shall be obliged to continue to pay Charterhire up to and including the date that the Termination Purchase Price is fully and irrevocably paid to the Owners (which shall be the Termination Date if the Termination Purchase Price is punctually paid in accordance with this

Clause) or, as the case may be, (without prejudice to the Owners' right to continue to request for the payment of the Termination Purchase Price) the date that the Vessel is re-delivered by the Charterers to the Owners under this Clause; and

- (b) if the Charterers fail to pay the Termination Purchase Price on the Termination Date, then sub-paragraphs (a)(i), (a)(ii) and (b) of Clauses 40.3 shall apply,
- and further the Owners (or their agents and representatives) may, to the extent permitted by applicable law and without prejudice to any of the obligations of the Charterers hereunder, take possession of the Vessel and for this purpose, the Owners (or their agents and representatives) may enter any premises belonging to or in the occupation or under the control of the Charterers, the Guarantor or any of its Affiliates, to board the Vessel and cause the Vessel to be redelivered to the Owners by any lawful means.
- 44.3 For the avoidance of doubt, notwithstanding any action taken by the Owners following a Termination Event, the Charterers shall remain liable for the outstanding obligations on their part to be performed under this Charter.
- 44.4 Without limiting the generality of the foregoing or any other rights of the Owners, upon the occurrence of a Termination Event which is continuing, the Owners shall have the sole and exclusive right and power to (i) settle, compromise, compound, adjust or defend any actions, suits or proceedings relating to or pertaining to the Vessel and this Charter, (ii) make proof of loss, appear in and prosecute any action arising from any policy or policies of insurance maintained pursuant to this Charter, and settle, adjust or compromise any claims for loss, damage or destruction under, or take any other action in respect of, any such policy or policies and (iii) change or appoint a new manager for the Vessel other than an Approved Manager and the appointment of that Approved Manager may be terminated immediately without any recourse to the Owners.
- 44.5 Each Termination Event shall be either a breach of condition by the Charterers where it involves a breach of this Charter by the Charterers or shall otherwise be an agreed terminating event, the occurrence and continuation of which gives rise to a right of the Owners to terminate the leasing of the Vessel under this Charter in accordance with this Clause and to exercise their rights under this Charter.

#### **Clause 45 – REPRESENTATIONS AND WARRANTIES**

- 45.1 The Charterers represent and warrant to the Owners as of the date of this Charter and on each day thereafter until the last day of the Charter Period, as follows:
- (a) the Charterers are directly and wholly legally owned by the Shareholder and the Shareholder is indirectly and wholly legally owned by the Guarantor;
- (b) the Charterers are wholly beneficially owned by the Guarantor;
- (c)
- (i) Mrs Angeliki Frangou either directly or indirectly (through entities owned and controlled by her or trusts or foundations of which she is the beneficiary) and/or Navios Maritime Partners L.P. and/or Navios Maritime Holdings Inc. and/or its Affiliates is the ultimate beneficial owner of, or has ultimate control of the voting rights attaching to, at least 5 per cent. of all the issued units in the Guarantor;



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- (ii) Mrs Angeliki Frangou, either directly or indirectly (through entities owned and controlled by her or trusts or foundations of which she is the beneficiary), is the ultimate beneficial owner of Olympos Maritime Ltd; and
  - (iii) Olympos Maritime Ltd. is the only general partner of the Guarantor;
- (d) each of the Relevant Persons is duly incorporated or formed, validly existing and (where relevant) good standing under the laws of its jurisdiction of its incorporation or formation;
- (e) each of the Relevant Persons has the corporate or limited partnership capacity, and has taken all corporate or limited partnership actions, and each of the Relevant Persons has obtained all consents, approvals, authorisations, licenses or permits necessary, in each case for it:
- (i) to execute each of the Leasing Documents to which it is a party; and
  - (ii) to comply with and perform its obligations under each of the Leasing Documents to which it is a party;
- (f) all consents, approvals, authorisations, licenses or permits referred to in Clause 45.1(e) required or desirable to (i) enable each Relevant Person (other than the Builder) lawfully to enter into, exercise their rights and comply with its obligations in the Leasing Documents to which such Relevant Person is a party to and (ii) to make the Leasing Documents to which such Relevant Person is a party admissible in evidence in such Relevant Person's Relevant Jurisdictions, have been obtained or effected and are in full force and effect;
- (g) all the consents, approvals, authorisations, licenses or permits referred to in Clause 45.1(e) remain in force and nothing has occurred which makes any of them liable to revocation;
- (h) each of the Leasing Documents to which a Relevant Person (other than the Builder) is a party constitutes such Relevant Person's legal, valid and binding obligations enforceable against such party in accordance with its respective terms and any relevant insolvency laws affecting creditors' rights generally;
- (i) no third party has any Security Interest, other than the Permitted Security Interests, or any other interest, right or claim over, in or in relation to the Vessel, any assets owned by the Charterers or any moneys payable to the Charterers, this Charter or any moneys payable hereunder and/or any of the other Leasing Documents;
- (j) all payments which a Relevant Person (other than the Builder) is liable to make under any Leasing Document to which such Relevant Person is a party may be made by such party without deduction or withholding for or on account of any tax payable under the laws of its jurisdiction of incorporation or formation;
- (k) no legal or administrative action involving:
- (i) to the best of the Charterers' knowledge and belief, the Builder; or
  - (ii) a Relevant Person (other than the Builder),
- (including without limitation, in relation to any Environmental Claim) has been commenced or taken, which if adversely determined, would have or which is likely to have a Material Adverse Effect;

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- (l) each of the Relevant Persons (other than the Builder) has paid all taxes applicable to, or imposed on or in relation to it, its business or if applicable, the Vessel, except for those being contested in good faith and for which adequate reserves have been made;
  - (m) the choice of governing law as stated in each Leasing Document to which a Relevant Person (other than the Builder) is a party and the agreement by such party to refer disputes to the relevant courts or tribunals as stated in such Leasing Document are valid and binding against such Relevant Person;
  - (n) no Relevant Person (other than the Builder) nor any of their assets are entitled to immunity on the grounds of sovereignty or otherwise from any set-off, legal action or proceeding (which shall include, without limitation, suit, attachment prior to judgment, execution or other enforcement) and to the best of the Charterers' knowledge and belief, neither the Builder nor any of its assets are entitled to immunity on the grounds of sovereignty or otherwise from any legal action or proceeding (which shall include, without limitation, suit, attachment prior to judgment, execution or other enforcement);
  - (o) the obligations of each Relevant Person (other than the Builder) under each Leasing Document to which it is a party, are the direct, general and unconditional obligations of such Relevant Person and, rank at least pari passu with all other present and future unsecured and unsubordinated creditors of such Relevant Person save for any obligation which is mandatorily preferred by law and not by virtue of any contract;
  - (p) each Leasing Document creates (or, once entered into, will create) the Security Interest which it is expressed to create with the ranking and priority it is expressed to have;
  - (q) no Relevant Person (other than the Builder) is a US Tax Obligor, and no Relevant Person (other than the Builder) has established a place of business in the United Kingdom or the United States of America;
  - (r) no Relevant Person (other than the Builder) nor any of their respective directors, officers, employees or agents is a Restricted Person and to the best of the Charterers' knowledge and belief (having made all due and careful enquiry), none of the Builder, the Permitted Sub-Charterer, any Non-subsiary Manager or any of their respective directors, officers, employees or agents is a Restricted Person;
  - (s) each Relevant Person (other than the Builder), a Non-subsiary Manager and their respective directors, officers, employees and agents, and to the best of the Charterers' knowledge and belief (having made all due and careful enquiry), each of the Builder, the Permitted Sub-Charterer and their directors, officers, employees and agents, is in compliance with all Sanctions laws;
  - (t) each Relevant Person (other than the Builder), a Non-subsiary Manager and their respective directors, officers, employees and agents, and to the best of the Charterers' knowledge and belief (having made all due and careful enquiry), each of the Builder and the Permitted Sub-Charterer and their directors, officers, employees and agents have not (i) been or are currently being investigated on compliance with Sanctions, (ii) received notice or are aware of any claim, action, suit or proceeding against any of them with respect to Sanctions and (iii) taken any action to evade the application of Sanctions;

- (u) the Vessel is not constructed, employed, operated or managed in any manner which (i) is contrary to any Sanctions and in particular, the Vessel is not used by or to benefit any party which is a target of Sanctions or trade to any area or country where trading the Vessel to such area or country would constitute a breach of any Sanctions or published boycotts imposed by any of the United Nations, the European Union, the United States of America, the United Kingdom or the People's Republic of China; or (ii) would trigger the operation of any sanctions limitation or exclusion clause in any insurance documentation;
- (v) each Relevant Person (other than the Builder) and to the best of the Charterers' knowledge and belief (having made all due and careful enquiry) each of the Builder, the Permitted Sub-Charterer, is not in breach of any laws or regulations relating to the Vessel and its ownership, employment, operation, management and registration, including the ISM Code, the ISPS Code, all Environmental Laws, the laws of the Vessel's registry and in particular, all Anti-Money Laundering Laws, Anti-Terrorism Financing Laws and/or Business Ethics Laws and each of the Relevant Persons has instituted and maintained systems, controls, policies and procedures designed to:
  - (i) prevent and detect incidences of bribery and corruption, money laundering and terrorism financing; and
  - (ii) promote and achieve compliance with Anti-Money Laundering Laws, Anti-Terrorism Financing Laws and Business Ethics Laws;
- (w) no Relevant Persons or Non-subsidiary Manager is insolvent or in liquidation or administration or subject to any other formal or informal insolvency procedure, and no receiver, administrative receiver, administrator, liquidator, trustee or analogous officer has been appointed in respect of the Relevant Persons, a Non-Subsidiary Manager or all or material part of their assets;
- (x) that in respect of any Permitted Sub-charter:
  - (i) the copy of such Permitted Sub-charter provided to the Owners is a true and complete copy; and
  - (ii) the relevant Permitted Sub-charterer is fully aware of the content of and the transactions contemplated under this Charter and consents to the same;
- (y) no Termination Event or Potential Termination Event has occurred or might reasonably be expected to result from the entry into and performance of this Charter or any other Leasing Document;
- (z) as at the date of this Charter, the Charterers have not entered into any other investments, any sale or leaseback agreements, any off-balance sheet transaction or incur any other liability or obligation (including without limitation, any Financial Indebtedness of any obligations under a guarantee) except:
  - (i) liabilities and obligations under the Leasing Documents to which they are or, as the case may be, will be a party; or
  - (ii) liabilities or obligations reasonably incurred in the normal course of its business of trading, operating and chartering, maintaining and repairing the Vessel;

