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

FORM 6-K

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

DATED: August 1, 2017

Commission File No. 001-33811

NAVIOS MARITIME PARTNERS L.P.

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

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

Form 20-F Form 40-F

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

Yes No

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

Yes No

Indicate by check mark whether the registrant by furnishing the information contained in this Form is also thereby furnishing the information to the Commission pursuant to Rule 12g3-2(b) under the Securities Exchange Act of 1934.

Yes No

If "Yes" is marked, indicate below the file number assigned to the registrant in connection with Rule 12g3-2(b):

N/A

Omnibus Agreement

On June 8, 2017, Navios Maritime Partners L.P. (“*Navios Partners*”) entered into an omnibus agreement with Navios Maritime Containers, Inc. (“*Navios Containers*”), Navios Maritime Acquisition Corporation (“*Navios Acquisition*”), Navios Maritime Holdings Inc. (“*Navios Holdings*”), and Navios Maritime Midstream Partners L.P. (“*Navios Midstream*”), pursuant to which Navios Acquisition, Navios Holdings, Navios Partners and Navios Midstream have granted to Navios Containers a right of first refusal over any container vessels to be sold or acquired in the future. The omnibus agreement contains significant exceptions that will allow Navios Acquisition, Navios Holdings, Navios Partners and Navios Midstream to compete with Navios Containers under specified circumstances.

A copy of the Omnibus Agreement is attached as Exhibit 10.1 to this report and is incorporated by reference herein.

Appointment of Director

On June 23, 2017, Navios Partners announced both the appointment of Mrs. Orthodoxia Zisimatou to its Board of Directors and the prior resignation of Dimitris Papastefanou Gkouras. A copy of the press release is attached as Exhibit 99.1 to this report and is incorporated by reference herein.

BNP Credit Facility

On June 26, 2017, Navios Partners entered into a new credit facility with BNP PARIBAS (the “*BNP Facility*”) of up to \$32.0 million (divided into two tranches) in order to finance a portion of the purchase price payable in connection with the acquisition of two Capesize vessels, the Navios Ace and the Navios Sol.

On June 28, 2017, Navios Partners drew on the first tranche of the BNP Facility of \$17.0 million. The first tranche will be repayable in 16 equal consecutive quarterly installments of \$0.4 million each, with a final balloon payment of \$10.8 million to be repaid on the last repayment date. The facility matures in the second quarter of 2021 and bears interest at the London Interbank Offered Rate (“*LIBOR*”) plus 300 basis points (“*bps*”) per annum.

A copy of the BNP Facility is attached as Exhibit 10.2 to this report and is incorporated by reference herein.

Commerzbank/DVB Credit Facility

On June 28, 2017, Navios Partners entered into a new credit facility with DVB Bank S.E. (the “*New DVB Facility*”) for an amount of up to \$39.0 million, in order to refinance the \$32.0 million outstanding under the existing facility with Commerzbank/DVB entered into in July 2012, which was supposed to mature in the third quarter of 2017, and provide an additional \$7.0 million to partially finance the acquisition of the Navios Prosperity I, a Panamax vessel. The New DVB Facility matures in the third quarter of 2020 and bears interest at LIBOR plus 310 bps per annum. A copy of the New DVB Facility is attached as Exhibit 10.3 to this report and is incorporated by reference herein.

Both the BNP Facility and the New DVB Facility require compliance with certain financial covenants. Among other events, it will be an event of default under both credit facilities if the financial covenants are not complied with.

Issuance of Units

In connection with the acquisition of the Rickmers Maritime Trust Pte. fleet (the “*Rickmers transaction*”), Navios Partners agreed to issue USD600,000 worth of common units to a third party as consideration for providing certain consulting and advisory services. The obligation to issue the units is subject to the occurrence of certain events, including the successful completion of delivery of all vessels under the Rickmers transaction.

Item 9.01 Financial Statements and Exhibits

(d) Exhibits

<u>Exhibit No.</u>	<u>Exhibit</u>
10.1	Omnibus Agreement, dated June 7, 2017.
10.2	Credit Agreement for \$32.0 million credit facility, dated June 26, 2017.
10.3	Credit Agreement for \$39.0 million credit facility, dated June 28, 2017.
99.1	Press release, dated June 23, 2017.

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: August 1, 2017

OMNIBUS AGREEMENT

AMONG

NAVIOS MARITIME ACQUISITION CORPORATION

NAVIOS MARITIME HOLDINGS INC.

NAVIOS MARITIME PARTNERS L.P.

NAVIOS MARITIME MIDSTREAM PARTNERS L.P.

NAVIOS MARITIME CONTAINERS INC.

AND

NAVIOS PARTNERS CONTAINERS FINANCE INC

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OMNIBUS AGREEMENT

THIS OMNIBUS AGREEMENT is entered into on, and effective as of, the Closing Date (as defined herein), among Navios Maritime Acquisition Corporation, a Marshall Islands corporation ("Navios Maritime Acquisition"), Navios Maritime Holdings Inc., a Marshall Islands corporation ("Navios Maritime Holdings"), Navios Maritime Partners L.P., a Marshall Islands limited partnership ("Navios Maritime Partners"), Navios Maritime Midstream Partners L.P., a Marshall Islands limited partnership ("Navios Maritime Midstream Partners"), Navios Maritime Containers Inc., a Marshall Islands corporation ("NMCI") and Navios Partners Containers Finance Inc., a Marshall Islands corporation ("Navios Containers Finance").

RECITALS:

1. The Parties desire by their execution of this Agreement to evidence their understanding, as more fully set forth in Articles II and IV, with respect to (a) those business opportunities that the Navios Maritime Entities (as defined herein) will not pursue during the term of this Agreement, unless permitted to do so in accordance with the terms of this Agreement and (b) the procedures whereby such business opportunities are to be offered to the Containers Group (as defined herein).

2. The Parties desire by their execution of this Agreement to evidence their understanding, as more fully set forth in Articles III and IV, with respect to (a) those business opportunities that the Containers Group will not pursue during the term of this Agreement, unless permitted to do so in accordance with the terms of this Agreement and (b) the procedures whereby such business opportunities are to be offered to Navios Maritime Entities.

3. The Parties desire by their execution of this Agreement to evidence their understanding, as more fully set forth in Article V, with respect to certain rights of first offer.

In consideration of the premises and the covenants, conditions, and agreements contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby agree as follows:

ARTICLE I DEFINITIONS

SECTION 1.1. Definitions. As used in this Agreement, the following terms shall have the respective meanings set forth below:

"Acquiring Party" has the meaning given such term in Section 4.1(a).

"Affiliate" means, with respect to any Person, any other Person that directly or indirectly through one or more intermediaries controls, is controlled by or is under common control with, the Person in question. As used herein, the term "control" means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a Person, whether through ownership of voting securities, by contract or otherwise.

"Agreement" means this Omnibus Agreement, as it may be amended, modified, or supplemented from time to time in accordance with Section 6.7 hereof.

"Board" means the Board of Directors of Navios Maritime Containers.

“Break-up Costs” means the aggregate amount of any and all additional taxes, flag administration, financing, legal and other similar costs to (a) the Navios Maritime Entities that would be required to transfer Vessels acquired by the Navios Maritime Entities as part of a larger transaction to a Containers Group Member pursuant to Section 2.2(c), or (b) the Containers Group that would be required to transfer Non-Restricted Vessels acquired by the Containers Group as part of a larger transaction to a Navios Maritime Entity pursuant to Section 3.2(a) .

“Change of Control” means, with respect to any Person (the “Applicable Person”), any of the following events: (a) any sale, lease, exchange or other transfer (in one transaction or a series of related transactions) of all or substantially all of the Applicable Person’s assets to any other Person (except to Angeliki Frangou, or any Navios Maritime Entity, or Navios Maritime Holdings or any entity controlled by Navios Maritime Holdings, or Navios Maritime Partners or any entity controlled by Navios Maritime Partners, or Navios Maritime Midstream Partners or any entity controlled by Navios Maritime Midstream Partners, or Navios Maritime Acquisition or any entity controlled by Navios Maritime Acquisition, or any subsidiary of Navios Maritime Containers), unless immediately following such sale, lease, exchange or other transfer such assets are owned, directly or indirectly, by the Applicable Person; (b) the consolidation or merger of the Applicable Person with or into another Person pursuant to a transaction in which the outstanding Voting Securities of the Applicable Person are changed into or exchanged for cash, securities or other property, other than any such transaction where (i) the outstanding Voting Securities of the Applicable Person are changed into or exchanged for Voting Securities of the surviving Person or its parent and (ii) the holders of the Voting Securities of the Applicable Person immediately prior to such transaction own, directly or indirectly, not less than a majority of the outstanding Voting Securities of the surviving Person or its parent immediately after such transaction; and (c) a “person” or “group” (within the meaning of Sections 13(d) or 14(d)(2) of the Exchange Act), other than (A) Navios Maritime Holdings or its Affiliates or any Navios Maritime Entity (including Angeliki Frangou) or Navios Maritime Containers, or Navios Maritime Partners and its affiliates, or Navios Maritime Midstream Partners and its affiliates, or Navios Maritime Acquisition and its affiliates, or any entity created by any Navios Maritime Entity (B) Angeliki Frangou, being or becoming the “beneficial owner” (as defined in Rules 13d-3 and 13d-5 under the Exchange Act) of more than 50% of all of the then outstanding Voting Securities of the Applicable Person, except in a merger or consolidation which would not constitute a Change of Control under clause (b) above; provided, however, that, notwithstanding the foregoing, the Conversion Transaction shall not constitute a “Change of Control” for purposes hereof.

“Charter-Out Opportunity” means the opportunity to enter into a charter-out contract for a Vessel.

“Closing Date” means the date of the closing of the initial offering of the common shares of NMCLP.

“Conflicts Committee” means the Conflicts Committee of the Board of Directors of Navios Maritime Containers.

“Containers Entities” means any General Partner (but only following the Conversion Transaction), Navios Maritime Containers, Navios Containers Finance and any Person controlled by any such entity.

“Containers Group” means Navios Maritime Containers, Navios Containers Finance and any Person controlled by any such entity.

“Containers Group Member” means any Person in the Containers Group.

“Control” means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a Person, whether through ownership of voting securities, by contract or otherwise.

“Conversion Transaction” means an exchange offer of limited partner interests, or common units representing limited partner interests, in NMCLP, for common shares of NMCI, as a result of which exchange offer NMCLP succeeds to all or substantially all of the assets, liabilities, rights and obligations of NMCI.

“Environmental Laws” means all international, federal, state, foreign and local laws, statutes, rules, regulations, treaties, conventions, orders, judgments and ordinances relating to protection of natural resources, health and safety and the environment, each in effect and as amended through the Closing Date.

“Exchange Act” means the United States Securities Exchange Act of 1934, as amended.

“First Offer Negotiation Period” has the meaning given such term in Section 5.2.

“General Partner” means, following the Conversion Transaction, Navios Maritime Holdings, or a wholly-owned subsidiary thereof, and its successors and permitted assigns that are admitted to NMCLP as general partner of NMCLP, in its capacity as general partner of NMCLP.

“Hazardous Substances” means (a) substances defined in or regulated under applicable Environmental Laws; (b) petroleum and petroleum products, including crude oil and any fractions thereof; (c) natural gas, synthetic gas and any mixtures thereof; (d) any substances with respect to which a federal, state, foreign or local agency requires environmental investigation, monitoring, reporting or remediation; (e) any hazardous waste or solid waste, within the meaning of any Environmental Law; (f) any solid, hazardous, dangerous or toxic chemical, material, waste or substance, within the meaning of and regulated by any Environmental Law; (g) any radioactive material; and (h) any asbestos-containing materials.

“Losses” means losses, damages, liabilities, claims, demands, causes of action, judgments, settlements, fines, penalties, costs and expenses (including, without limitation, court costs and reasonable attorneys’ and experts’ fees) of any and every kind or character; provided, however, that such term shall not include any special, indirect, incidental or consequential damages.

“National Securities Exchange” means an exchange registered with the United States Securities and Exchange Commission under Section 6(a) of the Exchange Act.

“Navios Containers Finance” is defined in the introduction to this Agreement.

“Navios Maritime Acquisition” is defined in the introduction to this Agreement.

“Navios Maritime Entities” means Navios Maritime Holdings and any Person controlled, directly or indirectly, by Navios Maritime Holdings, Navios Maritime Acquisition, Navios Maritime Partners and Navios Maritime Midstream Partners, other than the Containers Entities.

“Navios Maritime Holdings” is defined in the introduction to this Agreement.

“Navios Maritime Containers” means NMCI, prior to the Conversion Transaction, and NMCLP, after the Conversion Transaction.

“Navios Maritime Midstream Partners” is defined in the introduction to this Agreement.

“Navios Maritime Partners” is defined in the introduction to this Agreement.

“NMCLP” means Navios maritime Containers L.P., a Marshall Islands limited partnership.

“Non-Restricted Vessels” means any vessel other than a Vessel.

“Offer” has the meaning given such term in Section 4.1.

“Offered Assets” has the meaning given such term in Section 4.1.

“Offeree” has the meaning given such term in Section 4.1.

“Offer Period” has the meaning given such term in Section 4.1(b).

“Parties” means the parties to this Agreement and their successors and permitted assigns.

“Person” means an individual, corporation, partnership, joint venture, trust, limited liability company, unincorporated organization or any other entity.

“Potential Transferee” has the meaning given such term in Section 5.2.

“Sale Assets” has the meaning given such term in Section 5.2.

“Securities Act” means the United States Securities Act of 1933, as amended.

“Transfer” means any transfer, assignment, sale or other disposition of any Vessel by a Navios Maritime Entity or of any Non-Restricted Vessel by a Containers Group Member; provided, however, that such term shall not include: (a) transfers, assignments, sales or other dispositions from a Navios Maritime Entity to another Navios Maritime Entity, or from a Containers Group Member to another Containers Group Member; (b) transfers, assignments, sales or other dispositions pursuant to the terms of any related charter or other agreement with a charter party; (c) transfers, assignments, sales or other dispositions pursuant to Article II or III of this Agreement; (d) grants of security interests in or mortgages or liens on such Vessel or Non-Restricted Vessels in favor of a bona fide third party lender; (e) the merger by Navios Maritime Holdings, Navios Maritime Partners or Navios Maritime Containers with or into, or sale of substantially all of the assets by Navios Maritime Holdings, Navios Maritime Partners or Navios Maritime Containers to, an unaffiliated third party; or (f) transfers, assignments, sales or dispositions occurring solely as a result of the Conversion Transaction.

“Transfer Notice” has the meaning given such term in Section 5.2.

“Transferring Party” has the meaning given such term in Section 5.2.

“Vessel” means any container vessel.

“Vessel Asset” means any owned Vessel.

“Voting Securities” means securities of any class of Person entitling the holders thereof to vote in the election of members of the board of directors or other similar governing body of the Person.

ARTICLE II
VESSEL RESTRICTED BUSINESS OPPORTUNITIES

SECTION 2.1. Vessel Restricted Businesses. Subject to Section 6.6 and except as permitted by Section 2.2 and Section 4.1, each of the Navios Maritime Entities shall be prohibited from acquiring any Vessel hereafter.

SECTION 2.2. Permitted Exceptions. Notwithstanding any provision of Section 2.1 to the contrary, the Navios Maritime Entities may engage in the following:

- (a) owning a Vessel that is already owned by any Navios Maritime Entity or its Affiliates as of the date hereof;
- (b) acquiring a Vessel if the Navios Maritime Entity offers to sell to Navios Maritime Containers such Vessel for fair market value, pursuant to provisions of Article IV ;
- (c) acquiring a non-controlling interest in any company, business or pool of assets;
- (d) acquiring or owning a Vessel if Navios Maritime Containers does not fulfill its obligations under any written agreement between Navios Maritime Partners and Navios Maritime Containers requiring Navios Maritime Containers to purchase such Vessel;
- (e) acquiring or owning a Vessel that is subject to an offer to sell to Navios Maritime Containers by a Navios Maritime Entity, as described in Section 2.2(b), in each case pending Navios Maritime Containers' determination pursuant to Section 4.1 whether to purchase the Vessel (and, if Navios Maritime Containers determines to purchase such Vessel, pending the closing of such purchase);
- (f) providing ship management services relating to any vessel whatsoever; or
- (g) acquiring or owning a Vessel if Navios Maritime Containers has previously advised such Navios Maritime Entity that it consents to such acquisition or ownership.

SECTION 2.3. Charter Opportunities. Notwithstanding anything to the contrary herein, Navios Maritime Partners shall not be prohibited from operating a chartered-in Vessel; provided, however, that if Navios Maritime Partners is presented with a Charter-Out Opportunity with respect to such Vessel and Navios Maritime Containers has a Vessel that is (i) then available for charter-out, (ii) comparable to the Navios Maritime Partners chartered-in Vessel also then available for charter and (iii) acceptable to the customer, Navios Maritime Containers shall have the first right to accept any Charter-Out Opportunity.

ARTICLE III
NON-RESTRICTED VESSEL RESTRICTED BUSINESS OPPORTUNITIES

SECTION 3.1. Non-Restricted Vessel Restricted Businesses. Subject to Section 6.6 and except as permitted by Section 3.2, each Containers Group Member shall be prohibited from acquiring, owning, operating or chartering-in any Non-Restricted Vessel.

SECTION 3.2. Permitted Exceptions. Notwithstanding any provision of Section 3.1 to the contrary, the Containers Group Members may engage in the following activities under any of the following circumstances:

(a) acquiring any Non-Restricted Vessels as part of the acquisition of a controlling interest in a business or package of assets and owning and operating or chartering those vessels, provided, however, that:

(i) if less than a majority of the value of the total assets or business acquired is attributable to any Non-Restricted Vessels, as determined in good faith by Navios Maritime Containers, Navios Maritime Containers must offer to sell such Non-Restricted Vessels and related charters to the Navios Maritime Entities for their fair market value plus any applicable Break-up Costs in accordance with the procedures set forth in Section 4.1.

(ii) if a majority or more of the value of the total assets or business acquired is attributable to any Non-Restricted Vessels, as determined in good faith by Navios Maritime Containers; Navios Maritime Containers shall notify the Navios Maritime Entities in writing of the proposed acquisition. The Navios Maritime Entities shall, not later than the 15th calendar day following receipt of such notice, notify Navios Maritime Containers if any Navios Maritime Entity wishes to acquire the Non-Restricted Vessels forming part of the business or package of assets. If no Navios Maritime Entity notifies Navios Maritime Containers of its intent to pursue the acquisition within 15 calendar days, then the Navios Maritime Entities shall be deemed to have waived the right pursuant to this Section 3.2(ii) to acquire such Non-Restricted Vessels. Any dispute or controversy between the Navios Maritime Entities regarding the preference to acquire any Non-Restricted Vessel shall be decided in accordance with the terms of any prior Omnibus Agreement signed by and among the Navios Maritime Entities interested in said purchase.

(b) owning, operating or chartering any Non-Restricted Vessel that is subject to an offer to purchase by a Navios Maritime Entity as described in Section 3.2(a) pending the offer of any such Non-Restricted Vessel to the Navios Maritime Entities and the determination of any such Navios Maritime Entity pursuant to Sections 3.2(a)(ii) and 4.1 whether to purchase such Non-Restricted Vessel and, if a Navios Maritime Entity elects to purchase or cause any of its Affiliates to purchase any such Non-Restricted Vessel, pending the closing of such purchase;

(c) acquiring, operating or chartering any Non-Restricted Vessel if the Navios Maritime Entities have previously advised Navios Maritime Containers that they consent to such acquisition, operation or charter ; and

(d) acquiring, operating or chartering any Non-Restricted Vessels already owned by Navios Maritime Containers.

ARTICLE IV BUSINESS OPPORTUNITIES PROCEDURES

SECTION 4.1. Procedures. If (a) a Containers Group Member acquires any Non-Restricted Vessel in accordance with Section 3.2(a), or (b) a Navios Maritime Entity acquires any Vessel in accordance with Section 2.2(b), then (i) not later than 30 calendar days after the consummation of the acquisition (in the case of clause (a) or (b) above), such acquiring Party (the "Acquiring Party") shall notify (a) each Navios Maritime Entity, in the case of an acquisition by a Containers Group Member or (b) Navios Maritime Containers, in the case of an acquisition by a Navios Maritime Entity, and offer such party to be notified (each an "Offeree") the opportunity for any Navios Maritime Entity or Containers Group Member, as applicable, to purchase such Non-Restricted Vessel or Vessel, as applicable (the "Offered Assets"), for their fair market value (plus, in the case of an acquisition in accordance with Section 3.2(a), any applicable Break-up Costs), in each case on commercially reasonable terms in

accordance with this Section (the “Offer”). The Offer shall set forth the Acquiring Party’s proposed terms relating to the purchase of the Offered Assets by the applicable Navios Maritime Entity or Containers Group Member, including any liabilities to be assumed by the applicable Navios Maritime Entity or Containers Group Member as part of the Offer. As soon as practicable after the Offer is made, the Acquiring Party will deliver to the Offeree all information prepared by or on behalf of or in the possession of such Acquiring Party relating to the Offered Assets and reasonably requested by the Offeree. Within 30 calendar days after receipt of such notification, the Offeree shall notify the Acquiring Party in writing that either:

(a) If the Offeree elects not to purchase the Offered Assets, then the Acquiring Party and its Affiliates shall, subject to the other terms of this Agreement (including Section 2.2(b)(ii)), be forever free, subject to the provisions of this Agreement, to continue to own, operate and charter such Offered Assets; or

(b) If the Offeree elects to purchase the Offered Assets, then the following procedures shall be followed:

(i) After the receipt of the Offer by the Offeree, the Acquiring Party and the Offeree shall negotiate in good faith, the fair market value (and any applicable Break-up Costs), of the Offered Assets that are subject to the Offer and the other terms of the Offer on which the Offered Assets will be sold to the applicable Navios Maritime Entity or Containers Group Member. If the Acquiring Party and the Offeree agree on the fair market value (and any applicable Break-up Costs), of the Offered Assets that are subject to the Offer and the other terms of the Offer during the 30-day period (the “Offer Period”) after receipt by the Acquiring Party of the applicable Navios Maritime Entity’s election to purchase (or election to cause any of its permitted Affiliates to purchase) or of the Board’s election to cause any Containers Group Member to purchase, as applicable, the Offered Assets, the applicable Navios Maritime Entity or Containers Group Member shall purchase (or cause any of its permitted Affiliates to purchase) the Offered Assets on such terms as soon as commercially practicable after such agreement has been reached.

(ii) If the Acquiring Party and the Offeree are unable to agree on the fair market value (and any applicable Break-up Costs), of the Offered Assets that are subject to the Offer or on any other terms of the Offer during the Offer Period, the Acquiring Party and the Offeree will engage an independent ship broker and/or an independent investment banking firm prior to the end of the Offer Period to determine the fair market value (and any applicable Break-up Costs), of the Offered Assets and/or the other terms on which the Acquiring Party and the Offeree are unable to agree. In determining the fair market value of the Offered Assets and other terms on which the Offered Assets are to be sold, the ship broker or investment banking firm, as applicable, will have access to the proposed sale and purchase values and terms for the Offer submitted by the Acquiring Party and the Offeree, respectively, and to all information prepared by or on behalf of the Acquiring Party relating to the Offered Assets and reasonably requested by such ship broker or investment banking firm. Such ship broker or investment banking firm will determine the fair market value (and any applicable Break-up Costs) of the Offered Assets and/or the other terms on which the Acquiring Party and the Offeree are unable to agree within 30 calendar days of its engagement and furnish the Acquiring Party and the Offeree its determination. The fees and expenses of the ship broker or investment banking firm, as applicable, will be divided equally between the Acquiring Party and the Offeree. Upon receipt of such determination, the Offeree will have the option, but not the obligation:

(A) in the case that the Offeree is a Navios Maritime Entity, to purchase or cause any of its permitted Affiliates to purchase, or in the case that the Offeree is a Containers Group Member, to cause any Containers Group Member to purchase the Offered Assets for the fair market value (and any applicable Break-up Costs), and on the other terms determined by the ship broker or investment banking firm, as soon as commercially practicable after determinations have been made; or

(B) in the case that the Offeree is a Navios Maritime Entity, to elect not to cause any of its permitted Affiliates to purchase, or in the case that the Offeree is a Containers Group Member, not to cause any Containers Group Member to purchase such Offered Assets, in which event the Acquiring Party and its Affiliates shall, subject to the other terms of this Agreement, be forever free to continue to own and operate such Offered Assets.

SECTION 4.2. Scope of Prohibition. Except as otherwise provided in this Agreement or as otherwise agreed by any of the parties hereto, each party and its Affiliates shall be free to engage in any business activity whatsoever, including those that may be in direct competition with the Navios Maritime Entities or the Containers Group Members.

SECTION 4.3. Enforcement. Each Party agrees and acknowledges that the other Parties do not have an adequate remedy at law for the breach by any such Party of its covenants and agreements set forth in this Article IV, and that any breach by any such Party of its covenants and agreements set forth in this Article IV would result in irreparable injury to such other Parties. Each Party further agrees and acknowledges that any other Party may, in addition to the other remedies which may be available to such other Party, file a suit in equity to enjoin such Party from such breach, and consent to the issuance of injunctive relief to enforce the provisions of Article IV of this Agreement.

ARTICLE V RIGHTS OF FIRST OFFER

SECTION 5.1. Rights of First Offer.

(a) The Navios Maritime Entities hereby grant Navios Maritime Containers a right of first offer on any proposed Transfer by any Navios Maritime Entity of any Vessel owned or acquired by any Navios Maritime Entity.

(b) The Parties acknowledge that all potential Transfers of any Vessel Asset and Transfers of any Non-Restricted Vessel pursuant to this Article V are subject to obtaining any and all written consents of governmental authorities and other non-affiliated third parties and to the terms of all existing agreements in respect of such Vessel, as applicable.

SECTION 5.2. Procedures For Rights of First Offer. In the event that a Navios Maritime Entity (the "Transferring Party") proposes to Transfer any Vessel (the "Sale Assets"), prior to engaging in any negotiation for such Transfer with any non-affiliated third party or otherwise offering to Transfer the Sale Assets to any non-affiliated third party, such Transferring Party shall give Navios Maritime Containers (the "Potential Transferee"), written notice setting forth all material terms and conditions (including, without limitation, the purchase price) and a description of the Sale Asset(s) on which such Transferring Party desires to Transfer the Sale Assets (the "Transfer Notice"). The Transferring Party then shall be obligated to negotiate in good faith for a 15-day period following the delivery by the Transferring Party of the Transfer Notice (the "First Offer Negotiation Period") to reach an agreement for the Transfer of such Sale Assets to the Potential Transferee or any of its Affiliates on the

terms and conditions set forth in the Transfer Notice. If no such agreement with respect to the Sale Assets is reached during the First Offer Negotiation Period, and the Transferring Party has not Transferred, or agreed in writing to Transfer, such Sale Assets to a third party within 180 calendar days after the end of the First Offer Negotiation Period on terms generally no less favorable to the Transferring Party than those included in the Transfer Notice (except to the extent that market conditions during the 180 calendar days after the end of the First Offer Negotiation Period have resulted in a material change in the fair market value of such Sale Assets), then the Transferring Party shall not thereafter Transfer any of the Sale Assets without first offering such assets to the applicable Potential Transferee in the manner provided above.

ARTICLE VI
MISCELLANEOUS

SECTION 6.1. Other Agreements. The parties hereto acknowledge that the Navios Maritime Entities are subject to other omnibus agreements that currently exist or may exist in the future. The parties hereby agree that with respect to any Vessel, the provisions of this Agreement shall apply and supersede the provisions of any other omnibus agreement. Navios Maritime Containers agrees to be bound by the terms of any existing omnibus agreement then governing any Vessels or opportunity to acquire any Vessel unless the requirement with respect to such Vessel is set forth herein.

SECTION 6.2. Conversion Transaction. The parties hereto hereby expressly consent to the registration of common units representing limited partner interests in NMCLP under the Securities Act and the Exchange Act in connection therewith, the listing of the common units representing limited partner interests in NMCLP on a National Securities Exchange in connection therewith and the Conversion Transaction together with the performance by the other parties hereto of their obligations in connection therewith. Promptly upon the Conversion Transaction, Navios Maritime Holdings shall cause the General Partner, if such entity is not a party to this Agreement, to become a party hereto by executing a joinder in the form of Exhibit A hereto.

SECTION 6.3. Choice Of Law; Submission To Jurisdiction. This Agreement shall be subject to and governed by the laws of the State of New York.

SECTION 6.4. Notice. All notices or requests or consents provided for or permitted to be given pursuant to this Agreement must be in writing and must be given by depositing the same in the mail, addressed to the Person to be notified, postpaid, and registered or certified with return receipt requested or by delivering such notice in person or by private-courier, prepaid, or by telecopier to such party. Notice given by personal delivery or mail shall be effective upon actual receipt. Couriered notices shall be deemed delivered on the date the courier represents that delivery will occur. Notice given by telecopier shall be effective upon actual receipt if received during the recipient's normal business hours, or at the beginning of the recipient's next business day after receipt if not received during the recipient's normal business hours. All notices to be sent to a party pursuant to this Agreement shall be sent to or made at the address set forth below such party's signature to this Agreement, or at such other address as such party may stipulate to the other parties in the manner provided in this Section.

SECTION 6.5. Entire Agreement. This Agreement constitutes the entire agreement of the parties relating to the matters contained herein, superseding all prior contracts or agreements, whether oral or written, relating to the matters contained herein.

SECTION 6.6. Termination. Upon a Change of Control of the General Partner (but only following the Conversion Transaction) or of Navios Maritime Containers, the provisions of Articles II, III, IV and V of this Agreement (but not less than all of such Articles) shall terminate immediately.

Upon a Change of Control of Navios Maritime Holdings, the provisions of Articles II, III, IV and V of this Agreement (but not less than all of such Articles) shall terminate one year following the date of the Change of Control of Navios Maritime Holdings.

SECTION 6.7. Waiver; Effect of Waiver or Consent. Any party hereto may extend the time for the performance of any obligation or other act of any other party hereto or waive compliance with any agreement or condition contained herein. Except as otherwise specifically provided herein, any such extension or waiver shall be valid only if set forth in a written instrument duly executed by the party or parties to be bound thereby; provided, however, that Navios Maritime Containers and Navios Containers Finance may not, without the prior approval of the Conflicts Committee, agree to any extension or waiver of this Agreement that, in the reasonable discretion of the Board, will adversely affect the holders of common shares of (or, following the Conversion Transaction, common units of or limited partnership interests in) Navios Maritime Containers in any material respect. No waiver or consent, express or implied, by any party of or to any breach or default by any Person in the performance by such Person of its obligations hereunder shall be deemed or construed to be a waiver or consent of or to any other breach or default in the performance by such Person of the same or any other obligations of such Person hereunder. Failure on the part of a party to complain of any act of any Person or to declare any person in default, irrespective of how long such failure continues, shall not constitute a waiver by such party of its rights hereunder until the applicable statute of limitations period has run.

SECTION 6.8. Amendment or Modification. This Agreement may be amended or modified from time to time only by the written agreement of all the parties hereto; provided, however, that Navios Maritime Containers and Navios Containers Finance may not, without the prior approval of the Conflicts Committee, agree to any amendment or modification of this Agreement that, in the reasonable discretion of the Board, will adversely affect the holders of common shares of (or, following the Conversion Transaction, common units of or limited partnership interests in) Navios Maritime Containers in any material respect.

SECTION 6.9. Assignment; Succession. No party shall have the right to assign its rights or obligations under this Agreement without the consent of the other parties hereto; provided for the avoidance of doubt that NMCLP may succeed to the rights and obligations of NMCI hereunder in connection with the Conversion Transaction by executing a joinder in the form of Exhibit A hereto.

SECTION 6.10. Counterparts. This Agreement may be executed in any number of counterparts with the same effect as if all signatory parties had signed the same document. All counterparts shall be construed together and shall constitute one and the same instrument.

SECTION 6.11. Severability. If any provision of this Agreement or the application thereof to any Person or circumstance shall be held invalid or unenforceable to any extent, the remainder of this Agreement and the application of such provision to other Persons or circumstances shall not be affected thereby and shall be enforced to the greatest extent permitted by law.

SECTION 6.12. Gender, Parts, Articles and Sections. Whenever the context requires, the gender of all words used in this Agreement shall include the masculine, feminine and neuter, and the number of all words shall include the singular and plural. All references to Article numbers and Section numbers refer to Articles and Sections of this Agreement.

SECTION 6.13. Further Assurances. In connection with this Agreement and all transactions contemplated by this Agreement, each signatory party hereto agrees to execute and deliver such additional documents and instruments and to perform such additional acts as may be necessary or appropriate to effectuate, carry out and perform all of the terms, provisions and conditions of this Agreement and all such transactions.

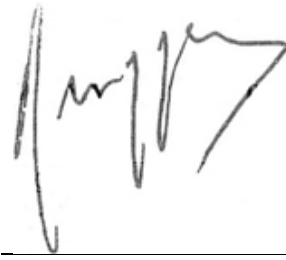
SECTION 6.14. Withholding or Granting of Consent. Each party may, with respect to any consent or approval that it is entitled to grant pursuant to this Agreement, grant or withhold such consent or approval in its sole and uncontrolled discretion, with or without cause, and subject to such conditions as it shall deem appropriate.

SECTION 6.15. Laws and Regulations. Notwithstanding any provision of this Agreement to the contrary, no party to this Agreement shall be required to take any act, or fail to take any act, under this Agreement if the effect thereof would be to cause such party to be in violation of any applicable law, statute, rule or regulation.

SECTION 6.16. Negotiation of Rights of Navios Maritime Holdings, Limited Partners, Assignees, and Third Parties. The provisions of this Agreement are enforceable solely by the parties to this Agreement, and no shareholder of Navios Maritime Holdings and no limited partner, member, assignee or other Person of Navios Maritime Containers or Navios Containers Finance or any other Person shall have the right, separate and apart from Navios Maritime Holdings, Navios Maritime Containers or Navios Containers Finance, to enforce any provision of this Agreement or to compel any party to this Agreement to comply with the terms of this Agreement.

[Signature Page Follows]

NAVIOS MARITIME ACQUISITION CORPORATION



By: _____

Name: Leonidas Korres
Title: CFO

Address for Notice:
7 Avenue de Grande Bretagne, Office 11B2
Monte Carlo, MC 98000 Monaco
Phone: +30 (210) 417-2050
Fax: +30 (210) 453-1984
Attention: Villy Papaefthymiou

NAVIOS MARITIME HOLDINGS INC.

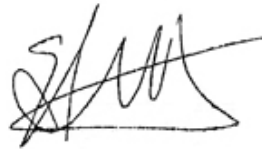


By: _____

Name: Georgios Achniotis
Title: CFO

Address for Notice:
7 Avenue de Grande Bretagne, Office 11B2
Monte Carlo, MC 98000 Monaco
Phone: +30 (210) 417-2050
Fax: +30 (210) 453-1984
Attention: Villy Papaefthymiou

NAVIOS MARITIME PARTNERS L.P.




By: _____

Name: Efstratios Desypris
Title: CFO

Address for Notice:
7 Avenue de Grande Bretagne, Office 11B2
Monte Carlo, MC 98000 Monaco
Phone: +30 (210) 417-2050
Fax: +30 (210) 453-1984
Attention: Villy Papaefthymiou

NAVIOS MARITIME MIDSTREAM PARTNERS L.P.



By: _____

Name: Erifili Tsironi
Title: CFO

Address for Notice:
7 Avenue de Grande Bretagne, Office 11B2
Monte Carlo, MC 98000 Monaco
Phone: +30 (210) 417-2050
Fax: +30 (210) 453-1984
Attention: Villy Papaefthymiou

NAVIOS MARITIME CONTAINERS INC.



By: _____

Name: Chris Christopoulos
Title: CFO

Address for Notice:
C/O Navios Maritime Holdings Inc.
7 Avenue de Grande Bretagne,
Office 11B2
Monte Carlo, MC 98000 Monaco
Phone: +30 (210) 417-2050
Fax: +30 (210) 453-1984
Attention: Villy Papaefthymiou

NAVIOS PARTNERS CONTAINERS FINANCE INC

By: Navios Maritime Containers Inc.,
its sole member



By: _____

Name: Giorgios Achniotis
Title: President / Director

Address for Notice:
C/O Navios Maritime Holdings Inc. 7 Avenue de Grande Bretagne,
Office 11B2
Monte Carlo, MC 98000 Monaco
Phone: +30 (210) 417-2050
Fax: +30 (210) 453-1984
Attention: Villy Papaefthymiou

[Signature Page to Omnibus Agreement]

Exhibit A

Form of Joinder

Reference is hereby made to the Omnibus Agreement, entered into as of June 7, 2017 (as amended, restated, supplemented or otherwise modified from time to time, the "Omnibus Agreement"), among Navios Maritime Acquisition Corporation, a Marshall Islands corporation ("Navios Maritime Acquisition"), Navios Maritime Holdings Inc., a Marshall Islands corporation ("Navios Maritime Holdings"), Navios Maritime Partners L.P., a Marshall Islands limited partnership ("Navios Maritime Partners"), Navios Maritime Midstream Partners L.P., a Marshall Islands limited partnership ("Navios Maritime Midstream Partners"), Navios Maritime Midstream Partners L.P., a Marshall Islands limited partnership ("Navios Maritime Midstream"), Navios Maritime Containers Inc., a Marshall Islands corporation ("NMCI") and Navios Partners Containers Finance Inc., a Marshall Islands limited liability company ("Navios Maritime Operating"). Unless otherwise defined herein, terms defined in the Omnibus Agreement and used herein shall have the meanings given to them in the Omnibus Agreement.

In accordance with Sections 6.2 and 6.9 of the Omnibus Agreement, Navios Maritime Containers L.P., a Marshall Islands limited partnership and the General Partner, by their signature below, become a party to the Omnibus Agreement, and agree to all the terms, conditions, covenants and other provisions thereof with the same force and effect as if originally named therein.

This Joinder shall be subject to and governed by the laws of the State of New York.

NAVIOS MARITIME CONTAINERS L.P.

By:

Name: Angeliki Frangou
Title: Chairman of the Board and
Chief Executive Officer

Address for Notice:

7 Avenue de Grande Bretagne, Office 11B2
Monte Carlo, MC 98000 Monaco
Phone: +30 (210) 417-2050
Fax: +30 (210) 453-1984
Attention: Villy Papaefthymiou

[GENERAL PARTNER]

By: _____

Name:

Title:]

Dated 26 June 2017

FINIAN NAVIGATION CO.
and
CASUAL SHIPHOLDING CO.
as joint and several Borrowers

and

THE BANKS AND FINANCIAL INSTITUTIONS
listed in Schedule 1
as Lenders

and

BNP PARIBAS
as Agent and Security Trustee

LOAN AGREEMENT

relating to a \$32,000,000 term loan facility secured on
m.vs. “NAVIOS ACE” and “TRITON CONDOR” (tbr “NAVIOS SOL”)

WATSON FARLEY
&
WILLIAMS

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BETWEEN:

- (1) **FINIAN NAVIGATION CO.** and **CASUAL SHIPHOLDING CO.**, each a corporation incorporated and existing under the laws of the Marshall Islands whose registered office at Trust Company Complex, Ajeltake Road, Ajeltake Island, Majuro, Marshall Islands MH 96960, as joint and several Borrowers.
- (2) **THE BANKS AND FINANCIAL INSTITUTIONS** listed in Schedule 1, as **Lenders**.
- (3) **BNP PARIBAS** acting through its office at 16, rue de Hanovre, 75078 Paris Cedex 02, France as **Agent** and **Security Trustee**.

WHEREAS

The Lenders have agreed to make available to the Borrowers, in two advances, a senior secured term loan facility:

- (A) Advance A shall be in an amount equal to the lesser of (a) \$17,000,000 and (b) 55 per cent. of the Initial Market Value of Ship A which shall be made available for the purpose of refinancing part of the acquisition cost of Ship A; and
- (B) Advance B shall be in an amount equal to the lesser of (a) \$15,000,000 and (b) 55 per cent. of the Initial Market Value of Ship B which shall be made available for the purpose of financing part of the acquisition cost of Ship B.

