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**UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION**

Washington, D.C. 20549

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**FORM 10-Q**

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(Mark One)

QUARTERLY REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934

For the quarterly period ended June 30, 2023

OR

TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934

For the transition period from \_\_\_\_\_ to \_\_\_\_\_

Commission File Number: 001-35784

**NORWEGIAN CRUISE LINE HOLDINGS LTD.**

(Exact name of registrant as specified in its charter)

Bermuda  
(State or other jurisdiction of incorporation or organization)

7665 Corporate Center Drive, Miami, Florida 33126  
(Address of principal executive offices)

98-0691007  
(I.R.S. Employer Identification No.)

33126  
(zip code)

(305) 436-4000

(Registrant's telephone number, including area code)

N/A

(Former name, former address and former fiscal year, if changed since last report)

Securities registered pursuant to Section 12(b) of the Act:

Title of each class	Trading Symbol(s)	Name of each exchange on which registered
Ordinary shares, par value \$0.001 per share	NCLH	The New York Stock Exchange

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes  No

Indicate by check mark whether the registrant has submitted electronically every Interactive Data File required to be submitted pursuant to Rule 405 of Regulation S-T (§232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit such files). Yes  No

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, a smaller reporting company, or an emerging growth company. See the definitions of "large accelerated filer," "accelerated filer," "smaller reporting company," and "emerging growth company" in Rule 12b-2 of the Exchange Act.

Large accelerated filer   
Non-accelerated filer   
Emerging growth company

Accelerated filer   
Smaller reporting company

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 13(a) of the Exchange Act.

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Exchange Act). Yes  No

There were 425,423,599 ordinary shares outstanding as of July 31, 2023.

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**PART I. FINANCIAL INFORMATION**

**Item 1. Financial Statements**

**Norwegian Cruise Line Holdings Ltd.**  
**Consolidated Statements of Operations**  
**(Unaudited)**  
**(in thousands, except share and per share data)**

	Three Months Ended		Six Months Ended	
	June 30,		June 30,	
	2023	2022	2023	2022
<b>Revenue</b>				
Passenger ticket	\$ 1,478,474	\$ 793,892	\$ 2,687,315	\$ 1,136,347
Onboard and other	727,018	393,289	1,340,116	572,774
Total revenue	<u>2,205,492</u>	<u>1,187,181</u>	<u>4,027,431</u>	<u>1,709,121</u>
<b>Cruise operating expense</b>				
Commissions, transportation and other	506,855	256,190	916,539	344,148
Onboard and other	161,880	96,155	281,577	128,705
Payroll and related	308,220	262,580	612,375	503,307
Fuel	164,242	181,189	359,110	316,698
Food	87,770	61,157	183,736	100,673
Other	154,643	216,045	310,691	415,198
Total cruise operating expense	<u>1,383,610</u>	<u>1,073,316</u>	<u>2,664,028</u>	<u>1,808,729</u>
<b>Other operating expense</b>				
Marketing, general and administrative	352,222	329,080	688,235	625,287
Depreciation and amortization	197,115	181,587	391,905	360,663
Total other operating expense	<u>549,337</u>	<u>510,667</u>	<u>1,080,140</u>	<u>985,950</u>
Operating income (loss)	<u>272,545</u>	<u>(396,802)</u>	<u>283,263</u>	<u>(1,085,558)</u>
<b>Non-operating income (expense)</b>				
Interest expense, net	(177,692)	(144,377)	(348,949)	(472,062)
Other income (expense), net	(8,043)	30,991	(16,998)	69,111
Total non-operating income (expense)	<u>(185,735)</u>	<u>(113,386)</u>	<u>(365,947)</u>	<u>(402,951)</u>
<b>Net income (loss) before income taxes</b>	86,810	(510,188)	(82,684)	(1,488,509)
<b>Income tax benefit (expense)</b>	(694)	867	9,479	(3,526)
<b>Net income (loss)</b>	<u>\$ 86,116</u>	<u>\$ (509,321)</u>	<u>\$ (73,205)</u>	<u>\$ (1,492,035)</u>
<b>Weighted-average shares outstanding</b>				
Basic	424,178,775	419,107,330	423,421,203	418,424,753
Diluted	<u>461,075,240</u>	<u>419,107,330</u>	<u>423,421,203</u>	<u>418,424,753</u>
<b>Earnings (loss) per share</b>				
Basic	\$ 0.20	\$ (1.22)	\$ (0.17)	\$ (3.57)
Diluted	<u>\$ 0.20</u>	<u>\$ (1.22)</u>	<u>\$ (0.17)</u>	<u>\$ (3.57)</u>

The accompanying notes are an integral part of these consolidated financial statements.

**Norwegian Cruise Line Holdings Ltd.**  
**Consolidated Statements of Comprehensive Income (Loss)**  
**(Unaudited)**  
**(in thousands)**

	<b>Three Months Ended</b>		<b>Six Months Ended</b>	
	<b>June 30,</b>		<b>June 30,</b>	
	<b>2023</b>	<b>2022</b>	<b>2023</b>	<b>2022</b>
Net income (loss)	\$ 86,116	\$ (509,321)	\$ (73,205)	\$ (1,492,035)
Other comprehensive loss:				
Shipboard Retirement Plan	64	94	128	2,570
Cash flow hedges:				
Net unrealized loss	(4,577)	(90,503)	(23,052)	(51,199)
Amount realized and reclassified into earnings	2,547	(36,075)	(7,327)	(43,577)
<b>Total other comprehensive loss</b>	<b>(1,966)</b>	<b>(126,484)</b>	<b>(30,251)</b>	<b>(92,206)</b>
Total comprehensive income (loss)	<u>\$ 84,150</u>	<u>\$ (635,805)</u>	<u>\$ (103,456)</u>	<u>\$ (1,584,241)</u>

The accompanying notes are an integral part of these consolidated financial statements.

**Norwegian Cruise Line Holdings Ltd.**  
**Consolidated Balance Sheets**  
**(Unaudited)**  
**(in thousands, except share data)**

	<b>June 30, 2023</b>	<b>December 31, 2022</b>
<b>Assets</b>		
Current assets:		
Cash and cash equivalents	\$ 899,135	\$ 946,987
Accounts receivable, net	219,116	326,272
Inventories	153,850	148,717
Prepaid expenses and other assets	576,478	450,893
Total current assets	<u>1,848,579</u>	<u>1,872,869</u>
Property and equipment, net	15,054,710	14,516,366
Goodwill	98,134	98,134
Trade names	500,525	500,525
Other long-term assets	1,146,264	1,569,800
Total assets	<u>\$ 18,648,212</u>	<u>\$ 18,557,694</u>
<b>Liabilities and shareholders' equity</b>		
Current liabilities:		
Current portion of long-term debt	\$ 1,125,754	\$ 991,128
Accounts payable	148,328	228,742
Accrued expenses and other liabilities	1,198,386	1,318,460
Advance ticket sales	3,345,767	2,516,521
Total current liabilities	<u>5,818,235</u>	<u>5,054,851</u>
Long-term debt	11,994,555	12,630,402
Other long-term liabilities	820,201	803,850
Total liabilities	<u>18,632,991</u>	<u>18,489,103</u>
Commitments and contingencies (Note 10)		
Shareholders' equity:		
Ordinary shares, \$0.001 par value; 980,000,000 shares authorized; 425,155,523 shares issued and outstanding at June 30, 2023 and 421,413,565 shares issued and outstanding at December 31, 2022	425	421
Additional paid-in capital	7,661,646	7,611,564
Accumulated other comprehensive income (loss)	(507,330)	(477,079)
Accumulated deficit	(7,139,520)	(7,066,315)
Total shareholders' equity	<u>15,221</u>	<u>68,591</u>
Total liabilities and shareholders' equity	<u>\$ 18,648,212</u>	<u>\$ 18,557,694</u>

The accompanying notes are an integral part of these consolidated financial statements.

**Norwegian Cruise Line Holdings Ltd.**  
**Consolidated Statements of Cash Flows**  
**(Unaudited)**  
**(in thousands)**

	<b>Six Months Ended</b>	
	<b>June 30,</b>	
	<b>2023</b>	<b>2022</b>
<b>Cash flows from operating activities</b>		
Net loss	\$ (73,205)	\$ (1,492,035)
Adjustments to reconcile net loss to net cash provided by (used in) operating activities:		
Depreciation and amortization expense	425,288	391,320
Loss on derivatives	9,423	47
Loss on extinguishment of debt	2,801	188,433
Provision for bad debts and inventory obsolescence	1,497	2,500
Gain on involuntary conversion of assets	(4,583)	(1,880)
Share-based compensation expense	72,691	62,840
Net foreign currency adjustments on euro-denominated debt	1,822	(12,063)
Changes in operating assets and liabilities:		
Accounts receivable, net	106,709	566,265
Inventories	(5,815)	(36,748)
Prepaid expenses and other assets	321,120	(542,730)
Accounts payable	(72,345)	(127,188)
Accrued expenses and other liabilities	(75,009)	137,225
Advance ticket sales	826,221	755,189
Net cash provided by (used in) operating activities	<u>1,536,615</u>	<u>(108,825)</u>
<b>Cash flows from investing activities</b>		
Additions to property and equipment, net	(974,190)	(326,303)
Proceeds from maturities of short-term investments	—	240,000
Cash paid on settlement of derivatives	(23,379)	—
Other	5,367	5,237
Net cash used in investing activities	<u>(992,202)</u>	<u>(81,066)</u>
<b>Cash flows from financing activities</b>		
Repayments of long-term debt	(2,500,777)	(1,268,888)
Proceeds from long-term debt	2,038,187	2,073,175
Proceeds from employee related plans	2,618	2,557
Net share settlement of restricted share units	(25,223)	(11,991)
Early redemption premium	—	(172,012)
Deferred financing fees	(107,070)	(36,359)
Net cash provided by (used in) financing activities	<u>(592,265)</u>	<u>586,482</u>
Net increase (decrease) in cash and cash equivalents	<u>(47,852)</u>	<u>396,591</u>
Cash and cash equivalents at beginning of period	946,987	1,506,647
Cash and cash equivalents at end of period	<u>\$ 899,135</u>	<u>\$ 1,903,238</u>

The accompanying notes are an integral part of these consolidated financial statements.

**Norwegian Cruise Line Holdings Ltd.**  
**Consolidated Statements of Changes in Shareholders' Equity**  
(Unaudited)  
(in thousands)

Three Months Ended June 30, 2023					
	Ordinary Shares	Additional Paid-in Capital	Accumulated Other Comprehensive Income (Loss)	Accumulated Deficit	Total Shareholders' Equity (Deficit)
<b>Balance, March 31, 2023</b>	\$ 424	\$ 7,631,028	\$ (505,364)	\$ (7,225,636)	\$ (99,548)
Share-based compensation	—	44,536	—	—	44,536
Issuance of shares under employee related plans	1	(1)	—	—	—
Net share settlement of restricted share units	—	(13,917)	—	—	(13,917)
Other comprehensive loss, net	—	—	(1,966)	—	(1,966)
Net income	—	—	—	86,116	86,116
<b>Balance, June 30, 2023</b>	<u>\$ 425</u>	<u>\$ 7,661,646</u>	<u>\$ (507,330)</u>	<u>\$ (7,139,520)</u>	<u>\$ 15,221</u>

Six Months Ended June 30, 2023					
	Ordinary Shares	Additional Paid-in Capital	Accumulated Other Comprehensive Income (Loss)	Accumulated Deficit	Total Shareholders' Equity (Deficit)
<b>Balance, December 31, 2022</b>	\$ 421	\$ 7,611,564	\$ (477,079)	\$ (7,066,315)	\$ 68,591
Share-based compensation	—	72,691	—	—	72,691
Issuance of shares under employee related plans	4	2,614	—	—	2,618
Net share settlement of restricted share units	—	(25,223)	—	—	(25,223)
Other comprehensive loss, net	—	—	(30,251)	—	(30,251)
Net loss	—	—	—	(73,205)	(73,205)
<b>Balance, June 30, 2023</b>	<u>\$ 425</u>	<u>\$ 7,661,646</u>	<u>\$ (507,330)</u>	<u>\$ (7,139,520)</u>	<u>\$ 15,221</u>

The accompanying notes are an integral part of these consolidated financial statements.

**Norwegian Cruise Line Holdings Ltd.**  
**Consolidated Statements of Changes in Shareholders' Equity - Continued**  
**(Unaudited)**  
**(in thousands)**

	<b>Three Months Ended June 30, 2022</b>				
	<b>Ordinary Shares</b>	<b>Additional Paid-in Capital</b>	<b>Accumulated Other Comprehensive Income (Loss)</b>	<b>Accumulated Deficit</b>	<b>Total Shareholders' Equity (Deficit)</b>
<b>Balance, March 31, 2022</b>	\$ 419	\$ 7,537,111	\$ (250,808)	\$ (5,779,120)	\$ 1,507,602
Share-based compensation	—	30,048	—	—	30,048
Net share settlement of restricted share units	—	(30)	—	—	(30)
Other comprehensive loss, net	—	—	(126,484)	—	(126,484)
Net loss	—	—	—	(509,321)	(509,321)
<b>Balance, June 30, 2022</b>	<u>\$ 419</u>	<u>\$ 7,567,129</u>	<u>\$ (377,292)</u>	<u>\$ (6,288,441)</u>	<u>\$ 901,815</u>

  

	<b>Six Months Ended June 30, 2022</b>				
	<b>Ordinary Shares</b>	<b>Additional Paid-in Capital</b>	<b>Accumulated Other Comprehensive Income (Loss)</b>	<b>Accumulated Deficit</b>	<b>Total Shareholders' Equity (Deficit)</b>
<b>Balance, December 31, 2021</b>	\$ 417	\$ 7,513,725	\$ (285,086)	\$ (4,796,406)	\$ 2,432,650
Share-based compensation	—	62,840	—	—	62,840
Issuance of shares under employee related plans	2	2,555	—	—	2,557
Net share settlement of restricted share units	—	(11,991)	—	—	(11,991)
Other comprehensive loss, net	—	—	(92,206)	—	(92,206)
Net loss	—	—	—	(1,492,035)	(1,492,035)
<b>Balance, June 30, 2022</b>	<u>\$ 419</u>	<u>\$ 7,567,129</u>	<u>\$ (377,292)</u>	<u>\$ (6,288,441)</u>	<u>\$ 901,815</u>

The accompanying notes are an integral part of these consolidated financial statements.

**Norwegian Cruise Line Holdings Ltd.**  
**Notes to Consolidated Financial Statements**  
**(Unaudited)**

Unless otherwise indicated or the context otherwise requires, references in this report to (i) the “Company,” “we,” “our” and “us” refer to NCLH (as defined below) and its subsidiaries, (ii) “NCLC” refers to NCL Corporation Ltd., (iii) “NCLH” refers to Norwegian Cruise Line Holdings Ltd., (iv) “Norwegian Cruise Line” or “Norwegian” refers to the Norwegian Cruise Line brand and its predecessors, (v) “Oceania Cruises” refers to the Oceania Cruises brand and (vi) “Regent” refers to the Regent Seven Seas Cruises brand.

References to the “U.S.” are to the United States of America, and “dollar(s)” or “\$” are to U.S. dollars, the “U.K.” are to the United Kingdom and “euro(s)” or “€” are to the official currency of the Eurozone. We refer you to “Item 2. Management’s Discussion and Analysis of Financial Condition and Results of Operations— Terminology” for the capitalized terms used and not otherwise defined throughout these notes to consolidated financial statements.

**1. Description of Business and Organization**

We are a leading global cruise company which operates the Norwegian Cruise Line, Oceania Cruises and Regent Seven Seas Cruises brands. As of June 30, 2023, we had 30 ships with approximately 62,000 Berths and had orders for seven additional ships to be delivered through 2028.

Norwegian Viva was delivered in August 2023. We refer you to Note 13 – “Subsequent Event” for additional information. We have four Prima Class Ships on order with currently scheduled delivery dates from 2025 through 2028. We have one Explorer Class Ship on order for delivery in 2023. We have one Allura Class Ship on order for delivery in 2025. These additions to our fleet will increase our total Berths to approximately 82,000.

**2. Summary of Significant Accounting Policies**

**Liquidity and Management’s Plan**

Due to the impact of COVID-19, in March 2020, the Company implemented a voluntary suspension of all cruise voyages across its three brands. In the third quarter of 2021, we began a phased relaunch of our fleet, which was completed in early May 2022, with all ships now in operation with guests on board. As a result of actions the Company undertook in response to the impacts of the COVID-19 pandemic, we have a substantial debt balance and we require a significant amount of our liquidity and cash flows to service our debt.

The estimation of our future cash flow projections includes numerous assumptions that are subject to various risks and uncertainties. Our principal assumptions for future cash flow projections include:

- Expected normalized Occupancy levels, which are expected to be between approximately 105% to 106% annually;
- Expected sustained increase in revenue per Passenger Cruise Day through a combination of both passenger ticket and onboard revenue as compared to 2019;
- Expected timing of cash collections for bookings;
- Expected fuel prices based on forward curves; and
- Expected impact of inflation on cost items other than fuel.

Our projected liquidity requirements also reflect our principal assumptions surrounding ongoing operating costs, as well as liquidity requirements for financing costs and necessary capital expenditures and our expectation that holders of the 2024 Exchangeable Notes will exchange their 2024 Exchangeable Notes for shares. In addition, as a result of lingering impacts associated with the COVID-19 pandemic and other global events, such as Russia’s ongoing invasion of Ukraine

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and actions taken by the United States and other governments in response to the invasion, the global economy, including the financial and credit markets, has experienced significant volatility and disruptions, including increases in inflation rates, fuel prices, and interest rates. These conditions have resulted, and may continue to result, in increased expenses and may also impact travel or consumer discretionary spending. We believe the ongoing effects of the foregoing factors and events on our operations and global bookings, including our substantial debt balance, have had, and will continue to have, a significant impact on our financial results and liquidity.

We cannot make assurances that our assumptions used to estimate our liquidity requirements will not change materially due to the dynamic nature of the current economic landscape. We have made reasonable estimates and judgments of the impact of these events within our financial statements; however, there may be material changes to those estimates in future periods. We have taken actions to improve our liquidity, including completing various capital market and financing transactions and making capital expenditure and operating expense reductions, and we expect to continue to pursue further opportunities to improve our liquidity.

Based on these actions and assumptions as discussed above, and considering our liquidity of approximately \$2.4 billion, including cash and cash equivalents of \$899.1 million and borrowings available under our \$875 million undrawn Revolving Loan Facility and \$650 million undrawn commitment less related fees (see Note 7 – “Long-Term Debt”) as of June 30, 2023, we have concluded that we have sufficient liquidity to satisfy our obligations for at least the next twelve months. In addition, we have \$300 million of backstop committed financing for amounts outstanding under the Senior Secured Credit Facility, which is available between October 4, 2023 and January 2, 2024 (see Note 7 – “Long-Term Debt”).

**Basis of Presentation**

The accompanying consolidated financial statements are unaudited and, in our opinion, contain all normal recurring adjustments necessary for a fair statement of the results for the periods presented.

Our operations are seasonal and results for interim periods are not necessarily indicative of the results for the entire fiscal year. Historically, demand for cruises has been strongest during the Northern Hemisphere’s summer months; however, our cruise voyages were completely suspended from March 2020 until July 2021 due to the COVID-19 pandemic and our resumption of cruise voyages was phased in gradually through May 2022. The interim consolidated financial statements should be read in conjunction with the audited consolidated financial statements for the year ended December 31, 2022, which are included in our most recent Annual Report on Form 10-K filed with the SEC on February 28, 2023.



### Earnings (Loss) Per Share

Basic earnings (loss) per share is computed by dividing net income (loss) by the basic weighted-average number of shares outstanding during each period. Diluted earnings (loss) per share is computed by dividing net income (loss) and assumed conversion of exchangeable notes by diluted weighted-average shares outstanding.

A reconciliation between basic and diluted earnings (loss) per share was as follows (in thousands, except share and per share data):

	Three Months Ended June 30,		Six Months Ended June 30,	
	2023	2022	2023	2022
Net income (loss) - Basic EPS	\$ 86,116	\$ (509,321)	\$ (73,205)	\$ (1,492,035)
Effect of dilutive securities - exchangeable notes	4,603	—	—	—
Net income (loss) and assumed conversion of exchangeable notes - Diluted EPS	\$ 90,719	\$ (509,321)	\$ (73,205)	\$ (1,492,035)
Basic weighted-average shares outstanding	424,178,775	419,107,330	423,421,203	418,424,753
Dilutive effect of share awards	2,758,715	—	—	—
Dilutive effect of exchangeable notes	34,137,750	—	—	—
Diluted weighted-average shares outstanding	461,075,240	419,107,330	423,421,203	418,424,753
Basic EPS	\$ 0.20	\$ (1.22)	\$ (0.17)	\$ (3.57)
Diluted EPS	\$ 0.20	\$ (1.22)	\$ (0.17)	\$ (3.57)

Each exchangeable note (see Note 7 – “Long-Term Debt”) is individually evaluated for its dilutive or anti-dilutive impact on EPS. Only the interest expense and weighted average shares for exchangeable notes which are dilutive are included in the effect of dilutive securities above. During the three months ended June 30, 2023, only the 2027 1.125% Exchangeable Notes were dilutive. For the three months ended June 30, 2023 and 2022, a total of 55.7 million and 97.7 million shares, respectively, and for the six months ended June 30, 2023 and 2022, a total of 89.6 million and 92.1 million shares, respectively, have been excluded from diluted weighted-average shares outstanding because the effect of including them would have been anti-dilutive.

### Foreign Currency

The majority of our transactions are settled in U.S. dollars. We remeasure assets and liabilities denominated in foreign currencies at exchange rates in effect at the balance sheet date. The resulting gains or losses are recognized in our consolidated statements of operations within other income (expense), net. We recognized a loss of \$11.1 million and a gain of \$36.4 million for the three months ended June 30, 2023 and 2022, respectively, and a loss of \$19.8 million and a gain of \$44.7 million for the six months ended June 30, 2023 and 2022, respectively, related to remeasurement of assets and liabilities denominated in foreign currencies. Remeasurements of foreign currency related to operating activities are recognized within changes in operating assets and liabilities in the consolidated statement of cash flows.

### Depreciation and Amortization Expense

The amortization of deferred financing fees is included in depreciation and amortization expense in the consolidated statements of cash flows; however, for purposes of the consolidated statements of operations they are included in interest expense, net.

### Accounts Receivable, Net

Accounts receivable, net included \$31.5 million and \$118.4 million due from credit card processors as of June 30, 2023 and December 31, 2022, respectively.

### 3. Revenue Recognition

#### *Disaggregation of Revenue*

Revenue and cash flows are affected by economic factors in various geographical regions. Revenues by destination were as follows (in thousands):

	Three Months Ended June 30,		Six Months Ended June 30,	
	2023	2022	2023	2022
North America	\$ 1,221,177	\$ 673,503	\$ 2,582,230	\$ 1,160,938
Europe	880,129	499,917	961,447	524,714
Asia-Pacific	89,890	13,362	295,552	21,654
Other	14,296	399	188,202	1,815
Total revenue	\$ 2,205,492	\$ 1,187,181	\$ 4,027,431	\$ 1,709,121

North America includes the U.S., the Caribbean, Canada and Mexico. Europe includes the Baltic region, Canary Islands and Mediterranean. Asia-Pacific includes Australia, New Zealand and Asia. Other includes all other international territories.

#### *Segment Reporting*

We have concluded that our business has a single reportable segment. Each brand, Norwegian, Oceania Cruises and Regent, constitutes a business for which discrete financial information is available and management regularly reviews the brand level operating results and, therefore, each brand is considered an operating segment. Our operating segments have similar economic and qualitative characteristics, including similar long-term margins, products and services; therefore, we aggregate all of the operating segments into one reportable segment.

Although we sell cruises on an international basis, our passenger ticket revenue is primarily attributed to U.S.-sourced guests who make reservations through the U.S. Revenue attributable to U.S.-sourced guests has approximated 83-87% of total revenue over the preceding three fiscal years. No other individual country's revenues exceed 10% in any given period.

#### *Contract Balances*

Receivables from customers are included within accounts receivable, net. As of June 30, 2023 and December 31, 2022, our receivables from customers were \$91.6 million and \$94.2 million, respectively, primarily related to in-transit credit card receivables.

Our standard payment and cancellation penalties apply for all sailings after March 31, 2023. Future cruise credits that have been issued as face value reimbursement for cancelled bookings due to COVID-19 are approximately \$81.2 million. The future cruise credits are not contracts, and therefore, guests who elected this option are excluded from our contract liability balance; however, the credit for the original amount paid is included in advance ticket sales.

Our contract liabilities are included within advance ticket sales. As of June 30, 2023 and December 31, 2022, our contract liabilities were \$2.5 billion and \$1.7 billion, respectively. Of the amounts included within contract liabilities as of June 30, 2023, approximately 40% were refundable in accordance with our cancellation policies. Of the deposits included within advance ticket sales, the majority are refundable in accordance with our cancellation policies and it is uncertain to what extent guests may request refunds. Refunds payable to guests are included in accounts payable. For the six months ended June 30, 2023, \$1.7 billion of revenue recognized was included in the contract liability balance at the beginning of the period.

#### 4. Leases

Operating lease balances were as follows (in thousands):

	Balance Sheet location	June 30, 2023	December 31, 2022
<b>Operating leases</b>			
Right-of-use assets	Other long-term assets	\$ 715,537	\$ 707,086
Current operating lease liabilities	Accrued expenses and other liabilities	40,149	39,689
Non-current operating lease liabilities	Other long-term liabilities	597,056	588,064

#### 5. Accumulated Other Comprehensive Income (Loss)

Accumulated other comprehensive income (loss) for the six months ended June 30, 2023 was as follows (in thousands):

	Six Months Ended June 30, 2023		
	Accumulated Other Comprehensive Income (Loss)	Change Related to Cash Flow Hedges	Change Related to Shipboard Retirement Plan
Accumulated other comprehensive income (loss) at beginning of period	\$ (477,079)	\$ (480,578)	\$ 3,499
Current period other comprehensive loss before reclassifications	(23,052)	(23,052)	—
Amounts reclassified into earnings	(7,199)	(7,327)(1)	128 (2)
Accumulated other comprehensive income (loss) at end of period	<u>\$ (507,330)</u>	<u>\$ (510,957)(3)</u>	<u>\$ 3,627</u>

Accumulated other comprehensive income (loss) for the six months ended June 30, 2022 was as follows (in thousands):

	Six Months Ended June 30, 2022		
	Accumulated Other Comprehensive Income (Loss)	Change Related to Cash Flow Hedges	Change Related to Shipboard Retirement Plan
Accumulated other comprehensive income (loss) at beginning of period	\$ (285,086)	\$ (279,696)	\$ (5,390)
Current period other comprehensive income (loss) before reclassifications	(48,818)	(51,199)	2,381
Amounts reclassified into earnings	(43,388)	(43,577)(1)	189 (2)
Accumulated other comprehensive income (loss) at end of period	<u>\$ (377,292)</u>	<u>\$ (374,472)</u>	<u>\$ (2,820)</u>

- (1) We refer you to Note 8 – “Fair Value Measurements and Derivatives” for the affected line items in the consolidated statements of operations.
- (2) Amortization of prior-service cost and actuarial loss reclassified to other income (expense), net.
- (3) Includes \$24.0 million of loss expected to be reclassified into earnings in the next 12 months.

## **6. Property and Equipment, Net**

Property and equipment, net increased \$538.3 million for the six months ended June 30, 2023 primarily due to the delivery of Oceania Cruises' Vista. We determine the weighted average useful lives of our ships based primarily on our estimates of the useful lives of the ships' major component systems on the date of acquisition, such as cabins, main diesels, main electric, superstructure and hull, and their related proportional weighting to the ship as a whole. We have assessed the weighted-average useful life of the components of Oceania Cruises' Vista and assigned a useful life and residual value to the Allura Class Ships consistent with our accounting policy. The useful life and residual value consider the historical useful lives of similar assets, manufacturer recommended lives, planned maintenance programs, anticipated changes in technological conditions and the related proportional weighting of the major components of the Allura Class Ships.

## **7. Long-Term Debt**

In February 2023, NCLC issued \$600.0 million aggregate principal amount of 8.375% senior secured notes due 2028 (the "2028 Senior Secured Notes"). The 2028 Senior Secured Notes and related guarantees are secured by first-priority interests in, among other things and subject to certain agreed security principles, thirteen of our vessels that also secure the Senior Secured Credit Facility. The 2028 Senior Secured Notes are guaranteed by our subsidiaries that own the vessels that secure the 2028 Senior Secured Notes. NCLC may redeem the 2028 Senior Secured Notes at its option, in whole or in part, at any time and from time to time prior to February 1, 2025, at a "make-whole" redemption price, plus accrued and unpaid interest and additional amounts, if any, to, but excluding, the redemption date. NCLC may redeem the 2028 Senior Secured Notes at its option, in whole or in part, at any time and from time to time on or after February 1, 2025, at the redemption prices set forth in the indenture governing the 2028 Senior Secured Notes plus accrued and unpaid interest and additional amounts, if any, to, but excluding, the redemption date. At any time and from time to time prior to February 1, 2025, NCLC may choose to redeem up to 40% of the aggregate principal amount of the 2028 Senior Secured Notes with the net proceeds of certain equity offerings, subject to certain restrictions, at a redemption price equal to 108.375% of the principal amount of the 2028 Senior Secured Notes redeemed plus accrued and unpaid interest to, but excluding, the redemption date, so long as at least 60% of the aggregate principal amount of the 2028 Senior Secured Notes issued remains outstanding following such redemption. The 2028 Senior Secured Notes pay interest at 8.375% per annum, semiannually on February 1 and August 1 of each year, to holders of record at the close of business on the immediately preceding January 15 and July 15, respectively.

The proceeds from the 2028 Senior Secured Notes were used to repay the loans outstanding under our Term Loan A Facility that otherwise would have become due in January 2024, including to pay any accrued and unpaid interest thereon, as well as related premiums, fees and expenses. As a result, all of the remaining term loans outstanding under our Term Loan A Facility will mature in January 2025, subject to, if a one-time minimum liquidity threshold is not satisfied on September 16, 2024, a springing maturity date of September 16, 2024.

The indenture governing the 2028 Senior Secured Notes includes requirements that, among other things and subject to a number of qualifications and exceptions, restrict the ability of NCLC and its restricted subsidiaries, as applicable, to (i) incur or guarantee additional indebtedness; (ii) pay dividends or distributions on, or redeem or repurchase, equity interests and make other restricted payments; (iii) make investments; (iv) consummate certain asset sales; (v) engage in certain transactions with affiliates; (vi) grant or assume certain liens; and (vii) consolidate, merge or transfer all or substantially all of their assets.

In July 2022, NCLC entered into a \$1 billion amended and restated commitment letter (the "commitment letter") with the purchasers named therein (collectively, the "Commitment Parties"), which superseded a \$1 billion commitment letter previously executed in November 2021. The commitment letter, among other things, extended the commitments thereunder through March 31, 2023. In February 2023, the Commitment Parties further amended the commitment letter (the "amended commitment letter") to extend certain commitments thereunder through February 2024, with an option for NCLC to further extend such commitments through February 2025 at its election. Pursuant to the amended commitment letter, the Commitment Parties have agreed to purchase from NCLC an aggregate principal amount of up to \$650 million of senior secured notes at NCLC's option. NCLC has the option to make up to two draws, consisting of (i) \$250 million of senior secured notes due 2028 that, if issued, will accrue interest at a rate of 11.00% per annum subject

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to a 1.00% increase or decrease based on certain market conditions at the time drawn (the “Class B Notes”) and (ii) \$400 million aggregate principal amount of 8.00% senior secured notes due five years after the issue date (the “Backstop Notes”). The Class B Notes and the Backstop Notes are subject to a quarterly commitment fee of 0.75% for so long as the commitments with respect to Class B Notes or the Backstop Notes, as applicable, are outstanding, which fee will be increased to 1.00% if NCLC extends the commitments through February 2025 at its election. If drawn, the Class B Notes will be subject to an issue fee of 2.00%, and the Backstop Notes will be subject to a quarterly duration fee of 1.50%, as well as an issue fee of 3.00%.

In February 2023, in connection with the execution of the amended commitment letter, NCLC issued \$250 million aggregate principal amount of 9.75% senior secured notes due 2028 (the “Class A Notes” and, collectively with the Class B Notes and the Backstop Notes, the “Notes”), subject to an issue fee of 2.00%. NCLC used the net proceeds from the Class A Notes for general corporate purposes. NCLC may redeem the Class A Notes at its option, in whole or in part, at any time and from time to time prior to February 22, 2025, at a “make-whole” redemption price, plus accrued and unpaid interest and additional amounts, if any, to, but excluding, the redemption date. NCLC may redeem the Class A Notes at its option, in whole or in part, at any time and from time to time on or after February 22, 2025, at the redemption prices set forth in the indenture governing the Class A Notes, plus accrued and unpaid interest and additional amounts, if any, to, but excluding, the redemption date. The Class A Notes pay interest at 9.75% per annum, quarterly on February 15, May 15, August 15 and November 15 of each year, to holders of record at the close of business on the immediately preceding February 1, May 1, August 1 and November 1, respectively.

The Class A Notes are, and the Class B Notes and the Backstop Notes, if issued, will be, secured by first-priority interests in, among other things and subject to certain agreed security principles, shares of capital stock in certain guarantors, our material intellectual property and two islands that we use in the operations of our cruise business. The Class A Notes are, and the Class B Notes and the Backstop Notes, if issued, will be, guaranteed by our subsidiaries that own the property that secures the Notes as well as certain additional subsidiaries whose assets do not secure the Notes.

The indenture governing the Class A Notes includes requirements that, among other things and subject to a number of qualifications and exceptions, restrict the ability of NCLC and its restricted subsidiaries, as applicable, to (i) incur or guarantee additional indebtedness; (ii) pay dividends or distributions on, or redeem or repurchase, equity interests and make other restricted payments; (iii) make investments; (iv) consummate certain asset sales; (v) engage in certain transactions with affiliates; (vi) grant or assume certain liens; and (vii) consolidate, merge or transfer all or substantially all of their assets.

In February 2023, NCLC entered into a Backstop Agreement with Morgan Stanley & Co. LLC (“MS”), pursuant to which MS has agreed to provide backstop committed financing to refinance and/or repay in whole or in part amounts outstanding under the Senior Secured Credit Facility. Pursuant to the Backstop Agreement, we may, at our sole option, issue and sell to MS (subject to the satisfaction of certain conditions) five-year senior unsecured notes up to an aggregate principal amount sufficient to generate gross proceeds of \$300 million at any time between October 4, 2023 and January 2, 2024.

In April 2023, \$82.5 million in aggregate principal amount of the Revolving Loan Facility due January 2024 was assigned to a new lender, and the maturity date was extended by one year to January 2025. The terms of the assigned principal are the same as the existing lenders who extended commitments in December 2022 under Amendment No. 4 to the Senior Secured Credit Facility.

In April 2023, we took delivery of Oceania Cruises’ Vista. We had export credit financing in place for 80% of the contract price. The associated \$632.6 million term loan bears interest at a fixed rate of 3.64% with a maturity date of April 30, 2035. Principal and interest payments are payable semiannually.

In May and June 2023, certain of NCLC’s export-credit backed facilities were amended to replace LIBOR with Term SOFR. In connection with these amendments, the Company adopted Accounting Standards Update (“ASU”) No. 2020-04, *Reference Rate Reform (Topic 848): Facilitation of the Effects of Reference Rate Reform on Financial Reporting* (“ASU 2020-04”), which provided guidance to alleviate the burden in accounting for reference rate reform by allowing certain expedients and exceptions in applying GAAP to contracts, hedging relationships and other transactions impacted

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by reference rate reform. The provisions apply only to those transactions that reference LIBOR or another reference rate expected to be discontinued due to reference rate reform. As of June 30, 2023, we have applied certain optional expedients in our accounting for these amendments and the impact was immaterial.

**Exchangeable Notes**

The following is a summary of NCLC's exchangeable notes as of June 30, 2023 (in thousands):

	Principal Amount	Unamortized Deferred Financing Fees	Net Carrying Amount	Fair Value	
				Amount	Leveling
2024 Exchangeable Notes (1)	\$ 146,601	\$ (1,329)	\$ 145,272	\$ 242,046	Level 2
2025 Exchangeable Notes	450,000	(5,264)	444,736	616,397	Level 2
2027 1.125% Exchangeable Notes	1,150,000	(20,777)	1,129,223	1,059,518	Level 2
2027 2.5% Exchangeable Notes	473,175	(9,077)	464,098	450,458	Level 2

(1) Classified within current portion of long-term debt as of June 30, 2023. We expect that the holders of the 2024 Exchangeable Notes will exchange their 2024 Exchangeable Notes for shares.

The following is a summary of NCLC's exchangeable notes as of December 31, 2022 (in thousands):

	Principal Amount	Unamortized Deferred Financing Fees	Net Carrying Amount	Fair Value	
				Amount	Leveling
2024 Exchangeable Notes	\$ 146,601	\$ (1,993)	\$ 144,608	\$ 161,840	Level 2
2025 Exchangeable Notes	450,000	(6,312)	443,688	433,580	Level 2
2027 1.125% Exchangeable Notes	1,150,000	(23,457)	1,126,543	763,830	Level 2
2027 2.5% Exchangeable Notes	473,175	(10,184)	462,991	331,743	Level 2

The following provides a summary of the interest expense of NCLC's exchangeable notes (in thousands):

	Three Months Ended June 30,		Six Months Ended June 30,	
	2023	2022	2023	2022
	Coupon interest	\$ 14,437	\$ 13,924	\$ 28,875
Amortization of deferred financing fees	2,856	2,865	5,499	5,140
Total	\$ 17,293	\$ 16,789	\$ 34,374	\$ 32,056

As of June 30, 2023, the effective interest rate is 7.04%, 5.97%, 1.64% and 3.06% for the 2024 Exchangeable Notes, 2025 Exchangeable Notes, 2027 1.125% Exchangeable Notes and 2027 2.5% Exchangeable Notes, respectively.

## Debt Repayments

The following are scheduled principal repayments on our long-term debt including exchangeable notes which can be settled in shares and finance lease obligations as of June 30, 2023 (in thousands):

Year	Amount
Remainder of 2023	\$ 475,986
2024	1,712,045
2025	1,899,496
2026	2,106,171
2027	3,158,887
2028	1,815,376
Thereafter	2,227,032
Total	\$ 13,394,993

## Debt Covenants

As of June 30, 2023, we were in compliance with all of our debt covenants. If we do not continue to remain in compliance with our covenants, we would have to seek additional amendments to or waivers of our covenants. However, no assurances can be made that such amendments or waivers would be approved by our lenders. Generally, if an event of default under any debt agreement occurs, then pursuant to cross default and/or cross acceleration clauses, substantially all of our outstanding debt and derivative contract payables could become due, and all debt and derivative contracts could be terminated, which would have a material adverse impact on our operations and liquidity.

## 8. Fair Value Measurements and Derivatives

Fair value is defined as the price at which an orderly transaction to sell an asset or to transfer a liability would take place between market participants at the measurement date under current market conditions (that is, an exit price at the measurement date from the perspective of a market participant that holds the asset or owes the liability).

### Fair Value Hierarchy

The following hierarchy for inputs used in measuring fair value should maximize the use of observable inputs and minimize the use of unobservable inputs by requiring that the most observable inputs be used when available:

- Level 1 Quoted prices in active markets for identical assets or liabilities that are accessible at the measurement dates.
- Level 2 Significant other observable inputs that are used by market participants in pricing the asset or liability based on market data obtained from independent sources.
- Level 3 Significant unobservable inputs we believe market participants would use in pricing the asset or liability based on the best information available.

### Derivatives

We are exposed to market risk attributable to changes in interest rates, foreign currency exchange rates and fuel prices. We attempt to minimize these risks through a combination of our normal operating and financing activities and through the use of derivatives. We assess whether derivatives used in hedging transactions are “highly effective” in offsetting changes in the cash flow of our hedged forecasted transactions. We use critical terms match or regression analysis for hedge relationships and high effectiveness is achieved when a statistically valid relationship reflects a high degree of offset and correlation between the fair values of the derivative and the hedged forecasted transaction. Cash flows from the derivatives are classified in the same category as the cash flows from the underlying hedged transaction. If it is determined that the hedged forecasted transaction is no longer probable of occurring, then the amount recognized in accumulated other comprehensive income (loss) is released to earnings. There are no amounts excluded from the

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assessment of hedge effectiveness, and there are no credit-risk-related contingent features in our derivative agreements. We monitor concentrations of credit risk associated with financial and other institutions with which we conduct significant business. Credit risk, including but not limited to counterparty non-performance under derivatives, is not considered significant, as we primarily conduct business with large, well-established financial institutions with which we have established relationships, and which have credit risks acceptable to us, or the credit risk is spread out among many creditors. We do not anticipate non-performance by any of our significant counterparties.

As of June 30, 2023, we had fuel swaps, which are used to mitigate the financial impact of volatility of fuel prices pertaining to approximately 481 thousand metric tons of our projected fuel purchases, maturing through December 31, 2024.

As of June 30, 2023, we had fuel swaps pertaining to approximately 11 thousand metric tons of our projected fuel purchases which were not designated as cash flow hedges maturing through December 31, 2023.

As of June 30, 2023, we had foreign currency forward contracts which are used to mitigate the financial impact of volatility in foreign currency exchange rates related to our ship construction contracts denominated in euros. The notional amount of our hedged foreign currency forward contracts was €1.2 billion, or \$1.3 billion based on the euro/U.S. dollar exchange rate as of June 30, 2023.

The derivatives measured at fair value and the respective location in the consolidated balance sheets include the following (in thousands):

Balance Sheet Location	Assets		Liabilities	
	June 30, 2023	December 31, 2022	June 30, 2023	December 31, 2022
<b>Derivative Contracts Designated as Hedging Instruments</b>				
Fuel contracts				
Prepaid expenses and other assets	\$ 11,535	\$ 53,224	\$ —	\$ 7,137
Other long-term assets	—	3,869	—	655
Accrued expenses and other liabilities	5,695	—	19,504	—
Other long-term liabilities	385	—	4,323	—
Foreign currency contracts				
Prepaid expenses and other assets	4,739	3,617	—	—
Accrued expenses and other liabilities	5,259	4,386	139,871	177,746
Total derivatives designated as hedging instruments	\$ 27,613	\$ 65,096	\$ 163,698	\$ 185,538
<b>Derivative Contracts Not Designated as Hedging Instruments</b>				
Fuel contracts				
Prepaid expenses and other assets	\$ —	\$ 84	\$ —	\$ 348
Other long-term assets	—	—	—	191
Accrued expenses and other liabilities	—	—	1,175	—
Total derivatives not designated as hedging instruments	\$ —	\$ 84	\$ 1,175	\$ 539
Total derivatives	\$ 27,613	\$ 65,180	\$ 164,873	\$ 186,077

The fair values of swap and forward contracts are determined based on inputs that are readily available in public markets or can be derived from information available in publicly quoted markets. The Company determines the value of options and collars utilizing an option pricing model based on inputs that are either readily available in public markets or can be derived from information available in publicly quoted markets. The option pricing model used by the Company is an industry standard model for valuing options and is used by the broker/dealer community. The inputs to this option pricing model are the option strike price, underlying price, risk-free rate of interest, time to expiration, and volatility. The fair value of option contracts considers both the intrinsic value and any remaining time value associated with those derivatives that have not yet settled. The Company also considers counterparty credit risk and its own credit risk in its determination of all estimated fair values.

Our derivatives and financial instruments were categorized as Level 2 in the fair value hierarchy, and we had no derivatives or financial instruments categorized as Level 1 or Level 3. Our derivative contracts include rights of offset



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with our counterparties. We have elected to net certain assets and liabilities within counterparties when the rights of offset exist. We are not required to post cash collateral related to our derivative instruments.

The following table discloses the gross and net amounts recognized within assets and liabilities (in thousands):

	Gross Amounts	Gross Amounts Offset	Total Net Amounts	Gross Amounts Not Offset	Net Amounts
<b>June 30, 2023</b>					
Assets	\$ 16,274	\$ —	\$ 16,274	\$ (4,739)	\$ 11,535
Liabilities	164,873	(11,339)	153,534	(108,668)	44,866
<b>December 31, 2022</b>					
Assets	\$ 60,794	\$ (8,331)	\$ 52,463	\$ (3,617)	\$ 48,846
Liabilities	177,746	(4,386)	173,360	(146,381)	26,979

The effects of cash flow hedge accounting on accumulated other comprehensive income (loss) were as follows (in thousands):

Derivatives	Amount of Gain (Loss) Recognized in Other Comprehensive Loss		Location of Gain (Loss) Reclassified from Accumulated Other Comprehensive Income (Loss) into Income (Expense)	Amount of Gain (Loss) Reclassified from Accumulated Other Comprehensive Income (Loss) into Income (Expense)	
	Three Months Ended	Three Months Ended		Three Months Ended	Three Months Ended
	June 30, 2023	June 30, 2022		June 30, 2023	June 30, 2022
Fuel contracts	\$ (12,055)	\$ 52,249	Fuel	\$ 572	\$ 37,342
Fuel contracts	—	—	Other income (expense), net	(306)	—
Foreign currency contracts	7,478	(142,752)	Depreciation and amortization	(2,813)	(1,267)
Total gain (loss) recognized in other comprehensive loss	\$ (4,577)	\$ (90,503)		\$ (2,547)	\$ 36,075
Derivatives	Amount of Gain (Loss) Recognized in Other Comprehensive Loss		Location of Gain (Loss) Reclassified from Accumulated Other Comprehensive Income (Loss) into Income (Expense)	Amount of Gain (Loss) Reclassified from Accumulated Other Comprehensive Income (Loss) into Income (Expense)	
	Six Months Ended	Six Months Ended		Six Months Ended	Six Months Ended
	June 30, 2023	June 30, 2022		June 30, 2023	June 30, 2022
Fuel contracts	\$ (41,070)	\$ 144,732	Fuel	\$ 13,169	\$ 46,151
Fuel contracts	—	—	Other income (expense), net	(343)	—
Foreign currency contracts	18,018	(195,931)	Depreciation and amortization	(5,499)	(2,534)
Interest rate contracts	—	—	Interest expense, net	—	(40)
Total gain (loss) recognized in other comprehensive loss	\$ (23,052)	\$ (51,199)		\$ 7,327	\$ 43,577

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The effects of cash flow hedge accounting on the consolidated statements of operations include the following (in thousands):

	Three Months Ended June 30, 2023			Three Months Ended June 30, 2022		
	Fuel	Depreciation and Amortization	Other Income (Expense), net	Fuel	Depreciation and Amortization	Interest Expense, net
Total amounts of income and expense line items presented in the consolidated statements of operations in which the effects of cash flow hedges are recorded	\$ 164,242	\$ 197,115	\$ (8,043)	\$ 181,189	\$ 181,587	\$ 144,377
Amount of gain (loss) reclassified from accumulated other comprehensive income (loss) into income (expense)						
Fuel contracts	572	—	—	37,342	—	—
Foreign currency contracts	—	(2,813)	—	—	(1,267)	—
Amount of gain (loss) reclassified from accumulated other comprehensive income (loss) into income (expense) as a result that a forecasted transaction is no longer probable of occurring						
Fuel contracts	—	—	(306)	—	—	—
	Six Months Ended June 30, 2023			Six Months Ended June 30, 2022		
	Fuel	Depreciation and Amortization	Other Income (Expense), net	Fuel	Depreciation and Amortization	Interest Expense, net
Total amounts of income and expense line items presented in the consolidated statements of operations in which the effects of cash flow hedges are recorded	\$ 359,110	\$ 391,905	\$ (16,998)	\$ 316,698	\$ 360,663	\$ 472,062
Amount of gain (loss) reclassified from accumulated other comprehensive income (loss) into income (expense)						
Fuel contracts	13,169	—	—	46,151	—	—
Foreign currency contracts	—	(5,499)	—	—	(2,534)	—
Interest rate contracts	—	—	—	—	—	(40)
Amount of gain (loss) reclassified from accumulated other comprehensive income (loss) into income (expense) as a result that a forecasted transaction is no longer probable of occurring						
Fuel contracts	—	—	(343)	—	—	—

The effects of derivatives not designated as hedging instruments on the consolidated statements of operations include the following (in thousands):

	Location of Gain (Loss)	Amount of Gain (Loss) Recognized in Income			
		Three Months Ended June 30,		Six Months Ended June 30,	
		2023	2022	2023	2022
Derivatives not designated as hedging instruments					
Fuel contracts	Other income (expense), net	\$ (251)	\$ 4,335	\$ (847)	\$ 34,078
Foreign currency contracts	Other income (expense), net	(1,315)	(11,856)	(1,528)	(11,856)

## Long-Term Debt

As of June 30, 2023 and December 31, 2022, the fair value of our long-term debt, including the current portion, was \$12.2 billion and \$11.9 billion, respectively, which was \$1.2 billion and \$2.0 billion lower, respectively, than the carrying values, excluding deferred financing costs. The difference between the fair value and carrying value of our long-term debt is due to our fixed and variable rate debt obligations carrying interest rates that are above or below market rates at the measurement dates. The fair value of our long-term revolving and term loan facilities was calculated based on estimated rates for the same or similar instruments with similar terms and remaining maturities. The fair value of our exchangeable notes considers observable risk-free rates; credit spreads of the same or similar instruments; and share prices, tenors, and historical and implied volatilities which are sourced from observable market data. The inputs are considered to be Level 2 in the fair value hierarchy. Market risk associated with our long-term variable rate debt is the potential increase in interest expense from an increase in interest rates or from an increase in share values.

## Other

The carrying amounts reported in the consolidated balance sheets of all other financial assets and liabilities approximate fair value.

## 9. Employee Benefits and Compensation Plans

In January 2013, NCLH adopted the 2013 Performance Incentive Plan, which provided for the issuance of up to 15,035,106 of NCLH's ordinary shares pursuant to awards granted under the plan. In May 2016, May 2021 and June 2022, the plan was amended and restated (the "Restated 2013 Plan") pursuant to approval from the Board of Directors and NCLH's shareholders. Among other things, under the Restated 2013 Plan, the number of NCLH's ordinary shares that could have been delivered pursuant to all awards granted under the plan was increased to a maximum aggregate limit of 39,375,106 shares. In June 2023, NCLH's shareholders approved a further amendment and restatement of the Restated 2013 Plan to increase the number of NCLH ordinary shares that may be delivered by 2,633,900, resulting in an increase in the maximum aggregate limit to 42,009,006 shares.

### Restricted Share Unit Awards

In March 2023, NCLH granted 5.8 million time-based restricted share unit awards to our employees, which primarily vest in substantially equal installments over three years. Additionally, in March 2023, NCLH granted 0.8 million performance-based restricted share units to certain members of our management team, which vest upon the achievement of certain pre-established performance targets established through 2025 and the satisfaction of an additional time-based vesting requirement that generally requires continued employment through March 1, 2026.

The following is a summary of restricted share unit activity for the six months ended June 30, 2023:

	Number of Time-Based Awards	Weighted- Average Grant Date Fair Value	Number of Performance- Based Awards	Weighted- Average Grant Date Fair Value	Number of Market- Based Awards	Weighted- Average Grant Date Fair Value
Non-vested as of January 1, 2023	6,980,707	\$ 22.83	2,749,939	\$ 26.30	50,000	\$ 59.43
Granted	5,933,520	15.05	919,890	14.87	—	—
Vested	(3,339,307)	24.66	(1,363,469)	22.14	—	—
Forfeited or expired	(201,540)	18.85	—	—	(50,000)	59.43
Non-vested as of June 30, 2023	<u>9,373,380</u>	17.34	<u>2,306,360</u>	24.20	—	—

## Share Option Awards

The following table sets forth a summary of option activity under NCLH's Restated 2013 Plan for the period presented:

	Number of Share Option Awards			Weighted-Average Exercise Price			Weighted-Average Contractual Term (years)	Aggregate Intrinsic Value (in thousands)
	Time-Based Awards	Performance-Based Awards	Market-Based Awards	Time-Based Awards	Performance-Based Awards	Market-Based Awards		
Outstanding as of January 1, 2023	4,198,595	114,583	208,333	\$ 51.92	\$ 59.43	\$ 59.43	2.29	\$ —
Forfeited and cancelled	(587,114)	—	(208,333)	45.11	—	59.43		
Outstanding as of June 30, 2023	<u>3,611,481</u>	<u>114,583</u>	<u>—</u>	53.03	59.43	—	1.77	—

The compensation expense recognized for share-based compensation for the periods presented include the following (in thousands):

	Three Months Ended		Six Months Ended	
	June 30,		June 30,	
	2023	2022	2023	2022
Payroll and related expense	\$ 4,876	\$ 5,732	\$ 9,333	\$ 11,936
Marketing, general and administrative expense	39,660	24,316	63,358	50,904
Total share-based compensation expense	<u>\$ 44,536</u>	<u>\$ 30,048</u>	<u>\$ 72,691</u>	<u>\$ 62,840</u>

## 10. Commitments and Contingencies

### Ship Construction Contracts

For the Norwegian brand, the second Prima Class Ship, Norwegian Viva, at approximately 143,500 Gross Tons and 3,100 Berths, was delivered in August 2023. We refer you to Note 13 – “Subsequent Event” for additional information. For the Norwegian brand, we have four Prima Class Ships on order, each ranging from approximately 156,300 to 169,000 Gross Tons with 3,450 or more Berths, with currently scheduled delivery dates from 2025 through 2028. For the Regent brand, we have an order for one Explorer Class Ship to be delivered in 2023, which will be approximately 55,000 Gross Tons and 750 Berths. For the Oceania Cruises brand, we have an order for one additional Allura Class Ship to be delivered in 2025, which will be approximately 67,000 Gross Tons and 1,200 Berths. The impacts of COVID-19 on the shipyards where our ships are under construction (or will be constructed), Russia's ongoing invasion of Ukraine, initiatives to improve environmental sustainability and modifications the Company plans to make to its newbuilds and/or other macroeconomic events have resulted in delays in expected ship deliveries. These and other impacts could result in additional delays in ship deliveries in the future, which may be prolonged.

The combined contract prices of the seven ships on order for delivery, including Norwegian Viva, as of June 30, 2023 was approximately €7.4 billion, or \$8.1 billion based on the euro/U.S. dollar exchange rate as of June 30, 2023. We have obtained export credit financing which is expected to fund approximately 80% of the contract price of each ship and related financing premiums, subject to certain conditions. We do not anticipate any contractual breaches or cancellations to occur. However, if any such events were to occur, it could result in, among other things, the forfeiture of prior deposits or payments made by us and potential claims and impairment losses which may materially impact our business, financial condition and results of operations.

### Litigation

#### Investigations

In March 2020, the Florida Attorney General announced an investigation related to the Company's marketing during the COVID-19 pandemic. Following the announcement of the investigation by the Florida Attorney General, we received

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notifications from other attorneys general and governmental agencies that they are conducting similar investigations. The Company is cooperating with these ongoing investigations, the outcomes of which cannot be predicted at this time.

*Helms-Burton Act*

On August 27, 2019, two lawsuits were filed against Norwegian Cruise Line Holdings Ltd. in the United States District Court for the Southern District of Florida under Title III of the Cuban Liberty and Solidarity (Libertad) Act of 1996, also known as the Helms-Burton Act. The complaint filed by Javier Garcia-Bengochea (the “Garcia-Bengochea Matter”) alleges that he holds an interest in the Port of Santiago, Cuba, and the complaint filed by Havana Docks Corporation (the “Havana Docks Matter”) alleges it holds an interest in the Havana Cruise Port Terminal, both of which were expropriated by the Cuban Government. The complaints further allege that the Company “trafficked” in those properties by embarking and disembarking passengers at these facilities, as well as profiting from the Cuban Government’s possession of the property. The plaintiffs seek all available statutory remedies, including the value of the expropriated property, plus interest, treble damages, attorneys’ fees and costs. On September 1, 2020, the district court in the Garcia-Bengochea Matter entered an order staying all case deadlines and administratively closed the case pending the outcome of an appeal in a related case brought by the same plaintiff, in which the district court granted another cruise line defendant judgment on the pleadings. As to the appeal in the related case, in November 2022, the Eleventh Circuit issued an opinion affirming the dismissal and, on February 8, 2023, issued its mandate to the district court. After the April 10, 2023 deadline for filing a petition for certiorari with the U.S. Supreme Court passed in the related appeals with the plaintiff taking no action there, on April 19, 2023, the plaintiff voluntarily dismissed with prejudice the action against the Company. In the Havana Docks Matter, after various motions challenging the sufficiency of plaintiff’s complaint were resolved and voluminous discovery was completed, both sides filed motions for summary judgment. On March 21, 2022, the court issued an order granting plaintiff’s motion for summary judgment on the issue of liability and denying the Company’s cross-motion for summary judgment. The court scheduled a trial on determination of damages only for November 2022. The plaintiff elected to seek what the court ruled to be its baseline statutory damage amount, which was the amount of the certified claim plus interest, trebled and with attorneys’ fees. Given this, there was no fact issue to be tried, and the matter was removed from the trial calendar. On December 30, 2022, the court entered a final judgment of approximately \$112.9 million and, on January 23, 2023, the Company filed a notice of appeal from that judgment. On April 12, 2023, the Company posted a sufficient supersedeas bond with the court to prevent any efforts by the plaintiff to collect on the judgment pending the appeal. On June 30, 2023, the Company filed its opening appellate brief with the United States Court of Appeals for the Eleventh Circuit. For the Havana Docks Matter, we believe that the likelihood of loss is reasonably possible but not probable at this time; therefore, no liability has been recorded. The ability to make such estimates and judgments can be affected by various factors including, among other things: lack of legal precedent, stage of the proceedings, legal uncertainties inherent within the litigation process, availability of appellate remedies, and involvement of numerous parties. We continue to believe we have meritorious defenses to the Havana Docks Matter. However, if the plaintiff prevails in the final outcome of this matter, there may be a material adverse impact on the Company’s financial condition, results of operations and/or cash flows.

*Other*

We are a party to a claim against a vendor which resulted in a verdict of approximately \$159 million in favor of the Company in October 2022. The court entered a final judgment of approximately that amount in February 2023. Thereafter, the vendor posted a bond and appealed the judgment. On July 12, 2023, the vendor filed its initial appellate brief. At this time, there can be no assurance that the Company will ultimately prevail in the final outcome of this claim, and no receivable has been recognized by the Company.

In the normal course of our business, various other claims and lawsuits have been filed or are pending against us. Most of these claims and lawsuits are covered by insurance and, accordingly, the maximum amount of our liability is typically limited to our deductible amount. Nonetheless, the ultimate outcome of these claims and lawsuits that are not covered by insurance cannot be determined at this time. We have evaluated our overall exposure with respect to all of our threatened and pending litigation and, to the extent required, we have accrued amounts for all estimable probable losses associated with our deemed exposure. We are currently unable to estimate any other potential losses beyond those accrued, as discovery is not complete nor is adequate information available to estimate such range of loss or potential recovery. However, based on our current knowledge, we do not believe that the aggregate amount or range of reasonably possible

losses with respect to these matters will be material to our consolidated results of operations, financial condition or cash flows. We intend to vigorously defend our legal position on all claims and, to the extent necessary, seek recovery.

#### **Other Contingencies**

The Company also has agreements with its credit card processors that govern approximately \$3.2 billion in advance ticket sales at June 30, 2023 that have been received by the Company relating to future voyages. These agreements allow the credit card processors to require under certain circumstances, including the existence of a material adverse change, excessive chargebacks and other triggering events, that the Company maintain a reserve which would be satisfied by posting collateral. Although the agreements vary, these requirements may generally be satisfied either through a percentage of customer payments withheld or providing cash funds directly to the card processor. Any cash reserve or collateral requested could be increased or decreased. As of June 30, 2023, we had cash reserves of approximately \$31.5 million with credit card processors recognized in accounts receivable, net. During the three months ended June 30, 2023, the Company received a return of cash collateral from one credit card processor of \$500 million, which was previously classified as other long-term assets. We may be required to pledge additional collateral and/or post additional cash reserves or take other actions in the future that may adversely affect our liquidity.

#### **11. Other Income (Expense), Net**

For the three and six months ended June 30, 2023, other income (expense), net consisted of expense of \$8.0 million and \$17.0 million, respectively, primarily due to losses on foreign currency remeasurements. For the three and six months ended June 30, 2022, other income (expense), net consisted of income of \$31.0 million and \$69.1 million, respectively, primarily due to gains on foreign currency remeasurements.

#### **12. Supplemental Cash Flow Information**

For the six months ended June 30, 2023 and 2022, we had non-cash investing activities consisting of changes in accruals related to property and equipment of \$49.4 million and \$145.5 million, respectively.

#### **13. Subsequent Event**

In August 2023, we took delivery of Norwegian Viva. We had export credit financing in place for 80% of the contract price. The associated \$1.1 billion term loan bears interest at a fixed rate of 2.77% with a maturity date of August 3, 2035. Principal and interest payments are payable semiannually.

## Item 2. Management's Discussion and Analysis of Financial Condition and Results of Operations

### Cautionary Statement Concerning Forward-Looking Statements

Some of the statements, estimates or projections contained in this report are "forward-looking statements" within the meaning of the U.S. federal securities laws intended to qualify for the safe harbor from liability established by the Private Securities Litigation Reform Act of 1995. All statements other than statements of historical facts contained, or incorporated by reference, in this report, including, without limitation, those regarding our business strategy, financial position, results of operations, plans, prospects, actions taken or strategies being considered with respect to our liquidity position, valuation and appraisals of our assets and objectives of management for future operations (including those regarding expected fleet additions, our expectations regarding macroeconomic conditions, our expectations regarding cruise voyage occupancy, the implementation of and effectiveness of our health and safety protocols, operational position, demand for voyages, plans or goals for our sustainability program and decarbonization efforts, our expectations for future cash flows and profitability, financing opportunities and extensions, and future cost mitigation and cash conservation efforts and efforts to reduce operating expenses and capital expenditures) are forward-looking statements. Many, but not all, of these statements can be found by looking for words like "expect," "anticipate," "goal," "project," "plan," "believe," "seek," "will," "may," "forecast," "estimate," "intend," "future" and similar words. Forward-looking statements do not guarantee future performance and may involve risks, uncertainties and other factors which could cause our actual results, performance or achievements to differ materially from the future results, performance or achievements expressed or implied in those forward-looking statements. Examples of these risks, uncertainties and other factors include, but are not limited to the impact of:

- adverse general economic factors, such as fluctuating or increasing levels of interest rates, inflation, unemployment, underemployment and the volatility of fuel prices, declines in the securities and real estate markets, and perceptions of these conditions that decrease the level of disposable income of consumers or consumer confidence;
- the spread of epidemics, pandemics and viral outbreaks, including the COVID-19 pandemic, and their effect on the ability or desire of people to travel (including on cruises), which has adversely impacted and may continue to adversely impact our results, operations, outlook, plans, goals, growth, reputation, cash flows, liquidity, demand for voyages and share price;
- implementing precautions in coordination with regulators and global public health authorities to protect the health, safety and security of guests, crew and the communities we visit and to comply with related regulatory restrictions;
- our indebtedness and restrictions in the agreements governing our indebtedness that require us to maintain minimum levels of liquidity and be in compliance with maintenance covenants and otherwise limit our flexibility in operating our business, including the significant portion of assets that are collateral under these agreements;
- our ability to work with lenders and others or otherwise pursue options to defer, renegotiate, refinance or restructure our existing debt profile, near-term debt amortization, newbuild related payments and other obligations and to work with credit card processors to satisfy current or potential future demands for collateral on cash advanced from customers relating to future cruises;
- our need for additional financing or financing to optimize our balance sheet, which may not be available on favorable terms, or at all, and our outstanding exchangeable notes and any future financing which may be dilutive to existing shareholders;
- the unavailability of ports of call;
- future increases in the price of, or major changes, disruptions or reduction in, commercial airline services;

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- changes involving the tax and environmental regulatory regimes in which we operate, including new regulations aimed at reducing greenhouse gas emissions;
- the accuracy of any appraisals of our assets as a result of the impact of the COVID-19 pandemic or otherwise;
- our success in controlling operating expenses and capital expenditures;
- trends in, or changes to, future bookings and our ability to take future reservations and receive deposits related thereto;
- adverse events impacting the security of travel, or customer perceptions of the security of travel, such as terrorist acts, armed conflict, such as Russia's invasion of Ukraine, and threats thereof, acts of piracy, and other international events;
- adverse incidents involving cruise ships;
- breaches in data security or other disturbances to our information technology and other networks or our actual or perceived failure to comply with requirements regarding data privacy and protection;
- changes in fuel prices and the type of fuel we are permitted to use and/or other cruise operating costs;
- mechanical malfunctions and repairs, delays in our shipbuilding program, maintenance and refurbishments and the consolidation of qualified shipyard facilities;
- the risks and increased costs associated with operating internationally;
- our inability to recruit or retain qualified personnel or the loss of key personnel or employee relations issues;
- impacts related to climate change and our ability to achieve our climate-related or other sustainability goals;
- our inability to obtain adequate insurance coverage;
- pending or threatened litigation, investigations and enforcement actions;
- volatility and disruptions in the global credit and financial markets, which may adversely affect our ability to borrow and could increase our counterparty credit risks, including those under our credit facilities, derivatives, contingent obligations, insurance contracts and new ship progress payment guarantees;
- any further impairment of our trademarks, trade names or goodwill;
- our reliance on third parties to provide hotel management services for certain ships and certain other services;
- fluctuations in foreign currency exchange rates;
- our expansion into new markets and investments in new markets and land-based destination projects;
- overcapacity in key markets or globally; and
- other factors set forth under "Risk Factors" herein and in our Annual Report on Form 10-K for the year ended December 31, 2022, filed with the SEC on February 28, 2023 ("Annual Report on Form 10-K").



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The above examples are not exhaustive and new risks emerge from time to time. There may be additional risks that we consider immaterial or which are unknown. Such forward-looking statements are based on our current beliefs, assumptions, expectations, estimates and projections regarding our present and future business strategies and the environment in which we expect to operate in the future. These forward-looking statements speak only as of the date made. We expressly disclaim any obligation or undertaking to release publicly any updates or revisions to any forward-looking statement to reflect any change in our expectations with regard thereto or any change of events, conditions or circumstances on which any such statement was based, except as required by law.

### **Terminology**

This report includes certain non-GAAP financial measures, such as Adjusted Gross Margin, Net Yield, Net Cruise Cost, Adjusted Net Cruise Cost Excluding Fuel, Adjusted EBITDA, Adjusted Net Income (Loss) and Adjusted EPS. Definitions of these non-GAAP financial measures are included below. For further information about our non-GAAP financial measures including detailed adjustments made in calculation our non-GAAP financial measures and a reconciliation to the most directly comparable GAAP financial measure, we refer you to “Results of Operations” below.

Unless otherwise indicated in this report, the following terms have the meanings set forth below:

- *2024 Exchangeable Notes.* On May 8, 2020, pursuant to an indenture among NCLC, as issuer, NCLH, as guarantor, and U.S. Bank National Association, as trustee, NCLC issued \$862.5 million aggregate principal amount of exchangeable senior notes due 2024.
- *2025 Exchangeable Notes.* On July 21, 2020, pursuant to an indenture among NCLC, as issuer, NCLH, as guarantor, and U.S. Bank National Association, as trustee, NCLC issued \$450.0 million aggregate principal amount of exchangeable senior notes due 2025.
- *2027 1.125% Exchangeable Notes.* On November 19, 2021, pursuant to an indenture among NCLC, as issuer, NCLH, as guarantor, and U.S. Bank National Association, as trustee, NCLC issued \$1,150.0 million aggregate principal amount of exchangeable senior notes due 2027.
- *2027 2.5% Exchangeable Notes.* On February 15, 2022, pursuant to an indenture among NCLC, as issuer, NCLH, as guarantor, and U.S. Bank National Association, as trustee, NCLC issued \$473.2 million aggregate principal amount of exchangeable senior notes due 2027.
- *Adjusted EBITDA.* EBITDA adjusted for other income (expense), net and other supplemental adjustments.
- *Adjusted EPS.* Adjusted Net Income (Loss) divided by the number of diluted weighted-average shares outstanding.
- *Adjusted Gross Margin.* Gross margin adjusted for payroll and related, fuel, food, other and ship depreciation. Gross margin is calculated pursuant to GAAP as total revenue less total cruise operating expense and ship depreciation.
- *Adjusted Net Cruise Cost Excluding Fuel.* Net Cruise Cost Excluding Fuel adjusted for supplemental adjustments.
- *Adjusted Net Income (Loss).* Net income (loss) adjusted for the effect of dilutive securities and other supplemental adjustments.
- *Allura Class Ships.* Oceania Cruises’ Vista and Oceania Cruises’ Allura.
- *Berths.* Double occupancy capacity per cabin (single occupancy per studio cabin) even though many cabins can accommodate three or more passengers.

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- *Capacity Days*. Berths available for sale multiplied by the number of cruise days for the period for ships in service.
- *Dry-dock*. A process whereby a ship is positioned in a large basin where all of the fresh/sea water is pumped out in order to carry out cleaning and repairs of those parts of a ship which are below the water line.
- *EBITDA*. Earnings before interest, taxes, and depreciation and amortization.
- *EPS*. Earnings (loss) per share.
- *Explorer Class Ships*. Regent's Seven Seas Explorer, Seven Seas Splendor, and Seven Seas Grandeur.
- *GAAP*. Generally accepted accounting principles in the U.S.
- *Gross Cruise Cost*. The sum of total cruise operating expense and marketing, general and administrative expense.
- *Gross Tons*. A unit of enclosed passenger space on a cruise ship, such that one gross ton equals 100 cubic feet or 2.831 cubic meters.
- *Net Cruise Cost*. Gross Cruise Cost less commissions, transportation and other expense and onboard and other expense.
- *Net Cruise Cost Excluding Fuel*. Net Cruise Cost less fuel expense.
- *Net Yield*. Adjusted Gross Margin per Capacity Day.
- *Occupancy or Occupancy Percentage*. The ratio of Passenger Cruise Days to Capacity Days. A percentage greater than 100% indicates that three or more passengers occupied some cabins.
- *Passenger Cruise Days*. The number of passengers carried for the period, multiplied by the number of days in their respective cruises.
- *Prima Class Ships*. Norwegian Prima, Norwegian Viva and four additional ships on order.
- *Revolving Loan Facility*. \$875.0 million senior secured revolving credit facility.
- *SEC*. U.S. Securities and Exchange Commission.
- *Senior Secured Credit Facility*. The Credit Agreement, originally dated as of May 24, 2013, as amended and restated on October 31, 2014, June 6, 2016, October 10, 2017, January 2, 2019 and May 8, 2020, and as further amended on January 29, 2021, March 25, 2021, November 12, 2021 and December 6, 2022, by and among NCLC and Voyager Vessel Company, LLC, as co-borrowers, JPMorgan Chase Bank, N.A., as administrative agent and as collateral agent, and various lenders and agents, providing for a senior secured credit facility consisting of (i) the Revolving Loan Facility and (ii) the Term Loan A Facility.
- *Shipboard Retirement Plan*. An unfunded defined benefit pension plan for certain crew members which computes benefits based on years of service, subject to certain requirements.
- *Term Loan A Facility*. The senior secured term loan A facility having an outstanding principal amount of approximately \$0.8 billion as of June 30, 2023.

## **Non-GAAP Financial Measures**

We use certain non-GAAP financial measures, such as Adjusted Gross Margin, Net Yield, Net Cruise Cost, Adjusted Net Cruise Cost Excluding Fuel, Adjusted EBITDA, Adjusted Net Income (Loss) and Adjusted EPS, to enable us to analyze our performance. See “Terminology” for the definitions of these and other non-GAAP financial measures. We utilize Adjusted Gross Margin and Net Yield to manage our business on a day-to-day basis because it reflects revenue earned net of certain direct variable costs. We also utilize Net Cruise Cost and Adjusted Net Cruise Cost Excluding Fuel to manage our business on a day-to-day basis. In measuring our ability to control costs in a manner that positively impacts net income (loss), we believe changes in Adjusted Gross Margin, Net Yield, Net Cruise Cost and Adjusted Net Cruise Cost Excluding Fuel to be the most relevant indicators of our performance. Per Capacity Day data is not considered meaningful for the three or six months ended June 30, 2022 due to our phased restart of cruise operations, which was completed in May 2022, and is not presented herein.

We believe that Adjusted EBITDA is appropriate as a supplemental financial measure as it is used by management to assess operating performance. We also believe that Adjusted EBITDA is a useful measure in determining our performance as it reflects certain operating drivers of our business, such as sales growth, operating costs, marketing, general and administrative expense and other operating income and expense. In addition, management uses Adjusted EBITDA as a performance measure for our incentive compensation. Adjusted EBITDA is not a defined term under GAAP nor is it intended to be a measure of liquidity or cash flows from operations or a measure comparable to net income (loss), as it does not take into account certain requirements such as capital expenditures and related depreciation, principal and interest payments and tax payments and it includes other supplemental adjustments.

In addition, Adjusted Net Income (Loss) and Adjusted EPS are non-GAAP financial measures that exclude certain amounts and are used to supplement GAAP net income (loss) and EPS. We use Adjusted Net Income (Loss) and Adjusted EPS as key performance measures of our earnings performance. We believe that both management and investors benefit from referring to these non-GAAP financial measures in assessing our performance and when planning, forecasting and analyzing future periods. These non-GAAP financial measures also facilitate management’s internal comparison to our historical performance. In addition, management uses Adjusted EPS as a performance measure for our incentive compensation. The amounts excluded in the presentation of these non-GAAP financial measures may vary from period to period; accordingly, our presentation of Adjusted Net Income (Loss) and Adjusted EPS may not be indicative of future adjustments or results.

You are encouraged to evaluate each adjustment used in calculating our non-GAAP financial measures and the reasons we consider our non-GAAP financial measures appropriate for supplemental analysis. In evaluating our non-GAAP financial measures, you should be aware that in the future we may incur expenses similar to the adjustments in our presentation. Our non-GAAP financial measures have limitations as analytical tools, and you should not consider these measures in isolation or as a substitute for analysis of our results as reported under GAAP. Our presentation of our non-GAAP financial measures should not be construed as an inference that our future results will be unaffected by unusual or non-recurring items. Our non-GAAP financial measures may not be comparable to other companies. Please see a historical reconciliation of these measures to the most comparable GAAP measure presented in our consolidated financial statements below in the “Results of Operations” section.