- (aa) apart from the listing of the units of the Guarantor on the New York Stock Exchange, none of the shares/ units of a Relevant Person (other than the Builder) are listed on any stock exchange for listed shares/units;
- (bb) any factual information provided by the Charterers (or on their behalf) to the Owners was true and accurate in all material respects as at the date it was provided or as the date at which such information was stated; and
- (cc) the entry by each Relevant Person (other than the Builder) into any Leasing Document does not in any way cause any breach, and is in all respects permitted, under the terms of any document which it is entered into; and
- (dd) in relation to the Shipbuilding Contract:
  - (i) the copy of the Shipbuilding Contract provided by the Charterers to the Owners prior to the date of this Charter is a true and complete copy of such document and there have been no amendments, supplements or variations to the same (except for those notified to and agreed by the Owners);
  - (ii) the Shipbuilding Contract constitutes the legal and valid and enforceable obligations of the each of the parties thereto, and remains in full force and effect in all respects; and
  - (iii) all amounts due and payable to the Builder under the Shipbuilding Contract have been fully and irrevocably paid to the Builder (the receipt of which has been duly acknowledged by the Builder) and there are no outstanding amounts which are due, owing or payable to the Builder beyond any applicable grace period stated under the Shipbuilding Contract.

#### **Clause 46 – CHARTERERS' UNDERTAKINGS**

- 46.1 The Charterers undertake that they shall comply or procure compliance with the following undertakings commencing from the date of this Charter and up to the last day of the Charter Period:
- (a) there shall be sent to the Owners:
    - (i) as soon as possible, but in no event later than ninety (90) days after the end of each financial half-year, the consolidated unaudited semi-annual accounts of the Guarantor certified as to their correctness by the chief financial officer or a duly authorised officer of the Guarantor; and
    - (ii) as soon as possible, but in no event later than one hundred and eighty (180) days after the end of each financial year of the Guarantor, the audited consolidated annual financial reports of the Guarantor;
  - (b) they will provide to the Owners, promptly at the Owners' request, copies of all notices and minutes relating to any of their shareholders' meetings and copies of their shareholders' written resolutions which are despatched to the Charterers' or the Guarantor's respective shareholders or partners or any class of them save that publicly disclosed notices, minutes and written resolutions not concerning the Vessel or the Leasing Documents need not be provided to the Owners under this Clause;

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- (c) they will provide to the Owners, promptly at the Owners' requests, copies of all notices, notices of meetings and written resolutions which are despatched to the Charterers' or Guarantor's other creditors (if any);
- (d) they will provide or will procure that each other Relevant Person (other than the Builder) provides the Owners with details of any legal, arbitral or administrative action involving such Relevant Person (provided that in the case where such Relevant Person is the Guarantor, such claim under such legal, arbitral or administrative action either (1) exceeds the sum of US\$10,000,000 (or its equivalent in any other currency) or (2) which if adversely determined against the Guarantor, would or is likely to have a Material Adverse Effect) or the Vessel as soon as such action is instituted or it becomes apparent to such Relevant Person that it is likely to be instituted and is likely to have a material adverse effect on the ability of a Relevant Person (other than the Builder) to perform their obligations under each Leasing Document to which it is a party;
- (e) they will, and will procure that each other Relevant Person (other than the Builder) obtains and promptly renews or procure the obtainment or renewal of and provide copies of, from time to time, any necessary consents, approvals, authorisations, licenses or permits of any regulatory body or authority for the transactions contemplated under each Leasing Document to which it is a party (including without limitation to sell, charter and operate the Vessel);
- (f) they will not, and will:
- (i) use their best endeavours to ensure that the Builder; and
  - (ii) procure that each other Relevant Person (other than the Builder),
- will not, create, assume or permit to exist any Security Interest of any kind upon any Leasing Document to which such Relevant Person is a party, and if applicable, the Vessel, in each case other than the Permitted Security Interests;
- (g) they will at their own cost, and will procure that each other Relevant Person (other than the Builder) will:
- (i) do all that such Relevant Person reasonably can to ensure that any Leasing Document to which such Relevant Person is a party validly creates the obligations and the Security Interests which such Relevant Person purports to create; and
  - (ii) without limiting the generality of paragraph (i), promptly register, file, record or enrol any Leasing Document to which such Relevant Person is a party with any court or authority in all Relevant Jurisdictions, pay any stamp duty, registration or similar tax or fee in all Relevant Jurisdictions in respect of any Leasing Document to which such Relevant Person is a party, give any notice or take any other step which, is or has become necessary or desirable for any such Leasing Document to be valid, enforceable or admissible in evidence or to ensure or protect the priority of any Security Interest which such Relevant Person creates;

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- (h) they will, and will procure that each other Relevant Person (other than the Builder), notify the Owners immediately of the occurrence of:
- (i) any event entitling any party to the Shipbuilding Contract to terminate, cancel and/or repudiate the Shipbuilding Contract occurs or the Shipbuilding Contract ceases to be legal, valid and binding or in full force and effect in any respect;
  - (ii) any damage and/or alteration caused to the Vessel by any reason whatsoever which results, or may be expected to result, in repairs on the Vessel which exceed US\$1,000,000 (or its equivalent in any other currency);
  - (iii) any material safety incidents taking place on board the Vessel;
  - (iv) any casualty or occurrence as a result of which the Vessel has become or is, by the passing of time or otherwise, likely to become, a Major Casualty;
  - (v) any Environmental Claim which is made against the Charterers, a Permitted Sub-Charterer or an Approved Manager in connection with the Vessel or any Environmental Incident;
  - (vi) any arrest or detention of the Vessel, any exercise or purported exercise of any lien on that Vessel or its Earnings or any requisition of that Vessel for hire; and
  - (vii) any Potential Termination Event or Termination Event,
- and will keep the Owners fully up-to-date with all developments and the Charterers will, if so requested by the Owners, provide any such certificate signed by an officer of the Charterers, confirming that there exists no Potential Termination Event or Termination Event;
- (i) they will, and will procure that each other Relevant Person (other than the Builder) and Non-subsiary Manager will, as soon as practicable after receiving the request, provide the Owners with any additional financial or other information relating:
- (i) to themselves and/or the Vessel (including, but not limited to the condition and location of the Vessel); or
  - (ii) to any other matter relevant to, or to any provision of any Leasing Document to which it is a party,
- which may be reasonably requested by the Owners (or their financiers (if any)) at any time;
- (j) without prejudice to Clause 46.1(l)(i)(A), comply, or procure compliance, and will procure that each other Relevant Person will comply or procure compliance, with all laws or regulations relating to the Vessel and its construction, ownership, employment, operation, management and registration, including the ISM Code, the ISPS Code, all Environmental Laws and the laws of the Vessel's registry;
- (k) as from the Delivery Date, the Vessel shall be classed with the Classification Society and shall be free of all overdue recommendations and conditions;

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- (l) as from the Delivery Date, they will ensure and procure that:
- (i) the Market Value of the Vessel shall be ascertained from time to time in the following circumstances:
    - (A) upon the occurrence of a Termination Event which is continuing, at any time at the request of the Owners; and
    - (B) in the absence of a Termination Event which is continuing, at least once every calendar year, with such report to be dated no more than thirty (30) calendar days prior to every anniversary of the Delivery Date occurring within the Charter Period or on such other date as the Owners may request; and
  - (ii) the Charterers shall pay the amount of the fees and expenses incurred by the Owners in connection with any matter arising out of this paragraph (l);
- (m) they shall comply, shall procure that each other Relevant Person and a Non-subsidiary Manager complies with all laws and regulations in respect of Sanctions, and in particular, they shall effect and maintain a sanctions compliance policy to ensure compliance with all such laws and regulations implemented from time to time;
- (n) the Vessel shall not be constructed, employed, operated or managed in any manner which (i) is contrary to any Sanctions and in particular, the Vessel shall not be used by or to benefit any party which is a target of Sanctions and/or is a Restricted Person or trade to any area or country or territory where trading the Vessel to such area or country or territory would constitute or reasonably be expected to constitute a breach of any Sanctions or published boycotts imposed by any of the United Nations, the European Union, the United States of America, the United Kingdom or the People's Republic of China, (ii) would result or reasonably be expected to result in any Relevant Person, a Non-subsidiary Manager or the Owners becoming a Restricted Person or (iii) would trigger the operation of any sanctions limitation or exclusion clause in any insurance documentation;
- (o) they shall, and shall procure that each other Relevant Person (other than the Builder) and a Non-subsidiary Manager shall, and shall use all reasonable endeavours to procure that the Permitted Sub-Charterer shall, promptly notify the Owners of any non-compliance, by any Relevant Person, the Permitted Sub-Charterer, any Non-subsidiary Manager or their respective officers, directors, employees, consultants, agents or intermediaries, with all laws and regulations relating to Sanctions, Anti-Money Laundering Laws, Anti-Terrorism Financing Laws and/or Business Ethics Laws (including but not limited to notifying the Owners in writing immediately upon being aware that any Relevant Person, the Permitted Sub-Charterer, any Non-Subsidiary Manager or their respective shareholders, directors, officers or employees is a Restricted Person or has otherwise become a target of Sanctions) as well as provide all information (once available) in relation to its business and operations which may be relevant for the purposes of ascertaining whether any of the aforesaid parties are in compliance with such laws;
- (p) they shall, and shall procure that each other Relevant Person (other than the Builder) shall, and shall use all reasonable endeavours to procure that the Permitted Sub-Charterer shall, (in each case above, including procuring or as the case may be, using all reasonable endeavours to procure the respective officers, directors, employees, consultants, agents and/or intermediaries of the relevant entity to do the same) shall:
- (i) comply with all Anti-Money Laundering Laws, Anti-Terrorism Financing Laws and Business Ethics Laws;