IT IS AGREED as follows:

1 INTERPRETATION

1.1 Definitions

Subject to Clause 1.5, in this Agreement:

“**Account**” means each of the Earnings Accounts, the Cash Collateral Account and the Retention Account and, in the plural, means all of them;

“**Account Bank**” means BNP Paribas (Suisse) SA, acting through its office at Place de Hollande 2, CP CH-1211, Geneva 11, Switzerland;

“**Account Pledge**” means, in relation to each Account, a deed of pledge of that Account in such form as the Lenders may approve or require, and in the plural means all of them;

“**Advance A**” means, in relation to Ship A, an amount equal to the lesser of (i) \$17,000,000 and (ii) 55 per cent. of the Initial Market Value of that Ship, to be made available to the Borrowers in a single amount for the purpose of refinancing part of the acquisition cost of Ship A;

“**Advance B**” means, in relation to Ship B, an amount equal to the lesser of (i) \$15,000,000 and (ii) 55 per cent. of the Initial Market Value of that Ship, to be made available to the Borrowers in a single amount for the purpose of financing part of the acquisition cost of Ship B;

“**Advances**” means, together, Advance A and Advance B or the principal amount of each borrowing by the Borrowers under this Agreement and, in the singular, means either of them;

“**Affected Lender**” has the meaning given in Clause 5.7;

“**Agency and Trust Deed**” means the agency and trust deed executed or to be executed between the Borrowers, the Lenders, the Agent and the Security Trustee in such form as the Lenders may approve or require;

“**Agent**” means BNP Paribas acting through its office at 16, rue de Hanovre, 75078 Paris Cedex 02, France, or any successor of it appointed under clause 5 of the Agency and Trust Agreement;

“**Applicable Person**” has the meaning given in Clause 29.4;

“**Approved Broker**” means any of 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 Borrowers and the Agent (acting on the instructions of the Majority Lenders) may agree in writing from time to time;

“**Approved Charter**” has the meaning given to that term in Schedule 5;

“**Approved Charterer**” has the meaning given to that term in Schedule 5;

“**Approved Flag**” means, in relation to a Ship, the flag of Marshall Islands, the flag of Liberia, the flag of Panama or such other flag as the Agent (acting on the instructions of the Majority Lenders) may approve as the flag on which that Ship is or, as the case may be, shall be registered;

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

“**Approved Manager**” means in respect of the commercial and technical management of either Ship, Navios Shipmanagement Inc., a corporation incorporated in the Marshall Islands having its registered office at Trust Company Complex, Ajeltake Road, Ajeltake Island, Majuro MH96960, Marshall Islands, or any other company (for the avoidance of doubt, other than an affiliate of Navios Shipmanagement Inc.) which the Agent (acting on the instructions of the Majority Lenders) may approve from time to time as the commercial and technical manager of either Ship;

“**Approved Manager’s Undertaking**” means, in relation to a Ship, a letter of undertaking including, without limitation, an assignment of the Approved Manager’s rights, title and interest in the Insurances of the relevant Ship executed or to be executed by the Approved Manager in favour of the Security Trustee agreeing certain matters in relation to the Approved Manager serving as the manager of that Ship and subordinating the rights of the Approved Manager against that Ship and that Borrower to the rights of the Creditor Parties under the Finance Documents, in such form as the Security Trustee, with the authorisation of the Lenders, may approve or require and, in the plural, means both of them;

“**Availability Period**” means the period commencing on the date of this Agreement and ending on:

(a) 30 September 2017, or such later date as the Agent may, with the authorisation of the Majority Lenders, agree with the Borrowers; or

(b) if earlier, 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 of Directive 2014/59/EU establishing a framework for the recovery and resolution of credit institutions and investment firms, the relevant implementing law or regulation as described in the EU Bail-In Legislation Schedule from time to time; and
- (b) in relation to any other state, any analogous law or regulation from time to time which requires contractual recognition of any Write-down and Conversion Powers contained in that law or regulation.

“Balloon Instalment” has the meaning given to it in Clause 8.1;

“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”;

“Borrower” means each of Borrower A and Borrower B, and, in the plural, means both of them;

“Borrower A” means Finian Navigation Co. a corporation incorporated and existing under the laws of the Marshall Islands having its registered office at Trust Company Complex, Ajeltake Road, Ajeltake Island, Majuro, Marshall Islands MH 96960;

“Borrower B” means Casual Shipholding Co. a corporation incorporated and existing under the laws of the Marshall Islands having its registered office at Trust Company Complex, Ajeltake Road, Ajeltake Island, Majuro, Marshall Islands MH 96960;

“Business Day” means a day on which banks are open in London, Athens, Paris and Geneva and in respect of a day on which a payment is required to be made under a Finance Document, also in New York City;

“Cash Collateral Account” means an account in the joint names of the Borrowers with the Account Bank designated “Finian Navigation Co. and Casual Shipholding Co. – Cash Collateral Account”, or any other account (with that or another office of the Account Bank which replaces this account and is designated by the Agent as the Cash Collateral Account for the purposes of this Agreement;

“**Charterparty**” means, in relation to a Ship, any charterparty (including, without limitation, an Approved Charter) in respect of that Ship of a duration exceeding or capable of exceeding 11 months, made on terms and with a charterer (including, without limitation, the Approved Charterer) acceptable in all respects to the Lenders;

“**Charterparty Assignment**” means, in relation to a Ship, the deed of assignment of any Charterparty in favour of the Security Trustee, in such form as the Lenders may approve or require;

“**Code**” means the United States Internal Revenue Code of 1986;

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

“**Confidentiality Undertaking**” means a confidentiality undertaking substantially in a recommended form of the Loan Market Association (LMA) or in any other form agreed between the Borrowers and the Agent;

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

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

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

- (i) information that:
 - (A) is or becomes public information other than as a direct or indirect result of any breach by that Creditor Party of Clause 30; 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 Creditor Party before the date the information is disclosed to it in accordance with paragraphs (a) or (b) above or is lawfully obtained by that Creditor Party after that date, from a source which is, as far as that Creditor Party is aware, unconnected with the Group and which, in either case, as far as that Creditor Party is aware, has not been obtained in breach of, and is not otherwise subject to, any obligation of confidentiality; and
- (ii) any Funding Rate or any quotation supplied to the Agent by a Reference Bank;

“**Confidential Rate**” means any quotation supplied to the Agent by a Reference Bank or any Funding Rate;

“**Contractual Currency**” has the meaning given in Clause 21.5;

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

“**Corporate Guarantee**” means the guarantee to be given by the Corporate Guarantor in favour of the Security Trustee, guaranteeing the obligations of the Borrowers under this Agreement and the other Finance Documents, in such form as the Lenders may approve or require;

“**Corporate Guarantor**” means Navios Maritime Partners L.P. a limited partnership formed in the Marshall Islands whose registered office at Trust Company Complex, Ajeltake Road, Ajeltake Island, Majuro, Marshall Islands, MH96960 and listed on the New York Stock Exchange;

“**CRD IV**” means Directive 2013/36/EU of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2003/87/EC and repealing Directive 2006/48/EC and 2006/29/EC;

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

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

“**Designated Shareholder**” means 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 Holdings Inc. or any of its affiliates being, either individually or together, the ultimate beneficial owner(s) of, or having ultimate control of the voting rights attaching to, at least 15 per cent. of all the issued shares in the Corporate Guarantor and in the plural means all of them;

“**Dollars**” and “**\$**” means the lawful currency for the time being of the United States of America;

“**Drawdown Date**” means, in relation to an Advance, the date requested by the Borrowers for the Advance to be made, or (as the context requires) the date on which the Advance is actually made;

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

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

- (a) all freight, hire and passage moneys, compensation payable to that Borrower or the Security Trustee in the event of requisition of the Ship owned by it 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 that Ship;
- (b) all moneys which are at any time payable under Insurances in respect of loss of earnings; and
- (c) if and whenever that 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 that Ship;

“Earnings Account” means, in relation to a Ship, an account in the name of the Borrower owning that Ship with the Account Bank which is designated by the Agent in writing as the Earnings Account in respect of that Ship for the purposes of this Agreement, and, in the plural, means both of them;

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

“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 in relation to a Ship:

- (a) any release of Environmentally Sensitive Material from that Ship; or
- (b) any incident in which Environmentally Sensitive Material is released from a vessel other than that Ship and which involves a collision between that Ship and such other vessel or some other incident of navigation or operation, in either case, in connection with which that Ship is actually or potentially liable to be arrested, attached, detained and/or enjoined and/or that Ship and/or the Borrower which is the owner thereof and/or any operator or manager of that 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 that Ship and in connection with which that Ship is actually or potentially liable to be arrested and/or where the Borrower which is the owner thereof and/or any operator or manager of that 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;

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

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

“**FATCA FFI**” means a foreign financial institution as defined in section 1471(d)(4) of the Code which, if any Creditor Party is not a FATCA Exempt Party, could be required to make a FATCA Deduction;

“**Finance Documents**” means:

- (a) this Agreement;
- (b) the Agency and Trust Deed;
- (c) the Corporate Guarantee;
- (d) the General Assignments;
- (e) the Mortgages;
- (f) the Account Pledges;
- (g) the Charterparty Assignments;
- (h) the Approved Manager’s Undertakings;
- (i) the Negative Pledges; and
- (j) any other document (whether creating a Security Interest or not) which is executed at any time by a Borrower, the Corporate Guarantor, the Approved Manager, the Shareholder 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 other documents referred to in this definition;

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

- (a) for principal, interest or any other sum payable in respect of any moneys borrowed or raised by the debtor;
- (b) under any loan stock, bond, note or other security issued by the debtor;
- (c) under any acceptance credit, guarantee or letter of credit facility or dematerialised equivalent made available to the debtor;

- (d) under a financial lease, a deferred purchase consideration arrangement or any other agreement having the commercial effect of a borrowing or raising of money by the debtor;
- (e) under any foreign exchange transaction, any interest or currency swap or any other kind of derivative transaction entered into by the debtor or, if the agreement under which any such transaction is entered into requires netting of mutual liabilities, the liability of the debtor for the net amount; or
- (f) under a guarantee, indemnity or similar obligation entered into by the debtor in respect of a liability of another person which would fall within (a) to (e) if the references to the debtor referred to the other person;

“**Funding Rate**” means any rate notified to the Agent by a Lender pursuant to Clause 5.12;

“**General Assignment**” means, in relation to a Ship, a general assignment of the Earnings, the Insurances and any Requisition Compensation, in such form as the Lenders may approve or require and in the plural means both of them;

“**Group**” means together, the Borrowers, the Corporate Guarantor and their wholly- owned subsidiaries (direct or indirect) from time to time during the Security Period and “**member of the Group**” shall be construed accordingly;

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

“**Initial Market Value**” means, in relation to each Ship, the Market Value thereof determined by taking the valuation of that Ship referred to in paragraph 4 of Schedule 3, 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, which are effected in respect of that Ship, the Earnings or otherwise in relation to it whether before, on or after the date of this Agreement; 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 Agreement;

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

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

- (a) the applicable Screen Rate for the longest period (for which that Screen Rate is available) which is less than that Interest Period; and
 - (b) the applicable Screen Rate for the shortest period (for which that Screen Rate is available) which exceeds that Interest Period,
- each as of 11.00 a.m. (London time) on the Quotation Day for the currency of the Loan;

“ISM Code” means, in relation to its application to the Borrowers, the Ships and their operation:

- (a) ‘The International Management Code for the Safe Operation of Ships 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, in relation to a Ship:

- (a) the document of compliance (DOC) and safety management certificate (SMC) issued pursuant to the ISM Code 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 that Ship’s or that Borrower’s compliance with the ISM Code which the Agent may require;

“ISM SMS” means the safety management system 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”) adopted by a Diplomatic conference of the IMO on Maritime Security on 13 December 2002 and now set out in Chapter XI-2 of the Safety of Life at Sea Convention (SOLAS) 1974 (as amended) to take effect on 1 July 2004;

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

“Lender” means, subject to Clause 26.6:

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

“LIBOR” means, for an Interest Period:

- (a) the applicable Screen Rate;
- (b) (if no Screen Rate is available for that Interest Period) the Interpolated Screen Rate; or

(c) if:

- (i) no Screen Rate is available for the currency of the Loan; or
- (ii) no Screen Rate is available for that Interest Period and it is not possible to calculate an Interpolated Screen Rate, the Reference Bank Rate,

as of, in the case of paragraphs (a) and (c) above, 11.00 a.m. (London time) on the Quotation Day for the currency of the Loan and for a period equal in length to that Interest Period and, if any such rate is below zero, LIBOR will be deemed to be zero;

“**Loan**” means the principal amount for the time being outstanding under this Agreement;

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

“**Majority Lenders**” means:

- (a) before an Advance has been made, Lenders whose Commitments total 66.66 per cent. of the Total Commitments; and
- (b) after an Advance has been made, Lenders whose Contributions total 66.66 per cent. of the Loan;

“**Margin**” means 3 per cent. per annum;

“**Market Value**” means the market value of the Ship determined from time to time in accordance with Clause 15.4;

“**Minimum Liquidity**” has the meaning given in Clause 11.21;

“**MOA**” means the memorandum of agreement dated 5 May 2017 and made between (i) the Borrower B as buyer and (ii) the Seller for the purchase by Borrower B of Ship B;

“**Mortgage**” means, in relation to a Ship, the first preferred or, as the case may be, priority ship mortgage and, if applicable, deed of covenant collateral thereto on that Ship, executed by the Borrower which is the owner thereof in favour of the Security Trustee or (as the case may be) the Lenders, in such form as the Lenders may approve or require and in the plural means both of them;

“**Negative Pledge**” means, in relation to the shares of each Borrower, the negative pledge agreement to be given by the Shareholder in favour of the Security Trustee as security for the obligations of the Borrowers under this Agreement and the other Finance Documents, in such form as the Lenders may approve or require and in the plural means both of them;

“**Negotiation Period**” has the meaning given in Clause 5.10;

“**Notifying Lender**” has the meaning given in Clause 23.1 or Clause 24.2 as the context requires;

“**Payment Currency**” has the meaning given in Clause 21.5;

“**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, repair or maintenance of a Ship, provided such liens do not secure amounts more than 45 days overdue (unless the overdue amount is being contested by the relevant Borrower in good faith by appropriate steps) and subject, in the case of liens for repair or maintenance, to Clause 14.13(g);
- (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 relevant Borrower is 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 for payment other than taxes being contested in good faith by appropriate steps and in respect of which appropriate reserves have been made;

"Person" has the meaning given to it in Clause 10.18;

"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 determination of the Majority Lenders and/or the satisfaction of any other condition, would constitute an Event of Default;

"Quotation Date" means, in relation to any period for which an interest rate is to be determined under any provision of a Finance Document, the day which is 2 Business Days before the first day of that period, unless market practice differs in the London Interbank Market for a currency, in which case the Quotation Date will be determined by the Agent in accordance with market practice in the London Interbank Market (and if quotations would normally be given by leading banks in the London Interbank Market on more than one day, the Quotation Date will be the last of those days);

“Reference Bank” means, in relation to the determination of LIBOR and any mandatory costs, the London office of BNP Paribas or such other bank as may be appointed by the Agent after consultation with the Borrower;

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

“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 Person” has the meaning given in Clause 19.9;

“Repayment Date” means a date on which a repayment is required to be made under Clause 8;

“Repayment Instalment” has the meaning given to it in Clause 8.1;

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

“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”**;

“Retention Account” means an account in the joint names of the Borrowers with the Account Bank designated **“Finian Navigation Co. and Casual Shipholding Co. – Retention Account”**, or any other account (with that or another office of the Account Bank which replaces this account and is designated by the Agent as the Retention Account for the purposes of this Agreement;

“Sanctioned Person” has the meaning given to it in Clause 10.18;

“Sanctioned Country” has the meaning given to it in Clause 10.18;

“Sanctions” means any economic or trade sanctions or restrictive measures enacted, administered, imposed or enforced by the U.S. Department of the Treasury’s Office of Foreign Assets Control (OFAC), the U.S. Department of State, the United Nations Security Council and/or the European Union and/or the French Republic and/or Her Majesty’s Treasury and/or the State Secretariat for Economic Affairs of Switzerland (SECO) or other relevant sanctions authority;

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

“Security Cover Ratio” means, at any relevant time, the aggregate of (i) the aggregate of the Market Value of the Mortgaged Ships, (ii) the net realisable value of any additional security provided at that time under Clause 15 and (iii) the whole of the Minimum Liquidity standing to the credit of the Cash Collateral Account, at that time expressed as a percentage of the Loan;

“Secured Liabilities” means all liabilities which the Borrowers, the Security Parties 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 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; and
- (b) the rights of the plaintiff under an action *in rem* in which the vessel concerned has been arrested or a writ has been issued or similar step taken.

“Security Party” means the Corporate Guarantor, the Approved Manager, the Shareholder and any other person (except an Approved Charterer and a Creditor Party) who, as a surety or mortgagor, as a party to any subordination or priorities arrangement, or in any similar capacity, executes a document falling within the final paragraph of the definition of “Finance Documents”;

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

- (a) all amounts which have become due for payment by a Borrower or any Security Party under the Finance Documents have been paid;
- (b) no amount is owing or has accrued (without yet having become due for payment) under any Finance Document;
- (c) no Borrower nor any Security Party has any future or contingent liability under Clause 20, 21 or 22 below or any other provision of this Agreement or another Finance Document; and
- (d) the Agent, the Security Trustee and the Lenders 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 Trustee” means BNP Paribas acting through its office at 16, rue de Hanovre, 75078 Paris Cedex 02, France, or any successor of it appointed under clause 5 of the Agency and Trust Agreement;

“Seller” has the meaning given to that term in Schedule 5;

“Shareholder” means Navios Maritime Operating L.L.C., a corporation incorporated and existing in the Republic of the Marshall Islands whose registered office is at Trust Company Complex, Ajeltake Road, Ajeltake Island, Majuro, The Marshall Islands MH96960;

“Ship” means each of Ship A and Ship B, and, in the plural, means both of them;

“**Ship A**” has the meaning given to that term in Schedule 5;

“**Ship B**” has the meaning given to that term in Schedule 5;

“**Term B Loan**” means the credit agreement dated as of 14 March 2017 (as amended, restated, supplemented or otherwise modified from time to time), by and among the Corporate Guarantor and Navios Partners Finance (US) Inc., a Delaware corporation, as borrowers, the lenders from time to time party thereto and Morgan Stanley Senior Funding, Inc., as administrative agent for the lenders;

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

- (a) actual, constructive, compromised, agreed or arranged total loss of that Ship;
- (b) any expropriation, confiscation, requisition 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 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 unless that Ship is within 30 days redelivered to the full control of the Borrower owning that Ship;
- (c) any condemnation of that Ship by any tribunal or by any person or person claiming to be a tribunal; and
- (d) any arrest, capture, seizure, confiscation or detention of that Ship (including any hijacking or theft) unless it is within the Relevant Period redelivered to the full control of the Borrower owning that Ship;

“**Relevant Period**” means:

- (i) in the case of any arrest of a Ship, within 1 month; and
- (ii) in the case of piracy or capture, seizure, confiscation or detention of a Ship (including any hijacking or theft) 90 days Provided that if the relevant underwriters confirm to the Agent in writing prior to the end of the 90-day period referred to in (i) above 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 a Ship:

- (a) in the case of an actual loss, 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 to the insurers; and
 - (ii) the date of any compromise, arrangement or agreement made by or on behalf of the Borrower owning that Ship, 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, on the earlier of:
 - (i) the date at which a total loss is subsequently admitted by such insurers;
 - (ii) the date at which a total loss is subsequently adjudged by a competent court of law or arbitration tribunal to have occurred, if such insurers do not immediately admit such claim; or
 - (iii) 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;

“**Trust Property**” has the meaning given in clause 3.1 of the Agency and Trust Agreement;

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

“**US GAAP**” means generally accepted international accounting principles as from time to time in effect in the United States of America;

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

1.2 Construction of certain terms

In this Agreement:

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

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

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

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

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

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

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

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

“**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;

“**months**” shall be construed in accordance with Clause 1.3;

“**obligatory insurances**” means, in relation to a Ship, all insurances effected, or which the Borrower owning that Ship, is obliged to effect, under Clause 13 or any other provision of this Agreement or another Finance Document;

“**parent company**” has the meaning given in Clause 1.4;

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

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

“**protection and indemnity risks**” means the usual risks covered by a protection and indemnity association managed in London, including pollution risks, freight demurrage and defence 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 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 (either having the force of law or compliance with which is reasonable in the ordinary course of business of the party concerned) 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 1.4;

“**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;

“**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, piracy and all risks excluded from the standard form of English or other marine policy; and

“**which is continuing**” or “**is continuing**”, 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 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) 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; or
- (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 **Provided** that there shall be excluded from this definition any subsidiaries which are listed on a public stock exchange.

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 to 1.4 and paragraph (a) of this Clause 1.5 apply unless the contrary intention appears.
 - (c) References in Clause 1.1 to a document being in the form of a particular Appendix include references to that form with any modifications to that form which the Agent (with the authorisation of the Lenders in the case of substantial modifications) approves or requires.
 - (d) The clause headings shall not affect the interpretation of this Agreement.

2 LOAN FACILITY

2.1 Amount of loan facility

Subject to the other provisions of this Agreement, the Lenders shall make available to the Borrowers a senior secured term loan facility in 2 Advances as follows:

- (a) Advance A shall be in an amount equal to the lesser of (a) \$17,000,000 and (b) 55 per cent. of the Initial Market Value of Ship A; and
- (b) Advance B shall be in an amount equal to the lesser of (a) \$15,000,000 and (b) 55 per cent. of the Initial Market Value of Ship B .

2.2 Lenders' participations in Advances

Subject to the other provisions of this Agreement, each Lender shall participate in each Advance in the proportion which, as at the Drawdown Date, its Commitment bears to the Total Commitments.

2.3 Purpose of Advances

The Borrowers undertake with each Creditor Party to use each Advance to finance or as the case may be refinance part of the acquisition cost of the Ship to which that Advance relates.

3 POSITION OF THE LENDERS

3.1 Interests of Lenders several

The rights of the Creditor Parties under this Agreement are several; accordingly each Lender shall be entitled to sue for any amount which has become due and payable by the Borrowers to it under this Agreement without joining the Security Trustee or any other Creditor Party as additional parties in the proceedings, save that the Security Interests created by any of the Finance Documents may only be enforced in accordance with Clause 19.2.

3.2 Proceedings by individual Creditor Party

However, without the prior consent of the Lenders, no Creditor Party may bring proceedings in respect of:

- (a) any other liability or obligation of either Borrower or a Security Party under or connected with a Finance Document; or

- (b) any misrepresentation or breach of warranty by either Borrower or a Security Party in or connected with a Finance Document.

3.3 Obligations of Creditor Parties 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) a Borrower, any Security Party or any other Lender being discharged (in whole or in part) from its obligations under any Finance Documents, 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 Lenders

Every Lender, either Borrower and each Security Party shall be bound by:

- (a) any determination made, or action taken, by the Lenders under any provision of a Finance Document;
- (b) any instruction or authorisation given by the Lenders to the Agent or the Security Trustee under or in connection with any Finance Document; and
- (c) any action taken (or in good faith purportedly taken) by the Agent or the Security Trustee in accordance with such an instruction or authorisation.

3.5 Reliance on action of Agent

However, either Borrower 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 and 3.5 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 Advance

Subject to the following conditions, the Borrowers may request an Advance to be advanced by ensuring that the Agent receives a completed Drawdown Notice not later than 11.00 a.m. (Paris time) 2 Business Days prior to the intended Drawdown Date (or such other shorter period as the Lenders may agree).

4.2 Availability

The conditions referred to in Clause 4.1 are that:

- (a) the Drawdown Date has to be a Business Day during the Availability Period;

- (b) the amount of each Advance shall not exceed an amount equal to the lesser of:
 - (i) 55 per cent. of the Initial Market Value of the Ships relevant to such Advance;
 - (ii) in relation to:
 - (A) Advance A, \$17,000,000;
 - (B) Advance B, \$15,000,000; and
 - (c) the aggregate amount of the Advances shall not exceed the Total Commitments.

4.3 Notification to Lenders of receipt of a Drawdown Notice

The Agent shall promptly notify the Lenders that it has received a Drawdown Notice and shall inform each Lender of:

- (a) the amount of the Advance and the Drawdown Date;
- (b) the amount of that Lender's participation in the Advance; and
- (c) the duration of the first Interest Period.

4.4 Drawdown Notice irrevocable

A Drawdown Notice must be signed by an officer or other authorised person of each Borrower; and once served a Drawdown Notice cannot be revoked without the prior consent of the Agent, acting on the authority of the Majority Lenders.

4.5 Lenders to make available Contributions

Subject to the provisions of this Agreement, each Lender shall, on and with value on the Drawdown Date, make available to the Agent for the account of the Borrowers the amount due from that Lender under Clause 2.2.

4.6 Disbursement of Advance

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; and that payment to the Borrowers shall be made:

- (a) to the account which the Borrowers specify in the Drawdown Notice; and
- (b) in the like funds as the Agent received the payments from the Lenders.

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, the rate of interest on each Advance in respect of an Interest Period shall be the aggregate of (i) the Margin and (ii) LIBOR for that Interest Period subject to Clause 5.6 and 5.7.

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 normal interest

The Agent shall notify the Borrowers and each Lender of:

- (a) each rate of interest; and
- (b) the duration of each Interest Period,

as soon as reasonably practicable after each is determined.

5.5 Obligation of Reference Bank to quote

Each of the Reference Banks which is a Lender shall use all reasonable efforts to supply the quotation required of it for the purposes of fixing a rate of interest under this Agreement unless that Reference Bank ceases to be a Lender pursuant to Clause 26.16.

5.6 Absence of quotations by Reference Bank

If any Reference Bank fails to supply a quotation, the relevant rate of interest shall be set in accordance with the following provisions of this Clause 5.

5.7 Market disruption

The following provisions of this Clause 5 apply if:

- (a) LIBOR is to be determined by reference to the Reference Banks and no Reference Bank does, before 1.00 p.m. (London time) on the Quotation Date for an Interest Period, provide quotations to the Agent in order to fix LIBOR; or
- (b) at least 1 Business Day before the start of an Interest Period, a Lender may notify the Agent that LIBOR fixed by the Agent would not accurately reflect the cost to that Lender of funding its respective Contribution (or any part of it) during the Interest Period in the London Interbank Market at or about 11.00 a.m. (London time) on the Quotation Date for the Interest Period; or
- (c) at least 1 Business Day before the start of an Interest Period, the Agent is notified by a Lender (the "Affected Lender") that for any reason it is unable to obtain Dollars in the London Interbank Market in order to fund its Contribution (or any part of it) during the Interest Period.

5.8 Notification of market disruption

The Agent shall promptly notify the Borrowers and each of the Lenders stating the circumstances falling within Clause 5.7 which have caused its notice to be given.

5.9 Suspension of drawdown

If the Agent's notice under Clause 5.8 is served before an Advance is made:

- (a) in a case falling within paragraphs (a) or (b) of Clause 5.7, the Lenders' obligations to make the Advance;

- (b) in a case falling within Clause 5.7(c), the Affected Lender's obligation to participate in the Advance, shall be suspended while the circumstances referred to in the Agent's notice continue.

5.10 Negotiation of alternative rate of interest

If the Agent's notice under Clause 5.8 is served after an Advance is made, the Borrowers, the Agent and the Lenders or (as the case may be) the Affected Lender shall use reasonable endeavours to agree, within the 30 days after the date on which the Agent serves its notice under Clause 5.8 (the "Negotiation Period"), an alternative interest rate or (as the case may be) an alternative basis for the Lenders or (as the case may be) the Affected Lender to fund or continue to fund their or its Contribution during the Interest Period concerned.

5.11 Application of agreed alternative rate of interest

Any alternative interest rate or an alternative basis which is agreed during the Negotiation Period shall take effect in accordance with the terms agreed.

5.12 Alternative rate of interest in absence of agreement

If an alternative interest rate or alternative basis is not agreed within the Negotiation Period, and the relevant circumstances are continuing at the end of the Negotiation Period, then the Agent shall, with the agreement of each Lender or (as the case may be) the Affected Lender, set an interest period and interest rate representing the cost of funding of the Lenders concerned or (as the case may be) the Affected Lender in Dollars or in any available currency of their or its Contribution plus the Margin; and the procedure provided for by this Clause 5.12 shall be repeated if the relevant circumstances are continuing at the end of the interest period so set by the Agent.

5.13 Notice of prepayment

If the Borrowers do not agree with an interest rate set by the Agent under Clause 5.12, the Borrowers may give the Agent not less than 15 Business Days' notice of their intention to prepay at the end of the interest period set by the Agent.

5.14 Prepayment; termination of Commitments

A notice under Clause 5.13 shall be irrevocable; the Agent shall promptly notify the Lenders or (as the case may require) the Affected 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 Affected Lender shall be cancelled; and
- (b) on the last Business Day of the interest period set by the Agent, the Borrowers shall prepay (without premium or penalty) the Loan or, as the case may be, the Affected Lender's Contribution, together with accrued interest thereon at the applicable rate plus the Margin.

5.15 Application of prepayment

The provisions of Clause 8 shall apply in relation to the prepayment.

6 INTEREST PERIODS

6.1 Commencement of Interest Periods

The first Interest Period applicable to an Advance shall commence on the Drawdown Date applicable to that Advance 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 and 6.4, each Interest Period shall be:

- (a) 3, 6 or 9 months as notified by the Borrowers to the Agent not later than 11.00 a.m. (Paris time) 3 Business Days before the commencement of the 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 may 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 on a particular Repayment Date, an Interest Period 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. (London time) on the third 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 London Interbank Market when the Interest Period commences, the Interest Period shall be 3 months.

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 on any amount payable by either Borrower under any Finance Document which the Agent, the Security Trustee or the other designated payee does not receive on or before the relevant date, that is:

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

7.2 Default rate of interest

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

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

- (b) in the case of any other overdue amount, the rate set out at paragraph (b) of Clause 7.3.

7.3 Calculation of default rate of interest

The rates referred to in Clause 7.2 are:

- (a) the rate applicable to the overdue principal amount immediately prior to the relevant date (but only for any unexpired part of any then current Interest Period);
- (b) the aggregate of the Margin plus, in respect of successive periods of any duration (including at call) up to 3 months which the Agent may select from time to time:
 - (i) LIBOR; or
 - (ii) if the Agent (after consultation with the Reference Bank) determines that Dollar deposits for any such period are not being made available to the Reference Bank by leading banks in the London Interbank Market in the ordinary course of business, a rate from time to time determined by the Agent by reference to the cost of funds to the Reference Bank from such other sources as the Agent (after consultation with the Reference Bank) may from time to time determine.

7.4 Notification of interest periods and default rates

The Agent shall promptly notify the Lenders and the Borrowers of each interest rate determined by the Agent under Clause 7.3 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 Agent for the account of the Creditor Party to which the overdue amount is due.

7.6 Compounding of default interest

Any such interest which is not paid at the end of the period by reference to which it was determined shall thereupon be compounded.

8 REPAYMENT AND PREPAYMENT

8.1 Amount of repayment instalments

The Borrowers shall repay:

- (a) Advance A, by:
 - (i) 16 equal consecutive quarterly instalments, each in the amount of \$386,000 (each a "**Repayment Instalment A**" and, together, the "**Repayment Instalments A**"); and
 - (ii) a balloon instalment in the amount of \$10,824,000 (the "**Balloon Instalment A**"); and

- (b) Advance B, by:
 - (i) 16 equal consecutive quarterly instalments (each a “**Repayment Instalment B**” and, together, the “**Repayment Instalments B**” and, together with the Instalments A, the “**Repayment Instalments**” and each a “**Repayment Instalment**”), each in the amount of \$417,000; and
 - (ii) a balloon instalment (the “**Balloon Instalment B**” and, together with the Balloon Instalment A, the “**Balloon Instalments**” and each a “**Balloon Instalment**”) in the amount of \$8,328,000,

Provided that (a) in respect of Advance A, if the amount advanced is less than \$17,000,000 or (b) in respect of Advance B, if the amount advanced is less than \$15,000,000, the aggregate amount of the Instalments and the Balloon Instalment in respect of the relevant Advance shall be reduced by an amount equal to the undrawn amount on a *pro rata* basis.

8.2 Repayment Dates

The first Repayment Instalment in respect of each Advance shall be repaid on the date falling 3 months after the Drawdown Date relating to that Advance with the remaining Repayment Instalments to be repaid at 3-monthly intervals thereafter and the last Repayment Instalment together with the Balloon Instalment shall be paid on the earlier of:

- (a) the date falling on the fourth anniversary of the relevant Drawdown Date; and
- (b) 30 September 2021.

8.3 Final Repayment Date

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

8.4 Voluntary prepayment

Subject to the following conditions, the Borrowers may prepay the whole or any part of the Loan on the last day of an Interest Period in respect thereof.

8.5 Conditions for voluntary prepayment

The conditions referred to in Clause 8.4 are that:

- (a) a partial prepayment shall be \$1,000,000 or an integral multiple of \$1,000,000;
- (b) the Agent has received from the Borrowers at least 10 Business Days’ prior written notice specifying:
 - (i) the amount to be prepaid and the date on which the prepayment is to be made (such date shall be the last day of an Interest Period);
 - (ii) whether such prepayment will be applied against one of the Advances, in which case the Borrowers will specify the Advance against which that prepayment should be applied. A failure by the Borrowers to make such a designation shall result in the prepayment being applied proportionately between each Advance and thereafter pro rata against the Instalments in respect of each Advance which are at the time being outstanding and each Balloon Instalment; and

- (c) the Borrowers have provided evidence satisfactory to the Agent that any consent required by the Borrowers or any Security Party in connection with the prepayment has been obtained and remains in force, and that any requirement relevant to this Agreement which affects the Borrowers or any Security Party has been complied with.

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 authority 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).

8.8 Mandatory prepayment

The Borrowers shall be obliged to prepay the Relevant Amount:

- (a) if a Ship is sold, on or before the date on which the sale is completed by delivery of that Ship to the buyer; or
- (b) if a Ship becomes a Total Loss, on the earlier of the date falling 180 days after the Total Loss Date and the date of receipt by the Security Trustee of the proceeds of insurance relating to such Total Loss.

In this Clause 8.8 “**Relevant Amount**” means an amount equal to the higher of:

- (i) the Advance to which the Ship being sold or which has become a Total Loss relates; and
- (ii) an amount (if any) which after the application of the prepayment to be made pursuant to Clause 8.10(b) results in the Security Cover Ratio being the greater of (A) 120 per cent. and (B) the percentage which applied immediately prior to the applicable event described in paragraph (a) or (b) of this Clause 8.8.

8.9 Amounts payable on prepayment

A prepayment shall be made together with accrued interest (and any other amount payable under Clause 21 below or otherwise) in respect of the amount prepaid and, if the prepayment is not made on the last day of an Interest Period together with any sums payable under Clause 21.1(b) but (subject to Clause 8.11) without premium or penalty.

8.10 Application of partial prepayment

Any voluntary prepayment shall be applied:

- (a) if made pursuant to Clause 8.4, pro rata against the Balloon Instalment and the Repayment Instalments of the Advance being prepaid or in such other manner as the Agent (acting on the instructions of the Lenders) may agree with the Borrowers;
- (b) if made pursuant to Clause 8.8:
 - (i) **FIRSTLY:** against the Advance which has been used in part financing or refinancing, as the case may be, the relevant Ship and thereafter any balance shall be applied pro rata against the then outstanding Repayment Instalments and the Balloon Instalment of the other Advance; and

- (ii) **SECONDLY:** pro rata towards repayment of any overdue interest, any breakage costs, any accrued interest relating to the Loan, any other costs, fees, expenses, commissions due under this Agreement; and
- (iii) **THIRDLY:** any surplus shall be released to the Borrowers Provided that no Event of Default or Potential Event of Default has occurred or is continuing.

8.11 No reborrowing

No amount repaid or prepaid may be reborrowed.

9 CONDITIONS PRECEDENT

9.1 Documents, fees and no default

Each Lender's obligation to contribute to an Advance is subject to the following conditions precedent:

- (a) that on or before the date of this Agreement, the Agent receives:
 - (i) the documents described in Part A of Schedule 3 in a form and substance satisfactory to the Agent and its lawyers; and
 - (ii) the up-front fee referred to in Clause 20.1; and
 - (iii) payment in full of any expenses payable pursuant to Clause 20.2 which are due and payable on the date of this Agreement;
- (b) that, on or before the service of each Drawdown Notice, the Agent receives:
 - (i) the documents described in Part B of Schedule 3 in form and substance satisfactory to the Agent and its lawyers; and
 - (ii) payment in full of any expenses payable pursuant to Clause 20.2 which are due and payable on the date of this Agreement;
- (c) that at the date of each Drawdown Notice and at each Drawdown Date:
 - (i) no Event of Default or Potential Event of Default has occurred or is continuing or would result from the borrowing of the relevant Advance; and
 - (ii) the representations and warranties in Clause 10 and those of the Borrowers 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;
 - (iii) none of the circumstances contemplated by Clause 5.7 has occurred and is continuing; and
 - (iv) there has been no material adverse change in the business, management, condition (financial or otherwise), results of operations, state of affairs, operation, performance, prospects or properties of the Borrowers or either of them and/or the Corporate Guarantor and its affiliates applying as at 31 March 2017;
- (d) that, if the ratio set out in Clause 15.1 were applied immediately following the making of an Advance, the Borrower would not be obliged to provide additional security or prepay part of the Loan under that Clause; and

- (e) 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 an Advance to be borrowed before certain of the conditions referred to in Clause 9.1 are satisfied, the Borrowers shall ensure that those conditions are satisfied within 5 Business Days after the Drawdown Date (or such longer period as the Agent may, with the authority of the Majority Lenders, specify).

10 REPRESENTATIONS AND WARRANTIES

10.1 General

Each Borrower represents and warrants (which representations and warranties (other than the ones in Clauses 10.11 and 10.12) shall survive the execution of this Agreement and shall be deemed to be repeated throughout the Security Period on the first day of each Interest Period with respect to the facts and circumstances then existing) 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 the Republic of the Marshall Islands.

10.3 Share capital and ownership

Each Borrower is authorised to issue 500 registered and/or bearer shares, without par value, and the ownership of all those shares is held in registered form by the Shareholder, free of any Security Interest or other claim, by the persons disclosed in writing to the Agent prior to the date of this Agreement.

10.4 Corporate power

Each Borrower has the corporate capacity, and has taken all corporate action and obtained all consents necessary for it to:

- (a) in relation to Borrower B, execute the MOA, to purchase and pay for Ship B under the MOA and register Ship B in its name under Panamanian flag;
- (b) continue to own the Ship owned by it under the relevant Approved Flag;
- (c) execute the Finance Documents to which that Borrower is a party; and
- (d) borrow under this Agreement and 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 remain in force and nothing has occurred which makes any of them liable to revocation.

10.6 Legal validity; effective Security Interests

The Finance Documents to which that 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 that Borrower's legal, valid and binding obligations enforceable against that Borrower in accordance with their respective terms; and
 - (b) create legal, valid and binding Security Interests enforceable in accordance with their respective terms over all the assets to which they, by their terms, relate,
- subject to any relevant insolvency laws affecting creditors' rights generally.

10.7 No third party Security Interests

Without limiting the generality of Clause 10.6, at the time of the execution and delivery of each Finance Document to which a Borrower is a party:

- (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.

10.8 No conflicts

The execution by a Borrower of each Finance Document to which it is a party, and the borrowing by that Borrower of the Loan, and its compliance with each Finance Document to which it is a party will not involve or lead to a contravention of:

- (a) any law or regulation; or
- (b) the constitutional documents of that Borrower; or
- (c) any contractual or other obligation or restriction which is binding on that Borrower or any of its assets.

10.9 No withholding taxes

All payments which each Borrower is liable to make under the Finance Documents to which it is a party may be made without deduction or withholding for or on account of any tax payable under any law of any Pertinent Jurisdiction.