## **Financial Presentation**

We categorize revenue from our cruise and cruise-related activities as either “passenger ticket” revenue or “onboard and other” revenue. Passenger ticket revenue and onboard and other revenue vary according to product offering, the size of the ship in operation, the length of cruises operated and the markets in which the ship operates. Our revenue is seasonal based on demand for cruises, which has historically been strongest during the Northern Hemisphere’s summer months; however, our cruise voyages were completely suspended from March 2020 until July 2021 due to the COVID-19 pandemic and our resumption of cruise voyages was phased in gradually, with full operation of our fleet resumed in May 2022. Passenger ticket revenue primarily consists of revenue for accommodations, meals in certain restaurants on the ship, certain onboard entertainment, port fees and taxes and includes revenue for service charges and air and land transportation to and from the ship to the extent guests purchase these items from us. Onboard and other revenue primarily consists of revenue from casino, beverage sales, shore excursions, specialty dining, retail sales, spa services

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and Wi-Fi services. Our onboard revenue is derived from onboard activities we perform directly or that are performed by independent concessionaires, from which we receive a share of their revenue.

Our cruise operating expense is classified as follows:

- Commissions, transportation and other primarily consists of direct costs associated with passenger ticket revenue. These costs include travel advisor commissions, air and land transportation expenses, related credit card fees, certain port fees and taxes and the costs associated with shore excursions and hotel accommodations included as part of the overall cruise purchase price.
- Onboard and other primarily consists of direct costs incurred in connection with onboard and other revenue, including casino, beverage sales and shore excursions.
- Payroll and related consists of the cost of wages and benefits for shipboard employees and costs of certain inventory items, including food, for a third party that provides crew and other hotel services for certain ships.
- Fuel includes fuel costs, the impact of certain fuel hedges and fuel delivery costs.
- Food consists of food costs for passengers and crew on certain ships.
- Other consists of repairs and maintenance (including Dry-dock costs), ship insurance and other ship expenses.

**Critical Accounting Policies**

For a discussion of our critical accounting policies and estimates, see “Critical Accounting Policies” included in our Annual Report on Form 10-K under the caption “Management’s Discussion and Analysis of Financial Condition and Results of Operations.” We have made no significant changes to our critical accounting policies and estimates from those described in our Annual Report on Form 10-K.

**Financing Transactions**

In February 2023, NCLC issued \$600 million aggregate principal amount of 8.375% senior secured notes due 2028. The proceeds from the notes were used to repay the loans outstanding under our Term Loan A Facility that otherwise would have become due in January 2024, including to pay any accrued and unpaid interest thereon, as well as related premiums, fees and expenses.

In February 2023, our \$1 billion commitment letter was extended through February 2024, with an option for NCLC to further extend the commitments through February 2025 at its election. Simultaneously, the amount of the commitment was reduced to \$650 million, which may be drawn in up to two draws, and in connection with the execution of the amended commitment letter, NCLC issued \$250 million aggregate principal amount of 9.75% senior secured notes due 2028. NCLC will use the net proceeds for general corporate purposes.

In February 2023, NCLC entered into a Backstop Agreement with MS, pursuant to which MS has agreed to provide backstop committed financing to refinance and/or repay in whole or in part up to \$300 million of amounts outstanding under the Senior Secured Credit Facility at any time between October 4, 2023 and January 2, 2024.

In April 2023, \$82.5 million in aggregate principal amount of the Revolving Loan Facility that was not previously extended was assigned to a new lender under the same terms as the existing lenders who extended commitments in December 2022 under Amendment No. 4 to the Senior Secured Credit Facility.

See Note 7 – “Long-Term Debt” for more information.

## **Update on Bookings**

Occupancy reached approximately 105% for the three months ended June 30, 2023, in line with our expectations and marking a significant milestone with the phased ramp-up now complete. As expected, Occupancy for the three months ended June 30, 2023 is slightly lower compared to the same period in 2019, reflecting the Company's strategic shift to longer, more immersive itineraries. This shift naturally results in lower Occupancy levels and is expected to attract higher quality guests, generate higher Net Yield, improve guest satisfaction and cultivate stronger loyalty over time.

The Company continues to experience strong and resilient consumer demand. The cumulative booked position for the second half of 2023 is ahead of 2019 levels at continued higher pricing. On a 12-month forward basis, the Company continues to be in its optimal booked position of approximately 60-65%. Onboard revenue generation remains robust with broad-based strength across all revenue streams. The Company continues to focus on increasing its pre-sold revenue from guests prior to sailing, as this typically results in higher overall spend throughout the cruise journey as well as earlier and more predictable cash inflow.

## **Macroeconomic Trends and Uncertainties**

As a result of conditions associated with global events, including the lingering effects of the COVID-19 pandemic and Russia's ongoing invasion of Ukraine and actions taken by the United States and other governments in response to the invasion, the global economy, including the financial and credit markets, has experienced significant volatility and disruptions, including impacts to inflation rates, fuel prices, foreign currencies and interest rates. Our costs have been, and are expected to continue to be, adversely impacted by these factors. We have used, and may continue to use, derivative instruments to attempt to mitigate the risk of volatility in fuel prices and interest rates. In an attempt to mitigate risks related to inflation, our supply chain department has negotiated contracts with varying terms, with a goal of providing us with the ability to take advantage of cost declines when they occur, and diversified our sourcing options. These strategies may not fully offset the impact of current macroeconomic conditions; however, cost savings from our ongoing margin enhancement initiative were realized earlier than anticipated, and as a result, we expect operating costs per Capacity Day to show continued improvement in 2023. Furthermore, we are exposed to fluctuations in the euro exchange rate for certain portions of ship construction contracts that have not been hedged. See "Item 1A. Risk Factors" in our Annual Report on Form 10-K for additional information.

## **Climate Change**

We believe the increasing focus on climate change, including the Company's recently established targets for greenhouse gas reductions, and evolving regulatory requirements will materially impact our future capital expenditures and results of operations. We are now targeting a reduction in greenhouse gas intensity of 10% by 2026 and 25% by 2030, compared to a 2019 baseline and measured on a per Capacity Day basis (the targets cover the Company's emissions from its fleet of ships, islands and facilities (Scopes 1 & 2) as well as upstream fuel- and energy-related activities, including well-to-tank emissions (a portion of Scope 3)). We expect to incur significant expenses related to these regulatory requirements and commitments, which may include expenses related to greenhouse gas emissions reduction initiatives and the purchase of emissions allowances, among other things. If requirements become more stringent, we may be required to change certain operating procedures, for example slowing the speed of our ships, which could adversely impact our operations. We are evaluating the effects of global climate change related requirements, which are still evolving, including our ability to mitigate certain future expenses through initiatives to reduce greenhouse gas emissions; consequently, the full impact to the Company is not yet known. Additionally, our ships, port facilities, corporate offices and island destinations have in the past and may again be adversely affected by an increase in the frequency and intensity of adverse weather conditions caused by climate change. For example, certain ports have become temporarily unavailable to us due to hurricane damage and other destinations have either considered or implemented restrictions on cruise operations due to environmental concerns. Refer to "Impacts related to climate change may adversely affect our business, financial condition and results of operations" in "Item 1A. Risk Factors" in our Annual Report on Form 10-K for further information.

## Quarterly Overview

### Three months ended June 30, 2023 (“2023”) compared to three months ended June 30, 2022 (“2022”)

- Total revenue increased to \$2.2 billion compared to \$1.2 billion.
- Net income (loss) and diluted EPS were \$86.1 million and \$0.20, respectively, compared to \$(509.3) million and \$(1.22), respectively.
- Operating income was \$272.5 million compared to operating loss of \$(396.8) million.
- Gross margin was \$638.4 million compared to \$(56.9) million. Adjusted Gross Margin was \$1.5 billion compared to \$834.8 million.
- Adjusted Net Income and Adjusted EPS were \$137.0 million and \$0.30, respectively, in 2023, which included \$46.3 million of adjustments primarily related to share-based compensation. Adjusted Net Loss and Adjusted EPS were \$(478.3) million and \$(1.14), respectively, in 2022, which included \$31.1 million of adjustments primarily related to share-based compensation.
- Adjusted EBITDA improved 379.1% to \$514.8 million compared to \$(184.5) million.

We refer you to our “Results of Operations” below for a calculation of Adjusted Gross Margin, Adjusted Net Income (Loss), Adjusted EPS and Adjusted EBITDA.

## Results of Operations

The following table sets forth selected statistical information:

	Three Months Ended June 30,		Six Months Ended June 30,	
	2023	2022	2023	2022
Passengers carried	693,085	393,943	1,326,995	585,093
Passenger Cruise Days	5,781,750	2,999,303	11,278,856	4,428,749
Capacity Days	5,513,288	4,639,435	10,928,835	7,617,788
Occupancy Percentage	104.9 %	64.6 %	103.2 %	58.1 %

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Adjusted Gross Margin and Net Yield were calculated as follows (in thousands, except Capacity Days and Yield data):

	Three Months Ended June 30,		Six Months Ended June 30,	
	2023	2022	2023	2022
Total revenue	\$ 2,205,492	\$ 1,187,181	\$ 4,027,431	\$ 1,709,121
Less:				
Total cruise operating expense	1,383,610	1,073,316	2,664,028	1,808,729
Ship depreciation	183,499	170,736	365,068	337,392
Gross margin	638,383	(56,871)	998,335	(437,000)
Ship depreciation	183,499	170,736	365,068	337,392
Payroll and related	308,220	262,580	612,375	503,307
Fuel	164,242	181,189	359,110	316,698
Food	87,770	61,157	183,736	100,673
Other	154,643	216,045	310,691	415,198
Adjusted Gross Margin	\$ 1,536,757	\$ 834,836	\$ 2,829,315	\$ 1,236,268
Capacity Days	5,513,288	4,639,435	10,928,835	7,617,788
Gross margin per Capacity Day	\$ 115.79		\$ 91.35	
Net Yield	\$ 278.74		\$ 258.89	

Gross Cruise Cost, Net Cruise Cost, Net Cruise Cost Excluding Fuel and Adjusted Net Cruise Cost Excluding Fuel were calculated as follows (in thousands, except Capacity Days and per Capacity Day data):

	Three Months Ended June 30,		Six Months Ended June 30,	
	2023	2022	2023	2022
Total cruise operating expense	\$ 1,383,610	\$ 1,073,316	\$ 2,664,028	\$ 1,808,729
Marketing, general and administrative expense	352,222	329,080	688,235	625,287
Gross Cruise Cost	1,735,832	1,402,396	3,352,263	2,434,016
Less:				
Commissions, transportation and other expense	506,855	256,190	916,539	344,148
Onboard and other expense	161,880	96,155	281,577	128,705
Net Cruise Cost	1,067,097	1,050,051	2,154,147	1,961,163
Less: Fuel expense	164,242	181,189	359,110	316,698
Net Cruise Cost Excluding Fuel	902,855	868,862	1,795,037	1,644,465
<b>Less Other Non-GAAP Adjustments:</b>				
Non-cash deferred compensation (1)	578	699	1,156	1,398
Non-cash share-based compensation (2)	44,536	30,048	72,691	62,840
Adjusted Net Cruise Cost Excluding Fuel	\$ 857,741	\$ 838,115	\$ 1,721,190	\$ 1,580,227
Capacity Days	5,513,288	4,639,435	10,928,835	7,617,788
Gross Cruise Cost per Capacity Day	\$ 314.85		\$ 306.74	
Net Cruise Cost per Capacity Day	\$ 193.55		\$ 197.11	
Net Cruise Cost Excluding Fuel per Capacity Day	\$ 163.76		\$ 164.25	
Adjusted Net Cruise Cost Excluding Fuel per Capacity Day	\$ 155.58		\$ 157.49	

- (1) Non-cash deferred compensation expenses related to the crew pension plan and other crew expenses, which are included in payroll and related expense.
- (2) Non-cash share-based compensation expenses related to equity awards, which are included in marketing, general and administrative expense and payroll and related expense.

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Adjusted Net Income (Loss) and Adjusted EPS were calculated as follows (in thousands, except share and per share data):

	Three Months Ended June 30,		Six Months Ended June 30,	
	2023	2022	2023	2022
Net income (loss)	\$ 86,116	\$ (509,321)	\$ (73,205)	\$ (1,492,035)
Effect of dilutive securities - exchangeable notes	4,603	—	—	—
Net income (loss) and assumed conversion of exchangeable notes	90,719	(509,321)	(73,205)	(1,492,035)
<b>Non-GAAP Adjustments:</b>				
Non-cash deferred compensation (1)	1,010	1,012	2,020	2,024
Non-cash share-based compensation (2)	44,536	30,048	72,691	62,840
Extinguishment and modification of debt (3)	719	—	3,153	188,433
Adjusted Net Income (Loss)	\$ 136,984	\$ (478,261)	\$ 4,659	\$ (1,238,738)
Diluted weighted-average shares outstanding - Net income (loss) and assumed conversion of exchangeable notes and Adjusted Net Income (Loss)	461,075,240	419,107,330	423,421,203	418,424,753
Diluted EPS	\$ 0.20	\$ (1.22)	\$ (0.17)	\$ (3.57)
Adjusted EPS	\$ 0.30	\$ (1.14)	\$ 0.01	\$ (2.96)

- (1) Non-cash deferred compensation expenses related to the crew pension plan and other crew expenses, which are included in payroll and related expense and other income (expense), net.
- (2) Non-cash share-based compensation expenses related to equity awards, which are included in marketing, general and administrative expense and payroll and related expense.
- (3) Losses on extinguishment of debt and modification of debt are included in interest expense, net.

EBITDA and Adjusted EBITDA were calculated as follows (in thousands):

	Three Months Ended June 30,		Six Months Ended June 30,	
	2023	2022	2023	2022
Net income (loss)	\$ 86,116	\$ (509,321)	\$ (73,205)	\$ (1,492,035)
Interest expense, net	177,692	144,377	348,949	472,062
Income tax (benefit) expense	694	(867)	(9,479)	3,526
Depreciation and amortization expense	197,115	181,587	391,905	360,663
EBITDA	461,617	(184,224)	658,170	(655,784)
Other (income) expense, net (1)	8,043	(30,991)	16,998	(69,111)
<b>Other Non-GAAP Adjustments:</b>				
Non-cash deferred compensation (2)	578	699	1,156	1,398
Non-cash share-based compensation (3)	44,536	30,048	72,691	62,840
Adjusted EBITDA	\$ 514,774	\$ (184,468)	\$ 749,015	\$ (660,657)

- (1) Primarily consists of gains and losses, net for foreign currency remeasurements.
- (2) Non-cash deferred compensation expenses related to the crew pension plan and other crew expenses, which are included in payroll and related expense.
- (3) Non-cash share-based compensation expenses related to equity awards, which are included in marketing, general and administrative expense and payroll and related expense.



**Three months ended June 30, 2023 (“2023”) compared to three months ended June 30, 2022 (“2022”)**

***Revenue***

Total revenue increased to \$2.2 billion in 2023 compared to \$1.2 billion in 2022. In 2023, revenue primarily increased as a result of increases in our Occupancy following our return to service with 5.8 million Passenger Cruise Days compared to 3.0 million in 2022.

***Expense***

Total cruise operating expense increased 28.9% in 2023 compared to 2022. In 2023, our cruise operating expenses increased due to the resumption of voyages, resulting in higher direct variable costs of fully operating ships. In 2022, the three months started with 23 ships operating with guests onboard and ended with the full fleet in service. Gross Cruise Cost increased 23.8% in 2023 compared to 2022 primarily related to the change in costs described above. Total other operating expense increased 7.6% in 2023 compared to 2022 primarily due to an increase in salaries and benefits, which includes higher share-based compensation expenses as well as other expenses related to the retirement of our prior President and Chief Executive Officer.

Interest expense, net was \$177.7 million in 2023 compared to \$144.4 million in 2022. The increase in interest expense is primarily as a result of higher rates.

Other income (expense), net was expense of \$8.0 million in 2023 compared to income of \$31.0 million in 2022. The income and expense primarily related to net gains and losses on foreign currency remeasurements.

**Six months ended June 30, 2023 (“2023”) compared to six months ended June 30, 2022 (“2022”)**

***Revenue***

Total revenue increased to \$4.0 billion in 2023 compared to \$1.7 billion in 2022. In 2023, revenue primarily increased as a result of increases in our Occupancy following our return to service with 11.3 million Passenger Cruise Days compared to 4.4 million in 2022.

***Expense***

Total cruise operating expense increased 47.3% in 2023 compared to 2022. In 2023, our cruise operating expenses increased due to the resumption of voyages, resulting in higher payroll, food and direct variable costs of fully operating ships. In 2022, the six months started with 16 ships operating with guests onboard and ended with the full fleet in service. Gross Cruise Cost increased 37.7% in 2023 compared to 2022 primarily related to the change in costs described above. Total other operating expense increased 9.6% in 2023 compared to 2022 primarily due to an increase in salaries and benefits, which includes higher share-based compensation expenses as well as other expenses related to the retirement of our prior President and Chief Executive Officer. Marketing costs also increased in 2023 compared to 2022 as we returned to historical Occupancy and prepared for three new ship deliveries in 2023.

Interest expense, net was \$348.9 million in 2023 compared to \$472.1 million in 2022. The decrease in interest expense reflects lower losses in 2023 from extinguishment of debt and debt modification costs, which were \$3.2 million in 2023 compared to \$188.4 million in 2022. Excluding these losses, interest expense increased primarily as a result of higher rates.

Other income (expense), net was expense of \$17.0 million in 2023 compared to income of \$69.1 million in 2022. The income and expense primarily related to net gains and losses on foreign currency remeasurements.

## **Liquidity and Capital Resources**

### ***General***

As of June 30, 2023, our liquidity was approximately \$2.4 billion, including cash and cash equivalents of \$899.1 million and borrowings available under our \$875 million fully undrawn Revolving Loan Facility and \$650 million undrawn commitment less related fees. Our primary ongoing liquidity requirements are to finance working capital, capital expenditures and debt service.

In February 2023, NCLC issued \$600 million aggregate principal amount of 8.375% senior secured notes due 2028. The proceeds from the notes were used to repay the loans outstanding under our Term Loan A Facility that otherwise would have become due in January 2024, including to pay any accrued and unpaid interest thereon, as well as related premiums, fees and expenses.

In February 2023, our \$1 billion commitment letter was extended through February 2024, with an option for NCLC to further extend the commitments through February 2025 at its election. Simultaneously, the amount of the commitment was reduced to \$650 million, which may be drawn in up to two draws, and in connection with the execution of the amended commitment letter, NCLC issued \$250 million aggregate principal amount of 9.75% senior secured notes due 2028. NCLC will use the net proceeds for general corporate purposes.

In February 2023, NCLC entered into a Backstop Agreement with MS, pursuant to which MS has agreed to provide backstop committed financing to refinance and/or repay in whole or in part up to \$300 million of amounts outstanding under the Senior Secured Credit Facility at any time between October 4, 2023 and January 2, 2024.

In April 2023, \$82.5 million in aggregate principal amount of the Revolving Loan Facility that was not previously extended was assigned to a new lender under the same terms as the existing lenders who extended commitments in December 2022 under Amendment No. 4 to the Senior Secured Credit Facility. See Note 7 – “Long-Term Debt” for more information on the above financing transactions.

The estimation of our future cash flow projections includes numerous assumptions that are subject to various risks and uncertainties. Refer to Note 2 – “Summary of Significant Accounting Policies” for further information on liquidity. Refer to “Item 1A. Risk Factors” in our Annual Report on Form 10-K for risks and uncertainties that may cause our results to differ from our expectations.

There can be no assurance that the accuracy of the assumptions used to estimate our liquidity requirements will be correct, and our ability to be predictive is uncertain due to the dynamic nature of the current operating environment, including any residual impacts of the COVID-19 global pandemic, Russia’s ongoing invasion of Ukraine and current macroeconomic conditions such as inflation, rising fuel prices and rising interest rates. Based on the liquidity estimates and our current resources, we have concluded we have sufficient liquidity to satisfy our obligations for at least the next 12 months. Within the next twelve months we will pursue refinancings in order to reduce interest expense and/or extend debt maturities. There is no assurance that cash flows from operations and additional financings will be available in the future to fund our future obligations. Beyond the next 12 months, we will pursue refinancings and other balance sheet optimization transactions in order to reduce interest expense and/or extend debt maturities.

We have received amendments to certain financial and other debt covenants, including the modification of our free liquidity requirements. At June 30, 2023, taking into account such amendments, we were in compliance with all of our debt covenants. If we do not continue to remain in compliance with our covenants, we would have to seek additional amendments to or waivers of the covenants. However, no assurances can be made that such amendments or waivers would be approved by our lenders. Generally, if an event of default under any debt agreement occurs, then pursuant to cross default and/or cross acceleration clauses, substantially all of our outstanding debt and derivative contract payables could become due, and all debt and derivative contracts could be terminated, which would have a material adverse impact to our operations and liquidity.

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Since March 2020, Moody's has downgraded our long-term issuer rating to B2, our senior secured rating to B1 and our senior unsecured rating to Caa1. Since April 2020, S&P Global has downgraded our issuer credit rating to B, lowered our issue-level rating on our \$875 million Revolving Loan Facility and \$0.8 billion Term Loan A Facility to BB-, our issue-level rating on our other senior secured notes to B+ and our senior unsecured rating to B-. If our credit ratings were to be further downgraded, or general market conditions were to ascribe higher risk to our rating levels, our industry, or us, our access to capital and the cost of any debt or equity financing will be further negatively impacted. We also have capacity to incur additional indebtedness under our debt agreements and may issue additional ordinary shares from time to time, subject to our authorized number of ordinary shares. However, there is no guarantee that debt or equity financings will be available in the future to fund our obligations, or that they will be available on terms consistent with our expectations.

As of June 30, 2023, we had advance ticket sales of \$3.5 billion, including the long-term portion, which included approximately \$81.2 million of future cruise credits. We also have agreements with our credit card processors that, as of June 30, 2023, governed approximately \$3.2 billion in advance ticket sales that had been received by the Company relating to future voyages. These agreements allow the credit card processors to require under certain circumstances, including the existence of a material adverse change, excessive chargebacks and other triggering events, that the Company maintain a reserve which would be satisfied by posting collateral. Although the agreements vary, these requirements may generally be satisfied either through a percentage of customer payments withheld or providing cash funds directly to the card processor. Any cash reserve or collateral requested could be increased or decreased. As of June 30, 2023, we had cash collateral reserves of approximately \$31.5 million with credit card processors recognized in accounts receivable, net. During the three months ended June 30, 2023, the Company received a return of cash collateral from one credit card processor of \$500 million, which was previously classified as other long-term assets. We may be required to pledge additional collateral and/or post additional cash reserves or take other actions in the future that may adversely affect our liquidity.

### ***Sources and Uses of Cash***

***In this section, references to "2023" refer to the six months ended June 30, 2023 and references to "2022" refer to the six months ended June 30, 2022.***

Net cash provided by operating activities was \$1.5 billion in 2023 as compared to net cash used in operating activities of \$108.8 million in 2022. The net cash provided by operating activities included net losses and timing differences in cash receipts and payments relating to operating assets and liabilities. The net cash provided by operating activities includes the return of \$500 million cash collateral from one credit card processor in 2023. Advance ticket sales increased by \$826.2 million in 2023 and by \$755.2 million in 2022. The net losses also include losses on extinguishment of debt of \$188.4 million in 2022.

Net cash used in investing activities was \$992.2 million in 2023 and \$81.1 million in 2022. The net cash used in investing activities was primarily related to newbuild payments in 2023. The net cash used in investing activities was primarily related to newbuild payments and ship improvement projects offset by proceeds from maturities of short-term investments in 2022.

Net cash used in financing activities was \$592.3 million in 2023 primarily due to debt repayments and a net decrease in our Revolving Loan Facility balance, partially offset by the proceeds from newbuild loan facilities and \$850 million from our various note offerings. Net cash provided by financing activities was \$586.5 million in 2022 primarily due to the proceeds of \$2.1 billion from our various note offerings partially offset by debt repayments and related redemption premiums associated with extinguishment of certain senior secured notes.

### ***Future Capital Commitments***

Future capital commitments consist of contracted commitments, including ship construction contracts. Anticipated expenditures related to ship construction contracts as of June 30, 2023 were \$1.7 billion for the remainder of 2023, including Norwegian Viva, and \$0.4 billion and \$2.0 billion for the years ending December 31, 2024 and 2025, respectively, reflecting delays in certain scheduled ship delivery dates. As of June 30, 2023, the Company has export

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credit financing in place for the anticipated expenditures related to ship construction contracts of \$1.4 billion for the remainder of 2023 and \$0.2 billion and \$1.5 billion for the years ending December 31, 2024 and 2025, respectively. Anticipated non-newbuild capital expenditures for the remainder of 2023 are approximately \$0.2 billion. Future expected capital expenditures will significantly increase our depreciation and amortization expense.

For the Norwegian brand, the second Prima Class Ship, Norwegian Viva, at approximately 143,500 Gross Tons and 3,100 Berths, was delivered in August 2023. For the Norwegian brand, we have four Prima Class Ships on order, each ranging from approximately 156,300 to 169,000 Gross Tons with 3,450 or more Berths, with currently scheduled delivery dates from 2025 through 2028. For the Regent brand, we have an order for one Explorer Class Ship to be delivered in 2023, which will be approximately 55,000 Gross Tons and 750 Berths. For the Oceania Cruises brand, we have an order for one additional Allura Class Ship to be delivered in 2025, which will be approximately 67,000 Gross Tons and 1,200 Berths. The impacts of COVID-19 on the shipyards where our ships are under construction (or will be constructed), Russia's ongoing invasion of Ukraine, initiatives to improve environmental sustainability and modifications the Company plans to make to its newbuilds and/or other macroeconomic events have resulted in delays in expected ship deliveries. These and other impacts could result in additional delays in ship deliveries in the future, which may be prolonged.

As of June 30, 2023, the combined contract prices of the seven ships on order for delivery, including Norwegian Viva, was approximately €7.4 billion, or \$8.1 billion based on the euro/U.S. dollar exchange rate as of June 30, 2023. We have obtained export credit financing which is expected to fund approximately 80% of the contract price of each ship and related financing premiums, subject to certain conditions. We do not anticipate any contractual breaches or cancellations to occur. However, if any such events were to occur, it could result in, among other things, the forfeiture of prior deposits or payments made by us and potential claims and impairment losses which may materially impact our business, financial condition and results of operations.

Capitalized interest for the three months ended June 30, 2023 and 2022 was \$16.6 million and \$14.8 million, respectively, and for the six months ended June 30, 2023 and 2022 was \$31.3 million and \$28.1 million, respectively, primarily associated with the construction of our newbuild ships.

### **Material Cash Requirements**

As of June 30, 2023, our material cash requirements for debt and ship construction were as follows (in thousands):

	Remainder of 2023	2024	2025	2026	2027	2028	Thereafter	Total
Long-term debt (1)	\$ 800,027	\$ 2,313,371	\$ 2,378,418	\$ 2,488,149	\$ 3,431,756	\$ 1,970,503	\$ 2,390,955	\$ 15,773,179
Ship construction contracts (2)	1,677,969	277,061	1,888,217	1,308,905	1,260,099	1,173,808	—	7,586,059
Total	\$ 2,477,996	\$ 2,590,432	\$ 4,266,635	\$ 3,797,054	\$ 4,691,855	\$ 3,144,311	\$ 2,390,955	\$ 23,359,238

- (1) Includes principal as well as estimated interest payments with Term SOFR held constant as of June 30, 2023. Includes exchangeable notes which can be settled in shares. Excludes the impact of any future possible refinancings and undrawn export-credit backed facilities.
- (2) Ship construction contracts are for our newbuild ships based on the euro/U.S. dollar exchange rate as of June 30, 2023. As of June 30, 2023, we have committed undrawn export-credit backed facilities of approximately \$7.0 billion which funds approximately 80% of our ship construction contracts.

### **Funding Sources**

Certain of our debt agreements contain covenants that, among other things, require us to maintain a minimum level of liquidity, as well as limit our net funded debt-to-capital ratio and maintain certain other ratios. Substantially all of our ships and certain other assets are pledged as collateral for certain of our debt. We have received amendments to certain financial and other debt covenants, including the modification of our free liquidity requirements. After taking into account such amendments, we believe we were in compliance with these covenants as of June 30, 2023.

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In addition, our existing debt agreements restrict, and any of our future debt arrangements may restrict, among other things, the ability of our subsidiaries, including NCLC, to make distributions and/or pay dividends to NCLH and NCLH's ability to pay cash dividends to its shareholders. NCLH is a holding company and depends upon its subsidiaries for their ability to pay distributions to it to finance any dividend or pay any other obligations of NCLH. However, we do not believe that these restrictions have had or are expected to have an impact on our ability to meet any cash obligations.

We believe our cash on hand, the availability under the Revolving Loan Facility and undrawn commitment less related fees, the backstop financing available from October 4, 2023 through January 2, 2024, expected future operating cash inflows and our ability to issue debt securities or additional equity securities, will be sufficient to fund operations, debt payment requirements, capital expenditures and maintain compliance with covenants under our debt agreements over the next 12-month period. Refer to “—Liquidity and Capital Resources—General” for further information regarding the debt covenant waivers and liquidity requirements.

***Other***

Certain service providers may require collateral in the normal course of our business. The amount of collateral may change based on certain terms and conditions.

As a routine part of our business, depending on market conditions, exchange rates, pricing and our strategy for growth, we regularly consider opportunities to enter into contracts for the building of additional ships. We may also consider the sale of ships, potential acquisitions and strategic alliances. If any of these transactions were to occur, they may be financed through the incurrence of additional permitted indebtedness, through cash flows from operations, or through the issuance of debt, equity or equity-related securities.

We refer you to “—Liquidity and Capital Resources—General” for information regarding collateral provided to our credit card processors.

**Item 3. Quantitative and Qualitative Disclosures About Market Risk**

**General**

We are exposed to market risk attributable to changes in interest rates, foreign currency exchange rates and fuel prices. We attempt to minimize these risks through a combination of our normal operating and financing activities and through the use of derivatives. The financial impacts of these derivative instruments are primarily offset by corresponding changes in the underlying exposures being hedged. We achieve this by closely matching the notional, term and conditions of the derivatives with the underlying risk being hedged. We do not hold or issue derivatives for trading or other speculative purposes. Derivative positions are monitored using techniques including market valuations and sensitivity analyses.

**Interest Rate Risk**

As of June 30, 2023, 88% of our debt was fixed and 12% was variable. As of December 31, 2022, 75% of our debt was fixed and 25% was variable. The change in our fixed rate percentage from December 31, 2022 to June 30, 2023 was primarily due to the addition of fixed rate debt, which partially replaced variable rate debt. Based on our June 30, 2023 outstanding variable rate debt balance, a one percentage point increase in annual Term SOFR interest rates would increase our annual interest expense by approximately \$16.7 million excluding the effects of capitalization of interest.

**Foreign Currency Exchange Rate Risk**

As of June 30, 2023, we had foreign currency derivatives to hedge the exposure to volatility in foreign currency exchange rates related to our ship construction contracts denominated in euros. These derivatives hedge the foreign currency exchange rate risk on a portion of the payments on our ship construction contracts. The payments not hedged aggregate €5.6 billion, or \$6.1 billion based on the euro/U.S. dollar exchange rate as of June 30, 2023. As of December 31, 2022, the payments not hedged aggregated €4.5 billion, or \$4.8 billion, based on the euro/U.S. dollar

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exchange rate as of December 31, 2022. The change from December 31, 2022 to June 30, 2023 was due to an increase in contract price for our newbuild agreements. We estimate that a 10% change in the euro as of June 30, 2023 would result in a \$0.6 billion change in the U.S. dollar value of the foreign currency denominated remaining payments.

**Fuel Price Risk**

Our exposure to market risk for changes in fuel prices relates to the forecasted purchases of fuel on our ships. Fuel expense, as a percentage of our total cruise operating expense, was 11.9% and 16.9% for the three months ended June 30, 2023 and 2022, respectively, and 13.5% and 17.5% for the six months ended June 30, 2023 and 2022, respectively. We use fuel derivative agreements to mitigate the financial impact of fluctuations in fuel prices and as of June 30, 2023, we had hedged approximately 51% and 26% of our remaining 2023 and 2024 projected metric tons of fuel purchases, respectively. As of December 31, 2022, we had hedged approximately 50% of our 2023 projected metric tons of fuel purchases. The percentage of fuel purchases hedged changed between December 31, 2022 and June 30, 2023 primarily due to the addition of fuel swaps.

We estimate that a 10% increase in our weighted-average fuel price would increase our anticipated 2023 fuel expense by \$32.2 million. This increase would be offset by an increase in the fair value of all our fuel swap agreements of \$15.7 million. Fair value of our derivative contracts is derived using valuation models that utilize the income valuation approach. These valuation models take into account the contract terms such as maturity, as well as other inputs such as fuel types, fuel curves, creditworthiness of the counterparty and the Company, as well as other data points.

**Item 4. Controls and Procedures**

**Evaluation of Disclosure Controls and Procedures**

Our management has evaluated, with the participation of our Chief Executive Officer and Chief Financial Officer, the effectiveness of our disclosure controls and procedures, as such term is defined in Rule 13a-15(e) under the Securities Exchange Act of 1934, as amended, as of June 30, 2023. There are inherent limitations in the effectiveness of any system of disclosure controls and procedures, including the possibility of human error and the circumvention or overriding of the controls and procedures. Accordingly, even effective disclosure controls and procedures can only provide reasonable assurance of achieving their control objectives. Based upon management's evaluation, our Chief Executive Officer and Chief Financial Officer concluded that our disclosure controls and procedures were effective as of June 30, 2023 to provide reasonable assurance that the information required to be disclosed by us in the reports we file or submit under the Securities Exchange Act of 1934, as amended, is recorded, processed, summarized and reported within the time periods specified in the rules and forms of the SEC, and that it is accumulated and communicated to our management, including our Chief Executive Officer and Chief Financial Officer, as appropriate, to allow timely decisions regarding required disclosure.

**Changes in Internal Control Over Financial Reporting**

There have been no changes in our internal control over financial reporting during the quarter ended June 30, 2023 that have materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

**Limitations on the Effectiveness of Controls**

It should be noted that any system of controls, however well designed and operated, can provide only reasonable, and not absolute, assurance that the objectives of the system will be met. In addition, the design of any control system is based in part upon certain assumptions about the likelihood of future events. Because of these and other inherent limitations of control systems, there is only the reasonable assurance that our controls will succeed in achieving their goals under all potential future conditions.

## PART II. OTHER INFORMATION

### Item 1. Legal Proceedings

Our threshold for disclosing material environmental legal proceedings involving a governmental authority where potential monetary sanctions are involved is \$1 million.

See the section titled “Litigation” in “[Item 1—Financial Statements—Notes to Consolidated Financial Statements—Note 10 Commitments and Contingencies](#)” in Part I of this quarterly report for information about legal proceedings.

### Item 1A. Risk Factors

We refer you to our Annual Report on Form 10-K for a discussion of the risk factors that affect our business and financial results. We caution you that the risk factors discussed in “Item 1A. Risk Factors” in our Annual Report on Form 10-K, elsewhere in this report or other SEC filings, could cause future results to differ materially from those stated in any forward-looking statements. You should not interpret the disclosure of a risk to imply that the risk has not already materialized. The impact of macroeconomic conditions have also had the effect of heightening many of the other risks described in the “Risk Factors” included in our Annual Report on Form 10-K, such as those relating to our need to generate sufficient cash flows to service our indebtedness, and our ability to comply with the covenants contained in the agreements that govern our indebtedness.

There have been no material changes in our risk factors from those disclosed in our Annual Report on Form 10-K.

### Item 5. Other Information

#### 10b5-1 Trading Arrangements

During the quarter ended June 30, 2023, none of our directors or Section 16 officers informed us of the adoption or termination of any “Rule 10b5-1 trading arrangement” or “non-Rule 10b5-1 trading arrangement” (in each case, as defined in Item 408(a) of Regulation S-K).

### Item 6. Exhibits

- 10.1 [Extension Agreement, dated April 21, 2023, to the Fifth Amended and Restated Credit Agreement dated May 8, 2020 \(as further amended\), among NCL Corporation Ltd. as a borrower and KfW IPEX-Bank GmbH \(incorporated herein by reference to Exhibit 10.8 to Norwegian Cruise Line Holdings Ltd.’s Form 10-Q filed on May 5, 2023 \(File No. 001-35784\)\)](#)
- 10.2 [Amendment and Restatement Agreement, dated as of April 6, 2023 and effective as of April 28, 2023, among Leonardo Three, Ltd., as borrower, NCL Corporation Ltd., as guarantor, NCL International, Ltd., as shareholder, Norwegian Cruise Line Holdings Ltd., the lenders party thereto, HSBC Bank PLC, BNP Paribas Fortis S.A./N.V., KfW IPEX-Bank GmbH and Cassa Depositi e Prestiti S.P.A., as joint mandated lead arrangers, and the other parties thereto, which amends and restates the Loan Agreement, originally dated as of April 12, 2017 \(incorporated herein by reference to Exhibit 10.1 to Norwegian Cruise Line Holdings Ltd.’s Form 8-K filed on May 2, 2023 \(File No. 001-35784\)\)#](#)
- 10.3 [Amendment and Restatement Agreement, dated as of April 6, 2023 and effective as of April 28, 2023, among Leonardo Four, Ltd., as borrower, NCL Corporation Ltd., as guarantor, NCL International, Ltd., as shareholder, Norwegian Cruise Line Holdings Ltd., the lenders party thereto, KfW IPEX-Bank GmbH, BNP Paribas Fortis S.A./N.V., HSBC Bank PLC and Cassa Depositi e Prestiti S.P.A., as joint mandated lead arrangers, and the other parties thereto, which amends and restates the Loan Agreement, originally dated as of April 12, 2017 \(incorporated herein by reference to Exhibit 10.2 to Norwegian Cruise Line Holdings Ltd.’s Form 8-K filed on May 2, 2023 \(File No. 001-35784\)\)#](#)

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- 10.4 [Amendment and Restatement Agreement, dated as of April 6, 2023 and effective as of April 28, 2023, among Leonardo Five, Ltd., as borrower, NCL Corporation Ltd., as guarantor, NCL International, Ltd., as shareholder, Norwegian Cruise Line Holdings Ltd., the lenders party thereto, Crédit Agricole Corporate and Investment Bank, BNP Paribas Fortis S.A./N.V., HSBC Bank PLC, KfW IPEX-Bank GmbH, Cassa Depositi e Prestiti S.P.A., Banco Santander, S.A. and Société Générale, as joint mandated lead arrangers, and the other parties thereto, which amends and restates the Loan Agreement, originally dated as of December 19, 2018 \(incorporated herein by reference to Exhibit 10.3 to Norwegian Cruise Line Holdings Ltd.'s Form 8-K filed on May 2, 2023 \(File No. 001-35784\)\)#](#)
- 10.5 [Amendment and Restatement Agreement, dated as of April 6, 2023 and effective as of April 28, 2023, among Leonardo Six, Ltd., as borrower, NCL Corporation Ltd., as guarantor, NCL International, Ltd., as shareholder, Norwegian Cruise Line Holdings Ltd., the lenders party thereto, Crédit Agricole Corporate and Investment Bank, BNP Paribas Fortis S.A./N.V., HSBC Bank PLC, KfW IPEX-Bank GmbH, Cassa Depositi e Prestiti S.P.A., Banco Santander, S.A. and Société Générale, as joint mandated lead arrangers, and the other parties thereto, which amends and restates the Loan Agreement, originally dated as of December 19, 2018 \(incorporated herein by reference to Exhibit 10.4 to Norwegian Cruise Line Holdings Ltd.'s Form 8-K filed on May 2, 2023 \(File No. 001-35784\)\)#](#)
- 10.6 [Amendment and Restatement Agreement, dated as of April 6, 2023 and effective as of April 28, 2023, among Explorer III New Build, LLC, as borrower, NCL Corporation Ltd., as guarantor, Seven Seas Cruises S. de R.L., as shareholder, Norwegian Cruise Line Holdings Ltd., the lenders party thereto, Crédit Agricole Corporate and Investment Bank, BNP Paribas Fortis S.A./N.V., HSBC Bank PLC, KfW IPEX-Bank GmbH, Cassa Depositi e Prestiti S.P.A., Banco Santander, S.A. and Société Générale, as joint mandated lead arrangers, and the other parties thereto, which amends and restates the Loan Agreement, originally dated as of December 19, 2018 \(incorporated herein by reference to Exhibit 10.5 to Norwegian Cruise Line Holdings Ltd.'s Form 8-K filed on May 2, 2023 \(File No. 001-35784\)\)#](#)
- 10.7 [Amendment and Restatement Agreement, dated as of April 6, 2023 and effective as of April 28, 2023, among O Class Plus Two, LLC, as borrower, NCL Corporation Ltd., as guarantor, Oceania Cruises S. de R.L., as shareholder, Norwegian Cruise Line Holdings Ltd., the lenders party thereto, Crédit Agricole Corporate and Investment Bank, BNP Paribas Fortis S.A./N.V., HSBC Bank PLC, KfW IPEX-Bank GmbH, Cassa Depositi e Prestiti S.P.A., Banco Santander, S.A. and Société Générale, as joint mandated lead arrangers, and the other parties thereto, which amends and restates the Loan Agreement, originally dated as of December 19, 2018 \(incorporated herein by reference to Exhibit 10.6 to Norwegian Cruise Line Holdings Ltd.'s Form 8-K filed on May 2, 2023 \(File No. 001-35784\)\)#](#)
- 10.8\* [Amendment and Restatement Agreement, dated as of May 19, 2023, among Explorer New Build, LLC, as borrower, NCL Corporation Ltd., as guarantor, Seven Seas Cruises S. de R.L., as charterer and shareholder, Norwegian Cruise Line Holdings Ltd., the lenders party thereto, Crédit Agricole Corporate and Investment Bank, Société Générale, and KfW IPEX-Bank GmbH, as joint mandated lead arrangers, and the other parties thereto, which amends and restates the Loan Agreement, originally dated as of July 31, 2013#](#)
- 10.9\* [Amendment and Restatement Agreement, dated as of May 19, 2023, among Leonardo One, Ltd., as borrower, NCL Corporation Ltd., as guarantor, NCL International, Ltd., as shareholder, Norwegian Cruise Line Holdings Ltd., the lenders party thereto, Crédit Agricole Corporate and Investment Bank, BNP Paribas Fortis S.A./N.V., HSBC Bank PLC, KfW IPEX-Bank GmbH, and Cassa Depositi e Prestiti S.P.A., as joint mandated lead arrangers, and the other parties thereto, which amends and restates the Loan Agreement, originally dated as of April 12, 2017#](#)
- 10.10\* [Amendment and Restatement Agreement, dated as of May 19, 2023, among Leonardo Two, Ltd., as borrower, NCL Corporation Ltd., as guarantor, NCL International, Ltd., as shareholder, Norwegian Cruise Line Holdings Ltd., the lenders party thereto, Crédit Agricole Corporate and Investment Bank, BNP Paribas Fortis S.A./N.V., HSBC Bank PLC and Cassa Depositi e Prestiti S.P.A., as joint mandated lead arrangers, and the other parties thereto, which amends and restates the Loan Agreement, originally dated as of April 12, 2017#](#)



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- 10.11\* [Amendment and Restatement Agreement, dated as of May 19, 2023, among Marina New Build, LLC, as borrower, NCL Corporation Ltd., as guarantor, Oceania Cruises S. de R.L., as charterer and shareholder, Norwegian Cruise Line Holdings Ltd., the lenders party thereto, Crédit Agricole Corporate and Investment Bank and Société Générale, as mandated lead arrangers, and the other parties thereto, which amends and restates the Loan Agreement, originally dated as of July 18, 2008#](#)
- 10.12\* [Amendment and Restatement Agreement, dated as of May 19, 2023, among O Class Plus One, LLC, as borrower, NCL Corporation Ltd., as guarantor, Oceania Cruises S. de R.L., as shareholder, Norwegian Cruise Line Holdings Ltd., the lenders party thereto, Crédit Agricole Corporate and Investment Bank, BNP Paribas Fortis S.A./N.V., HSBC Bank PLC, KfW IPEX-Bank GmbH, Cassa Depositi e Prestiti S.P.A., Banco Santander, S.A. and Société Générale, as joint mandated lead arrangers, and the other parties thereto, which amends and restates the Loan Agreement, originally dated as of December 19, 2018#](#)
- 10.13\* [Amendment and Restatement Agreement, dated as of May 19, 2023, among Riviera New Build, LLC, as borrower, NCL Corporation Ltd., as guarantor, Oceania Cruises S. de R.L., as charterer and shareholder, Norwegian Cruise Line Holdings Ltd., the lenders party thereto, Crédit Agricole Corporate and Investment Bank and Société Générale, as mandated lead arrangers, and the other parties thereto, which amends and restates the Loan Agreement, originally dated as of July 18, 2008#](#)
- 10.14\* [Amendment and Restatement Agreement, dated as of May 19, 2023, among Explorer II New Build, LLC, as borrower, NCL Corporation Ltd., as guarantor, Seven Seas Cruises S. de R.L., as charterer and shareholder, Norwegian Cruise Line Holdings Ltd., the lenders party thereto, Crédit Agricole Corporate and Investment Bank, Société Générale, HSBC Bank PLC, and KfW IpeX-Bank GmbH, as joint mandated lead arrangers, and the other parties thereto, which amends and restates the Loan Agreement, originally dated as of March 30, 2016#](#)
- 10.15 [Norwegian Cruise Line Holdings Ltd. Amended and Restated 2013 Performance Incentive Plan \(incorporated herein by reference to Exhibit 10.1 to Norwegian Cruise Line Holdings Ltd.'s Form 8-K filed on June 20, 2023 \(File No. 001-35784\)\)†](#)
- 10.16 [Employment Agreement by and between NCL \(Bahamas\) Ltd. and Mark Kempa, effective as of July 17, 2023 \(incorporated herein by reference to Exhibit 10.1 to Norwegian Cruise Line Holdings Ltd.'s Form 8-K filed on July 21, 2023 \(File No. 001-35784\)\)†](#)
- 10.17\* [Employment Agreement by and between Prestige Cruise Services LLC and Andrea DeMarco, effective as of July 17, 2023†](#)
- 10.18\* [Employment Agreement by and between Prestige Cruise Services LLC and Frank A. Del Rio, effective as of July 17, 2023†](#)
- 31.1\* [Certification of the President and Chief Executive Officer pursuant to Rule 13a-14\(a\) of the Securities Exchange Act of 1934](#)
- 31.2\* [Certification of the Executive Vice President and Chief Financial Officer pursuant to Rule 13a-14\(a\) of the Securities Exchange Act of 1934](#)
- 32.1\*\* [Certifications of the President and Chief Executive Officer and the Executive Vice President and Chief Financial Officer pursuant to Rule 13a-14\(b\) of the Securities Exchange Act of 1934 and Section 1350 of Chapter 63 of Title 18 of the United States Code](#)
- 101\* The following unaudited consolidated financial statements from Norwegian Cruise Line Holdings Ltd.'s Quarterly Report on Form 10-Q for the quarterly period ended June 30, 2023, formatted in Inline XBRL:

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- (i) the Consolidated Statements of Operations for the three and six months ended June 30, 2023 and 2022;
- (ii) the Consolidated Statements of Comprehensive Income (Loss) for the three and six months ended June 30, 2023 and 2022;
- (iii) the Consolidated Balance Sheets as of June 30, 2023 and December 31, 2022;
- (iv) the Consolidated Statements of Cash Flows for the six months ended June 30, 2023 and 2022;
- (v) the Consolidated Statements of Changes in Shareholders' Equity for the three and six months ended June 30, 2023 and 2022; and
- (vi) the Notes to the Consolidated Financial Statements.

104\* The cover page from Norwegian Cruise Line Holdings Ltd.'s Quarterly Report on Form 10-Q for the quarter ended June 30, 2023, formatted in Inline XBRL and included in the interactive data files submitted as Exhibit 101.

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\* Filed herewith.

\*\* Furnished herewith.

† Management contract or compensatory plan.

# Certain portions of this document that constitute confidential information have been redacted in accordance with Regulation S-K Item 601(b)(10).

**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.

NORWEGIAN CRUISE LINE HOLDINGS LTD.  
(Registrant)

By: /s/ HARRY SOMMER  
Name: Harry Sommer  
Title: President and Chief Executive Officer  
(Principal Executive Officer)

By: /s/ MARK A. KEMPA  
Name: Mark A. Kempa  
Title: Executive Vice President and Chief Financial Officer  
(Principal Financial Officer)

Dated: August 8, 2023

[\*]: THE IDENTIFIED INFORMATION HAS BEEN OMITTED FROM THE AGREEMENT BECAUSE IT IS BOTH (i) NOT MATERIAL AND (ii) WOULD BE COMPETITIVELY HARMFUL IF PUBLICLY DISCLOSED

Dated 19 May 2023

**EXPLORER NEW BUILD, LLC**  
as Borrower

and

**NCL CORPORATION LTD.**  
as Guarantor

and

**SEVEN SEAS CRUISES S. DE R.L.**  
as Charterer  
and Shareholder

and

**NORWEGIAN CRUISE LINE HOLDINGS LTD.**  
as the Holding

and

**THE BANKS AND FINANCIAL INSTITUTIONS LISTED IN SCHEDULE 1**  
as Lenders

and

**CRÉDIT AGRICOLE CORPORATE AND INVESTMENT BANK**  
**SOCIÉTÉ GÉNÉRALE**  
**KFW IPEX-BANK GMBH**  
as Joint Mandated Lead Arrangers

and

**CRÉDIT AGRICOLE CORPORATE AND INVESTMENT BANK**  
as Agent  
and SACE Agent

and

**CRÉDIT AGRICOLE CORPORATE AND INVESTMENT BANK**  
as Security Trustee

**AMENDMENT AND RESTATEMENT AGREEMENT**

relating to a facility agreement originally dated 31 July 2013 (as amended from time to time, including as amended and restated pursuant to an amendment and restatement agreement dated 31 October 2014, as amended by a supplemental agreement dated 4 June 2020, as further amended and restated by an amendment and restatement agreement dated 17 February 2021, as amended by a supplemental agreement

WATSON FARLEY  
&  
WILLIAMS

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dated 23 December 2021 and as further amended by a supplemental agreement dated 16 December 2022)  
in respect of the part financing of the passenger cruise ship m.v. "SEVEN SEAS EXPLORER"

WATSON FARLEY  
&  
WILLIAMS

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	Form of Amended and Restated Guarantee (marked to indicate amendments)	

THIS AGREEMENT is made on 19 May 2023

## PARTIES

- (1) **EXPLORER NEW BUILD, LLC**, a limited liability company formed in the state of Delaware whose registered office is at Corporate Creations Network, Inc., 3411 Silverside Road, Tatnall Building Suite 104, Wilmington, DE 19810, United States of America as borrower (the "**Borrower**")
- (2) **NCL CORPORATION LTD.**, an exempted company incorporated under the laws of Bermuda with its registered office at Park Place, 55 Par-la-Ville Road, Hamilton HM 11, Bermuda (the "**Guarantor**")
- (3) **NORWEGIAN CRUISE LINE HOLDINGS LTD.**, a company incorporated under the laws of Bermuda with its registered office at Park Place, 55 Par-la-Ville Road, Hamilton HM 11, Bermuda (the " **Holding**")
- (4) **SEVEN SEAS CRUISES S. DE R.L.**, a Panamanian limited liability company ("*sociedad de responsabilidad limitada*") domiciled in Panama whose resident agent is at Arifa Building, West Boulevard, Santa Maria Business District, Panama, Republic of Panama and registered at the Mercantile Section of the Panama Public Registry at Microjacket 876, Document 1238212 since 7 November 2007 (the "**Charterer**" and "**Shareholder**")
- (5) **THE FINANCIAL INSTITUTIONS** listed in Schedule 1 (*The Lenders*) as lenders (the "**Lenders**")
- (6) **CRÉDIT AGRICOLE CORPORATE AND INVESTMENT BANK**, a French société anonyme having its registered office located at 12, Place des États-Unis, CS 70052, 92547 Montrouge Cedex, France registered under number Siren 304 187 701 at the Registre du Commerce et des Sociétés of Nanterre, France, **SOCIÉTÉ GÉNÉRALE** a French société anonyme having its registered office located at 29 Boulevard Haussmann, 75009 Paris under number Siren 552 120 222 at the Registre du Commerce et des Sociétés of Paris, France and **KFW IPEX-BANK GMBH** of Palmengartenstraße, 5-9 60325, Frankfurt, as mandated lead arrangers (the "**Mandated Lead Arrangers**")
- (7) **CRÉDIT AGRICOLE CORPORATE AND INVESTMENT BANK**, a French société anonyme having its registered office located at 12, Place des États-Unis, CS 70052, 92547 Montrouge Cedex, France registered under number Siren 304 187 701 at the Registre du Commerce et des Sociétés of Nanterre, France as agent and SACE agent (the "**Agent**" and the "**SACE Agent**")
- (8) **CRÉDIT AGRICOLE CORPORATE AND INVESTMENT BANK**, a French société anonyme having its registered office located at 12, Place des États-Unis, CS 70052, 92547 Montrouge Cedex, France registered under number Siren 304 187 701 at the Registre du Commerce et des Sociétés of Nanterre, France as security trustee (the "**Security Trustee**")

## BACKGROUND

- (A) By the Original Facility Agreement, the Lenders agreed to make available to the Borrower a facility of the Dollar Equivalent of up to EUR 299,866,962 (not to exceed USD 440,321,649) for the purpose of assisting the Borrower in financing (i) payment under the Shipbuilding Contract of all or part of 80% of the Final Contract Price up to the Eligible Amount and (ii) payment to the Borrower of the Dollar Equivalent of 100% of the first instalment of the SACE Premium already paid direct to SACE on or before 30 days following the issuance of the SACE Insurance Policy and (iii) payment to SACE of the Dollar Equivalent of 100% of the second instalment of the SACE Premium payable on the original Drawdown Date.
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- (B) Due to the unprecedented and extraordinary impacts of the Covid-19 pandemic on the cruise sector and cruise operators, the Original Facility Agreement was amended pursuant to a supplemental agreement dated 4 June 2020 (the "**2020 Amendment Agreement**"), amended and restated pursuant to an amendment and restatement agreement dated 17 February 2021 (the "**February 2021 Amendment and Restatement Agreement**"), amended by a supplemental agreement dated 23 December 2021 (the "**December 2021 Amendment Agreement**") and further amended by a supplemental agreement dated 16 December 2022 (the "**December 2022 Amendment Agreement**") pursuant to which, *inter alia*, the parties agreed to the temporary amendment of certain covenants under the Guarantee and addition of certain covenants under the Original Facility Agreement.
- (C) The Parties have agreed to amend and restate the Facility Agreement as set out in this Agreement for the purposes of, *inter alia*, documenting the transition from LIBOR to SOFR (as defined below).

## **OPERATIVE PROVISIONS**

### **1 DEFINITIONS AND INTERPRETATION**

#### **1.1 Definitions**

In this Agreement:

**"2023 Finance Documents"** means this Agreement and the New Mortgage Addendum.

**"Amended and Restated Facility Agreement"** means the Facility Agreement as amended and restated by this Agreement in the form set out in Appendix 1.

**"Amended and Restated Guarantee"** means the Guarantee as amended and restated by this Agreement in the form set out in Appendix 2.

**"Effective Date"** means the date on which the Agent notifies the Borrower, the other Creditor Parties, SIMEST and SACE as to the satisfaction of the conditions precedent as provided in paragraph (a) of Clause 2.1 (*Conditions Precedent*).

**"Facility Agreement"** means the Original Facility Agreement as amended by the 2020 Amendment Agreement, as amended and restated pursuant to the February 2021 Amendment and Restatement Agreement, as amended by the December 2021 Amendment Agreement and as further amended by the December 2022 Amendment Agreement.

**"New Mortgage Addendum"** means the addendum to the Mortgage in the agreed form.

**"Obligors"** means the Borrower, the Guarantor, the Holding, the Charterer and the Shareholder.

**"Original Facility Agreement"** means the facility agreement dated 31 July 2013 (as amended pursuant to an amendment and restatement agreement dated 31 October 2014) and made between, amongst others, (i) the Borrower, (ii) the Lenders, (iii) the Mandated Lead Arrangers, (iv) the Agent and the SACE Agent and (v) the Security Trustee

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



"SOFR" means the secured overnight financing rate (SOFR) administered by the Federal Reserve Bank of New York (or any other person which takes over the administration of that rate) published by the Federal Reserve Bank of New York (or for any other person which takes over the publication of that rate).

## **1.2 Defined expressions**

Defined expressions in the Facility Agreement and, with effect from the Effective Date, the Amended and Restated Facility Agreement, shall have the same meanings when used in this Agreement unless the context otherwise requires or unless otherwise defined in this Agreement.

## **1.3 Application of construction and interpretation provisions of Facility Agreement**

Clause 1.2 (*construction of certain terms*) of the Facility Agreement applies to this Agreement as if it were expressly incorporated in it with any necessary modifications.

## **1.4 Agreed forms of new, and supplements to, Finance Documents**

References in Clause 1.1 (*Definitions*) to any new or supplement to a Finance Document being in "agreed form" are to that Finance Document:

- (a) in a form attached to a certificate dated the same date as this Agreement (and signed by the Borrower and the Agent); or
- (b) in any other form agreed in writing between the Borrower and the Agent acting with the authorisation of the Majority Lenders or, where clause 30.2 (*Variations, waivers etc. requiring agreement of all Lenders*) of the Facility Agreement applies, all the Lenders.

## **1.5 Designation as a Finance Document**

The Borrower and the Agent designate this Agreement as a Finance Document.

## **1.6 Third party rights**

- (a) Unless 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 other than SACE and SIMEST, who may enforce or to enjoy the benefit of and rely on the provisions of this Agreement and the Amended and Restated Facility Agreement subject to the provisions of the Third Parties Act.
- (b) Notwithstanding any term of any Finance Document, the consent of any person who is not a Party (other than SACE and SIMEST) is not required to rescind or vary this Agreement at any time.
- (c) For the avoidance of doubt and in accordance with clause 33.4 (*Third party rights*) of the Facility Agreement, nothing in this Clause 1.6 (*Third party rights*) shall limit or prejudice the exercise by SACE of its rights under this Agreement or the Finance Documents in the event that such rights are subrogated or assigned to it pursuant to the terms of the SACE Insurance Policy.

## **2 CONDITIONS PRECEDENT**

### **2.1** The Effective Date cannot occur unless:

- (a) the Agent has received (or on the instructions of all the Lenders, waived receipt of) all of the documents and other evidence listed in Schedule 2 (*Conditions Precedent*) in form and substance satisfactory to the Agent;
- (b) save as disclosed in writing to the Agent and SACE prior to the date of this Agreement, the representations and warranties contained in Clause 3 (*Representations*) are true and correct on, and as of, each such time as if each was made with respect to the facts and circumstances existing at such time;
- (c) save as disclosed in writing to the Agent and SACE prior to the date of this Agreement, no Event of Default, event or circumstance specified in clause 18 (*Events of Default*) of the Facility Agreement 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, event resulting in mandatory prepayment of the Loan pursuant to clause 16.3 (*Mandatory prepayment – Sale and Total Loss*) and clause 16.4 (*Mandatory prepayment – SACE Insurance Policy*) of the Facility Agreement or Deferral Prepayment Event shall have occurred and be continuing or would result from the amendment and restatement of the Facility Agreement pursuant to this Agreement; and
- (d) the Agent is satisfied that the Effective Date can occur and have not provided any instructions to the contrary informing the Parties that the Effective Date cannot occur.

**2.2** Upon fulfilment or waiver of the conditions set out in Clause 2.1 above, the Agent shall provide the Borrower and the Creditor Parties SIMEST and SACE with a copy of the executed certificate in the form set out in Schedule 3 (*Form of Effective Date Certificate*) confirming that the Effective Date has occurred and such certificate shall be binding on all Parties.

**2.3** Other than to the extent that the Majority Lenders notify the Agent in writing to the contrary before the Agent provides the certificate described in Clause 2.2 above, the Creditor Parties authorise (but do not require) the Agent to execute and provide such certificate. The Agent shall not be liable for any damages, costs or losses whatsoever as a result of giving any such certificate.

## **3 REPRESENTATIONS**

### **3.1 Facility Agreement representations**

On the date of this Agreement and on the Effective Date, each Obligor that is a party to the Facility Agreement makes each of the representations and warranties as set out in clause 11 (*Representations and warranties*) of the Facility Agreement, as amended and restated by this Agreement and updated with appropriate modifications to refer to this Agreement and (where relevant) the Amended and Restated Facility Agreement, the Amended and Restated Guarantee and the New Mortgage Addendum, by reference to the circumstances then existing.

### **3.2 Finance Document representations**

On the date of this Agreement and on the Effective Date, each Obligor (save for the Holding) makes the representations and warranties set out in the Finance Documents (other than the Facility Agreement) to which it is a party, as amended and restated and/or supplemented by

this Agreement and updated with appropriate modifications to refer to this Agreement, and, where appropriate, the Amended and Restated Guarantee and the New Mortgage Addendum, by reference to the circumstances then existing.

#### **4 AMENDMENT AND RESTATEMENT OF FACILITY AGREEMENT AND OTHER FINANCE DOCUMENTS**

##### **4.1 Specific amendments to the Facility Agreement**

With effect on and from the Effective Date, the Facility Agreement shall be amended and restated in the form of the Amended and Restated Facility Agreement and, as so amended and restated, the Facility Agreement shall continue to be binding on each of the parties to it in accordance with its terms as so amended and restated.

##### **4.2 Specific amendments to the Guarantee**

With effect on and from the Effective Date, the Guarantee shall be amended and restated in the form of the Amended and Restated Guarantee and, as so amended and restated, the Guarantor confirms that:

- (a) its Guarantee extends to the obligations of the Borrower under the Finance Documents as amended, restated and/or supplemented by this Agreement;
- (b) the obligations of the relevant Obligors under the Finance Documents as amended, restated and/or supplemented by this Agreement are included in the Secured Liabilities (as defined in the Facility Agreement); and
- (c) the Guarantee shall continue to be binding on each of the parties to it and have full force and effect in accordance with its terms as so amended and restated.

##### **4.3 Holding confirmation**

On the Effective Date, the Holding confirms that, notwithstanding the amendments made to the Finance Documents pursuant to this Agreement, the undertakings given by the Holding under the Guarantee, as amended and restated by this Agreement and updated with appropriate modifications to refer to this Agreement shall remain in full force and effect in accordance with its original terms and the amendments to the Finance Documents as amended, restated and/or supplemented by this Agreement.

##### **4.4 Security Confirmation**

Without prejudice to the provisions of the New Mortgage Addendum, on the Effective Date, each Obligor confirms that:

- (a) any Security Interest created by it under the Finance Documents extends to the obligations of the relevant Obligors under the Finance Documents as amended, restated and/or supplemented by this Agreement;
- (b) the obligations of the relevant Obligors under the Finance Documents as amended, restated and/or supplemented by this Agreement are included in the Secured Liabilities (as defined in the Finance Documents to which it is a party);

- (c) the Security Interests created under the Finance Documents continue in full force and effect on the terms of the respective Finance Documents; and
- (d) to the extent that this confirmation creates a new Security Interest, such Security Interest shall be on the terms of the Finance Documents in respect of which this confirmation is given.

**4.5 Finance Documents to remain in full force and effect**

The Finance Documents shall remain in full force and effect and, from the Effective Date:

- (a) in the case of the Facility Agreement as amended and restated pursuant to Clause 4.1 (*Specific amendments to the Facility Agreement*);
- (b) in the case of the Guarantee, as amended and restated pursuant to Clause 4.2 (*Specific amendments to the Guarantee*);
- (c) the Facility Agreement and the applicable provisions of this Agreement will be read and construed as one document;
- (d) the Guarantee and the applicable provisions of this Agreement will be read and construed as one document; and
- (e) except to the extent expressly waived by the amendments effected by this Agreement, no waiver is given by this Agreement and the Lenders expressly reserve all their rights and remedies in respect of any breach of or other default under the Finance Documents.

**5 FURTHER ASSURANCE**

Clause 12.19 (*Further assurance*) of the Facility Agreement, as amended and restated by this Agreement, applies to this Agreement as if it were expressly incorporated in it with any necessary modifications.

**6 COSTS, EXPENSES AND FEES**

Clause 10.11 (*Transaction Costs*) of the Facility Agreement, as amended and restated by this Agreement, applies to this Agreement as if it were expressly incorporated in it with any necessary modifications.

**7 NOTICES**

Clause 31 (*Notices*) of the Facility Agreement, as amended and restated by this Agreement, applies to this Agreement as if it were expressly incorporated in it with any necessary modifications.

**8 COUNTERPARTS**

This Agreement may be executed in any number of counterparts, and this has the same effect as if the signatures on the counterparts were on a single copy of this Agreement.

**9 SIGNING ELECTRONICALLY**

The Parties acknowledge and agree that they may execute this Agreement and any variation or amendment to the same, by electronic instrument. The Parties agree that the electronic signatures appearing on the documents shall have the same effect as handwritten signatures

and the use of an electronic signature on this Agreement shall have the same validity and legal effect as the use of a signature affixed by hand and is made with the intention of authenticating this Agreement, and evidencing the Parties' intention to be bound by the terms and conditions contained herein. For the purposes of using an electronic signature, the Parties authorise each other to conduct the lawful processing of personal data of the signers for contract performance and their legitimate interests including contract management.

## **10 GOVERNING LAW**

This Agreement and any non-contractual obligations arising out of or in connection with it are governed by English law.

## **11 ENFORCEMENT**

### **11.1 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.

### **11.2 Service of process**

- (a) Without prejudice to any other mode of service allowed under any relevant law, each Obligor (other than an Obligor incorporated in England and Wales):
  - (i) irrevocably appoints Hannaford Turner LLP, currently of 107 Cheapside, London, EC2V 6DN, UK as its agent for service of process in relation to any proceedings before the English courts in connection with any Finance Document; and
  - (ii) agrees that failure by a process agent to notify the relevant Obligor of the process will not invalidate the proceedings concerned.
- (b) If any person appointed as an agent for service of process is unable for any reason to act as agent for service of process, the Borrower (on behalf of all the Obligors) must immediately (and in any event within 10 days of such event taking place) appoint another agent on terms acceptable to the Agent. Failing this, the Agent may appoint another agent for this purpose.

**This Agreement has been entered into on the date stated at the beginning of this Agreement.**

**EXECUTION PAGES**

**BORROWER**

**SIGNED** by )  
duly authorised ) /s/ Daniel S. Farkas \_\_\_\_\_  
for and on behalf of )  
**EXPLORER NEW BUILD, LLC** )

**GUARANTOR**

**SIGNED** by )  
duly authorised ) /s/ Daniel S. Farkas \_\_\_\_\_  
for and on behalf of )  
**NCL CORPORATION LTD.** )

**HOLDING**

**SIGNED** by )  
for and on behalf of ) /s/ Daniel S. Farkas \_\_\_\_\_  
**NORWEGIAN CRUISE LINE** )  
**HOLDINGS LTD.** )  
as its duly appointed attorney-in-fact )  
in the presence of: )

**CHARTERER**

**SIGNED** by )  
duly authorised ) /s/ Daniel S. Farkas \_\_\_\_\_  
for and on behalf of )  
**SEVEN SEAS CRUISES S. DE R.L.** )

**SHAREHOLDER**

**SIGNED** by )  
duly authorised ) /s/ Daniel S. Farkas \_\_\_\_\_  
for and on behalf of )  
**SEVEN SEAS CRUISES S. DE R.L.** )

---

**LENDERS**

**SIGNED** by ) /s/ Jihanne Flegeau-Kihal  
duly authorised )  
for and on behalf of )  
**AKA AUSFUHRKREDIT-GESELLSCHAFT )**  
**MIT BESCHRAENKTER HAFTUNG )**

**SIGNED** by ) /s/ Chloe Konstantinides  
duly authorised )  
for and on behalf of )  
**BANCO BPM S.P.A. )**

**SIGNED** by ) /s/ Anne-Laure Orange  
duly authorised )  
for and on behalf of )  
**CRÉDIT AGRICOLE CORPORATE )**  
**AND INVESTMENT BANK )** /s/ Jérôme Leblond

**SIGNED** by ) /s/ André Tiele  
duly authorised )  
for and on behalf of )  
**KFW IPEX-BANK GMBH )** /s/ Claudia Coenberg

**SIGNED** by ) /s/ Isabelle Seneca  
duly authorised )  
for and on behalf of )  
**SOCIÉTÉ GÉNÉRALE )**

---

**MANDATED LEAD ARRANGERS**

**SIGNED** by )  
duly authorised ) /s/ Anne-Laure Orange  
for and on behalf of )  
**CRÉDIT AGRICOLE CORPORATE** )  
**AND INVESTMENT BANK** ) /s/ Jérôme Leblond

**SIGNED** by )  
duly authorised ) /s/ André Tiele  
for and on behalf of )  
**KFW IPEX-BANK GMBH** ) /s/ Claudia Coenenberg

**SIGNED** by )  
duly authorised ) /s/ Isabelle Seneca  
for and on behalf of )  
**SOCIÉTÉ GÉNÉRALE** )

---



**AGENT**

SIGNED by ) /s/ Anne-Laure Orange  
duly authorised )  
for and on behalf of )  
CRÉDIT AGRICOLE CORPORATE AND )  
INVESTMENT BANK ) /s/ Jérôme Leblond

**SACE AGENT**

SIGNED by ) /s/ Anne-Laure Orange  
duly authorised )  
for and on behalf of )  
CRÉDIT AGRICOLE CORPORATE AND )  
INVESTMENT BANK ) /s/ Jérôme Leblond

**SECURITY TRUSTEE**

SIGNED by ) /s/ Anne-Laure Orange  
duly authorised )  
for and on behalf of )  
CRÉDIT AGRICOLE CORPORATE AND )  
INVESTMENT BANK ) /s/ Jérôme Leblond

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## APPENDIX 1

### FORM OF AMENDED AND RESTATED FACILITY AGREEMENT (MARKED TO INDICATE AMENDMENTS)

Amendments are indicated as follows:

- 1 additions are indicated by underlined text in blue; and
  - 2 deletions are shown by strike-through text in red.
-

Dated \_\_\_\_\_ 2023

Originally dated 31 July 2013

(as amended ~~and restated~~ from time to time, including by an amendment and restatement agreement dated 31 October 2014 and as amended by a supplemental agreement dated 4 June 2020 ~~and~~, as further amended and restated ~~pursuant to~~ by an amendment and restatement agreement dated ~~February 2021~~ 17 February 2021, as further amended by a supplemental agreement dated 23 December 2021, as further amended by a supplemental agreement dated 16 December 2022 and as further amended and restated by an amendment and restatement agreement dated \_\_\_\_\_ 2023)

**EXPLORER NEW BUILD, LLC**  
as Borrower

and

**THE BANKS AND FINANCIAL INSTITUTIONS**  
listed in Schedule 1  
as Lenders

and

**CRÉDIT AGRICOLE CORPORATE AND INVESTMENT BANK**  
**SOCIÉTÉ GÉNÉRALE**  
~~HSBC BANK PLC~~  
**KFW IPEX-BANK GMBH**  
as Joint Mandated Lead Arrangers

and

**CRÉDIT AGRICOLE CORPORATE AND INVESTMENT BANK**  
as Agent  
and SACE Agent

and

**CRÉDIT AGRICOLE CORPORATE AND INVESTMENT BANK**  
as Security Trustee  
with the support of

**SACE S.p.A.**

**AMENDED AND RESTATED LOAN AGREEMENT**

relating to the part financing of the  
passenger cruise ship m.v. "SEVEN SEAS EXPLORER"

WATSON FARLEY  
&  
WILLIAMS

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**THIS AGREEMENT** is originally made on 31 July 2013 (as amended and restated by an amendment and restatement agreement dated 31 October 2014 ~~and~~, as amended by a supplemental agreement dated 4 June 2020 ~~and~~, as further amended and restated ~~pursuant to~~ by an amendment and restatement agreement dated ~~February 2021~~ 17 February 2021, as amended by a supplemental agreement dated 23 December 2021, as further amended by a supplemental agreement dated 16 December 2022 and as further amended and restated by an amendment and restatement agreement dated 2023).