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- (ii) maintain systems, controls, policies and procedures designed to promote and achieve ongoing compliance with Anti-Money Laundering Laws, Anti-Terrorism Financing Laws and Business Ethics Laws; and
  - (iii) in respect of the Charterers, not use, or permit or authorize any person to directly or indirectly use, the Purchase Price for any purpose that would breach any Anti-Money Laundering Laws, Anti-Terrorism Financing Laws or Business Ethics Laws;
  - (q) in respect of the Charterers, not lend, invest, contribute or otherwise make available the Purchase Price to or for any other person in a manner which would result in a violation of Anti- Money Laundering Laws, Anti-Terrorism Financing Laws or Business Ethics Laws;
  - (r) they shall not appoint or permit to be appointed any manager of the Vessel unless it is an Approved Manager and such Approved Manager has (prior to accepting its appointment) entered into a Manager's Undertaking;
  - (s) they shall ensure that all Earnings and any other amounts received by them in connection with the Vessel are paid into the Earnings Account;
  - (t) as from the Delivery Date, they shall maintain a credit balance of at least \$500,000 in the Earnings Account;
  - (u) upon request, they will provide or they will procure to be provided to the Owners the report(s) of the survey(s) conducted pursuant to Clause 7 (*Surveys on Delivery and Redelivery*) of this Charter in form and substance satisfactory to the Owners;
  - (v) save with the prior written consent of the Owners, they shall not permit the sub-chartering of the Vessel other than a Permitted Sub-Charter;
  - (w) as a condition precedent to the execution of any Permitted Sub-Charter entered into by the Charterers after the date of this Charter, the Charterers shall assign all their rights and interests under such Permitted Sub-Charter in favour of the Owners (and their financiers (if any)) and shall use all commercially reasonable endeavours to procure the relevant Permitted Sub-Charterer to give a written acknowledgment of such assignment, in each case, in form and substance acceptable to the Owners and provide such documents as the Owners may reasonably require regarding the due execution of such Permitted Sub-Charter (and in the case where the Permitted Sub-Charter is a bareboat charter, such Permitted Sub-Charterer thereunder shall additionally assign all their rights and interests under the Insurances and Requisition Compensation in favour of the Owners (and their financiers (if any)) in form and substance acceptable to the Owners (and their financiers (if any)));
  - (x) in respect of an Permitted Sub-Charterer which contains an option to extend the charter period, they shall notify the Owners as soon as they become aware that the relevant Permitted Sub-charterer does not intend to, or has not by the date falling 20 days prior to the date on which such Permitted Sub-Charter will expire, exercise the relevant option to extend the same;
  - (y) they shall not agree or enter into any document, transaction, arrangement or do or omit to do anything which shall have the effect of varying, amending or supplementing the terms of the Shipbuilding Contract without the prior written consent of the Owners;



- (z) they shall not make or pay any dividend or other distribution (in cash or in kind) in respect of its share capital following the occurrence of a Potential Termination Event or Termination Event or which would result in a Potential Termination Event or Termination Event;
- (aa) the Vessel shall be registered under the Flag State at all times; and
- (bb) they shall not enter into any other investments, any sale or leaseback agreements, any off-balance sheet transaction or incur any other liability or obligation (including without limitation, any Financial Indebtedness of any obligations under a guarantee) except:
  - (i) liabilities and obligations under the Leasing Documents to which it is or, as the case may be, will be a party; or
  - (ii) liabilities or obligations reasonably incurred in the normal course of its business of trading, operating and chartering, maintaining and repairing the Vessel; and
  - (iii) any transaction entered into with their Affiliates shall be on arm's length basis and in good faith.

#### **Clause 47 – EARLY PURCHASE OPTION**

- 47.1 The Charterers (or the Guarantor as the Charterers' nominee) shall have the option, at any time after the 4<sup>th</sup> anniversary of the Delivery Date to purchase the Vessel on any Payment Date during the Charter Period as specified in a notice (the "**Early Purchase Option Notice**") (the "**Early Purchase Option Date**") at the applicable Early Purchase Option Price, subject always to giving the Owners no less than sixty (60) days' prior written notice.
- 47.2 The Early Purchase Option shall only be exercisable by the Charterers if there is no Total Loss, Termination Event or Potential Termination Event has occurred and is continuing.
- 47.3 An Early Purchase Option Notice shall be signed by a duly authorised officer or an attorney of the Charterers and, once delivered to the Owners, is irrevocable and the Charterers shall be bound to pay to the Owners the Early Purchase Option Price on the Early Purchase Option Date.
- 47.4 Only one Early Purchase Option Notice may be served throughout the duration of the Charter Period.
- 47.5 Upon the Owners' receipt in full of the Early Purchase Option Price on or prior to the Early Purchase Option Date, the Owners shall transfer the legal and beneficial ownership of the Vessel in accordance with the terms and conditions set out at Clauses 50.1(a) and 50.1(b) to the Charterers or the Guarantor as their nominee.

#### **Clause 48 – EXPIRY PURCHASE OPTION**

- 48.1 The Charterers shall have the option to purchase the Vessel on the last day of the natural expiration of the Charter Period (the "**Expiry Purchase Option Date**") at the Expiry Purchase Option Price, provided that the Charterers shall be deemed to have exercised such option unless:
  - (a) the Charterers have notified the Owners in writing at least 6 months prior to the Expiry Purchase Option that the Charterers will not be exercising such option; or

- (b) a Total Loss has occurred.
- 48.2 Any notice to be given by the Charterers to the Owners pursuant to paragraph (a) of Clause 48.1 shall be signed by a duly authorised officer or an attorney of the Charterers and, once delivered to the Owners, is irrevocable.
- 48.3 Upon the Owners' receipt in full of the Expiry Purchase Option Price on or prior to the Expiry Purchase Option Date, the Owners shall transfer the legal and beneficial ownership of the Vessel in accordance with the terms and conditions set out at Clauses 50.1(a) and 50.1(b) to the Charterers (or the Guarantor as their nominee).

**Clause 49 – BALLAST BONUS**

- 49.1 Provided that no Total Loss has occurred, if the Expiry Purchase Option is not exercised by the Charterers pursuant to this Charter, the Charterers shall be obliged to pay the Ballast Bonus to the Owners on the last day of the natural expiration of the Charter Period.

**Clause 50 SALE OF THE VESSEL**

- 50.1 On the Early Purchase Option Date or the Expiry Purchase Option Date (as the case may be), all legal and beneficial interest and title in the Vessel shall be transferred to the Charterers by the Owners upon receipt by the Owners of the Early Purchase Option Price or the Expiry Purchase Option Price (as the case may be) on an "as is where is" basis and on the following terms and conditions:
- (a) the Charterers expressly agree and acknowledge that no condition, warranty or representation of any kind is or has been given by or on behalf of the Owners in respect of the Vessel or any part thereof, and accordingly the Charterers confirm that they have not, in entering into this Charter, relied on any condition, warranty or representation by the Owners or any person on the Owners' behalf, express or implied, whether arising by law or otherwise in relation to the Vessel or any part thereof, including, without limitation, warranties or representations as to the description, suitability, quality, merchantability, fitness for any purpose, value, state, condition, appearance, safety, durability, design or operation of any kind or nature of the Vessel or any part thereof, and the benefit of any such condition, warranty or representation by the Owners is hereby irrevocably and unconditionally waived by the Charterers to the extent permissible under applicable law, the Charterers hereby also waive any rights which they may have in tort in respect of any of the matters referred to under this Clause and irrevocably agree that:
- (i) the Owners shall have no greater liability in tort in respect of any such matter than they would have in contract after taking account of all of the foregoing exclusions;
  - (ii) no third party making any representation or warranty relating to the Vessel or any part thereof is the agent of the Owners nor has any such third party authority to bind the Owners thereby; and
  - (iii) notwithstanding anything contained above, nothing contained herein is intended to obviate, remove or waive any rights or warranties or other claims relating thereto which the Charterers (or their nominee) or the Owners may have against the manufacturer or supplier of the Vessel or any third party;

- (b) the Vessel shall be free from any registered mortgages or any other liens, encumbrances or debts created or permitted to exist by the Owners (save for those mortgages, liens, encumbrances or debts created under the Leasing Documents);
- (c) the Early Purchase Option Price or the Expiry Purchase Option Price (as the case may be) shall be paid by (or on behalf of) the Charterers to the Owners on the Early Purchase Option Date (in the case of the Early Purchase Option Price) or the Expiry Purchase Option Date (in the case of the Expiry Purchase Option Price), together with unpaid amounts of Charterhire and other moneys owing by or accrued or due from the Charterers under this Charter on or prior to the Early Purchase Option Date or the Expiry Purchase Option Date (as the case may be) which remain unpaid; and
- (d) upon the Early Purchase Option Price or the Expiry Purchase Option Price (as the case may be) and all other moneys payable under this Charter being fully and irrevocably paid to the Owners on, and in accordance with, the terms set forth in this Charter (except in the case of Total Loss) the Owners agree (at the cost of the Charterers) to enter into:
- (i) a bill of sale; and
  - (ii) a protocol of delivery and acceptance,
- and the Vessel shall accordingly be deemed delivered to the Charterers on the date and time set out in such protocol of delivery and acceptance (and to the extent required for such purposes the Vessel shall be deemed first to have been redelivered to the Owners).

#### **Clause 51 – INDEMNITIES**

- 51.1 The Charterers shall pay such amounts to the Owners, on the Owners' demand, in respect of all documented claims, expenses, liabilities, losses, fees (including, but not limited to, any legal fees or vessel registration and tonnage fees) suffered or incurred by or imposed on the Owners arising directly or indirectly from this Charter and any Leasing Document or in connection with delivery, possession, performance, control, registration, payment of tonnage tax or other registration fees or fees associated with maintaining the relevant registry of the Vessel, repair, survey, insurance, maintenance, manufacture, purchase, ownership and operation of the Vessel by the Owners and the costs related to the prevention or release of liens or detention of or requisition, use, operation or redelivery, repossession, sale or disposal of the Vessel or any part of it, enforcement of the Owners' rights under any Leasing Document or in connection with, following or resulting from the occurrence of a Termination Event or a Potential Termination Event and whether or not the Vessel is in the possession or the control of the Charterers or otherwise (including without limitation by reason thereof in re-taking possession or otherwise in re-acquiring the Vessel pursuant to Clause 37.3), and whether prior to, during or after termination of the leasing of this Charter and whether or not the Vessel is in the possession or the control of the Charterers or otherwise.
- 51.2 Without prejudice to its generality, Clause 51.1 covers any documented 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, any Environmental Law, any Sanctions, Anti-Money Laundering Laws, Anti-Terrorism Financing Laws or Business Ethics Laws.