10.10 No default

No Event of Default or Potential Event of Default has occurred and is continuing or would result from the entry into, the performance of, or any transaction contemplated by, any Finance Document.

10.11 Information

All information which has been provided in writing by or on behalf of the Borrowers or any member of the Group to any Creditor Party in connection with any Finance Document satisfied the requirements of Clause 11.5; all audited and unaudited accounts which have been so provided satisfied the requirements of Clause 11.7; and there has been no material adverse change in the financial position or state of affairs, operation, performance or prospects of the Borrowers or any of them or any Security Party (excluding the Approved Manager) as at 31 March 2017 from that disclosed to the Agent.

10.12 No litigation

No material, legal or administrative action involving either Borrower or any Security Party (excluding the Approved Manager) has been commenced or taken or, to a Borrower's knowledge, is likely to be commenced or taken.

10.13 Compliance with certain undertakings

At the date of this Agreement, each Borrower is in compliance with Clauses 11.2, 11.4, 11.9 and 11.13.

10.14 Taxes paid

Each Borrower has paid all taxes applicable to, or imposed on or in relation to that Borrower, its business or the Ship owned by it.

10.15 No money laundering; anti-bribery

None of the Borrowers, the Security Parties and the Designated Shareholder nor any of their subsidiaries, directors or officers, or, to their best knowledge, any affiliate or employee of them, have 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 Borrowers, the Security Parties and the Designated Shareholder has instituted and maintains policies and procedures designed to prevent violation of such laws, regulations and rules.

10.16 ISM Code, ISPS Code Compliance and Environmental Laws

All requirements of the ISM Code, ISPS Code and Environmental Laws as they relate to the Borrowers, the Approved Manager and the Ships have been complied with.

10.17 No immunity

Neither 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).

10.18 Sanctions

None of the Borrowers, the Security Parties, the Designated Shareholder or any charterer in respect of a Ship nor any of their subsidiaries, directors or officers, or, to their best knowledge, any affiliate, agent or employee of them, is an individual or entity (a "Person"), that is, or is owned or controlled by Persons that are: (i) the target of any Sanctions (a "Sanctioned Person") or (ii) located, organized or resident in a country or territory that is, or whose government is, the subject of Sanctions broadly prohibiting dealings with such government, country or territory (a "Sanctioned Country").

10.19 Insolvency

In relation to each Borrower, no corporate action, legal proceeding or other procedure or step described in Clause 19.1(g) or creditors' process described in that clause has been taken or, to its knowledge, threatened in relation to it, and none of the circumstances described in Clause 19.1(g) applies to it.

10.20 Validity and completeness of MOA

The MOA constitutes valid, binding and enforceable obligations of the Seller and Borrower B respectively in accordance with its terms and:

- (a) the copy of the MOA delivered to the Agent before the date of this Agreement is a true and complete copy; and

- (b) no amendments or additions to the MOA have been agreed nor has Borrower B or the Seller waived any of their respective rights under the MOA.

11 GENERAL UNDERTAKINGS

11.1 General

Each Borrower undertakes with each Creditor Party to comply with the following provisions of this Clause 11 at all times during the Security Period except as the Agent may, with the authority of the Majority Lenders, otherwise permit in writing.

11.2 Title and negative pledge

Each Borrower will:

- (a) hold the legal title to, and own the entire beneficial interest in the Ship owned by it, the 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;
- (b) not create or permit to arise any Security Interest (except for Permitted Security Interests) over any other asset, present or future; and
- (c) procure that its liabilities under the Finance Documents to which it is party do and will rank at least pari passu with all other present and future unsecured liabilities, except for liabilities which are mandatorily preferred by law.

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, but paragraph (a) does not apply to any charter of a Ship as to which Clause 14.13 applies.

11.4 No other liabilities or obligations to be incurred

No Borrower will incur any liability or obligation except:

- (a) liabilities and obligations under the MOA and the Finance Documents to which it is a party;
- (b) under the relevant Approved Charter;
- (c) under the unsecured guarantee issued by that Borrower in respect of obligations of the Corporate Guarantor under the Term B Loan;
- (d) subject to other provisions of this Agreement, liabilities or obligations reasonably incurred in the ordinary course of trading, maintaining, repairing, operating and chartering the Ship owned by it; and

- (e) Financial Indebtedness to any other corporation which is a member of the Group or individual who is a shareholder or majority shareholder in a member of the Group Provided that such Financial Indebtedness shall be fully subordinated to the Loan and the Borrower shall, promptly following the Agent's demand, execute or procure the execution of any documents which the Agent specifies to create or maintain the subordination of the rights of the relevant member of the Group against the relevant Borrower to those of the Creditor Parties under the Finance Documents.

11.5 Information provided to be accurate

All financial and other information which is provided in writing by or on behalf of a Borrower under or in connection with any Finance Document will be true, correct, accurate and not misleading and will not omit any material fact or consideration.

11.6 Provision of financial statements

Each Borrower will send or procure that they are sent to the Agent:

- (a) as soon as possible, but in no event later than 180 days after the end of each financial year of the Corporate Guarantor (commencing with the financial year ending on 31 December 2017), the audited annual consolidated accounts of the Group; and
- (b) as soon as possible, but in no event later than 90 days after the end of the 6-month period ending on 30 June in each financial year of the Corporate Guarantor, the semi-annual consolidated management accounts in respect of the Group, duly certified as to their correctness by a director or officer of the Corporate Guarantor; and
- (c) promptly after each request by the Agent, such further financial information about that Borrower, the Ship owned by it and the Corporate Guarantor or any other member of the Group (including, but not limited to, information regarding the charter arrangements, Financial Indebtedness and operating expenses) as the Agent may require.

11.7 Form of financial statements

All accounts (audited and unaudited) delivered under Clause 11.6 will:

- (a) be prepared in accordance with all applicable laws and US GAAP;
- (b) give a true and fair view of the state of affairs of the relevant person at the date of those accounts and of its profit for the period to which those accounts relate; and
- (c) fully disclose or provide for all significant liabilities of the Group.

11.8 Shareholder notices

Each Borrower will send to the Agent following a request by the Agent, and at the same time as they are despatched, copies of all communications which are despatched to that Borrower's shareholders or any class of them.

11.9 Consents

Each Borrower will, and will procure that each Security Party will, maintain in force and promptly obtain or renew, and will promptly send certified copies to the Agent of, all consents required:

- (a) for that Borrower and that Security Party to perform its obligations under any Finance Document or any Charterparty to which it is party;

- (b) for the validity or enforceability of any Finance Document and any Charterparty to which it is party; and
- (c) for that Borrower to continue to own and operate the Ship owned by it, and that Borrower will, and will procure that each Security Party will, comply with the terms of all such consents.

11.10 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, 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.

11.11 Notification of litigation

Each Borrower will provide the Agent with details of any legal or administrative action involving that Borrower, any Security Party, the Approved Manager, the Ship owned by it, the Earnings or the Insurances in respect of that Ship as soon as such action is instituted or it becomes apparent to that Borrower that it is likely to be instituted, unless it is clear that the legal or administrative action cannot be considered material in the context of any Finance Document.

11.12 Principal place of business

Each Borrower will maintain its place of business, and keep its corporate documents and records, at the address stated in Clause 28.2(a); and neither Borrower will establish, or do anything as a result of which it would be deemed to have, a place of business in the United States or the United Kingdom or any country other than Greece.

11.13 Confirmation of no default

The Borrower will, within 2 Business Days after service by the Agent of a written request, serve on the Agent a notice which is signed by 2 directors of the Borrower and which:

- (a) states that no Event of Default or Potential Event of Default has occurred; or
- (b) states that no Event of Default or Potential Event of Default has occurred, except for a specified event or matter, of which all material details are given.

The Agent may serve requests under this Clause 11.13 from time to time; this Clause 11.13 does not affect the Borrowers' obligations under Clause 11.14.

11.14 Notification of default

Each Borrower will notify the Agent as soon as that Borrower becomes aware of the occurrence of an Event of Default or a Potential Event of Default and will thereafter keep the Agent fully up-to-date with all developments.

11.15 Provision of further information

Each Borrower will, as soon as practicable after receiving the request, provide the Agent with any additional financial or other information relating:

- (a) to that Borrower, the Ship owned by it, the Insurances, the Earnings or the Corporate Guarantor; or
- (b) to any matter relevant to, or to any provision of, the Approved Charter;
- (c) to any other matter relevant to, or to any provision of, a Finance Document;
- (d) any information requested in respect of that Borrower, the Corporate Guarantor, the Shareholder and the Designated Shareholder in connection with the Creditor Parties' and/or the Account Bank's "Know your customer" regulations, including, but not limited to information required pursuant to all applicable laws and regulations, including, without limitation, the laws of the European Union, Switzerland and the United States of America in connection with that Borrower, the Corporate Guarantor and any other Security Party and their respective beneficial owners,

which may be requested by the Agent, the Security Trustee or any Lender at any time.

11.16 Provision of copies and translation of documents

Each Borrower will supply the Agent with a sufficient number of copies of the documents referred to above to provide 1 copy for each Creditor Party; if the Agent so requires in respect of any of those documents, that Borrower will provide a certified English translation prepared by a translator approved by the Agent.

11.17 "Know your customer" checks. If:

- (a) the introduction of or any change in (or in the interpretation, administration or application of) any law or regulation made after the date of this Agreement;
- (b) any change in the status of either Borrower or any Security Party after the date of this Agreement; or
- (c) a proposed assignment or transfer by a Lender of any of its rights and obligations under this Agreement to a party that is not a Lender prior to such assignment or transfer,

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

11.18 Sanctions

- (a) None of the Borrowers and the Security Parties will, directly or indirectly, use the proceeds of the loan hereunder, or lend, contribute or otherwise make available such proceeds to any subsidiary, joint venture partner or any other Person, (i) to fund any activities or business of or with any Person, or in any country or territory, that, at the time of such funding, is, a Sanctioned Person or Sanctioned Country or (ii) in any other manner that would result in a violation of Sanctions by any Person (including any Person participating in the loan hereunder, whether as underwriter, advisor, investor, lender, hedge provider, facility or security agent or otherwise);
- (b) Without limiting paragraphs (a) and (b) of Clause 14.10, the Borrowers shall procure:
 - (i) that the Ships shall not be used directly or indirectly by or for the benefit of a Sanctioned Person;
 - (ii) that the Ships shall not be used directly or indirectly in calling, trading or otherwise going to a Sanctioned Country;
 - (iii) that the Ships shall not be used or traded directly or indirectly in any manner which would trigger the operation of any sanctions limitation or exclusion clause (or similar) in the Insurances and/or re-insurance of the Ships; and
 - (iv) that each Charterparty and each sub-charterparty in respect of a Ship shall contain, for the benefit of the relevant Borrower, language which broadly gives effect to the provisions of paragraph (b) of Clause 14.10 as regards Sanctions and of this sub-paragraph (b)(iv) of this Clause 11.18 and which permits refusal of employment or voyage orders if compliance would result in a breach of Sanctions.

11.19 Hedging of interest rate risks – Right of first refusal

The Borrowers hereby grant to the Lenders a right of first refusal for the purpose of hedging any part of the interest rate risk under this Agreement throughout the Security Period. In the event that the Borrowers decide to hedge their exposure under this Agreement, they shall enter into such documentation as may be required by the relevant Lender (in such capacity the “**Swap Bank**”) and the provisions of this Agreement will be amended to incorporate the amendments required, including, but not limited to, Clause 17 reflecting pari passu sharing in the security and receipts between the Lenders and the Swap Bank.

11.20 No amendment to MOA

The Borrower B will not agree to any material amendment or supplement to, or waive or fail to enforce, the MOA or any of its provisions.

11.21 Minimum Liquidity

The Borrowers shall maintain in the Cash Collateral Account credit balances (“**Minimum Liquidity**”) in an aggregate amount of not less than \$1,500,000 in respect of each Ship (amounting to \$3,000,000 in aggregate) commencing from the Drawdown Date in respect of the Advance which will finance the relevant Ship and at all times thereafter up to and including the date falling on the first anniversary of the relevant Drawdown Date (the “**First Anniversary Date**”). On the second and fourth Repayment Dates in respect of each Advance falling in every subsequent 12-month period within the remainder of the Security Period (with the first such 12-month period commencing on the day falling after the First Anniversary Date) after the Repayment Instalment due and payable on that Repayment Date has been paid, funds from the Cash Collateral Account shall be released to or to the order of the Borrowers in such amounts so that the Minimum Liquidity shall, following such release, be equal to at least 9.4 per cent. of the Loan **Provided that** no Event of Default or Potential Event of Default has occurred or is continuing at the time of the proposed release or will occur as a result of the release of the relevant part of the Minimum Liquidity.

12 CORPORATE UNDERTAKINGS

12.1 General

Each Borrower also undertakes with each Creditor Party to comply with the following provisions of this Clause 12 at all times during the Security Period except as the Agent may, with the authorisation of the Majority Lenders, otherwise permit.

12.2 Maintenance of status

Each Borrower will maintain its separate corporate existence and remain in good standing under the laws of the Republic of the Marshall Islands.

12.3 Negative undertakings

No Borrower will:

- (a) carry on any business other than the ownership, chartering and operation of the Ship owned by it; 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 an Event of Default has occurred at such time or would occur as a direct result of such distribution, redemption, purchase or return; or
- (c) provide any form of credit or financial assistance or issue guarantees in favour of any other corporation or individual other than:
 - (i) in the normal course of its business; and
 - (ii) the unsecured guarantees issued by that Borrower in respect of obligations of the Corporate Guarantor under the Term B Loan,
Provided that that corporation or individual to whom the of credit or financial assistance has been granted or in favour of whom the guarantee has been issued fully subordinates its rights to the rights of the Creditor Parties under the Finance Documents on terms acceptable to the Agent;
- (d) provide any form of credit or financial assistance to:
 - (i) a person who is directly or indirectly interested in that Borrower's share or loan capital; or
 - (ii) any company in or with which such a person is directly or indirectly interested or connected,
or enter into any transaction with or involving such a person or company on terms which are, in any respect, less favourable to that Borrower than those which it could obtain in a bargain made at arms' length; or
- (e) open or maintain any account with any bank or financial institution except accounts with the Account Bank for the purposes of the Finance Documents and any accounts disclosed to the Agent on or prior to the date of this Agreement; or
- (f) issue, allot or grant any person a right to any shares in its capital or repurchase or reduce its issued share capital; or

- (g) 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, or enter into any transaction in a derivative; or
- (h) enter into any form of amalgamation, merger or de-merger or any form of reconstruction or reorganisation.

13 INSURANCE

13.1 General

Each Borrower undertakes with each Creditor Party to comply with the following provisions of this Clause 13 at all times during the Security Period except as the Agent may, with the authority of the Majority Lenders, otherwise permit in writing.

13.2 Maintenance of obligatory insurances

Each Borrower shall keep the Ship owned by it, at all times during the Security Period, insured at the expense of that Borrower against:

- (a) fire and usual marine risks (including hull and machinery and excess risks); and
- (b) war risks; and
- (c) protection and indemnity mean the usual risks including liability for oil pollution and excess war risk P&I cover; and
- (d) any other risks against which the Lenders consider, having regard to practices and other circumstances prevailing at the relevant time, it would in the opinion of the Lenders be reasonable for that Borrower to insure and which are specified by the Security Trustee 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 such amounts as shall from time to time be approved by the Agent but in any event in an amount not less than the greater of (i) the Market Value of the Ship owned by it and (ii) an amount which, when aggregated with the amount for which the other Ship then subject to a Mortgage is insured, is equal to 120 per cent. of the Loan; and
- (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 (currently \$1,000,000,000);
- (d) in relation to protection and indemnity risks in respect of the relevant Ship's full value and tonnage;
- (e) on such terms as shall from time to time be approved in writing by the Agent (including, without limitation, a blocking and trapping clause); 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 which are members of the International Group of Protection and Indemnity Associations.

13.4 Further protections for the Creditor Parties

In addition to the terms set out in Clause 13.3, each Borrower shall procure that the obligatory insurances shall:

- (a) subject always to paragraph (b), name that Borrower as the sole named 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
 - (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;
- (b) name (or be amended to name) the Security Trustee as mortgagee for its rights and interests, warranted no operational interest and with full waiver of rights of subrogation against the Security Trustee, but without the Security Trustee thereby being liable to pay (but having the right to pay) premiums, calls or other assessments in respect of such insurance;
- (c) name the Security Trustee as sole loss payee with such directions for payment as the Security Trustee may specify;
- (d) provide that all payments by or on behalf of the insurers under the obligatory insurances to the Security Trustee shall be made without set-off, counterclaim or deductions or condition whatsoever;
- (e) 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 Trustee in respect of any rights or interests (secured or not) held by or available to the Security Trustee 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 either Borrower or any Creditor Party) in circumstances where the insurers have fully discharged their liabilities and obligations under the relevant obligatory insurances;
- (f) provide that such obligatory insurances shall be primary without right of contribution from other insurances which may be carried by the Security Trustee;
- (g) provide that the Security Trustee may make proof of loss if that Borrower fails to do so; and
- (h) 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 Security Trustee, 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 Trustee for 30 days (or 7 days in the case of war risks) after receipt by the Security Trustee of prior written notice from the insurers of such cancellation, change or lapse.

13.5 Renewal of obligatory insurances

Each Borrower shall:

- (a) at least 14 days before the expiry of any obligatory insurance:
 - (i) notify the Security Trustee of the brokers (or other insurers) and any protection and indemnity or war risks association through or with whom that 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 Lenders' approval to the matters referred to in paragraph (i) above;
- (b) at least 7 days 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 Trustee 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 Trustee 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 Lenders 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;
- (b) they will hold such policies, and the benefit of such insurances, to the order of the Security Trustee in accordance with the said loss payable clause;
- (c) they will advise the Security Trustee immediately of any material change to the terms of the obligatory insurances;
- (d) they will notify the Security Trustee, 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 that Borrower or its agents and, in the event of their receiving instructions to renew, they will promptly notify the Security Trustee of the terms of the instructions; and
- (e) they will not set off against any sum recoverable in respect of a claim relating to the Ship owned by it 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 will arrange for a separate policy to be issued in respect of that Ship forthwith upon being so requested by the Security Trustee.

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 provides the Security Trustee with:

- (a) a certified copy of the certificate of entry for that Ship; and
- (b) a letter or letters of undertaking in such form as may be required by the Lenders; and

- (c) where required to be issued under the terms of insurance/indemnity provided by that Borrower'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 that Borrower in relation to that Ship in accordance with the requirements of such protection and indemnity association; and
- (d) a certified copy of each certificate of financial responsibility for pollution by oil or other Environmentally Sensitive Material issued by the relevant certifying authority in relation to that 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 all relevant receipts when so required by the Security Trustee.

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 the Ship owned by it, nor permit her to be employed, outside the cover provided by any obligatory insurances.

13.12 Compliance with terms of insurances

No Borrower shall either 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 13.6(c) above) ensure that the obligatory insurances are not made subject to any exclusions or qualifications to which the Security Trustee has not given its prior approval;
- (b) no Borrower shall make any changes relating to the classification or classification society or manager or operator of the Ship owned by it approved by the underwriters of the obligatory insurances;
- (c) each Borrower shall make 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
- (d) no Borrower shall 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 (including but not limited to any applicable laws and Sanctions), 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 Trustee.

13.14 Settlement of claims

No Borrower shall settle, compromise or abandon any claim under any obligatory insurance for Total Loss or for a Major Casualty, and shall do all things necessary and provide all documents, evidence and information to enable the Security Trustee to collect or recover any moneys which at any time become payable in respect of the obligatory insurances.

13.15 Provision of copies of communications

Each Borrower shall provide the Security Trustee, at the time of each such communication, copies of all written communications in case of, but not limited to, an Event of Default, Total Loss or Major Casualty between that Borrower and:

- (a) the approved brokers; and
- (b) the approved protection and indemnity and/or war risks associations; and
- (c) the approved insurance companies and/or underwriters, which relate directly or indirectly to:
 - (i) that Borrower's obligations relating to the obligatory insurances including, without limitation, all requisite declarations and payments of additional premiums or calls; and
 - (ii) any credit arrangements made between that Borrower and any of the persons referred to in paragraphs (a) or (b) 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 Security Trustee (or any persons which it may designate) with any information which the Security Trustee (or any such designated person) requests for the purpose of:

- (a) obtaining or preparing any report from an independent marine insurance broker appointed by the Agent 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 below or dealing with or considering any matters relating to any such insurances,

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

13.17 Mortgagee's interest and additional perils insurances

The Security Trustee 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 Lenders may from time to time consider appropriate:

- (a) a mortgagee's interest marine insurance in relation to the Ships in an amount equal to 120 per cent. of the Loan, 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 a Ship or a liability of that Ship or of the Borrower owning that Ship, 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 that Borrower, of any operator, charterer, manager or sub-manager of that Ship or of any officer, employee or agent of that 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 that 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 that Ship and/or that Ship being unseaworthy; and/or
 - (iii) any other matter capable of being insured against under a mortgagee's interest marine insurance policy whether or not similar to the foregoing;
- (b) a mortgagee's interest additional perils policy in relation to the Ships in an amount equal to 120 per cent. of the Loan, providing for the indemnification of the Security Trustee 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 that 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 Trustee 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 Lenders shall be entitled to review the requirements of this Clause 13 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 Lenders, significant and capable of affecting either Borrower or either Ship and its or their Insurances (including, without limitation, changes in the availability or the cost of Insurances or the risks to which the Borrower owning that Ship may be subject), and may appoint insurance consultants in relation to this review at the cost of the Borrowers, such review to be carried out at the Agent's request, at any time during the Security Period if the Agent (acting on the instructions of the Lenders) considers necessary (the reasonable fees of the insurance consultants to conduct such review shall be deducted from the Earnings Accounts (or either of them) and each Borrower hereby irrevocably authorises the Agent to debit its Earnings Account in order to pay such fees) **Provided that** the Borrowers shall not be required to pay the fees of the insurance consultants to conduct such review more often than once a year unless an Event of Default has occurred.

13.19 Modification of insurance requirements

The Security Trustee shall notify the Borrowers of any proposed modification under Clause 13.18 to the requirements of this Clause 13 which the Lenders consider appropriate in the circumstances, and such modification shall take effect on and from the date it is notified in writing to the Borrowers as an amendment to this Clause 13 and shall bind the Borrowers accordingly.

13.20 Compliance with mortgagee's instructions

The Security Trustee shall be entitled (without prejudice to or limitation of any other rights which it may have or acquire under any Finance Document) to require a Ship to remain at any safe port or to proceed to and remain at any safe port designated by the Security Trustee until the Borrower owning that Ship implements any amendments to the terms of the obligatory insurances and any operational changes required as a result of a notice served under Clause 13.19.

14 SHIP COVENANTS

14.1 General

Each Borrower also undertakes with each Creditor Party to comply with the following provisions of this Clause 14 at all times during the Security Period except as the Agent, with the authorisation of the Majority Lenders, may otherwise permit in writing.

14.2 Ship's name and registration

Each Borrower shall keep the Ship owned by it registered in its name under an 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 that Ship.

14.3 Repair and classification

Each Borrower shall keep the Ship owned by it in a good, safe and seaworthy condition and state of repair:

- (a) consistent with first-class ship ownership and management practice;
- (b) so as to maintain the highest class with a classification society which is a member of IACS acceptable to the Agent (acting with the authorisation of the Lenders) free of overdue recommendations and conditions of such classification society;
- (c) so as to comply with all laws and regulations applicable to vessels registered at ports of 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 ISM Code Documentation and the ISPS Code; and
- (d) each Borrower shall use its best efforts to allow the Agent (or its agents), at any time, to inspect the original class and related records of that Borrower and the Ship owned by it electronically (through the classification society directly) and to take copies of such records.

14.4 Modification

Neither Borrower shall make any modification or repairs to, or replacement of, the Ship or equipment installed on the Ship owned by it which would or might materially alter the structure, type or performance characteristics of that Ship or materially reduce its value.

14.5 Removal of parts

Neither Borrower shall remove any material part of the Ship owned by it, or any item of equipment installed on, that Ship unless the part or item so removed is forthwith replaced by a suitable part or item which is in the same condition as or better condition than the part or item removed, is free from any Security Interest or any right in favour of any person other than the Security Trustee and becomes on installation on the relevant Ship the property of that Borrower and subject to the security constituted by the relevant Mortgage **Provided that** each Borrower may install equipment owned by a third party if the equipment can be removed without any risk of damage to its Ship.

14.6 Surveys

Each Borrower shall submit the Ship owned by it regularly to all periodical or other surveys which may be required for classification purposes and, if so required by the Lenders provide the Security Trustee, with copies of all survey reports.

14.7 Technical Survey

Without prejudice to each Borrower's obligations pursuant to Clause 14.6, each Borrower promptly following the request of the Agent will, submit the Ship for a technical survey by an independent surveyor or surveyors appointed by the Agent (provided such technical survey does not interfere with the ordinary trading of the Ship owned by it). All fees and expenses incurred in relation to the appointment of the surveyor or surveyors and the preparation and issue of all technical reports pursuant to this Clause 14.7 shall be for the account of the Borrowers.

14.8 Inspection

Each Borrower shall permit the Security Trustee (by surveyors or other persons appointed by it for that purpose) to board the Ship owned by it at all times (but in any event without interfering with the ordinary trading of the Ship owned by it) to inspect its condition or to satisfy themselves about proposed or executed repairs, shall afford all proper facilities for such inspections and pay to the Agent the amount of all fees, costs and expenses incurred in respect of such inspections Provided that so long as no Event of Default shall have occurred that Borrower shall not be obliged to pay any fees and expenses in respect of more than one inspection of its Ship in any calendar year.

14.9 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 the Ship owned by it, the Earnings or the Insurances;
- (b) all taxes, dues and other amounts charged in respect of the Ship owned by it, the Earnings or the Insurances; and
- (c) all other outgoings whatsoever in respect of the Ship owned by it, the Earnings or the Insurances,

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

14.10 Compliance with laws etc.

Each Borrower shall:

- (a) comply, or procure compliance with the ISM Code (including, for the avoidance of doubt, by the Approved Manager), all Environmental Laws, the ISPS Code, Sanctions and all other laws or regulations relating to the Ship owned by it, its ownership, operation and management or to the business of that Borrower;

- (b) not employ the Ship owned by it, nor allow its employment in any manner contrary to any law or regulation in any relevant jurisdiction including but not limited to the ISM Code and the ISPS Code and Sanctions; and
- (c) in the event of hostilities in any part of the world (whether war is declared or not), not cause or permit it 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 the prior written consent of the Lenders has been given and that Borrower has (at its expense) effected any special, additional or modified insurance cover which the Lenders may require.

14.11 Provision of information

Each Borrower shall promptly provide the Security Trustee with any information which the Lenders request regarding:

- (a) the Ship owned by it, its employment, position and engagements;
 - (b) the Earnings and payments and amounts due to that Ship's master and crew of that Ship;
 - (c) any expenses incurred, or likely to be incurred, in connection with the operation, maintenance or repair of that Ship and any payments made in respect of that Ship;
 - (d) any towages and salvages;
 - (e) any intended dry-docking of that Ship;
 - (f) that Borrower's, the Approved Manager's compliance or the compliance of that Ship with the ISM Code and the ISPS Code; and
 - (g) any other information which the Creditor Parties (or any of them) may reasonably request,
- and, upon the Security Trustee's request, provide copies of any current charter relating to that Ship, and copies of that Borrower's or the Approved Manager's Document of Compliance or any other document issued under ISM Code Documentation.

14.12 Notification of certain events

Each Borrower shall immediately notify the Security Trustee by letter of:

- (a) any casualty which is or is likely to be or to become a Major Casualty;
- (b) any occurrence as a result of which the Ship owned by it has become or is, by the passing of time or otherwise, likely to become a Total Loss;
- (c) any requirement or recommendation made by any insurer or classification society or by any competent authority which is not complied with in accordance with its terms;
- (d) any arrest or detention of the Ship owned by it, any exercise or purported exercise of any lien on the Ship or its Earnings or any requisition of such Ship for hire;
- (e) any dry docking of the Ship owned by it;
- (f) any Environmental Claim made against that Borrower or in connection with the Ship owned by it, or any Environmental Incident;
- (g) any claim for breach of the ISM Code or the ISPS Code being made against that Borrower, the Approved Manager or otherwise in connection with the Ship owned by it; or

- (h) any other matter, event or incident, actual or threatened, the effect of which will or could lead to the ISM Code or the ISPS Code not being complied with,
and that Borrower shall keep the Security Trustee advised in writing on a regular basis and in such detail as the Security Trustee shall require of that Borrower's, the Approved Manager's or any other person's response to any of those events or matters.

14.13 Restrictions on chartering, appointment of managers etc.

Neither Borrower shall, in relation to the Ship owned by it:

- (a) let that Ship on demise charter for any period;
- (b) save and except for the relevant Approved Charter in relation to Ship A, enter into any time or consecutive voyage charter in respect of that Ship for a term which exceeds, or which by virtue of any optional extensions may exceed, 11 months except as the Agent may consent, such consent not to be unreasonably withheld;
- (c) enter into any charter in relation to that Ship under which more than 2 months' hire (or the equivalent) is payable in advance;
- (d) charter that Ship otherwise than on bona fide arm's length terms at the time when that Ship is fixed;
- (e) appoint a manager of that Ship other than the Approved Manager or agree to any material alteration to the terms of the Approved Manager's appointment which could lead to an Event of Default ("material alterations" to include, without limitation, alterations concerning fees, duration and parties);
- (f) de-activate or lay up that Ship; or
- (g) put that 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) unless that person has first given to the Security Trustee and in terms satisfactory to it a written undertaking not to exercise any lien on that Ship or her Earnings for the cost of such work or otherwise.

14.14 Notice of Mortgage

Each Borrower shall keep the Mortgage relative to its Ship registered against its Ship as a valid first priority or the case may be preferred mortgage, carry on board that Ship a certified copy of that Mortgage and place and maintain in a conspicuous place in the navigation room and the Master's cabin of that Ship a framed printed notice stating that that Ship is mortgaged by that Borrower to the Security Trustee.

14.15 Sharing of Earnings

Neither 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 right of that Borrower to any Earnings; 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.

14.16 Time Charter Assignment

If a Borrower enters into any Charterparty, that Borrower shall, at the request of the Agent, execute in favour of the Security Trustee a Charterparty Assignment, and shall deliver to the Agent such other documents equivalent to those referred to at paragraphs 3, 4 and 5 of Part A and 6 of Part B of Schedule 3 hereof as the Agent may require.

14.17 ISM Code, ISPS Code compliance and Environmental Laws

All requirements of the ISM Code, ISPS Code and Environmental Laws as they relate to each Borrower, the Approved Manager, the Ship owned by the relevant Borrower shall be complied with at all times.

15 SECURITY COVER

15.1 Minimum required security cover

Clause 15.2 applies if the Agent notifies the Borrowers that the Security Cover Ratio is below 120 per cent.

15.2 Provision of additional security; prepayment

If the Agent serves a notice on the Borrowers under Clause 15.1, the Borrowers shall prepay such part (at least) of the Loan as will eliminate the shortfall on or before the date falling 1 month after the date on which the Agent's notice is served under Clause 15.1 (the "**Prepayment Date**") unless at least 1 Business Day before the Prepayment Date it has provided, or ensured that a third party has provided, additional security which, in the reasonable opinion of the Majority Lenders, has a net realisable value at least equal to the shortfall.

In this Clause 15.2 "**security**" means a Security Interest over an asset or assets (whether securing a Borrower's liabilities under the Finance Documents or a guarantee in respect of those liabilities), or a guarantee, letter of credit or other security (including any cash pledged to the Security Trustee) in respect of that Borrower's liabilities under the Finance Documents.

15.3 Requirement for additional documents

The Borrowers shall not be deemed to have complied with Clause 15.2 above until the Agent has received in connection with the additional security certified copies of documents of the kinds referred to in paragraphs 3, 4 and 5 of Schedule 3, Part A and such legal opinions in terms acceptable to the Majority Lenders from such lawyers as they may select.

15.4 Valuation of Ship

The market value of a Ship at any date is that shown (i) in a valuation or (ii) (at the Agent's request acting in its sole discretion) by taking the average of 2 valuations, in each case prepared:

- (a) as at a date not more than 30 days previously;
- (b) by an Approved Broker selected by the Borrower and appointed by the Agent (unless the Borrower has not nominated an Approved Broker within 14 days of the Agent's request in which case the Agent will be entitled to select and appoint an Approved Broker);
- (c) with or without physical inspection of that Ship (as the 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 existing charter or other contract of employment (as the Agent may require).

15.5 Value of additional security

The net realisable value of any additional security which is provided under Clause 15.1 and which consists of a Security Interest over a vessel shall be that shown by a valuation complying with the requirements of Clause 15.4.

15.6 Valuations binding

Any valuation under Clause 15.2, 15.4 or 15.5 shall be binding and conclusive as regards the Borrowers, as shall be any valuation which the Majority Lenders make of a security which does not consist of or include a Security Interest.

15.7 Provision of information

The Borrowers shall promptly provide the Agent and any Approved Broker or expert acting under Clause 15.4 or 15.5 with any information which the Agent or the Approved Broker or expert may request for the purposes of the valuation; and, if the Borrowers fails to provide the information by the date specified in the request, the valuation may be made on any basis and assumptions which the Approved Broker or the Majority Lenders (or the expert appointed by them) consider prudent.

15.8 Payment of valuation expenses

Without prejudice to the generality of the Borrowers' obligations under Clauses 20.3, 20.4 and 20.5, the Borrowers shall, on demand, pay the Agent the amount of the fees and expenses of any Approved Broker or expert instructed by the Agent under this Clause and all legal and other expenses incurred by any Creditor Party in connection with any matter arising out of this Clause Provided that so long as no Event of Default shall have occurred and is continuing all valuations of each Ship commissioned by the Agent for the purposes of this Clause 15 which confirm that the Borrowers have satisfied the test in Clause 15.1, neither Borrower shall be obliged to pay the fees and expenses in respect of more than one valuation or (as applicable) one set of valuations of the Ship owned by it in any calendar year.

15.9 Frequency of valuations

The Borrowers acknowledge and agree that the Agent may commission valuation(s) of either Ship at such times as the Agent may reasonably request (including, without limitation, on the occurrence of any breach of obligation under this Agreement, any Finance Document or any other relevant documentation in connection therewith) and, in any event not less than once in any calendar year.

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 either Borrower to the Agent, the Security Trustee or any Lender,

under a Finance Document shall be made to the Agent or to the Security Trustee, 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);
- (iii) to the account of Agent, as the Agent may from time to time notify to the Borrowers and the other Creditor Parties; and
- (iv) in the case of an amount payable to the Security Trustee, to such account as it 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 either Borrower 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 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, 16.6 and 16.7:

- (a) any amount received by the Agent under a Finance Document for distribution or remittance to a Lender or the Security Trustee shall be made available by the Agent to that Lender or, as the case may be, the Security Trustee by payment, with funds having the same value as the funds received, to such account as the Lender or the Security Trustee may have notified to the Agent not less than 5 Business Days previously; and
- (b) amounts to be applied in satisfying amounts of a particular category which are due to the Lenders generally shall be distributed by the Agent to each Lender pro rata to the amount in that category which is due to it.

16.5 Permitted deductions by Agent

Notwithstanding any other provision of this Agreement or any other Finance Document, the Agent may, before making an amount available to a Lender, deduct and withhold from that amount any sum which is then due and payable to the Agent from that Lender under any Finance Document or any sum which the Agent is then entitled under any Finance Document to require that Lender to pay on demand.

16.6 Agent only obliged to pay when monies received

Notwithstanding any other provision of this Agreement or any other Finance Document, the Agent shall not be obliged to make available to the 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 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 Agent, the Security Trustee and each Lender 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 and 16.10 show an amount to be owing by a Borrower or a Security Party to a Creditor Party, those accounts shall be prima facie evidence that that amount is owing to that Creditor Party.

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 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 (ii) and (iii) below (including, but without limitation, all amounts payable by either Borrower under Clauses 20, 21 and 22 of this Agreement or by either Borrower or any Security Party under any corresponding or similar provision in any other Finance Document);

- (ii) secondly, in or towards satisfaction pro rata of any and all amounts of interest or 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 (or either of them), 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 17.1(a);
 - (c) THIRDLY: in or towards satisfaction of any amounts representing management fees then due and payable by the Borrowers (or either of them) to the Approved Manager in connection with the Ships; and
 - (d) FOURTHLY: any surplus shall be paid to the Borrowers (or either of them) or to any other person appearing to be entitled to it.

17.2 Variation of order of application

The Agent may, with the authorisation of the Majority Lenders 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 either as regards a specified sum or sums or as regards sums in a specified category or categories.

17.3 Notice of variation of order of application

The Agent may give notices under Clause 17.2 from time to time; and such a notice may be stated to apply not only to sums which may be received or recovered in the future, but also to any sum which has been received or recovered on or after the third Business Day before the date on which the notice is served.

17.4 Appropriation rights overridden

This Clause 17 and any notice which the Agent gives under Clause 17.2 shall override any right of appropriation possessed, and any appropriation made, by either Borrower or any Security Party.

18 APPLICATION OF EARNINGS

18.1 Payment of Earnings

Each Borrower undertakes with each Creditor Party that, throughout the Security Period (and subject only to the provisions of the General Assignment to which it is a party):

- (a) it shall maintain the Accounts opened in its name (whether individually or jointly) with the Account Bank;
- (b) it shall ensure that all Earnings of the Ship owned by it are paid to the Earnings Account for that Ship; and
- (c) the Minimum Liquidity amounts required to be maintained pursuant to Clause 11.21 shall be maintained in the Cash Collateral Account.

18.2 Monthly retentions

The Borrowers undertake with each Creditor Party to ensure that, on and from the date falling one month after each Drawdown Date and at monthly intervals thereafter during the Security Period, there are transferred in respect of each Advance drawn on that Drawdown Date to the Retention Account out of the Earnings received in the relevant Earnings Account during the preceding month:

- (a) one-third of the amount of the relevant Instalment falling due in respect of that Advance under Clause 8.1 on the next Repayment Date; and
- (b) the relevant fraction of the aggregate amount of interest on that Advance which is payable on the next due date for payment of interest under this Agreement,

and the Borrowers irrevocably authorise the Agent to make those transfers if the Borrowers fail to do so.

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

18.3 Shortfall in Earnings

If the aggregate Earnings received in an Earnings Account are insufficient at any time for the required amount to be transferred to the Retention Account under Clause 18.2, the Borrowers shall immediately pay the amount of the insufficiency into the Retention Account.

18.4 Application of retentions

Until an Event of Default or a Potential Event of Default occurs, the Agent shall, to the extent there are sufficient funds standing to the credit of the Retention Account, on each Repayment Date and on each due date for the payment of interest under this Agreement distribute to the Lenders in accordance with Clause 16.4 so much of the then balance on the Retention Account as equals:

- (a) the Instalment due on that Repayment Date pursuant to Clause 8.1; or
- (b) the amount of interest in respect of the relevant Advance or, as the case may be, the Loan payable on that interest payment date, in discharge of the Borrowers’ liability for that Instalment or that interest.

18.5 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, its Earnings Account shall, unless and until an Event of Default shall have occurred (whereupon the provisions of Clause 17.1 shall be and become applicable), be available for application in the following manner:

- (a) in or towards making payments of all amounts due and payable by the Borrowers under this Agreement (other than payments of principal and interest);
- (b) in or towards satisfaction of all amounts of interest or default interest payable to the Creditor Parties under the Finance Documents;
- (c) in or towards satisfaction of the Loan;

- (d) in or towards making payments of all fees due to the Approved Manager and thereafter meeting the costs and expenses from time to time incurred by or on behalf of a Borrower in connection with the operation of the Ship owned by it; and
- (e) as to any surplus from time to time arising on an Earnings Account following application as aforesaid, to be paid to the Borrower owning that Ship or to whomsoever it may direct.

18.6 Location of account

Each Borrower shall promptly:

- (a) comply with any requirement of the Agent as to the location or re-location of the Earnings Account; and
- (b) execute any documents which the Agent specifies to create or maintain in favour of the Security Trustee a Security Interest over (and/or rights of set-off, consolidation or other rights in relation to) the Accounts.