## **PARTIES**

- (1) **EXPLORER NEW BUILD, LLC**, a limited liability company formed in the state of Delaware whose registered office is at Corporate Creations Network, Inc., 3411 Silverside Road, Tatnall Building Suite 104, Wilmington, DE 19810, United States of America as borrower (the "**Borrower**")
- (2) **THE BANKS AND FINANCIAL INSTITUTIONS** listed in Schedule 1 (*Lenders and Commitments*) as lenders (the "**Lenders**")
- (3) **CRÉDIT AGRICOLE CORPORATE AND INVESTMENT BANK, SOCIÉTÉ GÉNÉRALE**, ~~HSBC BANK PLC~~ and **KFW IPEX-BANK GMBH** as joint mandated lead arrangers (the "**Joint Mandated Lead Arrangers**")
- (4) **CRÉDIT AGRICOLE CORPORATE AND INVESTMENT BANK**, acting through its office at 12 Place des États-Unis, CS 70052, 92547, Montrouge Cedex, France, as agent (the "**Agent**") and SACE agent (the "**SACE Agent**")
- (5) **CRÉDIT AGRICOLE CORPORATE AND INVESTMENT BANK**, acting through its office at 12 Place des États-Unis, CS 70052, 92547, Montrouge Cedex, France, as the security trustee (the "**Security Trustee**")

## **BACKGROUND**

- (A) By a memorandum of agreement dated October 12th, 2012 (the "**MOA**") (as amended from time to time) entered into between (i) Fincantieri - Cantieri Navali Italiani SpA, a company incorporated in Italy with registered office in Trieste, via Genova, 1, and having fiscal code 00397130584 (the "**Builder**") and (ii) Prestige Cruise Holdings, Inc. and a shipbuilding contract dated 21 June 2013 (together with the MOA, the "**Shipbuilding Contract**") entered into between (i) the Builder and (ii) the Borrower, the Builder agreed to design, construct and deliver, and the Borrower agreed to purchase the 738 passenger cruise ship "Seven Seas Explorer" (ex. hull number [\*], which was delivered to the Borrower on 30 June 2016.
  - (B) The total price payable by the Borrower to the Builder under the Shipbuilding Contract is EUR 343,000,000 (the "**Initial Contract Price**") which has been paid on the following terms:
    - (i) as to [\*]%, being EUR [\*], by an initial payment which is to be within 5 Business Days after the effective date of the Shipbuilding Contract in accordance with Article 10.1(A) of the Shipbuilding Contract;
    - (ii) as to [\*]%, being EUR [\*], on the later of the date of commencement of steel cutting and the date falling 24 months prior to the Delivery Date;
    - (iii) as to [\*]%, being EUR [\*], on the later of keel laying and the date falling 12 months prior to the Delivery Date;
-

- (iv) as to [\*]%, being EUR [\*], on the later of float out and the date falling 9 months prior to the Delivery Date; and
- (v) as to [\*]%, being EUR [\*], on delivery of the Ship,
- as each such event is described in the Shipbuilding Contract.
- (C) The agreement was that the Initial Contract Price may be (i) increased or decreased from time to time under Article 24 of the Shipbuilding Contract in the event that the Borrower requests, and the Builder agrees, modifications to the specification or plans constituting a part of the Shipbuilding Contract or in the event that, subsequent to the date of the Shipbuilding Contract, variations are made to its provisions compliance with which is compulsory, the net cost of all such variations being payable on the Delivery Date (the "**Change Orders**"); and (ii) decreased at delivery of the Ship under Articles 13, 14, 16, 17, 19 and 20 of the Shipbuilding Contract (in aggregate the "**Liquidated Damages**") or by mutual agreement between the parties (the Initial Contract Price adjusted as aforesaid being the "**Final Contract Price**").
- (D) By a facility agreement dated 31 July 2013 (the "**Original Facility Agreement**") entered into between (i) the Borrower, (ii) the Lenders, (iii) the Joint Mandated Lead Arrangers, (iv) the Agent and the SACE Agent and (v) the Security Trustee, the Lenders agreed to make available to the Borrower a Dollar loan facility for the purpose of assisting the Borrower in financing, subject to exchange rate fluctuations, up to 80% of the Final Contract Price and 100% of the SACE Premium.
- (E) By an amending and restating agreement dated 31 October 2014 (the "**2014 Amending and Restating Agreement**"), the parties thereto agreed to, among other things, (1) the Guarantor replacing the Prior Guarantors as a guarantor of the obligations of the Borrower under this Agreement and (2) the amending and restating of the Original Facility Agreement pursuant to the terms set forth herein.
- (F) Due to the unprecedented and extraordinary impacts of the Covid-19 pandemic on the cruise sector and cruise operators, SACE informed the cruise operators of its availability to evaluate certain measures (the "**Temporary Measures**") applicable in relation to certain qualifying loan agreements in order to assist companies which are financially sound but dealing with the impact of the temporary but unprecedented Covid-19 pandemic; the possibility to access to such measures was subject, amongst other things, to certain principles dated 15 April 2020 for cruise lines offered by SACE (the "**Original Principles**").
- (G) Pursuant to the consent request letter dated 18 April 2020, the Borrower and the Guarantor notified the Agent and the SACE Agent of the wish to benefit from the Temporary Measures in relation to certain loan agreements listed therein, including the Original Facility Agreement (as amended and restated by the 2014 Amending and Restating Agreement), and requested, amongst other things, the deferral of repayments of principal under the Original Facility Agreement (as amended and restated by the 2014 Amending and Restating Agreement) for a period of one year from 1 April 2020 to 31 March 2021 (the "**First Borrower Request**").
- (H) On 25 May 2020, the Agent (for and on behalf of the Lenders) provided its consent to part of the First Borrower Request in accordance with and subject to certain conditions as set out in an amendment to the Original Facility Agreement (as amended and restated by the 2014 Amending and Restating Agreement) and to the Original Guarantee dated 4 June 2020 between, amongst others, the Borrower, the Agent and the SACE Agent (the "**2020 Amendment Agreement**") ~~(the Original Facility Agreement as amended pursuant to the 2014~~

~~Amending and Restating Agreement and the 2020 Amendment Agreement, the "Facility Agreement").~~

- (I) Due to the continued impacts of the Covid-19 pandemic on the cruise sector and cruise operators, SACE confirmed on 31 December 2020 its availability to evaluate an extension of the Temporary Measures (the "**Extended Temporary Measures**"), again subject to certain principles set out in a document titled "Debt Deferral Extension Framework for ECA-backed Export Financings" dated 26 November 2020 for cruise lines offered by SACE (together with the Original Principles, the "**Principles**").
- (J) Pursuant to the consent request letter dated 3 December 2020, the Borrower and the Guarantor notified the Agent and the SACE Agent of the wish to benefit from the Extended Temporary Measures in relation to certain loan agreements listed therein, including the Original Facility Agreement, and requested, amongst other things, the deferral of repayments of principal under the Facility Agreement for a further period of one year from 1 April 2021 to 31 March 2022 (the "**Second Borrower Request**").
- (K) On 25 January 2021, the Agent (for and on behalf of the Lenders) provided its consent to part of the Second Borrower Request in accordance with and subject to certain conditions as set out in an amendment and restatement agreement to the Original Facility Agreement ~~dated \_\_\_\_\_~~ (as amended by the 2014 Amending and Restating Agreement and the 2020 Amendment Agreement) dated 17 February 2021 between, amongst others, the Borrower, the Agent and the SACE Agent (the "**2021 Amendment and Restatement Agreement**").
- (L) By a supplemental agreement dated 23 December 2021 and made between, amongst others, the Borrower, the Guarantor, the Holding, the Agent and the SACE Agent (the "**December 2021 Amendment Agreement**"), the Parties agreed to, *inter alia*, amend certain financial covenants and certain other provisions under the Original Facility Agreement (as amended and restated by the 2014 Amending and Restating Agreement, as amended by the 2020 Amendment Agreement and as amended and restated by the 2021 Amendment and Restatement Agreement).
- (M) By a supplemental agreement dated 16 December 2022 and made between, amongst others, the Borrower, the Guarantor, the Holding, the Agent and the SACE Agent (the "**December 2022 Amendment Agreement**"), the Parties agreed to, *inter alia*, amend certain financial covenants and certain other provisions under the Original Facility Agreement (as amended and restated by the 2014 Amending and Restating Agreement, as amended by the 2020 Amendment Agreement, as amended and restated by the 2021 Amendment and Restatement Agreement and as amended by the December 2021 Amendment Agreement).
- (N) The Parties have agreed to enter into an amendment and restatement agreement (the "**2023 Amendment and Restatement Agreement**") to amend and restate the Original Facility Agreement (as amended and restated by the 2014 Amending and Restating Agreement, as amended by the 2020 Amendment Agreement, as amended and restated by the 2021 Amendment and Restatement Agreement, as amended by the December 2021 Amendment Agreement and as amended by the December 2022 Amendment Agreement) in order to, *inter alia*, document the transition from LIBOR to SOFR (as defined below) (the Original Facility Agreement as amended and restated by the 2014 Amending and Restating Agreement, as amended by the 2020 Amendment Agreement, as amended and restated by the 2021 Amendment and Restatement Agreement, as amended by the December 2021 Amendment Agreement and as amended by the December 2022 Amendment Agreement, the "**Facility Agreement**").

(O) ~~(L)~~ This Agreement sets out the terms and conditions of the Facility Agreement as amended and restated by the ~~2021~~2023 Amendment and Restatement Agreement.

## OPERATIVE PROVISIONS

### 1 INTERPRETATION

#### 1.1 Definitions

Subject to Clause ~~4.5~~1.6 (*General Interpretation*), in this Agreement:

**"2014 Amending and Restating Agreement"** means the amendment and restatement agreement dated 31 October 2014 and made between (i) the Borrower, (ii) the Lenders, (iii) the Joint Mandated Lead Arrangers, (iv) the Agent and the SACE Agent and (v) the Security Trustee.

**"2020 Amendment Agreement"** has the meaning given to such term in Recital (H).

**"2020 Deferral Commitment"** means in relation to any Lender as listed in Schedule 1 (*Lenders and Commitments*) to the 2020 Amendment Agreement, the amount in Dollars expressed as a percentage set opposite its name under the heading "Commitment" and the amount of any other commitment attributable to it (including the related 2020 Deferral Tranche Premium payable to SACE) under this Agreement in respect of the 2020 Deferral Tranche.

**"2020 Deferral Effective Date"** has the meaning given to the term Effective Date in the 2020 Amendment Agreement.

**"2020 Deferral Fee Letters"** means any letter between the Agent and any Obligor which sets out the fees payable in connection with the arrangements contemplated by the 2020 Amendment Agreement.

**"2020 Deferral Final Repayment Date"** means the Repayment Date falling 3 years and six months after the 2020 Deferral Repayment Starting Point, or, if earlier, the date on which the 2020 Deferral Tranche has been repaid or prepaid in full, as further set out in Schedule 6 (*Deferred Repayment Schedule*).

**"2020 Deferral Period"** means the period from 1 April 2020 to 31 March 2021.

**"2020 Deferral Repayment Starting Point"** means the date of the first Repayment Date falling after 31 March 2021, namely 30 June 2021.

**"2020 Deferral Tranche"** means the part of the Loan made available to the Borrower to finance the aggregate of the 2020 Deferred Repayment Instalments and the related 2020 Deferral Tranche Premium payable to SACE (amounting to [\*] per cent. ([\*]%) of the Total Commitments as of 1 April 2020) in a principal amount not exceeding thirty-one million, seven hundred and ninety-five thousand, five hundred and one Dollars and eighty-six Cents (\$31,795,501.86).

**"2020 Deferral Tranche Premium"** has the meaning given to such term in paragraph (a) of Clause ~~8.5~~9.5 (*Deferral Tranches – additional premium*).

**"2020 Deferred Repayment Instalments"** means the repayment instalments due during the 2020 Deferral Period.



"**2021 Amendment and Restatement Agreement**" has the meaning given to such term in Recital (K).

"**2021 Deferral Commitment**" means in relation to any Lender as listed in Schedule 1 (*Lenders and Commitments*) to the 2021 Amendment and Restatement Agreement, the amount in Dollars expressed as a percentage set opposite its name under the heading "Commitment" and the amount of any other commitment attributable to it under this Agreement in respect of the 2021 Deferral Tranche.

~~"**2021 Deferral Effective Date**" has the meaning given to the term Effective Date in the 2021 Amendment and Restatement Agreement.~~

"**2021 Deferral Fee Letters**" means any letter between the Agent or the SACE Agent and any Obligor which sets out the fees payable in connection with the arrangements contemplated by the 2021 Amendment and Restatement Agreement.

"**2021 Deferral Final Repayment Date**" means the Repayment Date falling 4 years and six months after the 2021 Deferral Repayment Starting Point, or, if earlier, the date on which the 2021 Deferral Tranche has been repaid or prepaid in full, as further set out in Schedule 6 (*Deferred Repayment Schedule*).

"**2021 Deferral Period**" means the period from 1 April 2021 to 31 March 2022.

"**2021 Deferred Repayment Instalments**" means the repayment instalments due during the 2021 Deferral Period.

"**2021 Deferral Repayment Starting Point**" means the date of the first Repayment Date falling after 31 March 2022, namely 30 June 2022.

"**2021 Deferral Tranche**" means the part of the Loan made or to be made available to the Borrower to repay the aggregate of the 2021 Deferred Repayment Instalments, including, for the avoidance of doubt, the repayment instalments due pursuant to paragraph (a) of Clause 5.5 (*Repayment of Deferral Tranches*).~~"**2021 Deferral Tranche Premium**" has the meaning given to such term in Clause 8.5 (*Deferral Tranches – additional premium*).~~

~~"**2021 Deferral Tranche Premium**" has the meaning given to such term in Clause 9.5 (*Deferral Tranches – additional premium*).~~

"**2023 Amendment and Restatement Agreement**" has the meaning given to such term in Recital (N).

"**2023 Effective Date**" has the meaning given to the term Effective Date in the 2023 Amendment and Restatement 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.

"**Agent**" means Crédit Agricole Corporate and Investment Bank, a French "société anonyme", having a share capital of EUR 7,851,636,342.00 and its registered office located at 12 Place des États-Unis, CS 70052 92547, Montrouge Cedex, France, registered under the n° Siren 304 187 701 at the Registre du Commerce et des Sociétés of Nanterre or any successor of it appointed under Clause ~~25~~ 26 (*Role of the Agent and the Joint Mandated Lead Arrangers*).

"**Annex VI**" means Annex VI (Regulations for the Prevention of Air Pollution from Ships) to the International Convention for the Prevention of Pollution from Ships 1973 (as modified in 1978 and 1997, 2005, 2007, 2008, 2010 and 2012).

"**Approved Broker**" means Clarkson Platou, Barry Rogliano Salles, RS Platou ASA, Fearnleys AS, Rocca & Partners or such other shipbroker or ship valuer experienced in valuing cruise ships nominated by the Borrower and approved by the Agent and SACE.

"**Approved Flag**" means the Marshall Islands flag, the Bahamas flag or such other flag as the Agent may, with the authorisation of the Majority Lenders and SACE, approve from time to time.

"**Approved Manager**" means the Borrower, Seven Seas, Prestige Cruise Services Inc., or any other company (whether or not a member of the Group) which the Agent may, with the authorisation of the Majority Lenders, approve from time to time as the manager of the Ship.

"**Approved Manager's Undertaking**" means, in the event that the Approved Manager is a company other than the Borrower (or Seven Seas, as bareboat charterer), a letter of undertaking executed or to be executed by the Approved Manager in favour of the Agent, which will include, without limitation, an agreement by the Approved Manager to subordinate its rights against the Ship and the Borrower to the rights of the Secured Parties under the Finance Documents, in the agreed form.

"**Approved Project**" means any of the projects identified in the Approved Projects List.

"**Approved Projects List**" means the approved projects list provided by the Guarantor and accepted by the Agent prior to the December 2021 Effective Date.

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

"**Availability Period**" means the period commencing on the date of the Original Facility Agreement and ending on:

- (a) the earlier to occur of (i) the Delivery Date and (ii) 25 February 2017 (or such later date as the Agent may, with the authorisation of the Lenders, agree with the Borrower); or
- (b) if earlier, the date on which the Total Commitments are fully borrowed, cancelled or terminated.

"**Backstop Rate Switch Date**" means 30 June 2023 or any other date agreed between the Agent, the Majority Lenders and the Borrower.

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

"**Bail-In Legislation**" means:

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

analogous law or regulation from time to time which requires contractual recognition of any Write-down and Conversion Powers contained in that law or regulation.

"**Base Rate**" means one Euro for 1.46839 Dollars.

"**Builder**" has the meaning given in Recital (A).

"**Business Day**" means:

- (a) ~~"**Business Day**" means~~ a day (other than a Saturday or a Sunday) on which banks are open in London, Frankfurt, Rome and Paris and, in relation to any payment to be made to the Builder, Milan and, in respect of a day on which a payment is required to be made under a Finance Document, also in New York City; and
- (b) (in relation to the fixing of an interest rate for a Term SOFR Loan) which is a US Government Securities Business Day.

"**Central Bank Rate**" means:

- (a) the short-term interest rate target set by the US Federal Open Market Committee as published by the Federal Reserve Bank of New York from time to time; or
- (b) if that target is not a single figure, the arithmetic mean of:
  - (i) the upper bound of the short-term interest rate target range set by the US Federal Open Market Committee and published by the Federal Reserve Bank of New York; and
  - (ii) the lower bound of that target range.

"**Central Bank Rate Adjustment**" means in relation to the Central Bank Rate prevailing at close of business on any US Government Securities Business Day, the 20 per cent trimmed arithmetic mean calculated by the Agent (or by any other Creditor Party which agrees to determine that mean in place of the Agent), of the Central Bank Rate Spreads for the five most immediately preceding US Government Securities Business Days for which SOFR is available.

"**Central Bank Rate Spread**" means in relation to any US Government Securities Business Day, the difference (expressed as a percentage rate per annum) calculated by the Agent (or by any other Creditor Party which agrees to calculate that rate in place of the Agent) of:

- (a) SOFR for that US Government Securities Business Day; and
- (b) the Central Bank Rate prevailing at close of business on that US Government Securities Business Day.

"**Certified Copy**" means in relation to any document delivered or issued by or on behalf of any company, a copy of such document certified as a true, complete and up-to-date copy of the original by any of the directors or the secretary or assistant secretary or any attorney-in-fact for the time being of that company.

"**Charged Property**" means all of the assets which from time to time are, or are expressed to be, the subject of Security Interests pursuant to the Finance Documents.

"**CIRR**" (Commercial Interest Reference Rate) means 2.13% per annum or any other CIRR rate being the fixed rate for medium and long term export credits in Dollars applicable to the financing of the Ship according to the Organisation for Economic Co-operation and Development rules as determined by the competent Italian Authorities.

"**CISADA**" means the United States Comprehensive Iran Sanctions, Accountability and Divestment Act of 2010 as it applies to non-US persons.

"**Code**" means the United States Internal Revenue Code of 1986.

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

"**Compliance Certificate**" has the meaning given to the term "Compliance Certificate" in the Guarantee.

"**Confidential Information**" means all information relating to any Obligor, 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 information that:

- (i) is or becomes public information other than as a direct or indirect result of any breach by that Creditor Party of Clause ~~32~~33 (*Confidentiality*); or
- (ii) is identified in writing at the time of delivery as non-confidential by any member of the Group or any of its advisers; or
- (iii) 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.

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

"**Contribution**" means, in relation to a Lender, the part of the Loan which is owing to that Lender.

"**Conversion Rate**" means the rate determined by the Agent on the Conversion Rate Fixing Date and notified to the Borrower as being the lower of:

- (a) the Base Rate; or
- (b) the FOREX Contracts Weighted Average Rate.

"**Conversion Rate Fixing Date**" means the date falling [\*] days before the Intended Delivery Date.

"**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.

"**Credit Adjustment Spread**" means 0.42826% per annum.

"**Creditor Party**" means the Agent, the Security Trustee, the SACE Agent, the Joint Mandated Lead Arrangers or any Lender, whether as at the date of the Original Facility Agreement or at any later time.

"**Daily Rate**" means for any US Government Securities Business Day:

- (a) SOFR for that US Government Securities Business Day; or
- (b) if SOFR is not available for that US Government Securities Business Day, the percentage rate per annum which is the aggregate of:
  - (i) the Central Bank Rate for that US Government Securities Business Day; and
  - (ii) the applicable Central Bank Rate Adjustment; or
- (c) if paragraph (b) above applies but the Central Bank Rate for that US Government Securities Business Day is not available, the percentage rate per annum which is the aggregate of:
  - (i) the most recent Central Bank Rate for a day which is no more than five US Government Securities Business Days before that US Government Securities Business Day; and
  - (ii) the applicable Central Bank Rate Adjustment,

rounded, in either case, to five decimal places and if, in either case, the aggregate of that rate and the applicable Credit Adjustment Spread is less than zero, the Daily Rate shall be deemed to be such a rate that the aggregate of the Daily Rate and the applicable Credit Adjustment Spread is zero.

"**Daily Simple SOFR**" means, for any day, a rate per annum equal to the Daily Rate for the day that is:

- (a) for as long as the Interest Make-Up Agreement is in full force and effect, ten (10) US Government Securities Business Days; or

(b) if the Interest Make-Up Agreement ceases to be in full force and effect, five (5) US Government Securities Business Days,

prior to (i) if such day is a US Government Securities Business Day, that day or (ii) if such day is not a US Government Securities Business Day, the US Government Securities Business Day immediately preceding such day.

"December 2021 Amendment Agreement" has the meaning given to such term in Recital (L).

"December 2021 Effective Date" has the meaning given to the term Effective Date in the December 2021 Amendment Agreement.

"December 2021 Fee Letters" means any letter between the Agent (or the SACE Agent, as applicable) and any Obligor which sets out the fees payable in connection with the arrangements contemplated by the December 2021 Amendment Agreement.

"December 2022 Amendment Agreement" has the meaning given to such term in Recital (M).

"December 2022 Fee Letters" means any letter between the Agent (or the SACE Agent, as applicable) and any Obligor which sets out the fees payable in connection with the arrangements contemplated by the December 2022 Amendment Agreement.

"Deferral Commitment" means the 2020 Deferral Commitment or the 2021 Deferral Commitment and, together, "Deferral Commitments".

"Deferral Fee Letters" means any of the 2020 Deferral Fee Letters and/or the 2021 Deferral Fee Letters.

"Deferral Final Repayment Date" means any of the 2020 Deferral Final Repayment Date and/or the 2021 Deferral Final Repayment Date.

"Deferral Period" means the period from 1 April 2020 to 31 March 2022.

"Deferral Prepayment Event" means the occurrence of any event entitling the Agent to exercise any rights granted to it pursuant to Clause ~~46-5~~17.5 (*Breach of new covenants or the Principles*), including, without limitation, the ability to cancel any part, or demand the immediate repayment of, any Deferral Tranche and to terminate the waiver of the covenant granted pursuant to Clause ~~45-16~~Security Value Maintenance) or the waiver of the financial covenants granted pursuant to paragraphs (b) and (c) of clause 11.15 (*Financial Covenants*) of the Guarantee.

"Deferral Tranche" means the 2020 Deferral Tranche or the 2021 Deferral Tranche.

"Deferral Tranche Premia" has the meaning given to such term in Clause ~~8-5~~9.5 (*Deferral Tranches – additional premium*).

"Deferred Costs Percentage" means:

- (a) in relation to the 2020 Deferral Tranche, [\*]% p.a.; and
- (b) in relation to the 2021 Deferral Tranche, [\*]% p.a..

"**Delivery Date**" means the date and time of delivery of the Ship by the Builder to the Borrower as stated in the Protocol of Delivery and Acceptance.

"**Delivered Vessel Facilities**" means, together, Marina Facility Agreement, Riviera Facility Agreement, Seven Seas Splendor Facility Agreement and this Agreement (as further amended, restated and supplemented from time to time).

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

"**Dollar Equivalent**" means such amount in Dollars as is calculated by the Agent on the Conversion Rate Fixing Date to be the equivalent of an amount in Euro at the Conversion Rate.

"**Dollars**" and "\$" means the lawful currency for the time being of the United States of America.

"**Drawdown Date**" means the date on which the Loan is drawn down and applied in accordance with Clause 2 (*Facility*).

"**Drawdown Notice**" means a notice in the form set out in Schedule 2 (*Form of Drawdown Notice*) (or in any other form which the Agent approves or reasonably requires).

"**Earnings**" means all moneys whatsoever which are now, or later become, payable (actually or contingently) to the Borrower or Seven Seas (as bareboat charterer) and which arise out of the use or operation of the Ship, including (but not limited to):

- (a) all freight, hire, fare and passage moneys, compensation payable to the Borrower or the Agent in the event of requisition of the Ship for hire, remuneration for salvage and towage services, demurrage and detention moneys and damages for breach (or payments for variation or termination) of any charterparty or other contract for the employment of the Ship;
- (b) all moneys which are at any time payable under Insurances in respect of loss of earnings;
- (c) all moneys which are at any time payable to the Borrower in respect of the general average contribution; and
- (d) if and whenever the 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 the Ship.

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

"**Effective Date**" means the Effective Date defined in the 2014 Amending and Restating Agreement.

"**Eligible Amount**" means eighty per cent. (80%) of the lesser of:

- (a) the Dollar Equivalent of EUR355,005,000; and
- (b) the Dollar Equivalent of the Final Contract Price.

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

**"EU Blocking Regulation"** means EU Regulation (EC) 2271/96 of 22 November 1996.

**"Euro"** and **"EUR"** means the single currency of the Participating Member States.

**"Event of Default"** means any of the events or circumstances described in Clause ~~18.1~~[19.1](#) (*Events of Default*).



**"Existing Indebtedness"** means (a) Loan Agreement, dated as of July 18, 2008, by and among Marina New Build, LLC, as Borrower, the banks and financial institutions party thereto, Crédit Agricole Corporate and Investment Bank (formerly Calyon) and Société Générale, as Mandated Lead Arrangers, and Crédit Agricole Corporate and Investment Bank, as Agent and as SACE Agent (as amended from time to time); (b) Loan Agreement, dated as of July 18, 2008, by and among Riviera New Build, LLC, as Borrower, the banks and financial institutions party thereto, Crédit Agricole Corporate and Investment Bank (formerly Calyon) and Société Générale, as Mandated Lead Arrangers, and Crédit Agricole Corporate and Investment Bank, as Agent and as SACE Agent (as amended from time to time); (c) Credit Agreement, dated as of July 2, 2013, among Oceania Cruises, Inc., OCI Finance Corp., as Borrowers, the banks and financial institutions party thereto, Deutsche Bank AG, New York Branch, as administrative agent, as collateral agent and as mortgage trustee, Deutsche Bank Securities Inc., Barclays Bank Plc and UBS Securities LLC as co-syndication agents, HSBC Securities (USA) Inc. and Credit Agricole Corporate and Investment Bank as co-documentation agents, Barclays Bank Plc, UBS Securities LLC, HSBC Securities (USA) INC. and Credit Agricole Corporate and Investment Bank, as joint bookrunners, Deutsche Bank Securities Inc., Barclays Bank Plc and Ubs Securities LLC, as joint lead arrangers; (d) Credit Agreement, dated as of August 21, 2012 and amended on February 1, 2013, among Classic Cruises, LLC, Classic Cruises II, LLC, Seven Seas Cruises S. De R.L., a Panamanian sociedad de responsabilidad limitada, SSC Finance Corp., as Borrowers, Deutsche Bank Ag, New York Branch, as Administrative Agent and as Collateral Agent, and each lender from time to time party thereto; (e) \$225,000,000 of 9.125% Senior Secured Notes due 2019 and issued under that certain indenture dated as of May 19, 2011, by and among Seven Seas Cruises S. de R.L., as issuer; Celtic Pacific (UK) Two Limited; Supplystill Limited; Prestige Cruise Services (Europe) Limited (f/k/a Regent Seven Seas Cruises UK Limited); Celtic Pacific (UK) Limited; SSC (France) LLC; Mariner, LLC, each of the foregoing (other than the Issuer) as subsidiary guarantors; Wilmington Trust, National Association (successor by merger to Wilmington Trust FSB), as Trustee and Collateral Agent and any secured hedges in connection with the foregoing; (f) Financial Indebtedness referred to in the financial statements of the Guarantor delivered to the Agent prior to the Effective Date; (g) Credit Agreement, dated as of 14 July 2014, by and among Seahawk Two, Ltd., as borrower, NCL Corporation Ltd., as guarantor, the lenders party thereto, KfW IPEX-Bank GmbH as Hermes agent and KfW IPEX-Bank GmbH as facility agent, as collateral agent and as CIRR agent (as amended from time to time); and (h) Credit Agreement, dated as of 14 July 2014, by and among Seahawk One, Ltd., as borrower, NCL Corporation Ltd., as guarantor, the lenders party thereto, KfW IPEX-Bank GmbH as Hermes agent and KfW IPEX-Bank GmbH as facility agent, as collateral agent and as CIRR agent (as amended from time to time).

**"Exporter Declaration"** means a declaration in the form required by SIMEST at the relevant time duly signed by an authorised signatory of the Builder.

**"External Management Agreement"** means, in the event that the Approved Manager is not a member of the Group, the management agreement entered or to be entered into between the Borrower and the Approved Manager with respect to the Ship on terms reasonably acceptable to the Majority Lenders.

**"Facility Agreement"** has the meaning given to such term in Recital (H).

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

"Fallback Interest Payment" means the aggregate amount of interest that is, or is scheduled to become, payable under paragraph (d) of Clause 7.9 (Unavailability of Term SOFR) and relates to a Term SOFR Loan.

"FATCA" means:

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

"FATCA 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 2017; 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 2017,

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 the Original Facility 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.

"FATCA Protected Lender" means any Lender irrevocably designated as a FATCA Protected Lender by the Borrower by notice to that Lender and the Agent at least six months prior to the earliest FATCA Application Date for a payment by a Party to that Lender (or to the Agent for the account of that Lender).

"February 2021 Effective Date" has the meaning given to the term Effective Date in the 2021 Amendment and Restatement Agreement.

"Fee Letter" means any letter dated on or about the date of the Original Facility Agreement between the SACE Agent and the Borrower setting out the fees referred to in paragraph (e) of Clause ~~9~~-10 (Fees).

"Final Contract Price" has the meaning given in Recital (C).

"Finance Documents" means:

- (a) the 2014 Amending and Restating Agreement;
- (b) the 2020 Amendment Agreement;
- (c) the 2021 Amendment and Restatement Agreement;
- (d) [the 2023 Amendment and Restatement Agreement](#);
- (e) ~~(e)~~ this Agreement;
- (f) [the December 2021 Amendment Agreement](#);
- (g) [the December 2022 Amendment Agreement](#);
- (h) [the December 2021 Fee Letters](#);
- (i) [the December 2022 Fee Letters](#);
- (j) ~~(e)~~ the Deferral Fee Letters;
- (k) ~~(f)~~ any Fee Letter;
- (l) ~~(g)~~ the Guarantee;
- (m) ~~(h)~~ the Tripartite General Assignment;
- (n) ~~(i)~~ the Mortgage;
- (o) ~~(j)~~ the Mortgage Addenda;
- (p) ~~(k)~~ the Post-Delivery Assignment;
- (q) ~~(l)~~ the Limited Liability Company Interests Security Deed;
- (r) ~~(m)~~ the Approved Manager's Undertaking;
- (s) ~~(n)~~ the SACE Reimbursement Agreement;
- (t) ~~(o)~~ any Transfer Certificate;
- (u) ~~(p)~~ any other document (whether creating a Security Interest or not) which is executed as security for, or for the purpose of establishing any priority or subordination arrangement in relation to, the Secured Liabilities; and
- (v) ~~(q)~~ any other document (whether creating a Security Interest or not) which is designated as a Finance Document by agreement between the Borrower, SACE and the Agent.

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

- (a) for principal, interest or any other sum payable in respect of any moneys borrowed or raised by the debtor;
- (b) under any loan stock, bond, note or other security issued by the debtor;
- (c) under any acceptance credit, guarantee or letter of credit facility made available to the debtor;
- (d) under a financial lease, a deferred purchase consideration arrangement or any other agreement having the commercial effect of a borrowing or raising of money by the debtor;
- (e) under any 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;
- (f) under a guarantee, indemnity or similar obligation entered into by the debtor in respect of a liability of another person which would fall within paragraphs (a) to (e) if the references to the debtor referred to the other person; or
- (g) receivables sold or discounted (other than receivables to the extent they are sold on a non-recourse basis).

**"First Instalment"** means the first instalment of the SACE Premium as more particularly described in paragraph (a) of Clause ~~8-19.1~~ (SACE Premium).

**"Fixed Interest Rate"** means, in respect of any Interest Period, the rate per annum determined by the Agent to be the aggregate of:

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

**"Floating Interest Rate"** means, in respect of any Interest Period, the rate per annum determined by the Agent to be ~~the aggregate of:~~

(a) in relation to each LIBOR Loan, the percentage rate per annum which is the aggregate of:

- (i) ~~(a)~~ the Margin; and
- (ii) ~~(b)~~ LIBOR ~~for the relevant period.~~

(b) in relation to each Term SOFR Loan, the percentage rate per annum which is the aggregate of:

- (i) the Margin;
- (ii) the Term SOFR Reference Rate; and
- (iii) the Credit Adjustment Spread.

**"FOREX Contracts"** means each actual purchase contract, spot or forward contract and any other contract, such as an option or collar arrangement, which is entered into in the foreign exchange markets for the acquisition of Euro intended to pay the delivery instalment under the Shipbuilding Contract, which:

- (a) matures not later than the Intended Delivery Date, provided that option arrangements may mature up to one month after such date if at the time they are entered into there exists a reasonable uncertainty as to the date on which the Ship will be delivered;
- (b) is entered into by the Borrower or the Guarantor (or, prior to the Effective Date, the Prior Guarantors) or a combination of the foregoing not later than two (2) days before the Conversion Rate Fixing Date so that the Borrower, directly or through the Guarantor, purchases or may purchase Euro with Dollars at a pre-agreed rate; and
- (c) is notified to the Agent within twenty (20) days of its execution but in any event no later than the day preceding the Conversion Rate Fixing Date, with a Certified Copy of each such contract being delivered to the Agent at such time.

**"FOREX Contracts Weighted Average Rate"** means the rate determined by the Agent on the Conversion Rate Fixing Date in accordance with the following principles which (inter alia) are intended to take into account any maturity mismatch between the maturity of the FOREX Contracts and the Intended Delivery Date as well as FOREX Contracts that are unwound as part of the hedging strategy of the Borrower:

- (a) FOREX Contracts that are spot or forward foreign exchange contracts, if any, shall be valued at the contract value (taking into account any rescheduling);
- (b) the difference between the Euro amount available under (a) above and the Euro amount balance payable to the Builder on the Delivery Date is assumed to be purchased at the official daily fixing rate of the European Central Bank for the purchase of Euro with Dollars as displayed on "Reuters Page ECB 37" (or such other pages as may replace that page on that service or a successor service) at or around 2 p.m. (Paris time) on the Conversion Rate Fixing Date;
- (c) any FOREX Contract which is an option or collar arrangement and is not unwound at the Conversion Rate Fixing Date will be marked to market and the resulting profit or loss shall reduce or increase the Dollar countervalue of the purchased Euro;
- (d) any FOREX Contract which is an option or collar arrangement and is sold or purchased back at the time FOREX Contract(s) are entered into for an identical Euro amount shall be accounted for the net premium cost or profit, as the case may be.

Any marked to market valuation, as required in paragraph (c) above, shall be performed by Crédit Agricole Corporate and Investment Bank's dedicated desk in accordance with market practices. The Borrower shall have the right to request indicative valuations from time to time prior to the Conversion Rate Fixing Date.

**"Funding Rate"** means any individual rate notified by a Lender to the Agent pursuant to sub-paragraph (i) of paragraph (e) of Clause ~~6.10~~ 7.11 (*Cost of funds*).

**"GAAP"** means generally accepted accounting principles in the United States of America consistently applied (or, if not consistently applied, accompanied by details of the inconsistencies) including, without limitation, those set forth in the opinion and

pronouncements of the Accounting Principles Board of the American Institute of Certified Public Accountants and statements and pronouncements of the Financial Accounting Standards Board.

**"German Blocking Provisions"** means section 7 of the German Foreign Trade Regulation (AWV) (*Außenwirtschaftsverordnung*) (in connection with section 4 paragraph 1 a no. 3 German Foreign Trade Law (AWG) (*Außenwirtschaftsgesetz*)).

**"Gross Negligence"** means any act or omission, whether deliberate or not, which in the circumstances (including both the probability and seriousness of the consequences likely to result) would reasonably be regarded by those familiar with the nature of the activity in question and with the surrounding circumstances, as amounting to the reckless disregard of, or serious indifference to, the consequences, being in any case more than a negligent failure to exercise proper skill and care.

**"Group"** means the Guarantor and its Subsidiaries.

**"Guarantee"** means the Original Guarantee, as amended pursuant to the 2020 Amendment Agreement ~~and~~ as amended and restated pursuant to the 2021 [Amendment and Restatement Agreement, as amended pursuant to the December 2021 Amendment Agreement, as further amended pursuant to the December 2022 Amendment Agreement and as further amended and restated by the 2023 Amendment and Restatement Agreement](#) and as may be further amended and/or supplemented from time to time.

**"Guarantor"** means NCL Corporation Ltd., a Bermuda company with its registered office at Park Place ~~55~~, [55](#) Par-la-Ville Road, Hamilton HM 11, Bermuda.

**"Historic Term SOFR"** means, in relation to any Term SOFR Loan, the most recent applicable Term SOFR for a period equal in length to the Interest Period of that Term SOFR Loan and which is as of a day which is no more than five US Government Securities Business Days before the Quotation Day.

**"Holding"** means Norwegian Cruise Line Holdings Ltd., a company incorporated under the laws of Bermuda with its registered office at Park Place ~~55~~, [55](#) Par-la-Ville Road, Hamilton HM 11, Bermuda.

**"Holding Company"** means, in relation to a person, any other person in respect of which it is a Subsidiary;

**"IAPPC"** means a valid international air pollution prevention certificate for the Ship issued under Annex VI.

**"Illicit Origin"** means any origin which is illicit, fraudulent or in breach of Sanctions including, without limitation, drug trafficking, corruption, organised criminal activities, terrorism, money laundering or fraud.

**"Information Package"** means:

- (a) the information package in connection with the "Debt Holiday" application in the form set out in Schedule 4 (*Information Package*) of the 2020 Amendment Agreement, submitted by the Borrower (or the Guarantor on its behalf) in order to obtain the benefit of the measures provided for in the Original Principles; and

- (b) the information package in connection with the "Debt Holiday" application in the form set out in Schedule 4 (*Information Package*) of the 2021 Amendment and Restatement Agreement, submitted by the Borrower (or the Guarantor on its behalf) in order to obtain the benefit of the measures provided for in the Principles for the purpose of this Agreement and certain of the Borrower's and the Guarantor's obligations under this Agreement.

"Initial Contract Price" has the meaning given in Recital (B).

"Insurances" means:

- (a) all policies and contracts of insurance, including entries of the Ship in any protection and indemnity or war risks association, which are effected in respect of the Ship, its Earnings or otherwise in relation to it; 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 a premium.

"Intended Delivery Date" means 30 June 2016 (the date on which the Ship will be ready for delivery pursuant to the Shipbuilding Contract as at the date of the Original Facility Agreement) or any other date notified by the Borrower to the Agent in accordance with paragraph (a)(i) of Clause 3.5 (*No later than sixty (60) days before the Intended Delivery Date*) or paragraph (c) of Clause 3.7 (*No later than five (5) Business Days before the Intended Delivery Date*) as being the date on which the Builder and the Borrower have agreed that the Ship will be ready for delivery pursuant to the Shipbuilding Contract.

"Interest Make-Up Agreement" means an interest make up agreement (*Capitolato*) to be entered into between SIMEST and the Agent on behalf of the Lenders and in form and substance acceptable to the Joint Mandated Lead Arrangers, whereby, inter alia, the return to the Lenders on the Loan made hereunder will be supplemented by SIMEST so that it equals that which the Lenders would have received if interest were payable on the Loan at LIBOR plus the Margin.

"Interest Period" means a period determined in accordance with Clause ~~7-8~~ (*Interest Periods*).

"Interpolated ~~Screen-Rate~~ Historic Term SOFR" means, in relation to ~~the Loan or any part of the Term SOFR~~ Loan, the rate (rounded to the same number of decimal places as Term SOFR) which results from interpolating on a linear basis between:

(a) either:

- (i) ~~(a)~~ the most recent applicable ~~Screen-Rate~~ Term SOFR (as of a day which is not more than five US Government Securities Business Days before the Quotation Day) for the longest period (for which that ~~Screen-Rate~~ Term SOFR is available) which is less than the Interest Period of ~~the Loan or that part of the~~ Term SOFR Loan; and/or
- (ii) if no such Term SOFR is available for a period which is less than the Interest Period of that Term SOFR Loan, the most recent SOFR for a day which is no more than five US Government Securities Business Days (and no less than two US Government Securities Business Days) before the Quotation Day; and

- (b) the most recent applicable Term SOFR (as of a day which is not more than five US Government Securities Business Days before the Quotation Day) for the shortest period (for which Term SOFR is available) which exceeds the Interest Period of that Term SOFR Loan.

**"Interpolated Screen Rate"** means, in relation to any LIBOR 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 that LIBOR 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~~ LIBOR Loan,

each as of the Specified Time ~~for Dollars~~.

**"Interpolated Term SOFR"** means, in relation to any Term SOFR Loan, the rate (rounded to the same number of decimal places as Term SOFR) which results from interpolating on a linear basis between:

- (a) either
- (i) the applicable Term SOFR (as of the Quotation Day) for the longest period (for which Term SOFR is available) which is less than the Interest Period of that Term SOFR Loan;  
or
- (ii) if no such Term SOFR is available for a period which is less than the Interest Period of that Term SOFR Loan, SOFR for the day which is five (5) US Government Securities Business Days before the Quotation Day; and
- (b) the applicable Term SOFR (as of the Quotation Day) for the shortest period (for which Term SOFR is available) which exceeds the Interest Period of that Term SOFR Loan.

**"ISM Code"** means the International Safety Management Code for the safe operation of ships and for pollution prevention (including the guidelines on its implementation), adopted by the International Maritime Organisation as the same may be amended or supplemented from time to time.

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

**"Italian Authorities"** means SACE and/or SIMEST and any other relevant Italian authorities involved in the implementation of the Loan.

**"Lender"** means a bank, financial institution, trust, fund or other entity listed in Schedule 1 (*Lenders and Commitments*) and acting through its Facility Office or its transferee, successor or assign.

**"LIBOR"** means, in relation to ~~the Loan or any part of the~~ LIBOR Loan:



- (a) the applicable Screen Rate as of the Specified Time for ~~Dollars~~ dollars and for a period equal in length to the Interest Period of ~~the Loan or that part of the LIBOR~~ LIBOR Loan; or
- (b) as otherwise determined pursuant to Clause ~~6.7-7.7~~ 6.7-7.7 (*Unavailability of Screen Rate before Rate Switch Date*),

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

"LIBOR Loan" means the Loan, any Deferral Tranche, any other part of the Loan or, if applicable, Unpaid Sum to which the Floating Interest Rate applies and which is not a Term SOFR Loan.

**"Limited Liability Company Interests Security Deed"** means a security pledge in relation to the limited liability company interests of the Borrower executed or to be executed by Seven Seas in favour of the Security Trustee in the agreed form.

**"Loan"** means the loan made or to be made available under this Agreement (including under the Deferral Tranches) or the principal amount outstanding for the time being of that loan.

**"Majority Lenders"** means:

- (a) before the Loan has been made, Lenders whose Commitments total [\*] per cent. of the Total Commitments; and
- (b) after the Loan has been made, Lenders whose Contributions total [\*] per cent. of the Loan.

**"Margin"** means:

- (a) in relation to the Fixed Interest Rate one point thirty per cent. per annum (1.30% p.a.); and
- (b) in relation to the Floating Interest Rate two point eighty per cent. per annum (2.80% p.a.), save for the 2021 Deferral Tranche in respect of which it shall mean three point zero per cent. per annum (3.00% p.a.).

"Marina Facility Agreement" means, in respect of m.v. MARINA, a facility agreement originally dated 18 July 2008 (as amended by a supplemental agreement dated 25 October 2010, as further amended and restated by an amendment and restatement agreement dated 31 October 2014, as amended by a supplemental agreement dated 4 June 2020, as further amended and restated by an amendment and restatement agreement dated 17 February 2021, as further amended by a supplemental agreement dated 23 December 2021 and as further amended by a supplemental agreement dated 16 December 2022), as further amended, restated and supplemented from time to time.

**"Maritime Registry"** means the maritime registry which the Borrower will specify to the Lenders no later than three (3) months before the Intended Delivery Date, being that of the Marshall Islands, Bahamas or such other registry as the Agent may, with the authorisation of the Majority Lenders and SACE, approve.

"Market Disruption Rate" means the percentage rate per annum which is the aggregate of the Term SOFR Reference Rate and the applicable Credit Adjustment Spread.

**"Material Adverse Effect"** means the occurrence of any event or circumstance which reasonably would be expected to have a material adverse effect on:

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

**"Maximum Loan Amount"** means the aggregate of:

- (a) the Dollar Equivalent of Euro 284,004,000;
- ~~(b) "Maximum Loan Amount" means the aggregate of (a) the Dollar Equivalent of Euro 284,004,000; (b) 100% of the First Instalment of the SACE Premium to be paid by the Borrower direct to SACE on or before 30 days following the issuance of the SACE Insurance Policy; and (c) 100% of the Second Instalment of the SACE Premium payable on the original Drawdown Date, with (X) the Loan currently outstanding (including the drawn part of the 2020 Deferral Tranche) on the 2021 Deferral Effective Date being equal to \$265,287,622.76 and (Y) an amount equal to \$39,081,158.26 under the 2021 Deferral Tranche being available for utilisation, to be made (or deemed to be made) available as provided for in this Agreement.~~
- ~~(c) 100% of the Second Instalment of the SACE Premium payable on the original Drawdown Date, with (X) the Loan currently outstanding (including the drawn part of the 2020 Deferral Tranche and the 2021 Deferral Tranche) on the February 2021 Effective Date being equal to \$265,287,622.76 and (Y) an amount equal to \$39,081,158.26 under the 2021 Deferral Tranche being available for utilisation, to be made (or deemed to be made) available as provided for in this Agreement.~~

**"Mortgage"** means the Original Mortgage, as amended pursuant to both Mortgage Addenda and as may be further amended and/or supplemented from time to time.

**"Mortgage Addenda"** means:

- (a) the addendum to the Original Mortgage executed pursuant to the 2020 Amendment Agreement on 4 June 2020; ~~and~~
- (b) the addendum to the Original Mortgage (as amended pursuant to the addendum described in paragraph (a) above) executed pursuant to the 2021 Amendment and Restatement Agreement ~~on or about the date hereof;~~ and
- ~~(c) the addendum to the Original Mortgage (as amended pursuant to the addendum described in paragraph (a) and paragraph (b) above) executed pursuant to the 2023 Amendment and Restatement Agreement, on or about the date hereof.~~

**"Obligors"** means the Borrower, the Guarantor, Seven Seas and (in the event that the Approved Manager is a member of the Group) the Approved Manager.

"OFAC" means the Office of Foreign Assets Control of the United States Department of the Treasury.

"Original Facility Agreement" has the meaning given to such term in Recital (D).

"Original Guarantee" means the guarantee issued by the Guarantor in favour of the Security Trustee on 31 October 2014.

"Original Mortgage" means the first preferred Marshall Islands mortgage on the Ship, executed by the Borrower in favour of the Security Trustee on 30 June 2016.

"Original Principles" has the meaning given to such term in Recital (F).

"Overnight LIBOR" means, in relation to ~~the Loan or any part of the~~ LIBOR Loan:

- (a) on any date, the applicable day to day Screen Rate as of the Specified Time for Dollars; or
- (b) as otherwise determined pursuant to Clause ~~6.7-7.7~~ 6.7-7.7 (*Unavailability of Screen Rate before Rate Switch Date*),

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

"Overseas Regulations" means the United Kingdom Overseas Companies Regulations 2009.

"Parallel Debt" means any amount which an Obligor owes to the Security Trustee under Clause ~~26-2~~ 27.2 (*Parallel Debt (Covenant to pay the Security Trustee)*).

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

"Party" means a party to this Agreement from time to time.

"Permitted Financial Indebtedness" means any Financial Indebtedness:

- (a) incurred under the Finance Documents; or
- (b) permitted pursuant to Clause ~~12-13~~ 13.13 (*Financial Indebtedness and subordination of indebtedness*).

"Permitted Security Interests" means:

- (a) in the case of the Borrower:
  - (i) any of the Security Interests referred to in paragraph (b)(ii)(A) below, and
  - (ii) any of the Security Interests referred to in paragraphs (b)(ii)(B), (b)(ii)(C), (b)(ii)(E), (b)(ii)(H) and (b)(ii)(I) below if, by reason of any chartering or management arrangements for the Ship approved by the Agent pursuant to the provisions of this Agreement, such Security Interests are created by the Borrower in the case of paragraphs (b)(ii)(C) or (b)(ii)(E) or incurred by the Borrower in the case of paragraphs (b)(ii)(B), (b)(ii)(H) or (b)(ii)(I); and

- (b) in the case of the Guarantor:
- (i) any of the Security Interests referred to in paragraphs (b)(ii)(A), (b)(ii)(D), (b)(ii)(F) and (b)(ii)(G) below, and
  - (ii) any of the Security Interests referred to in paragraphs (C), (E), (H) and (I) below if, by reason of any chartering or management arrangements for the Ship approved by the Agent pursuant to the provisions of this Agreement, such Security Interests are created by the Guarantor in the case of paragraphs (C) or (E) or incurred by the Guarantor in the case of paragraphs (H) or (I);
    - (A) any Security Interest created by or pursuant to the Finance Documents and any deposits or other Security Interests placed or incurred in connection with any bond or other surety from time to time provided to the US Federal Maritime Commission in order to comply with laws, regulations and rules applicable to the operators of passenger vessels operating to or from ports in the United States of America;
    - (B) liens on the Ship up to an aggregate amount at any time not exceeding [\*] Dollars (\$[\*]) for current crew's wages and salvage and liens incurred in the ordinary course of trading the Ship;
    - (C) any deposits or pledges up to an aggregate amount at any time not exceeding [\*] Dollars (\$[\*]) to secure the performance of bids, tenders, bonds or contracts required in the ordinary course of business;
    - (D) any other Security Interest including in relation to the Existing Indebtedness over the assets of any Obligor other than the Borrower notified by the Borrower or any of the Obligors to the Agent and SACE and accepted by them prior to the date of this Agreement;
    - (E) (without prejudice to the provisions of Clause ~~42.13~~13.13 (*Financial Indebtedness and subordination of indebtedness*)) liens on assets leased, acquired or upgraded after the date of the Original Facility Agreement or assets newly constructed or converted after the date of the Original Facility Agreement provided that (i) such liens secure Financial Indebtedness otherwise permitted under this Agreement, (ii) such liens are incurred at the time of such lease, acquisition, upgrade, construction or conversion and (iii) the Financial Indebtedness secured by such liens does not exceed the cost of such upgrade or the cost of such assets acquired or leased;
    - (F) other liens arising in the ordinary course of business of the Group unrelated to Financial Indebtedness and securing obligations not yet delinquent or which are being contested in good faith by appropriate proceedings and for which adequate reserves have been established provided that (i) the aggregate amount of all cash and the fair market value of all other property subject to such liens as are described in this paragraph (F) does not exceed [\*] Dollars (\$[\*]) and (ii) such cash and/or other property is not an asset of the Borrower;

- (G) subject to the other provisions of this Agreement and the Guarantee, any Security Interest in respect of existing Financial Indebtedness of a person which becomes a Subsidiary of the Guarantor or is merged with or into the Guarantor or any of its subsidiaries;
- (H) liens in favour of credit card companies on unearned customer deposits pursuant to agreements therewith; and
- (I) liens in favour of customers on unearned customer deposits.

**"Pertinent Document"** means:

- (a) any Finance Document;
- (b) any policy or contract of insurance contemplated by or referred to in Clause ~~12-13~~ 13 (*General Undertakings*) or any other provision of this Agreement or another Finance Document;
- (c) any other document contemplated by or referred to in any Finance Document; and
- (d) any document which has been or is at any time sent by or to the Agent in contemplation of or in connection with any Finance Document or any policy, contract or document falling within paragraphs (b) or (c).

**"Pertinent Matter"** means:

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

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

**"Poseidon Principles"** means the financial industry framework for assessing and disclosing the climate alignment of ship finance portfolios published in June 2019 as the same may be amended or replaced to reflect changes in applicable law or regulation or the introduction of or changes to mandatory requirements of the International Maritime Organisation from time to time.

**"Post-Delivery Assignment"** means an assignment of the rights of the Borrower in respect of the post-delivery guarantee liability of the Builder under Article 25 of the Shipbuilding Contract executed or to be executed by the Borrower in favour of the Security Trustee in the agreed form.

**"Prestige Holdings"** means Prestige Cruise Holdings Inc. a Panamanian *sociedad anonima* domiciled in Panama whose resident agent is Arias, Fabrega & Fabrega at Plaza 2000 Building, 16th Floor, 50th Street, Panama, Republic of Panama.

**"Prestige Holdings Guarantee"** means a guarantee issued by Prestige Holdings in favour of the Security Trustee and terminated on the Effective Date.

"Principles" has the meaning given to such term in Recital (I).

"Prior Guarantees" means the Seven Seas Guarantee and the Prestige Holdings Guarantee.

"Prior Guarantors" means Seven Seas and Prestige Holdings.

"Prohibited Payment" means:

- (a) any offer, gift, payment, promise to pay, commission, fee, loan or other consideration which would constitute bribery or an improper gift or payment under, or a breach of Sanctions, any laws of the Republic of Italy, England and Wales, Panama, the United States of America or any other applicable jurisdiction; or
- (b) any offer, gift, payment, promise to pay, commission, fee, loan or other consideration which would or might constitute bribery within the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions of 17 December 1997.

"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.

"Protocol of Delivery and Acceptance" means the protocol of delivery and acceptance of the Ship to be signed by the Borrower and the Builder in accordance with Article 8 of the Shipbuilding Contract.

"Qualifying Certificate" means the certificate to be issued by the Builder on the Delivery Date and issued to the Agent and copied to the Borrower substantially in the form set out in Schedule 5 (Qualifying Certificate).

"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 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).~~

(a) in relation to a LIBOR Loan, two Business Days in London (other than Saturdays and Sundays on which banks are open in London) before the first day of that period unless market practice differs in the Relevant Market in which case the Quotation Day will be determined by the Agent in accordance with that market practice (and if quotations would normally be given on more than one day, the Quotation Day will be the last of those days); and

(b) in relation to a Term SOFR Loan, two US Government Securities Business Days before the first day of that period unless market practice differs in the relevant syndicated loan market in which case the Quotation Day will be determined by the Agent in accordance with that market practice (and if quotations would normally be given on more than one day, the Quotation Day will be the last of those days).

"Quoted Tenor" means any period for which:

- (a) in relation to a LIBOR Loan, the Screen Rate is customarily displayed on the relevant page or screen of an information service (other than for one week and two months); and
- (b) in relation to a Term SOFR Loan, Term SOFR is customarily displayed on the relevant page or screen of an information service.

**"Rate Switch Date" means the earlier of:**

- (a) the Backstop Rate Switch Date; and
- (b) any Rate Switch Trigger Event Date.

**"Rate Switch Trigger Event" means:**

(1)

(1)

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

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

- (2) the administrator of the Screen Rate publicly announces that it has ceased or will cease, to provide the Screen Rate for any Quoted Tenor permanently or indefinitely and, at that time, there is no successor administrator to continue to provide the Screen Rate for that Quoted Tenor;
  - (3) the supervisor of the administrator of the Screen Rate publicly announces that the Screen Rate has been or will be permanently or indefinitely discontinued for any Quoted Tenor; or
  - (4) the administrator of the Screen Rate or its supervisor publicly announces that the Screen Rate for any Quoted Tenor may no longer be used; or
- (2) the supervisor of the administrator of the Screen Rate publicly announces or publishes information:
- (1) stating that the Screen Rate for any Quoted Tenor is no longer, or as of a specified future date will no longer be, representative of the underlying market and the economic reality that it is intended to measure and that such

representativeness will not be restored (as determined by such supervisor); and

- (2) with awareness that any such announcement or publication will engage certain triggers for fallback provisions in contracts which may be activated by any such pre-cessation announcement or publication.

**"Rate Switch Trigger Event Date"** means:

- (1) in the case of an occurrence of a Rate Switch Trigger Event described in sub-paragraph (1) of paragraph (1) of the definition of Rate Switch Trigger Event, the date on which the Screen Rate ceases to be published or otherwise becomes unavailable;
- (2) in the case of an occurrence of a Rate Switch Trigger Event described in sub-paragraph (2), (3) or (4) of paragraph (1) of the definition of Rate Switch Trigger Event, the date on which the Screen Rate for the relevant Quoted Tenor ceases to be published or otherwise becomes unavailable; and
- (3) in the case of an occurrence of a Rate Switch Trigger Event described in paragraph (2) of the definition of Rate Switch Trigger Event, the date on which the Screen Rate for the relevant Quoted Tenor ceases to be representative of the underlying market and the economic reality that it is intended to measure (as determined by the supervisor of the administrator of such Screen Rate).

**"Reference Bank Quotation"** means any quotation supplied to the 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 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 such entities as may be appointed by the Agent in consultation with the Borrower.

~~**"Relevant Interbank Market"** means the London interbank market.~~



**"Reinstatement Date"** means:

- (a) in relation to this Agreement (as further amended, restated and supplemented from time to time), 31 December 2026;
- (b) in relation to the Marina Facility Agreement, 19 January 2027;
- (c) in relation to the Riviera Facility Agreement, 27 October 2026; and
- (d) in relation to the Seven Seas Splendor Facility Agreement, 29 January 2027.

**"Reinstatement Event"** means the final Reinstatement Date or any date when all Deferral Tranches under the Delivered Vessel Facilities (as defined therein) are repaid or prepaid in full.

**"Relevant Jurisdiction"** means, in relation to an Obligor:

- (a) its jurisdiction of incorporation;
- (b) any jurisdiction where any asset subject to, or intended to be subject to, any of the Security Interests created, or intended to be created, under the Finance Documents to which it is a party is situated;
- (c) any jurisdiction where it conducts its business; and
- (d) the jurisdiction whose laws govern the perfection of any of the Security Interests created, or intended to be created, under the Finance Documents to which it is a party.

**"Relevant Market"** means:

- (a) subject to paragraph (b) below, the London interbank market; and
- (b) on or after the Rate Switch Date, the market for overnight cash borrowing collateralised by US Government securities.

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

**"Repayment Date"** means a date on which a repayment is required to be made under Clause 5 (*Repayment*).

~~**"Replacement Benchmark"** means a benchmark rate which is:~~

- ~~(a) formally designated, nominated or recommended as the replacement for a Screen Rate by:~~
  - ~~(i) the administrator of that Screen Rate (provided that the market or economic reality that such benchmark rate measures is the same as that measured by that Screen Rate); or~~
  - ~~(ii) any Relevant Nominating Body;~~

~~and if replacements have, at the relevant time, been formally designated, nominated or recommended under both paragraphs, the "Replacement Benchmark" will be the replacement under paragraph (ii) above;~~

~~(b) in the opinion of the Majority Lenders and the Borrower, generally accepted in the international or any relevant domestic syndicated loan markets as the appropriate successor to a Screen Rate; or~~

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

"**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".

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

"**Restricted Creditor Party**" means a Creditor Party which serves a notice pursuant to paragraph (a) of Clause 1.5 (*Non-applicable provisions between the Obligors, German Lenders and any Creditor Party subject to the EU Blocking Regulation*).

"**Riviera Facility Agreement**" means, in respect of m.v. RIVIERA, a facility agreement originally dated 18 July 2008 (as amended by a supplemental agreement dated 25 October 2010, as amended by a side letter dated 29 March 2012, as amended and restated by an amendment and restatement agreement dated 31 October 2014, as amended by a framework agreement dated 31 January 2018, as amended by a supplemental agreement dated 4 June 2020, as further amended and restated by an amendment and restatement agreement dated 17 February 2021, as further amended by a supplemental agreement dated 23 December 2021 and as further amended by a supplemental agreement dated 16 December 2022), as further amended, restated and supplemented from time to time.

"**SACE**" means SACE SpA S.p.A., an Italian joint stock company (*società per azioni*) with a sole shareholder, whose registered office is located at Piazza Poli 37/42, 00187 Rome, Italy and registered with the Companies Registry of Rome under number 05804521002.

"**SACE Agent**" means Crédit Agricole Corporate and Investment Bank, a French "société anonyme", having a share capital of EUR 7,851,636,342.00 and its registered office located at 12 Place des États-Unis, CS 70052 92547, Montrouge Cedex, France, registered under the n° Siren 304 187 701 at the Registre du Commerce et des Sociétés of Nanterre or any successor of it appointed under Clause ~~25~~ 26 (*Role of the Agent and the Joint Mandated Lead Arrangers*).

"**SACE Insurance Policy**" means the insurance policy (as amended and supplemented from time to time) in respect of this Agreement (which, in all material respects, is not inconsistent with the commercial terms of this Agreement) issued by SACE for the benefit of the Lenders in respect of 95% of the Loan in form and substance satisfactory to the Agent and the Lenders.

"**SACE Premium**" means the amount payable by the Borrower to SACE directly or through the Agent in several instalments in respect of the SACE Insurance Policy as set out in Clause ~~8-9~~ 8-9 (*SACE Premium and Italian Authorities*), including the Deferral Tranche Premia (provided, for the avoidance of doubt, that the 2021 Deferral Tranche Premium shall not be financed).

"**SACE Reimbursement Agreement**" means the reimbursement agreement entered into on or before the Effective Date, as the context may require, between the Borrower, the Guarantor, the Agent and SACE.

"**SACE Required Documents**" means in relation to the Drawdown Notice:

- (a) a duly completed and executed Qualifying Certificate; and
- (b) each of the other documents, information and other evidence specified in or required to be enclosed with such Qualifying Certificate.

"**Safety Management Certificate**" 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 imposed by any member state of the European Union or Switzerland;
- (b) imposed by CISADA or OFAC; or
- (c) otherwise imposed by any law or regulation,

by which any Obligor is bound or to which it is subject or, as regards a regulation, compliance with which is reasonable in the ordinary course of business of any Obligor.

"**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 (before any correction, recalculation or republication by the administrator) on page LIBOR01 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 Agent may specify another page or service displaying the relevant rate after consultation with the Borrower.

~~"Screen Rate Contingency Period" means fifteen (15) Business Days:~~

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

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

~~regulatory authority or similar administrative, regulatory or judicial body which reasonably confirms that the administrator of that Screen Rate is insolvent;~~

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

- ~~(ii) the administrator of that Screen Rate publicly announces that it has ceased or will cease, to provide that Screen Rate permanently or indefinitely and, at that time, there is no successor administrator to continue to provide that Screen Rate;~~
- ~~(iii) the supervisor of the administrator of that Screen Rate publicly announces that such Screen Rate has been or will be permanently or indefinitely discontinued; or~~
- ~~(iv) the administrator of that Screen Rate or its supervisor announces that that Screen Rate may no longer be used; or~~
- ~~(e) the administrator of that Screen Rate determines that that Screen Rate should be calculated in accordance with its reduced submissions or other contingency or fallback policies or arrangements and either:
  - ~~(i) the circumstance(s) or event(s) leading to such determination are not (in the opinion of the Majority Lenders and the Borrower) temporary; or~~
  - ~~(ii) that Screen Rate is calculated in accordance with any such policy or arrangement for a period no less than the Screen Rate Contingency Period; or~~~~
- ~~(e) in the opinion of the Majority Lenders and the Borrower, that Screen Rate is otherwise no longer appropriate for the purposes of calculating interest under this Agreement.~~

**"Second Instalment"** means the second instalment of the SACE Premium as more particularly described in paragraph (b) of Clause ~~8.19.1~~ [\(SACE Premium\)](#).

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

**"Secured Party"** means SACE, the Agent, the Security Trustee, the SACE Agent, the Joint Mandated Lead Arrangers or any Lender whether at the date of the Original Facility Agreement or any later time.

**"Security Interest"** means:

- (a) a mortgage, charge (whether fixed or floating) or pledge, any maritime or other lien, assignment, hypothecation or any other security interest of any kind or other agreement or arrangement having the effect of conferring security;
- (b) the security rights of a plaintiff under an action *in rem*; and

- (c) any arrangement entered into by a person (A) the effect of which is to place another person (B) in a position which is similar, in economic terms, to the position in which B would have been had he held a security interest over an asset of A; but this paragraph (c) does not apply to a right of set off or combination of accounts conferred by the standard terms of business of a bank or financial institution.

**"Security Period"** means the period commencing on the date of the Original Facility Agreement and ending on the date on which:

- (a) all amounts which have become due for payment by the Borrower or any Obligor under the Finance Documents have been paid;
- (b) no amount is owing or has accrued (without yet having become due for payment) under any Finance Document;
- (c) neither the Borrower nor any other Obligor has any future or contingent liability under [Clause 49 20 \(Application of Sums Received\)](#) below or any other provision of this Agreement or another Finance Document; and
- (d) the Agent and the Majority 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 the Borrower or an Obligor 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 Property"** means:

- (a) the Security Interests expressed to be granted in favour of the Security Trustee as trustee for the Secured Parties and all proceeds received or recovered by or on behalf of the Security Trustee under or by virtue of any Security Interest including any money or other assets which are received or recovered by it as a result of the enforcement or exercise by it of such a Security Interest or right;
- (b) all obligations expressed to be undertaken by an Obligor to pay amounts in respect of the Secured Liabilities to the Security Trustee as trustee for the Secured Parties and secured by the Security Interests together with all representations and warranties expressed to be given by an Obligor in favour of the Security Trustee as trustee for the Secured Parties;
- (c) the Security Trustee'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 Trustee is required by the terms of the Finance Documents to hold as trustee on trust for the Secured Parties,

except:

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

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

**"Security Requirement"** means the amount in Dollars (as certified by the Agent whose certificate shall, in the absence of manifest error, be conclusive and binding on the Borrower and the Agent) which is at any relevant time one hundred per cent (100%) of the Loan.

**"Security Trustee"** means Crédit Agricole Corporate and Investment Bank, a French "société anonyme", having a share capital of EUR 7,851,636,342.00 and its registered office located at 12 place des États-Unis, CS 70052 92547, Montrouge Cedex, France, registered under the n° Siren 304 187 701 at the Registre du Commerce et des Sociétés of Nanterre or any successor of it appointed under Clause ~~26-27~~ (*The Security Trustee*).

**"Security Value"** means the amount in Dollars (as certified by the Agent whose certificate shall, in the absence of manifest error, be conclusive and binding on the Borrower and the Agent) which, at any relevant time, is the aggregate of (i) the market value of the Ship as most recently determined in accordance with Clause ~~13.4-14.4~~ (*Valuation of the Ship*); and (ii) the market value of any additional security for the time being actually provided to the Agent pursuant to Clause ~~45-16~~ (*Security Value Maintenance*).

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

**"Seven Seas"** means Seven Seas Cruises S. de R.L., a Panamanian *sociedad de responsabilidad limitada* domiciled in Panama whose resident agent is at Arifa Building, West Boulevard, Santa Maria Business District, Panama, Republic of Panama.

**"Seven Seas Charter"** means the bareboat charter of the Ship by the Borrower as owner to the Seven Seas as charterer which shall be entered into no later than the Delivery Date in the form of draft approved by the Agent before the date of the Original Facility Agreement with such reasonable changes thereto as the Agent may, with the authority of the Majority Lenders, approve from time to time.

**"Seven Seas Guarantee"** means a guarantee issued by Seven Seas in favour of the Security Trustee and terminated on the Effective Date.

**"Seven Seas Splendor Facility Agreement"** means, in respect of m.v. SEVEN SEAS SPLENDOR, [a facility agreement originally dated 30 March 2016 \(as amended by a supplemental agreement dated 4 June 2020, as further amended and restated pursuant to an amendment and restatement agreement dated 17 February 2021, as further amended by a supplemental agreement dated 23 December 2021 and as further amended by a supplemental agreement dated 16 December 2022\), as further amended, restated and supplemented from time to time.](#)

**"Ship"** means the passenger cruise ship "Seven Seas Explorer" (ex. hull number [\*]) in the registered ownership of the Borrower under the Marshall Islands maritime registry (official no. [\*]).

**"Shipbuilding Contract"** has the meaning given in Recital (A).

**"SIMEST"** means Società Italiana per Le Imprese all'Estero - SIMEST Spa, which grants export subsidies in Italy under and according to the Italian Legislative Decree n. 143/98 and its amendments.

"SOFR" means the secured overnight financing rate (SOFR) administered by the Federal Reserve Bank of New York (or any other person which takes over the administration of that rate) published (before any correction, recalculation or republication by the administrator) by the Federal Reserve Bank of New York (or any other person which takes over the publication of that rate).

"Specified Time" means a day or time determined in accordance with the following:

- (a) if LIBOR is fixed, the Quotation Day as of 11:00 am London time; and
- (b) in relation to a Reference Bank Rate calculated by reference to the available quotations in accordance with Clause ~~6-8~~7.8 (*Calculation of Reference Bank Rate*), noon on the Quotation Day.

"Subsidiary" has the following meaning:

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 attaching to the issued shares of S; or
- (c) P has the direct or indirect power to appoint or remove a majority of the directors of S; or
- (d) P otherwise has the direct or indirect power to ensure that the affairs of S are conducted in accordance with the wishes of P;

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

"Tax" means any tax, levy, impost, duty, assessment, fee, deduction or other charge or withholding of a similar nature imposed by any governmental authority (including any penalty or interest payable in connection with any failure to pay or any delay in paying any of the same).

"Term and Revolving Credit Facilities" means the facilities granted pursuant to the credit agreement originally dated 24 May 2013 (as amended and restated from time to time) between, inter alios, the Guarantor and Voyager Vessel Company, LLC as borrowers, the lenders party thereto and JPMorgan Chase Bank, N.A., as administrative agent and collateral agent.

"Term SOFR" means the term SOFR reference rate administered by CME Group Benchmark Administration Limited (or any other person which takes over the administration of that rate) for the relevant period published (before any correction, recalculation or republication by the administrator) by CME Group Benchmark Administration Limited (or any other person which takes over the publication of that rate).

"Term SOFR Loan" means the Loan, any Deferral Tranche, any other part of the Loan or, if applicable, Unpaid Sum to which the Floating Interest Rate applies and which is, or becomes, a "Term SOFR Loan" pursuant to Clause 6 (Rate Switch).

"Term SOFR Reference Rate" means, in relation to any Term SOFR Loan:

- (a) the applicable Term SOFR as of the Quotation Day and for a period equal in length to the Interest Period of that Term SOFR Loan; or
- (b) as otherwise determined pursuant to Clause 7.9 (Unavailability of Term SOFR),

and if, in either case, the aggregate of that rate and the applicable Credit Adjustment Spread is less than zero, the Term SOFR Reference Rate shall be deemed to be such a rate that the aggregate of the Term SOFR Reference Rate and the Credit Adjustment Spread is zero.

**"Total Loss"** means:

- (a) actual, constructive, compromised, agreed or arranged total loss of the Ship;
- (b) any expropriation, confiscation, requisition or acquisition of the 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 1 year without any right to an extension) unless it is within 1 month redelivered to the Borrower's full control;
- (c) any arrest, capture, seizure or detention of the Ship (including any hijacking or theft) unless it is within 1 month redelivered to the Borrower's full control.

**"Total Loss Date"** means:

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

**"Transaction Documents"** means the Finance Documents and the Underlying Documents.

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

**"Tripartite General Assignment"** means the tripartite general assignment dated 30 June 2016 and executed by the Borrower as owner and Seven Seas as bareboat charterer in favour of the Security Trustee.



**"UK Bail-In Legislation"** means (to the extent that the United Kingdom is not an EEA Member Country which has implemented, or implements, Article 55 BRRD) Part 1 of the United Kingdom Banking Act 2009 and any other law or regulation applicable in the United Kingdom relating to the resolution of unsound or failing banks, investment firms or other financial institutes or their affiliates (otherwise than through liquidation, administration or other insolvency proceedings).

**"Underlying Documents"** means the Shipbuilding Contract, any External Management Agreement, the Seven Seas Charter and any charter and associated guarantee in respect of which a notice of assignment is required to be served under the terms of the Tripartite General Assignment.

**"Unpaid Sum"** means any sum due and payable but unpaid by an Obligor under the Finance Documents.

**"US" means the United States of America.**

**"US Government Securities Business Day" means any day other than:**

- (a) a Saturday or a Sunday; and**
- (b) a day on which the Securities Industry and Financial Markets Association (or any successor organisation) recommends that the fixed income departments of its members be closed for the entire day for purposes of trading in US Government securities.**

**"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.

**"Write-down and Conversion Powers"** means:

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

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

## 1.2 Construction of certain terms

In this Agreement:

"**Agent**", the "**SACE Agent**", the "**Joint Mandated Lead Arranger**", the "**Security Trustee**", any "**Creditor Party**", any "**Secured Party**", any "**Lender**", any "**Obligor**" or any other "**person**", shall be construed so as to include its successors in title, permitted assigns and permitted transferees;

"**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.

"**date of this Agreement**" means ~~February 2021~~ [the 2023 Effective Date](#).

"**document**" includes a deed; also a letter or electronic mail.

"**expense**" means any kind of cost, charge or expense (including all legal costs, charges and expenses) and any applicable Taxes including VAT.

"**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.

"**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;

[a Lender's "cost of funds" in relation to its participation in the Loan or any part of the Loan is a reference to the average cost \(determined either on an actual or a notional basis\) which that Lender would incur if it were to fund, from whatever source\(s\) it may reasonably select, an](#)

amount equal to the amount of that participation in the Loan or that part of the Loan for a period equal in length to the Interest Period of the Loan or that part of the Loan;

"**law**" includes any order or decree, any form of delegated legislation, any treaty or international convention and any regulation or resolution of the Council of the European Union, the European Commission, the United Nations or its Security Council.

"**legal or administrative action**" means any legal proceeding or arbitration and any administrative or regulatory action or investigation.

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

"**months**" shall be construed in accordance with Clause 1.4 (*Meaning of "month"*).

"**parent company**" has the meaning given in the definition of "Subsidiary".

"**person**" includes any individual, firm, company, corporation, government, any state, political subdivision of a state and local or municipal authority, agency of a state or any association, trust, joint venture, consortium or partnership; and any international organisation (whether or not having a separate legal personality).

"**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;

"**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.

### 1.3 Construction of Insurance Terms

"**approved**" means, for the purposes of Clause ~~14~~15 (*Insurance Undertakings*), approved in writing by the Agent.

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

"**obligatory insurances**" means all insurances effected, or which the Borrower is obliged to effect, under Clause ~~14~~15 (*Insurance Undertakings*) or any other provision of this Agreement or another Finance Document.

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

"**protection and indemnity risks**" means the usual risks covered by a protection and indemnity association managed in London, including pollution risks and the proportion (if any) of any sums payable to any other person or persons in case of collision which are not recoverable under the hull and machinery policies by reason of the incorporation in them of clause 1 of the Institute Time Clauses (Hulls)(1/10/82) or clause 8 of the Institute Time Clauses (Hulls) (1/11/1995) or the Institute Amended Running Down ~~clause~~Clause (1/10/71) or any equivalent provision.

"war risks" includes the risk of mines and all risks excluded by clause 23 of the Institute Time Clauses (Hulls)(1/10/83) or clause 24 of the Institute Time Clauses (Hulls) (1/11/1995).

#### 1.4 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.

#### 1.5 Non-applicable provisions between the Obligors, German Lenders and any Creditor Party subject to the EU Blocking Regulation

- (a) A Creditor Party that is incorporated in the Federal Republic of Germany or is otherwise subject to the EU Blocking Regulation may notify the Agent in writing that it elects that any provisions with respect to Sanctions, including, without limitation, the undertakings and covenants given under paragraph (d) of Clause ~~12.2~~-13.2 (Information), Clause ~~12.3~~-13.3 (Illicit Payments), Clause ~~12.4~~-13.4 (Prohibited Payments), Clause ~~12.24~~-13.24 (Compliance with laws etc.) or provisions contained in Clause ~~20.3~~ 21.3 (Miscellaneous indemnities) or Clause ~~24.1~~-22.1 (Illegality) and the representations and warranties given under paragraphs (t), (u), (x) and (y) of Clause ~~11.2~~-12.2 (Continuing representations and warranties) respectively (the "Sanctions Provisions") shall only enure to the benefit of, and be applicable to, that Creditor Party to the extent that such provisions would not result in: (i) any violation of, conflict with or liability under the EU Blocking Regulation; or (ii) in the case of a Creditor Party that is incorporated in the Federal Republic of Germany only, a violation or conflict with the German Blocking Provisions.
- (b) If a Creditor Party elects to be a Restricted Creditor Party, in respect of any proposed requirement to comply, enforcement, waiver, non-waiver, consent, variation or amendment of or in relation to a Finance Document relating to any Sanctions Provision (a "Relevant Action"), the Restricted Creditor Party shall notify the Agent in writing whether or not it shall be deemed to be a Lender for the purposes of ascertaining whether the agreement of any specified group of Lenders has been obtained to approve the Relevant Action and upon receipt by the Agent of such notice such Restricted Creditor Party shall be so deemed for such purposes.