- 51.3 Without prejudice to any right to damages or other claim which the Owners may have at any time against the Charterers, it is hereby agreed that the indemnities of the Owners contained in this Charter shall continue in full force and effect until the expiry of the Charter Period.
- 51.4 Without prejudice to the above Clause 51.1, if any sum (a “**Sum**”) due from a Relevant Person (other than the Builder) under the Leasing Documents, 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:
- (a) making or filing a claim or proof against that Relevant Person; or
  - (b) obtaining or enforcing an order, judgment or award in relation to any litigation or arbitration proceedings,
- the Charterers shall, as an independent obligation, on demand, indemnify the Owners against any cost, loss or liability arising out of or as a result of the conversion including any discrepancy between:
- (i) the rate of exchange used to convert that Sum from the First Currency into the Second Currency; and
  - (ii) the rate or rates of exchange available to that person at the time of its receipt of that Sum.
- 51.5 The obligations of the Charterers under Clause 51 (*Indemnities*) and in respect of any Security Interest created pursuant to the Security Documents will not be affected or discharged by an act, omission, matter or thing which would reduce, release or prejudice any of its obligations under Clause 51 (*Indemnities*) or in respect of any Security Interest created pursuant to the Security Documents (without limitation and whether or not known to it or any Relevant Person) including:
- (a) any time, waiver or consent granted to, or composition with, any Relevant Person or other person;
  - (b) the release of any other Relevant Person or any other person under the terms of any composition or arrangement with any creditor of the Guarantor or any of its affiliates;
  - (c) the taking, variation, compromise, exchange, renewal or release of, or refusal or neglect to perfect or delay in perfecting, or refusal or neglect to take up or enforce, or delay in taking or enforcing any rights against, or security over assets of, any Relevant Person or other person or any non-presentation or non-observance of any formality or other requirement in respect of any instrument or any failure to realise the full value of any security;
  - (d) any incapacity or lack of power, authority or legal personality of or dissolution or change in the members or status of a Relevant Person or any other person;
  - (e) any amendment, novation, supplement, extension, restatement (however fundamental and whether or not more onerous) or replacement of any Leasing Document or any other document or security;
  - (f) any unenforceability, illegality or invalidity of any obligation of any person under any Security Document or any other document or security; or

- (g) any insolvency or similar proceedings.
- 51.6 Notwithstanding anything to the contrary under the Leasing Documents (but subject and without prejudice to Clause 33 (*Cancellation*)) and without prejudice to any right to damages or other claim which the Charterers may have at any time against the Owners under this Charter, the indemnities provided by the Charterers in favour of the Owners shall continue in full force and effect notwithstanding any breach of the terms of this Charter or such Leasing Document or termination or cancellation of this Charter or such Leasing Document pursuant to the terms hereof or thereof or termination of this Charter or such Leasing Document by the Owners.
- 51.7 In consideration of the Charterers requesting the Other Owners to charter the Other Vessels to the Other Charterers under the Other Charters, the Charterers hereby irrevocably and unconditionally undertake to pay immediately on demand (as primary obligor) from the Other Owners (or of them, as the case may be) such amounts in respect of all claims, expenses, liabilities, losses, fees of every kind and nature and all other moneys due, owing and/or payable to the Other Owners under or in connection with the Other Charters, and to indemnify and hold the Other Owners harmless against all such moneys, costs, fees and expenses incurred or suffered or outstanding under the Other Charters.
- 51.8 All rights which the Charterers have at any time (whether in respect of this Charter or any other transaction) against the Other Charterers or the Guarantor or any of them shall be fully subordinated to the rights of the Owners under the Leasing Documents and until the end of this Charter and unless the Owners otherwise direct, the Charterers shall not exercise any rights which it may have (whether in respect of this Charter or any other transaction) by reason of performance by it of its obligations under the Leasing Documents or by reason of any amount becoming payable, or liability arising, under this Clause:
- (a) to be indemnified by the Other Charterers or the Guarantor or any of them;
  - (b) to claim any contribution from any third party providing security for, or any other guarantor of, the Other Charterers' or the Guarantor's obligations under the Leasing Documents;
  - (c) to take any benefit (in whole or in part and whether by way of subrogation or otherwise) of any rights of the Other Charterers or the Guarantor or any of them under the Leasing Documents or of any other guarantee or security taken pursuant to, or in connection with, the Leasing Documents by any of the aforesaid parties;
  - (d) to bring legal or other proceedings for an order requiring any of the Other Charterers or the Guarantor or any of them to make any payment, or perform any obligation, in respect of any Leasing Document;
  - (e) to exercise any right of set-off against any of the Other Charterers or the Guarantor or any of them; and/or
  - (f) to claim or prove as a creditor of any of the Other Charterers or the Guarantor or any of them,
- and if the Charterers receive 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 Owners or the Other Owners by the Other Charterers or the Guarantor or any of them under or in connection with the Leasing Documents to be repaid in full on trust for the Owners or the Other Owners and shall promptly pay or transfer the same to the Owners or the Other Owners as may be directed by the Owners.

- 51.9 The Charterers hereby irrevocably agree to indemnify and hold harmless the Owners against any claim, expense, liability or loss reasonably incurred by the Owners (and which is notified to the Charterers) in liquidating or employing deposits from their financiers or third parties to fund the acquisition of the Vessel pursuant to the MOA, on or prior to the Delivery Date.
- 51.10 Notwithstanding anything to the contrary herein (but subject and without prejudice to Clause 33 (*Cancellation*)) and without prejudice to any right to damages or other claim which the Charterers may have at any time against the Owners under this Charter, the indemnities provided by the Charterers in favour of the Owners shall continue in full force and effect notwithstanding any breach of the terms of this Charter or termination of this Charter pursuant to the terms hereof or termination of this Charter by the Owners.

#### **Clause 52 – NO SET-OFF OR TAX DEDUCTION**

- 52.1 All payments of Charterhire, the Upfront Charterhire, the Early Purchase Option Price or the Expiry Purchase Option Price and any other payment made by the Charterers under a Leasing Document shall be paid punctually:
- (a) without any form of set-off (other than any set-off referred to in Clause 36.3, Clause 36.5(b) or Clause **Error! Reference source not found.**), cross-claim or condition and in the case of Charterhire or the Upfront Charterhire, without previous demand unless otherwise agreed with the Owners; and
  - (b) free and clear of any tax deduction or withholding unless required by law.
- 52.2 Without prejudice to Clause 52.1, if the Charterers are required by law to make a tax deduction from any payment:
- (a) the Owners shall notify the Charterers as soon as they become aware of the requirement; and
  - (b) the amount due in respect of the payment shall be increased by the amount necessary to ensure that the Owners receive and retain (free from any liability relating to the tax deduction) a net amount which, after the tax deduction, is equal to the full amount which they would otherwise have received.
- 52.3 In this Clause “**tax deduction**” means any deduction or withholding for or on account of any present or future tax, other than a FATCA Deduction.

#### **Clause 53 – INCREASED COSTS**

- 53.1 This Clause 53 (*Increased Costs*) applies if the Owners notify the Charterers that they consider that as a result of:
- (a) the introduction or alteration after the date of this Charter of a law or an alteration after the date of this Charter in the manner in which a law is interpreted or applied (disregarding any effect which relates to the application to payments under this Charter of a tax on the Owners’ 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 Owners allocates capital resources to their obligations under this Charter) which is introduced, or altered, or the interpretation or application of which is altered, after the date of this Charter,  
the Owners (or a parent company of them) has incurred or will incur an increased cost.
- 53.2 In this Clause 53 (*Increased Costs*), “**increased cost**” means, in relation to the Owners:
- (a) an additional or increased cost incurred as a result of, or in connection with, the Owners having entered into, or being a party to, this Charter, of funding the acquisition of the Vessel pursuant to the MOA or performing their obligations under this Charter;
- (b) a reduction in the amount of any payment to the Owners under this Charter or in the effective return which such a payment represents to the Owners on their capital;
- (c) an additional or increased cost of funding the acquisition of the Vessel pursuant to the MOA; or
- (d) a liability to make a payment, or a return foregone, which is calculated by reference to any amounts received or receivable by the Owners under this Charter.
- 53.3 For the purposes of Clause 53.2 the Owners may in good faith allocate or spread costs and/or losses among their assets and liabilities (or any class of their assets and liabilities) on such basis as they consider appropriate.
- 53.4 Subject to the terms of Clause 53.1, the Charterers shall pay to the Owners, on the Owners’ demand, the amounts which the Owners from time to time notify the Charterers to be necessary to compensate the Owners for the increased cost.

#### **Clause 54 – CONFIDENTIALITY**

- 54.1 The Parties agree to keep the terms and conditions of this Charter and any other Leasing Documents (the “**Confidential Information**”) strictly confidential, provided that a Party may disclose Confidential Information in the following cases:
- (a) it is already known to the public or becomes available to the public other than through the act or omission of the disclosing Party;
- (b) it is required to be disclosed under the applicable laws of any Relevant Jurisdiction, by a governmental order, decree, regulation or rule, by an order of a court, tribunal or listing exchange of the Relevant Jurisdiction (including but not limited to an order by the US Securities and Exchange Commission or the New York Stock Exchange), provided that the disclosing Party shall give written notice of such required disclosure to the other Party prior to the disclosure;
- (c) in filings with a court or arbitral body in proceedings in which the Confidential Information is relevant and in discovery arising out of such proceedings;
- (d) to (or through) whom a Party assigns or transfers (or may potentially assign or transfer) all or any of its rights and/or obligations under one or more Leasing Document (as permitted by the terms thereof), provided that such person receiving Confidential Information shall undertake that it would not disclose Confidential Information to any other party save for circumstances arising which are similar to those described under this Clause or such other circumstances as may be permitted by all Parties;

- (e) to any of the following persons on a need to know basis:
- (i) a shareholder or an Affiliate of either Party (including the employees, officers and directors thereof);
  - (ii) professional advisers retained by a disclosing party; or
  - (iii) persons advising on, providing or considering the provision of financing to the disclosing party or an Affiliate,
- provided that the disclosing party shall exercise due diligence to ensure that no such person shall disclose Confidential Information to any other party save for circumstances arising which are similar to those described under this Clause or such other circumstances as may be permitted by all Parties; or
- (f) with the prior written consent of all Parties.