18.7 Debits for expenses etc.

The Agent shall be entitled (but not obliged) from time to time to debit the Earnings Accounts without prior notice in order to discharge any amount due and payable under Clause 20 or 21 to a Creditor Party or payment of which any Creditor Party has become entitled to demand under Clause 20 or 21.

18.8 Borrowers' obligations unaffected

The provisions of this Clause 18 (as distinct from a distribution effected under Clause 18.4) 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.

18.9 Restriction on withdrawal

During the Security Period no sum may be withdrawn by a Borrower from the Retention Account.

19 EVENTS OF DEFAULT

19.1 Events of Default

An Event of Default occurs if:

- (a) either Borrower or any Security Party 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; or
- (b) any breach occurs of Clause 9.2, 10.15, 10.18, 11.2, 11.3, 11.18, 11.21, 12.2, 12.3, 13.2, 13.3, 14.2 or 15.2 or clause 12.3 (*Financial Covenants*) of the Corporate Guarantee; or
- (c) any breach by either Borrower or any Security Party 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 14 days after the earlier of (i) written notice from the Agent requesting action to remedy the same and (ii) either Borrower becoming aware of such breach; or

- (d) (subject to any applicable grace period specified in the Finance Document) any breach by either Borrower or any Security Party 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 or repeated by, or by an officer of, either Borrower or a Security Party in a Finance Document or in a Drawdown Notice or any other notice or document relating to a Finance Document is untrue or misleading when it is made or repeated; or
- (f) any of the following occurs in relation to any Financial Indebtedness of a Relevant Person (for an amount not exceeding, in the case of any Relevant Person other than a Borrower \$10,000,000 (or the equivalent in any other currency) in aggregate):
 - (i) any Financial Indebtedness of a Relevant Person is not paid when due or, if so payable, on demand; or
 - (ii) any Financial Indebtedness of a 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 unless the Relevant Person 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 have been set aside for its payment if such proceedings fail; or
 - (iii) a lease, hire purchase agreement or charter creating any Financial Indebtedness of a 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 a Relevant Person ceases to be available or becomes capable of being terminated as a result of any event of default, or cash cover is required, or becomes capable of being required, in respect of such a facility as a result of any event of default; or
 - (v) any Security Interest securing any Financial Indebtedness of a Relevant Person becomes enforceable; or
- (g) any of the following occurs in relation to a Relevant Person:
 - (i) a Relevant Person becomes, in the reasonable opinion of the 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 or the equivalent in another currency and such execution, attachment, arrest, sequestration or distress is not withdrawn or discharged within thirty (30) days; or
 - (iii) any administrative or other receiver is appointed over any asset of a Relevant Person; or
 - (iv) an administrator is appointed (whether by the court or otherwise) in respect of a Relevant Person; or

- (v) any formal declaration of bankruptcy or any formal statement to the effect that a Relevant Person is insolvent or likely to become insolvent is made by a Relevant Person or by the directors of a Relevant Person or, in any proceedings, by a lawyer acting for a Relevant Person; or
- (vi) a provisional liquidator is appointed in respect of a Relevant Person, a winding up order is made in relation to a Relevant Person or a winding up resolution is passed by a Relevant Person; or
- (vii) a resolution is passed, an administration notice is given or filed, an application or petition to a court is made or presented or any other step is taken by (aa) a Relevant Person, (bb) the members or directors of a Relevant Person, (cc) a holder of Security Interests which together relate to all or substantially all of the assets of a Relevant Person, or (dd) a government minister or public or regulatory authority of a Pertinent Jurisdiction for or with a view to the winding up of that or another Relevant Person or the appointment of a provisional liquidator or administrator in respect of that or another Relevant Person, or that or another Relevant Person ceasing or suspending business operations or payments to creditors, save that this paragraph does not apply to a fully solvent winding up of a Relevant Person other than either Borrower or the Corporate Guarantor which is, or is to be, effected for the purposes of an amalgamation or reconstruction previously approved by the Majority Lenders and effected not later than 3 months after the commencement of the winding up; or
- (viii) an administration notice is given or filed, an application or petition to a court is made or presented or any other step is taken by a creditor of a Relevant Person (other than a holder of Security Interests which together relate to all or substantially all of the assets of a Relevant Person) for the winding up of a Relevant Person or the appointment of a provisional liquidator or administrator in respect of a Relevant Person in any Pertinent Jurisdiction, unless the proposed winding up, appointment of a provisional liquidator or administration is being contested in good faith, on substantial grounds and not with a view to some other insolvency law procedure being implemented instead and either (aa) the application or petition is dismissed or withdrawn within 60 days of being made or presented, or (bb) within 60 days of the administration notice being given or filed, or the other relevant steps being taken, other action is taken which will ensure that there will be no administration and (in both cases (aa) or (bb)) the Relevant Person will continue to carry on business in the ordinary way and without being the subject of any actual, interim or pending insolvency law procedure; or
- (ix) a Relevant Person or its directors take any steps (whether by making or presenting an application or petition to a court, or submitting or presenting a document setting out a proposal or proposed terms, or otherwise) with a view to obtaining, in relation to that or another Relevant Person, any form of moratorium, suspension or deferral of payments, reorganisation of debt (or certain debt) or arrangement with all or a substantial proportion (by number or value) of creditors or of any class of them or any such moratorium, suspension or deferral of payments, reorganisation or arrangement is effected by court order, by the filing of documents with a court, by means of a contract or in any other way at all; or
- (x) any meeting of the members or directors, or of any committee of the board or senior management, of a Relevant Person is held or summoned for the purpose of considering a resolution or proposal to authorise or take any action of a type described in paragraphs (iv) to (ix) or a step preparatory to such action, or (with or without such a meeting) the members, directors or such a committee resolve or agree that such an action or step should be taken or should be taken if certain conditions materialise or fail to materialise; or

- (xi) in a country other than England, any event occurs, any proceedings are opened or commenced or any step is taken which, in the reasonable opinion of the Majority Lenders is similar to any of the foregoing; or
- (h) either Borrower or any Security Party ceases or suspends carrying on its business or a part of its business which, in the reasonable opinion of the Majority Lenders, is material in the context of this Agreement; or
- (i) it becomes unlawful in any Pertinent Jurisdiction or impossible:
 - (i) for either Borrower or any Security Party to discharge any liability under a Finance Document or to comply with any other obligation which the Majority Lenders consider material under a Finance Document; or
 - (ii) for the Agent, the Security Trustee or the Lenders to exercise or enforce any right under, or to enforce any Security Interest created by, a Finance Document; or
- (j) any official consent necessary to enable either Borrower to own, operate or charter the Ship owned by it or to enable either Borrower or any Security Party to comply with any provision which the Majority Lenders reasonably consider material of a Finance Document and the Approved Charter in respect of the Ship owned by it or the MOA is not granted, expires without being renewed, is revoked or becomes liable to revocation or any condition of such a consent is not fulfilled, unless the relevant Borrower contests any denial, expiration or revocation (other than with respect to a Finance Documents) and on the condition that, in the reasonable opinion of the Majority Lenders (i) there are real prospects of such contest being successfully granted/upheld by the relevant Borrower (ii) such contest being made in good faith; or
- (k) it appears to the Majority Lenders that, without their prior written consent:
 - (i) a change has occurred or probably has occurred after the date of this Agreement in the legal or direct beneficial ownership of any of the shares in either Borrower or the Shareholder in the voting rights attaching to any of those shares; or
 - (ii) either Borrower ceases to be a wholly owned indirect subsidiary of the Corporate Guarantor; or
 - (iii) the Designated Shareholders own, in aggregate, less than 15 per cent. of the issued and outstanding voting shares in the Corporate Guarantor; or
 - (iv) the shares of the Corporate Guarantor cease to be listed on the New York Stock Exchange (NYSE) or any other US or European stock exchange acceptable to the Agent; or
- (l) any provision which the Majority Lenders 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
- (m) the security constituted by a Finance Document is in any way imperilled or in jeopardy; or
- (n) the Approved Charter in respect of Ship A is terminated or rescinded or for any reason ceases to remain in full force and effect prior to its contractual termination date unless (i) that Approved Charter is replaced within 45 days of the date on which that Approved Charter ceases to be in full force and effect by another time charter on terms and with a first class charterer acceptable to the Lenders (the "Replacement Charter") and (ii) Borrower A complies with the provisions of Clause 14.16 in connection with the said Replacement Charter; or

- (o) any other event occurs or any other circumstances arise or develop including, without limitation:
- (i) a material adverse change in the business, condition (financial or otherwise), operation, state of affairs or prospects of either Borrower, the Corporate Guarantor or the Group; or
 - (ii) any accident or other event involving either Ship or another vessel owned, chartered or operated by a Relevant Person,
- in the light of which the Majority Lenders reasonably consider that there is a significant risk that any Security Party is, or will later become, unable to discharge its liabilities under the Finance Documents as they fall due or the enforceability of any Finance Document may be adversely affected.

19.2 Actions following an Event of Default

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

- (a) the Agent may, and if so instructed by the Majority Lenders, the Agent shall:
 - (i) serve on the Borrowers a notice stating that all or part of 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 all or part of the Loan, all accrued interest and all other amounts accrued or owing under this Agreement are immediately due and payable or are due and payable on demand; and/or
 - (iii) take any other action which, as a result of the Event of Default or any notice served under paragraph (i) or (ii) above, the Agent and/or the Lenders are entitled to take under any Finance Document or any applicable law; and/or
- (b) the Security Trustee may, and if so instructed by the Agent, acting with the authorisation of the Lenders, the Security Trustee 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 Trustee, the Agent and/or the Majority 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, 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, the Loan, all accrued interest and all other amounts accrued or owing from the Borrowers or any Security Party under this Agreement and every other Finance Document shall become immediately due and payable or, as the case may be, payable on demand.

19.5 Multiple notices; action without notice

The Agent may serve notices under paragraphs (a) (i) and (ii) of Clause 19.2 simultaneously or on different dates and it and/or the Security Trustee 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 Security Parties

The Agent shall send to each Lender, the Security Trustee and each Security Party a copy or the text of any notice which the Agent serves on the Borrowers under Clause 19.2; 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 the Borrowers or any Security Party with any form of claim or defence.

19.7 Creditor Party'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.

19.8 Exclusion of Creditor Party Liability

No Creditor Party, and no receiver or manager appointed by the Security Trustee, shall have any liability to the Borrowers or a Security Party:

- (a) for any loss caused by an exercise of rights under, or enforcement of a Security Interest created by, a Finance Document or by any failure or delay to exercise such a right or to enforce such a Security Interest; or
- (b) as mortgagee in possession or otherwise, for any income or principal amount which might have been produced by or realised from any asset comprised in such a Security Interest or for any reduction (however caused) in the value of such an asset,

except that this does not exempt a Creditor Party or a receiver or manager from liability for losses shown to have been 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, a "Relevant Person" means a Borrower, a Security Party (excluding the Approved Manager), and any company which is a subsidiary of either Borrower or of a Security Party or of which either Borrower is a subsidiary.

19.10 Interpretation

In Clause 19.1(f) 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) "petition" includes an application.

20 FEES AND EXPENSES

20.1 Up-front fee

The Borrowers shall pay to the Agent on or prior to the date of this Agreement, a non-refundable up-front fee in the amount of \$400,000 (representing 1.25 per cent. of the Total Commitments) for distribution among the Lenders pro rata to their Commitments.

20.2 Account Bank fee

The Borrowers shall pay to the Account Bank on or prior to the date of this Agreement and on each anniversary thereof a non-refundable annual fee in the amount of \$1,000 in respect of each Earnings Account.

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 Trustee in connection with the negotiation, preparation, execution or registration of any Finance Document or any related document or with any transaction contemplated by a Finance Document or a related document (including, without limitation, out of pocket expenses, legal fees and any related VAT).

20.4 Costs of variations, amendments, enforcement etc.

The Borrowers shall pay to the Agent, on the Agent's demand, the amount of all documented expenses incurred by a Creditor Party in connection with:

- (a) any amendment or supplement to a Finance Document, or any proposal for such an amendment to be made;
- (b) any consent or waiver by the Lenders, the Majority Lenders or the Creditor Party concerned under or in connection with a Finance Document, or any request for such a consent or waiver;
- (c) the valuation of any security provided or offered under Clause 15 or any other matter relating to such security;
- (d) where the Agent, in its absolute opinion, considers that there has been a material change to the insurances in respect of a Ship, the review of the insurances of a Ship pursuant to Clause 13.18;
- (e) the opinions of the independent insurance consultant referred to in paragraph 5 of Part B, Schedule 3; and
- (f) 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, claims losses 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 and which indicates (without necessarily specifying a detailed breakdown) the matters in respect of which the amount, or aggregate amount, is due shall be prima facie evidence that the amount, or aggregate amount, is due.

21 INDEMNITIES

21.1 Indemnities regarding borrowing and repayment of Loan

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

- (a) an Advance not being borrowed on the date specified in the Drawdown Notice for any reason other than a default by the Lender claiming the indemnity;
 - (b) the receipt or recovery of all or any part of the Loan or an overdue sum otherwise than on the last day of an Interest Period or other relevant period including, without limitation, where such receipt or recovery is made as a result of the voluntary or mandatory repayment or prepayment of the Loan, or any part thereof;
 - (c) any failure (for whatever reason) 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); and
 - (d) the occurrence and/or continuance of an Event of Default and/or the acceleration of repayment of the Loan under Clause 19,
- and in respect of any tax (other than tax on its overall net income or a FATCA Deduction) 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 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 its Contribution and/or any overdue amount (or an aggregate amount which includes its Contribution or any overdue amount); and
- (b) in terminating, or otherwise in connection with, any interest and/or currency swap or any other transaction entered into (whether with another legal entity or with another office or department of the Lender concerned) to hedge any exposure arising under this Agreement or that part which the Lender concerned determines is fairly attributable to this Agreement of the amount of the liabilities, expenses or losses (including losses of prospective profits) incurred by it in terminating, or otherwise in connection with, a number of transactions of which this Agreement is one.

21.3 Miscellaneous indemnities

The 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, a 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 Trustee or any other Creditor Party or by any receiver appointed under a Finance Document; and

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

21.4 Extension of indemnities; environmental indemnity

Without prejudice to its generality, Clause 21.3 covers:

- (a) any matter which would be covered by Clause 21.3 if any of the references in that Clause to a Lender were a reference to the Agent or (as the case may be) to the Security Trustee; and
- (b) any liability items which arise, or are asserted, under or in connection with any law relating to safety at sea, pollution or the protection of the environment, the ISM Code, the ISPS Code or any Environmental Law.

21.5 Currency indemnity

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

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

the 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, 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 creates a separate liability of each Borrower 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 and which indicates (without necessarily specifying a detailed breakdown of the amounts due) the matters in respect of which the amount, or aggregate amount, is due shall be prima facie evidence that the amount, or aggregate amount, is due.

21.7 Sums deemed due to a Lender

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

21.8 Sanctions

- (a) The Borrowers shall, within three (3) Business Days of demand by a Creditor Party, indemnify each Creditor Party against any cost, loss or liability incurred by it as a result of any civil penalty or fine against, and all reasonable costs and expenses (including reasonable counsel fees and disbursements) incurred in connection with the defence thereof by, the Agent or any Lender as a result of conduct of the Borrowers or any Security Party or any of their partners, directors, officers, employees, agents or advisors, that violates any Sanctions.
- (b) The indemnity in Clause 21.8(a) above shall cover any losses incurred by each Creditor Party in any jurisdiction arising or asserted under or in connection with any law relating to any Sanctions.

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 a Borrower is 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 “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 or a FATCA Deduction.

22.5 FATCA information

- (a) Subject to paragraph (c) below, each party to the Finance Documents shall, within 5 Business Days of a reasonable request by another party to the Finance Documents:

- (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 to any Finance Document 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 Creditor Party, and paragraph (a)(iii) above shall not oblige any other Party to a Finance Document, to do anything which would or might in its reasonable opinion constitute a breach of:
- (i) any law or regulation;
 - (ii) any fiduciary duty; or
 - (iii) any duty of confidentiality;
- (d) if a party to any Finance Document fails to confirm whether or not it is a FATCA Exempt Party or to supply forms, documentation or other information requested in accordance with paragraph (a)(i) or (ii) above (including, for the avoidance of doubt, where paragraph (c) above applies), then such party shall be treated for the purposes of the Finance Documents 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 or becomes a US Tax Obligor or a FATCA FFI, it shall as soon as reasonably practicable inform the Agent of the same;
- (f) Where the Agent reasonably believes that its obligations under FATCA require it, the relevant Borrower or the relevant Security Party shall provide the Agent, upon request, with a W-8 BEN-E form (or any successor form) or any other forms or documentation the Agent may reasonably require, as soon as reasonably practicable. The Agent shall not be liable for any action which it takes or refrains from taking under or in connection with this paragraph (f);
- (g) If a Borrower is or becomes a US Tax Obligor or a FATCA FFI, or where the Agent reasonably believes that its obligations under FATCA require it, each Creditor Party shall, within 10 Business Days of the date of a request from the Agent supply to the Agent:
- (i) a withholding certificate on Form W-8 or Form W-9 (or any successor form) (as applicable); and/or
 - (ii) any withholding statement and other documentation, authorisations and waivers as the Agent may require to certify or establish the status of such Creditor Party under FATCA,

the Agent shall provide any withholding certificate, withholding statement, documentation, authorisations and waivers it receives from a Creditor Party pursuant to this paragraph (g) to that Borrower or the relevant Security Party and shall be entitled to rely on any such withholding certificate, withholding statement, documentation, authorisations and waivers provided without further verification. The Agent shall not be liable for any action which it takes or refrains from taking under or in connection with this paragraph (g); and

- (h) The Borrowers, each Security Party and each Creditor Party agrees that if any withholding certificate, withholding statement, documentation, authorisations and waivers provided to the Agent pursuant to paragraphs (f) to (g) above is or becomes materially inaccurate or incomplete, it shall promptly update such withholding certificate, withholding statement, documentation, authorisations and waivers or promptly notify the Agent in writing of its legal inability to do so. The Agent shall, if applicable, provide any such updated withholding certificate, withholding statement, documentation, authorisations and waivers to the Borrowers or the relevant Security Party. The Agent shall not be liable for any action which it takes or refrains from taking under or in connection with this paragraph (h).

22.6 FATCA Deduction

- (a) Each party to a 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 shall not 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 to a 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 a Finance Document to whom it is making the payment and, in addition, shall notify the Borrowers and the Agent and the Agent shall notify the other Creditor Parties.

23 ILLEGALITY, ETC

23.1 Illegality

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

- (a) unlawful or prohibited as a result of the introduction of a new law, an amendment to an existing law or a change in the manner in which an existing law is or will be interpreted or applied; or
- (b) contrary to, or inconsistent with, any regulation,
- for the Notifying Lender to maintain or give effect to any of its obligations under this Agreement in the manner contemplated by this Agreement.

23.2 Notification of illegality

The Agent shall promptly notify the Borrowers, the Security Parties, the Security Trustee and the other Lenders of the notice under Clause 23.1 which the Agent receives from the Notifying Lender.

23.3 Prepayment; termination of Commitment

On the Agent notifying the Borrowers under Clause 23.2, the Notifying Lender’s Commitment shall terminate; and thereupon or, if later, on the date specified in the Notifying Lender’s notice under Clause 23.1 as the date on which the notified event would become effective the Borrowers shall prepay the Notifying Lender’s Contribution in accordance with Clause 8.

24 INCREASED COSTS

24.1 Increased costs

(a) Each Borrower shall, within 3 Business Days of a demand by the Agent, pay for the account of a Creditor Party the amount of any Increased Costs incurred by that Creditor 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,

after the date of this Agreement.

(b) In this Agreement, “Increased Costs” means:

- (i) a reduction in the rate of return from the Loan or on a Creditor Party’s (or its affiliate’s) overall capital;
- (ii) an additional or increased cost; or
- (iii) a reduction of any amount due and payable under any Finance Document,

which is incurred or suffered by a Creditor Party or any of its affiliates to the extent that it is attributable to that Creditor Party having entered into its Commitment or funding or performing its obligations under any Finance Document and, for the avoidance of doubt, includes any Increased Costs incurred or suffered by a Creditor Party or any of its affiliates as a result of or with connection to Basel III, CRD IV or CRR,

but not an item attributable to a change in the rate of tax on the overall net income of the Notifying Lender (aa) (or a parent company of it) or (bb) an item covered by the indemnity for tax in Clause 21.1 or by Clause 22 or (cc) a FATCA Deduction.

24.2 Increased cost claims

(a) A Creditor Party (the “**Notifying Lender**”) intending to make a claim pursuant to Clause 24.1 (*Increased Costs*) shall notify the Agent of the event giving rise to the claim, following which the Agent shall promptly notify the Borrower.

(b) Each Creditor Party shall, as soon as practicable after a demand by the Agent, provide a certificate confirming the amount of its Increased Costs.

24.3 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 24.2.

24.4 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.

24.5 Notice of prepayment

If the Borrowers are not willing to continue to compensate the Notifying Lender for the increased cost under Clause 24.4, the Borrowers may give the Agent not less than 15 days' notice of their intention to prepay the Notifying Lender's Contribution at the end of an Interest Period and/or to cancel the Notifying Lender's Available Commitment.

24.6 Prepayment; termination of Commitment

A notice under Clause 24.5 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.

24.7 Application of prepayment

Clause 8 shall apply in relation to the prepayment.

25 SET-OFF

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 that Borrower to that Creditor Party under any of the Finance Documents; and
- (b) for that purpose:
 - (i) break, or alter the maturity of, all or any part of a deposit of that Borrower;
 - (ii) convert or translate all or any part of a deposit or other credit balance into Dollars; and
 - (iii) enter into any other transaction or make any entry with regard to the credit balance which the Creditor Party concerned considers appropriate.

25.2 Existing rights unaffected

No Creditor Party shall be obliged to exercise any of its rights under Clause 25.1; 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, a sum payable by the Borrowers to the Agent or the Security Trustee 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 No Security Interest

This Clause 25 gives the Creditor Parties a contractual right of set off only and does not create any equitable charge or other Security Interest over any credit balance of either Borrower.

26 TRANSFERS AND CHANGES IN LENDING OFFICES

26.1 Transfer by Borrowers

No Borrower may, without the consent of the Agent, given on the instructions of all the Lenders:

- (a) transfer any of its rights 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, a Lender (the “**Transferor Lender**”) may, with the prior written consent of the Borrowers (such consent not to be unreasonably withheld or delayed), at any time allow:

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

to be (in the case of its rights) transferred to, or (in the case of its obligations) assumed by, another bank or financial institution (a “**Transferee Lender**”) by delivering to the Agent a completed certificate in the form set out in Schedule 4 with any modifications approved or required by the Agent (a “**Transfer Certificate**”) executed by the Transferor Lender and the Transferee Lender **Provided that** the consent of the Borrowers shall not be required:

- (i) if an Event of Default has occurred; or
- (ii) the Transferee Lender is an existing Lender or an affiliate of an existing Lender.

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

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, each Borrower, the Security Parties, the Security Trustee and each of the other Lenders;

- (b) on behalf of the Transferee Lender, send to each Borrower and each Security Party letters or faxes 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 sent under paragraph (b) above.

26.4 Effective Date of Transfer Certificate

A Transfer Certificate becomes effective on the date, if any, specified in the Transfer Certificate as its effective date Provided that it is signed by the Agent under Clause 26.3 on or before that date.

26.5 No transfer without Transfer Certificate

No assignment or transfer of any right or obligation of a Lender under any Finance Document is binding on, or effective in relation to, either Borrower, any Security Party, the Agent or the Security Trustee unless it is effected, evidenced or perfected by a Transfer Certificate.

26.6 Lender re-organisation; waiver of Transfer Certificate

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

26.7 Effect of Transfer Certificate

A Transfer Certificate takes effect in accordance with English law as follows:

- (a) to the extent specified in the Transfer Certificate, all rights and interests (present, future or contingent) which the Transferor Lender has under or by virtue of the Finance Documents are assigned to the Transferee Lender absolutely, free of any defects in the Transferor Lender’s title and of any rights or equities which the Borrowers or any Security Party had against the Transferor Lender;
- (b) the Transferor Lender’s Commitment is discharged to the extent specified in the Transfer Certificate;
- (c) the Transferee Lender becomes a Lender with the Contribution previously held by the Transferor Lender and a Commitment of an amount specified in the Transfer Certificate;
- (d) the Transferee Lender becomes bound by all the provisions of the Finance Documents which are applicable to the Lenders generally, including those about pro-rata sharing and the exclusion of liability on the part of, and the indemnification of, the Agent and the Security Trustee and, to the extent that the Transferee Lender becomes bound by those provisions (other than those relating to exclusion of liability), the Transferor Lender ceases to be bound by them;
- (e) any part of the Loan which the Transferee Lender advances after the Transfer Certificate’s effective date ranks in point of priority and security in the same way as it would have ranked had it been advanced by the transferor, assuming that any defects in the transferor’s title and any rights or equities of either Borrower or any Security Party against the Transferor Lender had not existed;

- (f) the Transferee Lender becomes entitled to all the rights under the Finance Documents which are applicable to the Lenders generally, including but not limited to those relating to the Majority Lenders and those under Clause 5.7 and Clause 20, and to the extent that the Transferee Lender becomes entitled to such rights, the Transferor Lender ceases to be entitled to them; and
- (g) in respect of any breach of a warranty, undertaking, condition or other provision of a Finance Document or any misrepresentation made in or in connection with a Finance Document, the Transferee Lender shall be entitled to recover damages by reference to the loss incurred by it as a result of the breach or misrepresentation, irrespective of whether the original Lender would have incurred a loss of that kind or amount.

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

26.8 Maintenance of register of Lenders

During the Security Period the Agent shall maintain a register in which it shall record the name, Commitment, Contribution and administrative details (including the lending office) from time to time of each Lender holding a Transfer Certificate and the effective date (in accordance with Clause 26.4) of the Transfer Certificate; and the Agent shall make the register available for inspection by any Lender, the Security Trustee 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 Trustee 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 \$1,500 (and all costs, fees and expenses incidental to the transfer (including, but not limited to legal fees and expenses)) from the Transferor Lender or (at the Agent's option) the Transferee Lender.

26.12 Sub-participation; subrogation assignment

A Lender may sub-participate all or any part of its rights and/or obligations under or in connection with the Finance Documents without the consent of, or any notice to, the Borrowers, any Security Party, the Agent or the Security Trustee; and the Lenders may assign, in any manner and terms agreed by the Majority Lenders, the Agent and the Security Trustee, all or any part of those rights to an insurer or surety who has become subrogated to them.

26.13 Disclosure of information

Subject to Clause 26.4, a Lender may, disclose to a potential Transferee Lender or, to any sub-participant any information which the Lender has received in relation to the Borrowers, any Security Party or their affairs under or in connection with any Finance Document, unless the information is clearly of a confidential nature in which case the consent of the Corporate Guarantor would be required Provided that a potential Transferee Lender or any sub-participant to whom disclosure is made agrees to be bound by the terms of the confidentiality undertaking in this Clause 26.13 by way of a confidentiality agreement in a form acceptable to the Borrowers.

The Borrowers agree that the terms and conditions of this Agreement shall remain confidential and shall not, or shall procure that the Corporate Guarantor shall not, disclose (whether, without limitation, in writing or orally) to third parties (other than any disclosure to the Corporate Guarantor's shareholders, officers, employees or professional advisers **Provided that** the person to whom disclosure is made agrees to be bound by the terms of the confidentiality undertaking in this Clause 26.13 any information required to be disclosed by law, regulation or any governmental or competent regulatory authority (including without limitation, any securities exchange), provided that, to the extent reasonably practicable, the Corporate Guarantor shall inform the Agent on the proposed form, timing, nature and purpose of the disclosure) the existence of this Agreement or the terms and conditions contained herein without the prior written consent of the Lenders.

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 Trustee; 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 Security over Lenders' rights.

In addition to the other rights provided to Lenders under this Clause 26, each Lender may without consulting with or obtaining consent from either Borrower or any Security Party, at any time charge, assign or otherwise create a Security Interest in or over (whether by way of collateral or otherwise) all or any of its rights under any Finance Document to secure obligations of that Lender including, without limitation:

- (a) any charge, assignment or other Security Interest to secure obligations to a federal reserve or central bank; and
- (b) in the case of any Lender which is a fund, any charge, assignment or other Security Interest granted to any holders (or trustee or representatives of holders) of obligations owed, or securities issued, by that Lender as security for those obligations or securities;

except that no such charge, assignment or Security Interest shall:

- (i) release a Lender from any of its obligations under the Finance Documents or substitute the beneficiary of the relevant charge, assignment or Security Interest for the Lender as a party to any of the Finance Documents; or
- (ii) require any payments to be made by the Borrowers or any Security Party 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 BY MAJORITY LENDERS

27.1 Variations, waivers etc. by Lenders

Subject to Clause 27.2, 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 Trustee in their own rights, and, if the document relates to a Finance Document to which a Security Party is party, by that Security Party.

27.2 Variations, waivers etc. requiring agreement of all Lenders

However, as regards the following, Clause 27.1 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 reduction in the Margin;
- (b) a postponement to the date for, or a reduction in the amount of, any payment of principal, interest, fees or other sum payable under this Agreement;
- (c) an increase in any Lender's Commitment;
- (d) a change to the definition of "**Majority Lenders**";
- (e) a change to Clause 3 or this Clause 27;
- (f) any release of, or material variation to, a Security Interest, guarantee, indemnity or subordination arrangement set out in a Finance Document; and
- (g) 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 and 27.2, 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 either Borrower or a Security Party of an obligation under a Finance Document or the general law; or
- (d) any right or remedy conferred by any Finance Document or by the general law,

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

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; 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 a Borrower: c/o Navios Shipmanagement Inc.
85 Akti Miaouli
Piraeus 185 38

Fax No: +30 210 4172070
- for the attention of: Vassiliki Papaefthymiou
E-mail: vpapaefthymiou@Navios.com
- (b) to a Lender: At the address below its name in Schedule 1 or (as the case may require) in the relevant Transfer Certificate.
- (c) to the Agent and the Security Trustee: BNP Paribas
16, rue de Hanovre
75078 Paris Cedex 02
France
Fax: +33 (0) 1 42984355
E-mail: igmo.shipping@bnpparibas.com

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

28.3 Effective date of notices

Subject to Clauses 28.4 and 28.5:

- (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 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 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) 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 and 28.4 do not apply if the recipient of a notice notifies the sender within 1 hour after the time at which the notice would otherwise be deemed to be served that the notice has been received in a form which is illegible in a material respect.

28.6 Valid notices

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

- (a) the failure to serve it in accordance with the requirements of this Agreement or other Finance Document, as the case may be, has not caused any party to suffer any significant loss or prejudice; or
- (b) in the case of incorrect and/or incomplete contents, it should have been reasonably clear to the party on which the notice was served what the correct or missing particulars should have been.

28.7 English language

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

28.8 Meaning of “notice”

In this Clause “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 Waiver of Banking Secrecy

The Borrowers hereby irrevocably authorise and give consent to the Agent and, each of its affiliates, and their respective subsidiaries, branches and representative offices and their respective directors, officers, employees and agents (the “**Authorised Persons**” and each an

“**Authorised Person**”), to disclose and transmit to the Applicable Persons, whether orally, in writing or by any other means, information and documents which relates to, or are connected with, the Borrowers, their beneficial owner, any other member of the Group, their business, dealings or assets (the “**Information**”), from time to time and to the extent that the Authorised Person deems such disclosure or transmission to be necessary or desirable for or incidental to the carrying out of its duties, obligations, commitments and activities whether arising under contract or by operation of law and/or consolidated supervision and risk management policy, to the extent that the Information is covered by banking secrecy under any applicable law in general and Swiss banking secrecy rules in particular and/or:

- (a) necessary or desirable for the purposes of its internal cross-selling enabling the Borrowers and/or any other member of the Group to benefit from the Agent’s or any other Authorised Person’s business activities; and/or
- (b) necessary or desirable to insure a risk related to the Borrowers and/or any other member of the Group; and/or
- (c) necessary or desirable to syndicate a risk related to the Borrowers and/or any other member of the Group; and/or
- (d) necessary or desirable to securitise a risk related to the Borrowers and/or any other member of the Group; and/or
- (e) necessary or desirable to open an account or to start a business relation with the Agent’s or any other Authorised Person’s parent company or any of its subsidiaries or branches.

In this Clause 29.4, “**Applicable Person**” means any or all of the following persons:

- (i) any authority or person against which, pursuant to any applicable law, administrative order or court ruling, banking secrecy may not be validly asserted by an Authorised Person;
- (ii) the Agent’s or any other Authorised Person’s parent company, any of its subsidiaries, branches or representative offices;
- (iii) any rating agency, auditor, insurance and reinsurance company, broker or professional adviser, to the extent such entity or person is bound by a statutory or contractual duty of confidentiality;
- (iv) any financial institution and institutional or other investor who is or might be involved in securitisation schemes, hedging agreements, participations, credit derivatives or any other risk transfer or sharing arrangements, including, inter alia, a bank and/or other financial institution’s participation in, or syndication in respect of, the Loan;
- (v) any potential assignee or transferee or person who has entered into or is proposing to enter into contractual arrangements with the Authorised Person in relation to a Borrower; and
- (vi) any external computer services provider, for the purpose of maintenance or repair of the Agent’s or any other Authorised Person’s computer systems and date provided that such external computer services provider is bound by the confidentiality policy of BNP Paribas.

29.5 Reference Banks

If a Reference Bank (or, if a Reference Bank is not a Lender, the Lender of which it is an affiliate) ceases to be a Lender, the Agent shall (in consultation with the Borrowers) appoint another Lender or an affiliate of a Lender to replace that Reference Bank.

29.6 Role of Reference Banks

- (a) No Reference Bank is under any obligation to provide a quotation or any other information to the Agent but may do so at the Agent's request.
- (b) No Reference Bank will be liable for any action taken by it under or in connection with any Finance Document, or for any quotation provided to the Agent.
- (c) No Party (other than the relevant Reference Bank) may take any proceedings against any officer, employee or agent of any Reference Bank in respect of any claim it might have against that Reference Bank or in respect of any act or omission of any kind by that officer, employee or agent in relation to any Finance Document, or to any quotation provided to the Agent, and any officer, employee or agent of each Reference Bank may rely on this clause subject to clause 29.3 and the provisions of the Third Parties Act.

29.7 Third party Reference Banks

Any Reference Bank which is not a party to this Agreement may rely on Clause 29.6 subject to Clause 29.3 and the provisions of the Third Parties Act.

29.8 Counterparts

A Finance Document may be executed in any number of counterparts.

30 CONFIDENTIALITY

30.1 Confidential Information

Each Creditor Party agrees to keep all Confidential Information confidential and not to disclose it to anyone, save to the extent permitted by Clauses 30.2 and 30.3 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 taking also into account the public nature of the Corporate Guarantor.

30.2 Disclosure of Confidential Information

Any Creditor Party may disclose:

- (a) to any of its affiliates and Related Funds and any of its or their officers, directors, employees, professional advisers, auditors, partners and Representatives such Confidential Information as that Creditor Party shall consider appropriate if any person to whom the Confidential Information is to be given pursuant to this paragraph (a) is informed in writing of its confidential nature and that some or all of such Confidential Information may be price-sensitive information except that there shall be no such requirement to so inform if the recipient is subject to professional obligations to maintain the confidentiality of the information or is otherwise bound by requirements of confidentiality in relation to the Confidential Information;
- (b) to any person:
 - (i) to (or through) whom it assigns or transfers (or may potentially assign or transfer) all or any of its rights and/or obligations under one or more Finance Documents or which succeeds (or which may potentially succeed) it as Agent 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 the Borrowers and/or any Security Party and to any of that person's affiliates, Related Funds, Representatives and professional advisers;
- (iii) appointed by any Creditor Party or by a person to whom paragraph (b)(i) or (ii) above applies to receive communications, notices, information or documents delivered pursuant to the Finance Documents on its behalf;
- (iv) who invests in or otherwise finances (or may potentially invest in or otherwise finance), directly or indirectly, any transaction referred to in paragraph (b)(i) or (b)(ii) above;
- (v) to whom information is required or requested to be disclosed by any court of competent jurisdiction or any governmental, banking, taxation or other regulatory authority or similar body, the rules of any relevant stock exchange or pursuant to any applicable law or regulation;
- (vi) to whom information is required to be disclosed in connection with, and for the purposes of, any litigation, arbitration, administrative or other investigations, proceedings or disputes;
- (vii) to whom or for whose benefit that Creditor Party charges, assigns or otherwise creates a Security Interest (or may do so) pursuant to Clause 26.17;
- (viii) who is a party to a Finance Document, a member of the Group or any related entity of the Borrowers or any Security Party; or
- (ix) with the consent of the Borrowers;

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

- (A) in relation to paragraphs (b)(i), (b)(ii) and (b)(iii) above, the person to whom the Confidential Information is to be given has entered into a Confidentiality Undertaking except that there shall be no requirement for a Confidentiality Undertaking if the recipient is a professional adviser and is subject to professional obligations to maintain the confidentiality of the Confidential Information;
- (B) in relation to paragraph (b)(iv) above, the person to whom the Confidential Information is to be given has entered into a Confidentiality Undertaking or is otherwise bound by requirements of confidentiality in relation to the Confidential Information they receive and is informed that some or all of such Confidential Information may be price-sensitive information;
- (C) in relation to paragraphs (b)(v), (b)(vi) and (b)(vii) above, the person to whom the Confidential Information is to be given is informed of its confidential nature and that some or all of such Confidential Information may be price-sensitive information except that there shall be no requirement to so inform if, in the opinion of that Creditor Party, it is not practicable so to do in the circumstances;

- (c) to any person appointed by that Creditor Party or by a person to whom paragraph (b)(i) or (b)(ii) above applies to provide administration or settlement services in respect of one or more of the Finance Documents including without limitation, in relation to the trading of participations in respect of the Finance Documents, such Confidential Information as may be required to be disclosed to enable such service provider to provide any of the services referred to in this paragraph (c) if the service provider to whom the Confidential Information is to be given has entered into a confidentiality agreement substantially in the form of the LMA Master Confidentiality Undertaking for Use With Administration/Settlement Service Providers or such other form of confidentiality undertaking agreed between the Borrowers and the relevant Creditor Party; and
- (d) to any rating agency (including its professional advisers) such Confidential Information as may be required to be disclosed to enable such rating agency to carry out its normal rating activities in relation to the Finance Documents and/or the Borrowers and/or the Security Parties.

30.3 Disclosure to numbering service providers

- (a) Any Creditor Party may disclose to any national or international numbering service provider appointed by that Creditor Party to provide identification numbering services in respect of this Agreement, the Loan and/or the Borrowers and/or the Security Parties the following information:
 - (i) names of the Borrowers and the Security Parties;
 - (ii) country of domicile of the Borrowers and the Security Parties;
 - (iii) place of incorporation of the Borrowers and the Security Parties;
 - (iv) date of this Agreement;
 - (v) governing law;
 - (vi) the name of the Agent;
 - (vii) date of each amendment and restatement of this Agreement;
 - (viii) amount of the Loan;
 - (ix) amount of Total Commitments;
 - (x) currency of the Loan;
 - (xi) type of facility;
 - (xii) ranking of facility;
 - (xiii) final Repayment Date;
 - (xiv) changes to any of the information previously supplied pursuant to paragraphs (i) to (xiii) above; and
 - (xv) such other information agreed between such Creditor Party and the Borrowers,to enable such numbering service provider to provide its usual syndicated loan numbering identification services.

- (b) The parties to this Agreement acknowledge and agree that each identification number assigned to this Agreement, the Loan and/or the Borrowers and/or any Security Party 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) The Borrowers represent that none of the information set out in paragraphs (a)(i) to (a)(xv) above is, nor will at any time be, unpublished price-sensitive information.
- (d) The Agent shall notify the Borrowers and the other Creditor Parties of:
 - (i) the name of any numbering service provider appointed by the Agent in respect of this Agreement, the Loan and/or the Borrowers and/or the Security Parties; and
 - (ii) the number or, as the case may be, numbers assigned to this Agreement, the Loan and/or the Borrowers and/or the Security Parties by such numbering service provider.