#### 1.6 General Interpretation

In this Agreement:

- (a) references in Clause 1.1 (Definitions) to a Finance Document or any other document being an "agreed form" are to the form agreed between the Agent (acting with the authorisation of each of the Creditor Parties) and the Borrower with any modifications to that form which the

Agent (with the authorisation of the Majority Lenders in the case of substantial modifications) approves or reasonably requires;

- (b) references to, or to a provision of, a Finance Document or any other document are references to it as amended, amended and restated or supplemented, whether before the date of this Agreement or otherwise;
- (c) references to, or to a provision of, any law or regulation include any amendment, extension, re-enactment or replacement, whether made before the date of this Agreement or otherwise;
- (d) 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;
- (e) words denoting the singular number shall include the plural and vice versa; and
- (f) Clauses 1.1 (*Definitions*) to ~~4-5~~1.6 (*General Interpretation*) apply unless the contrary intention appears.

## **1.7 Headings**

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

## **1.8 Schedules**

The schedules form an integral part of this Agreement.

## **1.9 Effective Date**

This Agreement is effective from the ~~2021-Deferral~~2023 Effective Date.

## **2 FACILITY**

### **2.1 Amount of facility**

Subject to the other provisions of this Agreement, the Lenders agree to make available to the Borrower a loan not exceeding the Maximum Loan Amount intended to be applied as follows:

- (a) in payment to the Builder of all or part of 80% of the Final Contract Price up to the Eligible Amount;
- (b) in reimbursement to the Borrower of the amount of the First Instalment of the SACE Premium paid by it to SACE on or before 30 days following the issuance of the SACE Insurance Policy; and
- (c) in payment to SACE of the amount of the Second Instalment of the SACE Premium payable by the Borrower to SACE on the Drawdown Date.

## **2.2 Lenders' participations in Loan**

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

## **2.3 Purpose of Loan**

The Borrower undertakes with each Secured Party to use the Loan only to pay for:

- (a) goods and services of Italian origin incorporated in the design, construction or delivery of the Ship;
- (b) subject to the limits and conditions fixed by the Italian Authorities, goods and services incorporated in the design, construction or delivery of the Ship and originating from countries other than Italy where the provision of such goods or services has been sub-contracted by the Builder and therefore remains the Builder's responsibility under the Shipbuilding Contract;
- (c) reimbursement to the Borrower of the First Instalment of the SACE Premium paid by the Borrower direct to SACE 30 days following the issuance of the SACE Insurance Policy;
- (d) the Second Instalment of the SACE Premium payable on the Drawdown Date; and
- (e) such purposes, relating to the 2020 Deferral Tranche and the 2021 Deferral Tranche, as specified in accordance with the 2020 Amendment Agreement and the 2021 Amendment and Restatement Agreement respectively.

## **2.4 Creditor Parties' rights and obligations**

- (a) The obligations of each Creditor Party under the Finance Documents are several. Failure by a Creditor Party to perform its obligations under the Finance Documents does not affect the obligations of any other Party under the Finance Documents. No Creditor Party is responsible for the obligations of any other Creditor Party under the Finance Documents.
- (b) The rights of each Creditor Party under or in connection with the Finance Documents are separate and independent rights and any debt arising under the Finance Documents to a Creditor Party from an Obligor shall be a separate and independent debt.
- (c) A Creditor Party may not, except as otherwise stated in the Finance Documents, separately enforce its rights under the Finance Documents.
- (d) Notwithstanding any other provision of the Finance Documents and subject to the prior written consent of SACE, a Creditor Party may separately sue for any Unpaid Sum due to it without the consent of any other Creditor Party or joining any other Creditor Party to the relevant proceedings (it being understood that a Creditor Party may file a claim noting the amounts due to it in the event insolvency proceedings are commenced against the Borrower by a third party.)

## **2.5 Monitoring**

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

## **2.6 Obligations of Lenders several**

The obligations of the Lenders under this Agreement are several; and a failure of a Lender to perform its obligations under this Agreement shall not result in:

- (a) the obligations of the other Lenders being increased; nor
- (b) any Obligor or any other Lender being discharged (in whole or in part) from its obligations under any Finance Document;

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

## **2.7 Independent Repayment Obligations**

- (a) The Borrower's obligations under this Agreement are separate from and are not in any way conditional upon the performance of the Shipbuilding Contract by the Builder or any other person and will not be affected or discharged by any matter affecting the Contract or any other contract or other arrangement between the Builder and any other party to the Contract including, without limitation, the performance, non-performance, frustration or invalidity or the destruction, non-completion, or non-functioning of any of the items to be supplied under the Contract (including those to be supplied by the Builder) or the liquidation or bankruptcy of the Builder.
- (b) The Borrower's repayment obligations under this Agreement will not be affected in any way by reason of any claim which the Borrower may have or may consider that it has against the Builder or any other person under the Contract.

## **3 CONDITIONS PRECEDENT**

### **3.1 General**

The Borrower may only draw under the Loan when the following conditions have been fulfilled to the satisfaction of the Agent and provided no Event of Default shall have occurred and remains unremedied or is likely to occur as a consequence of the drawing of the Loan. This Clause 3 (*Conditions Precedent*) shall not apply to the 2020 Deferral Tranche or the 2021 Deferral Tranche, save for Clause 3.14 (*Deferral Tranches*).

### **3.2 No later than the date of the Original Facility Agreement**

The Agent shall have received no later than the date of the Original Facility Agreement:

- (a) an opinion from legal counsel acceptable to the Secured Parties as to the laws of the state of Delaware in form and substance satisfactory to the Agent and SACE, together with the limited liability company documentation of the Borrower supporting the opinion, including but without limitation the Certificate of Formation and Limited Liability Company Agreement as filed with the competent authorities and a certificate of a competent officer or manager of the Borrower containing specimen signatures of the persons authorised to sign the documents on behalf of the Borrower, including, without limitation:
  - (i) the Borrower has been duly formed and is validly existing as a limited liability company under the laws of the state of Delaware;

- (ii) the Original Facility Agreement falls within the scope of the Borrower's limited liability company purpose as defined by its Certificate of Formation and Limited Liability Company Agreement;
- (iii) the Borrower's representatives were at the date of the Original Facility Agreement fully empowered to sign the Original Facility Agreement;
- (iv) either all administrative requirements applicable to the Borrower (whether in the state of Delaware or elsewhere), concerning the transfer of funds abroad and acquisitions of Dollars to meet its obligations hereunder have been complied with, or that there are no such requirements;
- (v) no withholding tax or stamp duty implications arise by virtue of the Borrower entering into the Original Facility Agreement;
- (vi) a judgment of an English Court in relation to the Original Facility Agreement and any relevant Finance Documents will be recognised by and acknowledged by the Courts in the State of Delaware; and
- (vii) the Original Facility Agreement constitutes the legal, valid and binding obligations of the Borrower enforceable in accordance with its terms,

and containing such qualifications and assumptions as are standard for opinions of this type;

- (b) an opinion from legal counsel to the Creditor Parties as to English law confirming, without limitation, that (i) the obligations of the Borrower under the Original Facility Agreement and (ii) that the obligations of each Prior Guarantor under the relevant Prior Guarantee are legally valid and binding obligations enforceable by the relevant Creditor Parties;
- (c) an opinion from legal counsel to SACE as to English law (to be solely addressed to the Italian Authorities) in form and substance satisfactory to SACE;
- (d) a Certified Copy of the executed Shipbuilding Contract;
- (e) a confirmation from EC3 Services Limited that it will act for the Borrower as agent for service of process in England in respect of the Original Facility Agreement and any other Finance Document;
- (f) an opinion from legal counsel acceptable to the Secured Parties as to Panamanian law in form and substance satisfactory to the Agent and SACE, together with the corporate documentation of each Prior Guarantor supporting the opinion, including but without limitation the Articles of Incorporation and By-laws as filed with the competent authorities and a certificate of a competent officer of each Prior Guarantor containing specimen signatures of the persons authorised to sign the documents on behalf of the Prior Guarantor including without limitation:
  - (i) each Prior Guarantor has been duly organised and is validly existing and in good standing as a Panamanian *sociedad anonima* or a *sociedad de responsabilidad limitada* with its domicile in the Republic of Panama and each Prior Guarantor's Resident Agent being Arias Fabrega & Fabrega with address at Plaza 2000 Building, 16th Floor, 50th Street, Panama;
  - (ii) each Prior Guarantee falls within the scope of the relevant Prior Guarantor's corporate purpose as defined by its Articles of Incorporation and By-laws;



- (iii) each Prior Guarantor's representative was at the date of the Prior Guarantee issued by it fully empowered to sign and duly execute that Prior Guarantee;
  - (iv) either all administrative requirements applicable to each Prior Guarantor (whether in the Republic of Panama) concerning the transfer of funds abroad and acquisitions of Dollars to meet its obligations under the Prior Guarantee issued by it have been complied with, or that there are no such requirements;
  - (v) each Prior Guarantee is the legal, valid and binding obligations of the Prior Guarantor which issued it enforceable in accordance with its terms;
  - (vi) the Limited Liability Company Interests Security Deed falls within the scope of Seven Seas' corporate purpose as defined by its Articles of Incorporation and By-laws; and
  - (vii) the representative of Seven Seas was at the date of the Limited Liability Company Interests Security Deed fully empowered to sign the Limited Liability Company Interests Security Deed.
  - (viii) a judgment of an English Court in relation to the Prior Guarantees will be recognised by and acknowledged by the Courts of Panama; and
  - (ix) none of the undertakings of either Prior Guarantor contained in either Prior Guarantee are contrary to public policy in the Republic of Panama,
- and containing such qualifications and assumptions as are standard for opinions of this type;
- (g) duly executed originals of the Guarantees and the Limited Liability Security Deed; and
  - (h) confirmation from EC3 Services Limited that it will act for each Prior Guarantor as agent for service of process in England in respect of the Prior Guarantee issued by that Prior Guarantor and any other Finance Document.

**3.3 No later than ninety (90) days before the Intended Delivery Date**

The Agent shall have received no later than ninety (90) days before the Intended Delivery Date:

- (a) notification from the Borrower of its chosen Maritime Registry;
  - (b) the SACE Insurance Policy documentation relating to the transaction contemplated by the Original Facility Agreement issued on terms whereby the SACE Insurance Policy will enter into full force and effect upon fulfilment of the conditions specified therein to be fulfilled on or before the Drawdown Date;
  - (c) evidence that the Borrower has paid the First Instalment of the SACE Premium to SACE on or before 30 days following the issuance of the SACE Insurance Policy; and
  - (d) notification of the Approved Manager.
- 3.4 No later than the date falling ninety (90) days before the Intended Delivery Date and on each subsequent date on which a Compliance Certificate is to be received by the Security Trustee pursuant to paragraph (e) of clause 11.3 of the Original Guarantee a duly completed Compliance Certificate from the Guarantor.

**3.5 No later than sixty (60) days before the Intended Delivery Date**

- (a) The Agent shall have received from the Borrower no later than sixty (60) days before the Intended Delivery Date:
- (i) notification of the Intended Delivery Date; and
  - (ii) notification, signed by a duly authorised signatory of the Borrower, specifying which of the Fixed Interest Rate or the Floating Interest Rate shall be applicable to the Loan until the date of payment of the final repayment instalment of the Loan; and in absence of any such notification, the Borrower shall be deemed to have opted for the Floating Interest Rate; and
  - (iii) a US tax opinion from legal counsel to the Creditor Parties in respect of the tax treatment of the entry by the US incorporated Borrower into the Original Facility Agreement and the other Finance Documents substantially in the form notified to the Borrower on or around the date of the Original Facility Agreement and updated to reflect any changes in law;
- (b) The Agent (acting on the instructions of the Lenders) shall notify to the Borrower any documents required under the ISM Code and the ISPS Code which are to be provided at delivery pursuant to paragraph (f) of Clause 3.10 (*At Delivery*) below.

**3.6 No later than fifteen (15) Business Days before the Intended Delivery Date**

The Agent shall have received no later than fifteen (15) Business Days before the Intended Delivery Date insurance documents in form and substance satisfactory to the Lenders confirming that the Insurances have been effected and will be in full force and effect on the Delivery Date.

**3.7 No later than five (5) Business Days before the Intended Delivery Date**

The Agent shall have received no later than five (5) Business Days before the Intended Delivery Date:

- (a) the Drawdown Notice from the Borrower, signed by a duly authorised signatory of the Borrower, specifying the amount of the Loan to be drawn down;
- (b) a Certified Copy of each of the Change Orders, of any amendments to the Shipbuilding Contract and of the power of attorney pursuant to which the authorised signatory of the Borrower signed the Drawdown Notice and a specimen of his signature;
- (c) a final confirmation of the Intended Delivery Date signed by a duly authorised signatory of the Borrower, and counter-signed by a duly authorised signatory of the Builder.

**3.8 Examination of documents by the Agent**

The Agent shall ensure that an officer or employee or other person designated by it as its authorised representative is present at the Builder on the proposed Drawdown Date for the purpose of examining originals (or certified copies) of the SACE Required Documents duly signed by the parties thereto and collecting copies thereof (which copies shall be certified as true copies by an authorised signatory of the Builder and/or the Borrower, as applicable).

### 3.9 No later than the Delivery Date

The Agent shall have received no later than the Delivery Date:

- (a) an opinion from legal counsel acceptable to the Secured Parties as to the laws of the state of Delaware in form and substance satisfactory to the Agent and SACE together with the limited liability company documentation of the Borrower and a certificate of a competent officer or manager of the Borrower containing specimen signatures of the persons authorised to sign the documents on behalf of the Borrower, confirming that, without limitation:
  - (i) the Original Mortgage, the Tripartite General Assignment, the Post-Delivery Assignment and the Seven Seas Charter fall within the scope of the Borrower's limited liability company purpose as defined by its Certificate of Formation and Limited Liability Company Agreement and are binding on it; and
  - (ii) the Borrower's representatives are fully empowered to sign the Protocol of Delivery and Acceptance, the Original Mortgage, the Tripartite General Assignment, the Post-Delivery Assignment and the Seven Seas Charter.
- (b) evidence of payment to and receipt by the Builder of:
  - (i) the [\*] pre-delivery instalments of the Final Contract Price; and
  - (ii) any other part of the Final Contract Price as at the Delivery Date not being financed hereunder;
- (c) evidence of payment of all amounts which are due and payable hereunder by the Borrower on or prior to the Delivery Date;
- (d) a certificate from the Borrower, signed by an authorised representative of the Borrower, confirming that the representations and warranties contained in Clause ~~41~~-12 (*Representations and Warranties*) are true and correct as of the Delivery Date in consideration of the facts and circumstances existing as of the Delivery Date;
- (e) an original of the Interest Make-Up Agreement relative to the Loan and in full force and effect;
- (f) a duly executed original of the SACE Reimbursement Agreement;
- (g) an original of the SACE Insurance Policy;
- (h) an original or a certified copy of each of the SACE Required Documents and SACE and the Agent shall be satisfied that the SACE Required Documents on their face appear properly completed and comply with the requirements of the Original Facility Agreement and the requirements of the SACE Insurance Policy; and

provided always that the obligations of the Lenders to make the Loan available on the Delivery Date are subject to the Lenders remaining satisfied that each of the SACE Insurance Policy and the Interest Make-Up Agreement will cover the Loan following the advance of the Loan, payment of the Second Instalment of the SACE Premium and delivery to the Agent of the documents listed in Schedule 3 (*Documents to be produced by the Builder to the Agent on Delivery*).

### 3.10 At Delivery

Immediately prior to the delivery of the Ship by the Builder to the Borrower, the Agent shall have received:

- (a) evidence that immediately following delivery:
  - (i) the Ship will be registered in the name of the Borrower in the Maritime Registry;
  - (ii) title to the Ship will be held by the Borrower free of all Security Interests other than any maritime lien in respect of crew's wages and trade debts arising out of equipment, consumable and other stores placed on board the Ship prior to or concurrently with delivery, none of which is overdue;
  - (iii) the Original Mortgage will be duly registered in the Maritime Registry and constitutes a first priority security interest over the Ship and that all taxes and fees payable to the Maritime Registry in respect of the Ship have been paid in full; and
  - (iv) the opinions mentioned in paragraphs (b), (c) and (d) of Clause 3.11 and the documents mentioned in paragraph (e) of Clause 3.11 will be received by the Agent;
- (b) a Certified Copy of a classification certificate (or interim classification certificate) showing the Ship to be classed in accordance with paragraph (c) of Clause ~~4.3~~12.3 (*Representations on the Delivery Date*).
- (c) duly executed originals of the Tripartite General Assignment, any Approved Manager's Undertaking and the Post-Delivery Assignment together with relevant notices of assignment and the acknowledgement of the notice of assignment to be issued pursuant to the Tripartite General Assignment and the Post-Delivery Assignment;
- (d) a duly executed original of the Limited Liability Company Interests Security Deed (and of each document required to be delivered under the Limited Liability Company Interests Security Deed);
- (e) a Certified Copy of any executed External Management Agreement, the Seven Seas Charter and any time charterparty in respect of the Ship;
- (f) a Certified Copy of any current certificate of financial responsibility in respect of the Ship issued under OPA, a valid Safety Management Certificate (or interim Safety Management Certificate) issued to the Ship in respect of its management by the Approved Manager pursuant to the ISM Code, a valid Document of Compliance (or interim Document of Compliance) issued to the Approved Manager in respect of ships of the same type as the Ship pursuant to the ISM Code, a valid International Ship Security Certificate issued to the Ship in accordance with the ISPS Code and a valid IAPPC issued to the Ship in accordance with Annex VI and, if entered into, any carrier initiative agreement with the United States' Customs and Border Protection under the Customs-Trade Partnership Against Terrorism (C-TPAT) programme along with any other documents required under the ISM Code and the ISPS Code and notified to the Borrower in accordance with paragraph (b) of Clause 3.5 (*No later than sixty (60) days before the Intended Delivery Date*) above;
- (g) a Certified Copy of the power of attorney pursuant to which the authorised signatory(ies) of the Borrower signed the documents referred to in this Clause 3.10 (*At Delivery*) and to which the Borrower is a party and a specimen of his or their signature(s);

- (h) a confirmation from EC3 Services Limited (or any replacement process agent satisfactory to the Agent acting reasonably) that it will act for each of the relevant Obligors as agent for service of process in England in respect of the deed of covenants constituting part of the Original Mortgage (if applicable), the Tripartite General Assignment and the Post-Delivery Assignment.

**3.11 Immediately following the delivery of the Ship by the Builder to the Borrower, the Agent shall receive:**

- (a) a duly executed original of the Original Mortgage;
- (b) an opinion from legal counsel acceptable to the Secured Parties as to the law of the Maritime Registry in form and substance satisfactory to the Agent and SACE confirming:
  - (i) the valid registration of the Ship in the Maritime Registry; and
  - (ii) the Original Mortgage over the Ship has been validly registered in the Maritime Registry;
- (c) an opinion from legal counsel to the Agent as to English law confirming, without limitation, that the obligations of the Borrower under the deed of covenants constituting part of the Original Mortgage (if applicable), the Tripartite General Assignment and the Post-Delivery Assignment are legally valid and binding obligations enforceable by the relevant Creditor Parties in the English courts;
- (d) an opinion from legal counsel to SACE in relation to, inter alia, the English law Finance Documents to be signed on the Delivery Date (to be addressed solely to SACE) in form and substance satisfactory to SACE;
- (e) the documents listed in Schedule 3 (*Documents to be produced by the Builder to the Agent on Delivery*).

**3.12 Waiver of conditions precedent**

If the Majority Lenders, at their discretion, subject to the prior written consent of SACE, permit the Loan to be borrowed before any of the conditions precedent referred to in Clause 3 (*Conditions Precedent*) has been satisfied, the Borrower shall ensure that that condition is satisfied within five (5) Business Days after the date (as specified in the relevant part of Clause 3 (*Conditions Precedent*)) or such later date as the Agent, acting with the authorisation of the Majority Lenders, may agree in writing with the Borrower.

**3.13 Changes to SACE requirements**

- (a) If SACE notifies the Agent in writing of a change to the requirements of the SACE Insurance Policy with the effect that, in the opinion of the Agent, certain documents which the Borrower is or may be required to provide for the purpose of drawing the Loan under this Agreement are no longer necessary to ensure that:
  - (i) such SACE Insurance Policy will apply to the Loan made or to be made under this Agreement; and
  - (ii) any claim which may be made in respect of the Loan under such SACE Insurance Policy will be valid and continue to be issued by SACE,

then the Agent shall promptly notify the Borrower of any changes the Agent considers appropriate to be made to this Agreement to reflect such a change in SACE's requirements.

- (b) If the Agent notifies the Borrower of any proposed changes to this Agreement under paragraph (i) above, and provided that:
- (i) all the Lenders and the Borrower agree with such changes; and
  - (ii) the Borrower indemnifies and holds harmless the Agent and the Lenders for any reasonable costs that it may incur arising from or in connection with any such amendments (including legal fees),

then such changes will be made to this Agreement in accordance with the terms hereof.

- (c) If, in the opinion of the Lenders, there are any provisions of this Agreement that contradict or conflict with any provision of the SACE Insurance Policy to an extent that the same may have the effect of rendering all or any part of the SACE Insurance Policy void, voidable or otherwise not in full force and effect, this Agreement will be amended to the extent agreed in writing between the Borrower and the Agent (acting on the instructions of the Majority Lenders) to ensure compliance with the terms of the SACE Insurance Policy.

### **3.14 Deferral Tranches**

The relevant part of a Deferral Tranche shall only be advanced if the Agent shall have received (a) no later than five (5) Business Days before the date of the relevant advance (and only if required under Clause 4.9 (*Deferral Tranches*) hereunder), a Drawdown Notice from the Borrower, signed by a duly authorised signatory of the Borrower, specifying the amount of the Deferral Tranche to be drawn down, and (b) on the relevant date of the relevant advance or deemed advance (as applicable), confirmation that:

- (a) save as disclosed in writing to the Agent and SACE prior to the date of the 2020 Amendment Agreement, no Event of Default is continuing or would result from such advance or deemed advance (as applicable) and no Deferral Prepayment Event or event or circumstance specified in Clause ~~4-19~~ 12 (*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 has occurred; and
- (b) save as disclosed in writing to the Agent and SACE prior to the date of the 2020 Amendment Agreement, each of the repeating representations set out in Clause ~~4-12~~ 12 (*Representations and warranties*) are true as at such date by reference to the facts and circumstances existing at such date,

it being provided that two advances under the 2020 Deferral Tranche have been made to the Borrower in respect of the 2020 Deferred Repayment Instalments.

## **4 DRAWDOWN**

### **4.1 Borrower's irrevocable payment instructions**

The Lenders shall not be obliged to fulfil their obligation to make the Loan available other than (i) by paying the Builder all or part of 80% of the Final Contract Price up to the Eligible Amount on behalf of and in the name of the Borrower, (ii) by reimbursing the Borrower for the First Instalment of the SACE Premium which was paid by the Borrower to SACE on or before 30 days

following the issuance of the SACE Insurance Policy and (iii) by payment to SACE of the Second Instalment of the SACE Premium payable on the Delivery Date. For the avoidance of doubt, the amount of the Loan shall not exceed the Maximum Loan Amount.

The Borrower hereby instructs the Lenders in accordance with this Clause 4.1 (*Borrower's irrevocable payment instructions*):

- (a) to pay to the Builder all or part of 80% of the Final Contract Price up to the Eligible Amount.
- (b) to reimburse the Borrower the amount of the First Instalment of the SACE Premium already paid by the Borrower to SACE on or before 30 days following the issuance of the SACE Insurance Policy; and
- (c) to pay to the Agent on behalf of the Lenders for onward payment to SACE (such payment to SACE to be made for value on the Drawdown Date), by drawing under the Loan, the amount of the Second Instalment of the related SACE Premium.

Payment to the Builder of the amount drawn under paragraph (a) of Clause 4.1 above shall be made on the Delivery Date of the Ship during usual banking hours in Italy to the Builder's account as specified by the Builder in accordance with the Shipbuilding Contract after receipt and verification by the Agent of the documents provided under Schedule 3 (*Documents to be produced by the Builder to the Agent on Delivery*).

Save as contemplated in Clause 4.3 (*Modification of payment terms*) below, the payment instruction contained in this Clause 4.1 (*Borrower's irrevocable payment instructions*) is irrevocable.

#### **4.2 Conversion Rate for Loan**

The Dollar amount to be drawn down under paragraph (a) of Clause 4.1 (*Borrower's irrevocable payment instructions*) shall be calculated by the Agent on the Conversion Rate Fixing Date in accordance with the definitions of "Eligible Amount" and "Conversion Rate" in Clause 1.1 (*Definitions*).

#### **4.3 Modification of payment terms**

The Borrower expressly acknowledges that the payment terms set out in this Clause may only be modified with the agreement of the Italian Authorities, Agent, the Security Trustee, the Lenders and the Borrower in the case of paragraph (a) of Clause 4.1 (*Borrower's irrevocable payment instructions*) and with the agreement of the Italian Authorities, Agent, the Lenders and the Borrower in the case of paragraphs (b) and (c) of Clause 4.1 (*Borrower's irrevocable payment instructions*); **provided that** it is the intention of the Borrower, the Lenders, the Security Trustee and the Agent that prior to the Conversion Rate Fixing Date agreement shall be reached with those financial institutions with whom the Borrower has entered into the FOREX Contracts (the "**Counterparties**") in order that the Euro payments due from the Counterparties under the FOREX Contracts shall be paid to the Agent for holding in escrow and to be released by the Agent simultaneously with (i) the payment in full to the Builder of the balance of the Final Contract Price denominated in Euro at the time of delivery of the Ship and (ii) the payment to the Counterparties of the Dollars due to them under the relevant FOREX Contracts out of the Dollar amount available under Clause paragraph (a) of Clause 4.1 (*Borrower's irrevocable payment instructions*), subject only to delivery of the Ship by the Builder to the Borrower taking place as evidenced by the execution and delivery of the Protocol of Delivery and Acceptance and to the Borrower having deposited with the Agent before

delivery, if and to the extent required, any Dollar and/or Euro amounts as may be needed to ensure the payment in full of both the balance of the Final Contract Price in Euro and the Dollars owed to the Counterparties under all the relevant FOREX Contracts.

#### **4.4 Availability and conditions**

Except as permitted by the provisions of the 2020 Amendment Agreement in respect of the 2020 Deferral Tranche and the 2021 Amendment and Restatement Agreement in respect of the 2021 Deferral Tranche:

- (a) drawing may not be made under this Agreement (and the Loan shall not be available) after the earlier of the Delivery Date and the expiry of the Availability Period;
- (b) there will be only one drawing under this Agreement; and
- (c) the drawing cannot exceed the Maximum Loan Amount.

#### **4.5 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 Loan and the Drawdown Date;
- (b) the amount of that Lender's participation in the Loan; and
- (c) the duration of the first Interest Period.

#### **4.6 Lenders to make available Contributions**

Subject to the provisions of this Agreement, each Lender shall, on and with value on the Drawdown Date, make available to the Agent the amount due from that Lender under Clause 2.2 (*Lenders' participations in Loan*).

#### **4.7 Disbursement of Loan**

Subject to the provisions of this Agreement, the Agent shall on the Drawdown Date pay the amounts which the Agent receives from the Lenders under Clause 4.6 (*Lenders to make available Contributions*) in the like funds as the Agent received the payments from the Lenders:

- (a) in the case of the amount referred to in paragraph (a) of Clause 4.1 (*Borrower's irrevocable payment instructions*), to the account of the Builder which the Borrower specifies in the Drawdown Notice; and
- (b) in the case of the amount referred to in paragraph (b) of Clause 4.1 (*Borrower's irrevocable payment instructions*) to the account of the Borrower which the Borrower shall specify; and
- (c) in the case of the amount referred to in paragraph (c) of Clause 4.1 (*Borrower's irrevocable payment instructions*) to the account of SACE which the SACE Agent shall specify.



#### **4.8 Disbursement of Loan to third party**

The payment by the Agent under Clause 4.7 (*Disbursement of Loan*) shall constitute the making of the Loan and the Borrower shall at that time become indebted, as principal and direct obligor, to each Lender in an amount equal to that Lender's Contribution.

#### **4.9 Deferral Tranches**

The Lenders have agreed, pursuant to the 2020 Amendment Agreement and the 2021 Amendment and Restatement Agreement, as set out in this Agreement (but without increasing the Maximum Loan Amount and the Total Commitments of each Lender save for the related 2020 Deferral Tranche Premium to be advanced in accordance with paragraph (c) below) to make available to the Borrower the Deferral Tranches as follows, as set out in further detail in Schedule 6 (*Deferred Repayment Schedule*):

- (a) on each Repayment Date during the 2020 Deferral Period, a portion of the 2020 Deferral Tranche in an amount equal to the relevant 2020 Deferred Repayment Instalment due on such Repayment Date shall be automatically drawn by the Borrower and applied towards repayment of the relevant 2020 Deferred Repayment Instalment due on such date. Each such advance under the 2020 Deferral Tranche shall be automatic and notional only, and effected by means of a book entry to finance the 2020 Deferred Repayment Instalments then due;
- (b) on each Repayment Date during the 2021 Deferral Period, a portion of the 2021 Deferral Tranche in an amount equal to the relevant 2021 Deferred Repayment Instalment due on such Repayment Date shall be automatically drawn by the Borrower and applied towards repayment of the relevant 2021 Deferred Repayment Instalment due on such date. Each such advance under the 2021 Deferral Tranche shall be automatic and notional only, and effected by means of a book entry to finance the 2021 Deferred Repayment Instalments then due; and
- (c) together with the first advance of the 2020 Deferral Tranche under this Clause 4.9 (*Deferral Tranches*), a portion of the 2020 Deferral Tranche in an amount equal to the amount to be paid to SACE in respect of the 2020 Deferral Tranche Premium payable to SACE due on the first advance under the 2020 Deferral Tranche shall be drawn by the Borrower and paid to SACE as specified in the relevant Drawdown Notice, it being provided that such amount was advanced to the Borrower on 30 June 2020 together with the first advance under the 2020 Deferral Tranche in respect of the 2020 Deferred Repayment Instalments.

Accordingly, the other provisions of this Clause 4 (*Drawdown*) shall not apply to the advances under the Deferral Tranches and each advance of any Deferral Tranches under this Clause 4.9 (*Deferral Tranches*) shall be deemed to satisfy the Borrower's obligations under Clause 5 (*Repayment*) in respect of the corresponding Deferred Repayment Instalment.

### **5 REPAYMENT**

#### **5.1 Number of repayment instalments**

Subject to Clause 6 (*Repayment of Deferral Tranches*), the Borrower shall repay the Loan by twenty-four (24) consecutive six-monthly instalments.

## 5.2 Repayment Dates

The first instalment shall be repaid on the date falling six (6) months after the Delivery Date and the last instalment on the date falling one hundred and forty-four (144) months after the Delivery Date, each date of payment of an instalment being a "Repayment Date".

## 5.3 Amount of repayment instalments

Subject to Clause 6 (*Repayment of Deferral Tranches*), each of the twenty-four (24) consecutive six-monthly repayment instalments of the Loan shall be of an equal amount.

## 5.4 Final Repayment Date

Subject to Clause 6 (*Repayment of Deferral Tranches*), on the final Repayment Date, the Borrower shall additionally pay to the Agent for the account of the Creditor Parties all other sums then accrued or owing under any Finance Document.

## 5.5 Repayment of Deferral Tranches

Subject to Clause 4.9 (*Deferral Tranches*):

- (a) the 2020 Deferral Tranche shall be repaid in eight semi-annual instalments beginning on the 2020 Deferral Repayment Starting Point and until the 2020 Deferral Final Repayment Date, as set out in further detail in Schedule 6 (*Deferred Repayment Schedule*); and
- (b) the 2021 Deferral Tranche shall be repaid in ten semi-annual instalments beginning on the 2021 Deferral Repayment Starting Point and until the 2021 Deferral Final Repayment Date, as set out in further detail in Schedule 6 (*Deferred Repayment Schedule*).

## 6 RATE SWITCH

### 6.1 Switch to Term SOFR Reference Rate

Subject to Clause 0 (*Delayed switch for existing LIBOR Loans*), on and from the Rate Switch Date, where the Floating Interest Rate applies:

- (a) use of the Term SOFR Reference Rate will replace the use of LIBOR for the calculation of interest for the Loan or any part of the Loan; and
- (b) the Loan or any part of the Loan or Unpaid Sum shall be a "Term SOFR Loan" and paragraph (b) of the definition of Floating Interest Rate shall apply to the Loan, any such part of the Loan or Unpaid Sum.

### 6.2 Delayed Switch for Existing LIBOR Loans

If the Rate Switch Date falls before the last day of an Interest Period for a LIBOR Loan:

- (a) the Loan, relevant part of the Loan or Unpaid Sum (as applicable) shall continue to be a LIBOR Loan for that Interest Period and paragraph (a) of the definition of Floating Interest Rate shall continue to apply to the Loan, relevant part of the Loan or Unpaid Sum (as applicable) for that Interest Period;

- (b) any provision of this Agreement which is expressed to relate solely to a Term SOFR Loan shall not apply in relation to the Loan, relevant part of the Loan or Unpaid Sum (as applicable) for that Interest Period; and
- (c) on and from the first day of the next Interest Period (if any) for the Loan, relevant part of the Loan or Unpaid Sum (as applicable):
  - (i) the Loan, relevant part of the Loan or Unpaid Sum (as applicable) shall be a "Term SOFR Loan"; and
  - (ii) paragraph (b) of the definition of Floating Interest Rate shall apply to it.

### **6.3 Notifications by Agent**

- (1) Subject to paragraph (b) below, following the occurrence of a Rate Switch Trigger Event, the Agent shall:
  - (a) promptly upon becoming aware of the occurrence of that Rate Switch Trigger Event, notify the Borrower and the Lenders of that occurrence; and
  - (b) promptly upon becoming aware of the date of the Rate Switch Trigger Event Date applicable to that Rate Switch Trigger Event, notify the Borrower and the Lenders of that date.
- (2) The Agent shall, promptly upon becoming aware of the occurrence of the Rate Switch Date, notify the Borrower and the Lenders of that occurrence.
- (3) The Parties agree that the FCA Cessation Announcement constitutes a Rate Switch Trigger Event, that the Rate Switch Trigger Event Date applicable to such Rate Switch Trigger Event will be 1 July 2023 and that the Agent is not under any obligation under paragraph (1) above to notify any Party of such Rate Switch Trigger Event or Rate Switch Trigger Event Date resulting from the FCA Cessation Announcement.
- (4) For the purposes of paragraph (3) above, the "FCA Cessation Announcement" means the announcement on 5 March 2021 by the UK's Financial Conduct Authority that all LIBOR settings will, as of certain specified future dates, either cease to be provided by any administrator or no longer be representative of the market and economic reality that they are intended to measure and that such representativeness will not be restored.

## **7 6INTEREST**

### **7.1 6.4Fixed Interest Rate**

If the Borrower has specified a Fixed Interest Rate pursuant to paragraph (a)(ii) of Clause 3.5 (*No later than sixty (60) days before the Intended Delivery Date*), the Loan shall bear interest at the Fixed Interest Rate. Such interest shall accrue on the actual number of days elapsed based upon a 360 day year and shall be paid on each Repayment Date.

### **7.2 6.2Floating Interest Rate**

If:

- (a) the Borrower has specified a Floating Interest Rate pursuant to paragraph (a)(ii) of Clause 3.5 (*No later than sixty (60) days before the Intended Delivery Date*); or
- (b) the Borrower has specified a Fixed Interest Rate pursuant to paragraph (a)(ii) of Clause 3.5 (*No later than sixty (60) days before the Intended Delivery Date*) but thereafter for any reason whatsoever the Interest Make-Up Agreement is suspended or otherwise ceases to be in effect; or
- (c) SIMEST has requested a change of currency pursuant to the Interest Make-Up Agreement and such change of currency is not agreed by the Borrower or Lenders in accordance with Clause ~~6.46~~ 7.17 (*Change of currency*); or
- (d) SIMEST has failed to make a net payment of interest to the Lenders pursuant to the Interest Make-Up Agreement,

the rate of interest on the Loan in respect of any Interest Period shall be the Floating Interest Rate applicable for that Interest Period and the following provisions of this Clause 6 (*Interest*) shall apply (in the case of the circumstances referred to in paragraph (b) above, with effect from the date on which the Interest Make-Up Agreement ceases to be in effect, with such consequential amendments as shall be necessary to give effect to the switch from a Fixed Interest Rate to a Floating Interest Rate).

### **7.3** ~~6.3~~ Interest in respect of Deferral Tranches

The rate of interest for each Interest Period in respect of each Deferral Tranche shall be the relevant Floating Interest Rate.

### **7.4** ~~6.4~~ Deferred Costs

Independently to any other obligation to pay costs, expenses or interest under or in connection with this Agreement, the Borrower shall, as a separate obligation, also pay to the Agent (for distribution to each Lender) deferred costs in respect of any drawn portion of a Deferral Tranche at the relevant Deferred Costs Percentage for each Interest Period during which any part of that Deferral Tranche remains outstanding. Whilst not an interest liability, such deferred costs shall be charged from and including the first day of the applicable Interest Period in which an amount of the relevant Deferral Tranche is outstanding to (but not including) the last day of such Interest Period, and will be payable semi-annually in arrears on each interest payment date. Any deferred costs payable in accordance with this Clause ~~6.4~~ 7.4 (*Deferred Costs*) shall be calculated on the basis of the actual number of days elapsed over a year comprised of 360 days. Any non-payment of such deferred costs shall be an Event of Default in accordance with Clause ~~48.2~~ 19.2 (*Non-payment*).

### **7.5** ~~6.5~~ Payment of Floating Interest Rate

Subject to the provisions of this Agreement, interest on the Loan in respect of each Interest Period shall accrue on the actual number of days elapsed based upon a 360 day year and shall be paid by the Borrower on the last day of that Interest Period.

### **7.6** ~~6.6~~ Notification of Interest Periods and Floating Interest Rate

- (a) ~~The Save where paragraph (d) of Clause 7.9 (Unavailability of Term SOFR) applies, the~~ Agent shall notify the Borrower and each Lender of each Floating Interest Rate and the duration of

each Interest Period as soon as reasonably practicable after each is determined and no later than the Quotation Day.

- (b) In respect of any Fallback Interest Payment, the Agent shall promptly upon a Fallback Interest Payment being determinable notify:
  - (i) the Borrower of that Fallback Interest Payment;
  - (ii) each relevant Lender of the proportion of that Fallback Interest Payment which relates to that Lender's participation in the Loan or the relevant part of the Loan; and
  - (iii) the relevant Lenders and the Borrower of each applicable Daily Simple SOFR relating to the determination of that Fallback Interest Payment.
- (c) The Agent shall promptly notify the Borrower of each Funding Rate relating to the Loan or any part of the Loan.
- (d) This Clause 7.6 (Notification of Interest Periods and Floating Interest Rate) shall not require the Agent to make any notification to any Party on a day which is not a Business Day.

#### **7.7 6.7 Unavailability of Screen Rate before Rate Switch Date**

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

#### **(c) Cost of funds**

- (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 that LIBOR Loan or that part of the Loan (as applicable)~~ and Clause ~~6.10~~ 7.11 (*Cost of funds*) shall apply to the Loan or that part of the Loan for that Interest Period.

#### **7.8 6.8 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.

## 7.9 Unavailability of Term SOFR

- (a) Interpolated Term SOFR: If no Term SOFR is available for the Interest Period of any Term SOFR Loan, the applicable Term SOFR Reference Rate shall be the Interpolated Term SOFR for a period equal in length to the Interest Period of that Term SOFR Loan.
- (b) Historic Term SOFR: If no Term SOFR is available for the Interest Period of any Term SOFR Loan and it is not possible to calculate the Interpolated Term SOFR, the applicable Term SOFR Reference Rate shall be the Historic Term SOFR for that Term SOFR Loan.
- (c) Interpolated Historic Term SOFR: If paragraph (b) above applies but no Historic Term SOFR is available for the Interest Period of any Term SOFR Loan, the applicable Term SOFR Reference Rate shall be the Interpolated Historic Term SOFR for a period equal in length to the Interest Period of that Term SOFR Loan.
- (d) Daily Simple SOFR: If, after giving effect to paragraph (c) above, no Term SOFR is available for the Interest Period of a Term SOFR Loan and it is not possible to calculate the Interpolated Historic Term SOFR, that Term SOFR Loan shall bear interest for any day of the relevant Interest Period at a rate per annum equal to the aggregate of the applicable (i) Daily Simple SOFR; (ii) Margin; and (iii) Credit Adjustment Spread.
- (e) Cost of funds: If paragraph (d) above applies but it is not possible to calculate the Daily Simple SOFR, there shall be no Term SOFR Reference Rate for that Term SOFR Loan and Clause 7.11 (Cost of funds) shall apply to that Term SOFR Loan for that Interest Period.

## 7.10 **6.9**Market Disruption

- (a) ~~If~~ In the case of a LIBOR Loan, if before close of business in London on the Quotation Day for the relevant Interest Period the Agent receives notification from a Lender or Lenders (whose participations in the Loan or the relevant part of the Loan in aggregate exceed [\*] per cent. of the Loan or the relevant part of the Loan as appropriate) that the cost to it or each of them 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 6.10 (Cost of funds) shall apply to the Loan or that part of the Loan (as applicable) for the relevant Interest Period.~~ 7.11 (Cost of funds) shall apply to the Loan or that part of the Loan (as applicable) for the relevant Interest Period.
- (b) In the case of a Term SOFR Loan, if before close of business in London on the Quotation Day for the relevant Interest Period, the Agent receives notification from a Lender or Lenders (whose participations in the Loan or the relevant part of the Loan exceed [\*] per cent. of the Loan or the relevant part of the Loan as appropriate) that its cost of funds relating to its participation in the Loan or that part of the Loan would be in excess of the Market Disruption Rate then Clause 7.11 (Cost of funds) shall apply to the Loan or that part of the Loan (as applicable) for the relevant Interest Period.

## 7.11 **6.10**Cost of funds

- (a) If this Clause ~~6.10~~ 7.11 (Cost of funds) applies, the rate of interest on the Loan or the relevant part of the Loan for the relevant Interest Period shall be the percentage rate per annum which is the sum of:
  - (i) the Margin; and

- (ii) the weighted average of the rates notified to the Agent by each 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 cost of funds relating to~~ its participation in the Loan or that part of the Loan from whatever source it may reasonably select.
- (b) If this Clause ~~6.10-7.11~~ 7.11 (*Cost of funds*) applies and the Agent or the Borrower so requires, the Agent and the Borrower shall enter into negotiations (for a period of not more than 30 days) with a view to agreeing a substitute basis for determining the rate of interest or (as the case may be) an alternative basis for funding.
- (c) Subject to Clause ~~6.11-7.12~~ 7.12 (*Replacement of Screen Rate* Changes to the reference rates), 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 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 ~~6.10-7.11~~ 7.11 (*Cost of funds*) applies pursuant to Clause ~~6.9-7.10~~ 7.10 (*Market Disruption*) and:
  - (i) in relation to a LIBOR Loan, a Lender's Funding Rate is less than LIBOR, or, that Lender's cost of funds relating to its participation in the Loan or the relevant part of the Loan for that Interest Period shall be deemed, for the purposes of sub-paragraph (ii) of paragraph (a) above, to be LIBOR.
  - (ii) in relation to a Term SOFR Loan, a Lender's Funding Rate is less than the Market Disruption Rate, that Lender's cost of funds relating to its participation in the Loan or the relevant part of the Loan for that Interest Period shall be deemed, for the purposes of sub-paragraph (ii) of paragraph (a) above, to be the Market Disruption Rate for that Term SOFR Loan.
  - (iii) ~~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 6.10 (Cost of funds) applies but any Lender does not supply a quotation by the time specified in sub-paragraph (ii) of paragraph (a) above, If this Clause 7.11 (Cost of funds) applies but any Lender does not notify a rate to the Agent by the time specified in sub-paragraph (ii) of paragraph (a) above,~~ the rate of interest shall be calculated on the basis of the ~~quotations of rates notified by~~ the remaining Lenders.

**6.11 Replacement of Screen Rate**

**7.12 Changes to the reference rates**

~~If a Screen-If a Published~~ Rate Replacement Event has occurred in relation to the ~~Screen-Published~~ Rate ~~for Dollars~~, any amendment or waiver which relates to:

- (a) providing for the use of a Replacement ~~Benchmark~~ Reference Rate; and

- (b)
- (i) aligning any provision of any Finance Document to the use of that Replacement ~~Benchmark~~Reference Rate;
  - (ii) enabling that Replacement ~~Benchmark~~Reference Rate to be used for the calculation of interest under this Agreement (including, without limitation, any consequential changes required to enable that Replacement ~~Benchmark~~Reference Rate to be used for the purposes of this Agreement);
  - (iii) implementing market conventions applicable to that Replacement ~~Benchmark~~Reference Rate;
  - (iv) providing for appropriate fallback (and market disruption) provisions for that Replacement ~~Benchmark~~Reference Rate; or
  - (v) adjusting the pricing to reduce or eliminate, to the extent reasonably practicable, any transfer of economic value from one Party to another as a result of the application of that Replacement ~~Benchmark~~Reference Rate (and if any adjustment or method for calculating any adjustment has been formally designated, nominated or recommended by the Relevant Nominating Body, the adjustment shall be determined on the basis of that designation, nomination or recommendation),

may be made with the consent of the Agent (acting on the instructions of the Majority Lenders), SACE and SIMEST (if applicable) and the Borrower.

- (e) ~~If, as at 30 September 2021, this Agreement provides that the rate of interest for the Loan in Dollars is to be determined by reference to the Screen Rate for LIBOR:~~
- ~~(i) a Screen Rate Replacement Event shall be deemed to have occurred on that date in relation to the Screen Rate for Dollars; and~~
  - ~~(ii) the Agent (acting on the instructions of the Majority Lenders) and the Obligors shall enter into negotiations in good faith with a view to agreeing the use of a Replacement Benchmark in relation to Dollars in place of that Screen Rate from and including a date no later than 30 November 2021, unless the Borrower and the Agent (acting on the instructions of the Majority Lenders) agree to defer the date of the negotiations required under this sub-paragraph (ii) together with the date for the use of such a Replacement Benchmark, in which case such dates shall be those so agreed.~~
- (c) ~~(d)~~ If an amendment is required as contemplated in this Clause ~~6.11~~7.12 (~~Replacement of Screen Rate~~Changes to the reference rates), the Obligors shall reimburse each of the Agent and the Security Trustee for the amount of all costs and expenses (including legal fees and other professional expenses) incurred by each Secured Party in relation to such amendment.

In this Clause 7.12:

"Published Rate" means:

- (a) SOFR; or
- (b) Term SOFR for any Quoted Tenor.



"Published Rate Contingency Period" means, in relation to:

- (a) Term SOFR (all Quoted Tenors), ten US Government Securities Business Days;
- (b) SOFR, ten US Government Securities Business Days.

"Published Rate Replacement Event" means, in relation to a Published Rate:

(a) the methodology, formula or other means of determining that Published Rate has, in the opinion of the Majority Lenders, and the Borrower materially changed;

(b) \_\_\_\_\_

(i) \_\_\_\_\_

(A) the administrator of that Published Rate or its supervisor publicly announces that such administrator is insolvent; or

(B) information is published in any order, decree, notice, petition or filing, however described, of or filed with a court, tribunal, exchange, regulatory authority or similar administrative, regulatory or judicial body which reasonably confirms that the administrator of that Published Rate is insolvent.

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

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

(iii) the supervisor of the administrator of that Published Rate publicly announces that such Published Rate has been or will be permanently or indefinitely discontinued; or

(iv) the administrator of that Published Rate or its supervisor announces that that Published Rate may no longer be used; or

(c) the administrator of that Published Rate (or the administrator of an interest rate which is a constituent element of that Published Rate) determines that that Published Rate should be calculated in accordance with its reduced submissions or other contingency or fallback policies or arrangements and either:

(A) the circumstance(s) or event(s) leading to such determination are not (in the opinion of the Majority Lenders and the Borrower) temporary; or

(B) that Published Rate is calculated in accordance with any such policy or arrangement for a period no less than the applicable Published Rate Contingency Period; or

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

"Replacement Reference Rate" means a reference rate which is:

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

#### **7.13 6-42** Notice of prepayment

If no agreement is reached with the Borrower under Clause ~~6-41-7.12~~ (~~Replacement of Screen Rate~~ Changes to the reference rates), the Borrower may give the Agent not less than 15 Business Days', or, if the Fixed Interest Rate has been selected pursuant to paragraph (a)(ii) of Clause 3.5 (*No later than sixty (60) days before the Intended Delivery Date*), the Borrower may give the Agent not less than 30 days' notice of its intention to prepay at the end of the interest period set by the Agent.

#### **7.14 6-43** Prepayment; termination of Commitments

A notice under Clause ~~6-42-7.13~~ (*Notice of prepayment*) shall be irrevocable; the Agent shall promptly notify the Lenders and, if the Fixed Interest Rate has been selected by the Borrower, SIMEST of the Borrower's notice of intended prepayment; and:

- (a) on the date on which the Agent serves that notice, the Total Commitments shall be cancelled; and
- (b) on the last Business Day of the Interest Period set by the Agent, the Borrower shall prepay (without premium or penalty subject to the provisions of Clause ~~20-2-21.2~~ (*Breakage costs*)) the Loan, together with accrued interest thereon at the applicable rate (being either the Floating Interest Rate or the Fixed Interest Rate as specified by the Borrower pursuant to paragraph (a)(ii) of Clause 3.5 (*No later than sixty (60) days before the Intended Delivery Date*)).

**7.15 6.14 Application of prepayment**

The provisions of Clause ~~46-17~~ (*Cancellation, Prepayment and Mandatory Prepayment*) shall apply in relation to the prepayment.

**7.16 6.15 Certain Circumstances**

Notwithstanding anything to the contrary in this Agreement:

- (a) in the event of any circumstances falling within Clause ~~6-9-7.9~~ (*Market Disruption*) which might affect the advance of the Loan on the Drawdown Date (the "**Relevant Circumstances**"):
  - (i) occurring and being continuing on the date falling ninety (90) days before the Intended Delivery Date (the "**Relevant Date**"), each Lender will notify the Borrower (through the Agent) of the Relevant Circumstances on the Relevant Date or, if the Relevant Date is not a Business Day, on the next following Business Day; and
  - (ii) occurring after the Relevant Date, each Lender will notify the Borrower (through the Agent) immediately each Lender become aware of the Relevant Circumstances;
- (b) in the event of any Relevant Circumstances falling within Clause ~~6-9-7.9~~ (*Market Disruption*) (the "**Pricing-Related Relevant Circumstances**") occurring before the Loan is made available, each Lender will fund its respective Contributions by reference to the agreed alternative rate of interest in accordance with Clauses ~~6-7-7.7~~ (*Unavailability of Screen Rate before Rate Switch Date*) ~~6-8-7.8~~ (*Calculation of Reference Bank Rate*), ~~6-9-7.9~~ (*Market Disruption*), ~~6-10-7.11~~ (*Cost of funds*) and ~~6-11-7.12~~ (*Replacement of Screen Rate Changes to the reference rates*) as if the provisions of such Clauses applied not only in the event that the Pricing-Related Relevant Circumstances have been notified by the Agent to the Borrower after the making of the Loan but also before the making of the Loan.
- (c) in the event of any Relevant Circumstances falling within Clause ~~6-9-7.9~~ (*Market Disruption*) (the "**Availability-Related Relevant Circumstances**") occurring before the Loan is made and notwithstanding the provisions of Clause ~~6-7-7.7~~ (*Unavailability of Screen Rate before Rate Switch Date*), each Lender will enter into good faith discussions with the Borrower for a period not exceeding 10 Business Days in order to discuss a basis on which the Lenders could be able to fund their respective Contributions in Dollars (or, if unavailable in Dollars, then in any available currency). Such discussions shall be without obligation on the Lenders provided that during such discussion period, such circumstances continue.

**7.17 6.16 Change of currency**

- (a) In the event that the Agent notifies the Borrower that SIMEST has requested a change in the currency of the Loan in accordance with clause 6.3 of the Interest Make-Up Agreement, the Borrower and the Lenders shall, without obligation, consider such request for a change of currency acting reasonably for a period of not exceeding 10 Business Days. Following such discussions the Agent shall report the decision of the Borrower and the Lenders to SIMEST, providing their reason for any negative decision.
- (b) In the event that a change of currency is agreed the Parties agree to negotiate in good faith the necessary changes to this Agreement and the Finance Documents in order to document the change in currency.

- (c) In the event that a change in currency is not acceptable to the Lenders or the Borrower, the provision of paragraph (c) of Clause ~~6-2~~7.2 (*Floating Interest Rate*) shall apply.

## 8 ~~7~~ **INTEREST PERIODS**

### **8.1** ~~7.4~~ **Commencement of Interest Periods**

The first Interest Period shall commence on the Drawdown Date and each subsequent Interest Period shall commence on the expiry of the preceding Interest Period.

### **8.2** ~~7.2~~ **Duration of Interest Periods**

Each Interest Period shall be 6 months and shall end on the next succeeding Repayment Date.

- 8.3** ~~7.3~~ The first Interest Period in relation to each advance or deemed advance (as applicable) under each Deferral Tranche shall start on the date of such advance or deemed advance (as applicable) and end on the last day of the current Interest Period in respect of the Loan, following which all Interest Periods will be consolidated.

## 9 ~~8~~ **SACE PREMIUM AND ITALIAN AUTHORITIES**

### **9.1** ~~8.4~~ **SACE Premium**

The estimated SACE Premium is due and payable in two instalments as follows:

- (a) the first instalment of the SACE Premium (being an amount of US\$[\*]) (the "**First Instalment**") shall be paid by the Borrower to SACE (provided that the Borrower and the Lenders have been notified by the SACE Agent that the SACE Insurance Policy has been issued) within 30 days of the issuance of the SACE Insurance Policy documentation in accordance with and as required by paragraph (b) of Clause 3.3 (*No later than ninety (90) days before the Intended Delivery Date*) of this Agreement; and
- (b) the second instalment of the SACE Premium shall be such amount in Dollars as is calculated by SACE as being (i) [\*]% of the Loan actually advanced on the Drawdown Date LESS (ii) the amount of the First Instalment (the "**Second Instalment**") and shall be payable on or prior to the Drawdown Date.

### **9.2** ~~8.2~~ **Reimbursement by the Borrower of the SACE Premium**

The Borrower irrevocably agrees to pay the First Instalment, and to instruct the Lenders to pay the Second Instalment on behalf of the Borrower, as follows:

- (a) The Borrower has requested and the Lenders have agreed to reimburse the payment of one hundred per cent. (100%) of the First Instalment to the Borrower on the Drawdown Date, it being agreed that such First Instalment shall be paid to SACE by the Borrower upon notification by the Agent to the Borrower (i) of the issue of the SACE Insurance Policy documentation in the form required by paragraph (b) of Clause 3.3 (*No later than ninety (90) days before the Intended Delivery Date*) of this Agreement, and (ii) of the amount of the First Instalment.
- (b) The Borrower has requested and the Lenders have agreed to finance the payment of one hundred per cent. (100%) of the Second Instalment on the Drawdown Date in accordance with paragraph (c) of Clause 2.1 of this Agreement.

Consequently, the Borrower hereby irrevocably instructs the Agent on behalf of the Lenders to pay the Second Instalment to SACE on the Drawdown Date in accordance with paragraph (c) of Clause 2.1 of this Agreement and to reimburse the Borrower by the Borrower drawing under the Loan the amount of the First Instalment in accordance with paragraph (b) of Clause 2.1 of this Agreement.

The First Instalment and Second Instalment each financed by the Loan will be repayable in any event by the Borrower to the Lenders in the manner specified in Clause 5 (*Repayment*) and under any and all circumstances including but without limitation in the event of prepayment or acceleration of the Loan.

**9.3 ~~8-3~~Italian Authorities**

- (a) The Borrower acknowledges and agrees that the Agent and the Lenders are entitled to provide the Italian Authorities with any information they may have relative to the Loan and the business of the Group, to allow the Italian Authorities to inspect all their records relating to this Agreement and the other Transaction Documents and to furnish them with copies thereof. Any such information relative to the Loan may also be given by any Italian Authorities to international institutions charged with collecting statistical data.
- (b) The Borrower acknowledges that, in the making of any decision or determination or the exercise of any discretion or the taking or refraining to take any action under this Agreement or any of the other Finance Documents, the Agent and the Lenders shall be deemed to have acted reasonably if they have acted on the instructions of either of the Italian Authorities.
- (c) Each Party further undertakes not to act in a manner which is inconsistent with the terms of the SACE Insurance Policy and the Interest Make Up Agreement.

**9.4 ~~8-4~~Refund**

- (a) Provided that no Event of Default has occurred and is then continuing and no loss has occurred under the SACE Insurance Policy, the Borrower shall be entitled to a refund of the First Instalment of the SACE Premium in accordance with the terms of the SACE Insurance Policy exclusively in the event that no disbursements have been made under this Agreement and, as a result thereof, the SACE Insurance Policy has been definitely terminated by mutual consent between the parties thereto.
- (b) Any refund of the SACE Premium, whether in whole or in part, must be expressly requested from SACE by the Borrower in writing. Under the terms of the SACE Insurance Policy, a fixed amount of [\*] per cent. ([\*]%) shall be withheld from the amount of the SACE Premium to be refunded. Such withholding, charged as a lump sum to cover administration and management costs for the SACE Insurance Policy, may not, in any event, amount to less than the equivalent of €[\*], calculated at the exchange rate as at the date of the refund request.
- (c) Except as set out in paragraph (a) and (b) above, no part of the SACE Premium is refundable to any Obligor.
- (d) In no event shall the SACE Agent be liable for any refund of the SACE Premium to be made by SACE.

**9.5 ~~8-5~~Deferral Tranches – additional premium**

A premium is payable by the Borrower to SACE in respect of:

- (a) the 2020 Deferral Tranche (the "**2020 Deferral Tranche Premium**"), it being provided that an amount of \$[\*] was advanced to the Borrower and paid to SACE on 30 June 2020 with the first Advance under the 2020 Deferral Tranche in respect of the 2020 Deferred Repayment Instalments; and
- (b) the 2021 Deferral Tranche (the "**2021 Deferral Tranche Premium**" and together with the 2020 Deferral Tranche Premium, the "**Deferral Tranche Premia**"), payable in an amount of \$[\*] no later than the earlier of (i) 30 days from the date of issuance of the relevant addendum to the SACE Insurance Policy in form and substance acceptable to the Lenders and (ii) the first Advance under the 2021 Deferral Tranche.

Each of the Deferral Tranche Premia paid or to be paid to SACE is non-refundable, and the 2021 Deferral Tranche Premium will not be financed.

## 10 **FEES**

The following fees shall be paid to the Agent by the Borrower as required hereunder:

- (a) for the benefit of the Lenders, an arrangement fee in Euros, computed at the rate of [\*] per cent. ([\*]%) flat on EUR 299,866,962.31 being the Maximum Loan Amount converted in to Euros at the Base Rate and payable on the date of the Original Facility Agreement;
- (b) for the benefit of the Lenders, a commitment fee in Dollars for the period from the date of the Original Facility Agreement to the Delivery Date of the Ship, or the date of receipt by the Agent of the written cancellation notice sent by the Borrower as described in Clause ~~16.1~~ 17.1 (*Cancellation*), whichever is the earliest, computed at the rate of [\*] per cent. ([\*]%) per annum and calculated on the undrawn amount of the Maximum Loan Amount and payable in arrears on the date falling six (6) months after the date of the Original Facility Agreement and on each date falling at the end of each following consecutive six (6) month period, with the exception of the commitment fee due in respect of the last period, which shall be paid on the Drawdown Date, or the date of receipt by the Agent of the written cancellation notice sent by the Borrower as described in Clause ~~16.1~~ 17.1 (*Cancellation*), whichever is the earliest, such commitment fee to be calculated on the actual number of days elapsed divided by three hundred and sixty (360). For the purpose of the computation of the periodical commitment fee payable to the Lenders, the Maximum Loan Amount is assumed to be \$440,321,648.78.
- (c) With effect from the date of the 2020 Amendment Agreement, the Borrower shall pay to the Agent (for the account of the Lenders for application pro rata to their Commitments) a commitment fee in the amount of [\*] per cent. ([\*]%) per annum on the daily undrawn 2020 Deferral Commitment. The commitment fee shall be payable in arrears on the date of each advance or deemed advance, as applicable, of the 2020 Deferral Tranche in accordance with Clause 4.9 (*Deferral Tranches*) or, if cancelled, on the date of cancellation of the 2020 Deferral Tranche;
- (d) With effect from the date of the 2021 Amendment and Restatement Agreement, the Borrower shall pay to the Agent (for the account of the Lenders for application pro rata to their Commitments) a commitment fee in the amount of [\*] per cent. ([\*]%) per annum on the daily undrawn 2021 Deferral Commitment. The commitment fee shall be payable in arrears on the date of each advance or deemed advance, as applicable, of the 2021 Deferral Tranche in accordance with Clause 4.9 (*Deferral Tranches*) or, if cancelled, on the date of cancellation of the 2021 Deferral Tranche;

- (e) for the Agent, an agency fee of \$[\*] payable on the date of the Original Facility Agreement and on or before each anniversary date thereof until total repayment of the Loan unless the Total Commitments are terminated pursuant to Clause ~~46.4~~17.1 (*Cancellation*).
- (f) for the SACE Agent a structuring fee in the amount and payable at the time separately agreed in writing between the SACE Agent and the Borrower;

## 11 ~~40~~**TAXES, INCREASED COSTS, COSTS AND RELATED CHARGES**

### 11.1 ~~40.4~~**Definitions**

- (a) In this Agreement:

"**Protected Party**" means a Secured 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 Secured Party under Clause ~~40.2~~11.2 (*Tax gross-up*) or a payment under Clause ~~40.3~~11.3 (*Tax indemnity*).

- (b) Unless a contrary indication appears, in this Clause ~~40.11~~11 (*Taxes, Increased Costs, Costs and Related Charges*) reference to "**determines**" or "**determined**" means a determination made in the absolute discretion of the person making the determination.

### 11.2 ~~40.2~~**Tax gross-up**

- (a) Each Obligor shall make all payments to be made by it under the Finance Documents without any Tax Deduction, unless a Tax Deduction is required by law.
- (b) The Borrower shall promptly upon becoming aware that an Obligor must make a Tax Deduction (or that there is any change in the rate or the basis of a Tax Deduction) notify the Agent accordingly. Similarly, a Lender shall notify the Agent on becoming so aware in respect of a payment payable to that Lender. If the Agent receives such notification from a Lender it shall notify the Borrower and that Obligor.
- (c) If a Tax Deduction is required by law to be made by an Obligor, the amount of the payment due from that Obligor shall be increased to an amount which (after making any Tax Deduction) leaves an amount equal to the payment which would have been due if no Tax Deduction had been required.
- (d) A payment shall not be increased under paragraph (c) above if on the date on which the payment falls due the Obligor making the payment is able to demonstrate that the payment could have been made to the Lender without the Tax Deduction had that Lender (having been given notice of the documentation requested under Clause ~~40.7~~11.7 (*Lender Status*) at least 30 Business Days prior to such payment date) complied with its obligations under Clause ~~40.7~~11.7 (*Lender Status*).

- (e) 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.
- (f) Within thirty 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 Agent for the Secured Party entitled to the payment evidence reasonably satisfactory to that Secured Party that the Tax Deduction has been made or (as applicable) any appropriate payment paid to the relevant taxing authority.

**11.3 ~~40.3~~ Tax indemnity**

- (a) The Borrower shall (within three Business Days of demand by the Agent) pay to a Protected Party an amount equal to the loss, liability or cost which that Protected Party determines will be or has been (directly or indirectly) suffered for or on account of Tax by that Protected Party in respect of a Finance Document.
- (b) Paragraph (a) above shall not apply:
  - (i) with respect to any Tax assessed on a Secured Party:
    - (A) under the law of the jurisdiction in which that Secured Party is incorporated or, if different, the jurisdiction (or jurisdictions) in which that Creditor Party is treated as resident for tax purposes; or
    - (B) under the law of the jurisdiction in which that Lender'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 Secured Party; or
  - (ii) to the extent a loss, liability or cost is compensated for by an increased payment under Clause ~~40.2-11.2~~ 11.2 (*Tax gross-up*) or would have been compensated for by an increased payment under Clause ~~40.2-11.2~~ 11.2 (*Tax gross-up*) but was not so compensated solely because an exclusion in paragraph (d) of Clause ~~40.2-11.2~~ 11.2 (*Tax gross-up*) applied, or relates to a FATCA Deduction required to be made by a Party; or
  - (iii) with respect to the Taxes in the nature of a branch profits tax imposed by Section 884(a) of the Code that is imposed by any jurisdiction described in paragraph (b)(i)(B) above.
- (c) A Protected Party making, or intending to make a claim under paragraph (a) above shall promptly notify the Agent of the event which will give, or has given, rise to the claim, following which the Agent shall notify the Borrower.
- (d) A Protected Party shall, on receiving a payment from an Obligor under this Clause ~~40.3-11.3~~ 11.3 (*Tax indemnity*), notify the Agent.

**11.4 ~~40.4~~ Tax Credit**

If an Obligor makes a Tax Payment and the relevant Creditor Party determines that:



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

the Creditor Party shall pay an amount to the Obligor which that Creditor 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.

#### 11.5 ~~40-5~~Stamp taxes

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

#### 11.6 ~~40-6~~VAT

- (a) All amounts expressed to be payable under a Finance Document by any Party to a Secured 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 Secured Party to any Party under a Finance Document and such Secured Party is required to account to the relevant tax authority for the VAT, that Party must pay to such Secured 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 Secured Party must promptly provide an appropriate VAT invoice to that Party).
- (b) If VAT is or becomes chargeable on any supply made by any Secured Party (the "**Supplier**") to any other Secured 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 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 Secured Party for any cost or expense, that Party shall reimburse or indemnify (as the case may be) such Secured Party for the full amount of such cost or expense, including such part of it as represents VAT, save to the extent that such Secured 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 ~~40-6~~11.6 (VAT) to any Party being required to account to a tax authority for VAT shall, at any time when such Party is treated as a member of a group for VAT purposes, include a reference to another member of that group being required to so account to the relevant tax authority.
- (e) In relation to any supply made by a Secured Party to any Party under a Finance Document, if reasonably requested by such Secured Party, that Party must promptly provide such Secured Party with details of that Party's VAT registration and such other information as is reasonably requested in connection with such Secured Party's VAT reporting requirements in relation to such supply.

**11.7 ~~40-7~~Lender Status**

- (a) Any Lender that is entitled to an exemption from or reduction of withholding Tax with respect to payments made under a Finance Document shall deliver to the Agent and the Borrower, at the time or times reasonably requested by the Agent or the Borrower, such properly completed and executed documentation reasonably requested by the Agent or the Borrower (and which it is reasonable for the Lender to complete and execute) as will permit such payments to be made without withholding or at a reduced rate of withholding. In addition, any Lender, if reasonably requested by the Agent or the Borrower, shall deliver such other documentation as prescribed by applicable law and reasonably requested by the Agent or the Borrower as will enable the Agent or the Borrower to determine whether or not such Lender is subject to backup withholding or information reporting requirements.
- (b) Any Lender shall, to the extent it is legally entitled to do so, deliver to the Agent and the Borrower on or prior to the date on which such Lender becomes a Lender under this Agreement or promptly thereafter (and from time to time thereafter as prescribed by applicable law or upon the request of the Agent or the Borrower), duly executed and properly completed copies of Internal Revenue Service Form W-9 or W-8, as applicable, certifying that it is not subject to U.S. federal backup withholding or establishing an exemption from, or reduction of, U.S. federal withholding Tax.

**11.8 ~~40-8~~FATCA Deduction**

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

**11.9 ~~40-9~~FATCA Information**

- (a) Subject to paragraph (c) below, each Party shall, within ten Business Days of a reasonable request by another Party:
  - (i) confirm to that other Party whether it is:
    - (A) a FATCA Exempt Party; or

- (B) not a FATCA Exempt Party; and
- (ii) supply to that other Party such forms (including any applicable W8 BEN-E or W9 or other equivalent form), documentation and other information relating to its status under FATCA (including its applicable "passthru payment percentage" or other information required under the US Treasury Regulations or other official guidance including intergovernmental agreements) as that other Party reasonably requests for the purposes of that other Party's compliance with FATCA.
- (b) If a Party confirms to another Party pursuant to paragraph ~~(a)(i)~~ 11.9(a)(i) 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 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 its status or to supply forms, documentation or other information requested in accordance with paragraph (a) above (including, for the avoidance of doubt, where paragraph (c) above applies), then:
  - (i) if that Party failed to confirm whether it is (and/or remains) a FATCA Exempt Party then such Party shall be treated for the purposes of the Finance Documents as if it is not a FATCA Exempt Party; and
  - (ii) if that Party failed to confirm its applicable "passthru payment percentage" then such Party shall be treated for the purposes of the Finance Documents (and payments made thereunder) as if its applicable "passthru payment percentage" is 100 per cent.,

until (in each case) such time as the Party in question provides the requested confirmation, forms, documentation or other information.

#### **11.10 ~~10.10~~ Increased Costs**

- (a) If after the date of the Original Facility Agreement by reason of (x) any change in law or in its interpretation or administration and/or (y) compliance with any request from or requirement of any central bank or other fiscal, monetary or other authority including but without limitation the Basel Committee on Banking Regulations and Supervisory Practices whether or not having the force of law:
  - (i) any of the Lenders incurs a cost as a result of its performing its obligations under this Agreement and/or its making available its Commitment hereunder; or
  - (ii) there is any increase in the cost to any of the Lenders of funding or maintaining all or any of the advances comprised in a class of advances formed by or including its Commitment advanced or to be advanced by it hereunder; or

- (iii) any of the Lenders incurs a cost as a result of its having entered into and/or its assuming or maintaining its commitment under this Agreement; or
- (iv) any of the Lenders becomes liable to make any payment on account of Tax or otherwise (other than Tax on its overall net income) on or calculated by reference to the amount of its Commitment advanced or to be advanced hereunder and/or any sum received or receivable by it hereunder; or
- (v) any of the Lenders suffers any decrease in its rate of return as a result of any changes in the requirements relating to capital ratios, monetary control ratios, the payment of special deposits, liquidity costs or other similar requirements affecting that Lender,

then the Borrower shall on demand pay to the Agent for the account of the relevant Lender or Lenders amounts sufficient to indemnify the relevant Lender or Lenders against, as the case may be, such cost, such increased cost (or such proportion of such increased cost as is in the reasonable opinion of the relevant Lender or Lenders attributable to the funding or maintaining of its or their Commitment(s) hereunder) or such liability.

- (b) This Clause ~~40.40-11.10~~ 11.10 (*Increased Costs*) does not apply to the extent any increased cost is:
  - (i) attributable to a Tax Deduction required by law to be made by an Obligor;
  - (ii) attributable to a FATCA Deduction required to be made by a Party;
  - (iii) compensated for by Clause ~~40.3-11.3~~ 11.3 (*Tax indemnity*) (or would have been compensated for under Clause ~~40.3-11.3~~ 11.3 (*Tax indemnity*) but was not compensated solely because any of the exclusions in paragraph (b) of Clause ~~40.3-11.3~~ 11.3 (*Tax indemnity*) applied); or
  - (iv) attributable to the wilful breach by the relevant Creditor Party or its Affiliates of any law of regulation.
- (c) In this Clause ~~40.40-11.10~~ 11.10 (*Increased Costs*), a reference to a "Tax Deduction" has the same meaning given to the term in Clause ~~40.4-11.1~~ 11.1 (*Definitions*).
- (d) A Lender affected by any provision of this Clause ~~40.40-11.10~~ 11.10 (*Increased Costs*) shall promptly inform the Agent after becoming aware of the relevant change and its possible results (which notice shall be conclusive evidence of the relevant change and its possible results) and the Agent shall, as soon as reasonably practicable thereafter, notify the Borrower of the change and its possible results. Without affecting the Borrower's obligations under this Clause ~~40.40-11.10~~ 11.10 (*Increased Costs*) and in consultation with the Agent and the Italian Authorities, the affected Lender will then take all such reasonable steps as may be open to it to mitigate the effect of the change (for example (if then possible) by changing its Facility Office or transferring some or all of its rights and obligations under this Agreement to another financial institution reasonably acceptable to the Borrower and the Agent and the Italian Authorities). The reasonable costs of mitigating the effect of any such change shall be borne by the Borrower save where such costs are of an internal administrative nature and are not incurred in dealings by any Lender with third parties.

#### **11.11 ~~40.44~~ Transaction Costs**

The Borrower undertakes to pay to the Agent, upon demand, all costs and expenses, duties and fees, including but without limitation agreed legal costs (which, for avoidance of doubt are

exclusive of VAT and disbursements) out of pocket expenses and travel costs, reasonably incurred by the Italian Authorities, the Joint Mandated Lead Arrangers and the Lenders (but not including any bank which becomes a Lender after the date of the Original Facility Agreement) in connection with the negotiation, preparation and execution of all agreements, guarantees, security agreements and related documents entered into, or to be entered into, for the purpose of the transaction contemplated hereby as well as all costs and expenses, duties and fees incurred by the Agent or the Lenders in connection with the registration, filing, enforcement or discharge of the said guarantees or security agreements, including without limitation the fees and expenses of legal advisers and insurance experts and the fees and expenses of the Italian Authorities (including the fees and expenses of its legal advisers) payable by the Joint Mandated Lead Arrangers to the Italian Authorities, the cost of registration and discharge of security interests and the related travel and out of pocket expenses; the Borrower further undertakes to pay to the Agent all costs, expenses, duties and fees incurred by the Lenders and the Italian Authorities in connection with any variation of this Agreement and the related documents, guarantees and security agreements, any supplements thereto and waiver given in relation thereto, in connection with the investigation of any potential Event of Default, the enforcement or preservation of any rights under this Agreement and/or the related guarantees and security agreements, including in each case the fees and expenses of legal advisers, and in connection with the consultations or proceedings made necessary or in the opinion of the Agent desirable by the acts of, or failure to act on the part of, the Borrower.