#### **Clause 55 – PARTIAL INVALIDITY**

If, at any time, any provision of a Leasing Document is or becomes illegal, invalid or unenforceable in any respect under any law of any jurisdiction, neither the legality, validity or enforceability of the remaining provisions under the law of that jurisdiction nor the legality, validity or enforceability of such provision under the law of any other jurisdiction will in any way be affected or impaired.

#### **Clause 56 – SETTLEMENT OR DISCHARGE CONDITIONAL**

- 56.1 Any settlement or discharge under any Leasing Document between the Owners and any Relevant Person (other than the Builder) or any other person shall be conditional upon no security or payment to the Owners by any Relevant Person (other than the Builder) or any other person being set aside, adjusted or ordered to be repaid, whether under any insolvency law or otherwise.
- 56.2 If the Owners consider that an amount paid or discharged by, or on behalf of, a Relevant Person (other than the Builder) in purported payment or discharge of an obligation of that Relevant Person to the Owners under the Leasing Documents is capable of being avoided or otherwise set aside on the liquidation or administration of that Relevant Person or otherwise, then that amount shall not be considered to have been unconditionally and irrevocably paid or discharged for the purposes of the Leasing Documents.

#### **Clause 57 – CHANGES TO THE PARTIES**

##### **57.1 Assignment or transfer by the Charterers**

The Charterers shall not assign their rights or transfer by novation any of their rights and obligations under the Leasing Documents except with the prior consent in writing of the Owners (such consent not to be unreasonably withheld if such assignment or transfer is to an Affiliate of the Charterers).

##### **57.2 Transfer by the Owners**

- (a) The Owners may transfer by novation (or otherwise) any of their rights and obligations under the Leasing Documents at any time to an Affiliate of the Owners, another lessor or financial institution or trust, fund, leasing company 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 or to any other party at any time.



- (b) During the Charter Period, any change in the registered ownership of the Vessel (other than pursuant to paragraph (a)) above shall not require the Charterers' prior approval and notwithstanding such change, this Charter would continue on identical terms (save for logical, consequential or mutually agreed amendments), and the Charterers hereby agree that they shall be liable to the aforesaid new owner of the Vessel for its performance of all obligations pursuant to this Charter after change of the registered ownership of the Vessel from the Owners to such new owner and shall procure that the Guarantor shall execute a guarantee in favour of the new owners for inter alia, the obligations of the Charterers under this Charter, in substantially in the same form as the Guarantee (or such other form as the Guarantor and the new owners may agree).
- 57.3 The Charterers agree and undertake to enter into any such usual documents as the Owners shall require to complete or perfect the transfer of the Vessel (with the benefit and burden of this Charter) pursuant to Clause 57.2, at no cost to the Charterers.

#### **Clause 58 – MISCELLANEOUS**

- 58.1 The Charterers waive any rights of sovereign immunity which they or any of their assets may enjoy in any jurisdiction and subjects itself to civil and commercial law with respect to their obligations under this Charter.
- 58.2 No term of this Charter is enforceable under the Contracts (Rights of Third Parties) Act 1999 by a person who is not party to this Charter, save that the Other Owners may rely on the rights conferred on them under Clause 51.7.
- 58.3 This Charter and each Leasing 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 this Charter or that Leasing Document, as the case may be.
- 58.4 These additional clauses shall be read together with the BARECON 2001, and shall constitute a single instrument. In the case of any conflict between the provisions of these additional terms and the BARECON 2001, these additional terms shall prevail.

#### **Clause 59 – FATCA**

##### **59.1 Defined terms**

For the purposes of this Clause 59 (*FACTA*), the following terms shall have the following meanings:

“**Code**” means the United States Internal Revenue Code of 1986, as amended.

“**FATCA**” means:

- (a) sections 1471 to 1474 of the Code or any associated regulations or other official guidance;
- (b) any treaty, law, regulation or other official guidance enacted in any other jurisdiction, or relating to an intergovernmental agreement between the US and any other jurisdiction, which (in either case) facilitates the implementation of paragraph (a) above; or

- (c) any agreement pursuant to the implementation of paragraphs (a) or (b) above with the IRS, the US government or any governmental or taxation authority in any other jurisdiction.

“**FATCA Deduction**” means a deduction or withholding from a payment under this Charter or the Leasing Documents required by or under FATCA.

“**FATCA Exempt Party**” means a Relevant Party that is entitled under FATCA to receive payments free from any FATCA Deduction.

“**FATCA FFI**” means a foreign financial institution as defined in section 1471(d)(4) of the Code which, if a Relevant Party is not a FATCA Exempt Party, could be required to make a FATCA Deduction.

“**FATCA Non-Exempt Party**” means any Relevant Party who is not a FATCA Exempt Party.

“**IRS**” means the United States Internal Revenue Service or any successor taxing authority or agency of the United States government.

“**Relevant Party**” means any party to a Leasing Document.

#### 59.2 **FATCA Information**

- (a) Subject to paragraph (c) below, each Relevant Party shall, on the date of this Charter, and thereafter within ten (10) Business Days of a reasonable request by another Relevant Party:
- (i) confirm to that other party whether it is a FATCA Exempt Party or is not a FATCA Exempt Party; and
  - (ii) supply to the requesting party (with a copy to all other Relevant Parties) such other form or forms (including IRS Form W-8 or Form W-9 or any successor or substitute form, as applicable) and any other documentation and other information relating to its status under FATCA (including its applicable “pass thru percentage” or other information required under FATCA or other official guidance including intergovernmental agreements) as the requesting party reasonably requests for the purpose of the requesting party’s compliance with FATCA.
- (b) If a Relevant Party confirms to any other Relevant Party that it is a FATCA Exempt Party or provides an IRS Form W-8 or W-9 showing 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 so notify all other Relevant Parties reasonably promptly.
- (c) Nothing in this clause shall oblige any Relevant Party to do anything which would or, in its reasonable opinion, might constitute a breach of any law or regulation, any policy of that party, any fiduciary duty or any duty of confidentiality, or to disclose any confidential information (including, without limitation, its tax returns and calculations); provided, however, that nothing in this paragraph shall excuse any Relevant Party from providing a true, complete and correct IRS Form W-8 or W-9 (or any successor or substitute form where applicable). Any information provided on such IRS Form W-8 or W-9 (or any successor or substitute forms) shall not be treated as confidential information of such party for purposes of this paragraph.

- (d) If a Relevant Party fails to confirm its status or to supply forms, documentation or other information requested in accordance with the provisions of this Charter or the provided information is insufficient under FATCA, then:
- (i) if that party failed to confirm whether it is (and/or remains) a FATCA Exempt Party then such party shall be treated for the purposes of this Charter and the Leasing Documents as if it is a FATCA Non-Exempt Party; and
  - (ii) if that party failed to confirm its applicable passthru percentage then such party shall be treated for the purposes of this Charter and the Leasing Documents (and payments made thereunder) as if its applicable passthru percentage is 100%,
- until (in each case) such time as the party in question provides sufficient confirmation, forms, documentation or other information to establish the relevant facts.

**59.3 FATCA Deduction and gross-up by Relevant Party**

- (a) If the representation made by the Charterers under Clause 45.1(q) proves to be untrue or misleading such that the Charterers are required to make a FATCA Deduction, the Charterers shall make the FATCA Deduction and any payment required in connection with that FATCA Deduction within the time allowed and in the minimum amount required by FATCA.
- (b) If the Charterers are required to make a FATCA Deduction then the Charterers shall increase the payment due from them to the Owners to an amount which (after making any FATCA Deduction) leaves an amount equal to the payment which would have been due if no FATCA Deduction had been required.
- (c) The Charterers shall promptly upon becoming aware that they must make a FATCA Deduction (or that there is any change in the rate or basis of a FATCA Deduction) notify the Owners accordingly.
- (d) Within thirty (30) days of the Charterers making either a FATCA Deduction or any payment required in connection with that FATCA Deduction, the Charterers shall deliver to the Owners evidence reasonably satisfactory to the Owners that the FATCA Deduction has been made or (as applicable) any appropriate payment paid to the relevant governmental or taxation authority.

**59.4 FATCA Deduction by Owners**

The Owners may make any FATCA Deduction they are required by FATCA to make, and any payment required in connection with that FATCA Deduction, and the Owners shall not be required to increase any payment in respect of which they make such a FATCA Deduction or otherwise compensate the recipient for that FATCA Deduction.

**59.5 FATCA Mitigation**

Notwithstanding any other provision to this Charter, if a FATCA Deduction is or will be required to be made by any party under Clause 59.3 in respect of a payment to the Owners as a result of the Owners not being a FATCA Exempt Party, the Owners shall have the right to transfer their interest in the Vessel (and this Charter) to any person nominated by the Owners and all costs in relation to such transfer shall be for the account of the Charterers.

## Clause 60 – DEFINITIONS

60.1 In this Charter the following terms shall have the meanings ascribed to them below:

“**Acceptance Certificate**” means a certificate substantially in the form set out in Schedule I (*Acceptance Certificate*) to be signed by the Charterers at Delivery.

“**Account Bank**” means Hamburg Commercial Bank AG, acting through its office at Gerhart- Hauptmann-Platz 50, 20095 Hamburg or such bank as the Owners may approve in advance in writing.

“**Account Security**” means the document creating security over the Earnings Account executed by the Charterers in favour of the Owners, 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.

“**AF Affiliate**” means any corporation which is owned directly or indirectly (through entities owned and controlled by Mrs Angeliki Frangou or trusts or foundations of which she is the beneficiary) by Mrs Angeliki Frangou.

“**Anti-Money Laundering Laws**” means all applicable financial record-keeping and reporting requirements, anti-money laundering statutes (including all applicable rules and regulations thereunder) and all applicable related or similar laws, rules, regulations or guidelines, of all jurisdictions including and without limitation, the United States of America, the European Union and the People’s Republic of China, and which in each case are (a) issued, administered or enforced by any governmental agency having jurisdiction over any Relevant Person or the Owners; (b) of any jurisdiction in which any Relevant Person or the Owners conduct business; or (c) to which any Relevant Person or the Owners is subjected or subject to.