30.4 Entire agreement

This Clause 30 constitutes the entire agreement between the parties to this Agreement in relation to the obligations of the Creditor Parties under the Finance Documents regarding Confidential Information and supersedes any previous agreement, whether express or implied, regarding Confidential Information.

30.5 Inside information

Each of the Creditor Parties acknowledges that some or all of the Confidential Information is or may be price-sensitive information and that the use of such information may be regulated or prohibited by applicable legislation including securities law relating to insider dealing and market abuse and each of the Creditor Parties undertakes not to use any Confidential Information for any unlawful purpose.

30.6 Notification of disclosure

Each of the Creditor Parties agrees (to the extent permitted by law and regulation) to inform the Borrowers:

- (a) of the circumstances of any disclosure of Confidential Information made pursuant to paragraph (b)(v) of Clause 30.2 except where such disclosure is made to any of the persons referred to in that paragraph during the ordinary course of its supervisory or regulatory function; and
- (b) upon becoming aware that Confidential Information has been disclosed in breach of this Clause 30.

30.7 Continuing obligations

The obligations in this Clause 30 are continuing and, in particular, shall survive and remain binding on each Creditor Party for a period of 12 months from the earlier of:

- (a) the date on which all amounts payable by the Borrowers and the Security Parties under or in connection with this Agreement have been paid in full and all Commitments have been cancelled or otherwise cease to be available; and
- (b) the date on which such Creditor Party otherwise ceases to be a Creditor Party.

31 LAW AND JURISDICTION

31.1 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.

31.2 Exclusive English jurisdiction

Subject to Clause 31.3, the courts of England shall have exclusive jurisdiction to settle any Dispute.

31.3 Choice of forum for the exclusive benefit of the Creditor Parties

Clause 31.2 is for the exclusive benefit of the Creditor Parties, each of which reserves the right:

- (a) to commence proceedings in relation to any Dispute in the courts of any country other than England and which have or claim jurisdiction to that Dispute; 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.

Neither Borrower shall commence any proceedings in any country other than England in relation to a Dispute.

31.4 Process agent

Each Borrower irrevocably appoints HFW Nominees Ltd at their office for the time being, presently at Friary Court, 65 Crutched Friars, London, EC3N 2AE, 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 a Dispute.

31.5 Creditor Party rights unaffected

Nothing in this Clause 31 shall exclude or limit any right which any Creditor Party may have (whether under the law of any country, an international convention or otherwise) with regard to the bringing of proceedings, the service of process, the recognition or enforcement of a judgment or any similar or related matter in any jurisdiction.

31.6 Meaning of “proceedings” and “Dispute”

In this Clause 31, “**proceedings**” means proceedings of any kind, including an application for a provisional or protective measure and a “**Dispute**” means any dispute arising out of or in connection with this Agreement (including a dispute relating to the existence, validity or termination of this Agreement or any non-contractual obligation arising out of or in connection with this Agreement).

32 BAIL-IN

32.1 Contractual recognition of 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 hereto 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.

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

EXECUTION PAGE

BORROWERS

SIGNED by Francisco Tateleer)
for and on behalf of) /s/ Francisco Tateleer
FINIAN NAVIGATION CO.)

SIGNED by by Francisco Tateleer)
for and on behalf of) /s/ Francisco Tateleer
CASUAL SHIPHOLDING CO.)

LENDERS

SIGNED by Christina Economides)
for and on behalf of) /s/ Christina Economides
BNP PARIBAS)

AGENT

SIGNED by Christina Economides)
for and on behalf of) /s/ Christina Economides
BNP PARIBAS)

SECURITY TRUSTEE

SIGNED by Christina Economides)
for and on behalf of) /s/ Christina Economides
BNP PARIBAS)

Witness to all the above)

Signature) /s/ Aikaterina Dimitriou

Name: Aikaterina Dimitriou
Address: Watson Farley & Williams
348 Syngrou Avenue
17674 Kellitheia
Athens - Greece

US\$39,000,000

FACILITY AGREEMENT

Dated 28 June 2017

for

**FANTASTIKS SHIPPING CORPORATION
SAGITTARIUS SHIPPING CORPORATION
CUSTOMIZED DEVELOPMENTS S.A.**

and

AMMOS SHIPPING CORP.
as joint and several Borrowers

guaranteed by

NAVIOS MARITIME PARTNERS L.P.
as Guarantor

arranged by

DVB BANK SE
as Arranger

with

DVB BANK SE
acting as Facility Agent

DVB BANK SE
acting as Security Agent

and

DVB BANK SE
acting as Account Bank

relating to the refinancing the existing indebtedness secured over
m.vs. "NAVIOS FANTASTIKS", "NAVIOS SAGITTARIUS" and "NAVIOS FULVIA" and
refinancing part of the acquisition cost of m.v. "NAVIOS PROSPERITY I"

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PARTIES

- (1) **FANTASTIKS SHIPPING CORPORATION**, a corporation incorporated in the Republic of the Marshall Islands with registered number 26503 whose registered office is at Trust Company Complex, Ajeltake Road, Ajeltake Island, Majuro, Marshall Islands MH 96960 as a borrower ("**Borrower A**")
- (2) **SAGITTARIUS SHIPPING CORPORATION**, a corporation incorporated in the Republic of the Marshall Islands with registered number 28739 whose registered office is at Trust Company Complex, Ajeltake Road, Ajeltake Island, Majuro, Marshall Islands MH 96960 ("**Borrower B**")
- (3) **CUSTOMIZED DEVELOPMENTS S.A.**, a corporation incorporated in the Republic of Liberia with registered number C-107622 whose registered office is at 80 Broad Street, Monrovia, Liberia as a borrower ("**Borrower C**")
- (4) **AMMOS SHIPPING CORP.**, a corporation incorporated in the Republic of the Marshall Islands with registered number 90059 whose registered office is at Trust Company Complex, Ajeltake Road, Ajeltake Island, Majuro, Marshall Islands MH 96960 as a borrower ("**Borrower D**")
- (5) **NAVIOS MARITIME PARTNERS L.P.**, a limited partnership incorporated in the Republic of the Marshall Islands with registered number 950018 whose registered office is at Trust Company Complex, Ajeltake Road, Ajeltake Island, Majuro, Marshall Islands MH 96960 as guarantor (the "**Guarantor**")
- (6) **DVB BANK SE**, as arranger (the "**Arranger**")
- (7) **THE FINANCIAL INSTITUTIONS** listed in Part B of Schedule 1 (The Parties) as lenders (the "**Original Lenders**")
- (8) **DVB BANK SE**, as agent of the other Finance Parties (the "**Facility Agent**")
- (9) **DVB BANK SE**, as security agent for the Creditor Parties (the "**Security Agent**")
- (10) **DVB BANK SE** acting through its office at Platz der Republik 6, 60325, Frankfurt/Main, Germany as account bank (the "**Account Bank**")

OPERATIVE PROVISIONS

SECTION 1

INTERPRETATION

1 DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Agreement:

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

“**Accounts**” means:

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

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

“**Advance**” means a borrowing of all or any 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.

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

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

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

“**Approved Flag**” means, in relation to a Vessel, as at the date of this Agreement, the flag of the Republic of Panama, the Republic of Liberia, Malta or the Republic of the Marshall Islands or such other flag approved in writing by the Facility Agent acting with the authorisation of the Lenders.

“**Approved Manager**” means, in relation to a Vessel, as at the date of this Agreement, Navios Shipmanagement Inc., a corporation incorporated in the Marshall Islands having its registered office at Trust Company Complex, Ajeltake Road, Ajeltake Island, Majuro MH96960, Marshall Islands, or any Affiliate of the Guarantor or any other person approved in writing by the Facility Agent, acting with the authorisation of the Lenders, as the commercial and technical manager of that Vessel.

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

“**Assignable Charter**” means any time charterparty, consecutive voyage charter or other contract of affreightment in respect of a Vessel of a duration of more than 13 months (or capable of exceeding a duration of 13 months taking into account any extension options), including the Initial Charter and any guarantee of the obligations of the charterer under such charter or any bareboat charter in respect of a Vessel and any guarantee of the obligations of the Charterer under such bareboat charter, entered or to be entered into by a Borrower and a Charterer or, as the context may require, bareboat charterer and, in the plural, means all of them.

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

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

“**Availability Period**” means, in relation to each Tranche, the period from and including the date of this Agreement to and including 30 November 2017, 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 a proposed Drawdown, the amount of its participation in any Advance that is due to be made on or before the proposed Drawdown Date.

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

“**Available Tranche**” means, in relation to a Tranche, the aggregate for the time being of each Lender’s Available Commitment in respect of that Tranche.

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

“**Bail-In Legislation**” means:

- (a) in relation to an EEA Member Country which has implemented, or which at any time implements, Article 55 of Directive 2014/59/EU establishing a framework for the recovery and resolution of credit institutions and investment firms, the relevant implementing law or regulation as described in the EU Bail-In Legislation Schedule from time to time; and
- (b) in relation to any other state, any analogous law or regulation from time to time which requires contractual recognition of any Write-down and Conversion Powers contained in that law or regulation.

“**Borrower**” means each of Borrower A, Borrower B, Borrower C and Borrower D and in the plural means all of them.

“**Break 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 the Loan or an Unpaid Sum to the last day of the current Interest Period in relation to the Loan, the relevant part of the Loan or that Unpaid Sum, had the principal amount or Unpaid Sum received been paid on the last day of that Interest Period exceeds
- (b) the amount which that Lender would be able to obtain by placing an amount equal to the principal amount or Unpaid Sum received by it on deposit with a leading bank in the Relevant Interbank Market for a period starting on the Business Day following receipt or recovery and ending on the last day of the current Interest Period,

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

“**Business Day**” means a day (other than a Saturday or Sunday) on which banks are open for general business in Amsterdam, Frankfurt and Athens and:

- (a) (in relation to LIBOR fixing) London; and
- (b) (in relation only to any date for payment or purchase of dollars) New York.

“**Charter**” means, in relation to a Vessel, any charter relating to that Vessel, or other contract for its employment, whether or not already in existence, 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 a Vessel, the assignment creating Security over the rights of the relevant Borrower under any Assignable Charter and any Charter Guarantee relative thereto in the agreed form.

“**Charterer**” means any person approved in writing by the Facility Agent, acting with the authorisation of the Majority Lenders, as a charterer under a Charter, including without limitation the Initial Charterer.

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

“**Commitment**” means each of Tranche A Commitment, Tranche B Commitment, Tranche C Commitment and Tranche D Commitment.

“**Compliance Certificate**” means a certificate in the form set out in Schedule 6 (*Form of Compliance Certificate*) or in any other form agreed between the Guarantor and the Facility Agent.

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

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

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

- (a) information that:
 - (i) is or becomes public information other than as a direct or indirect result of any breach by that Finance Party of Clause 44 (*Confidential Information*); or
 - (ii) is identified in writing at the time of delivery as non-confidential by any member of the Group or any of its advisers; or
 - (iii) is known by that Finance Party before the date the information is disclosed to it in accordance with paragraphs (a) or (b) above or is lawfully obtained by that Finance Party after that date, from a source which is, as far as that Finance Party is aware, unconnected with the Group and which, in either case, as far as that Finance Party is aware, has not been obtained in breach of, and is not otherwise subject to, any obligation of confidentiality; and
- (b) any Funding Rate or Reference Bank Quotation.

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

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

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

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

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

“Disruption Event” means either or both of:

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

- (ii) from communicating with other Parties or, if applicable, any Transaction Obligor in accordance with the terms of the Finance Documents,

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

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

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

“**Drawdown**” means a drawdown of an Advance.

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

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

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

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

“Earnings Account” means an account in the name of the Shareholder with the Account Bank with account number 2910063917.

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

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

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

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

“Environmental Incident” means:

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

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

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

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

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

“Existing Facility Agreement” means the facility agreement dated 31 July 2012 (as amended and restated on 16 February 2017) and entered into between, amongst others, Borrower A, Borrower B and Borrower C as joint and several borrowers and DVB Bank SE as lender to refinance certain existing indebtedness secured on the Vessels.

“Existing Indebtedness” means, at any date, the outstanding Financial Indebtedness of the Borrowers on that date under the Existing Facility Agreement amounting to \$36,054,776.61 at the date of this Agreement.

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

“Facility Extension Maturity Date” means the date falling one year after the Maturity Date.

“Facility Extension Option” means the extension of the Maturity Date for up to 1 year in accordance with Clause 6.5 (*Facility Extension Option*).

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

“FATCA” means:

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

“FATCA Application Date” means:

- (a) in relation to a “withholdable payment” described in section 1473(1)(A)(i) of the Code (which relates to payments of interest and certain other payments from sources within the US), 1 July 2014;
- (b) in relation to a “withholdable payment” described in section 1473(1)(A)(ii) of the Code (which relates to “gross proceeds” from the disposition of property of a type that can produce interest from sources within the US), 1 January 2019; or
- (c) in relation to a “passthru payment” described in section 1471(d)(7) of the Code not falling within paragraphs (a) or (b) above, 1 January 2019,

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

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

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

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

“**Finance Document**” means:

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

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

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

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

“**Fleet Vessel**” means any ship (including the Vessels) from time to time owned by the Guarantor (directly or indirectly).

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

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

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

- (a) the Earnings, the Insurances and any Requisition Compensation in relation to that Vessel; and
- (b) any Charter and any Charter Guarantee,

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 the guarantee of the Guarantor contained in this Agreement.

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

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

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

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

“**Initial Market Value**” means the Market Value of a Vessel determined in accordance with the valuations provided pursuant to paragraph 5.4 of Schedule 3, Part B.

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

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

“**Interest**” means, in respect of the Guarantor for any Relevant Period, the aggregate amount of interest, commissions, fees, discounts, prepayment fees, premiums, charges or other finance payments paid or payable during the Relevant Period in respect of any borrowings by the Guarantor and its Subsidiaries as shown in or determined from its Latest Accounts or otherwise as would be determined in accordance with GAAP.

“**Interest Cover Ratio**” means, by reference to a Test Date, the ratio of EBITDA to Interest on a trailing four-quarter basis.

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

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

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

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

each as of the Specified Time for dollars.

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

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

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

“Latest Accounts” means, in respect of any financial quarter or year of the Group, the latest unaudited (in respect of each financial quarter) or audited (in respect of each financial year) financial statements required to be prepared pursuant to Clause 20.2 (*Financial statements*).

“Lender” means:

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

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

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

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

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

“Liquid Funds” means, by reference to a Test Date or, as the case may be, for any accounting period, the aggregate of any cash deposits legally or beneficially held by all members of the Group and including any funds held with the Facility Agent and other banks from time to time to satisfy minimum liquidity requirements.

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

“**Loan**” means the aggregate amount of the Advances 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 or any other part of the Loan as the context may require.

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

“**Majority Lenders**” means:

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

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

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

“**Margin**” means 3.10 per cent. per annum.

“**Market Value**” means, in relation to a Vessel or any other vessel, at any date, the market value of that Vessel or vessel determined in accordance with Clause 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 Vessel or vessel (as the Facility Agent may require); and
- (d) on the basis of a sale for prompt delivery for cash on normal arm’s length commercial terms as between a willing seller and a willing buyer, free of any Charter.

“**Market Value Adjusted Leverage**” means, at any relevant time, the ratio of:

- (a) the Total Liabilities Adjusted; to
- (b) the Market Value Adjusted Total Assets.

“Market Value Adjusted Total Assets” means, at any time, Total Assets adjusted to reflect the difference between the book values of all Fleet Vessels and the aggregate market value of all Fleet Vessels as provided in the Latest Accounts.

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

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

“Maturity Date” means, in relation to each Tranche, the earlier of (i) the date falling 42 months after the Drawdown Date in respect of that Tranche and (ii) 30 November 2020.

“Month” means a period starting on one day in a calendar month and ending on the numerically corresponding day in the next calendar month, except that:

- (a) (subject to paragraph (c) below) if the numerically corresponding day is not a Business Day, that period shall end on the next Business Day in that calendar month in which that period is to end if there is one, or if there is not, on the immediately preceding Business Day;
- (b) if there is no numerically corresponding day in the calendar month in which that period is to end, that period shall end on the last Business Day in that calendar month; and
- (c) if an Interest Period begins on the last Business Day of a calendar month, that Interest Period shall end on the last Business Day in the calendar month in which that Interest Period is to end.

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

“Mortgage” means, in relation to a Vessel, a first preferred Panamanian (as the case may) ship mortgage on that Vessel in agreed form.

“Net Worth” means the amount by which the Total Assets exceed the Total Liabilities.

“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 2016.

“Original Jurisdiction” means, in relation to a Transaction Obligor, the jurisdiction under whose laws that Transaction 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 an Obligor 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 Vessel, 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;
- (c) which is entered into on bona fide arm’s length terms at the time at which that Vessel is fixed; and
- (d) in relation to which not more than two months’ hire is payable in advance,

and any other Charter which is approved in writing by the Facility Agent acting with the authorisation of the Majority Lenders (which shall include, in the case of Vessel B, the Initial Charter).

“Permitted Financial Indebtedness” means:

- (a) any Financial Indebtedness incurred under the Finance Documents;
- (b) the Existing Indebtedness;
- (c) any Financial Indebtedness (including without limitation, any shareholder or intra-Group loans made available to the Borrowers (or either of them) in the normal course of its business of trading and operating either Vessel) 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;
- (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 usual maritime 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 Vessel and not as a result of any default or omission by any Borrower and subject, in the case of liens for repair or maintenance, to Clause 24.16 (*Restrictions on chartering, appointment of managers etc.*).

“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.

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

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

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

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

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

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

- (a) if:
 - (i) the Reference Bank is a contributor to the Screen Rate; and
 - (ii) it consists of a single figure,as the rate (applied to the relevant Reference Bank and the relevant currency and period) which contributors to the Screen Rate are asked to submit to the relevant administrator; or
- (b) in any other case, as the rate at which the relevant Reference Bank could fund itself in dollars for the relevant period with reference to the unsecured wholesale funding market.

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

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

“Relevant Interbank Market” means the London interbank market.

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

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

“Relevant Period” means, by reference to a Test Date, each period of three months ending on that Test Date.

“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 19 (*Representations*) except Clause 19.10 (*Insolvency*), Clause 19.11 (*No filing or stamp taxes*), Clause 19.12 (*Deduction of Tax*) and Clause 19.17 (*No proceedings pending or threatened*) and any representation of any Transaction Obligor made in any other Finance Document that is expressed to be a “Repeating Representation” or is otherwise expressed to be repeated.

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

“Requisition” means, in relation to a Vessel:

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

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

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

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

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

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

- (a) imposed by law or regulation of the United Kingdom, the Council of the European Union, the United Nations or its Security Council or the United States of America; or
- (b) otherwise imposed by any law or regulation.

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

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

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

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

“**Security Document**” means:

- (a) any Shares Security;
- (b) any Mortgage;
- (c) any General Assignment;
- (d) any Charterparty Assignment;
- (e) any Account Security;
- (f) any Manager’s Undertaking;
- (g) any other document (whether or not it creates Security) which is executed as security for the Secured Liabilities; or
- (h) 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 Creditor Parties and all proceeds of that Transaction Security;
- (b) all obligations expressed to be undertaken by a Transaction Obligor to pay amounts in relation to the Secured Liabilities to the Security Agent as trustee for the Creditor Parties and secured by the Transaction Security together with all representations and warranties expressed to be given by a Transaction Obligor or any other person in favour of the Security Agent as trustee for the Creditor Parties;
- (c) the Security Agent’s interest in any turnover trust created under the Finance Documents;
- (d) any other amounts or property, whether rights, entitlements, choses in action or otherwise, actual or contingent, which the Security Agent is required by the terms of the Finance Documents to hold as trustee on trust for the Creditor Parties,

except:

- (i) rights intended for the sole benefit of the Security Agent; and

- (ii) any moneys or other assets which the Security Agent has transferred to the Facility Agent or (being entitled to do so) has retained in accordance with the provisions of this Agreement.

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

“**Servicing Party**” means the Facility Agent or the Security Agent.

“**Shares Security**” means, in relation to a Borrower, a document creating Security over the share capital in that Borrower in agreed form.

“**Shareholder**” means, in relation to a Borrower, means Navios Maritime Operating L.L.C., a corporation incorporated and existing in the Republic of the Marshall Islands whose registered office is at Trust Company Complex, Ajeltake Road, Ajeltake Island, Majuro, The Marshall Islands MH96960;

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

“**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*).

“**Term B Loan**” means the credit agreement dated as of 14 March 2017 (as amended, restated, supplemented or otherwise modified from time to time), by and among the Guarantor and Navios Partners Finance (US) Inc., a Delaware corporation, as borrowers, the lenders from time to time party thereto and Morgan Stanley Senior Funding, Inc., as administrative agent for the lenders;

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

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

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

“Time Deposit Account” means an account in the name of the Shareholder with the Account Bank with account number 5900000042.

“Total Assets” means, as at the date of calculation or, as the case may be, for any accounting period, the total assets of the Group (including, without limitation, the Vessels) as at that date (based on book values) or for that period (which shall have the meaning given thereto under the GAAP) as shown in the Latest Accounts.

“Total Commitments” means the aggregate of the Tranche A Commitment, Tranche B Commitment, Tranche C Commitment and Tranche D Commitment, being \$39,000,000 at the date of this Agreement.

“Total Debt” means, as at the date of calculation or, as the case may be, for any accounting period, the total debt of the Group as at that date or for that period (which shall have the meaning given thereto under GAAP) as shown in the most Latest Accounts.

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

“Total Liabilities Adjusted” means, the Total Liabilities excluding the amount which appears as deferred revenue and relates to the compensation received in respect of m.vs. “HYUNDAI BUSAN”, “HYUNDAI SINGAPORE”, “HYUNDAI SHANGHAI”, “HYUNDAI TOKYO” and “HYUNDAI HONG KONG”, in each case, as such amount reduces from time to time.

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

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

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

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

“Tranche” means each of Tranche A, Tranche B, Tranche C and Tranche D.

“Tranche A” means that part of the Loan made or to be made available to the Borrowers to refinance part of the Existing Indebtedness secured over Vessel A in a principal amount not exceeding the lesser of (i) US\$10,000,000 and (ii) 60 per cent. of the Initial Market Value of Vessel A.

“Tranche A Commitment” means:

- (a) in relation to an Original Lender, the amount set opposite its name under the heading “Tranche A Commitment” in Part B of Schedule 1 and the amount of any other Tranche A Commitment transferred to it under this Agreement; and
- (b) in relation to any other Lender, the amount of any Tranche A Commitment transferred to it under this Agreement, to the extent not cancelled, reduced or transferred by it under this Agreement.

“Tranche B” means that part of the Loan made or to be made available to the Borrowers to refinance part of the Existing Indebtedness secured over Vessel B in a principal amount not exceeding the lesser of (i) US\$6,000,000 and (ii) 60 per cent. of the Initial Market Value of Vessel B.

“Tranche B Commitment” means:

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

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

“Tranche C” means that part of the Loan made or to be made available to the Borrowers to refinance part of the Existing Indebtedness secured over Vessel C in a principal amount not exceeding the lesser of (i) US\$16,000,000 and (ii) 60 per cent. of Initial Market Value of Vessel C.

“Tranche C Commitment” means:

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

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

“Tranche D” means that part of the Loan made or to be made available to the Borrowers to refinance part of the acquisition cost of Vessel D in a principal amount not exceeding the lesser of (i) US\$7,000,000 and (ii) 60 per cent. of the Initial Market Value of Vessel D.

“Tranche D Commitment” means:

- (a) in relation to an Original Lender, the amount set opposite its name under the heading “Tranche D Commitment” in Part B of Schedule 1 and the amount of any other Tranche D Commitment transferred to it under this Agreement; and
- (b) in relation to any other Lender, the amount of any Tranche D Commitment transferred to it under this Agreement, to the extent not cancelled, reduced or transferred by it under this Agreement.

“**Transaction Document**” means:

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

“**Transaction Obligor**” means an Obligor, the Shareholder, the 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 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 Establishment**” means a UK establishment as defined in the Overseas Regulations.

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

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

“**US Tax Obligor**” means:

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

“**VAT**” means:

- (a) any tax imposed in compliance with the Council Directive of 28 November 2006 on the common system of value added tax (EC Directive 2006/112); and

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

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

“**Vessel**” means each of Vessel A, Vessel B, Vessel C and Vessel D and in the plural means all of them.

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

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

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

“**Vessel D**” has the meaning given to that term in Schedule 8 (*Details of the Vessels*).

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

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

1.2 Construction

(a) Unless a contrary indication appears, a reference in this Agreement to:

- (i) the “**Account Bank**”, the “**Arranger**”, the “**Facility Agent**”, any “**Finance Party**”, any “**Lender**”, any “**Obligor**”, any “**Party**”, any “**Creditor Party**”, the “**Security Agent**”, any “**Transaction Obligor**” or any other person shall be construed so as to include its successors in title, permitted assigns and permitted transferees to, or of, its rights and/or obligations under the Finance Documents;
- (ii) “**assets**” includes present and future properties, revenues and rights of every description;
- (iii) a liability which is “**contingent**” means a liability which is not certain to arise and/or the amount of which remains unascertained;

- (iv) “**document**” includes a deed and also a letter, fax or telex;
 - (v) “**expense**” means any kind of cost, charge or expense (including all legal costs, charges and expenses) and any applicable Tax including VAT;
 - (vi) a “**Finance Document**”, a “**Security Document**” or “**Transaction Document**” or any other agreement or instrument is a reference to that Finance Document, Security Document or Transaction Document or other agreement or instrument as amended or novated;
 - (vii) “**indebtedness**” includes any obligation (whether incurred as principal or as surety) for the payment or repayment of money, whether present or future, actual or contingent;
 - (viii) “**law**” includes any order or decree, any form of delegated legislation, any treaty or international convention and any regulation or resolution of the Council of the European Union, the European Commission, the United Nations or its Security Council;
 - (ix) “**proceedings**” means, in relation to any enforcement provision of a Finance Document, proceedings of any kind, including an application for a provisional or protective measure;
 - (x) a “**person**” includes any individual, firm, company, corporation, government, state or agency of a state or any association, trust, joint venture, consortium or partnership or other entity (whether or not having separate legal personality);
 - (xi) a “**regulation**” includes any regulation, rule, official directive, request or guideline (whether or not having the force of law) of any governmental, intergovernmental or supranational body, agency, department or regulatory, self-regulatory or other authority or organisation;
 - (xii) a provision of law is a reference to that provision as amended or re-enacted;
 - (xiii) a time of day is a reference to Amsterdam time;
 - (xiv) any English legal term for any action, remedy, method of judicial proceeding, legal document, legal status, court, official or any legal concept or thing shall, in respect of a jurisdiction other than England, be deemed to include that which most nearly approximates in that jurisdiction to the English legal term;
 - (xv) words denoting the singular number shall include the plural and vice versa; and
 - (xvi) “**including**” and “**in particular**” (and other similar expressions) shall be construed as not limiting any general words or expressions in connection with which they are used.
- (b) The determination of the extent to which a rate is “**for a period equal in length**” to an Interest Period shall disregard any inconsistency arising from the last day of that Interest Period being determined pursuant to the terms of this Agreement.
- (c) Section, Clause and Schedule headings are for ease of reference only and are not to be used for the purposes of construction or interpretation of the Finance Documents.
- (d) Unless a contrary indication appears, a term used in any other Finance Document or in any notice given under, or in connection with, any Finance Document has the same meaning in that Finance Document or notice as in this Agreement.

- (e) A Potential Event of Default is “**continuing**” if it has not been remedied or waived and an Event of Default is “**continuing**” if it has not been waived.

1.3 Construction of insurance terms

In this Agreement:

“**approved**” means, for the purposes of Clause 23 (Insurance Undertakings), approved in writing by the Facility Agent;

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

“**obligatory insurances**” means all insurances effected, or which each Borrower is obliged to effect, under Clause 23 (*Insurance Undertakings*) or any other provision of this Agreement or of another Finance Document;

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

“**protection and indemnity risks**” means the usual risks covered by a protection and indemnity association managed in London, including pollution risks and the proportion (if any) of any sums payable to any other person or persons in case of collision which are not recoverable under the hull and machinery policies by reason of the incorporation in them of clause 6 of the International Hull Clauses (1/11/02 or 1/11/03), clause 8 of the Institute Time Clauses (Hulls) (1/10/83)(1/11/95) or the Institute Amended Running Down Clause (1/10/71) or any equivalent provision; and

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

1.4 Agreed forms of Finance Documents

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

- (a) in a form attached to a certificate dated the same date as this Agreement (and signed by the Borrowers and the Facility Agent); or
- (b) in any other form agreed in writing between the Borrowers and the Facility Agent acting with the authorisation of the Majority Lenders or, where Clause 43.2 (*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 30.11 (*Exclusion of liability*), Clause 30.22 (*Role of Reference Banks*), Clause 30.23 (*Third Party Reference Banks*) or paragraph (b) of 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.

SECTION 2

THE FACILITY

2 THE FACILITY

2.1 The Facility

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

2.2 Finance Parties' rights and obligations

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

3 PURPOSE

3.1 Purpose

The Borrowers shall apply all amounts borrowed by them under the Facility only for the purpose of:

- (a) in respect of Tranche A, refinancing the Existing Indebtedness secured over Vessel A in a principal amount not exceeding the lesser of (i) US\$10,000,000 and (ii) 60 per cent. of the Initial Market Value of Vessel A;
- (b) in respect of Tranche B, refinancing the Existing Indebtedness secured over Vessel B in a principal amount not exceeding the lesser of (i) US\$6,000,000 and (ii) 60 per cent. of the Market Value of Vessel B;
- (c) in respect of Tranche C, refinancing the Existing Indebtedness secured over Vessel C in a principal amount not exceeding the lesser of (i) US\$16,000,000 and (ii) 60 per cent. of the Initial Market Value of Vessel C; and
- (d) in respect of Tranche D, refinancing the acquisition cost of Vessel D in a principal amount not exceeding the lesser of (i) US\$7,000,000 and (ii) 60 per cent. of the Initial Market Value of Vessel D.

3.2 Monitoring

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

4 CONDITIONS OF DRAWDOWN

4.1 Conditions precedent to delivery of a Drawdown Request

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

4.2 Further conditions precedent

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

- (a) on the date of a Drawdown Request and on the proposed Drawdown Date and before an Advance is made available:
 - (i) no Default is continuing or would result from the proposed Advance;
 - (ii) the Repeating Representations to be made by each Transaction Obligor are true; and
- (b) on or before the relevant Drawdown Date, the Facility Agent has received, or is satisfied that 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 and Subsequent*) in form and substance satisfactory to the Facility Agent (acting on the instructions of all the Lenders).

4.3 Conditions subsequent

Save in the case of documentary evidence which must be provided when the relevant Advance is made available (as a same day condition subsequent) that the relevant Mortgage has been duly registered on such date (as required under paragraph 2.1 of Part B of Schedule 2 (*Conditions Precedent and Subsequent*)), the Borrowers undertake to deliver or cause to be delivered to the Facility Agent within five Business Days after that Drawdown Date, the additional documents and other evidence listed in Part C of Schedule 2 (*Conditions Precedent and Subsequent*) in form and substance satisfactory to the Facility Agent.

4.4 Notification of satisfaction of conditions precedent

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

4.5 Waiver of conditions precedent

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

SECTION 3

DRAWDOWN

5 DRAWDOWN

5.1 Delivery of a Drawdown Request

- (a) The Borrowers may utilise the Facility by way of Advances by delivery to the Facility Agent of a duly completed Drawdown Request not later than the Specified Time.
- (b) The Borrowers may not deliver more than one Drawdown Request under each Tranche.

5.2 Completion of a Drawdown Request

- (a) Each Drawdown Request is irrevocable and will not be regarded as having been duly completed unless:
 - (i) it identifies the Tranche to be utilised;
 - (ii) the proposed Drawdown Date is a Business Day within the Availability Period;
 - (iii) the currency and amount of a Drawdown comply with Clause 5.3 (*Currency and amount*); and
 - (iv) the proposed Interest Period complies with Clause 9 (*Interest Periods*).
- (b) Only one Advance may be requested in each Drawdown Request and only up to four Drawdown Requests may be delivered.

5.3 Currency and amount

- (a) The currency specified in a Drawdown Request must be dollars.
- (b) The amount of the proposed Advance must be an amount which is not more than:
 - (i) in respect of the Advance under Tranche A, the Tranche A Commitment;
 - (ii) in respect of the Advance under Tranche B, the Tranche B Commitment;
 - (iii) in respect of the Advance under Tranche C, the Tranche C Commitment; and
 - (iv) in respect of the Advance under Tranche D, the Tranche D Commitment.
- (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 any Advance 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.

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 relevant Drawdown 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 Commitment to the Total Commitments 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 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.

SECTION 4

REPAYMENT, PREPAYMENT AND CANCELLATION

6 REPAYMENT

6.1 Repayment of Loan

The Borrower shall repay the Loan as follows:

- (a) Tranche A shall be repaid by 12 consecutive quarterly instalments, the first 5 such instalments each in an amount of \$470,000, the following 6 such instalments each in an amount of \$357,100 and the twelfth and final such instalment in the sum of \$5,507,400 (comprising an instalment in the amount of \$357,100 and a balloon payment in the amount of \$5,150,300), the first of which shall be repaid on the date falling three Months after the Drawdown Date in respect of Tranche A and the last, payable by no later than the relevant Maturity Date or, in the event that the Facility Agent agrees to exercise the Facility Extension Option, the relevant Facility Extension Maturity Date;
- (b) Tranche B shall be repaid by 12 consecutive quarterly instalments, the first 5 such instalments each in an amount of \$280,000, the following 6 such instalments each in an amount of \$214,300 and the twelfth and final such instalment in the sum of \$3,314,200 (comprising an instalment in the amount of \$214,300 and a balloon payment in the amount of \$3,099,900), the first of which shall be repaid on the date falling three Months after the Drawdown Date in respect of Tranche B and the last, payable by no later than the relevant Maturity Date or, in the event that the Facility Agent agrees to exercise the Facility Extension Option, the relevant Facility Extension Maturity Date;
- (c) Tranche C shall be repaid by 12 consecutive quarterly instalments, the first 5 such instalments each in an amount of \$750,000, the following 6 such instalments each in an amount of \$571,400 and the twelfth and final such instalment in the sum of \$8,821,600 (comprising an instalment in the amount of \$571,400 and a balloon payment in the amount of \$8,250,200), the first of which shall be repaid on the date falling three Months after the Drawdown Date in respect of Tranche C and the last, payable by no later than the relevant Maturity Date or, in the event that the Facility Agent agrees to exercise the Facility Extension Option, the relevant Facility Extension Maturity Date; and
- (d) Tranche D shall be repaid by 12 consecutive quarterly instalments, the first 5 such instalments each in an amount of \$325,000, the following 6 such instalments each in an amount of \$250,000 and the twelfth and final such instalment in the sum of \$3,875,000 (comprising an instalment in the amount of \$250,000 and a balloon payment in the amount of \$3,625,000), the first of which shall be repaid on the date falling three Months after the Drawdown Date in respect of Tranche D and the last, payable by no later than the relevant Maturity Date or, in the event that the Facility Agent agrees to exercise the Facility Extension Option, the relevant Facility Extension Maturity Date,

and each such instalment shall be a “**Repayment Instalment**”.

6.2 Effect of cancellation and prepayment on scheduled repayments

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

- (c) Any partial prepayment under Clause 7.1 (*Illegality*) shall reduce in inverse chronological order the amount of each Repayment Instalment and relevant the balloon payment in respect of each Tranche falling after that prepayment by the amount prepaid.
- (d) If any part of the Loan is prepaid in accordance with Clause 7.3 (*Voluntary prepayment of Loan*) then such partial prepayment shall (i) first reduce in chronological order the amount of each Repayment Instalment and the balloon payment in respect of the Tranche selected by the Borrowers in their notice or, in the absence of such Tranche selection, the Repayment Instalments and the balloon payments of all Tranches, falling after that prepayment up to an amount equal to the aggregate of the Repayment Instalments, any balloon payment payable in the twelve month period commencing on the date of such prepayment and (ii) secondly reduce pro rata the amount of each subsequent Repayment Instalment, balloon payment of the relevant Tranche(s), by the amount prepaid.
- (e) If any part of the Loan is prepaid in accordance with Clause 7.4 (*Mandatory prepayment on sale, arrest or Total Loss*), the amount of the Loan prepaid shall be applied against the Tranche which has been used in part refinancing, the relevant Vessel and thereafter any balance shall reduce pro rata the then outstanding Repayment Instalments and the balloon instalments of the other Tranches.

6.3 Maturity Date

On each Maturity Date, or, if applicable, the Facility Extension Maturity 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 relevant to the Tranche in question.

6.4 Reborrowing

No Borrower may reborrow any part of the Facility which is repaid.

6.5 Facility Extension Option

- (a) On a date following no later than 6 months prior to a Maturity Date, the Borrowers may request to exercise the Facility Extension Option and subject to the absolute and sole discretion of the Facility Agent.
- (b) In the event that the Facility Agent agrees to the exercise by the Borrowers of the Facility Extension Option, the relevant Tranche shall be repaid in the manner determined by the Facility Agent in its sole discretion.

7 PREPAYMENT AND CANCELLATION

7.1 Illegality

If it becomes unlawful in any applicable jurisdiction for a Lender to perform any of its obligations as contemplated by this Agreement or to fund or maintain its participation in 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 Voluntary and automatic cancellation

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

7.3 Voluntary prepayment of Loan

- (a) Subject to paragraph (b) below, 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, prepay the whole or any part of the Loan (but, if in part, being an amount that reduces the amount of the Loan by a minimum amount of \$500,000 or a multiple of that amount).
- (b) A Tranche may only be prepaid after the last day of the Availability Period (or, if earlier, the day on which the Available Facility is zero).

7.4 Mandatory prepayment on sale, arrest or Total Loss

If a Vessel is sold, arrested or becomes a Total Loss, the Borrowers shall prepay the Tranche applicable to that Vessel, and if required, such part of the Loan to eliminate any shortfall arising if the ratio set out in Clause 25.1 (*Minimum required security cover*) were applied and notice was given by the Facility Agent under Clause 25.1 (*Minimum required security cover*) immediately that prepayment was made. Such repayment shall be made:

- (a) in the case of a sale of that Vessel, on or before the date on which the sale is completed by delivery of that Vessel to the buyer; or
- (b) in the case of any arrest of that Vessel, where that Vessel is not within 30 days redelivered to the full control of the relevant Borrower, on or before the date falling 37 days after the date of the arrest of that Vessel, but this shall not extend to a hijacking of that Vessel for a period not exceeding twelve months, Provided that the relevant underwriters confirm to the Facility Agent in writing (in customary terms) within 30 days of the piracy event that adequate war risks insurance cover is in place in respect of that Vessel; or
- (c) 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.

7.5 Mandatory Prepayment

If the Mortgages have not been registered on all Vessels by the last day of the Availability Period, the Borrowers shall prepay the Loan in full within 7 days from the last day of the Availability Period unless the Lenders agree otherwise in their sole discretion.

7.6 Restrictions

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

- (b) Any prepayment under this Agreement shall be made together with accrued interest on the amount prepaid and all other amounts accrued under the Finance Documents and, subject to the fee provided for in Clause 11.3 (*Prepayment fee*) and any Break Costs, without premium or penalty.
- (c) 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 Lender, as appropriate.
- (g) If all or part of any Lender's participation in the Loan is repaid or prepaid, an amount of that Lender's Commitment (equal to the amount of the participation which is repaid or prepaid) will be deemed to be cancelled on the date of repayment or prepayment.