#### **11.12 ~~40.42~~ Costs of delayed Delivery Date**

The Borrower undertakes to pay to the Agent, upon demand, any costs incurred by the Lenders and/or the Italian Authorities in funding the Loan in the event that the Delivery Date is later than the Intended Delivery Date unless the Borrower has given the Agent at least three (3) Business Days' notification of such delay in the Delivery Date.

#### **11.13 ~~40.43~~ SACE obligations**

To the extent that this Clause ~~40-11~~ 11 (*Taxes, Increased Costs, Costs and Related Charges*) imposes obligations or restrictions on a Secured Party, such obligations or restrictions shall not apply to SACE and SACE shall have no obligations hereunder nor be constrained by such restrictions.

### **12 ~~44~~ REPRESENTATIONS AND WARRANTIES**

#### **12.1 ~~44.4~~ Timing and repetition**

The following applies in relation to the time at which representations and warranties are made and repeated:

- (a) the representations and warranties in Clause ~~44-2-12.2~~ 12.2 (*Continuing representations and warranties*) are made on the date of the Original Facility Agreement (apart from the representation at paragraphs (dd) and (ee) of Clause ~~44-2-12.2~~ 12.2 (*Continuing representations and warranties*) which shall only be made on the date of the Original Facility Agreement and shall not be repeated) and shall be deemed to be repeated, with reference mutatis mutandis to the facts and circumstances subsisting, as if made on each day until the Borrower has no remaining obligations, actual or contingent, under or pursuant to this Agreement or any of the other Finance Documents; and

- (b) the representations and warranties in Clause ~~44.3~~-12.3 (*Representations on the Delivery Date*) are made on the Delivery Date and shall be deemed to be repeated, with reference mutatis mutandis to the facts and circumstances subsisting, as if made thereafter on each day until the Borrower has no remaining obligations, actual or contingent, under or pursuant to this Agreement or any of the other Finance Documents.

**12.2 ~~44.2~~Continuing representations and warranties**

The Borrower represents and warrants to each of the Secured Parties that:

- (a) each Obligor is a limited liability company or body corporate duly organised, constituted and validly existing under the laws of the country of its formation or (as the case may be) incorporation, possessing perpetual existence, the capacity to sue and be sued in its own name and the power to own and charge its assets and carry on its business as it is now being conducted;
- (b) the Borrower has an authorised 1000 Common Units all of which have been issued to Seven Seas;
- (c) the legal title to and beneficial interest in the equity in the Borrower is held free of any security or any other claim by Seven Seas;
- (d) none of the equity in the Borrower is subject to any option to purchase, pre-emption rights or similar rights;
- (e) each Obligor has the power to enter into and perform this Agreement and those of the other Transaction Documents to which it is a party and the transactions contemplated hereby and thereby and has taken all necessary action to authorise the entry into and performance of this Agreement and such other Transaction Documents and such transactions;
- (f) this Agreement and each other Transaction Document constitutes (or will constitute when executed) legal, valid and binding obligations of each Obligor expressed to be a party thereto enforceable in accordance with their respective terms and in entering into this Agreement and borrowing the Loan, the Borrower is acting on its own account;
- (g) the entry into and performance of this Agreement and the other Transaction Documents and the transactions contemplated hereby and thereby do not and will not conflict with:
- (i) any law or regulation or any official or judicial order; or
  - (ii) the constitutional documents of any Obligor; or
  - (iii) any agreement or document to which any Obligor is a party or which is binding upon such Obligor or any of its assets,
- nor result in the creation or imposition of any Security Interest on the Borrower or its assets pursuant to the provisions of any such agreement or document, except for Security Interests which qualify as Permitted Security Interests with respect to the Borrower;
- (h) except for:
- (i) the filing of UCC-1 Financing Statements against the Borrower in respect of those Financing Documents to which it is a party and which create Security Interests;

- (ii) the recording of the Original Mortgage in the office of the Maritime Administrator of the Republic of the Marshall Islands; and
- (iii) the registration of the Ship under an Approved Flag,

all authorisations, approvals, consents, licences, exemptions, filings, registrations, notarisations and other matters, official or otherwise, required in connection with the entry into, performance, validity and enforceability of this Agreement and each of the other Transaction Documents to which any Obligor is a party and the transactions contemplated thereby have been obtained or effected and are in full force and effect except authorisations, approvals, consents, licences, exemptions, filings and registrations required in the normal day to day course of the operation of the Ship and not already obtained by the Borrower;

- (i) it is disregarded as an entity separate from its owner for U.S. federal Tax purposes;
- (j) all information furnished by any Obligor relating to the business and affairs of any Obligor in connection with this Agreement and the other Transaction Documents was and remains true and correct in all material respects and there are no other material facts or considerations the omission of which would render any such information misleading;
- (k) each Obligor has fully disclosed to the Agent all facts relating to each Obligor which it knows or should reasonably know and which might reasonably be expected to influence the Lenders in deciding whether or not to enter into this Agreement;
- (l) the obligations of the Borrower and the Guarantor under the Finance Documents rank at least pari passu with all its other present unsecured and unsubordinated indebtedness with the exception of any obligations which are mandatorily preferred by law;
- (m) the Borrower is and shall remain, after the advance to it of the Loan, solvent in accordance with the laws of the state of Delaware and the United Kingdom and in particular with the provisions of the Insolvency Act 1986 (as from time to time amended) and the requirements thereof;
- (n) neither the Borrower nor any other Obligor has taken any corporate action nor have any other steps been taken or legal proceedings been started or (to the best of its knowledge and belief) threatened against any of them for the reorganisation, winding-up, dissolution or for the appointment of a liquidator, administrator, receiver, administrative receiver, trustee or similar officer of any of them or any or all of their assets or revenues nor has it sought any other relief under any applicable insolvency or bankruptcy law;
- (o) (A) the consolidated audited accounts of both Prior Guarantors for the period ending on 31 December 2012 and 31 December 2013 (which accounts have been prepared in accordance with GAAP) fairly represent the financial condition of each Prior Guarantor as shown in such audited accounts and (B) (in relation to any date on which this representation and warranty is deemed to be repeated pursuant to paragraph (a) of Clause ~~11~~12.1 (Timing and repetition)) the latest available annual consolidated audited accounts of the Guarantor at the date of repetition (which accounts have been prepared in accordance with GAAP) fairly represent the financial condition of the Guarantor as shown in such audited accounts;
- (p) none of the Obligors nor any of their respective assets enjoys any right of immunity (sovereign or otherwise) from set-off, suit or execution in respect of their obligations under this Agreement or any of the other Transaction Documents or by any relevant or applicable law;

- (q) all the membership interest in the Borrower and all shares or membership interest in any Approved Manager which is a member of the Group shall be legally and beneficially owned directly or indirectly by (in the case of the Borrower) Seven Seas and (in the case of such Approved Manager) the Guarantor and such structure shall remain so throughout the Security Period;
- (r) the copies of the Shipbuilding Contract, any External Management Agreement, any charter and any charter guarantee which require a notice of assignment to be served under the terms of the Tripartite General Assignment (if any) and any other relevant third party agreements including but without limitation the copies of any documents in respect of the Insurances delivered to the Agent are true and complete copies of each such document constituting valid and binding obligations of the parties thereto enforceable in accordance with their respective terms and, subject to Clause ~~43.2~~ 14.2 (*Management and employment*) and Clause ~~42.22~~ 13.22 (*Shipbuilding Contract*), no amendments thereto or variations thereof have been agreed nor has any action been taken by the parties thereto which would in any way render such document inoperative or unenforceable;
- (s) any borrowing by the Borrower under this Agreement, and the performance of its obligations under this Agreement and the other Transaction Documents, will be for its own account and will not involve any breach by it of any law or regulatory measure relating to "money laundering" as defined in Article 1 of the Directive (91/308/EEC) of the Council of the European Communities (as amended by Directive 2001/97/EC of the European Parliament and of the Council of 4 December 2001); and
- (t) no Obligor is:
  - (i) 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;
- (u) 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;
- (v) the choice of governing law of each Transaction Documents to which it is a party will be recognised and enforced in its Relevant Jurisdictions and 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;
- (w) 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 situated outside of the European Union and it has no "establishment" (as that term is used in Article 2(h) of the Regulation) in European Union country;
- (x) no payments made or to be made by the Borrower, Seven Seas or the Guarantor in respect of amounts due under this Agreement or any Finance Document have been or shall be funded out of funds of Illicit Origin and none of the sources of funds to be used by the Borrower, Seven Seas or the Guarantor in connection with the construction of the Ship or its business are of Illicit Origin;



- (y) to the best of the Borrower's, Seven Seas' and the Guarantor's knowledge, no Prohibited Payment has been or will be made or provided, directly or indirectly, by (or on behalf of) it, any of its affiliates, its or its officers, directors or any other person acting on its behalf to, or for the benefit of, any authority (or any official, officer, director, agent or key employee of, or other person with management responsibilities in, of any authority) in connection with the Ship, this Agreement and/or the Finance Documents;
- (z) no event has occurred which constitutes a default under or in respect of any Transaction Document to which any Obligor or the Builder is a party or by which any Obligor or the Builder may be bound (including (inter alia) this Agreement) and no event has occurred which constitutes a default under or in respect of any agreement or document to which any Obligor is a party or by which any Obligor may be bound to an extent or in a manner which might have a material adverse effect on the ability of that Obligor to perform its obligations under the Transaction Documents to which it is a party;
- (aa) none of the assets or rights of the Borrower is subject to any Security Interest except any Security Interest which (i) qualifies as a Permitted Security Interest with respect to the Borrower or (ii) is permitted by Clause ~~42.7~~13.7 (*Negative Pledge*);
- (bb) no litigation, arbitration or administrative proceedings are current or pending or, to its knowledge, threatened, which might, if adversely determined, have a material adverse effect on the ability of an Obligor to perform its obligations under the Transaction Documents to which it is a party;
- (cc) to the best of its knowledge, each of the Obligors has complied with all taxation laws in all jurisdictions in which it is subject to taxation and has paid all Taxes due and payable by it;
- (dd) it is not required to make any deduction for or on account of Tax from any payment it may make under any Finance Document to which it is a party with respect to any Lender that provides the documentation described in paragraph (b) of Clause ~~40.7~~11.7 indicating that it is not subject to tax withholding;
- (ee) under the laws of its Relevant Jurisdictions it is not necessary that any stamp 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;
- (ff) each member of the Group has good and marketable title to all its assets which are reflected in the audited accounts referred to in paragraph (o) of Clause ~~41.2~~12.2 (*Continuing representations and warranties*);
- (gg) none of the Obligors has a place of business in any jurisdiction (except as already disclosed) which requires any of the Finance Documents to be filed or registered in that jurisdiction to ensure the validity of the Finance Documents to which it is a party;
- (hh) each of the Obligors and each member of the Group:
  - (i) is in compliance with all Environmental Laws and Environmental Approvals provided that any non-compliance would not be expected to result in a Material Adverse Effect;
  - (ii) has not received any notice or threat of any Environmental Claim against any member of the Group and no person has claimed that an Environmental Incident has occurred in each case that would reasonably be expected to result in a Material Adverse Effect;

- (iii) confirms that no Environmental Incident has occurred and no person has claimed that an Environmental Incident has occurred in each case that would reasonably be expected to result in a Material Adverse Effect.

### **12.3 ~~44-3~~ Representations on the Delivery Date**

The Borrower further represents and warrants to each of the Secured Parties on the Delivery Date that:

- (a) the Ship is in its absolute and unencumbered ownership save as contemplated by the Finance Documents;
- (b) the Ship is registered in its name under the laws and flag of the Maritime Registry;
- (c) the Ship is classed with the highest classification available for a Ship of its type free of all recommendations and qualifications with Lloyd's Register, RINA or Bureau Veritas;
- (d) the Ship is operationally seaworthy and in compliance with all relevant provisions, regulations and requirements (statutory or otherwise) applicable to ships registered under the laws and flag of the Maritime Registry;
- (e) the Ship is in compliance with the ISM Code, the ISPS Code and Annex VI as they relate to the Borrower, any Approved Manager and the Ship;
- (f) the Ship is insured in accordance with the provisions of Clause ~~44-15~~ (*Insurance Undertakings*) and in compliance with the requirements therein in respect of such insurances;
- (g) the Ship is managed by the Approved Manager and, in the event that the Approved Manager is not a member of the Group, on and subject to the terms set out in the External Management Agreement;
- (h) there is no agreement or understanding to allow or pay any rebate, premium, inducement, commission, discount or other benefit or payment (however described) to the Borrower or any other member of the Group, the Builder or a third party in connection with the purchase by the Borrower of the Ship, other than as disclosed to the Agent in writing on or before the date of this Agreement; and
- (i) no 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 Agent sufficient details to enable an accurate search against it to be undertaken by the Lenders at the Companies Registry.

## **13 ~~42~~ GENERAL UNDERTAKINGS**

### **13.1 ~~42-1~~ General**

The Borrower undertakes with each Secured Party to comply with the following undertakings during the Security Period:

### **13.2 ~~42.2~~Information**

The Borrower will provide to the Agent for the benefit of the Lenders and SACE (or will procure the provision of):

- (a) as soon as practicable (and in any event within one hundred and twenty (120) days after the close of its financial year) a Certified Copy of the audited consolidated accounts of the Guarantor and its subsidiaries for that year (commencing with accounts made up to 31 December 2014 in the case of the consolidated accounts of the Guarantor);
- (b) as soon as practicable (and in any event within forty-five (45) days of the end of the contemplated quarter for the first three quarters in any fiscal year and within 90 days for the final quarter) a copy of the unaudited consolidated quarterly management accounts of the Guarantor (it being understood that the delivery by the Guarantor of quarterly or annual reports as filed with the Securities and Exchange Commission in respect of the Guarantor and its consolidated subsidiaries shall satisfy all the requirements of this paragraph (b));
- (c) promptly, such further information in its possession or control regarding the condition or operations of the Ship and its financial condition and operations of the Borrower and those of any company in the Group as the Agent may reasonably request for the benefit of the Secured Parties; and
- (d) details of any material litigation, arbitration or administrative proceedings (including proceedings relating to any alleged or actual breach of Sanctions, the ISM Code of the ISPS Code) which affect any company in the Group as soon as the same are instituted and served, or, to the knowledge of the Borrower, threatened (and for this purpose proceedings shall be deemed to be material if they involve a claim in an amount exceeding twenty million Dollars or the equivalent in another currency provided that this threshold shall not apply to any proceedings relating to Sanctions).

All accounts required under this Clause ~~42.2-13.2~~ (*Information*) shall be prepared in accordance with GAAP and shall fairly represent the financial condition of the relevant company.

### **13.3 ~~42.3~~Illicit Payments**

No payments made by the Borrower, Seven Seas or the Guarantor in respect of amounts due under this Agreement or any Finance Document shall be funded out of funds of Illicit Origin and none of the sources of funds to be used by the Borrower, Seven Seas or the Guarantor in connection with the construction of the Ship or its business shall be of Illicit Origin

### **13.4 ~~42.4~~Prohibited Payments**

No Prohibited Payment shall be made or provided, directly or indirectly, by (or on behalf of) the Borrower, Seven Seas, the Guarantor or any of their affiliates, officers, directors or any other person acting on its behalf to, or for the benefit of, any authority (or any official, officer, director, agent or key employee of, or other person with management responsibilities in, of any authority) in connection with the Ship, this Agreement and/or the Finance Documents.

### **13.5 ~~42.5~~Notification of default**

The Borrower will notify the Agent of any Event of Default forthwith upon becoming aware of the occurrence thereof. Upon the Agent's request from time to time the Borrower will issue a certificate stating whether any Obligor is aware of the occurrence of any Event of Default.

### 13.6 ~~42-6~~ Consents and registrations

The Borrower will procure that (and will promptly furnish Certified Copies to the Agent on the request of the Agent of) all such authorisations, approvals, consents, licences and exemptions as may be required under any applicable law or regulation to enable it or any Obligor to perform its obligations under, and ensure the validity or enforceability of, each of the Transaction Documents are obtained and promptly renewed from time to time and will procure that the terms of the same are complied with at all times.

Insofar as such filings or registrations have not been completed on or before the Drawdown Date the Borrower will procure the filing or registration within applicable time limits of each Finance Document which requires filing or registration together with all ancillary documents required to preserve the priority and enforceability of the Finance Documents.

### 13.7 ~~42-7~~ Negative pledge

The Borrower will not create or permit to subsist any Security Interest on the whole or any part of its present or future assets, except for the following:

- (a) Security Interests created with the prior consent of the Agent; or
- (b) Security Interests qualifying as Permitted Security Interests with respect to the Borrower and described in paragraphs (a) and (b) of the definition of "Permitted Security Interests" in Clause 1.1 (*Definitions*); or
- (c) Security Interests qualifying as Permitted Security Interests with respect to the Borrower and described in paragraphs (C), (E), (H) or (I) of such definition, provided that insofar as they are enforceable against the Ship they do not prevail over the Mortgage.

### 13.8 ~~42-8~~ Disposals

Except in the case of a sale of the Ship if the completion of the sale is contemporaneous with prepayment of the Loan in accordance with the provisions of Clause ~~16-3-17.3~~ (*Mandatory Prepayment – Sale and Total Loss*) and except for charters and other arrangements complying with Clause ~~13-4 14.1~~ (*Pooling of earnings and charters*) the Borrower shall not without the consent of the Majority Lenders, either in a single transaction or in a series of transactions whether related or not and whether voluntarily or involuntarily, (i) sell, transfer, lease or otherwise dispose of the Ship or any of the Ship's equipment except in the case of items (a) being replaced (by an equivalent or superior item) or renewed or (b) that are being disposed of in the ordinary course of business **provided that** in the case of both (a) and (b) the net impact does not reduce the value of the Ship and, in the case of (b), the value of any such disposals during the term of this Agreement do not, in aggregate, exceed US\$3,000,000 (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 the same 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.

### 13.9 ~~42-9~~ Change of business

Except with the prior consent of the Agent, the Borrower shall not make or threaten to make any substantial change in its business as presently conducted, namely that of a single ship owning company for the Ship, or carry on any other business which is substantial in relation to

its business as presently conducted so as to affect, in the opinion of the Agent, the Borrower's ability to perform its obligations hereunder.

**13.10 ~~42.40~~ Mergers**

Except with the prior consent of the Lenders and SACE, the Borrower will not enter into any amalgamation, restructure, substantial reorganisation, merger, de-merger or consolidation or anything analogous to the foregoing nor will it acquire any equity, share capital or obligations of any corporation or other entity.

**13.11 ~~42.44~~ Maintenance of status and franchises**

The Borrower will do all such things as are necessary to maintain its limited liability company existence in good standing and will ensure that it has the right and is duly qualified to conduct its business as it is conducted in all applicable jurisdictions and will obtain and maintain all franchises and rights necessary for the conduct of its business.

**13.12 ~~42.42~~ Financial records**

The Borrower will keep proper books of record and account, in which proper and correct entries shall be made of all financial transactions and the assets, liabilities and business of the Borrower in accordance with GAAP.

**13.13 ~~42.43~~ Financial Indebtedness and subordination of indebtedness**

The following restrictions shall apply:

- (a) otherwise than in the ordinary course of business as owner of the Ship, except as contemplated by this Agreement and except any loan, advance or credit extended by the Guarantor or any member of the Group which is a wholly owned Subsidiary of the Guarantor, the Borrower will not create, incur, assume or allow to exist any financial indebtedness, enter into any finance lease or undertake any material capital commitment (including but not limited to the purchase of any capital asset); and
- (b) the Borrower shall procure that any and all indebtedness (and in particular with any other Obligor) is at all times fully subordinated to the Finance Documents and the obligations of the Borrower hereunder. Upon the occurrence of an Event of Default, the Borrower shall not make any repayments of principal, payments of interest or of any other costs, fees, expenses or liabilities arising from or representing such indebtedness. In this paragraph (b) of Clause ~~42.43~~ 13.13 (Financial Indebtedness and subordination of indebtedness), "fully subordinated" shall mean that any claim of the lender against the Borrower in relation to such indebtedness shall rank after and be in all respects subordinate to all of the rights and claims of the Secured Parties under this Agreement and the other Finance Documents and that the lender shall not take any steps to enforce its rights to recover any monies owing to it by the Borrower and in particular but without limitation the lender will not institute any legal or quasi-legal proceedings under any jurisdiction at any time against the Ship, her Earnings or Insurances or the Borrower and it will not compete with the Secured Parties or any of them in a liquidation or other winding-up or bankruptcy of the Borrower or in any proceedings in connection with the Ship, her Earnings or Insurances.

**13.14 ~~42.44~~ Investments**

The Borrower shall not:

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

**13.15 ~~42.45~~ Unlawfulness, invalidity and ranking; Security imperilled**

No Obligor shall 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 an Obligor to perform any of its obligations under the Transaction Documents;
- (b) cause any obligation of an Obligor under the Finance Documents to cease to be legal, valid, binding or enforceable if that cessation individually or together with any other cessations materially or adversely affects the interests of the Secured Parties under the Transaction Documents;
- (c) cause any Transaction Document to cease to be in full force and effect;
- (d) cause any Security Interest to rank after, or lose its priority to, any other Security Interest; and
- (e) imperil or jeopardise any Security Interest.

**13.16 ~~42.46~~ Dividends and dividend restriction**

- (a) Subject to paragraph (b) below, the Borrower shall not make or pay any dividend or other distribution (in cash or in kind) in respect of its share capital other than dividends and distributions that are transferred to Seven Seas or the Guarantor provided that no Event of Default has occurred or is continuing or would result from the payment of any dividend.
- (b) During the period from the 2020 Deferral Effective Date up to and including the 2021 Deferral Final Repayment Date, the Borrower shall not, and shall procure that the Guarantor, Seven Seas and the Holding shall not:
  - (i) declare, make or pay any dividend or other distribution (or interest on any unpaid dividend or other distribution) (whether in cash or in kind) on or in respect of its share capital (or any class of its share capital);

- (ii) repay or distribute any dividend or share premium reserve;
- (iii) make any repayment of any kind under any shareholder loan; or
- (iv) redeem, repurchase (whether by way of share buy-back program or otherwise), defease, retire or repay any of its share capital or resolve to do so,

except that (A) any Obligor other than the Guarantor may pay dividends and other distributions, directly or indirectly, to the Guarantor for the purpose of providing liquidity to the Guarantor to enable the Guarantor to satisfy payment obligations for which the Guarantor is an obligor and (B) any Obligor may pay dividends in respect of the Tax liability to each relevant jurisdiction in respect of consolidated, combined, unitary or affiliated Tax returns for each relevant jurisdiction of the Group or the Holding or holder of the Guarantor's capital stock with respect to income taxable as a result of any member of the Group or the Holding being taxed as a pass-through entity for U.S. Federal, state and local income tax purposes or attributable to any member of the Group, (C) the Guarantor and the Holding may pay dividends and other distributions (x) in respect of a conversion, exchange, or repurchase of convertible or exchangeable notes and any conversion of preference shares to ordinary shares in connection therewith, provided that the cash portion of a repurchase of convertible or exchangeable notes is limited to the amount of interest that would otherwise be payable through maturity on the amount of such convertible or exchangeable notes being repurchased plus any amount in lieu of fractional shares, and (y) to the extent contractually owed to holders of equity in the Guarantor or the Holding and (D) the Guarantor may pay dividends and other distributions to the Holding for the purposes of providing cash to the Holding for the payment of any Tax payable in connection with the Holding's equity plan,

provided that the actions in paragraph (B) and (C) above shall only be permitted if there is no Event of Default which is continuing under this Agreement and no Event of Default would arise from the payment of such dividend.

#### **13.17 ~~42-17~~ Loans and guarantees by the Borrower**

Otherwise than in the ordinary course of business in its ownership and operation of the Ship following the Delivery Date, the Borrower will not make any loan or advance or extend credit to any person, firm or corporation or issue or enter into any guarantee or indemnity or otherwise become directly or contingently liable for the obligations of any other person, firm or corporation.

#### **13.18 ~~42-18~~ Acquisition of shares**

The Borrower will not:

- (a) acquire any equity, share capital, assets or obligations of any corporation or other entity; or
- (b) permit any of its membership interest to be directly held other than by Seven Seas.

#### **13.19 ~~42-19~~ Further assurance**

The Borrower will, from time to time on being required to do so by the Agent, do or procure the doing of all such acts and/or execute or procure the execution of all such documents in a form satisfactory to the Agent as the Agent may reasonably consider necessary for giving full effect to any of the Transaction Documents, the Interest Make-Up Agreement or the SACE Insurance Policy or securing to the Secured Parties the full benefit of the rights, powers and

remedies conferred upon the Secured Parties or any of them in any such Transaction Document the Interest Make-Up Agreement or the SACE Insurance Policy.

**13.20 ~~42.20~~ Irrevocable payment instructions**

The Borrower shall not modify, revoke or withhold the payment instructions set out in Clause 4.1 (*Borrower's irrevocable payment instructions*) without the agreement of the Builder (in the case of paragraph (a) of Clause 4.1 ([Borrower's irrevocable payment instructions](#)) only), the Agent, SACE and the Lenders.

**13.21 ~~42.21~~ "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 the Original Facility Agreement;
  - (ii) any change in the status of the Borrower after the date of the Original Facility Agreement; or
  - (iii) a proposed assignment or transfer by a Lender of any of its rights and obligations under this Agreement to a party that is not a Lender prior to such assignment or transfer,

obliges the Agent or any Lender (or, in the case of paragraph (a)(iii) of this Clause ~~42.21~~ [13.21](#) ("*Know your customer*" checks), 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 or the Lenders (acting reasonably) require any additional documents to supplement those already provided, the Borrower shall promptly upon the request of the Agent or any Lender supply, or procure the supply of, such documentation and other evidence as is reasonably requested by the Agent (for itself or on behalf of any Lender) or any Lender (for itself or, in the case of the event described in paragraph (a)(iii) of this Clause ~~42.21~~ [13.21](#) ("*Know your customer*" checks), on behalf of any prospective new Lender) in order for the Agent and, such Lender or 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.

**13.22 ~~42.22~~ Shipbuilding Contract**

The Shipbuilding Contract constitutes legal, valid and binding and enforceable obligations of the Builder and the Borrower shall not modify the Shipbuilding Contract, directly or indirectly, if such modifications (in aggregate) would result in (i) a change to the type or class of the Ship or (ii) decrease the value of the Ship by equal to or greater than 5 per cent (in aggregate). The Borrower will, therefore, submit to the Agent any proposals for any such modification and SACE and the Agent on behalf of the Lenders will indicate in a timely manner whether the modification proposed will allow the Loan to be maintained. On or about the last day of each



successive period of three (3) months commencing on the date of the Original Facility Agreement and on the date of the Drawdown Notice, the Borrower undertakes to provide the Agent and SACE with a copy of any Change Order entered into during that three (3) month or other period. The Borrower also undertakes to notify the Agent of any change in the Intended Delivery Date as soon as practicable after each change has occurred.

**13.23 ~~42-23~~FOREX Contracts**

The Borrower shall:

- (a) provide the Agent with a copy of all FOREX Contracts together with all relevant details within twenty (20) days of their execution; and
- (b) inform the Agent, when requested by the Agent, of its intended hedging policy for purchasing Euro with Dollars.

The Agent shall inform the Lenders within ten (10) days of receipt of such information from the Borrower.

**13.24 ~~42-24~~Compliance with laws etc.**

The Borrower shall:

- (a) comply, or procure compliance with:
  - (i) in all material respects, all laws and regulations relating to its business generally; and
  - (ii) in all material respects (except in the case of compliance with Sanctions which must be complied with in all respects), all laws or regulations relating to the Ship, its ownership, employment, operation, management and registration,

including 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 Environment Approvals which are applicable to it; and
- (c) without limiting paragraph (a) above, not employ the Ship 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.

**13.25 ~~42-25~~New capital raises or financing**

(a) Save as provided below:

- (i) no new debt ~~or equity issuance~~ shall be raised and no new Financial Indebtedness shall be incurred by the Group (including, for the avoidance of doubt, inter-company loans);
- (ii) no non-arm's length disposals of any asset relating to the Group fleet shall be made; and
- (iii) no additional Security Interests securing existing Financial Indebtedness will be created or permitted to subsist by any Obligor (unless the Lenders benefit from this new security on a *pari passu* basis),

during the period up to and including the 2021 Deferral Final Repayment Date.

- (b) The restrictions in paragraph (a) above shall not apply in relation to:
- (i) any refinancing of any bond issuance of, or loan entered into by, the Group (A) which matures during such period or (B) where not maturing during such period, shall be on terms ~~which include any of the following (evidence of which shall be provided to the Agent by the Guarantor)~~ resulting, when taken as a whole, in an improvement of the ability of the Obligors to meet their obligations under the Finance Documents, which terms include any of the following: an extension of the repayment terms; or a decrease in the interest rate; or the conversion of such Financial Indebtedness from secured to unsecured or first to second priority;
  - (ii) any debt ~~or equity issuance~~ provided prior to 31 December ~~2022~~ 2023 to provide the Group with crisis and/or recovery related funding in respect of the impact of the Covid-19 pandemic;
  - (iii) any debt ~~or equity issuance~~ being raised on or after 31 December ~~2022~~ 2023 to support the Group with the impact of the Covid-19 pandemic, made with the prior written consent of SACE;
  - (iv) any debt ~~or equity issuance~~ being raised to finance any instalment of a cruise vessel already contracted for or contracted for during such period or any refurbishment, maintenance, upgrade or lengthening of a cruise ship during such period (including without limitation any costs incurred by the owner of a cruise ship in connection therewith);
  - (v) any debt ~~or equity issuance~~ being raised to finance capital expenditure for projects which are already contracted for but in respect of which committed financing has not yet been obtained, and which, in each case has been (or will be) listed in the Information Package submitted to the Agent prior to the February 2021 ~~Deferral~~ Effective Date;
  - (vi) any extension or renewal of revolving credit facilities, and made with the prior written consent of SACE if any additional security is to be granted;
  - (vii) any new debt ~~or equity issuance~~ otherwise agreed by SACE; or
  - (viii) any inter-company loan or operating arrangement which from an accounting perspective has the effect of an intercompany loan (an "**intercompany arrangement**") which:
    - (A) is existing as at the date of the 2021 Amendment and Restatement Agreement;
    - (B) is made among any Group members or any Group member with the Holding provided that:
      - (1) any inter-company arrangement is made solely for the purpose of regulatory or Tax purposes carried out in the ordinary course of business and on an arm's length basis; and
      - (2) the aggregate principal amount of any inter-company arrangements outstanding pursuant to ~~this sub-~~ paragraph (b)(viii)(B) of Clause ~~12-25~~

13.25 (New capital raises or financing) does not exceed [\*] Dollars (\$[\*]) at any time; or

- (C) has been approved with the prior written consent of SACE;
- (ix) any Permitted Security Interest;
- (x) any Security Interest otherwise approved with the prior written consent of SACE;
- (xi) any Financial Indebtedness incurred in the ordinary course of business which in the aggregate does not exceed USD [\*] during any twelve-month period; ~~and, it being provided that:~~
  - (A) prior to 31 December 2022, this amount shall be increased to USD [\*] for any Financial Indebtedness incurred to finance capital expenditure for Approved Projects; and
  - (B) if any part of such Financial Indebtedness allocated prior to 31 December 2022 to an Approved Project remains unused throughout the twelve-month period of year 2022, the surplus may be carried over to increase the relevant Financial Indebtedness throughout the twelve-month period of year 2023 for that Approved Project only;
- (xii) without prejudice to ~~Clause 12.10~~ Clauses 13.10 (Mergers) and ~~12.14~~ 13.14 (Investments) and clause 11.13 (No merger etc.) of the Guarantee, the issuance of share capital by any Group member to another Group member; ~~and~~ and
- (xiii) any extension, renewal, replacement or upsizing in respect of the Term and Revolving Credit Facilities (including the granting of additional Security Interests),  
and, for the avoidance of doubt, no debt or equity issuance shall be raised in respect of any form of merger, sub-division, amalgamation, restructuring, consolidation, winding-up, dissolution or anything analogous thereto or acquisition of any entity, share capital or obligations of any corporation or other entity.

#### **13.26 ~~12.26~~ Most favoured nations**

- (a) The Borrower shall procure that if at any time after the date of the Original Facility Agreement the Guarantor enters into any financial contract or financial document relating to any Financial Indebtedness with or which has the support of any export credit agency and which contains *pari passu* provisions or cross default provisions which are more favourable to the lenders than those contained in paragraph (l) of Clause ~~11.2~~ 12.2 (Continuing representations and warranties) and Clause ~~18.6~~ 19.6 (Cross default) respectively, the Borrower or the Guarantor shall immediately notify the Agent of such provisions and the relevant provisions contained in this Agreement shall be deemed amended so that such more favourable *pari passu* provisions or cross default provisions are granted to the Creditor Parties pursuant to this Agreement.
- (b) The Borrower undertakes that if at any time after the date of this Agreement and until the occurrence of a Reinstatement Event, it or any other member of the Group is required to grant additional security in relation to a financial contract or financial document relating to any existing Financial Indebtedness:

- (i) with the support of any export credit agency (excluding any extensions, increases or changes to the terms and conditions thereof), such security shall be granted on a *pari passu* basis to the Lenders (and the Security Trustee agrees to enter and/or procure the entry by the relevant Secured Parties into such intercreditor documentation to reflect such *pari passu* ranking (in form and substance reasonably satisfactory to the Secured Parties) as may be required in connection with such arrangements); or
  - (ii) without the support of any export credit agency (excluding any extensions, increases or changes to the terms and conditions thereof), such security shall (without prejudice to any of the Obligors' other obligations under the Finance Documents), subject to the provisions of clause 11.11 (*Negative pledge*) of the Guarantee and Clause ~~42.7~~ 13.7 (*Negative pledge*), be permitted provided that it shall not have an adverse effect on any Security Interests or other rights granted to the Secured Parties under the Finance Documents.
- (c) ~~In~~ Until the occurrence of a Reinstatement Event, in respect of any new Financial Indebtedness (other than Permitted Financial Indebtedness), or any extensions, increases or changes to the terms and conditions of any existing Financial Indebtedness, in each case with or which has the support of any export credit agency, the Borrower shall enter into good faith negotiations with the Security Trustee to grant additional security for the purpose of further securing the Loan, provided that any failure to reach agreement under this paragraph (c) following such good faith negotiations shall not constitute an Event of Default.

## 14 ~~13~~ SHIP UNDERTAKINGS

### 14.1 ~~13.1~~ Pooling of earnings and charters

The Borrower will not without the prior written consent of the Agent or SACE enter into in respect of the Ship (such consent for the purposes of paragraph (e) of Clause ~~13.1~~ 14.1 (Pooling of earnings and charters)) shall not be unreasonably withheld or delayed), nor permit to exist at any time following the Delivery Date:

- (a) any pooling agreement or other arrangement for the sharing of any of the Earnings or the expenses of the Ship except with a member of the Group and provided that it does not adversely affect the rights of the Secured Parties under the Finance Documents in the reasonable opinion of the Agent; or
- (b) any demise or bareboat charter (other than the Seven Seas Charter), provided however that such consent shall not be unreasonably withheld in the event that the Borrower wishes to enter into a bareboat charter in a form approved by the Agent with Seven Seas on condition that if so requested by the Agent and without limitation:
  - (i) any such bareboat charterer shall enter into such deeds (including but not limited to a full subordination and assignment deed in respect of its rights under the bareboat charter and its interest in the Insurances and earnings payable to it arising out of its use of the Ship), agreements and indemnities as the Majority Lenders shall require prior to entering into the bareboat charter with the Borrower; and
  - (ii) the Borrower shall assign the benefit of any such bareboat charter and its interest in the Insurances to the Secured Parties by way of further security for the Borrower's obligations under the Finance Documents.; or

- (c) any charter whereunder two (2) months' charterhire (or the equivalent thereof) is payable in advance in respect of the Ship; or
- (d) any charter of the Ship or employment which, with the exercise of options for extension, could be for a period longer than [\*] months; or
- (e) any time charter of the Ship with a company outside the Group (other than a time charter entered into in the ordinary course of business which does not exceed two (2) months **provided that** any such time charter (y) is assigned to the Security Trustee and (z) during the period of such time charter, the Ship continues to be managed by the existing Approved Manager), provided however that such consent shall not be unreasonably withheld in the event that:
  - (i) such time charter is assigned to the Security Trustee and the Borrower agrees to serve a notice of assignment of any time charter, the Earnings therefrom and any guarantee of the charterer's obligations on the time charterer and any time charter guarantor substantially in the form appended to the Tripartite General Assignment;
  - (ii) the Agent and SACE are satisfied that the income from such time charter will be sufficient to cover the expenses of the Ship and to service repayment of the Loan and all other amounts from time to time outstanding under this Agreement; and
  - (iii) during the term of such time charter, the Ship continues to be managed by the existing Approved Manager.

#### **14.2 ~~13.2~~ Management and employment**

The Borrower will not as from the Delivery Date:

- (a) permit any person other than an Approved Manager to be the manager of, including providing crewing services to, the Ship, at all times acting upon terms approved in writing by the Agent and having entered into (in the case of the Approved Manager) an Approved Manager's Undertaking; and
- (b) permit any amendment to be made to the terms of any External Management Agreement unless the amendment is advised by the Borrower's tax counsel or is deemed necessary by the parties thereto to reflect the prevailing circumstances but provided that the amendment does not imperil the security to be provided pursuant to the Finance Documents or adversely affect the ability of any Obligor to perform its obligations under the Transaction Documents; or
- (c) permit the Ship to be employed other than within the Seven Seas brand unless the Borrower notifies the Lenders that they intend to employ the Ship within another brand of the Group and the ship remains employed within the Group.

#### **14.3 ~~13.3~~ Trading with the United States of America**

The Borrower shall in respect of the Ship take all reasonable precautions as from the Delivery Date to prevent any infringements of the Anti-Drug Abuse Act of 1986 of the United States of America (as the same may be amended and/or re-enacted from time to time hereafter) or any similar legislation applicable to the Ship in any other jurisdiction in which the Ship shall trade (a "**Relevant Jurisdiction**") where the Ship trades in the territorial waters of the United States of America or a Relevant Jurisdiction.

#### **14.4 ~~13.4~~ Valuation of the Ship**

The following shall apply in relation to the valuation of the Ship:

- (a) the Borrower will on or before 31 May of each year that commences after the delivery of the Ship and at annual intervals thereafter unless an Event of Default has occurred and remains unremedied, at the Borrower's expense, procure that the Ship is valued by an Approved Broker (such valuation to be made without taking into account the benefit or otherwise of any fixed employment relating to the Ship);
- (b) the Borrower shall procure that forthwith upon the issuance of any valuation obtained pursuant to this Clause ~~13.4~~ 14.4 (*Valuation of the Ship*) a copy thereof is sent directly to the Agent for review; and
- (c) in the event that the Borrower fails to procure a valuation in accordance with paragraph (a) of Clause ~~13.4~~ 14.4 (*Valuation of the Ship*), the Agent shall be entitled to procure a valuation of the Ship on the same basis.

#### **14.5 ~~13.5~~ Earnings**

The Borrower will procure that the Earnings (if any) are paid in full without set off and free and clear of and without deduction for any taxes, levies, duties, imposts, charges, fees, restrictions or conditions of any nature whatsoever.

#### **14.6 ~~13.6~~ Operation and maintenance of the Ship**

From the Delivery Date until the end of the Security Period at its own expense the Borrower will keep the Ship in a good and efficient state of repair so as to maintain it to the highest classification notation available for the Ship of its age and type free of all recommendations and qualifications with ~~Lloyd's Register, RINA or~~ Bureau Veritas or DNV. On the Delivery Date and annually thereafter, it will furnish to the Agent a statement by such classification society that such classification notation is maintained. It will comply with all recommendations, regulations and requirements (statutory or otherwise) from time to time applicable to the Ship and shall have on board as and when required thereby valid certificates showing compliance therewith and shall procure that all repairs to or replacements of any damaged, worn or lost parts or equipment are carried out (both as regards workmanship and quality of materials) so as not to diminish the value or class of the Ship. It will not make any substantial modifications or alterations to the Ship or any part thereof which would reduce the market and commercial value of the Ship determined in accordance with Clause ~~13.4~~ 14.4 (*Valuation of the Ship*);

#### **14.7 ~~13.7~~ Surveys and inspections**

The Borrower will:

- (a) submit the Ship to continuous survey in respect of its machinery and hull and such other surveys as may be required for classification purposes and, if so required by the Agent, supply to the Agent copies in English of the survey reports;
- (b) permit surveyors or agents appointed by the Agent to board the Ship at all reasonable times to inspect its condition or satisfy themselves as to repairs proposed or already carried out and afford all proper facilities for such inspections;

#### **14.8 ~~13.8~~ISM Code**

The Borrower will comply, or procure that the Approved Manager will comply, with the ISM Code (as the same may be amended from time to time) or any replacement of the ISM Code (as the same may be amended from time to time) and in particular, without prejudice to the generality of the foregoing, as and when required to do so by the ISM Code and at all times thereafter:

- (a) hold, or procure that the Approved Manager holds, a valid Document of Compliance duly issued to the Borrower or the Approved Manager (as the case may be) pursuant to the ISM Code and a valid Safety Management Certificate duly issued to the Ship pursuant to the ISM Code;
- (b) provide the Agent with copies of any such Document of Compliance and Safety Management Certificate as soon as the same are issued; and
- (c) keep, or procure that there is kept, on board the Ship a copy of any such Document of Compliance and the original of any such Safety Management Certificate.

#### **14.9 ~~13.9~~ISPS Code**

The Borrower will comply, or procure that the Approved Manager will comply, with the ISPS Code (as the same may be amended from time to time) or any replacement of the ISPS Code (as the same may be amended from time to time) and in particular, without prejudice to the generality of the foregoing, as and when required to do so by the ISPS Code and at all times thereafter:

- (a) keep, or procure that there is kept, on board the Ship the original of the International Ship Security Certificate required by the ISPS Code; and
- (b) keep, or procure that there is kept, on board the Ship a copy of the ship security plan prepared pursuant to the ISPS Code.

#### **14.10 ~~13.10~~Annex VI**

The Borrower will comply with Annex VI (as the same may be amended from time to time) or any replacement of Annex VI (as the same may be amended from time to time) and in particular, without limitation, to:

- (a) procure that the Ship's master and crew are familiar with, and that the Ship complies with, Annex VI; and
- (b) maintain for the Ship throughout the Security Period a valid and current IAPPC and provide a copy to the Agent; and
- (c) notify the Agent immediately in writing of any actual or threatened withdrawal, suspension, cancellation or modification of the IAPPC.

#### **14.11 ~~13.11~~Employment of Ship**

The Borrower shall:

- (a) not employ the Ship or permit its employment in any trade or business which is forbidden by any applicable law or is otherwise illicit or in carrying illicit or prohibited goods or in any manner whatsoever which may render it liable to condemnation in a prize court or to destruction, seizure or confiscation or that may expose the Ship to penalties. In the event of hostilities in any part of the world (whether war be declared or not) it will not employ the Ship or permit its employment in carrying any contraband goods; and
- (b) promptly provide the Agent with (i) all information which the Agent may reasonably require regarding the Ship, its employment, earnings, position and engagements (ii) particulars of all towages and salvages and (iii) copies of all charters and other contracts for its employment and otherwise concerning it;

**14.12 ~~13.12~~ Provision of information**

The Borrower shall give notice to the Agent promptly and in reasonable detail upon the Borrower or any other Obligor becoming aware of:

- (a) accidents to the Ship involving repairs the cost of which will or is likely to exceed [\*] Dollars (\$[\*]);
- (b) the Ship becoming or being likely to become a Total Loss;
- (c) any recommendation or requirement made by any insurer or classification society or by any competent authority which is not complied with, or cannot be complied with, within any time limit relating thereto and that might reasonably affect the maintenance of either the Insurances or the classification of the Ship;
- (d) any writ or claim served against or any arrest of the Ship or the exercise of any lien or purported lien on the Ship, her Earnings or Insurances;
- (e) the Ship ceasing to be registered under the flag of the Maritime Registry or anything which is done or not done whereby such registration may be imperilled;
- (f) it becoming impossible or unlawful for it to fulfil any of its obligations under the Finance Documents; and
- (g) anything done or permitted or not done in respect of the Ship by any person which is likely to imperil the security created by the Finance Documents.

**14.13 ~~13.13~~ Payment of liabilities**

- (a) The Borrower shall promptly pay and discharge all debts, damages and liabilities, taxes, assessments, charges, fines, penalties, tolls, dues and other outgoings in respect of the Ship and keep proper books of account in respect thereof provided always that the Borrower shall not be obliged to compromise any debts, damages and liabilities as aforesaid which are being contested in good faith subject always that full details of any such contested debt, damage or liability which, either individually or in aggregate exceeds [\*] Dollars (\$[\*]) shall forthwith be provided to the Agent. As and when the Agent may so require the Borrower will make such books available for inspection on behalf of the Agent and provide evidence satisfactory to the Agent that the wages and allotments and the insurance and pension contributions of the master and crew are being regularly paid, that all deductions of crew's wages in respect of any tax liability are being properly accounted for and that the master has no claim for



disbursements other than those incurred in the ordinary course of trading on the voyage then in progress or completed prior to such inspection;

- (b) promptly pay and discharge all liabilities which have given rise, or may give rise, to liens or claims enforceable against the Ship under the laws of all countries to whose jurisdiction the Ship may from time to time be subject and in particular the Borrower hereby agrees to indemnify and hold the Secured Parties, their successors, assigns, directors, officers, shareholders, employees and agents harmless from and against any and all claims, losses, liabilities, damages, expenses (including attorneys, fees and expenses and consultant fees) and injuries of any kind whatsoever asserted against the Secured Parties, with respect to or as a result of the presence, escape, seepage, spillage, release, leaking, discharge or migration from the Ship or other properties owned or operated by the Borrower of any hazardous substance, including without limitation, any claims asserted or arising under any applicable environmental, health and safety laws, codes and ordinances, and all rules and regulations promulgated thereunder of all governmental agencies, regardless of whether or not caused by or within the control of the Borrower subject to the following:
- (i) it is the parties' understanding that the Secured Parties do not now, have never and do not intend in the future to exercise any operational control or maintenance over the Ship or any other properties and operations owned or operated by the Borrower, nor in the past, presently, or intend in the future to, maintain an ownership interest in the Ship or any other properties owned or operated by the Borrower except as may arise upon enforcement of the Lenders' rights under the Mortgage;
- (ii) unless and until an Event of Default shall have occurred and without prejudice to the right of each Lender to be indemnified pursuant to this paragraph (b) of Clause ~~13.13~~14.13 ([Payment of liabilities](#)):
- (A) each Lender will, if it is reasonably practicable to do so, notify the Borrower upon receiving a claim in respect of which the relevant Lender is or may become entitled to an indemnity under this paragraph (b) of Clause ~~13.13~~14.13 ([Payment of liabilities](#)); and
- (B) subject to the prior written approval of the relevant Lender which the Lender shall have the right to withhold, the Borrower will be entitled to take, in the name of the relevant Lender, such action as the Borrower may see fit to avoid, dispute, resist, appeal, compromise or defend any such claims, losses, liabilities, damages, expenses and injuries as are referred to above in this paragraph (b) of Clause ~~13.13~~14.13 ([Payment of liabilities](#)) or to recover the same from any third party, subject to the Borrower first ensuring that the relevant Lender is secured to its reasonable satisfaction against all expenses thereby incurred or to be incurred;

provided always that the Borrower shall not be obliged to compromise any liabilities as aforesaid which are being contested in good faith subject always that full details of any such contested liabilities which, either individually or in aggregate, exceed [\*] Dollars (\$[\*]) shall be forthwith provided to the Agent. If the Ship is arrested or detained for any reason it will procure its immediate release by providing bail or taking such other steps as the circumstances may require;

**14.14 ~~43-44~~ Certificate as to liabilities**

The Borrower shall give to the Agent at such times as it may from time to time reasonably require a certificate, duly signed on its behalf, as to the total amount of any debts, damages and liabilities relating to the Ship and details of such of those debts, damages and liabilities as are over a certain amount to be specified by the Agent at the relevant time and, if so required by the Agent, forthwith discharge such of those debts, damages and liabilities as the Agent shall require other than those being contested in good faith.

**14.15 ~~43-45~~ Modifications**

The Borrower shall maintain the type of the Ship as at the Delivery Date and not put the Ship into the possession of any person for the purpose of work being done on it in an amount exceeding or likely to exceed [\*] Dollars (\$[\*]) unless such person shall first have given to the Agent a written undertaking addressed to the Agent in terms satisfactory to the Agent agreeing not to exercise a lien on the Ship or her Earnings for the cost of such work or for any other reason (or the Borrower is able to demonstrate to the reasonable satisfaction of the Agent that the Borrower or Seven Seas has set aside and will have funds readily available for payment when due of the cost of the work (to the extent not fully covered by insurance proceeds in the case of a partial loss));

**14.16 ~~43-46~~ Registration of Ship**

The Borrower shall maintain the registration of the Ship under and fly the flag of the Maritime Registry and not do or permit anything to be done whereby such registration may be forfeited or imperilled.

**14.17 ~~43-47~~ Environmental Law**

The Borrower shall comply with all Environmental Laws, obtain, maintain and ensure compliance with all requisite Environmental Approvals, and implement procedures to monitor compliance with and to prevent liability under any Environmental Law.

**14.18 ~~43-48~~ Notice of Mortgage**

The Borrower shall keep the Mortgage registered against the Ship as a valid first preferred mortgage, carry on board the Ship a certified copy of the Mortgage and place and maintain in a conspicuous place in the navigation room and the master's cabin of the Ship a framed printed notice stating that the Ship is mortgaged by the Borrower to the Security Trustee.

**14.19 ~~43-49~~ Environmental claims**

Each Obligor shall, (through the Guarantor), promptly upon becoming aware of the same, inform the Agent in writing of:

- (a) any Environmental Claim which is likely to result in a Material Adverse Effect 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 which is likely to result in a Material Adverse Effect.

#### **14.20 ~~13.20~~ Trading in war zones**

In the event of hostilities in any part of the world (whether war is declared or not), the Borrower shall not cause or permit the Ship to enter or trade to any zone which is declared a war zone by the Ship's war risks insurers unless:

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

#### **14.21 ~~13.24~~ Poseidon Principles**

The Borrower shall, upon the request of the Agent and at the cost of the Borrower, on or before 31st July in each calendar year, supply to the Agent all information necessary in order for the Lenders to comply with their obligations under the Poseidon Principles in respect of the preceding year, including, without limitation, all ship fuel oil consumption data required to be collected and reported in accordance with Regulation 22A of Annex VI and any Statement of Compliance, in each case relating to the Ship for the preceding calendar year provided always that, for the avoidance of doubt, such information shall be "Confidential Information" for the purposes of Clause ~~32-33~~ 32-33 (*Confidentiality*) but the Borrower acknowledges that, in accordance with the Poseidon Principles, such information will form part of the information published regarding the Lenders' portfolio climate alignment.

### **15 ~~14~~ INSURANCE UNDERTAKINGS**

#### **15.1 ~~14.1~~ General**

The undertakings in this Clause ~~14-15~~ 14-15 (*Insurance Undertakings*) remain in force on and from the Delivery Date and throughout the rest of the Security Period except as the Agent, acting with the authorisation of the Majority Lenders may otherwise permit.

#### **15.2 ~~14.2~~ Maintenance of obligatory insurances**

The Borrower shall insure the Ship in its name and keep the Ship insured on an agreed value basis for an amount in the currency in which the Loan is denominated approved by the Agent but not being less than the greater of (x) [\*] per cent. ([\*]%) of the amount of the Loan; and (y) the full market and commercial value of the Ship determined in accordance with Clause ~~13.4-14.4~~ 13.4-14.4 (*Valuation of the Ship*) from time to time through internationally recognised independent first class insurance companies, underwriters, war risks and protection and indemnity associations acceptable to the Agent in each instance on terms and conditions approved by the Agent including as to deductibles but at least in respect of:

- (a) fire and marine risks including but without limitation hull and machinery and all other risks customarily and usually covered by first-class and prudent shipowners in the global insurance markets under English or Norwegian marine policies or Agent-approved policies containing the ordinary conditions applicable to similar Ships;
- (b) war risks (including terrorism, piracy and protection and indemnity war risks) up to the insured amount;

- (c) excess risks that is to say the proportion of claims for general average and salvage charges and under the running down clause not recoverable in consequence of the value at which the Ship is assessed for the purpose of such claims exceeding the insured value;
- (d) protection and indemnity risks with full standard coverage as offered by first-class protection and indemnity associations which are a member of the International Group of P&I Association and up to the highest limit of liability available (for oil pollution risk the highest limit currently available is one billion Dollars (\$1,000,000,000) and this to be increased if reasonably requested by the Agent and the increase is possible in accordance with the standard protection and indemnity cover for Ships of its type and is compatible with prudent insurance practice for first class cruise shipowners or operators in waters where the Ship trades from time to time from the Delivery Date until the end of the Security Period);
- (e) when and while the Ship is laid-up, in lieu of hull insurance, normal port risks; and
- (f) such other risks as the Agent may from time to time reasonably require,

and in any event in respect of those risks and at those levels covered by first class and prudent owners and/or financiers in the international market in respect of similar tonnage provided that if any of such insurances are also effected in the name of any other person (other than the Borrower and/or a Secured Party) such person shall if so required by the Agent execute a first priority assignment of its interest in such insurances in favour of the Secured Parties in similar terms mutatis mutandis to the relevant provisions of the Tripartite General Assignment.

### **15.3 ~~14.3~~ Mortgagee's interest and pollution risks insurances**

The Agent shall take out mortgagee interest insurance on such conditions as the Agent may reasonably require and mortgagee interest insurance for pollution risks as from time to time agreed each for an amount in the currency in which the Loan is denominated of [\*] per cent. ([\*]%) of the amount of the Loan, the Borrower having no interest or entitlement in respect of such policies; the Borrower shall upon demand of the Agent reimburse the Agent for the costs of effecting and/or maintaining any such insurance(s);

### **15.4 ~~14.4~~ Trading in the United States of America**

If the Ship shall trade in the United States of America and/or the Exclusive Economic Zone of the United States of America (the "EEZ") as such term is defined in the US Oil Pollution Act 1990 ("OPA"), to comply strictly with the requirements of OPA and any similar legislation which may from time to time be enacted in any jurisdiction in which the Ship presently trades or may or will trade at any time during the existence of this Agreement and in particular before such trade is commenced and during the entire period during which such trade is carried on:

- (a) to pay any additional premiums required to maintain full standard protection and indemnity cover for oil pollution up to the highest limit available to it for the Ship in the market;
- (b) to make all such quarterly or other voyage declarations as may from time to time be required by the Ship's protection and indemnity association and to comply with all obligations in order to maintain such cover, and promptly to deliver to the Agent copies of such declarations;
- (c) to submit the Ship to such additional periodic, classification, structural or other surveys which may be required by the Ship's protection and indemnity insurers to maintain cover for such trade and promptly to deliver to the Agent copies of reports made in respect of such surveys;

- (d) to implement any recommendations contained in the reports issued following the surveys referred to in paragraph (c) of Clause ~~14.4~~15.4 (Trading in the United States of America) within the time limit specified therein and to provide evidence satisfactory to the Agent that the protection and indemnity insurers are satisfied that this has been done;
- (e) in particular strictly to comply with the requirements of any applicable law, convention, regulation, proclamation or order with regard to financial responsibility for liabilities imposed on the Borrower or the Ship with respect to pollution by any state or nation or political subdivision thereof, including but not limited to OPA, and to provide the Agent on demand with such information or evidence as it may reasonably require of such compliance;
- (f) to procure that the protection and indemnity insurances do not contain a clause excluding the Ship from trading in waters of the United States of America and the EEZ or any other provision analogous thereto and to provide the Agent with evidence that this is so; and
- (g) strictly to comply with any operational or structural regulations issued from time to time by any relevant authorities under OPA so that at all times the Ship falls within the provisions which limit strict liability under OPA for oil pollution.

#### **15.5 ~~14.5~~ Protections for Secured Parties**

- (a) The Borrower shall give notice forthwith of any assignment of its interest in the Insurances to the relevant brokers, insurance companies, underwriters and/or associations in the form approved by the Agent;
- (b) The Borrower shall execute and deliver all such documents and do all such things as may be necessary to confer upon the Secured Parties legal title to the Insurances in respect of the Ship and to procure that the interest of the Secured Parties is at all times filed with all slips, cover notes, policies and certificates of entry and to procure (a) that a loss payable clause in the form approved by the Agent shall be filed with all the hull, machinery and equipment and war risks policies in respect of the Ship and (b) that a loss payable clause in the form approved by the Agent shall be endorsed upon the protection and indemnity certificates of entry in respect of the Ship; and
- (c) In the event of the Borrower making default in insuring and keeping insured the Ship as hereinbefore provided then the Agent may (but shall not be bound to) insure the Ship or enter the Ship in such manner and to such extent as the Agent in its discretion thinks fit and in such case all the cost of effecting and maintaining such insurance together with interest thereon at the Interest Rate shall be paid on demand by the Borrower to the Agent.

#### **15.6 ~~14.6~~ Copies of policies; letters of undertaking**

The Borrower will procure that each of the relevant brokers and associations furnishes the Agent with a letter of undertaking in the standard form available in the relevant insurance market or otherwise in such form as may be required by the Agent and waives any lien for premiums or calls except in relation to premiums or calls solely attributable to the Ship;

#### **15.7 ~~14.7~~ Payment of premiums**

The Borrower shall punctually pay all premiums, calls, contributions or other sums payable in respect of the Insurances on the Ship and to produce all relevant receipts when so required by the Agent;

**15.8 ~~44.8~~Renewal of obligatory insurances**

The Borrower shall notify the Agent of the renewal of the obligatory insurances at least five (5) days before the expiry thereof and shall procure that the relevant brokers or associations shall promptly confirm in writing to the Agent that such renewal is effected it being understood by the Borrower that any failure to renew the Insurances on the Ship at least two (2) days before the expiry thereof or to give or procure the relevant notices of such renewal shall constitute an Event of Default.

**15.9 ~~44.9~~Guarantees**

The Borrower shall arrange for the execution of such guarantees as may from time to time be required by any protection and indemnity and/or war risks association.

**15.10 ~~44.10~~Provision of insurances information**

The Borrower will furnish the Agent from time to time on request with full information about all Insurances maintained on the Ship and the names of the offices, companies, underwriters, associations or clubs with which such Insurances are placed.

**15.11 ~~44.11~~Alteration to terms of insurances**

The Borrower shall not make or agree to any variation in the terms of any of the Insurances on the Ship without the prior approval of the Agent nor to do any act or voluntarily suffer or permit any act to be done whereby any Insurances shall or may be rendered invalid, void, voidable, suspended, defeated or unenforceable and not to suffer or permit the Ship to engage in any voyage nor to carry any cargo not permitted under any of the Insurances without first obtaining the consent of the insurers or reinsurers concerned and complying with such requirements as to payment of extra premiums or otherwise as the insurers or reinsurers may impose.

**15.12 ~~44.12~~Settlement of claims**

The Borrower shall not settle, compromise or abandon any claim in respect of any of the Insurances on the Ship other than a claim of less than [\*] Dollars (\$[\*]) or the equivalent in any other currency and not being a claim arising out of a Total Loss.

**15.13 ~~44.13~~Application of insurance proceeds**

The Borrower shall apply or ensure the appliance of all such sums receivable in respect of the Insurances on the Ship for the purpose of making good the loss and fully repairing all damage in respect whereof the insurance monies shall have been received.

**15.14 ~~44.14~~Insurance advisers**

The Agent shall be entitled, immediately prior to the Delivery Date and thereafter no more frequently than annually on renewals but also additionally at any time when there is a proposed change of underwriters or the terms of any Insurances, to instruct independent reputable insurance advisers for the purpose of obtaining any advice or information regarding any matter concerning the Insurances which the Agent shall deem necessary, it being hereby specifically agreed that the Borrower shall reimburse the Agent on demand for the costs and expenses incurred by the Agent in connection with the instruction of such advisers subject to a limit of ten thousand Euro at the time of delivery of the Ship or in the event of a change of

underwriters or of terms of any Insurances and otherwise ten thousand Euro annually thereafter.

## **16 ~~15~~ SECURITY VALUE MAINTENANCE**

### **16.1 ~~15.4~~ Security Shortfall**

If, upon receipt of a valuation of the Ship in accordance with Clause ~~13.4~~ 14.4 (*Valuation of the Ship*), the Security Value shall be less than the Security Requirement, the Agent may give notice to the Borrower requiring that such deficiency be remedied and then the Borrower shall (unless the Ship has become a Total Loss) either:

- (a) prepay within a period of 30 days of the date of receipt by the Borrower of the Agent's said notice such sum in Dollars as will result in the Security Requirement after such repayment (taking into account any other repayment of the Loan made between the date of the notice and the date of such prepayment) being equal to the Security Value; or
- (b) within 30 days of the date of receipt by the Borrower of the Agent's said notice constitute to the reasonable satisfaction of the Agent such further security for the Loan as shall be reasonably acceptable to the Agent having a value for security purposes (as determined by the Agent in its absolute discretion) at the date upon which such further security shall be constituted which, when added to the Security Value, shall not be less than the Security Requirement as at such date.

Clauses ~~15.2~~ 16.2 (*Costs*) and ~~15.4~~ 16.4 (*Documents and evidence*) and paragraph (c) of Clause ~~16.2~~ 17.2 (*Voluntary prepayment*) shall apply to prepayments under paragraph (a) of Clause ~~15.4~~ 16.1 (*Security Shortfall*).

### **16.2 ~~15.2~~ Costs**

All costs in connection with the Agent obtaining any valuation of the Ship referred to in Clause ~~13.4~~ 14.4 (*Valuation of the Ship*), and obtaining any valuation either of any additional security for the purposes of ascertaining the Security Value at any time or necessitated by the Borrower electing to constitute additional security pursuant to paragraph (b) of Clause ~~15.4~~ 16.1 (*Security Shortfall*), shall be borne by the Borrower.

### **16.3 ~~15.3~~ Valuation of additional security**

For the purpose of this Clause ~~15~~ 16 (*Security Value Maintenance*), the market value of any additional security provided or to be provided to the Agent shall be determined by the Agent in its absolute discretion without any necessity for the Agent assigning any reason thereto.

### **16.4 ~~15.4~~ Documents and evidence**

In connection with any additional security provided in accordance with this Clause ~~15~~ 16 (*Security Value Maintenance*), the Agent shall be entitled to receive such evidence and documents of the kind referred to in Clause 3 (*Conditions Precedent*) in respect of other Finance Documents as may in the Agent's opinion be appropriate.

### **16.5 ~~15.5~~ Valuations binding**

Any valuation under this Clause ~~15~~ 16 (*Security Value Maintenance*) shall be binding and conclusive as regards the Borrower.

## **16.6 ~~45.6~~ Provision of information**

- (a) The Borrower shall promptly provide the Agent and any shipbroker acting under this Clause ~~45-16~~ (Security Value Maintenance) with any information which the Agent or the shipbroker may reasonably request for the purposes of the valuation.
- (b) If the 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 Agent considers prudent.

## **16.7 ~~45.7~~ Suspension of Event of Default**

- (a) Notwithstanding the provisions of Clause ~~48-19~~ (Events of Default), any breach of the provisions of this Clause ~~45-16~~ (Security Value Maintenance) arising between the February 2021 ~~Deferral~~ Effective Date and 31 December 2022 shall not (subject further to no (a) Event of Default under Clause 18.7 (Winding-up) to Clause 18.13 (Cessation of business) (inclusive) having occurred and being continuing or (b) Deferral Prepayment Event having occurred) result in an Event of Default.
- (b) For the avoidance of doubt, the Security Value will continue to be calculated in accordance with this Clause ~~45-16~~ (Security Value Maintenance) between the February 2021 ~~Deferral~~ Effective Date and 31 December 2022.

## **17 ~~46~~ CANCELLATION, PREPAYMENT AND MANDATORY PREPAYMENT**

### **17.1 ~~46.4~~ Cancellation**

At any time prior to the delivery of a Drawdown Notice and not less than ninety (90) Business Days prior to the Intended Delivery Date, the Borrower may give notice to the Agent in writing that it wishes to cancel the Total Commitments in their entirety whereupon (without penalty to the Borrower but without prejudice to any liabilities of the Borrower including, without limitation, in respect of fees payable or accrued under this Agreement, arising prior to the date of such cancellation) the Total Commitments shall terminate upon the date specified in such notice.

### **17.2 ~~46.2~~ Voluntary prepayment**

- (a) The Borrower may prepay all or part of the Loan (but if in part being an amount that reduces the Loan by a minimum amount of one (1) repayment instalment of principal of the Loan) together with interest thereon without penalty provided that the prepayment is made on the last day of an Interest Period and forty five (45) days prior written notice indicating the intended date of prepayment is given to the Agent and the SACE Agent, but the following amounts shall be payable to the Agent for the account of the Lenders or the Italian Authorities in the sum of:
  - (i) if the Borrower has specified a Floating Interest Rate pursuant to paragraph (a)(ii) of Clause 3.5 (*No later than sixty (60) days before the Intended Delivery Date*), the difference (if positive), calculated by the Lenders and notified by them to the Agent, between the actual cost for the Lenders of the funding for the Loan and the rate of interest for the monies to be invested by the Lenders, applied to the amounts so prepaid for the period from the said prepayment until the last day of the Interest Period during which the prepayment occurs (if prepayment does not occur on the last



day of that Interest Period), details of any such calculation being supplied to the Borrower by the Agent on behalf of the Lenders; or

- (ii) if the Borrower has selected the Fixed Interest Rate pursuant to paragraph (a)(ii) of Clause 3.5 (*No later than sixty (60) days before the Intended Delivery Date*), the charges (if any) imposed on the Lenders by the Italian Authorities representing funding or breakage costs of the Italian Authorities as more specifically set out in Clause ~~20-21~~ 21 (*Indemnities*).
- (b) For the avoidance of doubt, if a voluntary prepayment is made other than on the last day of an Interest Period, the prepayment shall be paid together with such other amounts payable in accordance with Clause ~~20-4~~ 21.1 (*Indemnities regarding borrowing and repayment of Loan*) and ~~20-2~~ 21.2 (*Breakage costs and SIMEST arrangements*).
- (c) If the Borrower has selected the Fixed Interest Rate pursuant to paragraph (a)(ii) of Clause 3.5 (*No later than sixty (60) days before the Intended Delivery Date*), the SACE Agent shall give SIMEST thirty (30) days written notice of the intended date of prepayment.
- (d) Any voluntary prepayment shall be made in accordance with the provisions of this Clause ~~16-2~~ 17.2 (*Voluntary prepayment*) and applied against the outstanding repayment instalments in the inverse order of their maturity, save that where there is an amount of a Deferral Tranche outstanding, any such prepayment shall first be applied against such Deferral Tranche in the inverse order of maturity, starting with the 2021 Deferral Tranche.
- (e) There may be no more than two voluntary prepayments in part of the Loan made in each 12-month period beginning on the Delivery Date unless the relevant prepayment is made at the end of an Interest Period relating to the Loan or the relevant part of the Loan (as applicable).

#### **17.3 ~~16-3~~ Mandatory prepayment – Sale and Total Loss**

The Borrower shall be obliged to prepay the whole of the Loan if the Ship is sold or becomes a Total Loss:

- (a) in the case of a sale, on or before the date on which the sale is completed by delivery of the Ship to the buyer; or
- (b) in the case of a Total Loss, on the earlier of the date falling 120 days after the Total Loss Date and the date of receipt by the Agent of the proceeds of insurance relating to such Total Loss.

#### **17.4 ~~16-4~~ Mandatory prepayment – SACE Insurance Policy**

- (a) The Borrower shall be obliged to prepay the whole of the Loan if the SACE Insurance Policy is revoked, rescinded, cancelled, terminated, suspended or otherwise becomes unenforceable or ceases to be in full force and effect.
- (b) In the event that any other event occurs or any other circumstances arise or develop which would have a Material Adverse Effect on SACE's ability to perform its obligations under the SACE Insurance Policy, the Borrower and the Lenders shall, provided that no Event of Default has occurred and is continuing, negotiate in good faith for a period of not less than 30 days with a view to agreeing such revised terms and conditions as the Lenders may require to enable the Lenders to maintain the entire Loan (and during such 30 day period, no Lender shall be obliged to make available to the Borrower their portion of the Loan to the extent such amounts have not already been drawn). In the event that following such negotiations the Borrower and

the Lenders fail to agree on such revised terms, the Borrower shall be obliged to prepay, on demand by the Agent, the outstanding principal amount of the Loan to the extent of the amount covered pursuant to the SACE Insurance Policy. If, during the period while negotiations are on-going pursuant to this paragraph (b) of Clause ~~16.4-17.4~~ the events described in paragraph (a) of Clause ~~16.4-17.4~~ (Mandatory prepayment – SACE Insurance Policy) should occur, the Borrower shall be obliged to prepay the Loan in full as required by paragraph (a) of Clause ~~16.4~~17.4 (Mandatory prepayment – SACE Insurance Policy).

#### **17.5 ~~16.5~~Breach of new covenants or the Principles**

- (a) Failure to comply, until the 2021 Deferral Final Repayment Date, with the provisions of Clause ~~12.16~~ 13.16 (*Dividends and dividend restriction*) and Clause ~~12.25-13.25~~ (*New capital raises or financing*) or the provisions of paragraph (f) of clause 11.3 (*Additional financial reporting*), paragraph (c) of clause 11.17 (*Dividend restriction*), clause 11.19 (*New capital raises or financing*) and clause 11.20 (*Payments under the Shipbuilding contacts*) of the Guarantee, or to otherwise duly perform and observe the other requirements and obligations set out in the Principles shall, in each case, not constitute an Event of Default under this Agreement but (in the case of any failure that is capable of remedy (in the opinion of the Agent, at its sole discretion)) shall have the following consequences:
- (i) the Agent shall reinstate from the date of such breach the requirement to comply with the covenant granted pursuant to Clause ~~15-16~~ (*Security Value Maintenance*) and the financial covenants set out in paragraphs (b) and (c) of clause 11.15 (*Financial covenants*) of the Guarantee which was otherwise suspended until 31 December 2022;
  - (ii) in respect of, specifically, Clause ~~12.16-13.16~~ (*Dividends and dividend restriction*) and Clause ~~12.25-13.25~~ (*New capital raises or financing*), and paragraph (c) of clause 11.17 (*Dividend restriction*) and clause 11.19 (*New capital raises or financing*) of the Guarantee, as well as a failure to perform and observe the other requirements and obligations set out in the Principles (including but not limited to any Obligor (a) commencing, or having commenced against it, any case, proceeding or other action seeking (i) to adjudicate it as bankrupt or insolvent, (ii) reorganization, arrangement, winding-up, liquidation, dissolution, or other relief with respect to it or its debts, (iii) the appointment of a receiver, trustee, or custodian or other similar official for it or for all or a substantial part of its assets, (b) making a general assignment for the benefit of its creditors, (c) being unable to, or admitting in writing its inability to, pay its debts as they become due, or (d) taking any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the acts set forth in (a), (b) or (c) hereof):
    - (A) the Deferral Commitments and the availability of the Deferral Tranches will be immediately cancelled; and
    - (B) all or part of the Deferral Tranches, together with accrued interest, deferred costs pursuant to Clause ~~6.4-7.4~~ (*Deferred Costs*) and all other amounts accrued or outstanding under this Agreement in connection with the Deferral Tranches will be immediately due and payable, (including, for the avoidance of doubt, any breakage costs pursuant to Clause ~~20.2-21.2~~ (*Breakage costs and SIMEST arrangements*)); and
  - (iii) in respect of paragraph (f) of clause 11.3 (*Additional financial reporting*) and clause 11.20 (*Payments under the Shipbuilding contacts*) of the Guarantee, shall entitle the Agent, (acting on the instructions of the Lenders), by notice to the Borrower to:

- (A) cancel the Deferral Commitments and the availability of the Deferral Tranches whereupon they shall immediately be cancelled; and
  - (B) declare that all or part of the Deferral Tranches, together with accrued interest, deferred costs pursuant to Clause ~~6.4-7.4~~ (Deferred Costs) of this Agreement and all other amounts accrued or outstanding under this Agreement in connection with the Deferral Tranches be immediately due and payable, whereupon they shall become immediately due and payable (including, for the avoidance of doubt, any breakage costs pursuant to Clause ~~20.2-21.2~~ (Breakage costs and SIMEST arrangements) of this Agreement); and
- (b) Save as permitted by Clause ~~12.25-13.25~~ (New capital raises or financing), if at any time after the February 2021 Deferral-Effective Date and until the occurrence of a Reinstatement Event:
- (i) the Guarantor or any other Group member enters into any financial contract or financial document relating to any Financial Indebtedness and which contains any debt deferral or covenant waivers of existing debt, or the raising of any new debt intended to reimburse existing debt that benefits from additional security or more favourable terms than those available to the Lenders (unless they are granted to the Lenders on a *pari passu* basis):
    - (A) the requirement to comply with the covenant granted pursuant to Clause ~~15-16~~ (Security Value Maintenance) and the financial covenants set out in paragraphs (b) and (c) of clause 11.15 (Financial covenants) of the Guarantee which was otherwise suspended until 31 December 2022 shall be reinstated;
    - (B) the Deferral Commitments and the availability of the Deferral Tranches will be immediately cancelled; and
    - (C) all or part of the Deferral Tranches, together with accrued interest, deferred costs pursuant to Clause ~~6.4-7.4~~ (Deferred Costs) and all other amounts accrued or outstanding under this Agreement in connection with the Deferral Tranches will be immediately due and payable, (including, for the avoidance of doubt, any breakage costs pursuant to Clause ~~20.2-21.2~~ (Breakage costs and SIMEST arrangements) ~~);~~);

it being provided that such covenants in sub-paragraph (A) above shall not be reinstated and such provisions in sub-paragraphs (B) and (C) above shall not be triggered in case of such financial contract or financial document relating to the Term and Revolving Credit Facilities;
  - (ii) the Guarantor or any other Group member makes a prepayment (save for any mandatory prepayment necessary to avoid an event of default (however defined)) of any Financial Indebtedness (unless this is done on a *pari passu* basis with the obligations owed to the Lenders hereunder):
    - (A) the requirement to comply with the covenant granted pursuant to Clause ~~15-16~~ (Security Value Maintenance) and the financial covenants set out in paragraphs (b) and (c) of clause 11.15 (Financial Covenants) of the Guarantee which was otherwise suspended until 31 December 2022 shall be reinstated; and
    - (B) the Agent shall be entitled (acting on the instructions of the Lenders) to:

- (1) cancel the Deferral Commitments and the availability of the Deferral Tranches whereupon they shall immediately be cancelled; and
- (2) declare that all or part of the Deferral Tranches, together with accrued interest, deferred costs pursuant to Clause ~~6.4~~7.4 (*Deferred Costs*) and all other amounts accrued or outstanding under this Agreement in connection with the Deferral Tranches will be immediately due and payable (including, for the avoidance of doubt, any breakage costs pursuant to Clause ~~20.2~~21.2 (*Breakage costs and SIMEST arrangements*)).

it being provided that such covenants in sub-paragraph (A) above shall not be reinstated and such provision in sub-paragraph (B) above shall not be triggered in case of a prepayment relating to the revolving tranche of the Term and Revolving Credit Facilities within the ordinary course of business.