“**Anti-Terrorism Financing Laws**” means all applicable anti-terrorism laws, rules, regulations or guidelines of any jurisdiction, including and not limited to the United States of America or the People’s Republic of China which are: (a) issued, administered or enforced by any governmental agency, having jurisdiction over any Relevant Person or the Owners; (b) of any jurisdiction in which any Relevant Person or the Owners conduct business; or (c) to which any Relevant Person or the Owners are subjected or subject to.

“**Approved Manager**” means any ship management company which is a member of the Group, Navios Containers Management Inc., Navios Shipmanagement Inc., Navios Tankers Management Inc. or any AF Affiliate.

“**Approved Sub-charter**” means the Initial Time Charter or any other sub-charter or other employment of the Vessel which has a charter period exceeding twenty-four (24) months (taking into account any optional extension period) with charterhire payments equal to at least the aggregate of charterhire payments payable hereunder plus operating expenses payable for the operation and management of the Vessel with such sub-charterer approved by the Owners in writing.

“**Approved Sub-charterer**” means the Initial Time Charterer and any other sub-charterer to any Approved Sub-charter.

“**Approved Valuer**” means Arrow, Fearnleys, Clarksons, Platou, Maersk Brokers, Simpson Spence Young, Howe Robinson, Braemar, VesselsValue or any other independent and reputable shipbroker nominated by the Charterers and approved by the Owners.

“**Ballast Bonus**” means an amount of \$4,000,000.

“**Breakfunding Costs**” means all breakfunding costs and expenses incurred or payable by the Owners when a repayment or prepayment under the relevant funding arrangement entered into by the Owners for the purpose of financing the Purchase Price does not fall on a Payment Date as a result of or due to the payments made under this Charter by the Charterers.

“**Builder**” means Zhoushan Changhong International Shipyard Co., Ltd. and/or Jiangyin Xiagang Changjiang Shipbreaking Co., Ltd.

“**Business Day**” means a day on which banks are open for business in the principal business centres of Athens, Amsterdam, Shanghai, Hong Kong and:

- (a) in respect of a day on which a payment is required to be made or other dealing is due to take place under a Leasing Document in Dollars, also a day on which commercial banks are open in New York City; and
- (b) in relation to the fixing of Term SOFR or any interest rate, which is a US Government Securities Business Day.

“**Business Ethics Law**” means any laws, regulations and/or other legally binding requirements or determinations in relation to corruption, fraud, collusion, bid-rigging or anti-trust, human rights violations (including forced labour and human trafficking) which are applicable to any Relevant Person or the Owners or to any jurisdiction where activities are performed and which shall include but not be limited to (i) the United Kingdom Bribery Act 2010 and (ii) the United States Foreign Corrupt Practices Act 1977 and all rules and regulations under each of (i) and (ii).

“**Cancelling Date**” has the meaning given to that term in the MOA.

“**Charterhire**” means each of, as the context may require, all of the monthly instalments of hire payable hereunder comprising in each case:

- (a) a component of Fixed Charterhire; and
- (b) a component of Variable Charterhire.

“**CISADA**” means the United States Comprehensive Iran Sanctions, Accountability and Divestment Act of 2010 as it applies to non-US persons.

“**Charter Period**” means the period commencing on the Delivery Date and described in Clause 32.2 unless it is either terminated earlier pursuant to the terms of this Charter.

“**Classification Society**” means DNV GL or any classification society being a member of the International Association of Classification Societies which is approved by the Owners.

“**Delivery**” means the delivery of the legal and beneficial interest in the Vessel from the Owners to the Charterers pursuant to the terms of the MOA.

“**Delivery Date**” means the date on which Delivery occurs.

“**Document of Compliance**” has the meaning given to it in the ISM Code.

“**Dollars**” or “**US\$**” or “**\$**” means the lawful currency for the time being of the United States of America.

“**Earnings**” means all moneys whatsoever which are now, or later become, payable (actually or contingently) and which arise out of the use or operation of the Vessel, including (but not limited to):

- (a) all freight, hire and passage moneys, compensation payable in the event of requisition of the Vessel for hire, all moneys which are at any time payable under any Insurances in respect of loss of hire, 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 the Vessel; and
- (b) if and whenever the Vessel is employed on terms whereby any moneys falling within paragraph (a) 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 the Vessel.

“**Earnings Account**” means, an account in the name of the Charterers with the Account Bank into which the Earnings are paid.

“**Early Purchase Option**” means the early purchase option which the Charterers are entitled to exercise pursuant to Clause 47 (*Early Purchase Option*).

“**Early Purchase Option Date**” has the meaning given to that term in Clause 47.1.

“**Early Purchase Option Fee**” means, in relation to an Early Purchase Option Date, an amount equal to the Outstanding Principal Balance multiplied by the following percentages pursuant to the table below corresponding with such Early Purchase Option Date:

<u>Early Purchase Option Date</u>	<u>Percentage (%)</u>
a day falling during the period commencing from the day after the 4 <sup>th</sup> anniversary of the Delivery Date up to (and including) the 5 <sup>th</sup> anniversary of the Delivery Date	1.5
a day falling during the period commencing from the day after the 5 <sup>th</sup> anniversary of the Delivery Date up to (and including) the 6 <sup>th</sup> anniversary of the Delivery Date	1.0
a day falling during the period commencing from the day after the 6 <sup>th</sup> anniversary of the Delivery Date up to (and including) the 7 <sup>th</sup> anniversary of the Delivery Date	0.5
a day falling during the period commencing from the day after the 7 <sup>th</sup> anniversary of the Delivery Date up to the last day of the natural expiration of the Charter Period	0

“**Early Purchase Option Notice**” has the meaning given to that term in Clause 47.1.

**“Early Purchase Option Price”** means, in relation to the Early Purchase Option Date, the aggregate, as at that date, of:

- (a) the Outstanding Principal Balance;
- (b) the Early Purchase Option Fee (if any);
- (c) any accrued but unpaid Variable Charterhire; (d) any Breakfunding Costs;
- (e) any legal costs incurred by the Owners in connection with the exercise of the Early Purchase Option under Clause 47 (*Early Purchase Option*); and
- (f) all other amounts payable under this Charter and the other Leasing Documents together with any applicable interest thereon.

**“Environmental Claim”** means:

- (a) any claim by any governmental, judicial or regulatory authority which arises out of an Environmental Incident or which relates to any Environmental Law; or
- (b) any claim by any other person which relates to an Environmental Incident,

and for this purpose, **“claim”** means 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 of Environmentally Sensitive Material whether within the Vessel or from the Vessel into any other vessel or into or upon the air, water, land or soils (including the seabed) or surface water; or
- (b) any incident in which Environmentally Sensitive Material is released, emitted, spilled or discharged into or upon the air, water, land or soils (including the seabed) or surface water from a vessel other than the Vessel and which involves a collision between the Vessel and such other vessel or some other incident of navigation or operation, in either case, in connection with which the Vessel is actually or reasonably expected to be potentially liable to be arrested, attached, detained or injuncted and/or the Vessel and/or any Relevant Person and/or any operator or manager of the 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, water, land or soils (including the seabed) or surface water otherwise than from the Vessel and in connection with which the Vessel is actually or reasonably expected to be potentially liable to be arrested and/or where any Relevant Person and/or any operator or manager of the Vessel is at fault or allegedly at fault or otherwise liable to any legal or administrative action.

**“Environmental Law”** means any present or future law applicable to the Vessel 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.

**“Expiry Purchase Option”** means the option of the Charterers to acquire the Vessel pursuant to Clause 48 (*Expiry Purchase Option*).

**“Expiry Purchase Option Date”** has the meaning given to that term in Clause 48.1.

**“Expiry Purchase Option Price”** means US\$13,600,000.

**“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 made available to the debtor;
- (d) under a lease, a deferred purchase consideration arrangement (other than deferred payments for assets or services obtained on normal commercial terms in the ordinary course of business) 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 Instruments”** means a mortgage, a deed of covenant, a general assignment or such other financial security instruments granted to the Owners’ financiers as security for the obligations of the Owners in relation to the financing of the acquisition of the Vessel.

**“Fixed Charterhire”** means:

- (a) in relation to each of the 1<sup>st</sup> to the 60<sup>th</sup> Payment Dates, an amount equivalent to US\$445,000; and
- (b) in relation to each of the 61<sup>st</sup> to the 120<sup>th</sup> Payment Dates, an amount which is calculated by reference to the following formula:

$$\frac{\text{Net Purchase Price} - (445,000 \times 60) - \$13,600,000}{60}$$

**“Flag State”** means the Republic of the Marshall Islands, the Republic of Panama, the Republic of Liberia or any other flag state approved by the Owners in writing (such approval not to be unreasonably withheld).



“**General Assignment**” means the general assignment executed or to be executed between the Charterers and the Owners in respect of the Vessel, pursuant to which the Charterers shall, assign their rights under the Insurances, Earnings, Requisition Compensation, any Approved Sub-Charter in favour of the Owners and in the agreed form.

“**Group**” means the Guarantor and each of its direct or indirect subsidiaries from time to time.

“**Guarantor**” means Navios Maritime Partners L.P., a limited partnership formed under the laws of the Republic of Marshall Islands, having its registered address at Trust Company Complex, Ajeltake Road, Ajeltake Island, Majuro, MH96960, the Republic of the Marshall Islands.

“**Guarantee**” means a guarantee executed by the Guarantor in favour of the Owners dated on or around the date of this Charter.

“**Holding Company**” means, in relation to a person, any other person in relation to which it is a subsidiary.

“**Initial Time Charter**” means the time charter dated 27 October 2021 entered between the Initial Charterer (as charterers) and the Charterers (as demise owners).

“**Initial Time Charterer**” means ZIM Integrated Shipping Services Ltd., a company incorporated under the laws of Israel with its address at ZIM Integrated Shipping Services Ltd., Andrei Sakharov St 9, Haifa, Israel.

“**Insurances**” means:

- (a) all policies and contracts of insurance, including entries of the Vessel in any protection and indemnity or war risks association, which are effected in respect of the Vessel or otherwise in relation to it whether before, on or after the date of this Charter; 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 and any rights in respect of any claim whether or not the relevant policy, contract of insurance or entry has expired on or before the date of this Charter.