7.7 Application of prepayments

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

SECTION 5

COSTS OF DRAWDOWN

8 INTEREST

8.1 Calculation of interest

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

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

8.2 Payment of interest

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

8.3 Fixed rate of interest

The Borrowers may, by giving not less than five Business Days’ notice in writing, request that a fixed rate of interest shall apply on the whole of the Loan or a Tranche for a period of 12 months or more by giving to the Facility Agent a notice which shall specify the period for which the fixed rate of interest shall apply and shall be given at least five Business Days before the end of the then current Interest Period of the Loan or that Tranche (as applicable). The Facility Agent shall notify the Borrowers of the fixed rate of interest to apply (which shall be determined at the level of the actual refinancing rates available to the Lenders (as certified by them) for the relevant period to which such fixed rate is to apply plus the Margin) and the Borrowers shall either accept or refuse the offer promptly in writing and in any event within one Business Day. Such offer and acceptance shall be in a form that shall constitute a Finance Document. Once accepted, the Borrowers may not revoke their acceptance and the relevant fixed rate of interest shall apply to the Loan or a Tranche from the first day of the next Interest Period of the Loan or that Tranche (as applicable). If the Borrowers refuse the offer or fail to accept it within the time permitted for acceptance, the other provisions of this Clause 8 (*Interest*) shall continue to apply.

8.4 Default interest

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

(ii) the rate of interest applying to that Unpaid Sum during that first Interest Period shall be 2 per cent. per annum higher than the rate which would have applied if that Unpaid Sum had not become due.

(c) Default interest (if unpaid) arising on an Unpaid Sum will be compounded with the Unpaid Sum at the end of each Interest Period applicable to that Unpaid Sum but will remain immediately due and payable.

8.5 Notification of rates of interest

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

(b) The Facility Agent shall promptly notify the Borrowers of each Funding Rate relating to the Loan, any part of the Loan or any Unpaid Sum.

9 INTEREST PERIODS

9.1 Selection of Interest Periods

(a) The first Interest Period for the Loan or a Tranche as specified in the Drawdown Request for the Loan or that Tranche shall be three Months from that Drawdown Date.

(b) Subject to Clause 8.3 (*Fixed rate of interest*) and this Clause 9 (*Interest Periods*), each subsequent Interest Period in respect of the Loan or a Tranche shall be three Months, unless otherwise agreed by the Facility Agent (acting on the instructions of all the Lenders) in writing.

(c) Each Selection Notice is irrevocable and must be delivered to the Facility Agent by the Borrowers not later than the Specified Time.

(d) If the Borrowers fail to deliver a Selection Notice to the Facility Agent in accordance with paragraphs (b) and (c) above, the relevant Interest Period will, subject to Clause 9.2 (*Changes to Interest Periods*) and paragraph (f) below, be three Months.

(e) An Interest Period in respect of a Tranche shall not extend beyond the Maturity Date or, if applicable, the Facility Extension Maturity Date, of that Tranche.

(f) In respect of a Repayment Instalment, an Interest Period for a part of the Loan equal to such Repayment Instalment shall end on the Repayment Date relating to it if such date is before the end of the Interest Period then current.

(g) The first Interest Period for the first Tranche to be advanced or the Loan shall start on the relevant Drawdown Date and each subsequent Interest Period shall start on the last day of the preceding Interest Period.

(h) The first Interest Period for the second and any subsequent Advance under a Tranche shall start on the Drawdown Date of such Tranche and end on the last day of the Interest Period applicable to the balance of the Loan following the date on which such Tranche is made.

(i) Except for the purposes of paragraphs (f) and (h) above and Clause 9.2 (*Changes to Interest Periods*) below, the Loan shall have one Interest Period only at any time.

9.2 Changes to Interest Periods

(a) In respect of a Repayment Instalment, prior to determining the interest rate for the Loan, the Facility Agent may establish an Interest Period for a part of the Loan equal to such Repayment Instalment to end on the Repayment Date relating to it and the remaining part of the Loan shall have the Interest Period selected in the relevant Selection Notice, subject to paragraph (b) of 9.1 (*Selection of Interest Periods*).

- (b) If after the Borrowers have selected and the Lenders have agreed an Interest Period longer than three Months, any Lender notifies the Facility Agent within two Business Days after the Specified Time relating to the relevant Drawdown Request or Selection Notice that it is not satisfied that deposits in dollars for a period equal to the Interest Period will be available to it in the Relevant Interbank Market when the Interest Period commences, the Facility Agent shall shorten the Interest Period to three Months.
- (c) If the Facility Agent makes any change to an Interest Period referred to in this Clause 9.2 (*Changes to Interest Periods*), it shall promptly notify the Borrowers and the Lenders.

9.3 Non-Business Days

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

10 CHANGES TO THE CALCULATION OF INTEREST

10.1 Unavailability of Screen Rate

- (a) *Interpolated Screen Rate*: If no Screen Rate is available for LIBOR for the Interest Period of the Loan or any part of the Loan, the applicable LIBOR shall be the Interpolated Screen Rate for a period equal in length to the Interest Period of the Loan or that part of the Loan.
- (b) *Reference Bank Rate*: If no Screen Rate is available for LIBOR for:
 - (i) dollars; or
 - (ii) the Interest Period of the Loan or any part of the Loan and it is not possible to calculate the Interpolated Screen Rate,the applicable LIBOR shall be the Reference Bank Rate as of the Specified Time and for a period equal in length to the Interest Period of the Loan or that part of the Loan.
- (c) *Cost of funds*: If paragraph (b) above applies but no Reference Bank Rate is available for dollars or the relevant Interest Period there shall be no LIBOR for the Loan or that part of the Loan (as applicable) and Clause 10.4 (*Cost of funds*) shall apply to the Loan or that part of the Loan for that Interest Period.

10.2 Calculation of Reference Bank Rate

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

10.3 Market disruption

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

10.4 Cost of funds

- (a) If this Clause 10.4 (*Cost of funds*) applies, the rate of interest on each Lender's share of the Loan or the relevant part of the Loan for the relevant Interest Period shall be the percentage rate per annum which is the sum of:
- (i) the Margin; and
 - (ii) the rate notified to the Facility Agent by that Lender as soon as practicable and in any event before interest is due to be paid in respect of that Interest Period to be that which expresses as a percentage rate per annum the cost to the relevant Lender of funding its participation in the Loan or that part of the Loan from whatever source it may reasonably select.
- (b) If this Clause 10.4 (*Cost of funds*) applies and the Facility Agent or the 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 43.4 (*Replacement of Screen Rate*), any substitute or alternative basis agreed pursuant to paragraph (b) above shall, with the prior consent of all the Lenders and the Borrower, be binding on all Parties.
- (d) If paragraph (e) below does not apply and any rate notified to the Facility Agent under sub-paragraph (ii) of paragraph (a) above is less than zero, the relevant rate shall be deemed to be zero.
- (e) If this Clause 10.4 (*Cost of funds*) applies pursuant to Clause 10.3 (*Market disruption*) and:
- (i) a Lender's Funding Rate is less than LIBOR; or
 - (ii) a Lender does not supply a quotation by the time specified in sub-paragraph (ii) of paragraph (a) above,
- the cost to that Lender of funding its participation in the Loan or the relevant part of the Loan for that Interest Period shall be deemed, for the purposes of paragraph (a) above, to be LIBOR.
- (f) If this Clause 10.4 (*Cost of funds*) applies but any Lender does not supply a quotation by the time specified in sub-paragraph (ii) of paragraph (a) above the rate of interest shall be calculated on the basis of the quotations of the remaining Lenders.

10.5 Notification to Borrower

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

10.6 Break Costs

- (a) The Borrower shall, within three Business Days of demand by a Finance Party, pay to that Finance Party its Break Costs attributable to all or any part of the Loan or Unpaid Sum being paid by the Borrower on a day other than the last day of an Interest Period for the Loan, the relevant part of the Loan or that Unpaid Sum.

- (b) Each Lender shall, as soon as reasonably practicable after a demand by the Facility Agent, provide a certificate confirming the amount of its Break Costs for any Interest Period in which they accrue.

11 FEES

11.1 Commitment fee

- (a) The Borrowers shall pay to the Facility Agent (for the account of each Lender) a fee computed at the rate of 1 per cent. per annum on that Lender's Available Commitment from time to time for the Availability Period.
- (b) The accrued commitment fee is payable on the last day of each successive period of three Months which ends during the Availability Period, on the last day of the Availability Period and, if cancelled, on the cancelled amount of the relevant Lender's Commitment at the time the cancellation is effective.

11.2 Arrangement fee

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

11.3 Prepayment fee

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

ADDITIONAL PAYMENT OBLIGATIONS

12 TAX GROSS UP AND INDEMNITIES

12.1 Definitions

(a) In this Agreement:

“**Protected Party**” means a Finance Party which is or will be subject to any liability, or required to make any payment, for or on account of Tax in relation to a sum received or receivable (or any sum deemed for the purposes of Tax to be received or receivable) under a Finance Document.

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

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

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

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

12.2 Tax gross-up

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

(b) The Borrowers shall promptly upon becoming aware that an Obligor must make a Tax Deduction (or that there is any change in the rate or the basis of a Tax Deduction) notify the 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 Obligor.

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

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

(e) Within 30 days of making either a Tax Deduction or any payment required in connection with that Tax Deduction, the Obligor making that Tax Deduction shall deliver to the Facility Agent for the Finance Party entitled to the payment evidence reasonably satisfactory to that Finance Party that the Tax Deduction has been made or (as applicable) any appropriate payment paid to the relevant taxing authority.

12.3 Tax indemnity

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

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

12.4 Tax Credit

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

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

12.5 Stamp taxes

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

12.6 VAT

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

- (b) If VAT is or becomes chargeable on any supply made by any Finance Party (the “**Supplier**”) to any other Finance Party (the “**Recipient**”) under a Finance Document, and any Party other than the Recipient (the “**Relevant Party**”) is required by the terms of any Finance Document to pay an amount equal to the consideration for that supply to the Supplier (rather than being required to reimburse or indemnify the Recipient in respect of that consideration):
- (i) (where the Supplier is the person required to account to the relevant tax authority for the VAT) the Relevant Party must also pay to the Supplier (at the same time as paying that amount) an additional amount equal to the amount of the VAT. The Recipient must (where this sub-paragraph (i) applies) promptly pay to the Relevant Party an amount equal to any credit or repayment the Recipient receives from the relevant tax authority which the Recipient reasonably determines relates to the VAT chargeable on that supply; and
 - (ii) (where the Recipient is the person required to account to the relevant tax authority for the VAT) the Relevant Party must promptly, following demand from the Recipient, pay to the Recipient an amount equal to the VAT chargeable on that supply but only to the extent that the Recipient reasonably determines that it is not entitled to credit or repayment from the relevant tax authority in respect of that VAT.
- (c) Where a Finance Document requires any Party to reimburse or indemnify a Finance Party for any cost or expense, that Party shall reimburse or indemnify (as the case may be) such Finance Party for the full amount of such cost or expense, including such part of it as represents VAT, save to the extent that such Finance Party reasonably determines that it is entitled to credit or repayment in respect of such VAT from the relevant tax authority.
- (d) Any reference in this Clause 12.6 (VAT) to any Party shall, at any time when that Party is treated as a member of a group or unity (or fiscal unity) for VAT purposes, include (where appropriate and unless the context otherwise requires) a reference to the person who is treated at that time as making the supply, or (as appropriate) receiving the supply, under the grouping rules (provided for in Article 11 of Council Directive 2006/112/EC (or as implemented by the relevant member state of the European Union) so that a reference to a Party shall be construed as a reference to that Party or the relevant group or unity (or fiscal unity) of which that Party is a member for VAT purposes at the relevant time or the relevant representative member (or representative or head) of that group or unity at the relevant time (as the case may be).
- (e) In relation to any supply made by a Finance Party to any Party under a Finance Document, if reasonably requested by such Finance Party, that Party must promptly provide such Finance Party with details of that Party’s VAT registration and such other information as is reasonably requested in connection with such Finance Party’s VAT reporting requirements in relation to such supply.

12.7 FATCA Information

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

- (ii) supply to that other Party such forms, documentation and other information relating to its status under FATCA as that other Party reasonably requests for the purposes of that other Party's compliance with FATCA; and
 - (iii) supply to that other Party such forms, documentation and other information relating to its status as that other Party reasonably requests for the purposes of that other Party's compliance with any other law, regulation, or exchange of information regime.
- (b) If a Party confirms to another Party pursuant to sub-paragraph (i) of paragraph (a) above that it is a FATCA Exempt Party and it subsequently becomes aware that it is not, or has ceased to be a FATCA Exempt Party, that Party shall notify that other Party reasonably promptly.
- (c) Paragraph (a) above shall not oblige any Finance Party to do anything and sub-paragraph (iii) of paragraph (a) above shall not oblige any other Party to do anything which would or might in its reasonable opinion constitute a breach of:
- (i) any law or regulation;
 - (ii) any fiduciary duty; or
 - (iii) any duty of confidentiality.
- (d) If a Party fails to confirm whether or not it is a FATCA Exempt Party or to supply forms, documentation or other information requested in accordance with sub-paragraphs (i) or (ii) of paragraph (a) above (including, for the avoidance of doubt, where paragraph (c) above applies), then such Party shall be treated for the purposes of the Finance Documents (and payments under them) as if it is not a FATCA Exempt Party until such time as the Party in question provides the requested confirmation, forms, documentation or other information.
- (e) If 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 10 Business Days of:
- (i) where that Borrower is a US Tax Obligor and the relevant Lender is an Original Lender, the date of this Agreement;
 - (ii) where that 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 that 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 Obligor and the Facility Agent and the Facility Agent shall notify the other Finance Parties.

13 INCREASED COSTS

13.1 Increased costs

- (a) Subject to Clause 13.3 (*Exceptions*), the 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;
 - (B) Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC; and
 - (C) any other law or regulation which implements Basel III.
- (iii) “**Increased Costs**” means:
 - (A) a reduction in the rate of return from the Facility or on a Finance Party’s (or its Affiliate’s) overall capital;
 - (B) an additional or increased cost; or
 - (C) a reduction of any amount due and payable under any Finance Document,

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

13.2 Increased cost claims

- (a) A Finance Party intending to make a claim pursuant to Clause 13.1 (*Increased costs*) shall notify the Facility Agent of the event giving rise to the claim, following which the Facility Agent shall promptly notify the 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 an Obligor;
- (b) attributable to a FATCA Deduction required to be made by a Party;
- (c) compensated for by Clause 12.3 (*Tax indemnity*) (or would have been compensated for under Clause 12.3 (*Tax indemnity*) but was not so compensated solely because any of the exclusions in paragraph (b) of Clause 12.3 (*Tax indemnity*) applied);
- (d) compensated for by any payment made pursuant to Clause 14.3 (*Mandatory Cost*); or
- (e) attributable to the wilful breach by the relevant Finance Party or its Affiliates of any law or regulation.

14 OTHER INDEMNITIES

14.1 Currency indemnity

- (a) If any sum due from an Obligor under the Finance Documents (a “**Sum**”), or any order, judgment or award given or made in relation to a Sum, has to be converted from the currency (the “**First Currency**”) in which that Sum is payable into another currency (the “**Second Currency**”) for the purpose of:
- (i) making or filing a claim or proof against that Obligor; or
 - (ii) obtaining or enforcing an order, judgment or award in relation to any litigation or arbitration proceedings,
- that Obligor shall, as an independent obligation, on demand, indemnify each Creditor Party to which that Sum is due against any cost, loss or liability arising out of or as a result of the conversion including any discrepancy between (A) the rate of exchange used to convert that Sum from the First Currency into the Second Currency and (B) the rate or rates of exchange available to that person at the time of its receipt of that Sum.
- (b) Each Obligor waives any right it may have in any jurisdiction to pay any amount under the Finance Documents in a currency or currency unit other than that in which it is expressed to be payable.

14.2 Other indemnities

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

- (d) Any Affiliate or any officer or employee of a Finance Party or of any of its Affiliates may rely on this Clause 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 Obligor shall, on demand, indemnify the Facility Agent against:

- (a) any cost, loss or liability incurred by the Facility Agent (acting reasonably) as a result of:
- (i) investigating any event which it reasonably believes is a Default; or
 - (ii) acting or relying on any notice, request or instruction which it reasonably believes to be genuine, correct and appropriately authorised; or
 - (iii) instructing lawyers, accountants, tax advisers, surveyors or other professional advisers or experts as permitted under the Finance Documents; and
- (b) any cost, loss or liability incurred by the Facility Agent (otherwise than by reason of the Facility Agent's gross negligence or wilful misconduct) or, in the case of any cost, loss or liability pursuant to Clause 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.

14.5 Indemnity to the Security Agent

- (a) Each Obligor shall, on demand, indemnify the Security Agent and every Receiver and Delegate against any cost, loss or liability incurred by any of them:
- (i) in relation to or as a result of:
 - (A) any failure by 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 Creditor Parties, indemnify itself out of the Security Assets in respect of, and pay and retain, all sums necessary to give effect to the indemnity in this Clause 14.5 (*Indemnity to the Security Agent*) and shall have a lien on the Transaction Security and the proceeds of the enforcement of the Transaction Security for all monies payable to it.

15 MITIGATION BY THE FINANCE PARTIES

15.1 Mitigation

- (a) Each Finance Party shall, in consultation with the 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*).
- (b) Paragraph (a) above does not in any way limit the obligations of any Transaction Obligor under the Finance Documents.

15.2 Limitation of liability

- (a) Each Obligor shall, on demand, indemnify each Finance Party for all costs and expenses reasonably incurred by that Finance Party as a result of steps taken by it under Clause 15.1 (*Mitigation*).
- (b) A Finance Party is not obliged to take any steps under Clause 15.1 (*Mitigation*) if either:
- (i) a Default has occurred and is continuing; or
 - (ii) in the opinion of that Finance Party (acting reasonably), to do so might be prejudicial to it.

16 COSTS AND EXPENSES

16.1 Transaction expenses

The Obligors shall, on demand, pay the Facility Agent, the Security Agent and the Arranger the amount of all costs and expenses (including legal fees) reasonably incurred by any Creditor Party in connection with the negotiation, preparation, printing, execution, syndication and perfection of:

- (a) this Agreement and any other documents referred to in this Agreement or in a Security Document; and
- (b) any other Finance Documents executed after the date of this Agreement.

16.2 Amendment costs

If:

- (a) a Transaction Obligor requests an amendment, waiver or consent; or
- (b) an amendment is required pursuant to Clause 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 Obligors shall, on demand, reimburse each of the Facility Agent and the Security Agent for the amount of all costs and expenses (including legal fees) reasonably incurred by each Creditor Party in responding to, evaluating, negotiating or complying with that request or requirement.

16.3 Enforcement and preservation costs

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

GUARANTEE AND JOINT AND SEVERAL LIABILITY OF BORROWERS

17 GUARANTEE AND INDEMNITY**17.1 Guarantee and indemnity**

The Guarantor irrevocably and unconditionally:

- (a) guarantees to each Finance Party punctual performance by each Borrower of all that Borrower's obligations under the Finance Documents;
- (b) undertakes with each Finance Party that whenever a Borrower does not pay any amount when due under or in connection with any Finance Document, the Guarantor shall immediately on demand pay that amount as if it were the principal obligor; and
- (c) agrees with each Finance Party that if any obligation guaranteed by it is or becomes unenforceable, invalid or illegal, it will, as an independent and primary obligation, indemnify that Finance Party immediately on demand against any cost, loss or liability it incurs as a result of a Borrower not paying any amount which would, but for such unenforceability, invalidity or illegality, have been payable by it under any Finance Document on the date when it would have been due. The amount payable by the Guarantor under this indemnity will not exceed the amount it would have had to pay under this Clause 17 (*Guarantee and Indemnity*) if the amount claimed had been recoverable on the basis of a guarantee.

17.2 Continuing guarantee

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

17.3 Reinstatement

If any discharge, release or arrangement (whether in respect of the obligations of any Transaction Obligor or any security for those obligations or otherwise) is made by a Creditor Party in whole or in part on the basis of any payment, security or other disposition which is avoided or must be restored in insolvency, liquidation, administration or otherwise, without limitation, then the liability of the Guarantor under this Clause 17 (*Guarantee and Indemnity*) will continue or be reinstated as if the discharge, release or arrangement had not occurred.

17.4 Waiver of defences

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

- (a) any time, waiver or consent granted to, or composition with, any Transaction Obligor or other person;
- (b) the release of any other Transaction Obligor or any other person under the terms of any composition or arrangement with any creditor of any member of the Group;

- (c) the taking, variation, compromise, exchange, renewal or release of, or refusal or neglect to perfect or delay in perfecting, or refusal or neglect to take up or enforce, or delay in taking or enforcing any rights against, or security over assets of, any Transaction Obligor or other person or any non-presentation or non-observance of any formality or other requirement in respect of any instrument or any failure to realise the full value of any security;
- (d) any incapacity or lack of power, authority or legal personality of or dissolution or change in the members or status of a Transaction Obligor or any other person;
- (e) any amendment, novation, supplement, extension, restatement (however fundamental and whether or not more onerous) or replacement of any Finance Document or any other document or security including, without limitation, any change in the purpose of, any extension of or any increase in any facility or the addition of any new facility under any Finance Document or other document or security;
- (f) any unenforceability, illegality or invalidity of any obligation of any person under any Finance Document or any other document or security; or
- (g) any insolvency or similar proceedings.

17.5 Immediate recourse

The Guarantor waives any right it may have of first requiring any Creditor Party (or any trustee or agent on its behalf) to proceed against or enforce any other rights or security or claim payment from any person (including without limitation to commence any proceedings under any Finance Document or to enforce any Transaction Security) before claiming or commencing proceedings under this Clause 17 (*Guarantee and Indemnity*). This waiver applies irrespective of any law or any provision of a Finance Document to the contrary.

17.6 Appropriations

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

- (a) refrain from applying or enforcing any other moneys, security or rights held or received by that Creditor Party (or any trustee or agent on its behalf) in respect of those amounts, or apply and enforce the same in such manner and order as it sees fit (whether against those amounts or otherwise) and the Guarantor shall not be entitled to the benefit of the same; and
- (b) hold in an interest-bearing suspense account any moneys received from the Guarantor or on account of the Guarantor's liability under this Clause 17 (*Guarantee and Indemnity*).

17.7 Deferral of Guarantor's rights

All rights which the 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 Creditor Parties under the Finance Documents and until the end of the Security Period and unless the Facility Agent otherwise directs, the Guarantor will not exercise any rights which it may have (whether in respect of any Finance Document to which it is a Party or any other transaction) by reason of performance by it of its obligations under the Finance Documents or by reason of any amount being payable, or liability arising, under this Clause 17 (*Guarantee and Indemnity*):

- (a) to be indemnified by a Transaction Obligor;
- (b) to claim any contribution from any third party providing security for, or any other guarantor of, any Transaction Obligor's obligations under the Finance Documents;

- (c) to take the benefit (in whole or in part and whether by way of subrogation or otherwise) of any rights of the Creditor Parties under the Finance Documents or of any other guarantee or security taken pursuant to, or in connection with, the Finance Documents by any Creditor Party;
- (d) to bring legal or other proceedings for an order requiring any Transaction Obligor to make any payment, or perform any obligation, in respect of which the Guarantor has given a guarantee, undertaking or indemnity under Clause 17.1 (*Guarantee and indemnity*);
- (e) to exercise any right of set-off against any Transaction Obligor; and/or
- (f) to claim or prove as a creditor of any Transaction Obligor in competition with any Creditor Party.

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

17.8 Additional security

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

17.9 Applicability of provisions of Guarantee to other Security

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

18 JOINT AND SEVERAL LIABILITY OF THE BORROWERS

18.1 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.

18.2 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.

18.3 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.

18.4 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.

18.5 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.

REPRESENTATIONS, UNDERTAKINGS AND EVENTS OF DEFAULT

19 REPRESENTATIONS**19.1 General**

Each Obligor makes and procures that each other Transaction Obligor 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 or limited partnership, duly incorporated or formed and validly existing in good standing under the law of its jurisdiction of incorporation.
- (b) It has the power to own its assets and carry on its business as it is being conducted.

19.3 Share capital and ownership

- (a) Borrower A has an authorised share capital of 50,000 registered shares with a par value of \$1 per share, all of which shares have been issued in registered form fully paid.
- (b) Borrower B has an authorised share capital of 50,000 registered shares with a par value of \$1 per share, all of which shares have been issued in registered form fully paid.
- (c) Borrower C has an authorised share capital of 500 registered and/or bearer shares without par value, all of which shares have been issued in registered form fully paid.
- (d) Borrower D has an authorised share capital of 500 registered and/or bearer shares without par value, all of which shares have been issued in registered form fully paid.
- (e) The legal title to the 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, directly or indirectly (but if indirectly only through the Shareholder), by the Guarantor.
- (f) None of the shares in a 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 Creditor 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.

19.6 Non-conflict with other obligations

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

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

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 relevant Vessel under its 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 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 registration of each Mortgage at the Ships Registry where title to each Vessel is registered in the ownership of the relevant Borrower and payment of associated fees, which registration and fees will be made and paid promptly after the date of the relevant Finance Document.

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 Drawdown Date, no Default is continuing or might reasonably be expected to result from the making of any Drawdown or the release of any Advance 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 a Borrower or any of its Subsidiaries or to which its (or any of its Subsidiaries') assets are subject.

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.

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 31 December 2016 and results of operations during that financial year.

- (c) There has been no material adverse change in the assets, business or consolidated financial condition of the Group since 31 March 2017.
- (d) The Guarantor'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) the Group's 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 the business or consolidated financial condition of the Group.

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 member of the Group.
- (b) No judgment or order of a court, arbitral tribunal or other tribunal or any order or sanction of any governmental or other regulatory body which might reasonably be expected to have a Material Adverse Effect has (to the best of its knowledge and belief (having made due and careful enquiry)) been made against it or any member of the Group.

19.18 Validity and completeness of the Transaction Documents

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

19.19 Valuations

- (a) All information supplied by it or on its behalf to an Approved Valuer for the purposes of a valuation delivered to the Facility Agent in accordance with this Agreement was true and accurate as at the date it was supplied or (if appropriate) as at the date (if any) at which it is stated to be given.
- (b) It has not omitted to supply any information to an Approved Valuer which, if disclosed, would adversely affect any valuation prepared by such Approved Valuer.

- (c) There has been no change to the factual information provided pursuant to paragraph (a) above in relation to any valuation between the date such information was provided and the date of that valuation which, in either case, renders that information untrue or misleading in any material respect.
- 19.20 No breach of laws**
- It has not (and no other member of the Group has) breached any law or regulation which breach has or is reasonably likely to have a Material Adverse Effect.
- 19.21 No Charter**
- No Vessel is subject to any Charter other than a Permitted Charter.
- 19.22 Compliance with Environmental Laws**
- All Environmental Laws relating to the ownership, operation and management of each Vessel and the business of each member of the Group (as now conducted and as reasonably anticipated to be conducted in the future) and the terms of all Environmental Approvals have been complied with.
- 19.23 No Environmental Claim**
- No Environmental Claim has been made or threatened against any member of the Group or any Vessel.
- 19.24 No Environmental Incident**
- No Environmental Incident has occurred and no person has claimed that an Environmental Incident has occurred.
- 19.25 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 Vessel have been complied with.
- 19.26 Taxes paid**
- (a) It is not and no other member of the Group is materially overdue in the filing of any Tax returns and it is not (and no other member of the Group is) overdue in the payment of any amount in respect of Tax.
- (b) No claims or investigations are being, or 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.
- 19.27 Financial Indebtedness**
- No Transaction Obligor (other than the Approved Manager) has any Financial Indebtedness outstanding other than as permitted by this Agreement or as disclosed in the Group's filings with the US Securities and Exchange Commission.
- 19.28 Overseas companies**
- No Transaction Obligor has delivered particulars, whether in its name stated in the Finance Documents or any other name, of any UK Establishment to the Registrar of Companies as required under the Overseas Regulations or, if it has so registered, it has provided to the Facility Agent sufficient details to enable an accurate search against it to be undertaken by the Lenders at the Companies Registry.

19.29 Good title to assets

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

19.30 Ownership

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

19.31 Centre of main interests and establishments

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

19.32 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 Part A.

19.33 No employee or pension arrangements

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

19.34 Sanctions

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

19.35 US Tax Obligor

No Transaction Obligor is a US Tax Obligor.

19.36 Repetition

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

20 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 Guarantor shall supply to the Facility Agent in sufficient copies for all the Lenders as the Facility Agent may request:

- (a) as soon as the same become available, but in any event within 180 days after the end of its financial years, commencing with the financial year ended on 31 December 2016, the annual audited consolidated financial statement of the Group for that financial year,
- (b) as soon as the same become available, but in any event within 60 days after the end of each quarter of each of its financial years, the unaudited consolidated quarterly financial statements of the Group for that financial quarter; and
- (c) upon request by the Facility Agent, any supplemental information related to any vessels owned by any member of the Group and such other information in respect of such vessels' type, age, employment, debt and the operating expenses.

including (without limitation) or supplemented by updated details of all off-balance sheet and time charter hire commitments **provided that** in the case of the unaudited financial statements to be provided under paragraph (c), such unaudited financial statements shall not be required in relation to a quarter ending at the financial year end in addition to the audited financial statements to be provided under paragraph (a) above.

20.3 Compliance Certificate

- (a) The Guarantor shall supply to the Facility Agent, with each set of financial statements delivered pursuant to Clause 20.2 (*Financial statements*) (in the case of paragraph (c) above in respect of each quarter), a Compliance Certificate setting out (in reasonable detail) computations as to compliance with Clause 21 (*Financial Covenants*) as at the date as at which those financial statements were drawn up.
- (b) Each Compliance Certificate shall be signed by one officer of the Guarantor and, if required to be delivered with the financial statements delivered pursuant to Clause 20.2 (*Financial statements*), shall be reported on by the Guarantor's auditors in the form agreed by the Guarantor and all the Lenders before the date of this Agreement.

20.4 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 a director of the company as giving a true and fair view (if audited) or fairly representing (if unaudited) its financial condition and operations as at the date as at which those financial statements were drawn up if it has not been filed with the US Securities and Exchange Commission.

- (b) The Guarantor shall procure that each set of financial statements of the Group 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 21 (*Financial Covenants*) 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.

20.5 Information: miscellaneous

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

- (a) all documents dispatched by it to any class of its shareholders generally at the same time as they are dispatched unless the contents of such communication have already been disclosed in the filings made with the US Securities and Exchange Commission;
- (b) promptly upon becoming aware of them, the details of any litigation, arbitration or administrative proceedings or investigations (including proceedings or investigations relating to any alleged or actual breach of the ISM Code or of the ISPS Code) which are current, threatened or pending against any member of the Group, and which might, if adversely determined, have a Material Adverse Effect;
- (c) promptly upon becoming aware of them, the details of any judgment or order of a court, arbitral tribunal or other tribunal or any order or sanction of any governmental or other regulatory body which is made against any member of the Group and which might have a Material Adverse Effect;
- (d) promptly, its constitutional documents where these have been amended or varied unless, in respect of the 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 Vessel, goods transported on each Vessel, 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.

20.6 Notification of Event of Default

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

20.7 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) An Obligor shall promptly upon becoming aware of its occurrence notify the Facility Agent if:
 - (i) the Designated Website cannot be accessed due to technical failure;
 - (ii) the password specifications for the Designated Website change;
 - (iii) any new information which is required to be provided under this Agreement is posted onto the Designated Website;
 - (iv) any existing information which has been provided under this Agreement and posted onto the Designated Website is amended; or

- (v) if that Obligor becomes aware that the Designated Website or any information posted onto the Designated Website is or has been infected by any electronic virus or similar software.

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

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

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; or
 - (iii) a proposed assignment or transfer by a Lender of any of its rights and obligations under this Agreement to a party that is not a Lender prior to such assignment or transfer,

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

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

21 FINANCIAL COVENANTS

21.1 Minimum liquidity

Each Borrower will ensure that at all times commencing on the Drawdown Date of the Tranche relating to the Vessel owned by it and for the remainder of the Security Period an amount of not less than \$650,000 (the “**Minimum Liquidity Amount**”) shall:

- (a) unless paragraph (b) below applies, be credited in its entirety to the Earnings Account;

- (b) where any Borrower has elected to place funds on the Time Deposit Account, be credited in its entirety to the Time Deposit Account.

21.2 Guarantor's financial covenants

The Guarantor shall ensure that:

- (a) the members of the Group will maintain Liquid Funds in an amount equal to at least the product of \$650,000 and the total number of Fleet Vessels at that time;
- (b) the Market Value Adjusted Leverage shall be no greater than 75 per cent.;
- (c) the Interest Cover Ratio shall be at least 2:1; and
- (d) the Net Worth shall be at least \$135,000,000.

21.3 Test Dates

The financial covenants under paragraphs (a) to (d) above shall be tested quarterly on each relevant Test Date.

22 GENERAL UNDERTAKINGS

22.1 General

The undertakings in this Clause 22 (*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.

22.2 Authorisations

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

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

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

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

22.3 Compliance with laws

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

22.4 Environmental compliance

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

- (a) comply with all Environmental Laws;
- (b) obtain, maintain and ensure compliance with all requisite Environmental Approvals;
- (c) implement procedures to monitor compliance with and to prevent liability under any Environmental Law, where failure to do so has or is reasonably likely to have a Material Adverse Effect.

22.5 Environmental claims

Each Obligor 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.

22.6 Taxation

(a) Each Obligor shall, and shall procure that each other Transaction Obligor will, pay and discharge all Taxes imposed upon it or its assets within the time period allowed without incurring penalties unless and only to the extent that:

- (i) such payment is being contested in good faith;
- (ii) adequate reserves are maintained for those Taxes and the costs required to contest them and both have been disclosed in its latest financial statements delivered to the Facility Agent under Clause 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 Obligor shall and the Obligors shall procure that no other Transaction Obligor will, change its residence for Tax purposes.

22.7 Overseas companies

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

22.8 *Pari passu* ranking

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

22.9 Title

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

22.10 Negative pledge

- (a) No Borrower shall create or permit to subsist any Security over any of its assets.
- (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.

22.11 Disposals

Subject to Clause 24.16 (*Restrictions on chartering, appointment of managers etc.*), 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 Vessel, its Earnings or its Insurances and the shares in any Borrower).

22.12 Merger

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

22.13 Change of business

- (a) The Guarantor 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 Vessel.

22.14 Financial Indebtedness

No Borrower shall incur or permit to be outstanding any Financial Indebtedness except Permitted Financial Indebtedness.

22.15 Expenditure

No Borrower shall incur any expenditure, except for expenditure reasonably incurred in the ordinary course of owning, operating, maintaining and repairing its Vessel.

22.16 Share capital

No Borrower shall:

- (a) purchase, cancel or redeem any of its share capital;
- (b) increase or reduce its authorised share capital;
- (c) issue any further shares except to the 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 Facility Agent and the terms of that Shares Security are complied with;
- (d) appoint any further director or officer of that Borrower (unless the provisions of the Shares Security applicable to that Borrower are complied with).

22.17 Dividends

The Guarantor may only make or pay any dividend or other distribution (in cash or in kind) in respect of its share capital of up to \$0.03 per share per annum (as such amount may be determined in accordance with the provisions of the Term B Loan) **Provided that** no Event of Default has occurred or will result from the making or payment of such dividend or distribution.

22.18 Accounts

No Borrower shall open or maintain any account with any bank or financial institution except any accounts with the Account Bank, the Facility Agent or the Security Agent for the purposes of the Finance Documents.

22.19 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 Permitted Financial Indebtedness;
- (b) save for under the unsecured guarantee issued by that Borrower in respect of obligations of the Guarantor under the Term B Loan, give or allow to be outstanding any guarantee or indemnity to or for the benefit of any person in respect of any obligation of any other person or enter into any document under which that Obligor assumes any liability of any other person other than any guarantee or indemnity given under the Finance Documents;
- (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.

22.20 Unlawfulness, invalidity and ranking; Security imperilled

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

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

22.21 Separate corporate existence

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

22.22 Accounting reference date

No Obligor shall change its year end accounting reference date.

22.23 Securitisation

Each Obligor shall, and the Obligors shall procure that each other Transaction Obligor will, assist the Facility Agent and/or any Lender in achieving a successful securitisation (or similar transaction) in respect of the Facility and the Finance Documents and such Transaction Obligor's reasonable costs for providing such assistance shall be met by the relevant Lender. Each Borrower, if requested by the Facility Agent, shall provide documentation evidencing the purchase price of the Vessel owned by it when acquired by that Borrower.

22.24 Constitutional documents

Without prejudice to Clause 22.16 (*Share capital*) and the terms of any Shares Security, no Obligor other than the Guarantor shall allow any amendment or variation to its constitutional documents unless such amendment or variation would clearly be immaterial to this Agreement and the other Finance Documents.

22.25 Further assurance

- (a) Each Obligor shall (and the Guarantor shall procure that each member of the Group will) promptly, and in any event within the time period specified by the Security Agent do all such acts (including procuring or arranging any registration, notarisation or authentication or the giving of any notice) or execute or procure execution of all such documents (including assignments, transfers, mortgages, charges, notices, instructions, acknowledgments, proxies and powers of attorney), as the Security Agent may specify (and in such form as the Security Agent may require in favour of the Security Agent or its nominee(s)):

- (i) to create, perfect, vest in favour of the Security Agent or protect the priority of the Security or any right of any kind created or intended to be created under or evidenced by the Finance Documents (which may include the execution of a mortgage, charge, assignment or other Security over all or any of the assets which are, or are intended to be, the subject of the Transaction Security) or for the exercise of any rights, powers and remedies of any of the Creditor Parties provided by or pursuant to the Finance Documents or by law;
 - (ii) to confer on the Security Agent or confer on the Creditor Parties Security over any property and assets of that Transaction Obligor located in any jurisdiction equivalent or similar to the Security intended to be conferred by or pursuant to the Finance Documents;
 - (iii) to facilitate or expedite the realisation and/or sale of, the transfer of title to or the grant of, any interest in or right relating to the assets which are, or are intended to be, the subject of the Transaction Security or to exercise any power specified in any Finance Document in respect of which the Security has become enforceable; and/or
 - (iv) to enable or assist the Security Agent to enter into any transaction to commence, defend or conduct any proceedings and/or to take any other action relating to any item of the Security Property.
- (b) Each Obligor shall, and shall procure that each other Transaction Obligor will, take all such action as is available to it (including making all filings and registrations) as may be necessary for the purpose of the creation, perfection, protection or maintenance of any Security conferred or intended to be conferred on the Security Agent or the Creditor Parties by or pursuant to the Finance Documents.
- (c) At the same time as an Obligor delivers to the Security Agent any document executed by itself or another Transaction Obligor pursuant to this Clause 22.25 (*Further assurance*), that Obligor shall deliver, or shall procure that such other Transaction Obligor will deliver, to the Security Agent a certificate signed by one of that Obligor's or Transaction Obligor's directors or officers which shall:
- (i) set out the text of a resolution of that Obligor's or Transaction Obligor's directors specifically authorising the execution of the document specified by the Security Agent; and
 - (ii) state that either the resolution was duly passed at a meeting of the directors validly convened and held, throughout which a quorum of directors entitled to vote on the resolution was present, or that the resolution has been signed by all of the directors and is valid under that Obligor's or Transaction Obligor's articles of association, articles of incorporation or other constitutional documents.

23 INSURANCE UNDERTAKINGS

23.1 General

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

23.2 Maintenance of obligatory insurances

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

- (a) hull and machinery plus freight interest and hull interest and/or increased value and any other usual marine risks (including excess risks);

- (b) war risks (including the London Blocking and Trapping addendum or its equivalent);
- (c) protection and indemnity risks (including liability for oil pollution for an amount of no less than \$1,000,000,000 and excess war risk P&I cover) on standard Club Rules, covered by a Protection and Indemnity association which is a member of the International Group of Protection and Indemnity Associations (or, if the International Group ceases to exist, any other leading protection and indemnity association or other leading provider of protection and indemnity insurance) (including, without limitation, the proportion (if any) of any collision liability not covered under the terms of the hull cover);
- (d) freight, demurrage and defence;
- (e) any other risks against which the Facility Agent acting on the instructions of the Majority Lenders considers, having regard to practices and other circumstances prevailing at the relevant time, it would be reasonable for the Borrowers to insure and which are specified by the Facility Agent by notice to the Borrowers.