#### **17.6 ~~46.6~~ Mandatory repayment and cancellation of FATCA Protected Lenders**

If on the date falling six months before the earliest FATCA Application Date for any payment by a Party to a FATCA Protected Lender (or to the Agent for the account of that Lender), that Lender is not a FATCA Exempt Party and, in the opinion of that Lender (acting reasonably), that Party will, as a consequence, be required to make a FATCA Deduction from a payment to that Lender (or to the Agent for the account of that Lender) on or after that FATCA Application Date (a "**FATCA Event**");

- (a) that Lender shall, reasonably promptly after that date, notify the Agent of that FATCA Event and the relevant FATCA Application Date;
- (b) if, on the date falling one month before such FATCA Application Date, that FATCA Event is continuing:
  - (i) that Lender may, no less than twenty (20) Business Days' before such FATCA Application Date, notify the Agent;
  - (ii) the Agent shall, by no less than seventeen (17) Business Days' notice, notify the Borrower and, the Commitment of that Lender will be immediately cancelled upon the expiry of that seventeen (17) Business Days' notice period; and
  - (iii) the Borrower shall repay that Lender's participation in the Loan made to the Borrower on the last day of the Interest Period for the Loan occurring after the Agent has notified the Borrower or, if earlier, the last Business Day before the relevant FATCA Application Date.

#### **17.7 ~~46.7~~ Other amounts**

Any prepayment of the whole of the Loan shall be made together with all other sums due under this Agreement (including, without limitation, the compensation calculated in accordance with Clause ~~46.2~~17.2 (*Voluntary prepayment*)).

**17.8 ~~46.8~~ Application of partial prepayment**

Amounts prepaid shall be applied in accordance with paragraph (b) of Clause ~~49.1~~ 20.1 (*Receipts*).

**17.9 ~~46.9~~ No reborrowing**

Amounts prepaid may not be reborrowed.

**18 ~~47~~ INTEREST ON LATE PAYMENTS**

**18.1 ~~47.4~~ Default rate of interest**

Without prejudice to the provisions of Clause ~~48~~ 19 (*Events of Default*) and without this Clause in any way constituting a waiver of terms of payment, all sums due by the Borrower under this Agreement will automatically bear interest on a day to day basis from the date when they are payable until the date of actual payment at a rate per annum equal to the higher of:

- (a) before the Rate Switch Date, where the Floating Interest Rate is applicable, the aggregate of:
  - (i) Overnight LIBOR;
  - (ii) the Margin; and
  - (iii) [\*] per cent. ([\*]%) per annum; or
- (b) after the Rate Switch Date, where the Floating Interest Rate is applicable, the aggregate of:
  - (i) Daily Simple SOFR;
  - (ii) the Credit Adjustment Spread;
  - (iii) the Margin; and
  - (iv) [\*] per cent. ([\*]%) per annum; or
- (c) ~~(b)~~ before the Rate Switch Date, where the Fixed Interest Rate is applicable, the higher of:
  - (i) the Fixed Interest Rate plus [\*] per cent. ([\*]%) per annum; and
  - (ii) Overnight LIBOR plus the Margin plus [\*] per cent. ([\*]%) per annum; or
- (d) after the Rate Switch Date, where the Fixed Interest Rate is applicable, the higher of:
  - (i) the Fixed Interest Rate plus [\*] per cent. ([\*]%) per annum; and
  - (ii) Daily Simple SOFR plus the Credit Adjustment Spread plus the Margin plus [\*] per cent. ([\*]%) per annum.

**18.2 ~~47.2~~ Compounding of default interest**

Any such interest will itself bear interest at the above rate if it is due for at least three (3) months and thereafter at three monthly intervals.

## **19 ~~48~~EVENTS OF DEFAULT**

### **19.1 ~~48.4~~Events of Default**

An Event of Default occurs if any of the events or circumstances described in ~~Clause 48.2~~ Clauses 19.2 (*Non-payment*) to ~~48.20~~ 19.20 (*Material Adverse Change*) occur.

### **19.2 ~~48.2~~Non-payment**

Any Obligor 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 and such failure is not remedied within three (3) Business Days of the due date or (if payable on demand) within three (3) Business Days of receiving the demand.

### **19.3 ~~48.3~~Non-remediable breaches**

The Borrower fails to comply with the provisions of Clauses ~~42.7~~ 13.7 (*Negative pledge*), ~~42.8~~ 13.8 (*Disposals*), ~~42.40~~ 13.10 (*Mergers*) or ~~42.47~~ 13.17 (*Loans and guarantees by the Borrower*).

### **19.4 ~~48.4~~Breach of other obligations**

- (a) Any Obligor fails to comply with any provision of any Finance Document (other than a failure to comply covered by any of the other provisions of Clauses ~~48.2~~ 19.2 (*Non-payment*) to ~~48.20~~ 19.20 (*Material Adverse Change*)) and in particular but without limitation the Guarantor fails to comply with the provisions of Clause ~~44~~ 12 (*Undertakings*) of its Guarantee or there is any breach in the opinion of the Majority Lenders of any of the Underlying Documents provided that no Event of Default shall be deemed to have occurred if, in the opinion of the Majority Lenders, such failure or breach is capable of remedy and is remedied within the Relevant Period (as defined below) from the date of its occurrence, if the failure was known to that Obligor, or from the date the relevant Obligor is notified by the Agent of the failure, if the failure was not known to that Obligor, unless in any such case as aforesaid the Majority Lenders consider that the failure or breach is or could reasonably be expected to become materially prejudicial to the interests, rights or position of the Lenders, "**Relevant Period**" meaning for the purposes of this Clause thirty (30) days in respect of a remedy period commencing under this Clause not later than 30 June 2015 and fifteen (15) days in respect of a remedy period commencing after 30 June 2015; or
- (b) If there is a repudiation or termination of any Transaction Document or if any of the parties thereto becomes entitled to terminate or repudiate any of them and evidences an intention so to do. For the avoidance of doubt, the termination of the Prior Guarantees shall not be deemed to be a termination of a Transaction Document.

### **19.5 ~~48.5~~Misrepresentation**

Any representation, warranty or statement made or repeated in, or in connection with, any Transaction Document or the SACE Insurance Policy or in any accounts, certificate, statement or opinion delivered by or on behalf of any Obligor thereunder or in connection therewith is materially incorrect or misleading when made or would, if repeated at any time hereafter by reference to the facts subsisting at such time, no longer be materially correct.

**19.6 ~~48.6~~Cross default**

- (a) Any event of default occurs under any financial contract or financial document relating to any Financial Indebtedness of the Borrower; or
- (b) any such Financial Indebtedness or any sum payable in respect thereof is not paid when due (after the expiry of any applicable grace period(s)) whether by acceleration or otherwise; or
- (c) any other Financial Indebtedness of any member of the Group is not paid when due or is or becomes capable of being declared due prematurely by reason of default or any Security Interest securing the same becomes enforceable by reason of default provided that no Event of Default will arise if the aggregate amount of the relevant Financial Indebtedness and liabilities secured by the relevant Security Interests is less than \$[\*] or its equivalent in other currencies; or
- (d) any other Security Interest over any assets of any member of the Group securing any alleged liability that does not qualify as Financial Indebtedness becomes enforceable where the alleged liability is in respect of a sum of, or sum aggregating, \$[\*] or its equivalent in other currencies, unless the alleged liability is being contested in good faith by appropriate means by the relevant Group member and the Agent is reasonably satisfied that the relevant member of the Group has reasonable grounds for succeeding in its action.
- (e) No Event of Default will occur, or be deemed to have occurred, under this Clause ~~48.6-19.6~~ (Cross default) if such Event of Default occurs before 31 December 2022 (but without prejudice to the rights of the Lenders in respect of any further breach that may occur after 31 December 2022 ) and is caused solely as a result of a breach of the covenant granted pursuant to Clause ~~45-16~~ (Security Value Maintenance) or of the financial covenants in respect of the Group equivalent to those set out in paragraphs (b) and (c) of clause 11.15 (Financial Covenants) of the Guarantee, under, or in relation to, any other SACE-backed facility agreement to which a Guarantor is a Party or has executed a guarantee and to which the Principles apply, unless at the time of such Event of Default, an event resulting in mandatory prepayment of the Loan pursuant to Clause ~~46.3-17.3~~ (Mandatory prepayment – Sale and Total Loss) or Clause ~~46.4-17.4~~ (Mandatory prepayment – SACE insurance policy) or a Deferral Prepayment Event has occurred.

**19.7 ~~48.7~~Winding-up**

Any order is made or an effective resolution passed or other action taken for the suspension of payments or reorganisation, dissolution, termination of existence, liquidation, winding-up or bankruptcy of any Obligor.

**19.8 ~~48.8~~Appointment of liquidators etc.**

A liquidator, trustee, administrator, receiver, administrative receiver, manager or similar officer is appointed in respect of any Obligor or in respect of all or any substantial part of the assets of any Obligor.

**19.9 ~~48.9~~Enforcement of any security**

Any corporate action, legal proceeding or other procedure or step is taken in relation to enforcement of any security interests over any assets of the Borrower.

**19.10 ~~48.40~~ Insolvency**

- (a) An Obligor is unable or admits inability to pay its debts as they fall due, is deemed to or declared to be unable to pay its debts under applicable law, suspends or threatens to suspend making payments on any of its debts.
- (b) The value of the assets of any Obligor is less than its liabilities (taking into account contingent liabilities).
- (c) A moratorium in respect of all or any debts of any Obligor or a compromise, composition, assignment or an arrangement with creditors of any Obligor or any similar proceeding or arrangement by which the assets of any Obligor are submitted to the control of its creditors is applied for, ordered or declared or any Obligor commences negotiations with any one or more of its creditors with a view to the general readjustment or rescheduling of all or a significant part of its Financial Indebtedness. If a moratorium occurs, the ending of the moratorium will not remedy any Event of Default caused by that moratorium.

**19.11 ~~48.44~~ Legal process**

Any corporate action, legal proceeding, distress, execution, attachment or other process affects the whole or any substantial part of the assets of any Obligor and remains undischarged for a period of thirty (30) days, any step is taken in relation to enforcement of any security interests over any assets of any Obligor (other than the Borrower) or any uninsured judgment which, in each case, is in excess of [\*] Dollars (\$[\*]) following final appeal, remains unsatisfied for a period of ten (10) days.

**19.12 ~~48.42~~ Analogous events**

Anything analogous to or having a substantially similar effect to any of the events specified in Clauses ~~48.7-19.7~~ 19.7 (*Winding-up*) to ~~48.44-19.11~~ 19.11 (*Legal process*) shall occur under the laws of any applicable jurisdiction.

**19.13 ~~48.43~~ Cessation of business**

Any Obligor ceases to carry on all or a substantial part of its business.

**19.14 ~~48.44~~ Revocation of consents**

Any authorisation, approval, consent, licence, exemption, filing, registration or notarisation or other requirement necessary to enable any Obligor to comply with any of its obligations under any of the Transaction Documents is materially adversely modified, revoked or withheld or does not remain in full force and effect and within ninety (90) days of the date of its occurrence such event is not remedied to the satisfaction of the Agent and the Majority Lenders consider that such failure is or might be expected to become materially prejudicial to the interests, rights or position of the Lenders provided that the Borrower shall not be entitled to the aforesaid ninety (90) day period if the modification, revocation or withholding of the authorisation, approval or consent is due to an act or omission of any Obligor and the Majority Lenders are satisfied that the Lenders' interests might reasonably be expected to be materially adversely affected.



**19.15 ~~48-45~~ Unlawfulness**

At any time it is unlawful or impossible for any Obligor to perform any of its material (to the Secured Parties or any of them) obligations under any Transaction Document to which it is a party or it is unlawful or impossible for the Secured Parties or any Lender to exercise any of their or its rights under any of the Transaction Documents provided that no Event of Default shall be deemed to have occurred where the unlawfulness or impossibility does not relate to the payment obligation of any Obligor under any Transaction Document and is cured within the period of twenty one (21) days of the date of occurrence of the event giving rise to the unlawfulness or impossibility and the affected Obligor performs its obligation within such period.

**19.16 ~~48-46~~ Insurances**

The Borrower fails to insure the Ship in the manner specified in Clause ~~44-15~~ 44-15 (*Insurance Undertakings*) or fails to renew the Insurances at least five (5) days prior to the date of expiry thereof and produce prompt confirmation of such renewal to the Agent provided that if the insurers withdraw their cover an Event of Default shall be deemed to have occurred upon issue of the insurer's notice of withdrawal.

**19.17 ~~48-47~~ Disposals**

If the Borrower or any other Obligor shall have concealed, removed, or permitted to be concealed or removed, any part of its property, with intent to hinder, delay or defraud its creditors or any of them, or made or suffered a transfer of any of its property which may be fraudulent under any bankruptcy, fraudulent conveyance or similar law; or shall have made any transfer of its property to or for the benefit of a creditor with the intention of preferring such creditor over any other creditor.

**19.18 ~~48-48~~ Prejudice to security**

Anything is done or suffered or omitted to be done by any Obligor which in the reasonable opinion of the Agent would or might be expected to imperil the security created by any of the Finance Documents.

**19.19 ~~48-49~~ Governmental intervention**

The authority of any Obligor in the conduct of its business is wholly or substantially curtailed by any seizure or intervention by or on behalf of any authority and within ninety (90) days of the date of its occurrence any such seizure or intervention is not relinquished or withdrawn and the Agent reasonably considers that the relevant occurrence is or might be expected to become materially prejudicial to the interests, rights or position of the Lenders provided that the Borrower shall not be entitled to the aforesaid ninety (90) day period if the seizure or intervention executed by any authority is due to an act or omission of any Obligor and the Majority Lenders are satisfied that the Lenders' interest might reasonably be expected to be materially adversely affected.

**19.20 ~~48-20~~ Material Adverse Change**

Any event or circumstance occurs which results in a Material Adverse Effect.

**19.21 ~~48.24~~ Actions following an Event of Default**

On, or at any time after, the occurrence of an Event of Default the Agent may, and if so instructed by the Majority Lenders, the Agent shall with the prior consent of SACE:

- (a) serve on the Borrower a notice stating that the Commitments and all other obligations of each Lender to the Borrower under this Agreement are terminated; and/or
- (b) serve on the Borrower a notice stating that the Loan (including but without limitation the amount representing the financed First Instalment and Second Instalment of the SACE Premium), 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
- (c) take any other action which, as a result of the Event of Default or any notice served under paragraph (a) or (b), the Agent and/or the Lenders are entitled to take under any Finance Document or any applicable law.

**19.22 ~~48.22~~ Termination of Commitments**

On the service of a notice under paragraph (a) of Clause ~~48.24-19.21~~ (*Actions following an Event of Default*), the Commitments and all other obligations of each Lender to the Borrower under this Agreement shall terminate.

**19.23 ~~48.23~~ Acceleration of Loan**

On the service of a notice under paragraph (b) of Clause ~~48.24-19.21~~ (*Actions following an Event of Default*), the Loan, all accrued interest and all other amounts accrued or owing from the Borrower or any Obligor under this Agreement and every other Finance Document shall become immediately due and payable or, as the case may be, payable on demand.

**19.24 ~~48.24~~ Further amounts payable**

Upon an acceleration of repayment of the Loan following an Event of Default the Borrower shall be liable to pay compensation calculated in accordance with Clause ~~46.2-17.2~~ (*Voluntary prepayment*).

**19.25 ~~48.25~~ Multiple notices; action without notice**

The Agent may serve notices under paragraphs (a) and (b) of Clauses ~~48.24-19.21~~ (*Actions following an Event of Default*) simultaneously or on different dates and it may take any action referred to in paragraph (c) of Clause ~~48.24-19.21~~ (*Actions following an Event of Default*) if no such notice is served or simultaneously with or at any time after the service of both or either of such notices.

**19.26 ~~48.26~~ Notification of Secured Parties and Obligors**

The Agent shall send to the Italian Authorities, each Lender and each Obligor a copy or the text of any notice which the Agent serves on the Borrower under Clause ~~48.24-19.21~~ (*Actions following an Event of Default*); but the notice shall become effective when it is served on the Borrower, and no failure or delay by the Agent to send a copy or the text of the notice to any other person shall invalidate the notice or provide any Obligor with any form of claim or defence.

## **19.27 ~~48.27~~ Lender's rights unimpaired**

Nothing in this Clause ~~48-19~~ (*Events of Default*) 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 Clauses 2.4 (*Creditor Parties' rights and obligations*) and 2.6 (*Obligations of Lenders several*).

## **19.28 ~~48.28~~ Exclusion of Secured Party liability**

No Secured Party, and no receiver or manager appointed by the Agent, shall have any liability to an Obligor:

- (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.

## **20 ~~49~~ APPLICATION OF SUMS RECEIVED**

### **20.1 ~~49.1~~ Receipts**

Except as any Finance Document may otherwise provide, all sums received under this Agreement or any other Finance Document by the Agent, on behalf of the Lenders, or by any of the Lenders for any reason whatsoever will be applied:

- (a) in priority, to payments of any kind due or in arrears in the order of their due payment dates and first, to fees, charges and expenses, second, to interest payable pursuant to Clause ~~47-18~~ (*Interest on Late Payments*), third, to interest payable pursuant to Clause 6 (*Interest*) and to any deferred costs payable pursuant to Clause ~~6-4-7.4~~ (*Deferred Costs*), fourth, to the principal of the Loan payable pursuant to Clause 5 (*Repayment*), fifth, to any other sums due under this Agreement or any other Finance Document and, if relevant, *pro rata* to each of the Lenders; and sixth, to any sums due pursuant to Clause ~~20-2-21.2~~ (*Breakage costs and SIMEST arrangements*); or
- (b) if no payments are in arrears or if these payments have been discharged as set out above, then and to sums remaining due under this Agreement or any other Finance Document and, if relevant, *pro rata* to each of the Lenders and in each case in inverse order of maturity, the interest being recalculated accordingly.

## **21 ~~20~~ INDEMNITIES**

### **21.1 ~~20.1~~ Indemnities regarding borrowing and repayment of Loan**

The Borrower shall fully indemnify the Agent and each Lender or SIMEST (but without double counting to the extent that a Lender is making a claim in respect of amounts owing to SIMEST) on the Agent's demand in respect of all claims, expenses, liabilities and losses which are made or brought against or incurred by that Secured Party, or which that Secured Party reasonably and with due diligence estimates that it will incur, as a result of or in connection with:

- (a) the Loan not being borrowed on the date specified in the Drawdown Notice for any reason other than a default by the Lender claiming the indemnity;
- (b) the receipt or recovery of all or any part of the Loan or an overdue sum otherwise than on the last day of an Interest Period or other relevant period;
- (c) any failure (for whatever reason) by the Borrower to make payment of any amount due under a Finance Document on the due date or, if so payable, on demand (after giving credit for any default interest paid by the Borrower on the amount concerned under Clause ~~17-18~~ (*Interest on Late Payments*)); and
- (d) the occurrence and/or continuance of an Event of Default and/or the acceleration of repayment of the Loan under Clause ~~18-19~~ (*Events of Default*).

## **21.2 ~~20-2~~ Breakage costs and SIMEST arrangements**

Without limiting its generality, Clause ~~20-1-21.1~~ ([Indemnities regarding borrowing and repayment of Loan](#)) covers:

- (a) any claim, expense, liability or loss, including a loss of a prospective profit, incurred by a Lender 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);
- (b) if the Borrower has selected the Fixed Interest Rate in accordance with paragraph (a)(ii) of Clause 3.5 (*No later than sixty (60) days before the Intended Delivery Date*), all of the amounts that SIMEST is entitled to charge, whether for taxes, costs, expenses, indemnities, penalties, losses or liabilities whatsoever, under and in accordance with the Interest Make-Up Agreement, including without limitation, as a result of any prepayment of all or any part of the Loan under this Agreement (whether voluntary, mandatory, following acceleration of the Loan or otherwise), as a result of an Interest Make-Up Event or as a result of the Borrower deciding to switch from the Fixed Interest Rate to another interest rate after the Drawdown Date and/or (z) an Interest Make-Up Event. Such amounts include, without limitation, (i) breakage costs, (ii) any amount due as a consequence of the close-out of any hedging arrangement entered into by SIMEST in relation to this Agreement, (iii) default interest and penalties (*maggiorazioni*) whenever applicable, and (iv) all amounts (if any) to be returned by the Agent to SIMEST under and pursuant to the Interest Make-Up Agreement; and
- (c) any other costs whatsoever or howsoever arising under or in respect of the Interest Make-Up Agreement which are passed to the Agent,

and any such costs imposed by SIMEST shall be paid by the Borrower to SIMEST through the Agent.

For the purposes of this Clause ~~20-2-21.2~~ (*Breakage costs and SIMEST arrangements*) "**Interest Make-Up Event**" means the occurrence of any circumstances which result in the termination, cancellation, revocation, cessation or suspension (in each case, in whole or in part) of the Interest Make-Up Agreement or the Interest Make-Up Agreement otherwise ceases or may cease to be in full force and effect or the Agent notifies the Borrower that the Fixed Interest Rate is not available for any reason, in each case, in accordance with the terms of the Interest Make-Up Agreement.

### 21.3 ~~20-3~~ Miscellaneous indemnities

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

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

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

Without prejudice to its generality, this Clause ~~20-3-21.3~~ 21.3 (*Miscellaneous indemnities*) covers any claims, expenses, liabilities and losses which arise, or are asserted, under or in connection with any law relating to safety at sea, the ISM Code or any Environmental Laws or any Sanctions.

### 21.4 ~~20-4~~ Currency indemnity

If any sum due from an Obligor 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 an Obligor, whether in its liquidation, any arrangement involving it or otherwise; or
- (b) obtaining an order or judgment from any court or other tribunal; or
- (c) enforcing any such order or judgment,

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

In this Clause ~~20-4-21.4~~ 21.4 (*Currency indemnity*) the "**available rate of exchange**" means the rate at which the Secured Party concerned is able at the opening of business (Paris time) on the Business Day after it receives the sum concerned to purchase the Contractual Currency with the Payment Currency.

This Clause ~~20-4-21.4~~ 21.4 (*Currency indemnity*) creates a separate liability of the 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.

### 21.5 ~~20-5~~ Certification of amounts

A notice which is signed by 2 officers of a Secured Party, which states that a specified amount, or aggregate amount, is due to that Secured Party under this Clause ~~20-21~~ 21 (*Indemnities*) and which indicates (without necessarily specifying a detailed breakdown) the matters in respect

of which the amount, or aggregate amount, is due shall be prima facie evidence that the amount, or aggregate amount, is due.

**21.6 ~~20-6~~Sums deemed due to a Lender**

For the purposes of this Clause ~~20-21~~ (*Indemnities*), a sum payable by the Borrower to the Agent for distribution to a Lender shall be treated as a sum due to that Lender.

**22 ~~24~~ILLEGALITY, ETC.**

**22.1 ~~24-4~~Illegality**

This Clause ~~24-22~~ (*Illegality, etc.*) applies if

- (a) a Lender (the "**Notifying Lender**") notifies the Agent that it has become, or will with effect from a specified date, become:
  - (i) 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, including for the avoidance of doubt in relation to Sanctions; or
  - (ii) 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; or

- (b) an Obligor is or becomes a Prohibited Person.

**22.2 ~~24-2~~Notification of illegality**

- (a) The Agent shall promptly notify the Borrower, the Obligors and the other Lenders of the notice under Clause ~~24-4~~22.1 (*Illegality*) which the Agent receives from the Notifying Lender.
- (b) Upon receipt of the notice under paragraph (a) above and provided that such illegality is not applicable with immediate effect (in which case paragraph (a) of Clause ~~24-3~~22.3 (*Prepayment; termination of Commitment*) will apply immediately and this paragraph (b) of Clause ~~24-2~~22.2 (*Notification of illegality*) will not apply), the Agent shall, where the Borrower has selected the Fixed Interest Rate pursuant to paragraph (a)(ii) of Clause 3.5 inform SIMEST in writing in order to start consultations between themselves (pursuant to clause 6 of the Interest Make-Up Agreement) with a view to exploring any possible solution to mitigate the unlawfulness preventing that Lender from performing any of its obligations under a Finance Document or funding or maintaining its share in the Loan. Any solution agreed between the Agent and SIMEST at the end of the consultation period (which shall last for a period of ten (10) days from the service of such notice on SIMEST) will be binding among themselves and shall be notified by the Agent to each Obligor immediately thereafter (and in any case no later than ten (10) days following such decision).
- (c) If at the end of the consultation procedure set out in paragraph (b) above, no solution is agreed between the Agent and SIMEST, the Agent must immediately notify the Lenders and the Obligors.

### **22.3 ~~21.3~~ Prepayment; termination of Commitment**

- (a) After notification under paragraph (c) of Clause ~~21.2-22.2~~ 22.2 (*Notification of illegality*) or (in case the Interest Make-Up Agreement has ceased to be in force and effect or the Fixed Interest Rate has not been selected pursuant to paragraph (a)(ii) of Clause 3.5 (*No later than sixty (60) days before the Intended Delivery Date*)) after notification under paragraph (a) of Clause ~~21.2-22.2~~ 22.2 (*Notification of illegality*) and subject to Clause ~~21.4-22.4~~ 22.4 (*Mitigation*) below the Borrower must repay or prepay that Lender's share in the Loan on the date specified in paragraph (c) below together with any breakage costs payable under Clause ~~20.2-21.2~~ 21.2 (*Breakage Costs and SIMEST arrangements*) and any indemnity payable under paragraph (c) of Clause ~~20.2-21.2~~ 21.2 (*Breakage Costs and SIMEST arrangements*) in respect of the Interest Make-Up Agreement;
- (b) On the Agent notifying the Borrower under paragraph (c) of Clause ~~21.2-22.2~~ 22.2 (*Notification of illegality*), the Notifying Lender's Commitment shall terminate; and thereupon or, if later, on the date specified in the Notifying Lender's notice under Clause ~~21.4-22.1~~ 22.1 (*Illegality*) as the date on which the notified event would become effective the Borrower shall prepay the Notifying Lender's Contribution and shall pay compensation to the Notifying Lender calculated in accordance with Clause ~~16.2-17.2~~ 17.2 (*Voluntary prepayment*).
- (c) The date for repayment or prepayment of a Lender's share in the Loan will be:
  - (i) the date specified by the Agent in the notification under paragraph (b) above; or
  - (ii) in case the Interest Make-Up Agreement has ceased to be in force and effect or the Fixed Interest Rate has not been selected pursuant to paragraph (a)(ii) of Clause 3.5 (*No later than sixty (60) days before the Intended Delivery Date*), the last day of the current Interest Period for the Loan or, if earlier, the date specified by the Lender in the notification under paragraph (a) above and which must not be earlier than the last day of any applicable grace period allowed by law.

### **22.4 ~~21.4~~ Mitigation**

- (a) Each Secured Party shall, in consultation with the Borrower, take all reasonable steps to mitigate any circumstances which arise and which would result in any amount becoming payable under or pursuant to, or cancelled pursuant to Clause ~~21-22~~ 22 (*Illegality, etc.*) including (but not limited to) transferring its rights and obligations under the Finance Documents to another Affiliate or Facility Office.
- (b) Paragraph (a) above does not in any way limit the obligations of any Obligor under the Finance Documents.

### **23 ~~22~~ SET-OFF**

#### **23.1 ~~22.1~~ 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 the Borrower at any office in any country of that Creditor Party in or towards satisfaction of any sum then due from the Borrower to that Creditor Party under any of the Finance Documents; and
- (b) for that purpose:

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

**23.2 ~~22-2~~ Existing rights unaffected**

No Creditor Party shall be obliged to exercise any of its rights under Clause ~~22-4~~ 23.1 (*Application of credit balances*); and those rights shall be without prejudice and in addition to any right of set-off, combination of accounts, charge, lien or other right or remedy to which a Creditor Party is entitled (whether under the general law or any document).

**23.3 ~~22-3~~ Sums deemed due to a Lender**

For the purposes of this Clause ~~22-23~~ (*Set-Off*), a sum payable by the Borrower to the Agent for distribution to, or for the account of, a Lender shall be treated as a sum due to that Lender; and each Lender's proportion of a sum so payable for distribution to, or for the account of, the Lenders shall be treated as a sum due to such Lender.

**23.4 ~~22-4~~ No Security Interest**

This Clause ~~22-23~~ (*Set-Off*) gives the Creditor Parties a contractual right of set-off only, and does not create any equitable charge or other Security Interest over any credit balance of the Borrower.

**24 ~~23~~ CHANGES TO THE LENDERS**

**24.1 ~~23-1~~ Transfer by a Lender**

Subject to Clause ~~23-5~~ 24.5 (*No transfer without Transfer Certificate*), Clause ~~23-17~~ 24.17 (*Assignment or transfer to SACE*) and Clause ~~23-14~~ 24.14 (*Change of Facility Office*), a Lender (the "**Transferor Lender**") may at any time provided they have obtained the prior written consent of the Italian Authorities cause:

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

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

However any rights and obligations of the Transferor Lender in its capacity as Agent or Security Trustee will have to be dealt with separately in accordance with the provisions of Clause ~~25~~ 26



(*Role of the Agent and the Joint Mandated Lead Arrangers*) and ~~26-27~~ (The Security Trustee) respectively.

**24.2 ~~23-2~~ Conditions of assignment or transfer**

- (a) The consent of the Borrower is required at all times (subject to the provisions of ~~Clause 23-5~~ Clauses 24.5 (*No transfer without Transfer Certificate*) and ~~23-17-24.17~~ 24.17 (*Assignment or transfer to SACE*)) for an assignment or transfer by a Lender (the "**Existing Lender**"), unless (i) there is an Event of Default or (ii) the assignment or transfer is to another Lender or an Affiliate of a Lender.
- (b) The consent of the Borrower to an assignment or transfer must not be unreasonably withheld or delayed. The Borrower will be deemed to have given its consent ten (10) Business Days after the Existing Lender has requested it unless consent is expressly refused by that Borrower within that time.
- (c) The assignment or transfer must be with respect to a minimum Commitment of [\*] Dollars (\$[\*]) or, if less, the Existing Lender's full Commitment.

**24.3 ~~23-3~~ Transfer Certificate, delivery and notification**

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

- (a) sign the Transfer Certificate on behalf of itself, the Borrower, any other Obligors, the Security Trustee and each of the other Lenders;
- (b) on behalf of the Transferee Lender, send to the Borrower and each Obligor letters or emails notifying them of the Transfer Certificate and attaching a copy of it; and
- (c) send to the Transferee Lender copies of the letters or emails sent under paragraph (b) above,

but the Agent shall only be obliged to execute a Transfer Certificate delivered to it by the Transferor Lender and the Transferee 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 that Transferee Lender.

**24.4 ~~23-4~~ 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 23-3-24.3~~ 24.3 (*Transfer Certificate, delivery and notification*) on or before that date.

**24.5 ~~23-5~~ No transfer without Transfer Certificate**

Except as provided in ~~Clause 23-16-24.16~~ 24.16 (*Security over Lenders' rights*), no assignment or transfer of any right or obligation of a Lender under any Finance Document is binding on, or effective in relation to, the Borrower, any Obligor, the Agent or the Security Trustee unless it is effected, evidenced or perfected by a Transfer Certificate.

#### 24.6 ~~23.6~~ Lender re-organisation; waiver of Transfer Certificate

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

#### 24.7 ~~23.7~~ Effect of Transfer Certificate

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

- (a) to the extent specified in the Transfer Certificate, all rights and interests (present, future or contingent) which the Transferor Lender has under or by virtue of the Finance Documents are assigned to the Transferee Lender absolutely, free of any defects in the Transferor Lender's title and of any rights or equities which the Borrower or any Obligor 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 the Borrower or any Obligor 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 ~~6-9~~7.9 (*Market Disruption*) and Clause ~~9-10~~ (*Fees*), and to the extent that the Transferee Lender becomes entitled to such rights, the Transferor Lender ceases to be entitled to them; and
- (g) in respect of any breach of a warranty, undertaking, condition or other provision of a Finance Document or any misrepresentation made in or in connection with a Finance Document, the Transferee Lender shall be entitled to recover damages by reference to the loss incurred by it as a result of the breach or misrepresentation, irrespective of whether the original Lender would have incurred a loss of that kind or amount.

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

#### **24.8 ~~23-8~~ 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 Facility Office) from time to time of each Lender holding a Transfer Certificate and the effective date (in accordance with Clause ~~23-4~~ [24.4](#) (*Effective Date of Transfer Certificate*)) of the Transfer Certificate; and the Agent shall make the register available for inspection by any Lender, the Security Trustee and the Borrower during normal banking hours, subject to receiving at least 3 Business Days' prior notice.

#### **24.9 ~~23-9~~ 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.

#### **24.10 ~~23-10~~ Authorisation of Agent to sign Transfer Certificates**

The Borrower, the Security Trustee and each Lender irrevocably authorise the Agent to sign Transfer Certificates on its behalf.

#### **24.11 ~~23-11~~ Fees and Costs**

In respect of any Transfer Certificate:

- (a) the Agent shall be entitled to recover a registration fee of EUR 5,000 from the Transferor Lender or (at the Agent's option) the Transferee Lender;
- (b) the Transferee Lender shall pay to the Agent, upon demand, all reasonable costs and expenses, duties and fees, including but without limitation legal costs and out of pocket expenses, incurred by the Agent or the Lenders in connection with any necessary amendment to or supplementing of the Transaction Documents or any of them or the SACE Insurance Policy as a consequence of the assignment or transfer; and
- (c) the Transferee Lender shall pay to the Agent, upon demand, such amount as is payable to the Italian Authorities to cover its costs of giving its approval under Clause ~~23-1~~ [24.1](#) (*Transfer by a Lender*).

#### **24.12 ~~23-12~~ Sub-participation; subrogation assignment**

A Lender may sub-participate all or any part of its rights and/or obligations under or in connection with the Finance Documents without the consent of, or any notice to, the Borrower, any Obligor, the Agent or the Security Trustee but with the prior written consent of SACE.

#### **24.13 ~~23-13~~ Disclosure of information**

A Lender may disclose to a potential Transferee Lender or sub participant any information which the Lender has received in relation to the Borrower, any Obligor or their affairs under or in connection with any Finance Document, unless the information is clearly of a confidential nature.

**24.14 ~~23-14~~Change of Facility Office**

Subject to the prior written consent of SACE, a Lender may change its Facility 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, provided that if (i) a Lender assigns or transfers any of its rights or obligations under the Finance Documents or changes its Facility Office, and (ii) as a result of circumstances existing at the date the assignment, transfer or change occurs, an Obligor would be obliged to make a payment or an increased payment to the new Lender or Lender acting through its new Facility Office under Clause ~~40-11~~ (*Taxes, Increased Costs, Costs and Related Charges*), then the new Lender or Lender acting through its new Facility Office is only entitled to receive payment under that Clause 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.

**24.15 ~~23-15~~Notification**

On receiving such a notice, the Agent shall notify the Borrower and the Security Trustee; and, until the Agent receives such a notice, it shall be entitled to assume that a Lender is acting through the Facility Office of which the Agent last had notice.

**24.16 ~~23-16~~Security over Lenders' rights**

In addition to the other rights provided to Lenders under this Clause ~~23-24~~ (*Changes to the Lenders*), each Lender may without consulting with or obtaining consent from the Borrower or any Obligor but subject to the prior written consent of SACE, 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 (i) to the benefit of any Affiliate and/or (ii) within the framework of its, or its Affiliates, direct or indirect funding operations 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) alter the obligations of the Obligor or require any payments to be made by the Borrower or any Obligor 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.

#### **24.17 ~~23.17~~ Assignment or transfer to SACE**

Notwithstanding the above provisions of this Clause ~~23-24~~ (*Changes to the Lenders*):

- (a) each Lender and the Agent shall, if so instructed by SACE in accordance with the provisions of the SACE Insurance Policy and without any requirement for the consent of the Borrower, assign its rights or (as the case may be) transfer its rights and obligations to SACE (but for the avoidance of doubt, SACE will not assume any of the Lenders' obligations pursuant to Clause ~~40-11~~ (*Taxes, Increased Costs, Costs and Related Charges*) or Clause ~~32-33~~ (*Confidentiality*) of this Agreement), which assignment or transfer shall take effect upon the date stated in the relevant documentation;
- (b) the Agent shall promptly notify the Borrower of any such assignment or transfer to SACE and the Borrower shall pay to the Agent, upon demand, all reasonable costs and expenses, duties and fees, including but without limitation legal costs and out of pocket expenses, incurred by the Agent or the Lenders in connection with any such assignment or transfer;
- (c) the Borrower and the Agent agree that SACE will be subrogated to the rights of the Lenders to the extent of any payment made by or on behalf of SACE under the SACE Insurance Policy.

#### **25 ~~24~~ CHANGES TO THE OBLIGORS**

##### **25.1 ~~24.1~~ No change without consent**

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

#### **26 ~~25~~ ROLE OF THE AGENT AND THE JOINT MANDATED LEAD ARRANGERS**

##### **26.1 ~~25.1~~ Appointment of the Agent**

- (a) Each other Creditor Party appoints the Agent to act as its agent under and in connection with this Agreement and the other Finance Documents, the SACE Insurance Policy and the Interest Make Up Agreement.
- (b) Each other Creditor Party authorises the Agent to exercise the rights, powers, authorities and discretions specifically given to the Agent under or in connection with the Finance Documents together with any other incidental rights, powers, authorities and discretions.

##### **26.2 ~~25.2~~ Duties of the Agent**

- (a) The Agent shall promptly forward to a Party the original or a copy of any document which is delivered to the Agent for that Party by any other Party.
- (b) Except where a Finance Document specifically provides otherwise, the Agent is not obliged to review or check the adequacy, accuracy or completeness of any document it forwards to another Party.
- (c) If the Agent receives notice from a Party referring to this Agreement, describing an Event of Default and stating that the circumstance described is an Event of Default, it shall promptly notify the other Secured Parties.

- (d) If the Agent is aware of the non-payment of any principal, interest, commitment fee or other fee payable to a Secured Party (other than the Agent or a Joint Mandated Lead Arranger) under this Agreement it shall promptly notify the other Creditor Parties.
- (e) The Agent's duties under the Finance Documents are solely administrative in nature.

**26.3 ~~25-3~~Role of the Joint Mandated Lead Arrangers**

None of the Joint Mandated Lead Arrangers has any obligations of any kind to any other Party under or in connection with any Transaction Document, the Interest Make-Up Agreement or the SACE Insurance Policy.

**26.4 ~~25-4~~No fiduciary duties**

- (a) Nothing in this Agreement constitutes the Agent or any of the Joint Mandated Lead Arrangers as a trustee or fiduciary of any other person.
- (b) Neither the Agent nor any of the Joint Mandated Lead Arrangers shall be bound to account to any Lender for any sum or the profit element of any sum received by it for its own account.

**26.5 ~~25-5~~Business with the Guarantor**

The Agent and each of the Joint Mandated Lead Arrangers may accept deposits from, lend money to and generally engage in any kind of banking or other business with any Affiliate or Subsidiary of the Guarantor.

**26.6 ~~25-6~~Rights and discretions of the Agent**

- (a) The Agent may rely on:
  - (i) any representation, notice or document believed by it to be genuine, correct and appropriately authorised; and
  - (ii) any statement made by a director, authorised signatory or employee of any person regarding any matters which may reasonably be assumed to be within his knowledge or within his power to verify.
- (b) The Agent may assume (unless it has received notice to the contrary in its capacity as agent for the Lenders) that:
  - (i) no Event of Default has occurred (unless it has actual knowledge of an Event of Default); and
  - (ii) any right, power, authority or discretion vested in any Party or the Lenders has not been exercised.
- (c) The Agent may engage, pay for and rely on the advice or services of any lawyers, accountants, surveyors or other experts.
- (d) The Agent may act in relation to the Finance Documents through its personnel and agents.
- (e) The Agent may disclose to any other Party any information it reasonably believes it has received as the Agent under this Agreement.

- (f) Notwithstanding any other provision of any Finance Document to the contrary, neither the Agent nor any of the Joint Mandated Lead Arrangers 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.

**26.7 ~~25.7~~Lenders' instructions**

- (a) Unless a contrary indication appears in a Finance Document, the Agent shall:
  - (i) exercise any right, power, authority or discretion vested in it as Agent in accordance with any instructions given to it by the Majority Lenders (or, if so instructed by the Majority Lenders, refrain from exercising any right, power, authority or discretion vested in it as the Agent); and
  - (ii) not be liable for any act (or omission) if it acts (or refrains from taking any action) in accordance with an instruction of the Majority Lenders.
- (b) Unless a contrary indication appears in a Finance Document, any instructions given by the Majority Lenders will be binding on all the Creditor Parties.
- (c) The Agent may refrain from acting in accordance with the instructions of the Majority Lenders until it has received such security as it may require for any cost, loss or liability (together with any associated VAT) which it may incur in complying with the instructions.
- (d) In the absence of instructions from the Majority Lenders the Agent may act (or refrain from taking action) as it considers to be in the best interest of the Lenders.
- (e) The Agent is not authorised to act on behalf of a Lender (without first obtaining that Lender's consent) in any legal or arbitration proceedings relating to any Finance Document.
- (f) Notwithstanding anything to the contrary, the Lenders agree that if the Agent (acting in its sole discretion) is of the opinion that or if any Lender notifies the Agent that it is of the opinion that, the prior approval of the Italian Authorities should be obtained in relation to the exercise or non-exercise by the Agent or the Lenders of any power, authority or discretion specifically given to them under or in connection with the Finance Documents or in relation to any other incidental rights, powers, authorities or discretions, then the Agent shall seek such approval of the Italian Authorities prior to such exercise or non-exercise.

**26.8 ~~25.8~~Responsibility for documentation**

The Agent is not responsible for:

- (a) the adequacy, accuracy and/or completeness of any information (whether oral or written) supplied by the Agent, a Joint Mandated Lead Arranger, an Obligor or any other person given in or in connection with any Transaction Document, the SACE Insurance Policy or the Interest Make-Up Agreement; nor for
- (b) the legality, validity, effectiveness, adequacy or enforceability of any Transaction Document the SACE Insurance Policy or the Interest Make-Up Agreement or any other agreement, arrangement or document entered into, made or executed in anticipation of or in connection with any Transaction Document, the SACE Insurance Policy or the Interest Make-Up Agreement.

## **26.9** ~~25.9~~ Exclusion of liability

- (a) Without limiting paragraph (b) of Clause ~~25.9~~26.9, the Agent will not be liable for any action taken by it under or in connection with any Finance Document, the SACE Insurance Policy or the Interest Make-Up Agreement, unless directly caused by its Gross Negligence or wilful misconduct.
- (b) No Party (other than the Agent) may take any proceedings against any officer, employee or agent of the Agent in respect of any claim it might have against the Agent or in respect of any act or omission of any kind by that officer, employee or agent in relation to any Finance Document, the SACE Insurance Policy or the Interest Make-Up Agreement and any officer, employee or agent of the Agent may rely on this Clause subject to Clause ~~33.4~~34.4 (*Third party rights*) and the provisions of the Third Parties Rights Act.
- (c) The Agent will not be liable for any delay (or any related consequences) in crediting an account with an amount required under the Finance Documents, the SACE Insurance Policy or the Interest Make-Up Agreement to be paid by the Agent if the 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 Agent for that purpose.
- (d) Nothing in this Agreement shall oblige the Agent or a Joint Mandated Lead Arranger to carry out any "know your customer" or other checks in relation to any person on behalf of any Lender and each Lender confirms to the Agent and the Joint Mandated Lead Arrangers that it is solely responsible for any such checks it is required to carry out and that it may not rely on any statement in relation to such checks made by the Agent or a Joint Mandated Lead Arranger.

## **26.10** ~~25.10~~ Lenders' indemnity to the Agent

Each Lender shall (in proportion to its share of the Total Commitments or, if the Total Commitments are then zero, to its share of the Total Commitments immediately prior to their reduction to zero) indemnify the Agent, within three (3) Business Days of demand, against any cost, loss or liability incurred by the Agent (otherwise than by reason of the Agent's Gross Negligence or wilful misconduct) in acting as Agent under the Finance Documents (unless the Agent has been reimbursed by an Obligor pursuant to a Finance Document).

## **26.11** ~~25.11~~ Resignation of the Agent

- (a) The Agent may resign and appoint one of its Affiliates as successor by giving notice to the other Creditor Parties, the Borrower and SACE and with the consent of SACE.
- (b) Alternatively, ~~is~~ the Agent may resign by giving notice to the other Creditor Parties and the Borrower, in which case the Lenders (after consultation with the Borrower) may appoint a successor Agent.
- (c) If the Lenders have not appointed a successor Agent in accordance with paragraph (b) of Clause ~~25.11~~26.11 within thirty (30) days after notice of resignation was given, the Agent (after consultation with the Borrower) may appoint a successor Agent.
- (d) The retiring Agent shall, at its own cost, make available to the successor Agent such documents and records and provide such assistance as the successor Agent may reasonably request for the purposes of performing its functions as Agent under the Finance Documents.



- (e) The Agent's resignation notice shall only take effect upon the appointment of a successor.
- (f) Upon the appointment of a successor, the retiring Agent shall be discharged from any further obligation in respect of the Finance Documents but shall remain entitled to the benefit of this Clause ~~25-26~~ (Role of the Agent and the Joint Mandated Lead Arrangers). Its successor and each of the other Parties shall have the same rights and obligations amongst themselves as they would have had if such successor had been an original Party.
- (g) After consultation with the Italian Authorities, the Majority Lenders may subject to the prior consent of the Italian Authorities, by notice to the Agent, require it to resign in accordance with paragraph (b) of Clause ~~25-11~~26.11. In this event, the Agent shall resign in accordance with paragraph (b) of Clause ~~25-11~~26.11 but the cost referred to in paragraph (d) above shall be for the account of the Borrower.

**26.12 ~~25-12~~Confidentiality**

- (a) In acting as agent for the Creditor Parties, the 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 another division or department of the Agent, it may be treated as confidential to that division or department and the Agent shall not be deemed to have notice of it.

**26.13 ~~25-13~~Relationship with the Lenders**

The Agent may treat each Lender as a Lender, entitled to payments under this Agreement and acting through its Facility Office unless it has received not less than five (5) Business Days' prior notice from that Lender to the contrary in accordance with the terms of this Agreement.

**26.14 ~~25-14~~Credit appraisal by the Lenders**

Without affecting the responsibility of any Obligor for information supplied by it or on its behalf in connection with any Finance Document, each Lender confirms to the Agent and each of the Joint Mandated Lead Arrangers that it has been, and will continue to be, solely responsible for making its own independent appraisal and investigation of all risks arising under or in connection with any Finance Document including but not limited to:

- (a) the financial condition, status and nature of the Guarantor and each Subsidiary of the Guarantor;
- (b) the legality, validity, effectiveness, adequacy or enforceability of any Finance Document and any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Finance Document;
- (c) whether that Lender has recourse, and the nature and extent of that recourse, against any Party or any of its respective assets under or in connection with any Finance Document, the transactions contemplated by the Finance Documents or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Finance Document;
- (d) the adequacy, accuracy and/or completeness of any information provided by the Agent, any Party or by any other person under or in connection with any Finance Document, the

transactions contemplated by the Finance Documents or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Finance Document; and

- (e) the right or title of any person in or to or the value or sufficiency of any part of the Charged Property, the priority of any Security Interests or the existence of any Security Interest affecting the Charged Property.

**26.15 ~~25.15~~ Deduction from amounts payable by the Agent**

If any Party owes an amount to the Agent under the Finance Documents the Agent may, after giving notice to that Party, deduct an amount not exceeding that amount from any payment to that Party which the Agent would otherwise be obliged to make under the Finance Documents and apply the amount deducted in or towards satisfaction of the amount owed. For the purposes of the Finance Documents that Party shall be regarded as having received any amount so deducted.

**26.16 ~~25.16~~ Full freedom to enter into transactions**

Notwithstanding any rule of law or equity to the contrary, the 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 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 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 Obligor or any other person; or
  - (ii) any options or other derivatives in connection with such securities; and
- (c) to provide advice or other services to the Borrower or any person who is a party to, or referred to in, a Finance Document,

and, in particular, the 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.

**26.17 ~~25.17~~ SACE Agent, SACE Insurance Policy and Interest Make-Up Agreement**

- (a) Where the context permits, references to the Agent shall include the SACE Agent. The Agent and the SACE Agent shall be the same entity throughout the Security Period.
- (b) With the prior written consent of each of the Lenders, the SACE Agent may amend or modify the SACE Insurance Policy and the Interest Make-Up Agreement provided that such

amendments are not inconsistent with the commercial terms of this Agreement, otherwise, the SACE Agent undertakes not to amend or modify the SACE Insurance Policy or the Interest Make-Up Agreement.

**26.18 ~~25-18~~ Resignation of the Agent in relation to FATCA**

The Agent shall resign in accordance with Clause ~~25-11-26.11~~ 26.11 (*Resignation of the Agent*) (and, to the extent applicable, shall use reasonable endeavours to appoint a successor Agent pursuant to paragraph (c) of Clause ~~25-11~~26.11 (*Resignation of the Agent*)) if on or after the date which is three months before the earliest FATCA Application Date relating to any payment to the Agent under the Finance Documents, either:

- (i) the Agent fails to respond to a request under Clause ~~10-9-11.9~~ 11.9 (FATCA Information) and a Lender reasonably believes that the Agent will not be (or will have ceased to be) a FATCA Exempt Party on or after that FATCA Application Date;
- (ii) the information supplied by the Agent pursuant to Clause ~~10-9-11.9~~ 11.9 (FATCA Information) indicates that the Agent will not be (or will have ceased to be) a FATCA Exempt Party on or after that FATCA Application Date; or
- (iii) the Agent notifies the Borrower and the Lenders that the Agent will not be (or will have ceased to be) a FATCA Exempt Party on or after that FATCA Application Date;

and (in each case) a Lender reasonably believes that a Party will be required to make a FATCA Deduction that would not be required if the Agent were a FATCA Exempt Party, and that Lender, by notice to the Agent, requires it to resign.

**27 ~~26~~ THE SECURITY TRUSTEE**

**27.1 ~~26-1~~ Trust**

- (a) The Security Trustee declares that it shall hold the Security Property on trust for the Secured Parties on the terms contained in this Agreement and shall deal with the Security Property in accordance with this Clause ~~26-27~~ 27 (*The Security Trustee*) and the other provisions of the Finance Documents.
- (b) Each of the parties to this Agreement agrees that the Security Trustee shall have only those duties, obligations and responsibilities expressly specified in this Agreement or in the Finance Documents (and no others shall be implied).
- (c) The Security Trustee shall not have any liability to any person in respect of its duties, obligations and responsibilities under this Agreement or the other Finance Documents except as expressly set out in paragraph (a) of Clause ~~26-1-27.1~~ 27.1 (*Trust*) and as excluded or limited by this Clause ~~26-27~~ 27 (*The Security Trustee*) including in particular Clause ~~26-8-27.8~~ 27.8 (*Instructions to Security Trustee and exercise of discretion*), Clause ~~26-13-27.13~~ 27.13 (*Responsibility for documentation*), Clause ~~26-14-27.14~~ 27.14 (*Exclusion of liability*), Clause ~~26-16-27.16~~ 27.16 (*Lenders' indemnity to the Security Trustee*), Clause ~~26-23-27.23~~ 27.23 (*Business with the Group*) and Clause ~~26-29-27.29~~ 27.29 (*Full freedom to enter into transactions*).

**27.2 ~~26.2~~ Parallel Debt (Covenant to pay the Security Trustee)**

- (a) Each Obligor irrevocably and unconditionally undertakes to pay to the Security Trustee 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 purposes of this Clause ~~26.2~~27.2 (*Parallel Debt (Covenant to pay the Security Trustee)*), the Security Trustee:
- (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 Secured 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 Trustee in connection with this Clause ~~26.2~~27.2 (*Parallel Debt (Covenant to pay the Security Trustee)*) to the extent permitted by applicable law, shall be applied in accordance with Clause ~~19~~20 (*Application of Sums Received*).
- (f) This Clause ~~26.2~~27.2 (*Parallel Debt (Covenant to pay the Security Trustee)*) shall apply, with any necessary modifications, to each Finance Document.

**27.3 ~~26.3~~ No independent power**

The Secured Parties shall not have any independent power to enforce, or have recourse to, any Security Interest created by any of the Finance Documents or to exercise any rights or

powers arising under the Finance Documents creating the Security Interest except through the Security Trustee.

#### **27.4 ~~26.4~~Application of receipts**

- (a) Except as expressly stated to the contrary in any Finance Document, any moneys which the Security Trustee receives or recovers and which are, or are attributable to, Security Property (for the purposes of this Clause ~~26-27~~ (The Security Trustee), the "**Recoveries**") shall be transferred to the Agent for application in accordance with Clause ~~49-20~~ (Application of Sums Received).
- (b) Paragraph (a) above is without prejudice to the rights of the Security Trustee, any receiver:
  - (i) under Clause ~~25.10-26.10~~ (Lenders' indemnity to the Agent) to be indemnified out of the Charged Property; and
  - (ii) under any Finance Document to credit any moneys received or recovered by it to any suspense account.
- (c) Any transfer by the Security Trustee to the Agent in accordance with paragraph (a) above shall be a good discharge, to the extent of that payment, by the Security Trustee.
- (d) The Security Trustee is under no obligation to make the payments to the Agent under paragraph (a) of this Clause ~~26.4-27.4~~ (Application of receipts) in the same currency as that in which the obligations and liabilities owing to the relevant Secured Party are denominated.

#### **27.5 ~~26.5~~Deductions from receipts**

- (a) Before transferring any moneys to the Agent under Clause ~~26.4-27.4~~ (Application of receipts), the Security Trustee may, in its discretion:
  - (i) deduct any sum then due and payable under this Agreement or any other Finance Documents to the Security Trustee or any receiver and retain that sum for itself or, as the case may require, pay it to another person to whom it is then due and payable;
  - (ii) set aside by way of reserve amounts required to meet, and to make and pay, any deductions and withholdings (on account of Taxes or otherwise) which it is or may be required by any applicable law to make from any distribution or payment made by it under this Agreement; and
  - (iii) pay all Taxes which may be assessed against it in respect of any of the Security Property, or as a consequence of performing its duties, or by virtue of its capacity as Security Trustee under any of the Finance Documents or otherwise (other than in connection with its remuneration for performing its duties under this Agreement).
- (b) For the purposes of paragraph 27.5(a)(i) above, if the Security Trustee 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.

#### **27.6 ~~26.6~~Prospective liabilities**

Following acceleration of any Security Interest, the Security Trustee may, in its discretion, or at the request of the Agent, hold any Recoveries in an interest bearing suspense or impersonal

account(s) in the name of the Security Trustee with such financial institution (including itself) and for so long as the Security Trustee shall think fit (the interest being credited to the relevant account) for later payment to the Agent for application in accordance with Clause ~~49-20~~ 20 (*Application of Sums Received*) in respect of:

- (a) any sum to the Security Trustee, any receiver; and
- (b) any part of the Secured Liabilities,

that the Security Trustee or, in the case of paragraph (b) only, the Agent, reasonably considers, in each case, might become due or owing at any time in the future.

#### **27.7 ~~26.7~~ Investment of proceeds**

Prior to the payment of the proceeds of the Recoveries to the Agent for application in accordance with Clause ~~49-20~~ 20 (*Application of Sums Received*) the Security Trustee 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 Trustee with such financial institution (including itself) and for so long as the Security Trustee shall think fit (the interest being credited to the relevant account) pending the payment from time to time of those moneys in the Security Trustee's discretion in accordance with the provisions of this Clause ~~26.7-27.7~~ 27.7 (*Investment of proceeds*).

#### **27.8 ~~26.8~~ Instructions to Security Trustee and exercise of discretion**

- (a) Subject to paragraph (d) below, the Security Trustee shall act in accordance with any instructions given to it by the Agent (acting on the instructions of the Majority Lenders or all the Lenders (as appropriate)) or, if so instructed by the Agent (acting on the instructions of the Majority Lenders or all the Lenders (as appropriate)), refrain from exercising any right, power, authority or discretion vested in it as Security Trustee and shall be entitled to assume that:
  - (i) any instructions received by it from the Agent (acting on the instructions of the Majority Lenders or all the Lenders (as appropriate)) are duly given in accordance with the terms of the Finance Documents; and
  - (ii) unless it has received actual notice of revocation, that those instructions or directions have not been revoked.
- (b) The Security Trustee shall be entitled to request instructions, or clarification of any direction, from the Agent (acting on the instructions of the Majority Lenders or all the Lenders (as appropriate)) as to whether, and in what manner, it should exercise or refrain from exercising any rights, powers, authorities and discretions and the Security Trustee may refrain from acting unless and until those instructions or clarification are received by it.
- (c) Any instructions given to the Security Trustee by the Agent (acting on the instructions of the Majority Lenders or all the Lenders (as appropriate)) shall override any conflicting instructions given by any other Party.
- (d) Paragraph (a) above shall not apply:
  - (i) where a contrary indication appears in this Agreement;
  - (ii) where this Agreement requires the Security Trustee to act in a specified manner or to take a specified action;

- (iii) in respect of any provision which protects the Security Trustee's own position in its personal capacity as opposed to its role of Security Trustee for the Creditor Parties including, without limitation, the provisions set out in Clauses ~~26.10~~-27.10 (*Security Trustee's discretions*) to Clause ~~26.29~~-27.29 (*Full freedom to enter into transactions*); and
- (iv) in respect of the exercise of the Security Trustee's discretion to exercise a right, power or authority under any of Clause ~~26.5~~-27.5 (*Deductions from receipts*) and Clause ~~26.6~~-27.6 (*Prospective liabilities*).

#### **27.9 ~~26.9~~ Security Trustee's Actions**

Without prejudice to the provisions of Clause ~~26.4~~-27.4 (*Application of receipts*), the Security Trustee may (but shall not be obliged to), in the absence of any instructions to the contrary, take such action in the exercise of any of its powers and duties under the Finance Documents as it considers in its discretion to be appropriate.

#### **27.10 ~~26.10~~ Security Trustee's discretions**

- (a) The Security Trustee may:
  - (i) assume (unless it has received actual notice to the contrary from the Agent) that (i) no Event of Default has occurred and no Obligor is in breach of or default under its obligations under any of the Finance Documents and (ii) any right, power, authority or discretion vested by any Finance Document in any person has not been exercised;
  - (ii) assume that any notice or request made by the Borrower (other than the Drawdown Notice) is made on behalf of and with the consent and knowledge of all the Obligors;
  - (iii) if it receives any instructions or directions to take any action in relation to a Security Interest under the Finance Documents, assume that all applicable conditions under the Finance Documents for taking that action have been satisfied;
  - (iv) engage, pay for and rely on the advice or services of any legal advisers, accountants, tax advisers, surveyors or other experts (whether obtained by the Security Trustee or by any other Secured Party) whose advice or services may at any time seem necessary, expedient or desirable;
  - (v) act in relation to the Finance Documents through its personnel and agents;
  - (vi) disclose to any other Party any information it reasonably believes it has received as Security Trustee under this Agreement;
  - (vii) rely upon any communication or document believed by it to be genuine and, as to any matters of fact which might reasonably be expected to be within the knowledge of a Secured Party or an Obligor, upon a certificate signed by or on behalf of that person; and
  - (viii) refrain from acting in accordance with the instructions of any Party (including bringing any legal action or proceeding arising out of or in connection with the Finance Documents) until it has received any indemnification and/or security that it may in its discretion require (whether by way of payment in advance or otherwise) for all costs, losses and liabilities which it may incur in so acting.

- (b) Notwithstanding any other provision of any Finance Document to the contrary, the Security Trustee 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.

**27.11 ~~26.41~~ Security Trustee's obligations**

The Security Trustee shall promptly:

- (a) copy to the Agent the contents of any notice or document received by it from any Obligor under any Finance Document;
- (b) forward to a Party the original or a copy of any document which is delivered to the Security Trustee for that Party by any other Party provided that, except where a Finance Document expressly provides otherwise, the Security Trustee is not obliged to review or check the adequacy, accuracy or completeness of any document it forwards to another Party; and
- (c) inform the Agent of the occurrence of any Event of Default or any default by an Obligor in the due performance of or compliance with its obligations under any Finance Document of which the Security Trustee has received notice from any other party to this Agreement.

**27.12 ~~26.42~~ Excluded obligations**

Notwithstanding anything to the contrary expressed or implied in the Finance Documents, the Security Trustee shall not:

- (a) be bound to enquire as to (i) whether or not any Event of Default has occurred or (ii) the performance, default or any breach by an Obligor of its obligations under any of the Finance Documents;
- (b) 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;
- (c) be bound to disclose to any other person (including but not limited to any Secured Party) (i) any confidential information or (ii) any other information if disclosure would, or might in its reasonable opinion, constitute a breach of any law or be a breach of fiduciary duty;
- (d) have or be deemed to have any relationship of trust or agency with, any Obligor.

**27.13 ~~26.43~~ Responsibility for documentation**

None of the Security Trustee, any receiver shall accept responsibility or be liable for:

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



- (c) any losses to any person or any liability arising as a result of taking or refraining from taking any action in relation to any of the Finance Documents, the Security Property or otherwise, whether in accordance with an instruction from the Agent or otherwise unless directly caused by its Gross Negligence or wilful misconduct;
- (d) the exercise of, or the failure to exercise, any judgment, discretion or power given to it by or in connection with any of the Finance Documents, the Security Property or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with, the Finance Documents or the Security Property; or
- (e) any shortfall which arises on the enforcement or realisation of the Security Property.

**27.14 ~~26.14~~ Exclusion of liability**

- (a) Without limiting Clause ~~26.15~~ 27.15 (*No proceedings*), none of the Security Trustee or any receiver will be liable for any action taken by it or not taken by it under or in connection with any Finance Document or any Security Interest, unless directly caused by its Gross Negligence or wilful misconduct.
- (b) The Security Trustee 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 it if it 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 it for that purpose.
- (c) Nothing in this Agreement shall oblige the Security Trustee to carry out any "know your customer" or other checks in relation to any person on behalf of any Lender and each Lender confirms to the Security Trustee 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 Trustee.

**27.15 ~~26.15~~ No proceedings**

No Party (other than the Security Trustee or that receiver) may take any proceedings against any officer, employee or agent of the Security Trustee or a receiver in respect of any claim it might have against the Security Trustee or a receiver in respect of any act or omission of any kind by that officer, employee or agent in relation to any Finance Document or any Security Property and any officer, employee or agent of the Security Trustee or a receiver may rely on this clause subject to Clause ~~33.4~~ 34.4 (*Third party rights*) and the provisions of the Third Parties Rights Act.

**27.16 ~~26.16~~ Lenders' indemnity to the Security Trustee**

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 Trustee and every receiver within three Business Days of demand, against any cost, loss or liability incurred by any of them (otherwise than by reason of the relevant Security Trustee's or receiver's Gross Negligence or wilful misconduct) in acting as Security Trustee or receiver under the Finance Documents (unless the relevant Security Trustee or receiver has been reimbursed by an Obligor pursuant to a Finance Document).

**27.17 ~~26.47~~ Own responsibility**

Without affecting the responsibility of any Obligor for information supplied by it or on its behalf in connection with any Finance Document, each Creditor Party confirms to the Security Trustee that it has been, and will continue to be, solely responsible for making its own independent appraisal and investigation of all risks arising under or in connection with any Finance Document including but not limited to:

- (a) the financial condition, status and nature of each member of the Group;
- (b) the legality, validity, effectiveness, adequacy and enforceability of any Finance Document, the Security Property and any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Finance Document or the Security Property;
- (c) whether that Creditor Party has recourse, and the nature and extent of that recourse, against any Party or any of its respective assets under or in connection with any Finance Document, the Security Property, the transactions contemplated by the Finance Documents or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Finance Document or the Security Property;
- (d) the adequacy, accuracy and/or completeness of any information provided by the Security Trustee or by any other person under or in connection with any Finance Document, the transactions contemplated by any Finance Document or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Finance Document; and
- (e) the right or title of any person in or to, or the value or sufficiency of any part of the Charged Property, the priority of any of the Security Interests created by the Finance Documents or the existence of any Security Interest affecting the Charged Property,

and each Creditor Party warrants to the Security Trustee that it has not relied on and will not at any time rely on the Security Trustee in respect of any of these matters.

**27.18 ~~26.48~~ No responsibility to perfect Security Interests**

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

- (a) require the deposit with it of any deed or document certifying, representing or constituting the title of any Obligor to any of the Charged Property;
- (b) obtain any licence, consent or other authority for the execution, delivery, legality, validity, enforceability or admissibility in evidence of any of the Finance Documents or any Security Interest;
- (c) register, file or record or otherwise protect any Security Interests (or the priority of any of Security Interest) under any applicable laws in any jurisdiction or to give notice to any person of the execution of any of the Finance Documents or of any Security Interest;
- (d) take, or to require any of the Obligors to take, any steps to perfect its title to any of the Charged Property or to render any Security Interest effective or to secure the creation of any ancillary security under the laws of any jurisdiction; or

- (e) require any further assurances in relation to any of the Finance Documents creating the Security Interests.

**27.19 ~~26.19~~ Insurance by Security Trustee**

- (a) The Security Trustee shall not be under any obligation to insure any of the Charged Property, to require any other person to maintain any insurance or to verify any obligation to arrange or maintain insurance contained in the Finance Documents. The Security Trustee shall not be responsible for any loss which may be suffered by any person as a result of the lack of or inadequacy of any such insurance.
- (b) Where the Security Trustee is named on any insurance policy as an insured party, it shall not be responsible for any loss which may be suffered by reason of, directly or indirectly, 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 Agent shall have requested it to do so in writing and the Security Trustee shall have failed to do so within fourteen (14) days after receipt of that request.

**27.20 ~~26.20~~ Custodians and nominees**

The Security Trustee may appoint and pay any person to act as a custodian or nominee on any terms in relation to any assets of the trust as the Security Trustee 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 Trustee 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.

**27.21 ~~26.21~~ Acceptance of title**

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

**27.22 ~~26.22~~ Refrain from illegality**

Notwithstanding anything to the contrary expressed or implied in the Finance Documents, the Security Trustee may refrain from doing anything which in its opinion will or may be contrary to any relevant law, directive or regulation of any jurisdiction and the Security Trustee may do anything which is, in its opinion, necessary to comply with any such law, directive or regulation.

**27.23 ~~26.23~~ Business with the Group**

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

**27.24 ~~26.24~~ Winding up of trust**

If the Security Trustee, with the approval of the Agent determines that (a) all of the Secured Liabilities and all other obligations secured by the Finance Documents creating the Security Interests have been fully and finally discharged and (b) none of the Secured Parties is under

any commitment, obligation or liability (actual or contingent) to make advances or provide other financial accommodation to any Obligor pursuant to the Finance Documents:

- (a) the trusts set out in this Agreement shall be wound up and the Security Trustee shall release, without recourse or warranty, all of the Security Interests and the rights of the Security Trustee under each of the Finance Documents creating the Security Interests; and
- (b) any Retiring Security Trustee shall release, without recourse or warranty, all of its rights under each of the Finance Documents creating the Security Interests.

**27.25 ~~26.25~~ Perpetuity period**

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

**27.26 ~~26.26~~ Powers supplemental**

The rights, powers and discretions conferred upon the Security Trustee by this Agreement 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 Trustee by general law or otherwise.

**27.27 ~~26.27~~ Trustee division separate**

- (a) In acting as trustee for the Secured Parties, the Security Trustee shall be regarded as acting through its trustee division which shall be treated as a separate entity from any of its other divisions or departments.
- (b) If information is received by another division or department of the Security Trustee, it may be treated as confidential to that division or department and the Security Trustee shall not be deemed to have notice of it nor shall it be obliged to disclose such information to any Party.

**27.28 ~~26.28~~ Disapplication**

In addition to its rights under or by virtue of this Agreement and the other Finance Documents, the Security Trustee shall have all the rights conferred on a trustee by the Trustee Act 1925, the Trustee Delegation Act 1999, the Trustee Act 2000 and by general law or otherwise, provided that:

- (a) section 1 of the Trustee Act 2000 shall not apply to the duties of the Security Trustee in relation to the trusts constituted by this Agreement and the other Finance Documents; and
- (b) 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 allowed by law, prevail and, in the case of any inconsistency with the Trustee Act 2000, such provisions shall constitute a restriction or exclusion for the purposes of the Trustee Act 2000.

**27.29 ~~26.29~~ Full freedom to enter into transactions**

Notwithstanding any rule of law or equity to the contrary, the Security Trustee shall be absolutely entitled:

- (a) to enter into and arrange banking, derivative, investment and/or other transactions of every kind with or affecting any 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 trustee for, and/or participating in, other facilities to such 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 Obligor or any other person; or
  - (ii) any options or other derivatives in connection with such securities; and
- (c) to provide advice or other services to the Borrower or any person who is a party to, or referred to in, a Finance Document,

and, in particular, each Servicing Party 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.

### **27.30 ~~26.30~~ Resignation of the Security Trustee**

- (a) The Security Trustee may resign and appoint one of its affiliates as successor by giving notice to the Borrower and each Secured Party.
- (b) Alternatively the Security Trustee may resign by giving notice to the other Parties in which case the Majority Lenders may appoint a successor Security Trustee.
- (c) If the Majority Lenders have not appointed a successor Security Trustee in accordance with paragraph (b) above within 30 days after the notice of resignation was given, the Security Trustee (after consultation with the Agent) may appoint a successor Security Trustee.
- (d) The retiring Security Trustee (the "**Retiring Security Trustee**") shall, at its own cost, make available to the successor Security Trustee such documents and records and provide such assistance as the successor Security Trustee may reasonably request for the purposes of performing its functions as Security Trustee under the Finance Documents.
- (e) The Security Trustee'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 of the Security Property to that successor.
- (f) Upon the appointment of a successor, the Retiring Security Trustee 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 ~~26.24~~ 27.24 (*Winding up of trust*) and under paragraph (d) above) but shall, in respect of any act or omission by it whilst it was the Security Trustee, remain entitled to the benefit of Clause ~~26.27~~ 27.27 (*The Security Trustee*), Clause ~~26.5~~ 27.5 (*Deductions from receipts*), Clause ~~26.16~~ 27.16 (*Lenders' indemnity to the Security Trustee*) and any other provisions of a Finance Document which are expressed to limit or exclude its liability in acting as Security Trustee. Its successor and each of the other

Parties shall have the same rights and obligations amongst themselves as they would have had if that successor had been an original Party.

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

**27.31 ~~26.34~~ Delegation**

- (a) Each of the Security Trustee or any receiver may, at any time, delegate by power of attorney or otherwise to any person for any period, all or any of the rights, powers and discretions vested in it by any of the Finance Documents.
- (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 Trustee or that receiver (as the case may be) may, in its discretion, think fit in the interests of the Secured Parties and it shall not be bound to supervise, or be in any way responsible for any loss incurred by reason of any misconduct or default on the part of any such delegate or sub delegate.

**27.32 ~~26.32~~ Additional Security Trustee**

- (a) The Security Trustee may at any time appoint (and subsequently remove) any person to act as a separate trustee or as a co-trustee jointly with it:
  - (i) if it considers that appointment to be in the interests of the Secured Parties; or
  - (ii) for the purposes of conforming to any legal requirements, restrictions or conditions which the Security Trustee deems to be relevant; or
  - (iii) for obtaining or enforcing any judgment in any jurisdiction,

and the Security Trustee shall give prior notice to the Borrower and the Agent of that appointment.

- (b) Any person so appointed shall have the rights, powers and discretions (not exceeding those conferred on the Security Trustee by this Agreement) and the duties and obligations that are conferred or imposed by the instrument of appointment.
- (c) The remuneration that the Security Trustee 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 Trustee.

**28 ~~27~~ CONDUCT OF BUSINESS BY THE CREDITOR PARTIES**

**28.1 ~~27.4~~ No provision of this Agreement will:**

- (a) interfere with the right of any Creditor Party to arrange its affairs (Tax or otherwise) in whatever manner it thinks fit;

- (b) oblige any Creditor 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 Creditor Party to disclose any information relating to its affairs (Tax or otherwise) or any computations in respect of Tax.

## 29 ~~28~~ SHARING AMONG THE CREDITOR PARTIES

### **29.1** ~~28.1~~ Payments to Creditor Parties

If a Creditor Party (a "**Recovering Creditor Party**") receives or recovers any amount from an Obligor other than in accordance with this Clause ~~28-29~~ (*Sharing Among the Creditor Parties*) and applies that amount to a payment due under the Finance Documents then:

- (a) the Recovering Creditor Party shall, within three (3) Business Days, notify details of the receipt or recovery to the Agent;
- (b) the Agent shall determine whether the receipt or recovery is in excess of the amount the Recovering Creditor Party would have been paid had the receipt or recovery been received or made by the Agent and distributed in accordance with Clause ~~19-20~~ (*Application of Sums Received*) and Clause ~~29-30~~ (*Payment Mechanics*), without taking account of any Tax which would be imposed on the Agent in relation to the receipt, recovery or distribution; and
- (c) the Recovering Creditor Party shall, within three (3) Business Days of demand by the Agent, pay to the Agent an amount (the "**Sharing Payment**") equal to such receipt or recovery less any amount which the Agent determines may be retained by the Recovering Creditor Party as its share of any payment to be made, in accordance with Clause ~~19-20~~ (*Application of Sums Received*) and Clause ~~29-30~~ (*Payment Mechanics*).

### **29.2** ~~28.2~~ Redistribution of payments

The Agent shall treat the Sharing Payment as if it had been paid by the relevant Obligor and distribute it between the Creditor Parties (other than the Recovering Creditor Party) in accordance with Clause ~~19-20~~ (*Application of Sums Received*) and Clause ~~29-30~~ (*Payment Mechanics*).

### **29.3** ~~28.3~~ Recovering Creditor Party's rights

- (a) On a distribution by the Agent under Clause ~~28.2-29.2~~ (*Redistribution of payments*), the Recovering Creditor Party will, if possible under the relevant applicable laws, be subrogated to the rights of the Creditor Parties which have shared in the redistribution.
- (b) If and to the extent that the Recovering Creditor Party is not able to rely on its rights under paragraph (a) of Clause ~~28.3-29.3~~ (*Recovering Creditor Party's rights*), the relevant Obligor shall be liable to the Recovering Creditor Party for a debt equal to the Sharing Payment which is immediately due and payable.