“**Interest Rate**” means, in relation to Variable Charterhire, the rate of interest determined in accordance with Schedule III (*Interest Rate*) plus the Margin.

“**ISM Code**” means the International Safety Management Code (including the guidelines on its implementation), adopted by the International Maritime Organization Assembly as Resolutions A.741 (18) and A.788 (19), 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 Security Code as adopted by the Conference of Contracting Governments to the Safety of Life at Sea Convention 1974 on 13 December 2002 and incorporated as Chapter XI-2 of the Safety of Life at Sea Convention 1974, as the same may be supplemented or amended from time to time.

“**Leasing Documents**” means this Charter, the MOA, the Security Documents and the Trust Deed.

“**Major Casualty**” means any casualty to the Vessel in respect of which the claim or the aggregate of the claims against all insurers, before adjustment for any relevant franchise or deductible, exceeds US\$1,000,000 (or its equivalent in any other currency).

“**Manager’s Undertaking**” means, in relation to an Approved Manager, the letter of undertaking from such Approved Manager, *inter alia*, subordinating the rights of such Approved Manager against the Vessel and the Charterers to the rights of the Owners and their financiers (if any) in an agreed form.

“**Margin**” means 2.10% per annum.

“**Market Value**” means, in relation to the Vessel at any relevant time, the arithmetic mean of two (2) valuations, each prepared by an Approved Valuer (one selected by the Owners and one selected by the Charterers (but both at the cost of the Charterers)):

- (a) on a date no earlier than thirty (30) days previously;
- (b) without physical inspection of the Vessel; and
- (c) on the basis of a sale for prompt delivery for cash on normal arm’s length commercial terms as between a willing and a willing buyer, free of any existing charter or other contract of employment.

“**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).

“**Material Adverse Effect**” means, in the opinion of the Owners, a material adverse effect on:

- (a) the business, operations, property, condition (financial or otherwise) or prospects of the Charterers, the Shareholder, the Guarantor or the Group taken as a whole; or
- (b) the ability of any Relevant Person to perform its obligations under the Shipbuilding Contract or any Leasing Document to which it is a party; or
- (c) the validity or enforceability of, or the effectiveness or ranking of any Security Interests granted pursuant to any of the Leasing Documents or the rights or remedies of the Owners under any of the Leasing Documents.

“**MOA**” means the memorandum of agreement entered into by the Charterers as sellers and the Owners as buyers dated on the date of this Charter in relation to the sale and purchase of the Vessel.

“**Mortgagee**” has the meaning given to that term in Clause 35.2.

“**Net Purchase Price**” has the meaning given to that term in the MOA.

“**Net Sale Proceeds**” means, in relation to a sale of the Vessel by the Owners to a third party following the Charterers’ failure to pay the Termination Purchase Price, the amount of the consideration actually and unconditionally received by the Owners from a purchaser of the Vessel and any non-refundable deposit paid to or for the account of the Owners by a person acquiring or proposing to acquire the Vessel under a contract or offer to purchase the Vessel or other agreement to acquire the Vessel which has been withdrawn, terminated or cancelled

or has lapsed, after deducting in each case: (a) any tax for which the Owners are required to account in respect of such sale, and (b) the Owners' costs and out of pocket expenses properly incurred in connection with such sale (including but not limited to brokers' commissions, legal fees, registration fees and stamp duties) or properly incurred in recovering possession of or in moving, insuring, maintaining, or dry-docking the Vessel and in carrying out any works or modifications required to restore the Vessel to the condition required by this Charter.

**"Non-subsidiary Manager"** means an Approved Manager which is not an entity within the Group (and which shall include without limitation, as at the date of this Agreement, Navios Containers Management Inc., Navios Shipmanagement Inc. Navios Tankers Management Inc. or any AF Affiliate for so long as each such corporation is not a member within the Group).

**"OFAC"** means the U.S. Department of Treasury's Office of Foreign Assets Control.

**"Original Jurisdiction"** means, in relation to any Relevant Person, the jurisdiction under whose laws they are respectively incorporated, converted or formed as at the date of this Charter.

**"Other Charter"** means, in relation to each Other Charterer, the bareboat charterparty entered into between the relevant Other Owner and such Other Charterer in respect of the relevant Other Vessels.

**"Other Charterer"** means each or, as the context may require, any of Astrovalos Shipping Corporation, Gavdos Shipping Corporation and Kleio Shipping Corporation (and **"Other Charterers"** mean all of them).

**"Other Owner"** means each or, as the context may require, any of Xiang H142 International Ship Lease Co., Limited, Xiang H143 International Ship Lease Co. and Limited, Xiang H144 International Ship Lease Co., Limited (and **"Other Owners"** means all of them).

**"Other Vessel"** means each or, as the context may require, any of the crude oil/product oil tanker with builder's hull no. S-1645 (and to be named m.v. "NAVE COSMOS" on delivery), crude oil/product oil tanker with builder's hull no. S-1647 (and to be named m.v. "NAVE PHOTON" on delivery) and container vessel with builder's hull no. CHB2014 (and to be named m.v. "ZIM SEAGULL" on delivery) (and **"Other Vessels"** means all of them).

**"Outstanding Principal Balance"** means:

- (a) in relation to the 1<sup>st</sup> Payment Date, the Purchase Price minus the aggregate of (i) the Upfront Charterhire and (ii) the Fixed Charterhire payable on such 1<sup>st</sup> Payment Date which has been paid by the Charterers and received by the Owners as at such date;
- (b) in relation to any other relevant date or Payment Date (other than the 1<sup>st</sup> Payment Date), the amount referred to in paragraph (a) above minus the aggregate Fixed Charterhire which has been paid by the Charterers and received by the Owners as at such date.

**"Party"** means either party to this Charter.

**"Payment Date"** means each of the 120 dates described in Clause 36.5, upon which an instalment of Charterhire is to be paid by the Charterers to the Owners pursuant to Clause 36 (*Charterhire and Upfront Charterhire*).

**"Payment Notice"** has the meaning given to that term in the MOA.

**“Permitted Security Interests”** means:

- (a) Security Interests created by a Leasing Document or a Financial Instrument;
- (b) liens for unpaid master’s and crew’s wages in accordance with the ordinary course of operation of the Vessel or in accordance with usual reputable maritime practice;
- (c) liens for salvage;
- (d) liens for master’s disbursements incurred in the ordinary course of trading;
- (e) any other liens arising by operation of law or otherwise in the ordinary course of the operation, repair or maintenance of the Vessel provided such liens do not secure amounts more than 30 days overdue;
- (f) any Security Interest created in favour of a plaintiff or defendant in any action of the court or tribunal before whom such action is brought as security for costs and expenses where the Owners are prosecuting or defending such action in good faith by appropriate steps; and
- (g) Security Interests arising by operation of law in respect of taxes which are not overdue or for payment of taxes which are overdue for payment but which are being contested by the Owners or the Charterers in good faith by appropriate steps and in respect of which adequate reserves have been made.

**“Permitted Sub-Charter”** means an Approved Sub-Charter or, if the Owners provide their consent to the Charterers to sub-bareboat charter the Vessel, such bareboat charter.

**“Permitted Sub-Charterer”** means, in relation to a Permitted Sub-Charter, the relevant Approved Sub-Charterer or such sub-charterer who is a party to that Permitted Sub-Charter.

**“Potential Termination Event”** means, an event or circumstance which, with the giving of any notice, the lapse of time, a determination of the Owners and/or the satisfaction of any other condition, would constitute a Termination Event.

**“Purchase Price”** has the meaning given to that term in the MOA.

**“Quiet Enjoyment Letter”** means the quiet enjoyment letter entered or to be entered into between amongst others, the Owners, the Charterers and the Permitted Sub-Charterer in relation to the Vessel.

**“Quotation Day”** means in relation to any Term or other period for which an Interest Rate is to be determined, three (3) US Government Securities Business Days before the first day of that period unless market practice differs in the Relevant Market in which case the Quotation Day will be determined by the Owners in accordance with market practice in the Relevant Market (and if quotations would normally be given by leading banks in the Relevant Market on more than one day, the Quotation Day will be the last of those days).

**“Relevant Market”** means the market for overnight cash borrowing collateralised by US Government securities.

**“Relevant Person”** means:

- (a) during the period commencing from the date of this Charter up to and including the Delivery Date, the Builder; (b) the Charterers,
- (c) the Other Charterers,
- (d) the Guarantor,
- (e) the Shareholder;
- (f) any Approved Manager other than a Non-subsiary Manager; and
- (g) such other party providing security to the Owners for the Charterers’ obligations under this Charter pursuant to a Security Document or otherwise.

**“Relevant Jurisdiction”** means, in relation to any Relevant Person:

- (a) its Original Jurisdiction;
- (b) any jurisdiction where any property owned by it and charged under a Leasing Document is situated;
- (c) any jurisdiction where it conducts its business; and
- (d) any jurisdiction whose laws govern the perfection of any of the Leasing Documents entered into by it creating a Security Interest.

**“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 those countries subject to country-wide or territory-wide Sanctions and/or trade embargoes, in particular but not limited to those of OFAC, including at the date of this Charter, but without limitation, Cuba, Crimea, Iran, North Korea, Sudan, Syria and any additional countries based on respective country-wide or territory-wide Sanctions being imposed by OFAC or any of the regulative bodies referred to in the definition of Restricted Persons.

**“Restricted Person”** means a person, entity or any other parties (i) located, domiciled, resident or incorporated in Restricted Countries, and/or (ii) subject to any sanction administrated by the United Nations, the European Union, Switzerland, the United States, OFAC, the United Nations, the United Kingdom, Her Majesty’s Treasury and the Foreign and Commonwealth Office of the United Kingdom, the People’s Republic of China and/or (iii) owned or controlled by or affiliated with persons, entities or any other parties as referred to in (i) and (ii).

**“Sanctions”** means any sanctions, embargoes, freezing provisions, prohibitions or other restrictions relating to trading, doing business, investment, exporting, financing or making assets available (or other activities similar to or connected with any of the foregoing) imposed by law or regulation of the United Kingdom, the United States of America (including, without limitation, CISADA and OFAC), the People’s Republic of China or the Council of the European Union.