23.3 Terms of obligatory insurances

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

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

23.4 Further protections for the Finance Parties

In addition to the terms set out in Clause 23.3 (*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 as the sole named insured unless the interest of every other named insured is limited:

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

and that it shall do all things necessary and provide all documents, evidence and information to enable the Security Agent to collect or recover any moneys which at any time become payable in respect of the obligatory insurances;

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

23.5 Renewal of obligatory insurances

Each Borrower shall:

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

23.6 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 or undertaking in a form required by the Facility Agent and including undertakings by the Approved Brokers that:
 - (i) they will have endorsed on each policy, immediately upon issue, a loss payable clause and a notice of assignment complying with the provisions of Clause 23.4 (*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 Vessel owned by that Borrower under such obligatory insurances any premiums or other amounts due to them or any other person whether in respect of that Vessel or otherwise, they waive any lien on the policies, or any sums received under them, which they might have in respect of such premiums or other amounts and they will not cancel such obligatory insurances by reason of non-payment of such premiums or other amounts; and
 - (vii) they will arrange for a separate policy to be issued in respect of the Vessel owned by that Borrower forthwith upon being so requested by the Facility Agent.

23.7 Copies of certificates of entry

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

- (a) a certified copy of the certificate of entry for that Vessel;
- (b) a letter or letters of undertaking in such form as may be required by the Facility Agent acting on the instructions of Majority Lenders; and
- (c) a certified copy of each certificate of financial responsibility for pollution by oil or other Environmentally Sensitive Material issued by the relevant certifying authority in relation to that Vessel.

23.8 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.

23.9 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.

23.10 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.

23.11 Compliance with terms of insurances

- (a) No Borrower shall do or omit to do (or permit to be done or not to be done) any act or thing which would or might render any obligatory insurance invalid, void, voidable or unenforceable or render any sum payable under an obligatory insurance repayable in whole or in part.
- (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 23.6 (*Copies of policies; letters of undertaking*)) ensure that the obligatory insurances are not made subject to any exclusions or qualifications to which the Facility Agent has not given its prior approval;
 - (ii) not make any changes relating to the classification or classification society or manager or operator of the Vessel owned by it unless approved by the underwriters of the obligatory insurances;
 - (iii) make (and promptly supply copies to the Facility Agent of) all quarterly or other voyage declarations which may be required by the protection and indemnity risks association in which the Vessel owned by it is entered to maintain cover for trading to the United States of America and Exclusive Economic Zone (as defined in the United States Oil Pollution Act 1990 or any other applicable legislation); and
 - (iv) not employ the Vessel owned by it, nor allow it to be employed, otherwise than in conformity with the terms and conditions of the obligatory insurances, without first obtaining the consent of the insurers and complying with any requirements (as to extra premium or otherwise) which the insurers specify.

23.12 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.

23.13 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.

23.14 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.

23.15 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 23.16 (*Mortgagee's interest, additional perils and mortgagee's rights insurances*) or dealing with or considering any matters relating to any such insurances,
and the Borrowers shall, forthwith upon demand, indemnify the Facility Agent in respect of all fees and other expenses incurred by or for the account of the Facility Agent in connection with any such report as is referred to in paragraph (a) above.

23.16 Mortgagee's interest, additional perils and mortgagee's rights insurances

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

- (a) a mortgagee's interest insurance in an amount equal to 120 per cent. of the Loan;
- (b) a mortgagee's interest additional perils insurance in an amount equal to 120 per cent. of the Loan;
- (c) a mortgagee's rights insurance in an amount equal to 110 per cent. of the Loan,

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

24 VESSEL UNDERTAKINGS

24.1 General

The undertakings in this Clause 24 (*Vessel Undertakings*) remain in force on and from the relevant Drawdown Date and throughout the rest of the Security Period except as the Facility Agent, acting with the authorisation of the Majority Lenders (or, where specified, all the Lenders) may otherwise permit in writing.

24.2 Vessel's names and registration

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

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

24.3 Repair and classification

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

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

24.4 Modifications

No Borrower shall make any modification or repairs to, or replacement of, the Vessel owned by it or equipment installed on it which would or might materially alter the structure, type or performance characteristics of that Vessel or materially reduce its value.

24.5 Removal and installation of parts

- (a) Subject to paragraph (b) below, no Borrower shall remove any material part of the Vessel owned by it, or any item of equipment installed on that Vessel unless:
 - (i) the part or item so removed is forthwith replaced by a suitable part or item which is in the same condition as or better condition than the part or item removed;
 - (ii) the replacement part or item is free from any Security in favour of any person other than the Security Agent; and
 - (iii) the replacement part or item becomes, on installation on that Vessel, the property of that Borrower and subject to the security constituted by the Mortgage on that Vessel.
- (b) A Borrower may install equipment owned by a third party if the equipment can be removed without any risk of damage to the Vessel owned by that Borrower.

24.6 Surveys

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

24.7 Inspection

Each Borrower shall permit the Security Agent (acting through surveyors or other persons appointed by it for that purpose) to board the Vessel owned by it at all reasonable times at the Facility Agent's discretion to inspect its condition or to satisfy themselves about proposed or executed repairs and shall afford all proper facilities for such inspections **provided that** such technical survey shall not interfere with the ordinary trading of the Vessel owned by it (unless an Event of Default is in existence at the relevant time). The cost of all inspections under this Clause 24.7 (*Inspection*) shall be for the account of the Borrowers.

24.8 Prevention of and release from arrest

- (a) Each Borrower shall, in respect of the Vessel 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 Vessel, its Earnings or its Insurances;
 - (ii) all Taxes, dues and other amounts charged in respect of that Vessel, its Earnings or its Insurances; and
 - (iii) all other outgoings whatsoever in respect of that Vessel, its Earnings or its Insurances.
- (b) Each Borrower shall immediately upon receiving notice of the arrest of the Vessel owned by it or of its detention in exercise or purported exercise of any lien or claim, take all steps necessary to procure its release by providing bail or otherwise as the circumstances may require.

24.9 Compliance with laws etc.

Each Borrower shall (and shall procure that the Approved Manager shall):

- (a) comply, or procure compliance with all laws or regulations:
- (i) relating to its business generally; and
 - (ii) relating to the Vessel 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;
- (c) without limiting paragraph (a) above, not employ the Vessel 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 all Sanctions; and
- (d) not appoint any manager or agent to manage the Vessel owned by it unless such party undertakes to procure that any agreement entered into relating to the management, employment or operation of that Vessel contains a clause in which the counterparty undertakes to comply with all Sanctions.

24.10 ISPS Code

Without limiting paragraph (a) of Clause 24.9 (*Compliance with laws etc.*), each Borrower shall:

- (a) procure that the Vessel owned by it and the company responsible for that Vessel's compliance with the ISPS Code comply with the ISPS Code; and
- (b) maintain an ISSC and an IAPPC for that Vessel; and
- (c) notify the Facility Agent immediately in writing of any actual or threatened withdrawal, suspension, cancellation or modification of the ISSC.

24.11 Sanctions and Vessel trading

Without limiting Clause 24.9 (*Compliance with laws etc.*), each Borrower shall procure:

- (a) that the Vessel owned by it shall not be used by or for the benefit of a Prohibited Person;
- (b) that the Vessel 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); and
- (c) that the Vessel 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.

24.12 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 Vessel to enter or trade to any zone which is declared a war zone by any government or by that Vessel's war risks insurers unless:

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

24.13 Monitoring

- (a) Each Borrower shall (or shall procure that any Charterer and the Approved Manager shall) allow the Security Agent (or its agents), at any time and from time to time, to access all information pertaining to the Vessel owned by it and to monitor and/or track her position (including the movement of that Vessel) using any and all available means.
- (b) All costs incurred by the Security Agent (and any of its agents) under paragraph (a) of Clause 24.13 (*Monitoring*) above shall, prior to an Event of Default, be for the account of the Lenders and, following an Event of Default, be for the sole account of the Borrowers.

24.14 Provision of information

Without prejudice to Clause 20.5 (*Information: miscellaneous*) each Borrower shall, in respect of the Vessel owned by it, promptly provide the Facility Agent with any information which it requests regarding:

- (a) that Vessel, its employment, position and engagements;
- (b) 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 Vessel and any payments made by it in respect of that Vessel;
- (d) any towages and salvages; and
- (e) its compliance, the Approved Manager's compliance and the compliance of that Vessel with the ISM Code and the ISPS Code, and, upon the Facility Agent's request, each Borrower shall promptly provide copies of class records, any inspection reports obtained for the Vessel owned by it, any current Charter relating to that Vessel, any current guarantee of any such Charter, that Vessel's Safety Management Certificate and any relevant Document of Compliance.

24.15 Notification of certain events

Each Borrower shall, in respect of the Vessel owned by it, immediately notify the Facility Agent by fax, confirmed forthwith by letter, of:

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

and that 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, the 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 Vessel owned by it:

- (a) let that Vessel on demise charter for any period;
- (b) enter into any time, voyage or consecutive voyage charter in respect of that Vessel other than a Permitted Charter and any Assignable Charter, subject to the relevant Owner's compliance with Clause 24.22 (*Charterparty assignment*);
- (c) change in a material respect, cancel or terminate (or purport to so change, cancel or terminate) the Initial Charter, any Assignable Charter and any Charter Guarantee relating to an Assignable Charter;

- (d) change, cancel or terminate a Management Agreement;
- (e) appoint a manager of that Vessel other than an Approved Manager;
- (f) deactivate or lay up that Vessel; or
- (g) put that Vessel into the possession of any person for the purpose of work being done upon it in an amount exceeding or likely to exceed US\$500,000 (or the equivalent in any other currency) unless the relevant Borrower has exercised reasonable endeavours to ensure 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 Vessel or its Earnings for the cost of such work or for any other reason.

24.17 Notice of Mortgage

Each Borrower shall keep the relevant Mortgage registered against the Vessel owned by it as a valid first priority or preferred (as the case may be) mortgage, carry on board that Vessel a certified copy of the relevant Mortgage and place and maintain in a conspicuous place in the navigation room and the master's cabin of that Vessel a framed printed notice stating that that Vessel 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 Nuclear materials

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

24.20 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 (*Vessel Undertakings*).

24.21 Charterparty Assignment

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

25 SECURITY COVER

25.1 Minimum required security cover

Clause 25.2 (*Provision of additional security; prepayment*) applies if the Facility Agent notifies the Borrowers that:

- (a) the aggregate Market Value of the Vessels then subject to a Mortgage; plus
- (b) the net realisable value of additional Security previously provided under this Clause 25.1 (*Minimum required security cover*), is below:
 - (i) until the second anniversary of the last Drawdown Date, 130 per cent. of the Loan; and
 - (ii) on and from the second anniversary of the last Drawdown Date and at all times thereafter, 140 per cent. of the Loan.

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*), an Obligor shall, on or before the date falling one Month after the date on which the Facility Agent's notice is served (the "**Prepayment Date**"), prepay such part of the Loan as shall eliminate the shortfall.
- (b) An Obligor 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 after deducting the amount of any indebtedness (other than Secured Liabilities) which is secured by Security over that vessel. Valuations binding

Any valuation under this Clause 25 (*Security Cover*) shall be binding and conclusive as regards each Borrower.

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 shall be treated as a voluntary prepayment pursuant to Clause 7.3 (*Voluntary prepayment of Loan*).

25.7 Provision of valuations

- (a) For the purpose of a Drawdown and subject to paragraph (b) below, the Market Value of any Vessel shall be determined by reference to one valuation of that Vessel as given by an Approved Valuer selected and appointed by the Borrowers and addressed to the Facility Agent.
- (b) If requested by the Facility Agent in relation to paragraph (a) above, a second Approved Valuer shall be selected by the Facility Agent, appointed by the Borrowers and its valuation shall be addressed to the Facility Agent, and the Market Value of that Vessel shall be the arithmetic average of the two valuations.
- (c) If one such valuation in respect of a Vessel obtained pursuant to paragraphs (a) and (b) above differs by at least 10 per cent. from the lower valuation, then a third valuation for that Vessel shall be obtained from a third Approved Valuer selected by the Facility Agent, appointed by the Borrowers and such valuation shall be addressed to the Facility Agent and the Market Value of that Vessel shall be the arithmetic average of all three such valuations.
- (d) The Facility Agent shall be entitled, after the first Drawdown Date, to test the security cover requirement under Clause 25.1 (*Minimum required security cover*) by reference to the Market Value of any Vessel as determined in accordance with paragraphs (a) to (c) above, quarterly during the Security Period.
- (e) The Facility Agent shall ascertain compliance with Clause 21 (*Financial Covenants*) by reference to the market value of the Fleet Vessels as provided in the Latest Accounts.
- (f) Each of the valuations referred to at paragraphs (a), (b) and (c) above shall be obtained not more than 30 days before the relevant Drawdown Date, while each of the valuations referred to in paragraph (d) above shall be obtained not more than 30 days before the Test Date of the relevant quarter.
- (g) The Facility Agent may at any time after an Event of Default has occurred and is continuing obtain valuations of any Vessel 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 Vessel and any other vessel and also for the purpose of testing the security cover requirement under Clause 25.1 (*Minimum required security cover*). The Facility Agent shall be entitled to determine the Market Value of any Vessel 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 (d) for the Borrowers shall be limited to twice per annum, unless an Event of Default has occurred 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.

26 ACCOUNTS AND APPLICATION OF EARNINGS

26.1 Account bank

Subject to Clause 26.8 (*Location of Accounts*), each Account must be held with the Account Bank.

26.2 Accounts

- (a) Each Borrower must operate each of its Accounts in accordance with this Clause 26 (*Accounts and Application of Earnings*) and the provisions of the relevant Account Security.
- (b) Account Security must be provided in respect of any Account opened after the date of this Agreement.

26.3 Payments into the Time Deposit Account

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

26.4 Payments out of the Time Deposit Account

- (a) The Security Agent shall instruct the Account Bank to transfer any amount standing to the credit of the Time Deposit Account:
 - (i) on expiry of the term of the deposit on the Time Deposit Account, at the Shareholder's instructions upon receiving the Borrowers' request, in accordance with the provisions of the Account Bank's Terms and Conditions; or
 - (ii) at any time (subject to the payment of any break costs payable in accordance with the terms of the deposit), to meet any Borrower's prepayment obligations under any of Clauses 7.1 (*Illegality*) or 7.4 (*Mandatory prepayment on sale, arrest or Total Loss*),

Provided that in each case:

- (A) there is no Event of Default which is continuing; and
- (B) no breach of Clause 21 (*Financial Covenants*) has occurred or will occur as a result of such transfer.

- (b) Where no transfer can be made as a result of the proviso under paragraph (a) above, interest shall be payable on the amount then standing to the credit of the Time Deposit Account at the Account Bank's discretion and in accordance with market standard conditions at that time.
- (c) In the event of any conflict between the provisions of the Terms and Conditions and this Agreement, this Agreement shall prevail.

26.5 Payment of Earnings

Each Borrower shall ensure that, subject only to the provisions of the relevant General Assignment, all the Earnings in respect of the Vessel owned by it are paid in to the Earnings Account.

26.6 Application of Earnings

Each Borrower shall procure that the Shareholder will transfer from the Earnings Account to the Facility Agent:

- (a) on each relevant Repayment Date, the amount of the relevant Repayment Instalment then due on that Repayment Date; and
- (b) on the last day of each relevant Interest Period, the amount of interest then due on that date; and
- (c) on any day on which an amount is otherwise due from any Borrower under a Finance Document, an amount necessary to meet that due amount, and each Borrower shall procure that the Shareholder irrevocably authorizes and instructs:
 - (i) the Account Bank to make those transfers in accordance with the instructions of the Facility Agent (copied to the Security Agent, who, as security taker under the Account Security, agrees for itself and on behalf of the other pledgees that such transfers may be made);
 - (ii) the Facility Agent to apply the transferred amounts in payment of the relevant Repayment Instalment, interest amount or other amount due.

26.7 Application of funds

Until an Event of Default occurs, the Facility Agent shall on each Repayment Date and on each Interest Payment Date distribute to the Finance Parties in accordance with Clause 34 (*Payment Mechanics*) so much of the then balance on the Earnings Account as equals:

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

26.8 Location of Accounts

Each Borrower shall promptly:

- (a) comply with any requirement of the Facility Agent as to the location or relocation of each of its Accounts; 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) the relevant Account.

26.9 Miscellaneous Accounts provisions

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

27 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 27.19 (*Acceleration*) and Clause 27.20 (*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 five Business Days of its due date.

27.3 Specific obligations

A breach occurs of Clause 4.5 (*Waiver of conditions precedent*), Clause 21 (*Financial Covenants*), Clause 22.9 (*Title*), Clause 22.10 (*Negative pledge*), Clause 22.20 (*Unlawfulness, invalidity and ranking; Security imperilled*), Clause 23.2 (*Maintenance of obligatory insurances*), Clause 23.3 (*Terms of obligatory insurances*), Clause 23.5 (*Renewal of obligatory insurances*), Clause 24.9 (*Compliance with laws etc.*) in relation to Sanctions or Clause 25 (*Security Cover*).

27.4 Other obligations

- (a) A Transaction Obligor does not comply with any provision of the Finance Documents to which it is a party (other than those referred to in Clause 27.2 (*Non-payment*) and Clause 27.3 (*Specific obligations*)).
- (b) No Event of Default under paragraph (a) above will occur if the failure to comply is capable of remedy and is remedied within fifteen days of the Facility Agent giving notice to the 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 any Transaction Obligor (other than the Approved Manager) becomes entitled to declare any Financial Indebtedness of that Transaction Obligor due and payable prior to its specified maturity as a result of an event of default (however described) unless the 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 a person other than a Borrower if the aggregate amount of Financial Indebtedness or commitment for Financial Indebtedness falling within paragraphs (a) to (d) above is less than \$10,000,000 (or, in each case, its equivalent in any other currency).

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;
 - (ii) is deemed to, or is declared to, be unable to pay its debts under applicable law; or
 - (iii) suspends or threatens to suspend making payments on any of its debts.
- (b) A moratorium is declared in respect of any indebtedness of any Transaction Obligor (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;
 - (ii) a composition, compromise, assignment or arrangement with any creditor of any Transaction Obligor;
 - (iii) the appointment of a liquidator, receiver, administrator, administrative receiver, compulsory manager or other similar officer in respect of any Transaction Obligor or any of its assets; or
 - (iv) enforcement of any Security over any assets of any Transaction Obligor,
or any analogous procedure or step is taken in any jurisdiction.
- (b) Paragraph (a) above shall not apply to any winding-up petition which is frivolous or vexatious and is discharged, stayed or dismissed within 30 days of commencement.

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

27.10 Ownership of the Borrowers

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 unless by operation of law.

27.12 Security imperilled; flag instability

- (a) Any Security created or intended to be created by a Finance Document is in any way imperilled or in jeopardy.
- (b) The state of the Approved Flag of any Vessel is or becomes involved in hostilities or civil war or there is a seizure of power in such state by unconstitutional means, or any other event occurs in relation to that Vessel, the relevant Mortgage or its Approved Flag and in the reasonable opinion of the Facility Agent such event is likely to have a Material Adverse Effect unless the relevant Borrower, within 30 days of the occurrence of such event (or such longer period as may be agreed by the Facility Agent acting with the authorisation of the Lenders) re-registers that Vessel on an alternative flag approved pursuant to Clause 24.2 (*Vessel's names and registration*) and subject to:
 - (i) that Vessel remaining subject to security securing the Security created by a first priority or preferred ship mortgage on that Vessel 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 relevant Mortgage and on such other terms and in such other form as the Facility Agent, acting with the authorisation of the Lenders, shall reasonably approve or require; and
 - (ii) the execution of such other documentation amending and supplementing the Finance Documents, as the Facility Agent, acting with the authorisation of the Lenders, shall reasonably approve or require.

27.13 Cessation of business

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

27.14 Expropriation

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

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

27.15 Repudiation and rescission of agreements

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

27.16 Litigation

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

27.17 Material adverse change

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

27.18 Initial Charter Termination

The Initial Charter is frustrated (except as a result of a Total Loss of Vessel B), terminated (except by mere effluxion of time), cancelled or rescinded or purported to be cancelled or rescinded or Vessel B is withdrawn from service under the Initial Charter before its scheduled expiration, unless (a) on the date of such frustration, cancellation, rescission or termination of the Initial Charter or withdrawal of Vessel B from service under the Initial Charter, the outstanding amount of the Loan is equal to or less than 50 per cent. of the Total Commitments or (b) Borrower B procures within 45 calendar days after the occurrence of any such event that (i) a substitute Charter is entered into in respect of Vessel B and (ii) Borrower B complies with the provisions of Clause 24.22 (*Charterparty Assignment*) in connection with the said substitute Charter.

27.19 Acceleration

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

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

and the Facility Agent may serve notices under paragraphs (a), (b) and (c) above simultaneously or on different dates and the Security Agent may take any action referred to in Clause 27.20 (*Enforcement of security*) if no such notice is served or simultaneously with or at any time after the service of any of such notice.

27.20 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 27.19 (*Acceleration*).

SECTION 9

CHANGES TO PARTIES

28 CHANGES TO THE LENDERS

28.1 Assignments and transfers by the Lenders

Subject to this Clause 28 (*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**”).

28.2 Conditions of assignment or transfer

- (a) A notice to and the consent of the Borrowers is required for an assignment or transfer by an Existing Lender, unless the assignment or transfer is:
 - (i) to another Lender or an Affiliate of a Lender;
 - (ii) if the Existing Lender is a fund, to a fund which is a Related Fund; or
 - (iii) made at a time when an Event of Default has occurred.
- (b) The consent of the Borrowers to an assignment or transfer may not be unreasonably withheld or delayed. The Borrowers will be deemed to have given their consent five Business Days after the Existing Lender has requested it unless consent is expressly refused by the Borrowers within that time.
- (c) The consent of the Borrowers to an assignment or transfer may not be withheld solely because the assignment or transfer may result in an increase to any amount payable under Clause 14.3 (*Mandatory Cost*).
- (d) The consent of the Facility Agent is required for an assignment or transfer by an Existing Lender, such consent not to be unreasonably withheld.
- (e) An assignment will only be effective on:
 - (i) receipt by the Facility Agent (whether in the Assignment Agreement or otherwise) of written confirmation from the New Lender (in form and substance satisfactory to the Facility Agent) that the New Lender will assume the same obligations to the other Creditor Parties as it would have been under if it were an Original Lender; and
 - (ii) performance by the Facility Agent of all necessary “know your customer” or other similar checks under all applicable laws and regulations in relation to such assignment to a New Lender, the completion of which the Facility Agent shall promptly notify to the Existing Lender and the New Lender.
- (f) A transfer will only be effective if the procedure set out in Clause 28.5 (*Procedure for transfer*) is complied with.

- (g) If:
- (i) a Lender assigns or transfers any of its rights or obligations under the Finance Documents or changes its Facility Office; and
 - (ii) as a result of circumstances existing at the date the assignment, transfer or change occurs, a Transaction Obligor would be obliged to make a payment to the New Lender or Lender acting through its new Facility Office under Clause 12 (*Tax Gross Up and Indemnities*) or under that clause as incorporated by reference or in full in any other Finance Document or Clause 13 (*Increased Costs*),
- then the New Lender or Lender acting through its new Facility Office is only entitled to receive payment under those Clauses to the same extent as the Existing Lender or Lender acting through its previous Facility Office would have been if the assignment, transfer or change had not occurred. This paragraph (g) shall not apply in respect of an assignment or transfer made in the ordinary course of the primary syndication of the Facility.
- (h) Each New Lender, by executing the relevant Transfer Certificate or Assignment Agreement, confirms, for the avoidance of doubt, that:
- (A) the Facility Agent has authority to execute on its behalf any amendment or waiver that has been approved by or on behalf of the requisite Lender or Lenders in accordance with this Agreement on or prior to the date on which the transfer or assignment becomes effective in accordance with this Agreement and that it is bound by that decision to the same extent as the Existing Lender would have been had it remained a Lender; and
 - (B) it has received a copy of each of the Security Documents which are governed by German law and which are account pledges, is aware of the contents of such account pledges and expressly consents to the declarations of the Security Agent made on behalf of the New Lender (as future pledgee) in such account pledges.

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 \$5,000.

28.4 Limitation of responsibility of Existing Lenders

- (a) Unless expressly agreed to the contrary, an Existing Lender makes no representation or warranty and assumes no responsibility to a New Lender for:
- (i) the legality, validity, effectiveness, adequacy or enforceability of the Finance Documents, 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 Finance Documents or any other documents; or
 - (iv) the accuracy of any statements (whether written or oral) made in or in connection with any Finance Document or any other document, and any representations or warranties implied by law are excluded.
- (b) Each New Lender confirms to the Existing Lender and the other Finance Parties and the Creditor Parties that it:

- (i) has made (and shall continue to make) its own independent investigation and assessment of the financial condition and affairs of each Transaction Obligor and its related entities in connection with its participation in this Agreement and has not relied exclusively on any information provided to it by the Existing Lender or any other Finance Party in connection with any Finance 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 28 (*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 Finance Documents or otherwise.

28.5 Procedure for transfer

- (a) Subject to the conditions set out in Clause 28.2 (*Conditions of assignment or transfer*), a transfer is effected in accordance with paragraph (c) below when the Facility Agent executes an otherwise duly completed Transfer Certificate delivered to it by the Existing Lender and the New Lender. The Facility Agent shall, subject to paragraph (b) below as soon as reasonably practicable after receipt by it of a duly completed Transfer Certificate appearing on its face to comply with this Agreement and delivered in accordance with this Agreement, execute that Transfer Certificate. Upon execution by the Facility Agent, the Security Agent shall also execute the Transfer Certificate.
- (b) The Facility Agent shall only be obliged to execute a Transfer Certificate delivered to it by the Existing Lender and the New Lender once it is satisfied it has complied with all necessary “know your customer” or other similar checks under all applicable laws and regulations in relation to the transfer to such New Lender.
- (c) Subject to Clause 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 Arranger, the New Lender and other Lenders shall acquire the same rights and assume the same obligations between themselves and in respect of the Transaction Security as they would have acquired and assumed had the New Lender been an Original Lender with the rights and/or obligations acquired or assumed by it as a result of the transfer and to that extent the Facility Agent, the Security Agent, the Arranger and the Existing Lenders shall each be released from further obligations to each other under the Finance Documents; and

(iv) the New Lender shall become a Party as a “Lender”.

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. Upon execution by the Facility Agent, the Security Agent shall also execute the Assignment Agreement.
- (b) The Facility Agent shall only be obliged to execute an Assignment Agreement delivered to it by the Existing Lender and the New Lender once it is satisfied it has complied with all necessary “know your customer” or other similar checks under all applicable laws and regulations in relation to the assignment to such New Lender.
- (c) Subject to Clause 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*), each Lender may without consulting with or obtaining consent from any Transaction Obligor, at any time charge, assign or otherwise create Security in or over (whether by way of collateral or otherwise) all or any of its rights under any Finance Document to secure obligations of that Lender including, without limitation:

- (a) any charge, assignment or other Security to secure obligations to a federal reserve or central bank; and

- (b) in the case of any Lender which is a fund, any charge, assignment or other Security granted to any holders (or trustee or representatives of holders) of obligations owed, or securities issued, by that Lender as security for those obligations or securities, except that no such charge, assignment or Security shall:
- (i) release a Lender from any of its obligations under the Finance Documents or substitute the beneficiary of the relevant charge, assignment or Security for the Lender as a party to any of the Finance Documents; or
 - (ii) require any payments to be made by a Transaction Obligor other than or in excess of, or grant to any person any more extensive rights than, those required to be made or granted to the relevant Lender under the Finance Documents.

28.9 Pro rata interest settlement

If the 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):

- (a) any interest or fees in respect of the relevant participation which are expressed to accrue by reference to the lapse of time shall continue to accrue in favour of the Existing Lender up to but excluding the Transfer Date (“**Accrued Amounts**”) and shall become due and payable to the Existing Lender (without further interest accruing on them) on the last day of the current Interest Period (or, if the Interest Period is longer than six Months, on the next of the dates which falls at six Monthly intervals after the first day of that Interest Period); and
- (b) The rights assigned or transferred by the Existing Lender will not include the right to the Accrued Amounts, so that, for the avoidance of doubt:
 - (i) when the Accrued Amounts become payable, those Accrued Amounts will be payable to the Existing Lender; and
 - (ii) the amount payable to the New Lender on that date will be the amount which would, but for the application of this Clause 28.9 (*Pro rata interest settlement*), have been payable to it on that date, but after deduction of the Accrued Amounts.
- (c) 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.

29 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.

THE FINANCE PARTIES

30 THE FACILITY AGENT, THE ARRANGER AND THE REFERENCE BANKS

30.1 Appointment of the Facility Agent

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

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;
 - (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 43 (*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.
- (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.
- (e) If the Facility Agent receives notice from a Party referring to any Finance Document, describing a Default and stating that the circumstance described is a Default, it shall promptly notify the other Finance Parties.
- (f) If the Facility Agent is aware of the non-payment of any principal, interest, commitment fee or other fee payable to a Finance Party (other than the Facility Agent, the Arranger or the Security Agent) under this Agreement, it shall promptly notify the other Finance Parties.
- (g) The Facility Agent shall have only those duties, obligations and responsibilities expressly specified in the Finance Documents to which it is expressed to be a party (and no others shall be implied).

30.4 Role of the Arranger

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

30.5 No fiduciary duties

- (a) Nothing in any Finance Document constitutes the Facility Agent or the Arranger as a trustee or fiduciary of any other person.
- (b) Neither the Facility Agent nor the Arranger shall not 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 34.5 (*Application of receipts; partial payments*).

30.7 Business with the Group

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

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
 - (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 Drawdown Request or a Selection Notice) is made on behalf of and with the consent and knowledge of all the Transaction Obligors.
- (c) The Facility Agent may engage and pay for the advice or services of any lawyers, accountants, tax advisers, surveyors or other professional advisers or experts.
- (d) Without prejudice to the generality of paragraph (c) above or paragraph (e) below, the Facility Agent may at any time engage and pay for the services of any lawyers to act as independent counsel to the Facility Agent (and so separate from any lawyers instructed by the Lenders) if the Facility Agent in its reasonable opinion deems this to be desirable.
- (e) The Facility Agent may rely on the advice or services of any lawyers, accountants, tax advisers, surveyors or other professional advisers or experts (whether obtained by the Facility Agent or by any other Party) and shall not be liable for any damages, costs or losses to any person, any diminution in value or any liability whatsoever arising as a result of its so relying.
- (f) The Facility Agent may act in relation to the Finance Documents and the Security Property through its officers, employees and agents and shall not:
 - (i) be liable for any error of judgment made by any such person; or
 - (ii) be bound to supervise, or be in any way responsible for any loss incurred by reason of misconduct, omission or default on the part of any such person,
 unless such error or such loss was directly caused by the Facility Agent's gross negligence or wilful misconduct.
- (g) Unless a Finance Document expressly provides otherwise the Facility Agent may disclose to any other Party any information it reasonably believes it has received as agent under the Finance Documents.
- (h) Notwithstanding any other provision of any Finance Document to the contrary, neither the Facility Agent nor the Arranger is obliged to do or omit to do anything if it would or might, in its reasonable opinion, constitute a breach of any law or regulation or a breach of a fiduciary duty or duty of confidentiality.
- (i) Notwithstanding any provision of any Finance Document to the contrary, the Facility Agent is not obliged to expend or risk its own funds or otherwise incur any financial liability in the performance of its duties, obligations or responsibilities or the exercise of any right, power, authority or discretion if it has grounds for believing the repayment of such funds or adequate indemnity against, or security for, such risk or liability is not reasonably assured to it.

30.9 Responsibility for documentation

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

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

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

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 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 for:
 - (i) any damages, costs or losses to any person, any diminution in value, or any liability whatsoever arising as a result of taking or not taking any action under or in connection with any Transaction Document or the Security Property, unless directly caused by its gross negligence or wilful misconduct;
 - (ii) exercising, or not exercising, any right, power, authority or discretion given to it by, or in connection with, any Transaction Document, the Security Property or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with, any Transaction Document or the Security Property; or
 - (iii) any shortfall which arises on the enforcement or realisation of the Security Property; or
 - (iv) without prejudice to the generality of paragraphs (i) to (iii) above, any damages, costs or losses to any person, any diminution in value or any liability whatsoever arising as a result of:
 - (A) any act, event or circumstance not reasonably within its control; or
 - (B) the general risks of investment in, or the holding of assets in, any jurisdiction, including (in each case and without limitation) such damages, costs, losses, diminution in value or liability arising as a result of nationalisation, expropriation or other governmental actions; any regulation, currency restriction, devaluation or fluctuation; market conditions affecting the execution or settlement of transactions or the value of assets (including any Disruption Event); breakdown, failure or malfunction of any third party transport, telecommunications, computer services or systems; natural disasters or acts of God; war, terrorism, insurrection or revolution; or strikes or industrial action.
- (b) No Party other than the Facility Agent may take any proceedings against any officer, employee or agent of the Facility Agent in respect of any claim it might have against the Facility Agent or in respect of any act or omission of any kind by that officer, employee or agent in relation to any Transaction Document or any Security Property and any officer, employee or agent of the Facility Agent may rely on this Clause subject to Clause 1.5 (*Third party rights*) and the provisions of the Third Parties Act.

- (c) The Facility Agent will not be liable for any delay (or any related consequences) in crediting an account with an amount required under the Finance Documents to be paid by the Facility Agent if the Facility Agent has taken all necessary steps as soon as reasonably practicable to comply with the regulations or operating procedures of any recognised clearing or settlement system used by the Facility Agent for that purpose.
- (d) Nothing in this Agreement shall oblige the Facility Agent or the Arranger to carry out:
- (i) any “know your customer” or other checks in relation to any person; or
 - (ii) any check on the extent to which any transaction contemplated by this Agreement might be unlawful for any Finance Party,
- on behalf of any Finance Party and each Finance Party confirms to the Facility Agent and the Arranger that it is solely responsible for any such checks it is required to carry out and that it may not rely on any statement in relation to such checks made by the Facility Agent or the Arranger.
- (e) Without prejudice to any provision of any Finance Document excluding or limiting the Facility Agent’s liability, any liability of the Facility Agent arising under or in connection with any Transaction Document or the Security Property shall be limited to the amount of actual loss which has been finally judicially determined to have been suffered (as determined by reference to the date of default of the Facility Agent or, if later, the date on which the loss arises as a result of such default) but without reference to any special conditions or circumstances known to the Facility Agent at any time which increase the amount of that loss. In no event shall the Facility Agent be liable for any loss of profits, goodwill, reputation, business opportunity or anticipated saving, or for special, punitive, indirect or consequential damages, whether or not the Facility Agent has been advised of the possibility of such loss or damages.

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 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.

30.13 Resignation of the Facility Agent

- (a) The Facility Agent may resign and appoint one of its Affiliates acting through an office 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, the Arranger and the Reference Banks*) and any other term of this Agreement dealing with the rights or obligations of the Facility Agent consistent with then current market practice for the appointment and protection of corporate trustees together with any reasonable amendments to the agency fee payable under this Agreement which are consistent with the successor Facility Agent's normal fee rates and those amendments will bind the Parties.
- (e) The retiring Facility Agent shall, at its own cost, make available to the successor Facility Agent such documents and records and provide such assistance as the successor Facility Agent may reasonably request for the purposes of performing its functions as Facility Agent under the Finance Documents. The 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 this Clause 30 (*The Facility Agent, the Arranger and the Reference Banks*) and any other provisions of a Finance Document which are expressed to limit or exclude its liability (or to indemnify it) in acting as Facility Agent. Any fees for the account of the retiring Facility Agent shall cease to accrue from (and shall be payable on) that date). Any successor and each of the other Parties shall have the same rights and obligations amongst themselves as they would have had if such successor had been an original Party.
- (h) The Majority Lenders may, by notice to the Facility Agent, require it to resign in accordance with paragraph (b) above. In this event, the Facility Agent shall resign in accordance with paragraph (b) above but the cost referred to in paragraph (e) above shall be for the account of the Borrowers.
- (i) The consent of the Borrowers (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 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.

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 at the opening of business (in the place of the Facility Agent's principal office as notified to the Finance Parties from time to time) as the Lender acting through its Facility Office:
 - (i) entitled to or liable for any payment due under any Finance Document on that day; and
 - (ii) entitled to receive and act upon any notice, request, document or communication or make any decision or determination under any Finance Document made or delivered on that day,unless it has received not less than five Business Days' prior notice from that Lender to the contrary in accordance with the terms of this Agreement.
- (b) Each Finance Party shall supply the Facility Agent with any information that the Security Agent may reasonably specify (through the Facility Agent) as being necessary or desirable to enable the Security Agent to perform its functions as Security Agent. Each Finance Party shall deal with the Security Agent exclusively through the Facility Agent and shall not deal directly with the Security Agent.
- (c) Any Lender may by notice to the Facility Agent appoint a person to receive on its behalf all notices, communications, information and documents to be made or despatched to that Lender under the Finance Documents. Such notice shall contain the address, fax number and (where communication by electronic mail or other electronic means is permitted under Clause 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.

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 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.

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*).

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

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 the Borrowers 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 Capital Markets

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

30.22 Role of Reference Banks

- (a) No Reference Bank is under any obligation to provide a quotation or any other information to the Facility Agent.
- (b) No Reference Bank will be liable for any action taken by it under or in connection with any Finance Document, or for any Reference Bank Quotation, unless directly caused by its gross negligence or wilful misconduct.
- (c) No Party (other than the relevant Reference Bank) may take any proceedings against any officer, employee or agent of any Reference Bank in respect of any claim it might have against that Reference Bank or in respect of any act or omission of any kind by that officer, employee or agent in relation to any Finance Document, or to any Reference Bank Quotation, and any officer, employee or agent of each Reference Bank may rely on this Clause 30.22 (*Role of Reference Banks*) subject to Clause 1.5 (*Third party rights*) and the provisions of the Third Parties Act.

30.23 Third Party Reference Banks

A Reference Bank which is not a Party may rely on Clause 30.22 (*Role of Reference Banks*), Clause 43.3 (*Other exceptions*) and Clause 45 (*Confidentiality of Funding Rates and Reference Bank Quotations*) subject to Clause 1.5 (*Third party rights*) and the provisions of the Third Parties Act.

31 THE SECURITY AGENT

31.1 Trust

- (a) The Security Agent declares that it holds the Security Property on trust for the Creditor Parties on the terms contained in this Agreement and shall deal with the Security Property in accordance with this Clause 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 Obligor irrevocably and unconditionally undertakes to pay to the Security Agent its Parallel Debt which shall be amounts equal to, and in the currency or currencies of, its Corresponding Debt.
- (b) The Parallel Debt of an Obligor:
 - (i) shall become due and payable at the same time as its Corresponding Debt;
 - (ii) is independent and separate from, and without prejudice to, its Corresponding Debt.
- (c) For the purposes of this Clause 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).
- (d) The Parallel Debt of an Obligor shall be:
 - (i) decreased to the extent that its Corresponding Debt has been irrevocably and unconditionally paid or discharged; and
 - (ii) increased to the extent that its Corresponding Debt has increased,
and the Corresponding Debt of an Obligor shall be:
 - (A) decreased to the extent that its Parallel Debt has been irrevocably and unconditionally paid or discharged; and
 - (B) increased to the extent that its Parallel Debt has increased,in each case provided that the Parallel Debt of an Obligor shall never exceed its Corresponding Debt.
- (e) All amounts received or recovered by the Security Agent in connection with this Clause 31.2 (*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 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 Creditor Parties shall not have any independent power to enforce, or have recourse to, any of the Transaction Security or to exercise any right, power, authority or discretion arising under the Security Documents except through the Security Agent.

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.