### **29.4** ~~28.4~~ Reversal of redistribution

If any part of the Sharing Payment received or recovered by a Recovering Creditor Party becomes repayable and is repaid by that Recovering Creditor Party, then:

- (a) each Lender which has received a share of the relevant Sharing Payment pursuant to Clause ~~28.2~~29.2 (*Redistribution of payments*) shall, upon request of the Agent, pay to the Agent for account of that Recovering Creditor 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 Creditor Party for its proportion of any interest on the Sharing Payment which that Recovering Creditor Party is required to pay); and
- (b) that Recovering Creditor Party's rights of subrogation in respect of any reimbursement shall be cancelled and the relevant Obligor will be liable to the reimbursing Creditor Party for the amount so reimbursed.

#### **29.5 ~~28.5~~Exceptions**

- (a) This Clause ~~28-29~~ (*Sharing ~~Among~~among the Creditor Parties*) shall not apply to the extent that the Recovering Creditor Party would not, after making any payment pursuant to this Clause, have a valid and enforceable claim against the relevant Obligor.
- (b) A Recovering Creditor Party is not obliged to share with any other Creditor Party any amount which the Recovering Creditor Party has received or recovered as a result of taking legal or arbitration proceedings, if:
  - (i) it notified that other Creditor Party of the legal or arbitration proceedings; and
  - (ii) that other Creditor 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.

#### **30 ~~29~~PAYMENT MECHANICS**

##### **30.1 ~~29.1~~Payments to the Agent**

- (a) On each date on which an Obligor or a Lender is required to make a payment under a Finance Document, that Obligor or Lender shall make the same available to the Agent (unless a contrary indication appears in a Finance Document) for value on the due date at the time and in such funds specified by the Agent as being customary at the time for settlement of transactions in the relevant currency in the place of payment.
- (b) Payment shall be made to such account in the principal financial centre of the country of that currency (or, in relation to Euro, in a principal financial centre in a Participating Member State or London) with such bank as the Agent specifies.
- (c) Payment shall be made before 11.00 a.m. New York time or 11.00 a.m. Paris time (in the case of a payment in Euro).
- (d) For each payment by the Borrower, it shall notify the Agent on the third Business Day prior to the due date for payment that it will issue to its bank (which shall be named in such notification) to make the payment.

##### **30.2 ~~29.2~~Distributions by the Agent**

Each payment received by the Agent under the Finance Documents for another Party shall, subject to Clause ~~29.3~~30.3 (*Distributions to an Obligor*), Clause ~~29.4~~30.4 (*Clawback*) be made available by the Agent as soon as practicable after receipt to the Party entitled to receive



payment in accordance with this Agreement (in the case of a Lender, for the account of its Facility Office), to such account as that Party may notify to the Agent by not less than five (5) Business Days' notice with a bank 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).

### **30.3 ~~29.3~~Distributions to an Obligor**

The Agent may in accordance with Clause ~~22-23~~ 23 (*Set-Off*) apply any amount received by it for that Obligor in or towards payment (on the date and in the currency and funds of receipt) of any amount due from that Obligor under the Finance Documents or in or towards purchase of any amount of any currency to be so applied.

### **30.4 ~~29.4~~Clawback**

- (a) Where a sum is to be paid to the Agent under the Finance Documents for another Party, the Agent is not obliged to pay that sum to that other Party (or to enter into or perform any related exchange contract) until it has been able to establish to its satisfaction that it has actually received that sum.
- (b) If the Agent pays an amount to another Party and it proves to be the case that the Agent had not actually received that amount, then the Party to whom that amount (or the proceeds of any related exchange contract) was paid by the Agent shall on demand refund the same to the Agent together with interest on that amount from the date of payment to the date of receipt by the Agent, calculated by the Agent to reflect its cost of funds.

### **30.5 ~~29.5~~No set-off by Obligors**

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

### **30.6 ~~29.6~~Business Days**

- (a) Any payment which is due to be made on a day that is not a Business Day shall be made on the next Business Day in the same calendar month (if there is one) or the preceding Business Day (if there is not).
- (b) During any extension of the due date for payment of any principal or unpaid sum under this Agreement interest is payable on the principal or unpaid sum at the rate payable on the original due date.

### **30.7 ~~29.7~~Currency of account**

- (a) Subject to paragraphs (b) and (c) of Clause ~~29.7~~ 30.7 (*Currency of account*), Dollars is the currency of account and payment for any sum from an Obligor under any Finance Document.
- (b) Each payment in respect of costs, expenses or Taxes shall be made in the currency in which the costs, expenses or taxes are incurred.
- (c) Any amount expressed to be payable in a currency other than Dollars shall be paid in that other currency.

### **30.8** ~~29-8~~ Change of currency

- (a) Unless otherwise prohibited by law, if more than one currency or currency unit are at the same time recognised by the central bank of any country as the lawful currency of that country, then:
- (i) any reference in the Finance Documents to, and any obligations arising under the Finance Documents in, the currency of that country shall be translated into, or paid in, the currency or currency unit of that country designated by the Agent (after consultation with the Lenders and the Borrower); and
  - (ii) any translation from one currency or currency unit to another shall be at the official rate of exchange recognised by the central bank for the conversion of that currency or currency unit into the other, rounded up or down by the Agent (acting reasonably).
- (b) If a change in any currency of a country occurs, this Agreement will, to the extent the Agent (acting reasonably and after consultation with the Lenders and the Borrower) specifies to be necessary, be amended to comply with any generally accepted conventions and market practice in the Relevant ~~Interbank~~ Market and otherwise to reflect the change in currency.

### **30.9** ~~29-9~~ Distributions under the Interest Make-Up Agreement

Each payment received by the Agent under the Interest Make-Up Agreement for a Lender shall be made available by the Agent as soon as practicable after receipt to the Lender entitled to receive such payment in accordance with this Agreement (for the account of its Facility Office), to such account as that Lender may notify to the Agent by not less than five (5) Business Days' notice with a bank 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).

## **31** ~~30~~ VARIATIONS AND WAIVERS

### **31.1** ~~30-4~~ Variations, waivers etc. by Majority Lenders

Subject to Clause ~~30-2~~ 31.2 (*Variations, waivers etc. requiring agreement of all Lenders*) and Clause ~~30-4~~ 31.4 (*Other exceptions – FATCA*), a document shall be effective to vary, waive, amend, 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 email, by the Borrower, by the Agent on behalf of the Majority Lenders, by the Agent and the Security Trustee in their own rights, and, if the document relates to a Finance Document to which an Obligor is party, by an Obligor (provided that no amendment or variation may be made to this Agreement or any other Finance Document without the consent of the Italian Authorities); provided, further, that no amendment or variation may be made before the date falling ten Business Days after the terms of that amendment or variation have been notified by the Agent to the Lenders, unless each Lender is a FATCA Protected Lender. The Agent shall notify the Lenders reasonably promptly of any amendments or variations proposed by the Borrower.

### **31.2** ~~30-2~~ Variations, waivers etc. requiring agreement of all Lenders

However, as regards the following, Clause ~~30-4~~ 31.1 (*Variations, waivers etc. by Majority Lenders*) applies as if the words "by the Agent on behalf of the Majority Lenders" were replaced by the words "by or on behalf of every Lender":

- (a) a reduction in the Margin;

- (b) a postponement to the date for, or a reduction in the amount of, any payment of principal, interest, fees, commission or other sum payable under this Agreement;
- (c) an increase in or extension of any Lender's Commitment or any requirement that a cancellation of Commitments reduces the Commitments rateably under the Loan;
- (d) a change to the definition of "**Majority Lenders**";
- (e) a change to Clause 2 (*Facility*), Clause 6 (*Interest*), Clause ~~23-24~~ (*Changes to the Lenders*) or this Clause ~~30-31~~ (*Variations and Waivers*);
- (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.

**31.3 ~~30.3~~ Exclusion of other or implied variations**

Except for a document which satisfies the requirements of Clauses ~~30.1 and 30.2~~ 31.1 (*Variations, waivers etc. by Majority Lenders*) and 31.2 (*Variations, waivers etc. requiring agreement of all Lenders*), no document, and no act, course of conduct, failure or neglect to act, delay or acquiescence on the part of the Creditor Parties or any of them (or any person acting on behalf of any of them) shall result in the Creditor Parties or any of them (or any person acting on behalf of any of them) being taken to have varied, waived, suspended or limited, or being precluded (permanently or temporarily) from enforcing, relying on or exercising:

- (a) a provision of this Agreement or another Finance Document; or
- (b) an Event of Default; or
- (c) a breach by the Borrower or an Obligor 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.

**31.4 ~~30.4~~ Other exceptions – FATCA**

- (a) If the Agent or a Lender reasonably believes that an amendment or waiver may constitute a "material modification" for the purposes of FATCA that may result (directly or indirectly) in a Party being required to make a FATCA Deduction and the Agent or that Lender (as the case may be) notifies the Borrower and the Agent accordingly, that amendment or waiver may, subject to paragraph (b) below, not be effected without the consent of the Agent or that Lender (as the case may be).
- (b) The consent of a Lender shall not be required pursuant to paragraph (a) above if that Lender is a FATCA Protected Lender.

**32 ~~31~~NOTICES**

**32.1 ~~31.1~~General**

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

**32.2 ~~31.2~~Addresses for communications**

A notice shall be sent:

- (a) to the Borrower:

7665 Corporate Center Drive  
Miami FL33126, USA

Attention: Chief Financial Officer and General Counsel  
Email: [ ] / [ ]

- (b) to a Lender:

At the address below its name in Schedule 1 (*Lenders and Commitments*) or (as the case may require) in the relevant Transfer Certificate.

- (c) to the Agent or the SACE Agent:

12 Place des États-Unis  
CS 70052  
92547 Montrouge Cedex, France

Fax No. (33) 1 41 89 19 34  
Attn: Shipping Middle Office – Ms Clémentine Costil and Romy Roussel

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

**32.3 ~~31.3~~Effective date of notices**

Subject to Clauses ~~31.4–32.4~~ (*Service outside business hours*) and ~~31.5–32.5~~ (*Electronic communication*), 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.

**32.4 ~~31.4~~Service outside business hours**

However, if under Clause ~~31.3–32.3~~ (*Effective date of notices*) a notice would be deemed to be served:

- (a) on a day which is not a business day in the place of receipt; or  
(b) on such a business day, but after 6 p.m. local time;

the notice shall (subject to Clause ~~31.5~~32.5 (*Electronic communication*)) be deemed to be served, and shall take effect, at 9 a.m. on the next day which is such a business day.

**32.5 ~~31.5~~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, 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 and if those two Parties:
  - (i) notify each other in writing of their electronic mail address and/or any other information required to enable the sending and receipt of information by that means; and
  - (ii) notify each other of any change to their address or any other such information supplied by them by not less than five Business Days' notice.
- (b) Any electronic communication made between those two Parties will be effective only when actually received in readable form and in the case of any electronic communication made by a Party to the Agent only if it is addressed in such a manner as the Agent shall specify for this purpose.
- (c) Any electronic communication which becomes effective, in accordance with paragraph (b) above, after 5.00 p.m. in the place of receipt shall be deemed only to become effective on the following day.

**32.6 ~~31.6~~Illegible notices**

Clauses ~~31.3~~32.3 (*Effective date of notices*) and ~~31.4~~32.4 (*Service outside business hours*) do not apply if the recipient of a notice notifies the sender within 1 hour after the time at which the notice would otherwise be deemed to be served that the notice has been received in a form which is illegible in a material respect.

**32.7 ~~31.7~~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.

**32.8 ~~31.8~~English language**

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

### **32.9 ~~31.9~~ Meaning of "notice"**

In this Clause ~~31-32~~ 32 (*Notices*), "notice" includes any demand, consent, authorisation, approval, instruction, waiver or other communication.

### **33 ~~32~~ CONFIDENTIALITY**

#### **33.1 ~~32.4~~ Confidential Information**

Each Creditor Party agrees to keep all Confidential Information confidential and not to disclose it to anyone, save to the extent permitted by Clause ~~32.2-33.2~~ 33.2 (*Disclosure of Confidential Information*) 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.

#### **33.2 ~~32.2~~ Disclosure of Confidential Information**

Any Creditor Party may disclose:

- (a) to the Italian Authorities, any of its Affiliates 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 and to any of that person's Affiliates, Representatives and professional advisers;
  - (ii) with (or through) whom it enters into (or may potentially enter into), whether directly or indirectly, any sub-participation in relation to, or any other transaction under which payments are to be made or may be made by reference to, one or more Finance Documents and/or one or more Obligors and to any of that person's Affiliates, Representatives and professional advisers;
  - (iii) appointed by any Creditor Party or by a person to whom paragraph 33.2(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)~~ 33.2(b)(i) or ~~(b)(ii)~~ 33.2(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, arbitrations, administrative or other investigations, proceedings or disputes;
- (vii) which is a classification society or other entity which a Lender has engaged to make the calculations necessary to enable that Lender to comply with its reporting obligations under the Poseidon Principles;
- (viii) who is a Party, a member of the Group or any related entity of an 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; or
- (xi) any employee, officer, director or Representative of any Italian Authorities to whom information is required to be disclosed in the course of such person's employment or duties;
- (xii) to whom or for whose benefit that Creditor Party charges, assigns or otherwise creates a Security Interest (or may do so) pursuant to Clause ~~23.16~~ 24.16 (*Security over Lenders' rights*).

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)(xii) 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)(33.2(b)(i))~~ or ~~(b)(33.2(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 in to a confidentiality agreement substantially in the form of the LMA Master Confidentiality Undertaking for Use With Administration/Settlement

Service Providers or such other form of confidentiality undertaking agreed between the Borrower and the relevant Creditor Party;

- (d) to any rating agency (including its professional advisers) such Confidential Information as may be required to be disclosed to enable such rating agency to carry out its normal rating activities in relation to the Finance Documents and/or the 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.

### **33.3 ~~32-3~~Entire agreement**

This Clause ~~32-33~~ 33 (*Confidentiality*) constitutes the entire agreement between the Parties in relation to the obligations of the Creditor Parties under the Finance Documents regarding Confidential Information and supersedes any previous agreement, whether express or implied, regarding Confidential Information.

### **33.4 ~~32-4~~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.

### **33.5 ~~32-5~~Notification of disclosure**

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

- (a) of the circumstances of any disclosure of Confidential Information made pursuant to paragraph (b)(v) of Clause ~~32-2~~ 33.2 (*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 ~~32-33~~ 33 (*Confidentiality*).

### **33.6 ~~32-6~~Continuing obligations**

The obligations in this Clause ~~32-33~~ 33 (*Confidentiality*) 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 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 Creditor Party otherwise ceases to be a Creditor Party.

### **33.7 ~~32-7~~Disclosure by SACE**

Notwithstanding any other provision of this Agreement to the contrary, SACE may disclose any Confidential Information:



- (a) to its ultimate shareholder, holding, subsidiary, parent and affiliate companies;
- (b) to the Ministry of Economy and Finance of the Republic of Italy and its departments, other Italian Ministries (including any of their department), Interministerial committees of the Italian Government and any other Italian authority, committee, agency or governmental entity;
- (c) to providers of reinsurance/counter guarantee or any form of risk enhancement (including their agents, brokers and consultants) subject to such persons undertaking confidentiality obligations with SACE, unless they are subject to professional duties of confidentiality;
- (d) for the purposes of the State guarantee in favour of SACE pursuant to article 32 of law decree n. 91/2014 converted into law 116/2014 and for the purposes of article 2 of law decree 23/2020 converted into law 40/2020; or
- (e) following any payment due under the SACE Insurance Policy.

#### **34 ~~33~~SUPPLEMENTAL**

##### **34.1 ~~33-1~~Rights cumulative, non-exclusive**

The rights and remedies which the Finance Documents give to each Secured 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.

##### **34.2 ~~33-2~~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.

##### **34.3 ~~33-3~~Counterparts**

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

##### **34.4 ~~33-4~~Third party rights**

A person who is not a party to this Agreement has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce or to enjoy the benefit of any term of this Agreement.

##### **34.5 ~~33-5~~No waiver**

No failure or delay on the part of a Secured Party in exercising any right, power or privilege hereunder shall operate as a waiver thereof; nor shall any single or partial exercise thereof preclude any other or further exercise thereof by the Secured Parties or the exercise by the Secured Parties of any other right, power or privilege. The rights and remedies of the Secured Parties herein provided are cumulative and not exclusive of any rights or remedies provided by law.

**34.6 33-6 Writing required**

This Agreement shall not be capable of being modified otherwise than by an express modification in writing signed by the Borrower, the Agent and the Lenders.

**35 34 GOVERNING LAW**

**35.1 34-1 Law**

This Agreement and any non-contractual obligations arising out of or in connection with it are governed by and construed in accordance with English law.

**36 35 ENFORCEMENT**

**36.1 35-1 Jurisdiction of English Courts**

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) (a "**Dispute**"). Each Party agrees that the courts of England are the most appropriate and convenient courts to settle Disputes and accordingly no Party will argue to the contrary.

**36.2 35-2 Service of process**

Without prejudice to any other mode of service allowed under any relevant law, the Borrower:

- (a) irrevocably appoints Hannaford Turner LLP, currently of ~~9 Cleak Lane~~ 107 Cheapside, London ~~EC4R 2RU~~ UK EC2V 6DN, as its agent for service of process in relation to any proceedings before the English courts in connection with any Finance Document; and
- (b) agrees that failure by a process agent to notify the Borrower of the process will not invalidate the proceedings concerned.
- (c) If any person appointed as an agent for service of process is unable for any reason to act as agent for service of process, the Borrower (on behalf of all the Obligors) must immediately (and in any event within 15 days of such event taking place) appoint another agent on terms acceptable to the Agent. Failing this, the Agent may appoint another agent for this purpose.

**37 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.

**38 ~~37~~ CONFIDENTIALITY OF FUNDING RATES AND REFERENCE BANK QUOTATIONS**

**38.1 ~~37.4~~ Confidentiality and disclosure**

- (a) The Agent and each Obligor agree to keep each Funding Rate (and, in the case of the 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 Agent may disclose:
  - (i) any Funding Rate (but not, for the avoidance of doubt, any Reference Bank Quotation) to the Borrower pursuant to Clause ~~6-6-7.6~~ 6-6-7.6 (*Notification of Interest Periods and Floating Interest Rate*);
  - (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 Agent and the relevant Lender or Reference Bank, as the case may be.
- (c) The 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 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 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 Agent's obligations in this Clause ~~37-38~~ (*Confidentiality of Funding Rates and Reference Bank Quotations*) relating to Reference Bank Quotations are without prejudice to its obligations to make notifications under Clause ~~6-6-7.6~~ (*Notification of Interest Periods and Floating Interest Rate*) **provided that** (other than pursuant to sub-paragraph (i) of paragraph (b) above) the Agent shall not include the details of any individual Reference Bank Quotation as part of any such notification.

### **38.2 ~~37.2~~ Related obligations**

- (a) The Agent and each Obligor acknowledge that each Funding Rate (and, in the case of the 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 Agent and each Obligor undertake not to use any Funding Rate or, in the case of the Agent, any Reference Bank Quotation for any unlawful purpose.
- (b) The 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 (c) of Clause ~~37.4-38.1~~ (*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 ~~37-38~~ (*Confidentiality of Funding Rates and Reference Bank Quotations*).

### **38.3 ~~37.3~~ No Event of Default**

No Event of Default will occur under Clause ~~18.4-19.4~~ (*Breach of other obligations*) by reason only of an Obligor's failure to comply with this Clause ~~37-38~~ (*Confidentiality of Funding Rates and Reference Bank Quotations*).

**This Agreement has been entered into and amended and restated on the date stated at the beginning of this Agreement.**

EXECUTION PAGES

**BORROWER**

SIGNED by )  
 )  
for and on behalf of )  
**EXPLORER NEW BUILD, LLC** )  
in the presence of: )

**LENDERS**

SIGNED by )  
 )  
for and on behalf of )  
AKA AUSFUHRKREDIT-GESELLSCHAFT )  
MIT BESCHRAENKTER HAFTUNG )  
in the presence of: )

SIGNED by )  
 )  
for and on behalf of )  
BANCO BPM S.P.A. )  
in the presence of: )

SIGNED by )  
 )  
for and on behalf of )  
**CREDIT AGRICOLE CORPORATE** )  
**AND INVESTMENT BANK** )  
in the presence of: )

SIGNED by )  
 )  
for and on behalf of )  
**SOCIÉTÉ GÉNÉRALE** )  
in the presence of: }

SIGNED by )  
 )  
for and on behalf of )  
BANCO BPM S.P.A. )  
in the presence of: )

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**SIGNED** by \_\_\_\_\_ )  
for and on behalf of \_\_\_\_\_ )  
**KFW IPEX-BANK GMBH** \_\_\_\_\_ )  
in the presence of: \_\_\_\_\_ )

**SIGNED** by \_\_\_\_\_ )  
for and on behalf of \_\_\_\_\_ )  
**AKA AUSFUHRKREDIT-GESELLSCHAFT** \_\_\_\_\_ )  
**MIT BESCHRAENKTER HAFTUNG** \_\_\_\_\_ )  
**SOCIÉTÉ GÉNÉRALE** \_\_\_\_\_ )  
in the presence of: \_\_\_\_\_ )

**JOINT MANDATED LEAD ARRANGERS**

**SIGNED** by \_\_\_\_\_ )  
\_\_\_\_\_ )  
for and on behalf of \_\_\_\_\_ )  
**CREDIT AGRICOLE CORPORATE** \_\_\_\_\_ )  
**AND INVESTMENT BANK** \_\_\_\_\_ )  
in the presence of: \_\_\_\_\_ )

**SIGNED** by \_\_\_\_\_ )  
\_\_\_\_\_ )  
for and on behalf of \_\_\_\_\_ )  
**KFW IPEX-BANK GMBH** \_\_\_\_\_ )  
in the presence of: \_\_\_\_\_ )

**SIGNED** by \_\_\_\_\_ )  
\_\_\_\_\_ )  
for and on behalf of \_\_\_\_\_ )  
**SOCIETE GENERALE** \_\_\_\_\_ )  
in the presence of: \_\_\_\_\_ )

**AGENT**

**SIGNED** by \_\_\_\_\_ )  
\_\_\_\_\_ )

---

for and on behalf of )  
**CRÉDIT AGRICOLE CORPORATE** ) )  
**AND INVESTMENT BANK** ) )  
in the presence of: )

**SECURITY TRUSTEE**

**SIGNED** by )  
) )  
for and on behalf of )  
**CRÉDIT AGRICOLE CORPORATE** ) )  
**AND INVESTMENT BANK** ) )  
in the presence of: )

**SACE AGENT**

**SIGNED** by )  
) )  
for and on behalf of )  
**CRÉDIT AGRICOLE CORPORATE** ) )  
**AND INVESTMENT BANK** ) )  
in the presence of: )

~~**JOINT MANDATED LEAD ARRANGERS**~~

~~**SIGNED** by )  
) )  
for and on behalf of )  
**CRÉDIT AGRICOLE CORPORATE** ) )  
**AND INVESTMENT BANK** ) )  
in the presence of: )~~

~~**SIGNED** by )  
) )  
for and on behalf of )  
**SOCIETE GENERALE** ) )  
in the presence of: )~~

~~**SIGNED** by )  
) )  
for and on behalf of )  
**HSBC BANK PLC** ) )  
in the presence of: )~~



**SIGNED** by

)

for and on behalf of

)

**KFW IPEX BANK GMBH**

)

in the presence of:

)





## APPENDIX 2

### FORM OF AMENDED AND RESTATED GUARANTEE (MARKED TO INDICATE AMENDMENTS)

Amendments are indicated as follows:

- 1 additions are indicated by underlined text in blue; and
  - 2 deletions are shown by strike-through text in red.
-

Originally dated 31 October 2014 (as amended from time to time, including by a supplemental agreement dated 4 June 2020 ~~and~~, as further amended and restated by an amendment and restatement agreement dated ~~\_\_\_\_\_~~ 17 February 2021, as further amended by a supplemental agreement dated 23 December 2021, as further amended by a supplemental agreement dated 16 December 2022 and as further amended and restated by an amendment and restatement agreement dated \_\_\_\_\_ 2023)

~~Dated \_\_\_\_\_ February 2024~~

**NCL CORPORATION LTD.**  
as Guarantor

and

**CRÉDIT AGRICOLE CORPORATE AND INVESTMENT BANK**  
as Security Trustee

and

**NORWEGIAN CRUISE LINE HOLDINGS LTD.**  
as ~~the~~ Holding

#### **AMENDED AND RESTATED GUARANTEE**

relating to

a loan agreement dated 31 July 2013 (as previously amended from time to time, including amended and restated by an amendment and restatement agreement dated 31 October 2014 ~~and as~~, as further amended by a supplemental agreement dated 4 June 2020 ~~and~~, as further amended and restated by an amendment and restatement agreement dated ~~\_\_\_\_\_ February 2021~~ 17 February 2021, as further amended by a supplemental agreement dated 23 December 2021, as further amended by a supplemental agreement dated 16 December 2022 and as further amended and restated by an amendment and restatement agreement dated \_\_\_\_\_ 2023) in respect of the passenger cruise ship m.v. "SEVEN SEAS EXPLORER"

WATSON FARLEY  
&  
WILLIAMS

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**THIS GUARANTEE** is originally made on 31 October 2014 (as amended from time to time, including by a supplemental agreement dated 4 June 2020 ~~and~~, as further amended and restated by an amendment and restatement agreement dated ~~February 2021~~ February 2021, as further amended by a supplemental agreement dated 23 December 2021, as further amended by a supplemental agreement dated 16 December 2022 and as further amended and restated by an amendment and restatement agreement dated 2023)

## **PARTIES**

- (1) **NCL CORPORATION LTD.**, a company incorporated under the laws of Bermuda with its registered office at Park Place ~~55~~, 55 Par-la-Ville Road, Hamilton HM 11, Bermuda (the "**Guarantor**")
- (2) **CRÉDIT AGRICOLE CORPORATE AND INVESTMENT BANK** a *société anonyme*, having a share capital of EUR 7,851,636,342.00 and its registered office located at 12, Place des États-Unis, CS 70052 92547, Montrouge Cedex, France registered under the no. Siren 304 187 701 at the Registre du Commerce et des Sociétés of Nanterre as security trustee on behalf of the Secured Parties (the "**Security Trustee**", which expression includes its successors, transferees and assigns)
- (3) **NORWEGIAN CRUISE LINE HOLDINGS LTD.**, a company incorporated under the laws of Bermuda with its registered office at Park Place ~~55~~, 55 Par-la-Ville Road, Hamilton HM 11, Bermuda (the "**Holder**")

## **BACKGROUND**

- (A) By a memorandum of agreement dated October 12th, 2012 (as amended from time to time) entered into between (i) Fincantieri S.p.A, a company incorporated in Italy with registered office in Trieste, via Genova, 1, and having fiscal code 00397130584 (the "**Builder**") and (ii) Prestige Cruise Holdings, Inc. and a shipbuilding contract dated 21 June 2013 (as amended from time to time, the "**Shipbuilding Contract**") entered into between (i) the Builder and (ii) Explorer New Build, LLC (the "**Borrower**"), the Builder agreed to design, construct and deliver, and the Borrower agreed to purchase the 738 passenger cruise ship "Seven Seas Explorer" (ex. hull number [\*]), which was delivered to the Borrower on 30 June 2016 in accordance with the Shipbuilding Contract.
  - (B) By a loan agreement dated 31 July 2013 (the "**Original Loan Agreement**") and made between (i) the Borrower, (ii) the Lenders, (iii) the Joint Mandated Lead Arrangers, (iv) the Agent and SACE Agent and (v) the Security Trustee, it was agreed that the Lenders would make available to the Borrower a loan facility of the Dollar Equivalent of up to EUR 299,866,962.00 (not to exceed USD 440,321,649.00) for the purpose of assisting the Borrower in financing (a) payment or reimbursement under the Shipbuilding Contract of all or part of 80% of the Final Contract Price up to the Eligible Amount, (b) payment to SACE of 100% of the SACE Premium (as defined therein).
  - (C) By a guarantee dated 31 July 2013 (as amended from time to time) (the "**Prestige Guarantee**") and made between (i) Prestige Cruise Holdings, Inc. (the "**Prestige Guarantor**") and (ii) the Security Trustee, the Prestige Guarantor agreed to guarantee the obligations of the Borrower under the Original Loan Agreement.
  - (D) By a guarantee dated 31 July 2013 (as amended from time to time) (the "**Seven Seas Guarantee**" and together with the Prestige Guarantee, the "**Prior Guarantees**") and made between (i) Seven Seas Cruises S. de R.L. (the "**Seven Seas Guarantor**" and together with the
-

- Prestige Guarantor, the "**Prior Guarantors**") and (ii) the Security Trustee, the Seven Seas Guarantor agreed to guarantee the obligations of the Borrower under the Original Loan Agreement.
- (E) By an amendment and restatement agreement dated 31 October 2014 (the "**Original Amendment and Restatement Agreement**") and made between (i) the Borrower, (ii) the Lenders, (iii) the Joint Mandated Lead Arrangers, (iv) the Agent and SACE Agent and (v) the Security Trustee, the parties thereto agreed to, among other things, the Guarantor replacing the Prior Guarantors as a guarantor of the obligations of the Borrower under the Original Loan Agreement with the corresponding termination of the Prior Guarantees and the execution and delivery of a guarantee by the Guarantor which was executed on 31 October 2014 (the "**Original Guarantee**").
  - (F) The execution and delivery to the Security Trustee of the Original Guarantee was one of the conditions precedent to the availability of the facility under the Original Loan Agreement.
  - (G) Due to the unprecedented and extraordinary impacts of the Covid-19 pandemic on the cruise sector and cruise operators, SACE informed the cruise operators of its availability to evaluate certain measures (the "**Temporary Measures**") applicable in relation to certain qualifying loan agreements in order to assist companies which are financially sound but dealing with the impact of the temporary but unprecedented Covid-19 pandemic; the possibility to access to such measures was subject, amongst other things, to certain principles dated 15 April 2020 for cruise lines offered by SACE (the "**Original Principles**").
  - (H) Pursuant to the consent request letter dated 18 April 2020, the Borrower and the Guarantor notified the Agent and the SACE Agent of their wish to benefit from the Temporary Measures in relation to certain loan agreements listed therein, including the Original Loan Agreement (as amended and restated ~~pursuant to~~ by the Original Amendment and Restatement Agreement), and requested, amongst other things, the deferral of repayments of principal under the Original Loan Agreement (as amended and restated ~~pursuant to~~ by the Original Amendment and Restatement Agreement) for a period of one year from 1 April 2020 to 31 March 2021 (the "**First Borrower Request**").
  - (I) On 25 May 2020, the Agent (for and on behalf of the Lenders) provided its consent to part of the First Borrower Request in accordance with and subject to certain conditions as set out in an amendment to the Original Loan Agreement (as amended and restated ~~pursuant to~~ by the Original Amendment and Restatement Agreement) dated 4 June 2020 between, amongst others, the Borrower, the Agent and the SACE Agent (the "**2020 Amendment Agreement**") ~~(the Original Loan Agreement as amended and restated pursuant to the Original Amendment and Restatement Agreement and as further amended pursuant to the 2020 Amendment Agreement, the "**Amended Loan Agreement**").~~
  - (J) Due to the continued impacts of the Covid-19 pandemic on the cruise sector and cruise operators, SACE confirmed on 31 December 2020 its availability to evaluate an extension of the Temporary Measures (the "**Extended Temporary Measures**"), again subject to certain principles set out in a document titled "Debt Deferral Extension Framework for ECA-backed Export Financings" dated 26 November 2020 for cruise lines offered by SACE (together with the Original Principles, the "**Principles**").
  - (K) Pursuant to the consent request letter dated 3 December 2020, the Borrower and the Guarantor notified the Agent and the SACE Agent of their wish to benefit from the Extended Temporary Measures in relation to certain loan agreements listed therein, including the
-

- ~~Amended-Original~~ Loan Agreement (as amended and restated by the Original Amendment and Restatement Agreement and as further amended by the 2020 Amendment Agreement), and requested, amongst other things, the deferral of repayments of principal under the ~~Amended-Original~~ Loan Agreement (as amended and restated by the Original Amendment and Restatement Agreement and as further amended by the 2020 Amendment Agreement) for a period of one year from 1 April 2021 to 31 March 2022 (the "**Second Borrower Request**").
- (L) On 25 January 2021, the Agent (for and on behalf of the Lenders) provided its consent to part of the Second Borrower Request in accordance with and subject to certain conditions as set out in an amendment and restatement agreement to the ~~Amended-Original~~ Loan Agreement (as amended and restated by the Original Amendment and Restatement Agreement and as further amended by the 2020 Amendment Agreement) and to the Original Guarantee (as amended ~~pursuant to by~~ the 2020 Amendment Agreement, ~~the "Amended Guarantee"~~) dated ~~\_\_\_\_\_~~ 17 February 2021 between, amongst others, the Borrower, the Guarantor, the Agent and the SACE Agent (the "**February 2021 Amendment and Restatement Agreement**", ~~and the Amended Loan Agreement as amended and restated by the 2021 Amendment and Restatement Agreement, the "Loan Agreement"~~);
- (M) By a supplemental agreement dated 23 December 2021 and made between, amongst others, the Borrower, the Agent and the SACE Agent (the "December 2021 Amendment Agreement"), the Parties agreed to, *inter alia*, amend certain financial covenants and certain other provisions under the Original Loan Agreement (as amended and restated by the Original Amendment and Restatement Agreement, as amended by the 2020 Amendment Agreement and as amended and restated by the 2021 Amendment and Restatement Agreement) and the Original Guarantee (as amended by the 2020 Amendment Agreement and as amended and restated by the 2021 Amendment and Restatement Agreement).
- (N) By a supplemental agreement dated 16 December 2022 and made between, amongst others, the Borrower, the Agent and the SACE Agent (the "December 2022 Amendment Agreement"), the Parties agreed to, *inter alia*, amend certain financial covenants and certain other provisions under the Original Loan Agreement (as amended and restated by the Original Amendment and Restatement Agreement, as amended by the 2020 Amendment Agreement, as amended and restated by the February 2021 Amendment and Restatement Agreement and as amended by the December 2021 Amendment Agreement) and the Original Guarantee (as amended by the 2020 Amendment Agreement, as amended and restated by the February 2021 Amendment and Restatement Agreement and as amended by the December 2021 Amendment Agreement).
- (O) The Parties have agreed to enter into an amendment and restatement agreement to the Original Loan Agreement (as amended and restated by the Original Amendment and Restatement Agreement, as amended by the 2020 Amendment Agreement, as amended and restated by the February 2021 Amendment and Restatement Agreement, as amended by the December 2021 Amendment Agreement and as amended by the December 2022 Amendment Agreement, the "Amended Loan Agreement") and to the Original Guarantee (as amended by the 2020 Amendment Agreement, as amended and restated by the February 2021 Amendment and Restatement Agreement, as amended by the December 2021 Amendment Agreement and as amended by the December 2022 Amendment Agreement, the "Amended Guarantee"), dated \_\_\_\_\_ 2023 to, *inter alia*, incorporate certain amendments including the switch from LIBOR to SOFR (as defined therein) (the "**2023 Amendment**").

and Restatement Agreement" and the Amended Loan Agreement as amended and restated by the 2023 Amendment and Restatement Agreement, the "Loan Agreement").

(P) ~~(M)~~ This Guarantee sets out the terms and conditions of the Amended Guarantee as amended and restated by the ~~2024~~2023 Amendment and Restatement Agreement.

## OPERATIVE PROVISIONS

### 1 INTERPRETATION

#### 1.1 Defined expressions

Words and expressions defined in the Loan Agreement shall have the same meanings when used in this Guarantee unless the context otherwise requires.

#### 1.2 Construction of certain terms

In this Guarantee:

**"Bankruptcy"** includes a liquidation, receivership or administration and any form of suspension of payments, arrangement with creditors or reorganisation under any corporate or insolvency law of any country.

**"Capital Stock"** means:

- (a) in the case of a corporation or company, corporate stock or shares;
- (b) in the case of an association or business entity, any and all shares, interests, participations, rights or other equivalents (however designated) of corporate stock;
- (c) in the case of a partnership or limited liability company, partnership or membership interests (whether general or limited); and
- (d) any other interest or participation that confers on a person the right to receive a share of the profits and losses of, or distributions of assets of, the issuing person.

**"First Financial Quarter"** means the financial quarter ending immediately prior to or on the date falling 90 days before the Intended Delivery Date.

**"Loan Agreement"** has the meaning given to such term in Recital (L).

~~**"Management"** means the employees of the Guarantor and its subsidiaries or their dependants or any trust for which such persons are the intended beneficiary.~~

#### 1.3 Application of construction and interpretation provisions of Loan Agreement

Clauses 1.2 (*Construction of certain terms*) to ~~1.5~~1.6 (*General Interpretation*) of the Loan Agreement apply, with any necessary modifications, to this Guarantee.

#### **1.4 Inconsistency between Loan Agreement provisions and this Guarantee**

This Guarantee shall be read together with the Loan Agreement, but in case of any conflict between the Loan Agreement and this Guarantee, unless expressly provided to the contrary in this Guarantee, the provisions of the Loan Agreement shall prevail.

## **2 GUARANTEE**

### **2.1 Guarantee and indemnity**

The Guarantor unconditionally and irrevocably:

- (a) guarantees to the Security Trustee punctual performance by the Borrower of all the Borrower's obligations under or in connection with the Loan Agreement and every other Finance Document;
- (b) undertakes to the Security Trustee that whenever the Borrower does not pay any amount when due under or in connection with the Loan Agreement and the other Finance Documents, the Guarantor shall immediately on demand pay that amount as if it was the principal obligor;
- (c) agrees that if any obligation guaranteed by it is or becomes unenforceable, invalid or illegal, it will, as an independent and primary obligation, indemnify the Security Trustee and each other Secured Party immediately on demand by the Security Trustee against any cost, loss or liability it incurs as a result of the Borrower not paying any amount which would, but for such unenforceability, invalidity or illegality, have been payable by it under the Loan Agreement or any other Finance Document on the date when it would have been due. Any such demand for indemnification shall be made through the Security Trustee, for itself or on behalf of the Secured Parties. The amount payable by the Guarantor under this indemnity will not exceed the amount it would have had to pay under this Clause 2.1 (*Guarantee and indemnity*) if the amount claimed had been recoverable on the basis of a guarantee.

### **2.2 No limit on number of demands**

The Security Trustee may serve any number of demands under Clause 2.1 (*Guarantee and indemnity*).

## **3 LIABILITY AS PRINCIPAL AND INDEPENDENT DEBTOR**

### **3.1 Principal and independent debtor**

The Guarantor shall be liable under this Guarantee as a principal and independent debtor and accordingly it shall not have, as regards this Guarantee, any of the rights or defences of a surety.

### **3.2 Waiver of rights and defences**

Without limiting the generality of Clause 3.1 (*Principal and independent debtor*), the obligations of the Guarantor under this Guarantee will not be affected or discharged by an act, omission, matter or thing which, but for this Clause, would reduce, release or prejudice any of its obligations under this Guarantee (without limitation and whether or not known to it or any Secured Party) including:

- (a) any time, waiver or consent granted to, or composition with, the Borrower or other person;



- (b) the release of the Borrower or any other person under the terms of any composition or arrangement with any creditor of any affiliate of the Borrower;
- (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, the Borrower or other person or any non-presentation or non-observance of any formality or other requirement in respect of any instrument or any failure to realise the full value of any security;
- (d) any incapacity or lack of power, authority or legal personality of or dissolution or change in the members or status of the Borrower or any other person;
- (e) any amendment, novation, supplement, extension, restatement (however fundamental and whether or not more onerous) or replacement of any Finance Document or any other document or security including without limitation any change in the purpose of, any extension of or any increase in any facility or the addition of any new facility under any Finance Document or other document or security;
- (f) any insolvency or similar proceedings;
- (g) any arrangement or concession (including a rescheduling or acceptance of partial payments) relating to, or affecting, the Finance Documents;
- (h) any release or loss whatsoever of any guarantee, right or Security Interest created by the Finance Documents;
- (i) any failure whatsoever promptly or properly to exercise or enforce any such right or Security Interest, including a failure to realise for its full market value an asset covered by such a Security Interest;
- (j) any other Finance Document or any Security Interest now being or later becoming void, unenforceable, illegal or invalid or otherwise defective for any reason, including a neglect to register it; or
- (k) any unenforceability, illegality or invalidity of any obligation of any person under any Finance Document or any other document or security.

#### **4 EXPENSES**

##### **4.1 Costs of preservation of rights, enforcement etc**

The Guarantor shall pay to the Security Trustee on its demand the amount of all expenses incurred by the Security Trustee or any other Secured Party in connection with any matter arising out of this Guarantee or any Security Interest connected with it, including any advice, claim or proceedings relating to this Guarantee or such a Security Interest.

##### **4.2 Fees and expenses payable under Loan Agreement**

Clause 4.1 (*Costs of preservation of rights, enforcement etc*) is without prejudice to the Guarantor's liabilities in respect of the Borrower's obligations under clauses 9 (*Fees*) and 10 (*Taxes, Increased Costs, Costs and Related Charges*) of the Loan Agreement and under similar provisions of other Finance Documents.

## **5 ADJUSTMENT OF TRANSACTIONS**

### **5.1 Reinstatement of obligation to pay**

The Guarantor shall pay to the Security Trustee on its demand any amount which any Secured Party is required, or agrees, to pay pursuant to any claim by, or settlement with, a trustee in **bankruptcy** Bankruptcy of the Borrower or of any other Obligor (or similar person) on the ground that the Loan Agreement or any other Finance Document, or a payment by the Borrower or of such other Obligor, was invalid or on any similar ground.

## **6 PAYMENTS**

### **6.1 Method of payments**

Any amount due under this Guarantee shall be paid:

- (a) in immediately available funds;
- (b) to such account as the Security Trustee may from time to time notify to the Guarantor;
- (c) without any form of set-off, cross-claim or condition; and
- (d) free and clear of any tax deduction except a tax deduction which the Guarantor is required by law to make.

### **6.2 Grossing-up for taxes**

If the Guarantor is required by law to make a tax deduction, the amount due to the Security Trustee shall be increased by the amount necessary to ensure that the Security Trustee and (if the payment is not due to the Security Trustee for its own account) the Secured Party beneficially interested in the payment receives and retains a net amount which, after the tax deduction, is equal to the full amount that it would otherwise have received.

### **6.3 Tax Credits**

If an additional payment is made by the Guarantor under this Clause and any Secured Party determines that it has received or been granted a credit against or relief of or calculated with reference to the deduction giving rise to such additional payment, such Secured Party shall, to the extent that it can do so without prejudice to the retention of the amount of such credit, relief, remission or repayment and provided that it has received the cash benefit of such credit, relief or remission, pay to the Guarantor such amount as such Secured Party shall in its reasonable opinion have concluded to be attributable to the relevant deduction. Any such payment shall be conclusive evidence of the amount due to the Guarantor hereunder and shall be accepted by the Guarantor in full and final settlement of its rights of reimbursement hereunder in respect of such deduction. Nothing herein contained shall interfere with the right of each Secured Party to arrange its tax affairs in whatever manner it thinks fit. Notwithstanding the foregoing, to the extent that this Clause imposes obligations or restrictions on a party, such obligations or restrictions shall not apply to SACE and SACE shall have no obligations hereunder nor be constrained by such restrictions.

- 6.4 To the extent that this Clause 6 (*Payments*) imposes obligations or restrictions on a Secured Party, such obligations or restrictions shall not apply to SACE and SACE shall have no obligations hereunder nor be constrained by such restrictions.

## 7 INTEREST

### 7.1 Accrual of interest

Any amount due under this Guarantee shall carry interest after the date on which the Security Trustee demands payment of it until it is actually paid, unless interest on that same amount also accrues under the Loan Agreement.

### 7.2 Calculation of interest

Interest on sums payable under this Guarantee shall be calculated and accrue in the same way as interest under clause 6 (*Interest*) of the Loan Agreement.

### 7.3 Guarantee extends to interest payable under Loan Agreement

For the avoidance of doubt, it is confirmed that this Guarantee covers all interest payable under the Loan Agreement, including that payable under clause 17 (*Interest ~~of on~~ Late Payments*) of the Loan Agreement.

## 8 SUBORDINATION

### 8.1 Subordination of rights of Guarantor

Until all amounts which may be or become payable by the Obligors under or in connection with the Finance Documents have been irrevocably paid in full and unless the Agent otherwise directs, all rights which the Guarantor at any time has (whether in respect of this Guarantee or any other transaction) against the Borrower, any other Obligor or their respective assets shall be fully subordinated to the rights of the Secured Parties under the Finance Documents; and in particular, the Guarantor shall not:

- (a) claim, or in a ~~bankruptcy~~ Bankruptcy of the Borrower or any other Obligor prove for, any amount payable to the Guarantor by the Borrower or any other Obligor, whether in respect of this Guarantee or any other transaction;
- (b) take or enforce any Security Interest for any such amount;
- (c) exercise any right to be indemnified by an Obligor;
- (d) bring legal or other proceedings for an order requiring the Borrower or any other Obligor to make any payment, or perform any obligation, in respect of which ~~any~~ the Guarantor has given a guarantee, undertaking or indemnity under this Guarantee;
- (e) claim to set-off any such amount against any amount payable by the Guarantor to the Borrower or any other Obligor; or
- (f) claim any subrogation or right of contribution or other right in respect of any Finance Document or any sum received or recovered by any Secured Party under a Finance Document.

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 Secured Parties by the Obligors under or in connection with the Finance Documents to be repaid in full on trust for the Secured Parties and shall promptly

pay or transfer the same to the Security Trustee or as the Security Trustee may direct for application in accordance with the Loan Agreement and the Finance Documents.

## **9 ENFORCEMENT**

### **9.1 No requirement to commence proceedings against Borrower**

The Guarantor waives any right it may have of first requiring the Security Trustee or any other Secured Party to proceed against or enforce any other rights or security or claim payment from any person before claiming from ~~that~~ the Guarantor under this Guarantee. Neither the Security Trustee nor any other Secured Party will need to make any demand under, commence any proceedings under, or enforce any guarantee or any Security Interest contained in or created by, the Loan Agreement or any other Finance Document before claiming or commencing proceedings under this Guarantee. This waiver applies irrespective of any law or any provision of a Finance Document to the contrary.

### **9.2 Conclusive evidence of certain matters**

However, as against the Guarantor:

- (a) any judgment or order of a court in England or the jurisdiction of the Approved Flag or Bermuda or the United States of America in connection with the Loan Agreement; and
  - (b) any statement or admission by the Borrower in connection with the Loan Agreement,
- shall be binding and conclusive as to all matters of fact and law to which it relates.

### **9.3 Suspense account**

Until all amounts which may be or become payable by the Obligors under or in connection with the Finance Documents have been irrevocably paid in full, the Security Trustee and any Secured Party may:

- (a) refrain from applying or enforcing any other moneys, security or rights held or received by it (or any trustee or agent on its behalf which, in the case of a Secured Party, shall include the Agent and the Security Trustee) 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 ~~any~~ the Guarantor or on account of ~~any~~ the Guarantor's liability under this Guarantee.

## **10 REPRESENTATIONS AND WARRANTIES**

### **10.1 General**

The Guarantor represents and warrants to the Security Trustee as follows on the date of this Guarantee, which representations and warranties shall be deemed to be repeated, with reference mutatis mutandis to the facts and circumstances subsisting, as if made on each day from the date of this Guarantee to the end of the Security Period.

## **10.2 Status**

The Guarantor is duly incorporated and validly existing and in good standing under the laws of Bermuda as an exempted company.

## **10.3 Corporate power**

The Guarantor has the corporate capacity, and has taken all corporate action and obtained all consents necessary for it:

- (a) to execute this Guarantee; and
- (b) to make all the payments contemplated by, and to comply with, this Guarantee.

## **10.4 Consents in force**

All the consents referred to in Clause 10.3 (*Corporate power*) remain in force and nothing has occurred which makes any of them liable to revocation.

## **10.5 Legal validity**

This Guarantee constitutes the Guarantor's legal, valid and binding obligations enforceable against the Guarantor in accordance with its terms subject to any relevant insolvency laws affecting creditors' rights generally.

## **10.6 No conflicts**

The execution by the Guarantor of this Guarantee and its compliance with this Guarantee will not involve or lead to a contravention of:

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

## **10.7 No withholding taxes**

All payments which the Guarantor is liable to make under this Guarantee may be made without deduction or withholding for or on account of any tax payable under any law of Bermuda or the United States of America.

## **10.8 No default**

To the knowledge of the Guarantor, no Event of Default has occurred which is continuing.

## **10.9 Information**

All information which has been provided in writing by or on behalf of the Guarantor to the Security Trustee or any other Secured Party in connection with any Finance Document satisfied the requirements of Clause 11.2 (*Information provided to be accurate*); all audited and unaudited accounts which have been so provided satisfied the requirements of Clause 11.4

(*Form of financial statements*); and there has been no material adverse change in the financial position or state of affairs of the Guarantor from that disclosed in the latest of those accounts.

#### **10.10 No litigation**

No legal or administrative action involving the Guarantor has been commenced or taken or, to the Guarantor's knowledge, is likely to be commenced or taken which, in either case, would be likely to have a material adverse effect on the Guarantor's financial position or profitability.

#### **10.11 No Security Interests**

None of the assets or rights of the Guarantor is subject to any Security Interest except any Security Interest which (i) qualifies as a Permitted Security Interest with respect to the Guarantor or (ii) is permitted by Clause 11.11 (*Negative pledge*).

### **11 UNDERTAKINGS**

#### **11.1 General**

The Guarantor undertakes with the Security Trustee to comply with the following provisions of this Clause 11 (*Undertakings*) at all times from the date of this Guarantee to the end of the Security Period, except as the Security Trustee may otherwise permit.

#### **11.2 Information provided to be accurate**

All financial and other information which is provided in writing by or on behalf of the Guarantor under or in connection with this Guarantee will be true and not misleading and will not omit any material fact or consideration.

#### **11.3 Provision of financial statements**

The Guarantor will send to the Security Trustee:

- (a) as soon as practicable, but in no event later than 120 days after the end of each financial year of the Guarantor beginning with the year ending 31 December 2014, the audited consolidated accounts of the Guarantor and its subsidiaries;
- (b) as soon as practicable (and in any event within forty-five (45) days of the end of the contemplated quarter in respect of the first three quarters of each fiscal year and 90 days in respect of the final quarter) a copy of the unaudited consolidated quarterly management accounts of the Guarantor certified as to their correctness by the chief financial officer of the Guarantor (it being understood that the delivery by the Guarantor of quarterly or annual reports as filed with the Securities and Exchange Commission in respect of the Guarantor and its consolidated subsidiaries shall satisfy all the requirements of this paragraph (b));
- (c) a compliance certificate in the form set out in Schedule 1 (*Form of Compliance Certificate*) to this Guarantee or in such other form as the Security Trustee may reasonably require (each a "**Compliance Certificate**") at the same time as there is delivered to the Security Trustee, and together with, each set of unaudited consolidated quarterly management accounts under paragraph (b) and, if applicable, audited consolidated accounts under paragraph (a), duly signed by the chief financial officer of the Guarantor and certifying whether or not the requirements of Clause 11.15 (*Financial Covenants*) are then complied with;

- (d) such additional financial or other relevant information regarding the Guarantor and the Group as the Security Trustee may reasonably request; and
- (e) as soon as practicable (and in any event not later than 31 January of each fiscal year):
  - (i) updated financial projections of the Group for at least the next five years (including an income statement, balance sheet statement and cash flow statement and quarterly break downs for the first of those five years); and
  - (ii) an outline of the assumptions supporting such budget and financial projections including but without limitation any scheduled drydockings.
- (f) **Additional financial reporting**

In addition to the information to be provided in accordance with clause 12.2 (*Information*) of the Loan Agreement and this Clause 11.3 (*Provision of financial statements*), the Guarantor undertakes to provide to the Agent a written report (in form and substance satisfactory to SACE) from the 2021 Deferral Effective Date until the 2021 Deferral Final Repayment Date, covering the information requested in the document entitled "Debt Deferral Extension - Regular Monitoring Requirements", the form of which is included in Schedule 2 (*Debt Deferral Extension – Regular Monitoring Requirements*), within the timelines specified therein.

- (g) For the avoidance of doubt, subject to the provisions of the Loan Agreement, paragraph (h) below and Clause 11.21 (*Breach of new covenants or the Principles*), the financial covenants contained in Clause 11.15 (*Financial Covenants*) will continue to be tested and the reporting obligations shall continue to apply in accordance with this Clause 11.3 (*Provision of financial statements*) until 31 December 2022.
- (h) Any breach of the financial covenants contained in paragraphs (b) and (c) of Clause 11.15 (*Financial Covenants*) arising on a testing date between the 2021 Deferral Effective Date and 31 December 2022, by reference to the financial position of the Group (on a consolidated basis), shall not (without prejudice to the rights of the Lenders in respect of any further breach of such financial covenants that may occur after 31 December 2022, and subject further to no (a) Event of Default under clauses 18.7 (*Winding-up*) to clause 18.13 (*Cessation of business*) (inclusive) of the Loan Agreement having occurred and being continuing or (b) Deferral Prepayment Event having occurred) result in an Event of Default.

#### **11.4 Form of financial statements**

All accounts (audited and unaudited) delivered under Clause 11.3 (*Provision of financial statements*) will:

- (a) be prepared in accordance with GAAP;
- (b) when required to be audited, be audited by the auditors which are the Guarantor's auditors at the date of this Guarantee or other auditors approved by the Security Trustee, provided that, such approval by the Security Trustee shall not be unreasonably withheld or delayed;
- (c) give a true and fair view of the state of affairs of the Guarantor and its subsidiaries at the date of those accounts and of their profit for the period to which those accounts relate; and
- (d) fully disclose or provide for all significant liabilities of the Guarantor and its subsidiaries.

### **11.5 Shareholder and creditor notices**

The Guarantor will send the Security Trustee, at the same time as they are despatched, copies of all communications which are despatched to the Guarantor's shareholders or creditors generally or any class of them.

### **11.6 Consents**

The Guarantor will maintain in force and promptly obtain or renew, and will promptly send certified copies to the Security Trustee of, all consents required:

- (a) for the Guarantor to perform its obligations under this Guarantee;
- (b) for the validity or enforceability of this Guarantee;

and the Guarantor will comply with the terms of all such consents.

### **11.7 Notification of litigation**

The Guarantor will provide the Security Trustee with details of any material legal or administrative action involving the Guarantor as soon as such action is instituted or it becomes apparent to the Guarantor that it is likely to be instituted (and for this purpose proceedings shall be deemed to be material if they involve a claim in an amount exceeding ~~ten~~ twenty million Dollars (\$20,000,000) or the equivalent in another currency).

### **11.8 Domicile and principal place of business**

The Guarantor:

- (a) will maintain its domicile and registered office at the address stated at the commencement of this Guarantee or at such other address in Bermuda as is notified beforehand to the Security Trustee;
- (b) will maintain its principal place of business and keep its corporate documents and records in the United States of America at 7665 Corporate Center Drive, Miami, 33126, Florida or at such other address in the United States of America as is notified beforehand to the Security Trustee; and
- (c) will not move its domicile out of Bermuda nor its principal place of business out of the United States of America without the prior agreement of the Security Trustee, acting with the authorisation of the Secured Parties, such agreement not to be unreasonably withheld.

### **11.9 Notification of default**

The Guarantor will notify the Security Trustee as soon as the Guarantor becomes aware of the occurrence of an Event of Default and will thereafter keep the Security Trustee fully up-to-date with all developments.

### **11.10 Maintenance of status**

The Guarantor will maintain its separate corporate existence and remain in good standing under the laws of Bermuda.



### 11.11 Negative pledge

The Guarantor shall not, and shall procure that the Borrower will not, create or permit to arise any Security Interest over any asset present or future except Security Interests created or permitted by the Finance Documents and except for the following:

- (a) Security Interests created with the prior consent of the Security Trustee or otherwise permitted by the Finance Documents;
- (b) in the case of the Guarantor, Security Interests which qualify as Permitted Security Interests with respect to the Guarantor;
- (c) in the case of the Borrower, Security Interests permitted under clause 12.7 (*Negative pledge*) of the Loan Agreement;
- (d) Security Interests provided in favour of lenders under and in connection with any refinancing of the Existing Indebtedness or any financing arrangements entered into by any member of the Group for the acquisition of additional or replacement ship(s) (including any refinancing of any such arrangement) but limited to:
  - (i) pledges of the share capital of the relevant ship owning subsidiary(/ies); and/or
  - (ii) ship mortgages and other securities over the financed ship(s).

### 11.12 No disposal of assets, change of business

The Guarantor will:

- (a) not, and shall procure that its subsidiaries, as a group, shall not, transfer all or substantially all of the cruise vessels owned by them and shall procure that any cruise vessels which are disposed of in compliance with the foregoing shall be disposed of on a willing seller willing buyer basis at or about market rate and at arm's length subject always to the provisions of any pertinent loan documentation, and
- (b) continue to be a holding company for a group of companies whose main business is the operation of cruise vessels as well as the marketing of cruises on board such vessels and the Guarantor will not change its main line of business so as to affect any Obligor's ability to perform its obligations under the Finance Documents or to imperil, in the opinion of the Security Trustee, the security created by any of the Finance Documents or the SACE Insurance Policy.

### 11.13 No merger etc.

The Guarantor shall not enter into any form of merger, sub-division, amalgamation, restructuring, consolidation, winding-up, dissolution or anything analogous thereto or acquire any entity, share capital or obligations of any corporation or other entity (each of the foregoing being a "**Transaction**") unless:

- (a) the Guarantor has notified the Security Trustee in writing of the agreed terms of the relevant Transaction promptly after such terms have been agreed as heads of terms (or similar) and thereafter notified the Security Trustee in writing of any significant amendments to such terms during the course of the negotiation of the relevant Transaction; and

- (b) the relevant Transaction does not require or involve or result in any dissolution of the Guarantor so that at all times the Guarantor remains in existence; and
- (c) each notice delivered to the Security Trustee pursuant to paragraph (a) above is accompanied by a certificate signed by the chief financial officer of the Guarantor whereby the Guarantor represents and warrants to the Security Trustee that the relevant Transaction will not:
  - (i) adversely affect the ability of any Obligor to perform its obligations under the Finance Documents;
  - (ii) imperil the security created by any of the Finance Documents or the SACE Insurance Policy; or
  - (iii) affect the ability of the Guarantor to comply with the financial covenants contained in Clause 11.15 (*Financial Covenants*); and
- (d) if the merger or analogous transaction involves the Guarantor or the Borrower, all the necessary "Know your customer requirements" have been complied with.

**11.14 Maintenance of ownership of Seven Seas and Borrower.**

- (a) The Guarantor shall remain the direct or indirect beneficial owner of the entire issued and allotted share capital of Seven Seas, free from any Security Interest and Seven Seas shall remain the legal holder and direct beneficial owner of all membership interest in the Borrower, free from any Security Interest, except that created in favour of the Security Trustee; or
- (b) no person or "group" (within the meaning of Rules 13d-3 and 13d-5 under the Securities Exchange Act of 1934 (15 USC §78a et seq.) (the "**Exchange Act**") as in effect on the Delivery Date) shall acquire beneficial ownership of 35% or more on a fully diluted basis of the voting interest in the Guarantor's equity interests.

**11.15 Financial Covenants**

- (a) The Guarantor will not permit the Free Liquidity to be less than fifty million Dollars (\$50,000,000-) at any time, save that until ~~31 December 2022~~30 September 2026, this amount shall be increased to ~~\$200,000,000~~two hundred and fifty million Dollars (\$250,000,000).
- (b) The Guarantor will not permit the ratio of Total Net Funded Debt to Total Capitalization to be greater than 0.70:1.00 at any time, save that from 1 January 2023 until 30 September 2026, this ratio shall be computed in accordance with the table below.
- (c) The Guarantor will not permit the ratio of Consolidated EBITDA to Consolidated Debt Service for the Group at the end of any fiscal quarter, computed for the period of the four consecutive fiscal quarters ending as at the end of the relevant fiscal quarter, to be less than 1.25:1.00 unless the Free Liquidity of the Group at all times during such period of four consecutive fiscal quarters ending as at the end of such fiscal quarter was equal to or greater than one hundred million Dollars (\$100,000,000-), save that from 1 January 2023 until 30 September 2026, this amount shall be increased to three hundred million Dollars (\$300,000,000).

	<u>1Q</u> <u>2023</u>	<u>2Q</u> <u>2023</u>	<u>3Q</u> <u>2023</u>	<u>4Q</u> <u>2023</u>	<u>1Q</u> <u>2024</u>	<u>2Q</u> <u>2024</u>	<u>3Q</u> <u>2024</u>	<u>4Q</u> <u>2024</u>	<u>1Q</u> <u>2025</u>	<u>2Q</u> <u>2025</u>	<u>3Q</u> <u>2025</u>	<u>4Q</u> <u>2025</u>	<u>1Q</u> <u>2026</u>	<u>2Q</u> <u>2026</u>	<u>3Q</u> <u>2026</u>
<u>Total Net Funded Debt to Total Capitalization</u>	<u>0.93</u>	<u>0.92</u>	<u>0.91</u>	<u>0.91</u>	<u>0.91</u>	<u>0.90</u>	<u>0.88</u>	<u>0.87</u>	<u>0.87</u>	<u>0.85</u>	<u>0.82</u>	<u>0.79</u>	<u>0.79</u>	<u>0.76</u>	<u>0.73</u>

**11.16 Financial definitions**

For the purposes of Clause 11.15 (*Financial Covenants*):

- (a) "**Cash Balance**" shall mean, at any date of determination, the unencumbered and otherwise unrestricted cash and Cash Equivalents of the Group;
- (b) "**Cash Equivalents**" shall mean:
  - (i) securities issued or directly and fully guaranteed or insured by the United States or any agency or instrumentality thereof (provided that the full faith and credit of the United States is pledged in support thereof) having maturities of not more than one year from the date of acquisition,
  - (ii) time deposits and certificates of deposit of any commercial bank having, or which is the principal banking subsidiary of a bank holding company having capital, surplus and undivided profits aggregating in excess of \$200,000,000, with maturities of not more than one year from the date of acquisition by any person,

- (iii) repurchase obligations with a term of not more than 90 days for underlying securities of the types described in paragraph (i) above entered into with any bank meeting the qualifications specified in paragraph (ii) above,
  - (iv) commercial paper issued by any person incorporated in the United States rated at least A-1 or the equivalent thereof by S&P or at least B-1 or the equivalent thereof by Moody's and in each case maturing not more than one year after the date of acquisition by any other person, and
  - (v) investments in money market funds substantially all of whose assets are comprised of securities of the types described in paragraphs (i) through (iv) above;
- (c) **"Consolidated Debt Service"** shall mean, for any relevant period, the sum (without double counting), determined in accordance with GAAP, of:
- (i) the aggregate principal payable or paid during such period on any Indebtedness for Borrowed Money of any member of the Group, other than:
    - (A) principal of any such Indebtedness for Borrowed Money prepaid at the option of the relevant member of the Group or by virtue of "cash sweep" or "special liquidity" cash sweep provisions (or analogous provisions) in any debt facility of the Group;

- (B) principal of any such Indebtedness for Borrowed Money prepaid upon a sale or a Total Loss of any ship (as if references in that definition were to all ships and not just the Ship) owned or leased under a capital lease by any member of the Group; and
  - (C) balloon payments of any such Indebtedness for Borrowed Money payable during such period (and for the purpose of this paragraph (c) a "balloon payment" shall not include any scheduled repayment instalment of such Indebtedness for Borrowed Money which forms part of the balloon);
- (ii) Consolidated Interest Expense for such period;
  - (iii) the aggregate amount of any dividend or distribution of present or future assets, undertakings, rights or revenues to any shareholder of any member of the Group (other than the Guarantor, or one of its wholly owned Subsidiaries) or any dividends or distributions other than tax distributions in each case paid during such period; and
  - (iv) all rent under any capital lease obligations by which the Guarantor or any consolidated Subsidiary is bound which are payable or paid during such period and the portion of any debt discount that must be amortized in such period;

as calculated in accordance with GAAP and derived from the then latest accounts delivered under Clause 11.3 (*Provision of financial statements*);

- (d) "**Consolidated EBITDA**" shall mean, for any relevant period, the aggregate of:
  - (i) Consolidated Net Income from the Guarantor's operations for such period; and
  - (ii) the aggregate amounts deducted in determining Consolidated Net Income for such period in respect of gains and losses from the sale of assets or reserves relating thereto, Consolidated Interest Expense, depreciation and amortization, impairment charges and any other non-cash charges and deferred income tax expense for such period;
- (e) "**Consolidated Interest Expense**" shall mean, for any relevant period, the consolidated interest expense (excluding capitalized interest) of the Group for such period;
- (f) "**Consolidated Net Income**" shall mean, for any relevant period, the consolidated net income (or loss) of the Group for such period as determined in accordance with GAAP;
- (g) "**Free Liquidity**" shall mean, at any date of determination, the aggregate of the Cash Balance or any other amounts available for drawing under other revolving or other credit facilities of the Group, which remain undrawn, could be drawn for general working capital purposes or other general corporate purposes and would not, if drawn, be repayable within six months;
- (h) "**Indebtedness**" shall mean any obligation for the payment or repayment of money, whether as principal or as surety and whether present or future, actual or contingent including, without limitation, pursuant to an Interest Rate Protection Agreement or Other Hedging Agreement;
- (i) "**Indebtedness for Borrowed Money**" shall mean Indebtedness (whether present or future, actual or contingent, long-term or short-term, secured or unsecured) in respect of:
  - (i) moneys borrowed or raised;

- (ii) the advance or extension of credit (including interest and other charges on or in respect of any of the foregoing);
- (iii) the amount of any liability in respect of leases which, in accordance with GAAP, are capital leases;
- (iv) the amount of any liability in respect of the purchase price for assets or services payment of which is deferred for a period in excess of 180 days;
- (v) all reimbursement obligations whether contingent or not in respect of amounts paid under a letter of credit or similar instrument; and
- (vi) (without double counting) any guarantee of Indebtedness falling within paragraphs (i) to (v) above;

**Provided that** the following shall not constitute Indebtedness for Borrowed Money:

- (A) loans and advances made by other members of the Group which are subordinated to the rights of the Secured Parties;
  - (B) loans and advances made by any shareholder of the Guarantor which are subordinated to the rights of the Secured Parties on terms reasonably satisfactory to the Agent; and
  - (C) any liabilities of the Guarantor or any other member of the Group under any Interest Rate Protection Agreement or any Other Hedging Agreement or other derivative transactions of a non-speculative nature;
- (j) **"Interest Rate Protection Agreement"** shall mean any interest rate swap agreement, interest rate cap agreement, interest collar agreement, interest rate hedging agreement, interest rate floor agreement or other similar agreement or arrangement entered into between a Lender or its Affiliate, or a Joint Mandated Lead Arranger or its Affiliate, and the Guarantor and/or the Borrower in relation to the Secured Liabilities of the Borrower under the Loan Agreement;
  - (k) **"Other Hedging Agreement"** shall mean any foreign exchange contracts, currency swap agreements, commodity agreements or other similar agreements or arrangements entered into between a Lender or its Affiliate, or a Joint Mandated Lead Arranger or its Affiliates, and the Guarantor and/or the Borrower in relation to the Secured Liabilities of the Borrower under the Loan Agreement and designed to protect against the fluctuations in currency or commodity values;
  - (l) **"Total Capitalization"** means, at any date of determination, the Total Net Funded Debt plus the consolidated stockholders' equity of the Group at such date determined in accordance with GAAP and derived from the then latest accounts delivered under Clause 11.3 (*Provision of financial statements*); provided it is understood that the effect of any impairment of intangible assets and, in relation to exchangeable or convertible notes or other debt instruments containing similar equity mechanisms, any non-cash loss, charge or expense shall be added back to stockholders' equity;~~and~~
  - (m) **"Total Net Funded Debt"** shall mean, as at any relevant date:
    - (i) Indebtedness for Borrowed Money of the Group on a consolidated basis; and

- (ii) the amount of any Indebtedness for Borrowed Money of any person which is not a member of the Group but which is guaranteed by a member of the Group as at such date;

~~less~~ an amount equal to any Cash Balance as at such date; ~~Provided~~ provided that any Commitments and other amounts available for drawing under other revolving or other credit facilities of the Group which remain undrawn shall not be counted as cash or indebtedness for the purposes of this Guarantee.

#### 11.17 Negative Undertakings

- (a) The Guarantor may, subject to the provisions of paragraph (c) below:
  - (i) at any time prior to the end of the First Financial Quarter, declare or pay dividends or make other distributions or payment in respect of Financial Indebtedness owed to its shareholders without the prior written consent of the Agent;
  - (ii) at any time after the end of the First Financial Quarter, declare or pay dividends or make other distributions or payment in respect of Financial Indebtedness owed to its shareholders without the prior written consent of the Agent, subject to it on each such occasion satisfying the Agent acting on behalf of the Creditor Parties that it will continue to meet all the requirements of Clause 11.15 (*Financial Covenants*), if such covenants were to be tested immediately following the payment of any such dividend; and
  - (iii) pay dividends (x) to persons responsible for paying the tax liability in respect of consolidated, combined, unitary or affiliated tax returns for each relevant jurisdiction of the Group, or (y) to holders of the Guarantor's Capital Stock with respect to income taxable as a result of a member of the Group being taxed as a pass-through entity for U.S. Federal, state and local income tax purposes or attributable to any member of the Group,

provided that the actions in paragraphs (ii) and 7.12 above shall only be permitted if there is no Event of Default which is continuing under the Loan Agreement and no Event of Default would arise from the payment of such dividend.

- (b) ~~subject to the restrictions set out in~~ Save as permitted by Clause 11.19 (*New capital raises or financing*), the Guarantor shall not, and shall procure that none of its subsidiaries shall:
  - (i) make loans to any person that is not the Guarantor or a direct or indirect subsidiary of the Guarantor; or
  - (ii) issue or enter into one or more guarantees covering the obligations of any person which is not the Guarantor or a direct or indirect subsidiary of the Guarantor,

except if such loan is granted to a non-subsiary or such guarantee is issued in the ordinary course of business covering the obligations of a non-subsiary and the aggregate amount of all such loans and guarantees made or issued by the Guarantor and its subsidiaries does not exceed [\*] Dollars (\$[\*]) or is otherwise approved by the Security Trustee which approval shall not be unreasonably withheld if such loan or guarantee in respect of a non-subsiary would neither:

- (A) affect the ability of any Obligor to perform its obligations under the Finance Documents; nor
- (B) imperil the security created by any of the Finance Documents or the SACE Insurance Policy; nor
- (C) affect the ability of the Guarantor to comply with the financial covenants contained in Clause 11.15 (*Financial Covenants*) if such covenants were to be tested immediately following the grant of such loan or the issuance of such guarantee, as demonstrated by evidence satisfactory to the Security Trustee.

**(c) Dividend restriction**

During the period up to and including the 2021 Deferral Final Repayment Date, neither the Guarantor nor the Holding shall, and the Guarantor shall procure that none of its subsidiaries shall:

- (i) declare, make or pay any dividend or other distribution (or interest on any unpaid dividend or other distribution) (whether in cash or in kind) on or in respect of its share capital (or any class of its share capital);
- (ii) repay or distribute any dividend or share premium reserve;
- (iii) make any repayment of any kind under any shareholder loan; or
- (iv) redeem, repurchase (whether by way of share buy-back program or otherwise), defease, retire or repay any of its share capital or resolve to do so,

except that (A) any Obligor other than the Guarantor may pay dividends and other distributions, directly or indirectly, to the Guarantor for the purpose of providing liquidity to the Guarantor to enable the Guarantor to satisfy payment obligations for which the Guarantor is an obligor, (B) any Obligor may pay dividends in respect of the Tax liability to each relevant jurisdiction in respect of consolidated, combined, unitary or affiliated Tax returns for each relevant jurisdiction of the Group or the Holding or holder of the Guarantor's ~~capital stock~~ Capital Stock with respect to income taxable as a result of any member of the Group or the Holding being taxed as a pass-through entity for U.S. Federal, state and local income Tax purposes or attributable to any member of the Group, (C) the Guarantor and the Holding may pay dividends and other distributions (x) in respect of a conversion, exchange, or repurchase of convertible or exchangeable notes and any conversion of preference shares to ordinary shares in connection therewith, provided that the cash portion of a repurchase of convertible or exchangeable notes is limited to the amount of interest that would otherwise be payable through maturity on the amount of such convertible or exchangeable notes being repurchased plus any amount in lieu of fractional shares and (y) to the extent contractually owed to holders of equity in the Guarantor or the Holding and (D) the Guarantor may pay dividends and other distributions to the Holding for the purposes of providing cash to the Holding for the payment of any Tax payable in connection with the Holding's equity plan,

provided that the actions in paragraphs (B) and (C) above shall only be permitted if there is no Event of Default which is continuing under the Loan Agreement and no Event of Default would arise from the payment of such dividend.

- (d) For the avoidance of doubt, the Holding gives no guarantee of any kind nor undertakes any obligations under this Guarantee other than the undertaking as expressly specified in paragraph (c) above.

#### 11.18 Most favoured nations

- (a) The Guarantor undertakes that if at any time after the date of this Guarantee it enters into any financial contract or financial document relating to any Financial Indebtedness with or which has the support of any export credit agency and which contains *pari passu* provisions or cross default provisions which are more favourable to the lenders than those contained in paragraph (l) of clause 11.2 (*Continuing representations and warranties*) of the Loan Agreement and clause 18.6 (*Cross default*) of the Loan Agreement respectively, the Guarantor shall immediately notify the Borrower and the Agent of such provisions and the relevant provisions contained in the Loan Agreement shall be deemed amended so that such more favourable *pari passu* provisions or cross default provisions are granted to the Creditor Parties pursuant to the Loan Agreement.
- (b) The Guarantor undertakes that if at any time after the date of this Guarantee and until the occurrence of a Reinstatement Event, it or any other member of the Group is required to grant additional security in relation to a financial contract or financial document relating to any existing Financial Indebtedness:
- (i) with the support of any export credit agency (excluding any extensions, increases or changes to the terms and conditions thereof), such security shall be granted on a *pari passu* basis to the Lenders (and the Security Trustee agrees to enter and/or procure the entry by the relevant Secured Parties into such intercreditor documentation to reflect such *pari passu* ranking (in form and substance reasonably satisfactory to the Secured Parties) as may be required in connection with such arrangements); or
- (ii) without the support of any export credit agency (excluding any extensions, increases or changes to the terms and conditions thereof), such security shall (without prejudice to any of the Obligors' other obligations under the Finance Documents), subject to the provisions of Clause 11.11 (*Negative pledge*) of this Guarantee and clause 12.7 (*Negative pledge*) of the Loan Agreement, be permitted provided that it shall not have an adverse effect on any Security Interests or other rights granted to the Secured Parties under the Finance Documents.
- (c) ~~in~~ Until the occurrence of a Reinstatement Event, in respect of any new Financial Indebtedness (other than Permitted Financial Indebtedness), or any extensions, increases or changes to the terms and conditions of any existing Financial Indebtedness, in each case with or which has the support of any export credit agency, the Guarantor shall enter into good faith negotiations with the Security Trustee to grant additional security for the purpose of further securing the Loan, provided that any failure to reach agreement under this paragraph (c) following such good faith negotiations shall not constitute an Event of Default.