“**Security Documents**” means the Guarantee, the Account Security, the General Assignment, the Shares Security, the Manager’s Undertaking, the Quiet Enjoyment Letter (if applicable) and any other security documents granted as security for the obligations of the Charterers under or in connection with this Charter.

“**Security Interest**” means:

- (a) a mortgage, charge (whether fixed or floating), pledge or assignment, 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; or
- (c) any other right which confers on a creditor or potential creditor a right or privilege to receive the amount actually or contingently due to it ahead of the general unsecured creditors of the debtor concerned; however 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.

“**Shareholder**” means NAVIOS MARITIME OPERATING LLC, a limited liability company formed and existing under the laws of the Republic of the Marshall Islands having its registered address at Trust Company Complex, Ajeltake Road, Ajeltake Island, Majuro, MH96960, the Republic of Marshall Islands.

“**Shares Security**” means the shares security over the shares in the Charterers to be executed by the Shareholder in favour of the Owners, in the agreed form.

“**Shipbuilding Contract**” means the shipbuilding contract in respect of the construction of the Vessel dated 1 October 2021 and entered into between the Charterers (as buyers) and the Builder (as seller).

“**SOFR**” means the secured overnight financing rate (SOFR) administered by the Federal Reserve Bank of New York (or any other person which takes over the administration of that rate) published (before any correction, recalculation or republication by the administrator) by the Federal Reserve Bank of New York (or any other person which takes over the publication of that rate).

“**Term**” means, in relation to the definitions of “Fixed Charterhire” and “Variable Charterhire”, a period of one (1) month’s duration, provided that:

- (a) the first period shall commence on the Delivery Date and end on the day falling immediately prior to the 2<sup>nd</sup> Payment Date;
- (b) the second period shall commence on the 2<sup>nd</sup> Payment Date and end on the day falling immediately prior to the 3<sup>rd</sup> Payment Date;
- (c) each subsequent period shall commence on the day falling immediately after the last day of the preceding period; and
- (d) any period which would otherwise extend beyond the Charter Period shall instead end on the last day of the Charter Period.

“**Term SOFR**” means the term SOFR reference rate administered by CME Group Benchmark Administration Limited (or any other person which takes over the administration of that rate) for the relevant period published (before any correction, recalculation or republication by the administrator) by CME Group Benchmark Administration Limited (or any other person which takes over the publication of that rate).

“**Termination Date**” has the meaning given to that term in Clause 44.2.

“**Termination Event**” means any event described in Clause 44 (*Termination Events*).

“**Termination Purchase Price**” means, in respect of any date, the aggregate, as at such date, of:

- (a) in the case where such date falls prior to the Delivery Date:
  - (i) any interest, costs incurred and expenses incurred by the Owners (and their financiers (if any)) in collecting any payments due under this Charter or the other Leasing Documents, or in obtaining the due performance of the obligations of the Charterers under this Charter or the other Leasing Documents and any default interest in relation thereto;
  - (ii) any legal costs incurred by the Owners in connection with the termination of this Charter under Clause 44 (*Termination Events*); and
  - (iii) all other outstanding amounts payable under this Charter together with any applicable interest thereon;and
- (b) in the case where such date falls on or after the Delivery Date:
  - (i) an amount equivalent to:
    - (A) in the case where such date falls on or before the 5<sup>th</sup> anniversary of the Delivery Date, 102% of the Outstanding Principal Balance; and
    - (B) in the case where such date falls after the 5<sup>th</sup> anniversary of the Delivery Date, 101% of the Outstanding Principal Balance;
  - (ii) any Breakfunding Costs;
  - (iii) any unpaid Charterhire;
  - (iv) any costs incurred and expenses incurred by the Owners (and their financiers (if any)) in locating, repossessing or recovering the Vessel or collecting any payments due under this Charter or the other Leasing Documents, or in obtaining the due performance of the obligations of the Charterers under this Charter or the other Leasing Documents and any default interest in relation thereto;
  - (v) any legal costs incurred by the Owners in connection with the termination of this Charter under Clause 44 (*Termination Events*); and
  - (vi) all other outstanding amounts payable under this Charter together with any applicable interest thereon.

“**Total Loss**” means:

- (a) actual, constructive, compromised, agreed or arranged total loss of the Vessel;
- (b) any expropriation, confiscation, requisition or acquisition of the Vessel, whether for full consideration, a consideration less than its proper value, a nominal consideration or without any consideration, which is effected by any government or official authority or by any person or persons claiming to be or to represent a government or official authority; or
- (c) any arrest, capture, seizure or detention of the Vessel (including any hijacking or theft but excluding any event specified in paragraph (b) of this definition) unless it is redelivered within thirty (30) days to the full control of the Owners or the Charterers.

“**Trust Deed**” means a trust deed dated on or around the date of this Charter entered into between amongst others the Owners, the Other Owners, the Charterers, the Other Charterers, the Shareholder and the Guarantor which, *inter alia*, sets out the obligations of the Owners in respect of holding on trust all moneys or other assets received or recovered by or on behalf of the Owners and the Other Owners by virtue of any Security Interest or other rights granted to the Owners under or by virtue of the Security Documents.

“**Upfront Charterhire**” means an amount equal to the Purchase Price less the Net Purchase Price.

“**Upfront Fee**” shall have the meaning given to such term in Clause 41.1.

“**US**” means the United States of America.

“**US Government Securities Business Day**” means any day other than:

- (a) a Saturday or a Sunday; and
- (b) a day on which the Securities Industry and Financial Markets Association (or any successor organisation) recommends that the fixed income departments of its members be closed for the entire day for purposes of trading in US Government securities.

“**US Tax Obligor**” means (a) a person which is resident for tax purposes in the United States of America or (b) a person some or all of whose payments under the Leasing Documents are from sources within the United States for United States federal income tax purposes.

“**Variable Charterhire**” means, in relation to a Payment Date, the interest component of Charterhire calculated in accordance with Schedule III (*Interest Rate*) at the applicable Interest Rate for the Term ending on the next Payment Date on the Outstanding Principal Balance (as at Delivery Date, in the case of the 1<sup>st</sup> Payment Date, and as at the preceding Payment Date, in the case of all other Payment Dates).

“**Vessel**” means the 5,300 TEU container vessel with hull number CHB2015 which is to be named m.v. “ZIM ALBATROSS” and registered under the name of the Owners under the flag of the relevant Flag State upon Delivery.



60.2 In this Charter:

“**Approved Manager**”, “**Approved Sub-charterer**”, “**Charterers**”, “**Other Charterers**”, “**Other Owners**”, “**Owners**”, “**Permitted Sub-Charterer**”, “**Relevant Person**”, “**Shareholder**” 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 Leasing Documents;

“**agreed form**” means, in relation to a document, such document in a form agreed in writing by the Owners;

“**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;

“**continuing**” or, as the case may be, “**continuation of**” means, in relation to any Termination Event, a Termination Event which has not been waived by the Owners in writing and in relation to any Potential Termination Event, a Potential Termination Event which has not been waived by the Owners in writing;

“**control**” over a particular company means the power (whether by way of ownership of units/limited liability company interests/shares, proxy, contract, agency or otherwise) to:

- (a) cast, or control the casting of, more than 51 per cent, of the maximum number of votes that might be cast at a general meeting of such company; or
- (b) appoint or remove all, or the majority, of the directors or other equivalent officers of such company; or
- (c) give directions with respect to the operating and financial policies of such company with which the directors or officers of such company are obliged to comply;

“**document**” includes a deed; also a letter, fax or telex;

“**expense**” means any kind of cost, charge or expense (including all legal costs, 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 60.3;

“**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 which is a member of the International Group of P&I Clubs including pollution risks, freight, demurrage and defence cover, extended passenger cover and the proportion (if any) of any sums payable to any other person or persons in case of collision which are not recoverable under the hull and machinery policies by reason of the incorporation in them of clause 6 of the International Hull Clauses (1/11/02 or 1/11/03), clause 8 of the Institute Time Clauses (Hulls)(1/10/83) or clause 8 of the Institute Time Clauses (Hulls) (1/11/1995) or the Institute Amended Running Down Clause (1/10/71) or any equivalent provision;

“**regulation**” includes any regulation, rule, official directive, request or guideline whether or not having the force of law of any governmental, intergovernmental or supranational body, agency, department or regulatory, self-regulatory or other authority or organisation;

“**subsidiary**” has the meaning given in Clause 60.4; and

“**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.

#### 60.3 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.

#### 60.4 Meaning of “subsidiary”.

A company (S) is a subsidiary of another company (P) if a majority of the issued units/shares in S (or a majority of the issued units/shares in S which carry unlimited rights to capital and income distributions) are directly owned by P or are indirectly attributable to P.

A company (S) is a subsidiary of another company (U) if S is a subsidiary of P and P is in turn a subsidiary of U.

60.5 In this Charter:

- (a) references to a Leasing Document or any other document being in the form of a particular appendix or to any document referred to in the recitals include references to that form with any modifications to that form which the Owners approve;
- (b) references to, or to a provision of, a Leasing Document or any other document are references to it as amended or supplemented, whether before the date of this Charter or otherwise;
- (c) references to, or to a provision of, any law include any amendment, extension, re-enactment or replacement, whether made before the date of this Charter or otherwise; and
- (d) words denoting the singular number shall include the plural and vice versa.

60.6 Headings

In interpreting a Leasing Document or any provision of a Leasing Document, all clauses, sub-clauses and other headings in that and any other Leasing Document shall be entirely disregarded.

EXECUTION PAGE

OWNERS

SIGNED )  
by ) /s/ Chi Chao  
as an attorney-in-fact )  
for and on behalf of )  
**XIANG H145 INTERNATIONAL SHIP LEASE CO., LIMITED** )  
in the presence of: )  
  
Witness' signature: )  
Witness' name: ) /s/ Wei Wang  
Witness' address: ) 28F, No. 333 Lujiazui Ring  
Road  
) Shanghai, China

CHARTERERS

SIGNED )  
by ) /s/ Eleni Georgiou  
as an attorney-in-fact )  
for and on behalf of )  
**POLYMNIA SHIPPING CORPORATION** )  
in the presence of: )  
  
Witness' signature: )  
Witness' name: ) /s/ Aikaterina Dimitriou  
  
) Solicitor  
Witness' address: ) Watson Farley & Williams LLP  
348 Syngrou Avenue  
Kallithea 176 74  
) Athens, Greece