- (c) Save in the case of decisions stipulated to be a matter for any other Finance Party or group of Finance Parties under the relevant Finance Document and unless a contrary indication appears in a Finance Document, any instructions given to the Security Agent by the Majority Lenders shall override any conflicting instructions given by any other Parties and will be binding on all Finance Parties.
- (d) Paragraph (a) above shall not apply:
- (i) where a contrary indication appears in a Finance Document;
 - (ii) where a Finance Document requires the Security Agent to act in a specified manner or to take a specified action;
 - (iii) in respect of any provision which protects the Security Agent's own position in its personal capacity as opposed to its role of Security Agent for the relevant Creditor Parties.
 - (iv) in respect of the exercise of the Security Agent's discretion to exercise a right, power or authority under any of:
 - (A) Clause 31.28 (*Application of receipts upon enforcement*);
 - (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 43 (*Amendments and Waivers*), the Security Agent shall not act in accordance with those instructions unless consent to it so acting is obtained from each Party (other than the Security Agent) whose consent would have been required in respect of that amendment or waiver.
- (f) In exercising any discretion to exercise a right, power or authority under the Finance Documents where either:
- (i) it has not received any instructions as to the exercise of that discretion; or
 - (ii) the exercise of that discretion is subject to sub-paragraph (iv) of paragraph (d) above,
- the Security Agent shall do so having regard to the interests of all the Creditor Parties.
- (g) The Security Agent may refrain from acting in accordance with any instructions of any Finance Party or group of Finance Parties until it has received any indemnification and/or security that it may in its discretion require (which may be greater in extent than that contained in the Finance Documents and which may include payment in advance) for any cost, loss or liability (together with any applicable VAT) which it may incur in complying with those instructions.
- (h) Without prejudice to the remainder of this Clause 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.

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

- (iii) rely on a certificate from any person:
 - (A) as to any matter of fact or circumstance which might reasonably be expected to be within the knowledge of that person; or
 - (B) to the effect that such person approves of any particular dealing, transaction, step, action or thing,as sufficient evidence that that is the case and, in the case of paragraph (A) above, may assume the truth and accuracy of that certificate.
- (b) The Security Agent shall be entitled to carry out all dealings with the other Finance Parties through the Facility Agent and may give to the Facility Agent any notice or other communication required to be given by the Security Agent to any Finance Party.
- (c) The Security Agent may assume (unless it has received notice to the contrary in its capacity as security agent for the Creditor Parties) that:
 - (i) no Default has occurred;
 - (ii) any right, power, authority or discretion vested in any Party or any group of Finance Parties has not been exercised; and
 - (iii) any notice or request made by a Borrower (other than a Drawdown Request or a Selection Notice) is made on behalf of and with the consent and knowledge of all the Transaction Obligors.
- (d) The Security Agent may engage and pay for the advice or services of any lawyers, accountants, tax advisers, surveyors or other professional advisers or experts.
- (e) Without prejudice to the generality of paragraph (d) above or paragraph (f) below, the Security Agent may at any time engage and pay for the services of any lawyers to act as independent counsel to the Security Agent (and so separate from any lawyers instructed by the Facility Agent or the Lenders) if the Security Agent in its reasonable opinion deems this to be desirable.
- (f) The Security Agent may rely on the advice or services of any lawyers, accountants, tax advisers, surveyors or other professional advisers or experts (whether obtained by the Security Agent or by any other Party) and shall not be liable for any damages, costs or losses to any person, any diminution in value or any liability whatsoever arising as a result of its so relying.
- (g) The Security Agent may act in relation to the Finance Documents and the Security Property through its officers, employees and agents and shall not:
 - (i) be liable for any error of judgment made by any such person; or
 - (ii) be bound to supervise, or be in any way responsible for any loss incurred by reason of misconduct, omission or default on the part of any such person,unless such error or such loss was directly caused by the Security Agent's gross negligence or wilful misconduct.
- (h) Unless a Finance Document expressly provides otherwise the Security Agent may disclose to any other Party any information it reasonably believes it has received as security agent under the Finance Documents.
- (i) Notwithstanding any other provision of any Finance Document to the contrary, the Security Agent is not obliged to do or omit to do anything if it would or might, in its reasonable opinion, constitute a breach of any law or regulation or a breach of a fiduciary duty or duty of confidentiality.

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

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 Arranger, a Transaction Obligor or any other person in, or in connection with, any Transaction Document or the transactions contemplated in the Transaction Documents or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Transaction Document; or
- (b) the legality, validity, effectiveness, adequacy or enforceability of any Transaction Document or the Security Property or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with, any Transaction Document or the Security Property; or
- (c) any determination as to whether any information provided or to be provided to any Creditor Party is non-public information the use of which may be regulated or prohibited by applicable law or regulation relating to insider dealing or otherwise.

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 paragraphs (i) to (iii) above, any damages, costs or losses to any person, any diminution in value or any liability whatsoever arising as a result of:
 - (A) any act, event or circumstance not reasonably within its control; or
 - (B) the general risks of investment in, or the holding of assets in, any jurisdiction, including (in each case and without limitation) such damages, costs, losses, diminution in value or liability arising as a result of nationalisation, expropriation or other governmental actions; any regulation, currency restriction, devaluation or fluctuation; market conditions affecting the execution or settlement of transactions or the value of assets (including any Disruption Event); breakdown, failure or malfunction of any third party transport, telecommunications, computer services or systems; natural disasters or acts of God; war, terrorism, insurrection or revolution; or strikes or industrial action.
- (b) No Party other than the Security Agent, that Receiver or that Delegate (as applicable) may take any proceedings against any officer, employee or agent of the Security Agent, a Receiver or a Delegate in respect of any claim it might have against the Security Agent, a Receiver or a Delegate or in respect of any act or omission of any kind by that officer, employee or agent in relation to any Transaction Document or any Security Property and any officer, employee or agent of the Security Agent, a Receiver or a Delegate may rely on this Clause subject to Clause 1.5 (*Third party rights*) and the provisions of the Third Parties Act.
- (c) The Security Agent will not be liable for any delay (or any related consequences) in crediting an account with an amount required under the Finance Documents to be paid by the Security Agent if the Security Agent has taken all necessary steps as soon as reasonably practicable to comply with the regulations or operating procedures of any recognised clearing or settlement system used by the Security Agent for that purpose.
- (d) Nothing in this Agreement shall oblige the Security Agent to carry out:
 - (i) any “know your customer” or other checks in relation to any person; or
 - (ii) any check on the extent to which any transaction contemplated by this Agreement might be unlawful for any Finance Party,on behalf of any Finance Party and each Finance Party confirms to the Security Agent that it is solely responsible for any such checks it is required to carry out and that it may not rely on any statement in relation to such checks made by the Security Agent.
- (e) Without prejudice to any provision of any Finance Document excluding or limiting the liability of the Security Agent or any Receiver or Delegate, any liability of the Security Agent or any Receiver or Delegate arising under or in connection with any Transaction Document or the Security Property shall be limited to the amount of actual loss which has been finally judicially determined to have been suffered (as determined by reference to the date of default of the Security Agent, Receiver or Delegate or, if later, the date on which the loss arises as a result of such default) but without reference to any special conditions or circumstances known to the Security Agent, any Receiver or Delegate at any time which increase the amount of that loss. In no event shall the Security Agent, any Receiver or Delegate be liable for any loss of profits, goodwill, reputation, business opportunity or anticipated saving, or for special, punitive, indirect or consequential damages, whether or not the Security Agent, the Receiver or Delegate has been advised of the possibility of such loss or damages.

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 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 acting through an office 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.
- (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 31.24 (*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 the Borrowers (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).
- (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.

31.17 Reliance and engagement letters

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

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 Security Document.

31.19 Insurance by Security Agent

- (a) The Security Agent shall not be obliged:
 - (i) to insure any of the Security Assets;
 - (ii) to require any other person to maintain any insurance; or
 - (iii) to verify any obligation to arrange or maintain insurance contained in any Finance Document,and the Security Agent shall not be liable for any damages, costs or losses to any person as a result of the lack of, or inadequacy of, any such insurance.
- (b) Where the Security Agent is named on any insurance policy as an insured party, it shall not be liable for any damages, costs or losses to any person as a result of its failure to notify the insurers of any material fact relating to the risk assumed by such insurers or any other information of any kind, unless the Majority Lenders request it to do so in writing and the Security Agent fails to do so within 14 days after receipt of that request.

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

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 Creditor Parties; or

- (ii) for the purposes of conforming to any legal requirement, restriction or condition which the Security Agent deems to be relevant; or
- (iii) for obtaining or enforcing any judgment in any jurisdiction,

and the Security Agent shall give prior notice to the Borrowers and the Finance Parties of that appointment.

- (b) Any person so appointed shall have the rights, powers, authorities and discretions (not exceeding those given to the Security Agent under or in connection with the Finance Documents) and the duties, obligations and responsibilities that are given or imposed by the instrument of appointment.
- (c) The remuneration that the Security Agent may pay to that person, and any costs and expenses (together with any applicable VAT) incurred by that person in performing its functions pursuant to that appointment shall, for the purposes of this Agreement, be treated as costs and expenses incurred by the Security Agent.

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 Creditor Party) to release, without recourse or warranty, that property from the Transaction Security and to execute any release of the Transaction Security or other claim over that asset and to issue any certificates of non-crystallisation of floating charges that may be required or desirable.

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 Creditor Party is under any commitment, obligation or liability (actual or contingent) to make advances or provide other financial accommodation to any Transaction Obligor pursuant to the Finance Documents,

then

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

All amounts from time to time received or recovered by the Security Agent pursuant to the terms of any Finance Document, under Clause 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 Creditor Parties, for application towards the discharge of all sums due and payable by any Transaction Obligor under any of the Finance Documents in accordance with Clause 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.

31.29 Permitted Deductions

- (a) The Security Agent may, in its discretion:
 - (i) set aside by way of reserve amounts required to meet, and to make and pay, any deductions and withholdings (on account of Taxes or otherwise) which it is or may be required by any applicable law to make from any distribution or payment made by it under this Agreement; and
 - (ii) pay all Taxes which may be assessed against it in respect of any of the Security Property, or as a consequence of performing its duties, or by virtue of its capacity as Security Agent under any of the Finance Documents or otherwise (other than in connection with its remuneration for performing its duties under this Agreement).
- (b) For the purposes of sub-paragraph (i) of paragraph (a) above, if the Security Agent has become entitled to require a sum to be paid to it on demand, that sum shall be treated as due and payable, even if no demand has yet been served.

31.30 Prospective liabilities

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

- (a) any sum to the Security Agent, any Receiver or any Delegate; and
- (b) any part of the Secured Liabilities,

that the Security Agent or, in the case of paragraph (b) only, the 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 34.5 (*Application of receipts; partial payments*) the Security Agent may, in its discretion, hold all or part of those proceeds in an interest bearing suspense or impersonal account(s) in the name of the Security Agent with such financial institution (including itself) and for so long as the Security Agent shall think fit (the interest being credited to the relevant account) pending the payment from time to time of those moneys in the Security Agent's discretion in accordance with the provisions of this Clause 31.31 (*Investment of proceeds*).

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 Creditor Parties and any payment made in that way shall be a good discharge, to the extent of that payment, by the Security Agent.
- (b) The Security Agent is under no obligation to make the payments to the Facility Agent under paragraph (a) above in the same currency as that in which the obligations and liabilities owing to the relevant Finance Party are denominated.

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.

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.

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.

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 London, 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 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 a Drawdown 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.
- (c) If the Facility Agent has notified the Lenders that it 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 Facility Agent shall notify the Borrowers of the Lender's identity and 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 that 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 or the Security Agent (as applicable) receives a payment that is insufficient to discharge all the amounts then due and payable by a Transaction Obligor under the Finance Documents, the Facility Agent or the Security Agent (as applicable) shall apply that payment towards the obligations of that Transaction Obligor under the Finance Documents in the following order:
 - (i) **first**, in or towards payment pro rata of any unpaid fees, costs and expenses of, and any other amounts owing to, the Facility Agent, the Security Agent, any Receiver or any Delegate under the Finance Documents;
 - (ii) **secondly**, in or towards payment pro rata of any accrued interest and fees due but unpaid to the Lenders under this Agreement;
 - (iii) **thirdly**, in or towards payment pro rata of any principal due but unpaid to the Lenders under this Agreement; and
 - (iv) **fourthly**, in or towards payment pro rata of any other sum due to any Finance Party but unpaid under the Finance Documents.
- (b) The Facility Agent shall, if so directed by the Majority Lenders, vary, or instruct the Security Agent to vary (as applicable), the order set out in subparagraphs (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).
- (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 Interbank 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 the Borrowers that a Disruption Event has occurred:

- (a) the Facility Agent may, and shall if requested to do so by the Borrowers, consult with the Borrowers with a view to agreeing with the Borrowers such changes to the operation or administration of the Facility as the 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 43 (*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.

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 any other Obligor, that specified in Schedule 1 (*The Parties*) or, if it becomes a Party after the date of this Agreement, that notified in writing to the Facility Agent on or before the date on which it becomes a Party;

- (c) in the case of the Facility Agent, that specified in Schedule 1 (*The Parties*); and
- (d) in the case of the Security Agent, that specified in Schedule 1 (*The Parties*),
or any substitute address, fax number or department or officer as the Party may notify to the Facility Agent (or the Facility Agent may notify to the other Parties, if a change is made by the Facility Agent) by not less than five Business Days' notice.

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).
- (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 between any two Parties under or in connection with the Finance Documents may be made by electronic mail or other electronic means (including, without limitation, by way of posting to a secure website) if those two Parties:
 - (i) notify each other in writing of their electronic mail address and/or any other information required to enable the transmission of information by that means; and
 - (ii) notify each other of any change to their address or any other such information supplied by them by not less than five Business Days' notice.

- (b) Any such electronic communication as specified in paragraph (a) above to be made between an Obligor and a Finance Party may only be made in that way to the extent that those two Parties agree that, unless and until notified to the contrary, this is to be an accepted form of communication.
- (c) Any such electronic communication as specified in paragraph (a) above made between any two Parties will be effective only when actually received (or made available) in readable form and in the case of any electronic communication made by a Party to the Facility Agent or the Security Agent only if it is addressed in such a manner as the Facility Agent or the Security Agent shall specify for this purpose.
- (d) Any electronic communication which becomes effective, in accordance with paragraph (c) above, after 5.00 p.m. in the place in which the Party to whom the relevant communication is sent or made available has its address for the purpose of this Agreement shall be deemed only to become effective on the following day.
- (e) Any reference in a Finance Document to a communication being sent or received shall be construed to include that communication being made available in accordance with this Clause 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

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

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

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

41 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.

42 IRREVOCABLE PAYMENT

If the Facility Agent considers that an amount paid or discharged by, or on behalf of, a Transaction Obligor or by any other person in purported payment or discharge of an obligation of that Transaction Obligor to a Creditor Party under the Finance Documents is capable of being avoided or otherwise set aside on the liquidation or administration of that Transaction Obligor or otherwise, then that amount shall not be considered to have been unconditionally and irrevocably paid or discharged for the purposes of the Finance Documents.

43 AMENDMENTS AND WAIVERS

43.1 Required consents

- (a) Subject to Clause 43.2 (*All Lender matters*) and Clause 43.3 (*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 Transaction 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 43 (*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.

43.2 All Lender matters

Subject to Clause 43.4 (*Replacement of Screen Rate*), an amendment of or waiver or consent in relation to any term of any Finance Document that has the effect of changing or which relates to:

- (a) the definition of "Majority Lenders" in Clause 1.1 (*Definitions*);
- (b) a postponement to or extension of the date of payment of any amount under the Finance Documents (other than in relation to Clause 7.3 (*Voluntary prepayment of Loan*) in respect of a prepayment made pursuant to Clause 25.2 (*Provision of additional security; prepayment*) or Clause 7.4 (*Mandatory prepayment on sale, arrest or Total Loss*);

- (c) a reduction in the Margin or the amount of any payment of principal, interest, fees or commission payable;
- (d) a change in currency of payment of any amount under the Finance Documents;
- (e) an increase in any Commitment or the Total Commitments, an extension of any Availability Period or any requirement that a cancellation of Commitments reduces the Commitments rateably under the Facility;
- (f) a change to any Transaction Obligor;
- (g) any provision which expressly requires the consent of all the Lenders;
- (h) this Clause 43 (*Amendments and Waivers*);
- (i) any change to Clause 2 (*The Facility*), Clause 3 (*Purpose*), Clause 5 (*Drawdown*), Clause 8 (*Interest*), Clause 25.7 (*Provision of valuations*), Clause 26 (*Accounts and Application of Earnings*), Clause 28 (*Changes to the Lenders*), Clause 33 (*Sharing among the Finance Parties*), Clause 47 (*Governing Law*) or Clause 48 (*Enforcement*);
- (j) any release of, or material variation to, any Transaction Security, guarantee, indemnity or subordination arrangement set out in a Finance Document (except in the case of a release of Transaction Security as it relates to the disposal of an asset which is the subject of the Transaction Security and where such disposal is expressly permitted by the Majority Lenders or otherwise under a Finance Document);
- (k) (other than as expressly permitted by the provisions of any Finance Document) the nature or scope of:
 - (i) the guarantee and indemnity granted under Clause 17 (*Guarantee and Indemnity*);
 - (ii) the Security Assets; or
 - (iii) the manner in which the proceeds of enforcement of the Transaction Security are distributed,
 (except in the case of sub-paragraphs (ii) and (iii) above, insofar as it relates to a sale or disposal of an asset which is the subject of the Transaction Security where such sale or disposal is expressly permitted under this Agreement or any other Finance Document);
- (l) the release of the guarantee and indemnity granted under Clause 17 (*Guarantee and Indemnity*) or of any Transaction Security unless permitted under this Agreement or any other Finance Document or relating to a sale or disposal of an asset which is the subject of the Transaction Security where such sale or disposal is expressly permitted under this Agreement or any other Finance Document, shall not be made, or given, without the prior consent of all the Lenders.

43.3 Other exceptions

- (a) An amendment or waiver which relates to the rights or obligations of a Servicing Party or the Arranger or a Reference Bank (each in their capacity as such) may not be effected without the consent of that Servicing Party, the Arranger or that Reference Bank, as the case may be.
- (b) The Borrowers and the Facility Agent, the Arranger or the Security Agent, as applicable, may amend or waive a term of a Fee Letter to which they are party.

43.4 Replacement of Screen Rate

- (a) Subject to Clause 43.3 (*Other exceptions*), if the Screen Rate is not available for dollars, any amendment or waiver which relates to providing for another benchmark rate to apply in relation to dollars, in place of that Screen Rate (or which relates to aligning any provision of a Finance Document to the use of that benchmark rate) may be made with the consent of the Majority Lenders and the Obligors.
- (b) If any Lender fails to respond to a request for an amendment or waiver described in paragraph (a) above within 2 Business Days (unless the Borrowers and the Facility Agent agree to a longer time period in relation to any request) of that request being made:
 - (i) its Commitment shall not be included for the purpose of calculating the Total Commitments when ascertaining whether any relevant percentage of Total Commitments has been obtained to approve that request; and
 - (ii) its status as a Lender shall be disregarded for the purpose of ascertaining whether the agreement of any specified group of Lenders has been obtained to approve that request.

43.5 Obligor Intent

Without prejudice to the generality of Clauses 1.2 (*Construction*) and 17.4 (*Waiver of defences*) each Obligor expressly confirms that it intends that any guarantee contained in this Agreement or any other Finance Document and any Security created by any Finance Document shall extend from time to time to any (however fundamental) variation, increase, extension or addition of or to any of the Finance Documents and/or any facility or amount made available under any of the Finance Documents for the purposes of or in connection with any of the following: business acquisitions of any nature; increasing working capital; enabling investor distributions to be made; carrying out restructurings; refinancing existing facilities; refinancing any other indebtedness; making facilities available to new borrowers; any other variation or extension of the purposes for which any such facility or amount might be made available from time to time; and any fees, costs and/or expenses associated with any of the foregoing.

44 CONFIDENTIAL INFORMATION

44.1 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 44.2 (*Disclosure of Confidential Information*) and Clause 44.3 (*Disclosure to numbering service providers*) and to ensure that all Confidential Information is protected with security measures and a degree of care that would apply to its own confidential information.

44.2 Disclosure of Confidential Information

Any Finance Party may disclose:

- (a) to any of its Affiliates and Related Funds and any of its or their officers, directors, employees, professional advisers, auditors, partners and Representatives such Confidential Information as that Finance Party shall consider appropriate if any person to whom the Confidential Information is to be given pursuant to this paragraph (a) is informed in writing of its confidential nature and that some or all of such Confidential Information may be price-sensitive information except that there shall be no such requirement to so inform if the recipient is subject to professional obligations to maintain the confidentiality of the information or is otherwise bound by requirements of confidentiality in relation to the Confidential Information;
- (b) to any person:

- (i) to (or through) whom it assigns or transfers (or may potentially assign or transfer) all or any of its rights and/or obligations under one or more Finance Documents or which succeeds (or which may potentially succeed) it as Facility Agent or Security Agent and, in each case, to any of that person's Affiliates, Related Funds, Representatives and professional advisers;
- (ii) with (or through) whom it enters into (or may potentially enter into), whether directly or indirectly, any sub-participation in relation to, or any other transaction including a securitisation under which payments are to be made or may be made by reference to, one or more Finance Documents and/or one or more Transaction Obligors and to any of that person's Affiliates, Related Funds, Representatives and professional advisers;
- (iii) appointed by any Finance Party or by a person to whom sub-paragraph (i) or (ii) of paragraph (b) above applies to receive communications, notices, information or documents delivered pursuant to the Finance Documents on its behalf (including, without limitation, any person appointed under paragraph (b) of Clause 30.15 (*Relationship with the other Finance Parties*));
- (iv) who invests in or otherwise finances (or may potentially invest in or otherwise finance), directly or indirectly, any transaction referred to in sub-paragraph (i) or (ii) of paragraph (b) above;
- (v) to whom information is required or requested to be disclosed by any court of competent jurisdiction or any governmental, banking, taxation or other regulatory authority or similar body, the rules of any relevant stock exchange or pursuant to any applicable law or regulation including any applicable data protection laws;
- (vi) to whom information is required to be disclosed in connection with, and for the purposes of, any litigation, arbitrations, administrative or other investigations, proceedings or disputes;
- (vii) to whom or for whose benefit that Finance Party charges, assigns or otherwise creates Security (or may do so) pursuant to Clause 28.8 (*Security over Lenders' rights*);
- (viii) who is a Party, a member of the Group or any related entity of a Transaction Obligor;
- (ix) as a result of the registration of any Finance Document as contemplated by any Finance Document or any legal opinion obtained in connection with any Finance Document; or
- (x) with the consent of the 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 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; and
- (d) to any rating agency (including its professional advisers) such Confidential Information as may be required to be disclosed to enable such rating agency to carry out its normal rating activities in relation to the Finance Documents and/or the Transaction Obligors if the rating agency to whom the Confidential Information is to be given is informed of its confidential nature and that some or all of such Confidential Information may be price-sensitive information.

Any non-disclosure undertaking contained herein shall not prevent the Guarantor from disclosing any information required to be disclosed by law, regulation or any governmental or competent regulatory authority (including without limitation, any securities exchange), provided that, to the extent reasonably practicable, the Guarantor shall inform the Facility Agent on the proposed form, timing, nature and purpose of the disclosure.

44.3 Disclosure to numbering service providers

- (a) Any Finance Party may disclose to any national or international numbering service provider appointed by that Finance Party to provide identification numbering services in respect of this Agreement, the Facility and/or one or more Transaction Obligors the following information:
- (i) names of Transaction Obligors;
 - (ii) country of domicile of Transaction Obligors;
 - (iii) place of incorporation of Transaction Obligors;
 - (iv) date of this Agreement;
 - (v) Clause 47 (*Governing Law*);
 - (vi) the name of the Facility 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;
- (xi) ranking of Facility;
- (xii) Maturity Date or, if applicable, the Facility Extension Maturity Date for Facility;
- (xiii) changes to any of the information previously supplied pursuant to sub-paragraphs (i) to (xii) above; and
- (xiv) such other information agreed between such Finance Party and the 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.

44.4 Entire agreement

This Clause 44 (*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.

44.5 Inside information

Each of the Finance Parties acknowledges that some or all of the Confidential Information is or may be price-sensitive information and that the use of such information may be regulated or prohibited by applicable legislation including securities law relating to insider dealing and market abuse and each of the Finance Parties undertakes not to use any Confidential Information for any unlawful purpose.

44.6 Notification of disclosure

Each of the Finance Parties agrees (to the extent permitted by law and regulation) to inform the Borrowers:

- (a) of the circumstances of any disclosure of Confidential Information made pursuant to sub-paragraph (v) of paragraph (b) of Clause 44.2 (*Disclosure of Confidential Information*) except where such disclosure is made to any of the persons referred to in that paragraph during the ordinary course of its supervisory or regulatory function; and
- (b) upon becoming aware that Confidential Information has been disclosed in breach of this Clause 44 (*Confidential Information*).

44.7 Continuing obligations

The obligations in this Clause 44 (*Confidential Information*) are continuing and, in particular, shall survive and remain binding on each Finance Party for a period of 12 months from the earlier of:

- (a) the date on which all amounts payable by the Obligors under or in connection with this Agreement have been paid in full and all Commitments have been cancelled or otherwise cease to be available; and
- (b) the date on which such Finance Party otherwise ceases to be a Finance Party.

45 CONFIDENTIALITY OF FUNDING RATES AND REFERENCE BANK QUOTATIONS

45.1 Confidentiality and disclosure

- (a) The Facility Agent and each Obligor agree to keep each Funding Rate (and, in the case of the Facility Agent, each Reference Bank Quotation) confidential and not to disclose it to anyone, save to the extent permitted by paragraphs (b), (c) and (d) below.
- (b) The Facility Agent may disclose:
 - (i) any Funding Rate (but not, for the avoidance of doubt, any Reference Bank Quotation) to the Borrower pursuant to Clause 8.5 (*Notification of rates of interest*); and
 - (ii) any Funding Rate or any Reference Bank Quotation to any person appointed by it to provide administration services in respect of one or more of the Finance Documents to the extent necessary to enable such service provider to provide those services if the service provider to whom that information is to be given has entered into a confidentiality agreement substantially in the form of the LMA Master Confidentiality Undertaking for Use With Administration/Settlement Service Providers or such other form of confidentiality undertaking agreed between the Facility Agent and the relevant Lender or Reference Bank, as the case may be.
- (c) The Facility Agent may disclose any Funding Rate or any Reference Bank Quotation, and each Obligor may disclose any Funding Rate, to:
 - (i) any of its Affiliates and any of its or their officers, directors, employees, professional advisers, auditors, partners and Representatives if any person to whom that Funding Rate or Reference Bank Quotation is to be given pursuant to this sub-paragraph (i) is informed in writing of its confidential nature and that it may be price sensitive information except that there shall be no such requirement to so inform if the recipient is subject to professional obligations to maintain the confidentiality of that Funding Rate or Reference Bank Quotation or is otherwise bound by requirements of confidentiality in relation to it;
 - (ii) any person to whom information is required or requested to be disclosed by any court of competent jurisdiction or any governmental, banking, taxation or other regulatory authority or similar body, the rules of any relevant stock exchange or pursuant to any applicable law or regulation if the person to whom that Funding Rate or Reference Bank Quotation is to be given is informed in writing of its confidential nature and that it may be price sensitive information except that there shall be no requirement to so inform if, in the opinion of the Facility Agent or the relevant Obligor, as the case may be, it is not practicable to do so in the circumstances;

- (iii) any person to whom information is required to be disclosed in connection with, and for the purposes of, any litigation, arbitration, administrative or other investigations, proceedings or disputes if the person to whom that Funding Rate or Reference Bank Quotation is to be given is informed in writing of its confidential nature and that it may be price sensitive information except that there shall be no requirement to so inform if, in the opinion of the Facility Agent or the relevant Obligor, as the case may be, it is not practicable to do so in the circumstances; and
 - (iv) any person with the consent of the relevant Lender or Reference Bank, as the case may be.
- (d) The Facility Agent's obligations in this Clause 45 (*Confidentiality of Funding Rates and Reference Bank Quotations*) relating to Reference Bank Quotations are without prejudice to its obligations to make notifications under Clause 8.5 (*Notification of rates of interest*) **provided that** (other than pursuant to sub-paragraph (i) of paragraph (b) above) the Facility Agent shall not include the details of any individual Reference Bank Quotation as part of any such notification.

45.2 Related obligations

- (a) The Facility Agent and each Obligor acknowledge that each Funding Rate (and, in the case of the Facility Agent, each Reference Bank Quotation) is or may be price sensitive information and that its use may be regulated or prohibited by applicable legislation including securities law relating to insider dealing and market abuse and the Facility Agent and each Obligor undertake not to use any Funding Rate or, in the case of the Facility Agent, any Reference Bank Quotation for any unlawful purpose.
- (b) The Facility Agent and each Obligor agree (to the extent permitted by law and regulation) to inform the relevant Lender or Reference Bank, as the case may be:
 - (i) of the circumstances of any disclosure made pursuant to sub-paragraph (ii) of paragraph (c) of Clause 45.1 (*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 45 (*Confidentiality of Funding Rates and Reference Bank Quotations*).

45.3 No Event of Default

No Event of Default will occur under Clause 27.4 (*Other obligations*) by reason only of an Obligor's failure to comply with this Clause 45 (*Confidentiality of Funding Rates and Reference Bank Quotations*).

46 COUNTERPARTS

Each Finance Document may be executed in any number of counterparts, and this has the same effect as if the signatures on the counterparts were on a single copy of the Finance Document.

GOVERNING LAW AND ENFORCEMENT

47 GOVERNING LAW

This Agreement and any non-contractual obligations arising out of or in connection with it are governed by English law.

48 ENFORCEMENT

48.1 Jurisdiction

- (a) The courts of England have exclusive jurisdiction to settle any dispute arising out of or in connection with this Agreement (including a dispute regarding the existence, validity or termination of this Agreement or any non-contractual obligation arising out of or in connection with this Agreement) (a “**Dispute**”).
- (b) The Obligors accept that the courts of England are the most appropriate and convenient courts to settle Disputes and accordingly no Obligor will argue to the contrary.
- (c) This Clause 48.1 (*Jurisdiction*) is for the benefit of the Creditor Parties only. As a result, no Creditor Party shall be prevented from taking proceedings relating to a Dispute in any other courts with jurisdiction. To the extent allowed by law, the Creditor Parties may take concurrent proceedings in any number of jurisdictions.

48.2 Service of process

- (a) Without prejudice to any other mode of service allowed under any relevant law, each Transaction Obligor (other than a Transaction Obligor incorporated in England and Wales):
 - (i) irrevocably appoints HFW Nominees Ltd at its current address at Friary Court, 65 Crutched Friars, London EC3N 2AE, England, as its agent for service of process in relation to any proceedings before the English courts in connection with any Finance Document; and
 - (ii) agrees that failure by a process agent to notify the relevant Obligor of the process will not invalidate the proceedings concerned.
- (b) If any person appointed as an agent for service of process is unable for any reason to act as agent for service of process, the Borrowers (on behalf of all the Transaction Obligors) must immediately (and in any event within seven days of such event taking place) appoint another agent on terms acceptable to the Facility Agent. Failing this, the Facility Agent may appoint another agent for this purpose.

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

- 1.1 that the Relevant Vessel:
 - (a) is definitively and permanently, or in relation to Vessel D, provisionally registered in the name of the relevant Borrower under the Approved Flag at the port of Panama;
 - (b) is in the absolute and unencumbered ownership of the Relevant Borrower save as contemplated by the Finance Documents; and
 - (c) maintains the Approved Classification with the Approved Classification Society free of all overdue recommendations and conditions of the Approved Classification Society.
- 1.2 Documentary evidence that on the proposed Drawdown Date when an Advance is made available (as a same day condition subsequent) the Mortgage in respect of the Relevant Vessel has been duly registered as a valid first priority ship mortgage in accordance with the laws of the jurisdiction of the Approved Flag.
- 1.3 Copies of the Relevant's Vessel's Class certificate and class maintenance certificate, Safety Management Certificate (together with any other details of the applicable Safety Management System which the Facility Agent requires) and of any other documents required under the ISM Code and the ISPS Code in relation to the Relevant Vessel including without limitation an ISSC and an IAPPC.
- 1.4 An opinion from Bankserve or any other independent insurance consultant acceptable to the Facility Agent on such matters relating to the Insurances in respect of the Relevant Vessel as the Facility Agent may require.
- 1.5 A copy of the Initial Charter.

2 Legal opinions

Draft agreed form legal opinions of the legal advisers to the Facility Agent, the Arranger and the Security Agent in the jurisdiction of the Approved Flag of the Relevant Vessel and such other relevant jurisdictions as the Facility Agent may require.

3 Other documents and evidence

- 3.1 Evidence that any process agent referred to in Clause 48.2 (Service of process), if not an Obligor, has accepted its appointment.
- 3.2 Evidence that the fees, costs and expenses then due from the Borrowers pursuant to Clause 11 (*Fees*) and Clause 16 (*Costs and expenses*), including legal fees, have been paid or will be paid by the relevant Drawdown Date.
- 3.3 Evidence that the relevant minimum liquidity set out in Clause 21.1 (*Minimum liquidity*) has been credited to the relevant Account.

EXECUTION PAGES

BORROWERS

SIGNED by)
duly authorised)
for and on behalf of)
FANTASTIKS SHIPPING CORPORATION)
in the presence of:)

/s/ ALEXANDROS LAIOS

Witness' signature:)
Witness' name:)
Witness' address:)

/s/ PANAGIOTIS-PITER KALLIFIDAS

SIGNED by)
duly authorised)
for and on behalf of)
SAGITTARIUS SHIPPING CORPORATION)
in the presence of:)

/s/ ALEXANDROS LAIOS

Witness' signature:)
Witness' name:)
Witness' address:)

/s/ PANAGIOTIS-PITER KALLIFIDAS

SIGNED by)
duly authorised)
for and on behalf of)
CUSTOMIZED DEVELOPMENTS S.A.)
in the presence of:)

/s/ ALEXANDROS LAIOS

Witness' signature:)
Witness' name:)
Witness' address:)

/s/ PANAGIOTIS-PITER KALLIFIDAS

SIGNED by)
duly authorised)
for and on behalf of)
AMMOS SHIPPING CORP.)
in the presence of:)

/s/ ALEXANDROS LAIOS

Witness' signature:)
Witness' name:)
Witness' address:)

/s/ PANAGIOTIS-PI TER KALLIFIDAS

GUARANTOR

SIGNED by)
duly authorised)
for and on behalf of)
NAVIOS MARITIME PARTNERS L.P.)
in the presence of:)

/s/ ALEXANDROS LAIOS

Witness' signature:)
Witness' name:)
Witness' address:)

/s/ PANAGIOTIS-PI TER KALLIFIDAS

LENDERS

SIGNED by)
duly authorised)
for and on behalf of)
DVB BANK SE)
in the presence of:)

/s/ CHRISTINA ECONOMIDES

Witness' signature:)
Witness' name:)
Witness' address:)

/s/ NADINE AKLEH
SOLICITOR
WATSON FARLEY & WILLIAMS
348 SYNGROU AVENUE
176 74 KALLITHEA
ATHENS - GREECE

FACILITY AGENT

SIGNED by)
duly authorised)
for and on behalf of)
DVB BANK SE)
in the presence of:)

/s/ CHRISTINA ECONOMIDES

Witness' signature:)
Witness' name:)
Witness' address:)

/s/ NADINE AKLEH
SOLICITOR
WATSON FARLEY & WILLIAMS
348 SYNGROU AVENUE
176 74 KALLITHEA
ATHENS - GREECE

SECURITY AGENT

SIGNED by)
duly authorised)
for and on behalf of)
DVB BANK SE)
in the presence of:)

/s/ CHRISTINA ECONOMIDES

Witness' signature:)
Witness' name:)
Witness' address:)

/s/ NADINE AKLEH
SOLICITOR
WATSON FARLEY & WILLIAMS
348 SYNGROU AVENUE
176 74 KALLITHEA
ATHENS - GREECE

ARRANGER

SIGNED by)
duly authorised)
for and on behalf of)
DVB BANK SE)
in the presence of:)

/s/ CHRISTINA ECONOMIDES

Witness' signature:)
Witness' name:)
Witness' address:)

/s/ NADINE AKLEH
SOLICITOR
WATSON FARLEY & WILLIAMS
348 SYNGROU AVENUE
176 74 KALLITHEA
ATHENS - GREECE

ACCOUNT BANK

SIGNED by)
duly authorised)
for and on behalf of)
DVB BANK SE)
in the presence of:)

/s/ CHRISTINA ECONOMIDES

Witness' signature:)
Witness' name:)
Witness' address:)

/s/ NADINE AKLEH
SOLICITOR
WATSON FARLEY & WILLIAMS
348 SYNGROU AVENUE
176 74 KALLITHEA
ATHENS - GREECE

**Navios Maritime Partners L.P. Announces
Appointment of Mrs. Orthodoxia Zisimatou to the Board of Directors**

MONACO, June 23, 2017 – Navios Maritime Partners L.P. (“Navios Partners” or the “Company”) (NYSE: NMM), an international owner and operator of container and dry bulk and container vessels, announced today the appointment of Mrs. Orthodoxia Zisimatou to its Board of Directors.

Mrs. Zisimatou, lawyer by training, has been focused on the maritime sectors since she became a member of the Athens Bar since 1988. She is currently Secretary General of the Union of Piraeus Shipping Lawyers. Mrs. Zisimatou is a Member of the Permanent Committee of Maritime Policy, Security and Protection of Environment of the Hellenic Chamber of Shipping, Member of the Legal Committee of the Hellenic Chamber of Shipping and Maritime Arbitrator of the Hellenic Chamber of Shipping. Mrs. Zisimatou earned a bachelor’s degree in Law from the faculty of Law of the University of Athens.

“We are delighted Mrs. Zisimatou has joined our board and believe that her deep understanding of shipping and maritime law will significantly benefit the Company,” said Ms. Angeliki Frangou, Chairman and CEO of Navios Maritime Partners L.P.

Navios Partners has also announced that Dimitris Papastefanou Gkouras, a director of Navios Partners’ since June 2013, has resigned. Ms. Frangou commented, “We thank Mr. Papastefanou Gkouras for his valuable contribution and his good service to the Company. We wish him well in his future ventures.”

About Navios Maritime Partners L.P.

Navios Partners (NYSE: NMM) is a publicly traded master limited partnership which owns and operates container and dry bulk vessels. For more information, please visit our website at www.navios-mlp.com.

Forward-Looking Statements

This press release contains forward-looking statements (as defined in Section 27A of the Securities Act of 1933, as amended, and Section 21E of the Securities Exchange Act of 1934, as amended) concerning future events including Navios Partners’ 2017 cash flow generation, future contracted revenues, future distributions and its ability to have a dividend going forward, opportunities to reinvest cash accretively in a fleet renewal program or otherwise, potential capital gains, our 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. Words such as “may”, “expects”, “intends”, “plans”, “believes”, “anticipates”, “hopes”, “estimates”, and variations of such words and similar expressions are intended to identify forward-looking statements. Such statements include comments regarding expected revenue and time charters.

These forward-looking statements are based on the information available to, and the expectations and assumptions deemed reasonable by Navios 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 known and unknown risks and are based upon a number of assumptions and estimates which are inherently subject to significant uncertainties and contingencies, many of which are beyond the control of Navios 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, uncertainty relating to global trade, including prices of seaborne commodities and continuing issues related to seaborne volume and ton miles, our continued ability to enter into long-term time charters, our ability to maximize the use of our vessels, expected demand in the dry cargo shipping sector in general and the demand for our Panamax, Capesize, Ultra-Handymax and Container vessels in particular, fluctuations in charter rates for dry cargo carriers and container vessels, the

aging of our fleet and resultant increases in operations costs, the loss of any customer or charter or vessel, the financial condition of our customers, changes in the availability and costs of funding due to conditions in the bank market, capital markets and other factors, increases in costs and expenses, including but not limited to: crew wages, insurance, provisions, port expenses, lube oil, bunkers, repairs, maintenance and general and administrative expenses, the expected cost of, and our ability to comply with, governmental regulations and maritime self-regulatory organization standards, as well as standard regulations imposed by our charterers applicable to our business, general domestic and international political conditions, competitive factors in the market in which Navios 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-Fs and Form 6-Ks. 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.

Contacts

Navios Maritime Partners L.P.
+1 (212) 906 8645
Investors@navios-mlp.com

Nicolas Bornozis
Capital Link, Inc.
+1 (212) 661 7566
naviospartners@capitallink.com