#### 11.19 New capital raises or financing

- (a) Save as provided below, during the period up to and including the 2021 Deferral Final Repayment Date:
- (i) no new debt ~~or equity issuance~~ shall be raised and no new Financial Indebtedness shall be incurred by the Group (including, for the avoidance of doubt, inter-company loans);



- (ii) no non-arm's length disposals of any asset relating to the Group fleet shall be made; and
  - (iii) no additional Security Interests securing existing Financial Indebtedness will be created or permitted to subsist by any Obligor (unless the Lenders benefit from this new security on a *pari passu* basis).
- (b) The restrictions in paragraph (a) above shall not apply in relation to:
- (i) any refinancing of any bond issuance of, or loan entered into by, the Group (A) which matures during such period or (B) where not maturing during such period, which shall be on terms ~~which include any of the following (evidence of which shall be provided to the Agent by the Guarantor)~~ resulting, when taken as a whole, in an improvement of the ability of the Obligors to meet their obligations under the Finance Documents, which terms include any of the following: an extension of the repayment terms; a decrease in the interest rate; or the conversion of such Financial Indebtedness from secured to unsecured or first to second priority;
  - (ii) any debt ~~or equity issuance~~ provided prior to 31 December ~~2022-2023~~ to provide the Group with crisis and/or recovery related funding in respect of the impact of the Covid-19 pandemic;
  - (iii) any debt ~~or equity issuance~~ being raised on or after 31 December ~~2022-2023~~ to support the Group with the impact of the Covid-19 pandemic, made with the prior written consent of SACE;
  - (iv) any debt ~~or equity issuance~~ being raised to finance any instalment of a cruise vessel already contracted for or contracted for during such period or any refurbishment, maintenance, upgrade or lengthening of a cruise ship during such period (including without limitation any costs incurred by the owner of a cruise ship in connection therewith);
  - (v) any debt ~~or equity issuance~~ being raised to finance capital expenditure for projects which are already contracted for but in respect of which committed financing has not yet been obtained, and which, in each case has been (or will be) listed in the Information Package submitted to the Agent prior to the February 2021 ~~Deferral~~ Effective Date;
  - (vi) any extension or renewal of revolving credit facilities, and made with the prior written consent of SACE if any additional security is to be granted;
  - (vii) any new debt ~~or equity issuance~~ otherwise agreed by SACE;
  - (viii) any inter-company loan or operating arrangement which from an accounting perspective has the effect of an intercompany loan (an "**intercompany arrangement**") which:
    - (A) is existing as at the date of the 2021 Amendment and Restatement Agreement; or
    - (B) is made among any Group members or any Group member with the Holding provided that:
-

- (1) any inter-company arrangement is made solely for the purpose of regulatory or Tax purposes carried out in the ordinary course of business and on an arm's length basis; and
  - (2) the aggregate principal amount of any inter-company arrangements pursuant to ~~this paragraph~~ ~~(B) sub-paragraph~~ (b)(viii)(B) of this Clause 11.19 (New capital raises or financing) does not exceed [\*] Dollars (\$[\*]) at any time; or
- (C) has been approved with the prior written consent of SACE;
- (ix) any Permitted Security Interest;
  - (x) any Security Interest otherwise approved with the prior written consent of SACE;
  - (xi) any Financial Indebtedness incurred in the ordinary course of business which in the aggregate does not exceed USD [\*] during any twelve-month period; ~~or, it being provided that:~~
    - (A) prior to 31 December 2022, this amount shall be increased to USD [\*] for any Financial Indebtedness incurred to finance capital expenditure for Approved Projects; and
    - (B) if any part of such Financial Indebtedness allocated to an Approved Project remains unused throughout the twelve-month period of year 2022, the surplus may be carried over to increase the relevant Financial Indebtedness throughout the twelve-month period of year 2023 for that Approved Project only;
  - (xii) without prejudice to clauses 12.10 (*Mergers*) and 12.14 (*Investments*) of the Loan Agreement and Clause 11.13 (*No merger etc-*), the issuance of share capital by any Group member to another Group member; and
  - (xiii) any extension, renewal, replacement or upsizing in respect of the Term and Revolving Credit Facilities (including the granting of additional Security Interests);
- and, for the avoidance of doubt, no debt or equity issuance shall be raised in respect of any form of merger, sub-division, amalgamation, restructuring, consolidation, winding-up, dissolution or anything analogous thereto or acquisition of any entity, share capital or obligations of any corporation or other entity.

## 11.20 Payments under the Shipbuilding Contracts

Until the 2021 Deferral Final Repayment Date:

- (a) the Guarantor shall and the Guarantor shall procure that any member of the Group that has entered into a shipbuilding contract with a shipbuilder or enters into any such shipbuilding contract, in each case which is financed with the support of SACE (the "**Covered Shipbuilding Contracts**") shall continue to perform all of their respective obligations as set out in any Covered Shipbuilding Contract (including without limitation the payment of any instalments due under any Covered Shipbuilding Contract (as the same may have been amended prior to the 2021 Deferral Effective Date), and subject to any amendment agreed pursuant to paragraph 7.9 below). The Guarantor shall and the Guarantor shall procure that any member

of the Group shall promptly notify the Agent and SACE of any failure by it to comply with any due and owing obligations under a Covered Shipbuilding Contract; and

- (b) the Guarantor shall and the Guarantor shall procure that any member of the Group further undertakes to consult with the Agent and SACE in respect of any proposed amendment to a Covered Shipbuilding Contract insofar as any such proposed amendment relates to a payment instalment or (save as expressly permitted by the Loan Agreement) a delivery date or any other substantial amendment which may affect the related financing and to obtain the Agent and SACE's approval prior to executing any such amendment.

#### **11.21 Breach of new covenants or the Principles**

- (a) Failure to comply, until the 2021 Deferral Final Repayment Date, with the provisions of paragraph (f) of Clause 11.3 (*Provision of financial statements*), paragraph (c) of Clause 11.17 (*Negative Undertakings*), Clause 11.19 (*New capital raises or financing*) Clause 11.20 (*Payments under the Shipbuilding Contracts*), or to otherwise duly perform and observe the other requirements and obligations set out in the Principles shall, in each case, not constitute an Event of Default under the Loan Agreement but (in the case of any failure that is capable of remedy (in the opinion of the Agent, at its sole discretion), including any failure to comply with Clause 11.20 (*Payments under the Shipbuilding Contracts*) or paragraph (f) of Clause 11.3 (*Provision of financial statements*), only if such failure is not remedied within the Relevant Period pursuant to clause 18.4 (*Breach of other obligations*) of the Loan Agreement from the date of such failure to comply) shall have the following consequences:

- (i) the Agent shall reinstate from the date of such breach the requirement to comply with the covenant granted pursuant to clause 15 (*Security Value Maintenance*) of the Loan Agreement and the financial covenants set out in paragraphs (b) and (c) of Clause 11.15 (*Financial Covenants*) which was otherwise suspended by operation of the Loan Agreement and this Guarantee;

- (ii) in respect of paragraph (c) of Clause 11.17 (*Negative Undertakings*) and [Clause](#) 11.19 (*New capital raises or financing*), as well as a failure to perform and observe the other requirements and obligations set out in the Principles (including but not limited to any Obligor (a) commencing, or having commenced against it, any case, proceeding or other action seeking (i) to adjudicate it as bankrupt or insolvent, (ii) reorganization, arrangement, winding-up, liquidation, dissolution, or other relief with respect to it or its debts, (iii) the appointment of a receiver, trustee, or custodian or other similar official for it or for all or a substantial part of its assets, (b) making a general assignment for the benefit of its creditors, (c) being unable to, or admitting in writing its inability to, pay its debts as they become due, or (d) taking any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the acts set forth in (a), (b) or (c) hereof):

- (A) the Deferral Commitments and the availability of the Deferral Tranches will be immediately cancelled;

- (B) all or part of the Deferral Tranches, together with accrued interest, deferred costs pursuant to clause 6.4 (*Deferred Costs*) of the Loan Agreement and all other amounts accrued or outstanding under the Loan Agreement in connection with the Deferral Tranches will be immediately due and payable, (including, for the avoidance of doubt, any breakage costs pursuant to clause 20.2 (*Breakage costs and SIMEST arrangements*) of the Loan Agreement); and

- (iii) in respect of Clause 11.20 (*Payments under the Shipbuilding Contracts*) and paragraph (f) of Clause 11.3 (*Provision of financial statements*), shall entitle the Agent, (acting on the instructions of the Lenders), by notice to the Guarantor and the Borrower to:
- (A) cancel the Deferral Commitments and the availability of the Deferral Tranches whereupon they shall immediately be cancelled; and
  - (B) declare that all or part of the Deferral Tranches, together with accrued interest, deferred costs pursuant to clause 6.4 (*Deferred Costs*) of the Loan Agreement and all other amounts accrued or outstanding under the Loan Agreement in connection with the Deferral Tranches be immediately due and payable, whereupon they shall become immediately due and payable (including, for the avoidance of doubt, any breakage costs pursuant to clause 20.2 (*Breakage costs sand SIMEST arrangements*) of the Loan Agreement); ~~and~~.
- (b) Save as permitted by Clause 11.19 (*New capital raises or financing*), if at any time after the February 2021 ~~Deferral~~ Effective Date and until the occurrence of a Reinstatement Event:
- (i) the Guarantor or any other Group member enters into any financial contract or financial document relating to any Financial Indebtedness and which contains any debt deferral or covenant waivers of existing debt, or the raising of any new debt intended to reimburse existing debt that benefits from additional security or more favourable terms than those available to the Lenders (unless they are granted to the Lenders on a *pari passu* basis);
    - (A) the requirement to comply with the covenant granted pursuant to clause 15 (*Security Value Maintenance*) of the Loan Agreement and the financial covenants set out in paragraphs (b) and (c) of Clause 11.15 (*Financial Covenants*) which was otherwise suspended until 31 December 2022 shall be reinstated;
    - (B) the Deferral Commitments and the availability of the Deferral Tranches will be immediately cancelled; and
    - (C) all or part of the Deferral Tranches, together with accrued interest, deferred costs pursuant to clause 6.4 (*Deferred Costs*) of the Loan Agreement and all other amounts accrued or outstanding under the Loan Agreement in connection with the Deferral Tranches will be immediately due and payable, (including, for the avoidance of doubt, any breakage costs pursuant to clause 20.2 (*Breakage costs and SIMEST arrangements*) of the Loan Agreement);

it being provided that such covenants in sub-paragraph (A) above shall not be reinstated and such provisions in sub-paragraphs (B) and (C) above shall not be triggered in case of such financial contract or financial document relating to the Term and Revolving Credit Facilities;
  - (ii) the Guarantor or any other Group member makes a prepayment (save for any mandatory prepayment necessary to avoid an event of default (however defined)) of any Financial Indebtedness (unless this is done on a *pari passu* basis with the obligations owed to the Lenders hereunder):

- (A) the requirement to comply with the covenant granted pursuant to clause 15 (*Security Value Maintenance*) of the Loan Agreement and the financial covenants set out in paragraphs (b) and (c) of Clause 11.15 (*Financial Covenants*) which was otherwise suspended until 31 December 2022 shall be reinstated;
- (B) the Agent shall be entitled (acting on the instructions of the Lenders) to:
  - (1) cancel the Deferral Commitments and the availability of the Deferral Tranches whereupon they shall immediately be cancelled; and
  - (2) ~~(e)~~ declare that all or part of the Deferral Tranches, together with accrued interest, deferred costs pursuant to clause 6.4 (*Deferred Costs*) of the Loan Agreement and all other amounts accrued or outstanding under the Loan Agreement in connection with the Deferral Tranches will be immediately due and payable (including, for the avoidance of doubt, any breakage costs pursuant to clause 20.2 (*Breakage costs and SIMEST arrangements*) of the Loan Agreement).

it being provided that such covenants in sub-paragraph (A) above shall not be reinstated and such provision in sub-paragraph (B) above shall not be triggered in case of a prepayment relating to the revolving tranche of the Term and Revolving Credit Facilities within the ordinary course of business.

## **12 JUDGMENTS AND CURRENCY INDEMNITY**

### **12.1 Judgments relating to Loan Agreement**

This Guarantee shall cover any amount payable by the Borrower under or in connection with any judgment relating to the Loan Agreement.

### **12.2 Currency indemnity**

In addition, clause 20.4 (*Currency indemnity*) of the Loan Agreement shall apply, with any necessary adaptations, in relation to this Guarantee.

## **13 SET-OFF**

### **13.1 Application of credit balances**

Each Secured 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 the Guarantor at any office in any country of that Secured Party in or towards satisfaction of any sum then due from the Guarantor to that Secured Party under this Guarantee; and
- (b) for that purpose:
  - (i) break, or alter the maturity of, all or any part of a deposit of the Guarantor;
  - (ii) convert or translate all or any part of a deposit or other credit balance into Dollars;

- (iii) enter into any other transaction or make any entry with regard to the credit balance which the Secured Party concerned considers appropriate.

### **13.2 Existing rights unaffected**

No Secured Party shall be obliged to exercise any of its rights under Clause 13.1 (*Application of credit balances*); and those rights shall be without prejudice and in addition to any right of set-off, combination of accounts, charge, lien or other right or remedy to which a Secured Party is entitled (whether under the general law or any document).

### **13.3 Sums deemed due to a Lender**

For the purposes of this Clause 13 (*Set-Off*), a sum payable by the Guarantor to 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 that Lender.

## **14 SUPPLEMENTAL**

### **14.1 Continuing guarantee**

This Guarantee shall remain in force as a continuing security at all times during the Security Period, regardless of any intermediate payment or discharge in whole or in part.

### **14.2 Rights cumulative, non-exclusive**

The Security Trustee's rights under and in connection with this Guarantee are cumulative, may be exercised as often as appears expedient and shall not be taken to exclude or limit any right or remedy conferred by law.

### **14.3 No impairment of rights under Guarantee**

If the Security Trustee omits to exercise, delays in exercising or invalidly exercises any of its rights under this Guarantee, that shall not impair that or any other right of the Security Trustee under this Guarantee.

### **14.4 Severability of provisions**

If any provision of this Guarantee is or subsequently becomes void, illegal, unenforceable or otherwise invalid, that shall not affect the validity, legality or enforceability of its other provisions.

### **14.5 Guarantee not affected by other security**

This Guarantee is in addition to and shall not impair, nor be impaired by, any other guarantee, any Security Interest or any right of set-off or netting or to combine accounts which the Security Trustee or any Secured Party may now or later hold in connection with the Loan Agreement.

### **14.6 Guarantor bound by Loan Agreement**

- (a) The Guarantor is fully familiar with, and agrees to all the provisions of, the Loan Agreement and the other Finance Documents to which it is not a party.

- (b) The Guarantor agrees with the Security Trustee:
- (i) to be bound by all provisions of the Loan Agreement which are applicable to the Obligors in the same way as if those provisions had been set out (with any necessary modifications) in this Guarantee; and
  - (ii) that any provision of the Loan Agreement which, by its terms, applies or relates to the Finance Documents generally applies to this Guarantee.
- (c) Clause ~~36~~ 36 (*Bail-In*) of the Loan Agreement shall apply to this Guarantee as if it was expressly incorporated in this Guarantee with any necessary modifications.

#### **14.7 Applicability of provisions of Guarantee to other Security Interests**

Any Security Interest which the Guarantor creates (whether at the time at which it signs this Guarantee or at any later time) to secure any liability under this Guarantee shall be a principal and independent security, and Clauses 3 (*Liability as Principal and Independent Debtor*) and 17 (*Invalidity of Loan Agreement*) shall, with any necessary modifications, apply to it, notwithstanding that the document creating the Security Interest neither describes it as a principal or independent security nor includes provisions similar to Clauses 3 (*Liability as Principal and Independent Debtor*) and 17 (*Invalidity of Loan Agreement*).

#### **14.8 Applicability of provisions of Guarantee to other rights**

Clauses 3 (*Liability as Principal and Independent Debtor*) and 17 (*Invalidity of Loan Agreement*) shall also apply to any right of set-off or netting or to combine accounts which the Guarantor creates by an agreement entered into at the time of this Guarantee or at any later time (notwithstanding that the agreement does not include provisions similar to Clauses 3 (*Liability as Principal and Independent Debtor*) and 17 (*Invalidity of Loan Agreement*)), being an agreement referring to this Guarantee.

#### **14.9 Third party rights**

Other than a Secured Party or the Italian Authorities, no person who is not a party to this Guarantee has any right under the Contracts (Rights of Third Parties) Act 1999 to enforce or to enjoy the benefit of any term of this Guarantee.

#### **14.10 Waiver of rights against SACE**

Nothing in this Guarantee or any of the Finance Documents is intended to grant to the Guarantor or any other person any right of contribution from or any other right or claim against SACE and the Guarantor hereby waives irrevocably any right of contribution or other right or claim as between itself and SACE.

#### **14.11 Reinstatement**

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

#### **14.12 Guarantor intent**

Without prejudice to the generality of Clause 1.3 (*Application of construction and interpretation provisions of Loan Agreement*) and Clause 3.2 (*Waiver of rights and defences*), the Guarantor expressly confirms that it intends that this Guarantee and any Security Interest created by it under 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.

#### **15 ASSIGNMENT AND TRANSFER**

##### **15.1 Assignment and transfer by Security Trustee**

- (a) The Security Trustee may assign or transfer its rights under and in connection with this Guarantee to the same extent as it may assign or transfer its rights under the Loan Agreement.
- (b) The Guarantor may not assign or transfer its rights under and in connection with this Guarantee.

#### **16 NOTICES**

##### **16.1 Notices to Guarantor**

Any notice or demand to the Guarantor under or in connection with this Guarantee shall be given by letter or email at:

NCL Corporation Ltd.  
7665 Corporate Center Drive  
Miami  
Florida, 33126

Attention: Chief Financial Officer and General Counsel  
Email: [\*] / [\*]

or to such other address which the Guarantor may notify to the Security Trustee.

##### **16.2 Application of certain provisions of Loan Agreement**

Clauses 31.3 (*Effective date of notices*) to 31.9 (*Meaning of "notice"*) of the Loan Agreement apply to any notice or demand under or in connection with this Guarantee.

##### **16.3 Validity of demands**

A demand under this Guarantee shall be valid notwithstanding that it is served:

- (a) on the date on which the amount to which it relates is payable by the Borrower under the Loan Agreement;



- (b) at the same time as the service of a notice under clause 18.21 (*Actions following an Event of Default*) of the Loan Agreement,

and a demand under this Guarantee may refer to all amounts payable under or in connection with the Loan Agreement without specifying a particular sum or aggregate sum.

#### **16.4 Notices to Security Trustee**

Any notice to the Security Trustee under or in connection with this Guarantee shall be sent to the same address and in the same manner as notices to the Security Trustee under the Loan Agreement.

### **17 INVALIDITY OF LOAN AGREEMENT**

#### **17.1 Invalidity of Loan Agreement**

In the event of:

- (a) the Loan Agreement or any provision thereof now being or later becoming, with immediate or retrospective effect, void, illegal, unenforceable or otherwise invalid for any reason whatsoever; or
- (b) without limiting the scope of paragraph (a), a ~~bankruptcy~~ Bankruptcy of the Borrower, the introduction of any law or any other matter resulting in the Borrower being discharged from liability under the Loan Agreement, or the Loan Agreement ceasing to operate (for example, by interest ceasing to accrue);

this Guarantee shall cover any amount which would have been or become payable under or in connection with the Loan Agreement if the Loan Agreement had been and remained entirely valid, legal and enforceable, or the Borrower had not suffered ~~bankruptcy~~ Bankruptcy, or any combination of such events or circumstances, as the case may be, and the Borrower had remained fully liable under it for liabilities whether invalidly incurred or validly incurred but subsequently retrospectively invalidated; and references in this Guarantee to amounts payable by the Borrower under or in connection with the Loan Agreement shall include references to any amount which would have so been or become payable as aforesaid.

#### **17.2 Invalidity of Finance Documents**

Clause 17.1 (*Invalidity of Loan Agreement*) also applies to each of the other Finance Documents to which the Borrower is a party.

### **18 GOVERNING LAW AND JURISDICTION**

#### **18.1 English law**

This Guarantee and any non-contractual obligations arising out of or in connection with it shall be governed by, and construed in accordance with, English law.

#### **18.2 Exclusive English jurisdiction**

The courts of England shall have exclusive jurisdiction to settle any Dispute.

### 18.3 Process agent

The Guarantor irrevocably appoints Hannaford Turner LLP, currently of ~~9 Cloak Lane~~107 Cheapside, London ~~EC4R 2RU~~, EC2V 6DN, United Kingdom, 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.

### 18.4 Secured Parties' rights unaffected

Nothing in this Clause 18 (*Governing Law and Jurisdiction*) shall exclude or limit any right which any Secured 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.

### 18.5 Meaning of "proceedings"

In this Clause 18 (*Governing Law and Jurisdiction*), "**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 Guarantee (including a dispute relating to the existence, validity or termination of this Guarantee) or any non-contractual obligation arising out of or in connection with this Guarantee.

**THIS AMENDED AND RESTATED GUARANTEE HAS BEEN ENTERED INTO ON THE DATE STATED AT THE BEGINNING OF THIS GUARANTEE.EXECUTION PAGE**

**EXECUTION PAGE**

**GUARANTOR**

**SIGNED** by )  
duly authorised )  
for and on behalf of )  
**NCL CORPORATION LTD.** )  
as its duly appointed attorney-in-fact )  
in the presence of: )

**SECURITY TRUSTEE**

**SIGNED** by )  
for and on behalf of )  
**CRÉDIT AGRICOLE CORPORATE AND** )  
**INVESTMENT BANK** )  
as its duly appointed attorney-in-fact )  
in the presence of: )

**HOLDING**

**SIGNED** by )  
for and on behalf of )  
**NORWEGIAN CRUISE LINE HOLDINGS LTD.** )  
as its duly appointed attorney-in-fact )  
in the presence of: )

---

[\*]: THE IDENTIFIED INFORMATION HAS BEEN OMITTED FROM THE AGREEMENT BECAUSE IT IS BOTH (i) NOT MATERIAL AND (ii) WOULD BE COMPETITIVELY HARMFUL IF PUBLICLY DISCLOSED

**Dated 19 May 2023**

**LEONARDO ONE, LTD.**  
as Borrower

and

**NCL CORPORATION LTD.**  
as Guarantor

and

**NCL INTERNATIONAL, LTD.**  
as Shareholder

and

**NORWEGIAN CRUISE LINE HOLDINGS LTD.**  
as the Holding

and

**THE BANKS AND FINANCIAL INSTITUTIONS LISTED IN SCHEDULE 1**  
as Lenders

and

**CRÉDIT AGRICOLE CORPORATE AND INVESTMENT BANK**  
**BNP PARIBAS FORTIS S.A./N.V.**  
**HSBC BANK PLC**  
**KFW IPEX-BANK GMBH**  
**CASSA DEPOSITI E PRESTITI S.P.A.**  
as Joint Mandated Lead Arrangers

and

**CRÉDIT AGRICOLE CORPORATE AND INVESTMENT BANK**  
as Agent  
and SACE Agent

and

**CRÉDIT AGRICOLE CORPORATE AND INVESTMENT BANK**  
as Security Trustee

**AMENDMENT AND RESTATEMENT AGREEMENT**

relating to a facility agreement originally dated 12 April 2017  
(as amended from time to time, including as amended and restated by an amendment and restatement agreement dated 21 November 2017, as further amended by a supplemental agreement

WATSON FARLEY  
&  
WILLIAMS

---

dated 4 June 2020, as further amended and restated by an amendment and restatement agreement dated 17 February 2021, as further amended and restated by an amendment and restatement agreement dated 17 June 2021, as further amended by a supplemental agreement dated 23 December 2021 and as further amended by a supplemental agreement dated 16 December 2022)  
in respect of the part financing of the 3,300 passenger cruise ship newbuilding  
**m.v "Norwegian Prima"**

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### Appendices

Form of Amended and Restated Facility Agreement (marked to indicate amendments)	
Form of Amended and Restated Guarantee (marked to indicate amendments)	

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THIS AGREEMENT is made on 19 May 2023

**PARTIES**

- (1) **LEONARDO ONE, LTD.**, an exempted company incorporated under the laws of Bermuda whose registered office is at Park Place, 55 Par-la-Ville Road, Hamilton HM11, Bermuda as borrower (the "**Borrower**")
- (2) **NCL CORPORATION LTD.**, an exempted company incorporated under the laws of Bermuda with its registered office at Park Place, 55 Par-la-Ville Road, Hamilton HM11, Bermuda (the "**Guarantor**")
- (3) **NCL INTERNATIONAL, LTD.**, a company incorporated under the laws of Bermuda and having its registered office at Park Place, 55 Par-la-Ville Road, Hamilton HM11, Bermuda (the "**Shareholder**")
- (4) **NORWEGIAN CRUISE LINE HOLDINGS LTD.**, a company incorporated under the laws of Bermuda with its registered office at Park Place, 55 Par-la-Ville Road, Hamilton HM11, Bermuda (the "**Holder**")
- (5) **THE FINANCIAL INSTITUTIONS** listed in Schedule 1 (*The Lenders*) as lenders (the "**Lenders**")
- (6) **CRÉDIT AGRICOLE CORPORATE AND INVESTMENT BANK**, a French société anonyme having its registered office located at 12, Place des États-Unis, CS 70052, 92547 Montrouge Cedex, France registered under number Siren 304 187 701 at the Registre du Commerce et des Sociétés of Nanterre, France, **BNP PARIBAS FORTIS S.A./N.V.** of 3, Montagne du Parc, 1 KA1E, 1000 Brussels, Belgium, **HSBC BANK PLC** of Level 2, 8 Canada Square, London, E14 5HQ, United Kingdom, **KFW IPEX-BANK GMBH** of Palmengartenstraße, 5-9 60325, Frankfurt, Germany and **CASSA DEPOSITI E PRESTITI S.P.A.** of Via Goito, 4 – 00185, Roma, Italy as joint mandated lead arrangers (the "**Mandated Lead Arrangers**")
- (7) **CRÉDIT AGRICOLE CORPORATE AND INVESTMENT BANK**, a French société anonyme having its registered office located at 12, Place des États-Unis, CS 70052, 92547 Montrouge Cedex, France registered under number Siren 304 187 701 at the Registre du Commerce et des Sociétés of Nanterre, France as agent and SACE agent (the "**Agent**" and the "**SACE Agent**")
- (8) **CRÉDIT AGRICOLE CORPORATE AND INVESTMENT BANK**, a French société anonyme having its registered office located at 12, Place des États-Unis, CS 70052, 92547 Montrouge Cedex, France registered under number Siren 304 187 701 at the Registre du Commerce et des Sociétés of Nanterre, France as security trustee (the "**Security Trustee**")

**BACKGROUND**

- (A) By the Original Facility Agreement, the Lenders agreed to make available to the Borrower a facility of (originally) the Dollar Equivalent of up to €640,000,000.00 and the amount of the SACE Premium (but not exceeding \$868,108,108.11) for the purpose of assisting the Borrower in financing (a) the payment or reimbursement under the Shipbuilding Contract of all or part of 80% of the Final Contract Price up to the Eligible Amount and (b) reimbursement to the Borrower of 100% of the First Instalment of the SACE Premium paid by it to SACE and payment to SACE of 100% of the Second Instalment of the SACE Premium (as defined therein).
  - (B) Due to the unprecedented and extraordinary impacts of the Covid-19 pandemic on the cruise sector and cruise operators, the Original Facility Agreement was amended pursuant to an
-

amendment agreement dated 4 June 2020 (the "**2020 Amendment Agreement**"), further amended and restated pursuant to an amendment and restatement agreement dated 17 February 2021 (the "**February 2021 Amendment and Restatement Agreement**"), further amended and restated pursuant to an amendment and restatement agreement dated 17 June 2021 (the "**June 2021 Amendment and Restatement Agreement**"), further amended pursuant to a supplemental agreement dated 23 December 2021 (the "**December 2021 Amendment Agreement**") and further amended pursuant to a supplemental agreement dated 16 December 2022 (the "**December 2022 Amendment Agreement**") pursuant to which the parties agreed to, *inter alia*, the temporary suspension and amendment of certain covenants under the Guarantee and addition of certain covenants under the Original Facility Agreement.

- (C) The Parties have agreed to amend and restate the Facility Agreement as set out in this Agreement for the purposes of, *inter alia*, documenting the transition from LIBOR to SOFR (as defined below).

## OPERATIVE PROVISIONS

### 1 DEFINITIONS AND INTERPRETATION

#### 1.1 Definitions

In this Agreement:

"**2023 Finance Document**" means this Agreement.

"**Amended and Restated Facility Agreement**" means the Facility Agreement as amended and restated by this Agreement in the form set out in Appendix 1.

"**Amended and Restated Guarantee**" means the Guarantee as amended and restated by this Agreement in the form set out in Appendix 2.

"**Effective Date**" means the date on which the Agent notifies the Borrower, the other Creditor Parties and SACE as to the satisfaction of the conditions precedent as provided in paragraph (a) of Clause 2.1 (*Conditions Precedent*).

"**Facility Agreement**" means the Original Facility Agreement, as amended by the 2020 Amendment Agreement, as further amended and restated by the February 2021 Amendment and Restatement Agreement, as further amended and restated by the June 2021 Amendment and Restatement Agreement, as further amended by the December 2021 Amendment Agreement and as further amended by the December 2022 Amendment Agreement.

"**Obligors**" means the Borrower, the Guarantor, the Holding and the Shareholder.

"**Original Facility Agreement**" means the facility agreement dated 12 April 2017 (as amended and restated by an amendment and restatement agreement dated 21 November 2017) and made between, amongst others, (i) the Borrower, (ii) the Lenders, (iii) the Mandated Lead Arrangers, (iv) the Agent and the SACE Agent and (v) the Security Trustee.

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

"**SOFR**" means the secured overnight financing rate (SOFR) administered by the Federal Reserve Bank of New York (or any other person which takes over the administration of that

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rate) published by the Federal Reserve Bank of New York (or for any other person which takes over the publication of that rate).

## 1.2 Defined expressions

Defined expressions in the Facility Agreement and, with effect from the Effective Date, the Amended and Restated Facility Agreement, shall have the same meanings when used in this Agreement unless the context otherwise requires or unless otherwise defined in this Agreement.

## 1.3 Application of construction and interpretation provisions of Facility Agreement

Clause 1.2 (*Construction of certain terms*) of the Facility Agreement applies to this Agreement as if it were expressly incorporated in it with any necessary modifications.

## 1.4 Designation as a Finance Document

The Borrower and the Agent designate this Agreement as a Finance Document.

## 1.5 Third party rights

- (a) Unless 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 enjoy the benefit of any term of this Agreement other than SACE and SIMEST, who may enforce or enjoy the benefit of and rely on the provisions of this Agreement and the Amended and Restated Facility Agreement subject to the provisions of the Third Parties Act.
- (b) Notwithstanding any term of any Finance Document, the consent of any person who is not a Party (other than SACE and SIMEST) is not required to rescind or vary this Agreement at any time.
- (c) For the avoidance of doubt and in accordance with clause 36.4 (*Third party rights*) of the Facility Agreement, nothing in this Clause 1.5 (*Third party rights*) shall limit or prejudice the exercise by SACE of its rights under this Agreement or the Finance Documents in the event that such rights are subrogated or assigned to it pursuant to the terms of the SACE Insurance Policy.

## 2 CONDITIONS PRECEDENT

### 2.1 The Effective Date cannot occur unless:

- (a) the Agent has received (or on the instructions of all the Lenders, waived receipt of) all of the documents and other evidence listed in Schedule 2 (*Conditions Precedent*) in form and substance satisfactory to the Agent;
  - (b) save as disclosed in writing to the Agent and SACE prior to the date of this Agreement, the representations and warranties contained in Clause 3 (*Representations*) are true and correct on, and as of, each such time as if each was made with respect to the facts and circumstances existing at such time;
  - (c) save as disclosed in writing to the Agent and SACE prior to the date of this Agreement, no Event of Default, event or circumstance specified in clause 18 (*Events of Default*) of the Facility Agreement 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, event resulting in mandatory prepayment of the Loan pursuant to clause 16.3 (*Mandatory prepayment – Sale and Total Loss*) and clause 16.4 (*Mandatory prepayment – SACE Insurance Policy*) of the Facility Agreement shall have occurred and be continuing or would result from the amendment and restatement of the Facility Agreement pursuant to this Agreement; and

- (d) the Agent is satisfied that the Effective Date can occur and has not provided any instructions to the contrary informing the Parties that the Effective Date cannot occur.
- 2.2 Upon fulfilment or waiver of the conditions set out in Clause 2.1 above, the Agent shall provide the Borrower and the Creditor Parties and SACE with a copy of the executed certificate in the form set out in Schedule 3 (*Form of Effective Date Certificate*) confirming that the Effective Date has occurred and such certificate shall be binding on all Parties.
- 2.3 Other than to the extent that the Majority Lenders notify the Agent in writing to the contrary before the Agent provides the certificate described in Clause 2.2 above, the Creditor Parties authorise (but do not require) the Agent to execute and provide such certificate. The Agent shall not be liable for any damages, costs or losses whatsoever as a result of giving any such certificate.

### **3 REPRESENTATIONS**

#### **3.1 Facility Agreement representations**

On the date of this Agreement and on the Effective Date, each Obligor that is a party to the Facility Agreement makes each of the representations and warranties as set out in clause 11 (*Representations and warranties*) of the Facility Agreement, as amended and restated by this Agreement and updated with appropriate modifications to refer to this Agreement and (where relevant) the Amended and Restated Facility Agreement and the Amended and Restated Guarantee, by reference to the circumstances then existing.

#### **3.2 Finance Document representations**

On the date of this Agreement and on the Effective Date, each Obligor (save for the Holding) makes the representations and warranties set out in the Finance Documents (other than the Facility Agreement) to which it is a party, as amended and restated and/or supplemented by this Agreement and updated with appropriate modifications to refer to this Agreement and, where appropriate, the Amended and Restated Guarantee, by reference to the circumstances then existing.

### **4 AMENDMENT AND RESTATEMENT OF FACILITY AGREEMENT AND OTHER FINANCE DOCUMENTS**

#### **4.1 Specific amendments to the Facility Agreement**

With effect on and from the Effective Date, the Facility Agreement shall be amended and restated in the form of the Amended and Restated Facility Agreement and, as so amended and restated, the Facility Agreement shall continue to be binding on each of the parties to it in accordance with its terms as so amended and restated.

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#### 4.2 Specific amendments to the Guarantee

With effect on and from the Effective Date, the Guarantee shall be amended and restated in the form of the Amended and Restated Guarantee and, as so amended and restated, the Guarantor confirms that:

- (a) its Guarantee extends to the obligations of the Borrower under the Finance Documents as amended, restated and/or supplemented by this Agreement;
- (b) the obligations of the relevant Obligors under the Finance Documents as amended, restated and/or supplemented by this Agreement are included in the Secured Liabilities (as defined in the Facility Agreement); and
- (c) the Guarantee shall continue to be binding on each of the parties to it and have full force and effect in accordance with its terms as so amended and restated.

#### 4.3 Holding confirmation

On the Effective Date, the Holding confirms that, notwithstanding the amendments made to the Finance Documents pursuant to this Agreement, the undertakings given by the Holding under the Guarantee, as amended and restated by this Agreement and updated with appropriate modifications to refer to this Agreement shall remain in full force and effect in accordance with its original terms and the amendments to the Finance Documents as amended, restated and/or supplemented by this Agreement.

#### 4.4 Security Confirmation

On the Effective Date, each Obligor confirms that:

- (a) any Security Interest created by it under the Finance Documents extends to the obligations of the relevant Obligors under the Finance Documents as amended, restated and/or supplemented by this Agreement;
- (b) the obligations of the relevant Obligors under the Finance Documents as amended, restated and/or supplemented by this Agreement are included in the Secured Liabilities (as defined in the Finance Documents to which it is a party);
- (c) the Security Interests created under the Finance Documents continue in full force and effect on the terms of the respective Finance Documents; and
- (d) to the extent that this confirmation creates a new Security Interest, such Security Interest shall be on the terms of the Finance Documents in respect of which this confirmation is given.

#### 4.5 Finance Documents to remain in full force and effect

The Finance Documents shall remain in full force and effect and, from the Effective Date:

- (a) in the case of the Facility Agreement as amended and restated pursuant to Clause 4.1 (*Specific amendments to the Facility Agreement*);
  - (b) in the case of the Guarantee, as amended and restated pursuant to Clause 4.2 (*Specific amendments to the Guarantee*);
-

- (c) the Facility Agreement and the applicable provisions of this Agreement will be read and construed as one document;
- (d) the Guarantee and the applicable provisions of this Agreement will be read and construed as one document; and
- (e) except to the extent expressly waived by the amendments effected by this Agreement, no waiver is given by this Agreement and the Lenders expressly reserve all their rights and remedies in respect of any breach of or other default under the Finance Documents.

**5 FURTHER ASSURANCE**

Clause 12.20 (*Further assurance*) of the Facility Agreement, as amended and restated by this Agreement, applies to this Agreement as if it were expressly incorporated in it with any necessary modifications.

**6 COSTS, EXPENSES AND FEES**

Clause 10.11 (*Transaction Costs*) of the Facility Agreement, as amended and restated by this Agreement, applies to this Agreement as if it were expressly incorporated in it with any necessary modifications.

**7 NOTICES**

Clause 32 (*Notices*) of the Facility Agreement, as amended and restated by this Agreement, applies to this Agreement as if it were expressly incorporated in it with any necessary modifications.

**8 COUNTERPARTS**

This Agreement may be executed in any number of counterparts, and this has the same effect as if the signatures on the counterparts were on a single copy of this Agreement.

**9 SIGNING ELECTRONICALLY**

The Parties acknowledge and agree that they may execute this Agreement and any variation or amendment to the same, by electronic instrument. The Parties agree that the electronic signatures appearing on the documents shall have the same effect as handwritten signatures and the use of an electronic signature on this Agreement shall have the same validity and legal effect as the use of a signature affixed by hand and is made with the intention of authenticating this Agreement, and evidencing the Parties' intention to be bound by the terms and conditions contained herein. For the purposes of using an electronic signature, the Parties authorise each other to conduct the lawful processing of personal data of the signers for contract performance and their legitimate interests including contract management.

**10 GOVERNING LAW**

This Agreement and any non-contractual obligations arising out of or in connection with it are governed by English law.

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## 11 ENFORCEMENT

### 11.1 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.

### 11.2 Service of process

- (a) Without prejudice to any other mode of service allowed under any relevant law, each Obligor (other than an Obligor incorporated in England and Wales):
  - (i) irrevocably appoints Hannaford Turner LLP, currently of 107 Cheapside, London UK, EC2V 6DN, as its agent for service of process in relation to any proceedings before the English courts in connection with any Finance Document; and
  - (ii) agrees that failure by a process agent to notify the relevant Obligor of the process will not invalidate the proceedings concerned.
- (b) If any person appointed as an agent for service of process is unable for any reason to act as agent for service of process, the Borrower (on behalf of all the Obligors) must immediately (and in any event within 10 days of such event taking place) appoint another agent on terms acceptable to the Agent. Failing this, the Agent may appoint another agent for this purpose.

**This Agreement has been entered into on the date stated at the beginning of this Agreement.**

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**EXECUTION PAGES**

**BORROWER**

**SIGNED** by )  
duly authorised ) /s/ Daniel S. Farkas  
for and on behalf of )  
**LEONARDO ONE, LTD.** )

**GUARANTOR**

**SIGNED** by )  
duly authorised ) /s/ Daniel S. Farkas  
for and on behalf of )  
**NCL CORPORATION LTD.** )

**SHAREHOLDER**

**SIGNED** by )  
for and on behalf of ) /s/ Daniel S. Farkas  
**NCL INTERNATIONAL, LTD.** )  
as its duly appointed attorney-in-fact )  
in the presence of: )

**HOLDING**

**SIGNED** by )  
for and on behalf of ) /s/ Daniel S. Farkas  
**NORWEGIAN CRUISE LINE** )  
**HOLDINGS LTD.** )  
as its duly appointed attorney-in-fact )  
in the presence of: )

---

**LENDERS**

**SIGNED** by )  
duly authorised ) /s/ Isabella Roberts  
for and on behalf of )  
**BNP PARIBAS FORTIS S.A./N.V** )

**SIGNED** by )  
duly authorised ) /s/ Daniela Rotellini  
for and on behalf of )  
**CASSA DEPOSITI E PRESTITI S.P.A.** )

**SIGNED** by )  
duly authorised ) /s/ Anne-Laure Orange  
for and on behalf of )  
**CRÉDIT AGRICOLE CORPORATE** )  
**AND INVESTMENT BANK** ) /s/ Jérôme Leblond

**SIGNED** by )  
duly authorised ) /s/ Varsha Sharan  
for and on behalf of )  
**HSBC BANK PLC** )

**SIGNED** by )  
duly authorised ) /s/ André Tiele  
for and on behalf of )  
**KFW IPEX-BANK GMBH** ) /s/ Claudia Coenenberg

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**MANDATED LEAD ARRANGERS**

**SIGNED** by )  
duly authorised ) /s/ Isabella Roberts  
for and on behalf of )  
**BNP PARIBAS FORTIS S.A./N.V** )

**SIGNED** by )  
duly authorised ) /s/ Daniela Rotellini  
for and on behalf of )  
**CASSA DEPOSITI E PRESTITI S.P.A.** )

**SIGNED** by )  
duly authorised ) /s/ Anne-Laure Orange  
for and on behalf of )  
**CRÉDIT AGRICOLE CORPORATE** )  
**AND INVESTMENT BANK** ) /s/ Jérôme Leblond

**SIGNED** by )  
duly authorised ) /s/ Varsha Sharan  
for and on behalf of )  
**HSBC BANK PLC** )

**SIGNED** by )  
duly authorised ) /s/ André Tiele  
for and on behalf of )  
**KFW IPEX-BANK GMBH** ) /s/ Claudia Coenenberg

---



**AGENT**

SIGNED by ) /s/ Anne-Laure Orange  
duly authorised )  
for and on behalf of )  
CRÉDIT AGRICOLE CORPORATE AND )  
INVESTMENT BANK ) /s/ Jérôme Leblond

**SACE AGENT**

SIGNED by ) /s/ Anne-Laure Orange  
duly authorised )  
for and on behalf of )  
CRÉDIT AGRICOLE CORPORATE AND )  
INVESTMENT BANK ) /s/ Jérôme Leblond

**SECURITY TRUSTEE**

SIGNED by ) /s/ Anne-Laure Orange  
duly authorised )  
for and on behalf of )  
CRÉDIT AGRICOLE CORPORATE AND )  
INVESTMENT BANK ) /s/ Jérôme Leblond

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## APPENDIX 1

### FORM OF AMENDED AND RESTATED FACILITY AGREEMENT (MARKED TO INDICATE AMENDMENTS)

Amendments are indicated as follows:

- 1 additions are indicated by underlined text in blue; and
  - 2 deletions are shown by strike-through text in red.
-

Originally dated 12 April 2017

(as amended from time to time, including as amended and restated by an amendment and restatement agreement dated 21 November 2017, as amended by a supplemental agreement dated 4 June 2020, as amended and restated by an amendment and restatement agreement dated 17 February 2021 ~~and~~, as further amended and restated by an amendment and restatement agreement dated ~~2021~~ 17 June 2021, as further amended by a supplemental agreement dated 23 December 2021, as further amended by a supplemental agreement dated 16 December 2022 and as amended and restated by an amendment and restatement agreement dated 2023)

**TERM LOAN FACILITY**

**LEONARDO ONE, LTD.**  
as Borrower

and

**THE BANKS AND FINANCIAL INSTITUTIONS  
LISTED IN SCHEDULE 1**  
as Lenders

and

**CRÉDIT AGRICOLE CORPORATE AND INVESTMENT BANK  
BNP PARIBAS FORTIS S.A./N.V.  
KFW IPEX-BANK GMBH  
HSBC BANK PLC  
CASSA DEPOSITI E PRESTITI S.P.A.**  
as Joint Mandated Lead Arrangers

and

**CRÉDIT AGRICOLE CORPORATE AND INVESTMENT BANK**  
as Agent and SACE Agent

and

**CRÉDIT AGRICOLE CORPORATE AND INVESTMENT BANK**  
as Security Trustee

with the support of

**SACE S.P.A.**

**AMENDED AND RESTATED FACILITY AGREEMENT**

relating to the part financing of the 3,300 passenger cruise ship  
newbuilding ~~presently designated as Hull No. [\*] at Fincantieri S.p.A. m.v "Norwegian Prima"~~

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**THIS AGREEMENT** is originally made on 12 April 2017 (as amended from time to time, including as amended and restated by an amendment and restatement agreement dated 21 November 2017, as amended by a supplemental agreement dated 4 June 2020, as amended and restated by an amendment and restatement dated 17 February 2021 ~~and~~, as further amended and restated by an amendment and restatement agreement dated ~~2021~~ 2021 ~~17 June 2021, as further amended by a supplemental agreement dated 23 December 2021, as further amended by a supplemental agreement dated 16 December 2022 and as further amended and restated by an amendment and restatement agreement dated~~ 2023)

## **PARTIES**

- (1) **LEONARDO ONE, LTD.**, an exempted company incorporated under the laws of Bermuda whose registered office is at Park Place ~~55~~, 55 Par-la-Ville Road, Hamilton HM 11, Bermuda as borrower (the "**Borrower**")
- (2) **THE BANKS AND FINANCIAL INSTITUTIONS** listed in Schedule 1 (*Lenders and Commitments*) as lenders (the "**Lenders**")
- (3) **CRÉDIT AGRICOLE CORPORATE AND INVESTMENT BANK, BNP PARIBAS FORTIS S.A./N.V., KFW IPEX-BANK GMBH, HSBC BANK PLC and CASSA DEPOSITI E PRESTITI S.P.A.** as joint mandated lead arrangers (the "**Joint Mandated Lead Arrangers**")
- (4) **CRÉDIT AGRICOLE CORPORATE AND INVESTMENT BANK**, acting through its office at 12 Place des États-Unis, CS 70052, 92547, Montrouge Cedex, France, as agent (the "**Agent**") and SACE agent (the "**SACE Agent**")
- (5) **CRÉDIT AGRICOLE CORPORATE AND INVESTMENT BANK**, acting through its office at 12 Place des États-Unis, CS 70052, 92547, Montrouge Cedex, France, as security trustee (the "**Security Trustee**")

## **BACKGROUND**

- (A) By a shipbuilding contract originally dated as of 21 October 2016 (as amended or supplemented from time to time, including on 14 December 2016, 30 January 2017, 27 February 2017, 30 March 2017 and 10 April 2017 (the "**Original Shipbuilding Contract**")) entered into between (i) Fincantieri S.p.A., a company incorporated in Italy with registered office in Trieste, via Genova, 1, and having fiscal code 00397130584 (the "**Builder**") and (ii) the Borrower, the Builder agreed to design, construct and deliver, and the Borrower agreed to purchase, a 3,300 passenger cruise ship with hull number [\*], which is to be delivered to the Borrower on [\*] subject to any adjustments of such delivery date in accordance with the Shipbuilding Contract.
  - (B) The total price payable by the Borrower to the Builder under the Shipbuilding Contract is eight hundred million Euros (€800,000,000) (the "**Initial Contract Price**") payable on the following terms:
    - (i) as to [\*] per cent. ([\*]%), being [\*] Euros (€[\*]), by an initial payment which is to be within 5 Business Days after the effective date of the Shipbuilding Contract in accordance with Article 10.1(A) of the Shipbuilding Contract ("**First Shipbuilding Contract Instalment**");
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- (ii) as to [\*] per cent. ([\*]%), being [\*] Euros (€[\*]), on the later of the date of commencement of steel cutting and the date falling 24 months prior to the Intended Delivery Date;
  - (iii) as to [\*] per cent. ([\*]%), being [\*] Euros (€[\*]), on the later of keel laying in dry-dock and the date falling 18 months prior to the Intended Delivery Date;
  - (iv) as to [\*] per cent. ([\*]%), being [\*] Euros (€[\*]), on the later of launching and the date falling 12 months prior to the Intended Delivery Date; and
  - (v) as to [\*] per cent. ([\*]%), being [\*] Euros (€[\*]), on delivery of the Ship on the Delivery Date,
- as each such event is described in the Shipbuilding Contract.
- (C) The agreement was that the Initial Contract Price may be decreased at delivery of the Ship under Articles 13, 14, 16, 17, 19 and 20 of the Shipbuilding Contract (in aggregate the "**Liquidated Damages**") or by mutual agreement between the parties (the Initial Contract Price adjusted as aforesaid being the "**Final Contract Price**"). For the avoidance of doubt, under the Shipbuilding Contract the price of the Ship may be increased or decreased pursuant to Article 24 thereof but, for the purposes of this Agreement, the Final Contract Price will not include any increase in the price under Article 24.
  - (D) By a facility agreement dated 12 April 2017 (the "**Original Facility Agreement**") entered into between the Borrower, the Lenders, the Joint Mandated Lead Arrangers, the Agent, the SACE Agent and the Security Trustee (as defined therein), the Lenders agreed to make available to the Borrower a Dollar loan facility for the purpose of assisting the Borrower in financing, subject to exchange rate fluctuations, up to eighty per cent. (80%) of the Final Contract Price (and subject to an aggregate amount no greater than the Eligible Amount) and one hundred per cent. (100%) of the SACE Premium.
  - (E) It is a condition precedent:
    - (i) under the Original Shipbuilding Contract that each instalment of the price payable under the Original Shipbuilding Contract (save for the delivery instalment) be covered by a Refund Guarantee issued by a Refund Guarantor; and
    - (ii) under the ~~Original~~ Facility Agreement that no later than the Drawdown Date in respect of each Advance under Tranche A and Tranche B (save for the Delivery Advance under Tranche A and Tranche B), the Agent shall have received a certified copy of any executed Refund Guarantee.
  - (F) The Builder requested that a sixth addendum to the Original Shipbuilding Contract (the "**Sixth Addendum**") be signed in order that the Builder should have the option, in case a Refund Guarantee cannot be renewed or extended, to replace any previously issued Refund Guarantee with a cash deposit (the "**Acceptable Deposit**").
  - (G) By an ~~amending and restating~~ amendment and restatement agreement dated 21 November 2017 (the "**2017 Amending and Restating Agreement**") entered into between the Borrower, the Lenders, the Agent and the Security Trustee (as defined therein), the Secured Parties agreed to amend the Original Facility Agreement and the other Finance Documents to reflect the changes to the Shipbuilding Contract pursuant to the terms of the Sixth Addendum, provided that:
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- (i) the Acceptable Deposit be held in an account opened by the Borrower with the Account Bank which shall be pledged in favour of the Lenders, the Joint Mandated Lead Arrangers, the Agent, the SACE Agent and the Security Trustee; and
    - (ii) the next instalment under the Shipbuilding Contract is covered by a Refund Guarantee.
  - (H) Due to the unprecedented and extraordinary impacts of the Covid-19 pandemic on the cruise sector and cruise operators, SACE informed the cruise operators of its availability to evaluate certain measures (the "**Temporary Measures**") applicable in relation to certain qualifying loan agreements in order to assist companies which are financially sound but dealing with the impact of the temporary but unprecedented Covid-19 pandemic; the possibility to access to such measures was subject, amongst other things, to certain principles titled "Cruise Debt Holiday Principles" offered by SACE dated 15 April 2020 for cruise lines (the "**Original Principles**").
  - (I) Pursuant to the consent request letter dated 18 April 2020, the Borrower and the Guarantor notified the Agent and the SACE Agent of the wish to benefit from the Temporary Measures in relation to certain loan agreements listed therein, including the Original Facility Agreement (as amended and restated by the 2017 Amending and Restating Agreement), and requested, amongst other things, the temporary suspension of certain covenants under the Original Guarantee (as defined below) and the addition of certain covenants under the Original Facility Agreement (as amended and restated by the 2017 Amending and Restating Agreement) for a period of one year from 1 April 2020 to 31 March 2021 (the "**Borrower Request**").
  - (J) On 25 May 2020, the Agent (for and on behalf of the Lenders (as defined in the Original Facility Agreement (as amended and restated by the 2017 Amending and Restating Agreement))) provided its consent to part of the Borrower Request in accordance with and subject to certain conditions as set out in an amendment to the Original Facility Agreement (as amended and restated by the 2017 Amending and Restating Agreement) and to the Original Guarantee dated 4 June 2020 between, amongst others, the Borrower, the Agent and the SACE Agent (the "**2020 Amendment Agreement**").
  - (K) Due to the continued impacts of the Covid-19 pandemic on the cruise sector and cruise operators, SACE confirmed on 31 December 2020 its availability to evaluate an extension of the Temporary Measures (the "**Extended Temporary Measures**"), again subject to certain principles set out in a document titled "Debt Deferral Extension Framework for ECA-backed Export Financings" dated 26 November 2020 for cruise lines offered by SACE (together with the Original Principles, the "**Principles**").
  - (L) Pursuant to the consent request letter dated 3 December 2020, the Borrower and the Guarantor notified the Agent and the SACE Agent of the wish to benefit from the Extended Temporary Measures in relation to certain loan agreements listed therein, including the Original Facility Agreement (as amended and restated by the 2017 Amending and Restating Agreement and as amended by the 2020 Amendment Agreement), and requested, amongst other things, the further temporary suspension of certain covenants under the Original Guarantee (as amended by the 2020 Amendment Agreement) and the addition of certain covenants under the Original Facility Agreement (as ~~defined below~~ amended and restated by the 2017 Amending and Restating Agreement and as amended by the 2020 Amendment Agreement) for a further period from 1 April 2021 to 31 December 2022 (the "**Second Borrower Request**").
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- (M) On 25 January 2021, the Agent (for and on behalf of the Lenders (as defined in the 2020 Amendment Agreement)) provided its consent to part of the Second Borrower Request in accordance with and subject to certain conditions as set out in an amendment and restatement agreement to the Original Facility Agreement (as amended and restated by the 2017 Amending and Restating Agreement and as amended by the 2020 Amendment Agreement) dated 17 February 2021 between, amongst others, the Borrower, the Agent and the SACE Agent (the "**February 2021 Amendment and Restatement Agreement**") ~~(the Original Facility Agreement as amended and restated by the 2017 Amending and Restating Agreement, as amended by the 2020 Amendment Agreement and as amended and restated by the February 2021 Amendment and Restatement Agreement, the "Facility Agreement")~~.
- (N) A seventh addendum to the Original Shipbuilding Contract (the "**Seventh Addendum**") ~~has been~~ was entered into in order to include the option of a new allowance of two hundred and thirty two million Euros (€232,000,000) for owner supplies and change orders in the Original Shipbuilding Contract (the Original Shipbuilding Contract as amended pursuant to the Sixth Addendum and the Seventh Addendum, the "**Shipbuilding Contract**").
- (O) ~~The Parties have agreed to amend and restate the Facility Agreement as set out in~~ By an amendment and restatement agreement dated ~~\_\_\_\_\_~~ 17 June 2021 and made between, amongst others, the Borrower, the Agent, the SACE Agent and the Security Trustee ~~in order~~ (the "June 2021 Amendment and Restatement Agreement"), the Parties agreed to, *inter alia*, provide for an increase of the Facility for the purpose of (i) financing an amount to be applied towards payments relating to the Upsize Allowance (as defined below), (ii) financing an amount to be applied towards the second instalment of the Additional SACE Premium (as defined below) and (iii) financing an amount to be applied towards the Tranche B Premium (as defined below) ~~(the "June 2021 Amendment and Restatement Agreement")~~.
- (P) By a supplemental agreement dated 23 December 2021 and made between, amongst others, the Borrower, the Agent, the SACE Agent and the Security Trustee (the "December 2021 Amendment Agreement"), the Parties agreed to, inter alia, amend certain financial covenants and certain other provisions under the Original Facility Agreement (This Agreement sets out the terms and conditions of the Facility Agreement as amended and restated by the 2017 Amending and Restating Agreement, as amended by the 2020 Amendment Agreement, as amended and restated by the February 2021 Amendment and Restatement Agreement and as amended and restated by the June 2021 Amendment and Restatement Agreement).
- (Q) By a supplemental agreement dated 16 December 2022 and made between, amongst others, the Borrower, the Agent, the SACE Agent and the Security Trustee (the "December 2022 Amendment Agreement"), the Parties agreed to, inter alia, amend certain financial covenants and certain other provisions under the Original Facility Agreement (as amended and restated by the 2017 Amending and Restating Agreement, as amended by the 2020 Amendment Agreement, as amended and restated by the February 2021 Amendment and Restatement Agreement, as amended and restated by the June 2021 Amendment and Restatement Agreement and as amended by the December 2021 Amendment Agreement).
- (R) The Parties have agreed to enter into an amendment and restatement agreement (the "2023 Amendment and Restatement Agreement") to amend and restate the Original Facility Agreement (as amended and restated by the 2017 Amending and Restating Agreement, as amended by the 2020 Amendment Agreement, as amended and restated by the February 2021 Amendment and Restatement Agreement, as amended and restated by the June 2021 Amendment and Restatement Agreement and as amended by the December 2021 Amendment Agreement) in order to inter alia, incorporate certain amends to the Facility
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Agreement including the switch from LIBOR to SOFR (as defined below) (the Original Facility Agreement as amended and restated by the 2017 Amending and Restating Agreement, as amended by the 2020 Amendment Agreement, as amended and restated by the February 2021 Amendment and Restatement Agreement, as amended and restated by the June 2021 Amendment and Restatement Agreement and as amended by the December 2021 Amendment Agreement, the "Facility Agreement").

(S) This Agreement sets out the terms and conditions of the Facility Agreement as amended and restated by the 2023 Amendment and Restatement Agreement.

## OPERATIVE PROVISIONS

### 1 INTERPRETATION

#### 1.1 Definitions

Subject to Clause 1.6 (*General Interpretation*), in this Agreement:

"**2017 Amending and Restating Agreement**" has the meaning given to such term in Recital ~~E~~(G).

"**2020 Amendment Agreement**" has the meaning given to such term in Recital ~~F~~(J).

"**2020 Deferral Fee Letters**" means any letter between the Agent and any Obligor which sets out the fees payable in connection with the arrangements contemplated by the 2020 Amendment Agreement.

~~"2021 Deferral Effective Date" has the meaning given to the term Effective Date in the February 2021 Amendment and Restatement Agreement.~~

"**2021 Deferral Fee Letters**" means any letter between the Agent or the SACE Agent and any Obligor which sets out the fees payable in connection with the arrangements contemplated by the February 2021 Amendment and Restatement Agreement.

"2021 Deferral Final Repayment Date" means:

- (1) in relation to the Marina Facility Agreement, 19 January 2027;
- (2) in relation to the Riviera Facility Agreement, 27 October 2026;
- (3) in relation to the Seven Seas Explorer Facility Agreement, 31 December 2026; and
- (4) in relation to the Seven Seas Splendor Facility Agreement, 29 January 2027.

"2023 Amendment and Restatement Agreement" has the meaning given to such term in Recital (R).

"2023 Effective Date" has the meaning given to the term Effective Date in the 2023 Amendment and Restatement Agreement.

"**Acceptable Deposit**" means a cash deposit for an amount equal to the cumulative total of the principal and interest secured by the relevant Refund Guarantee which is to be paid by the Builder (a) for security purposes in favour of the Borrower and under its control, the Builder

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agreeing that it shall not have any control rights in respect of the deposit, that the Borrower may freely assign, charge, pledge or otherwise convey its rights in relation to the deposit to its financiers and SACE without the need to seek or obtain any approval or consent from the Builder, and that the Borrower shall be entitled to claim payment of the deposit in the same circumstances that it could claim payment of a Refund Guarantee, and (b) to the Account Bank by or before the relevant due date for payment of the deposit in accordance with Article 10.3 of the Shipbuilding Contract.

**"Account"** means a Euro account of the Borrower opened or to be opened with the Account Bank and subject to an Account Pledge.

**"Account Bank"** means Crédit Agricole Corporate and Investment Bank, being pursuant to the terms of the Shipbuilding Contract, the legal person designated by written notice by the Borrower to the Builder at any time to hold an Acceptable Deposit.

**"Account Pledge"** means any pledge of an Acceptable Deposit granted in favour of the Security Trustee, the Joint Mandated Lead Arrangers, the Agent, the SACE Agent and the Lenders.

**"Additional SACE Premium"** has the meaning given to such term in Clause [8-5-9.5](#) (*Additional [SACE Premium](#)*).

**"Advance"** means the principal amount of each borrowing of all or part of a Tranche by the Borrower 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.

**"Agent"** means Crédit Agricole Corporate and Investment Bank, a French "*société anonyme*", having a share capital of seven billion eight hundred and fifty one million six hundred and thirty six thousand three hundred and forty two Euros (€7,851,636,342.00) and its registered office located at 12, Place des États-Unis, CS 70052, 92547 Montrouge Cedex, France, registered under the n° Siren 304 187 701 at the Registre du Commerce et des Sociétés of Nanterre or any successor of it appointed under Clause [26-27](#) (*Role of the Agent and the Joint Mandated Lead Arrangers*).

**"Aggregate SACE Premium"** means, together, the SACE Premium, the Additional SACE Premium and the Tranche B Premium.

**"Amended Maximum Loan Amount"** means the aggregate of:

- (a) the Original Maximum Loan Amount, financed or to be financed pursuant to Tranche A, provided that such amount shall not, at any time, exceed the Total Tranche A Commitments;
  - (b)
    - (i) the Dollar Equivalent of Euros one hundred eighty-five million six hundred thousand (€185,600,000), corresponding to the amount to be financed in relation to the Upsize Allowance, financed or to be financed pursuant to Tranche B;
    - (ii) 100% of the Tranche B Premium to be paid in accordance with paragraph (a) of Clause [8-6-9.6](#) (*Tranche B Premium*),
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provided that such amount shall not, at any time, exceed the Total Tranche B Commitments;  
and

- (c) the second instalment of the Additional SACE Premium, calculated in accordance with paragraph (a)(ii) of Clause ~~8.5~~-9.5 (*Additional SACE Premium*), financed or to be financed pursuant to Tranche C, provided that such amount shall not, at any time, exceed the Total Tranche C Commitments,

provided that such aggregate amount shall not, at any time, exceed the Total Commitments.

**"Annex VI"** means Annex VI (Regulations for the Prevention of Air Pollution from Ships, entered into on 19 May, 2005) to the International Convention for the Prevention of Pollution from Ships 1973, as modified by the Protocol of 1978 relating thereto and by the Protocol of 1997 (MARPOL) and as further revised in October 2008 with such revised version having entered into force on 1 July 2010.

**"Approved Broker"** means Clarkson Platou, Barry Rogliano Salles, Fearnleys AS, Rocca & Partners, Brax Shipbrokers AS (or any Affiliate of such person through which valuations are commonly issued) or such other shipbroker or ship valuer experienced in valuing cruise ships nominated by the Borrower and approved by the Agent.

**"Approved Flag"** means the Bermudian flag, the Marshall Islands flag, the Bahamas flag or such other flag as the Agent may, with the approval of the Italian Authorities and at least three Lenders representing as a minimum the Majority Lenders, approve from time to time.

**"Approved Manager"** means any of the Borrower, NCL Corporation Ltd., NCL (Bahamas) Ltd. or other member of the Group, or any company which is not a member of the Group which the Agent may, with the authorisation of the Majority Lenders, approve from time to time as the manager of the Ship.

**"Approved Manager's Undertaking"** means, in the event that the Approved Manager is a company other than the Borrower, a letter of undertaking executed or to be executed by the Approved Manager in favour of the Agent, which will include, without limitation, an agreement by the Approved Manager to subordinate its rights against the Ship and the Borrower to the rights of the Secured Parties under the Finance Documents, in the agreed form.

**"Approved Project"** means any of the projects identified in the Approved Projects List.

**"Approved Projects List"** means the approved projects list provided by the Guarantor and accepted by the Agent prior to the December 2021 Effective Date.

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

**"Availability Period"** means, in relation to Tranche A, the period commencing on the date of the Original Facility Agreement and, in relation to Tranche B and Tranche C, the period commencing on the date of this Agreement, and ending on:

- (a) the earlier to occur of (i) the Delivery Date and (ii) 25 February 2023 (or such later date as the Agent may, with the authorisation of the Lenders, agree with the Borrower); or
- (b) if earlier, the date on which the Total Commitments are fully borrowed, cancelled or terminated.
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**"Backstop Rate Switch Date"** means 30 June 2023 or any other date agreed between the Agent, the Majority Lenders and the Borrower.

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

**"Bail-In Legislation"** means:

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

**"Base Rate"** means one Euro for 1.304875 Dollars.

**"Bermudian Obligors"** means the Borrower, the Shareholder and the Guarantor.

**"Builder"** has the meaning given in Recital (A).

**"Business Day"** means:

- (a) for the purposes of Recital (B) above, a day (other than a Saturday or a Sunday) on which banks are open in Paris, New York, Milan and Rome; ~~and~~
- (b) for the purposes of any other provision in this Agreement, a day (other than a Saturday or a Sunday) on which banks are open in London, Frankfurt, Rome, Brussels and Paris and, in relation to any payment to be made to the Builder, Milan and, in respect of a day on which a payment is required to be made under a Finance Document, also in New York City; and

(c) (in relation to the fixing of an interest rate for a Term SOFR Loan) which is a US Government Securities Business Day.

**"CDP"** means Cassa Depositi e Prestiti S.p.A..

**"Central Bank Rate"** means:

- (a) the short-term interest rate target set by the US Federal Open Market Committee as published by the Federal Reserve Bank of New York from time to time; or
- (b) if that target is not a single figure, the arithmetic mean of:
  - (i) the upper bound of the short-term interest rate target range set by the US Federal Open Market Committee and published by the Federal Reserve Bank of New York; and
  - (ii) the lower bound of that target range.

**"Central Bank Rate Adjustment"** means in relation to the Central Bank Rate prevailing at close of business on any US Government Securities Business Day, the 20 per cent trimmed arithmetic mean calculated by the Agent (or by any other Creditor Party which agrees to determine that

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mean in place of the Agent), of the Central Bank Rate Spreads for the five most immediately preceding US Government Securities Business Days for which SOFR is available.

"Central Bank Rate Spread" means in relation to any US Government Securities Business Day, the difference (expressed as a percentage rate per annum) calculated by the Agent (or by any other Creditor Party which agrees to calculate that rate in place of the Agent) of:

- (a) SOFR for that US Government Securities Business Day; and
- (b) the Central Bank Rate prevailing at close of business on that US Government Securities Business Day.

"**Certified Copy**" means in relation to any document delivered or issued by or on behalf of any company, a copy of such document certified as a true, complete and up-to-date copy of the original by any of the directors or the secretary or assistant secretary or any attorney-in-fact for the time being of that company.

"**Charged Property**" means all of the assets which from time to time are, or are expressed to be, the subject of Security Interests pursuant to the Finance Documents.

"**CIRR**" (Commercial Interest Reference Rate) means two point fifty-three per cent. (2.53%) per annum or any other CIRR rate being the fixed rate for medium and long term export credits in Dollars applicable to the financing of the Ship according to the Organisation for Economic Co-operation and Development rules as determined by the competent Italian Authorities.

"**Code**" means the United States Internal Revenue Code of 1986.

"**Code of Ethics**" means the code of ethics adopted by CDP, available on CDP's website ([http://www.cdp.it/static/upload/cdp/cdp\\_code\\_ethics.pdf](http://www.cdp.it/static/upload/cdp/cdp_code_ethics.pdf)).

"**Commitment**" means a Tranche A Commitment, a Tranche B Commitment or a Tranche C Commitment.

"**Compliance Certificate**" has the meaning given to the term "Compliance Certificate" in the Guarantee.

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

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

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

- (i) is or becomes public information other than as a direct or indirect result of any breach by that Secured Party of Clause ~~33~~34 (*Confidentiality*); or
-

- (ii) is identified in writing at the time of delivery as non-confidential by any member of the Group or any of its advisers; or
- (iii) is known by that Secured Party before the date the information is disclosed to it in accordance with paragraphs (a) or (b) above or is lawfully obtained by that Secured Party after that date, from a source which is, as far as that Secured Party is aware, unconnected with the Group and which, in either case, as far as that Secured Party is aware, has not been obtained in breach of, and is not otherwise subject to, any obligation of confidentiality.

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

**"Contribution"** means, in relation to a Lender, the part of the Loan which is owing to that Lender.

**"Conversion Rate"** means the rate determined by the Agent on the Conversion Rate Fixing Date and notified to the Borrower as being the lower of:

- (a) the Base Rate; or
- (b) the FOREX Contracts Weighted Average Rate.

**"Conversion Rate Fixing Date"** means:

- (a) in respect of each Advance under a Tranche save for the Delivery Advance under that Tranche, the date falling [\*] ([\*]) days before the relevant Drawdown Date under that Tranche; and
- (b) in respect of the Delivery Advance under a Tranche, the date falling [\*] ([\*]) days before the Delivery Date.

**"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.

**"Credit Adjustment Spread" means 0.42826% per annum.**

**"Creditor Party"** means the Agent, the Security Trustee, the SACE Agent, the Joint Mandated Lead Arrangers or any Lender, whether as at the date of the Original Facility Agreement or at any later time.

**"Daily Rate" means for any US Government Securities Business Day:**

- (a) SOFR for that US Government Securities Business Day; or
  - (b) if SOFR is not available for that US Government Securities Business Day, the percentage rate per annum which is the aggregate of:
    - (i) the Central Bank Rate for that US Government Securities Business Day; and
    - (ii) the applicable Central Bank Rate Adjustment; or
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(c) if paragraph (b) above applies but the Central Bank Rate for that US Government Securities Business Day is not available, the percentage rate per annum which is the aggregate of:

(i) the most recent Central Bank Rate for a day which is no more than five US Government Securities Business Days before that US Government Securities Business Day; and

(ii) the applicable Central Bank Rate Adjustment,

rounded, in either case, to five decimal places and if, in either case, the aggregate of that rate and the applicable Credit Adjustment Spread is less than zero, the Daily Rate shall be deemed to be such a rate that the aggregate of the Daily Rate and the applicable Credit Adjustment Spread is zero.

"Daily Simple SOFR" means, for any day, a rate per annum equal to the Daily Rate for the day that is:

(a) for as long as the Interest Make-Up Agreement is in full force and effect, ten (10) US Government Securities Business Days; or

(b) if the Interest Make-Up Agreement ceases to be in full force and effect, five (5) US Government Securities Business Days,

prior to (i) if such day is a US Government Securities Business Day, that day or (ii) if such day is not a US Government Securities Business Day, the US Government Securities Business Day immediately preceding such day.

"December 2021 Amendment Agreement" has the meaning given to such term in Recital (P).

"December 2021 Effective Date" has the meaning given to the term Effective Date in the December 2021 Amendment Agreement.

"December 2021 Fee Letters" means any letter between the Agent (or the SACE Agent, as applicable) and any Obligor which sets out the fees payable in connection with the arrangements contemplated by the December 2021 Amendment Agreement.

"December 2022 Amendment Agreement" has the meaning given to such term in Recital (Q).

"December 2022 Fee Letters" means any letter between the Agent (or the SACE Agent, as applicable) and any Obligor which sets out the fees payable in connection with the arrangements contemplated by the December 2022 Amendment Agreement.

"Deferral Fee Letters" means any of the 2020 Deferral Fee Letters and/or the 2021 Deferral Fee Letters.

"Deferral Period" means the period from 1 April 2020 to 31 December 2022.

"Delivered Vessel Facilities" means, together, Marina Facility Agreement, Riviera Facility Agreement, Seven Seas Explorer Facility Agreement and Seven Seas Splendor Facility Agreement.

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"**Delivery Advance**" means, subject to the provisions of Clause ~~8-4~~ 9.4 (*Refund*) and paragraphs (e) and (f) of Clause ~~8-6~~ 9.6 (*Tranche B Premium*), the Advance under a Tranche to be made available (as applicable) for drawing on the Delivery Date.

"**Delivery Date**" means the date and time of delivery of the Ship by the Builder to the Borrower as stated in the Protocol of Delivery and Acceptance.

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

"**Dollar Equivalent**" means such amount in Dollars as is calculated by the Agent on the Conversion Rate Fixing Date to be the equivalent of an amount in Euro at the Conversion Rate.

"**Dollars**" and "\$" means the lawful currency for the time being of the United States of America.

"**Downgraded Refund Guarantor**" means a Refund Guarantor who has become subject to a RG Downgrade Event.

"**Drawdown Date**" means, in relation to an Advance under a Tranche, the date on which that Advance is drawn down and applied in accordance with Clause 2 (*Facility*).

"**Drawdown Notice**" means a notice in the form set out in Schedule 2 (*Form of Drawdown Notice*) (or in any other form which the Agent approves or reasonably requires).

"**Earnings**" means all moneys whatsoever which are now, or later become, payable (actually or contingently) to the Borrower and which arise out of the use or operation of the Ship, including (but not limited to):

- (a) all freight, hire, fare and passage moneys, compensation payable to the Borrower or the Agent in the event of requisition of the Ship for hire, remuneration for salvage and towage services, demurrage and detention moneys and damages for breach (or payments for variation or termination) of any charterparty or other contract for the employment of the Ship;
- (b) all moneys which are at any time payable under Insurances in respect of loss of earnings;
- (c) all moneys which are at any time payable to the Borrower in respect of the general average contribution; and
- (d) if and whenever the 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 the Ship.

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

"**Eligible Amount**" means eighty per cent. (80%) of the lesser of:

- (a) the Dollar Equivalent of eight hundred million Euros (€800,000,000); and
  - (b) the Dollar Equivalent of the Final Contract Price.
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**"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 the Ship or into or upon the air, sea, land or soils (including the seabed) or surface water of Environmentally Sensitive Material within or from the Ship; 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 the Ship and which involves a collision between the Ship and such other vessel or some other incident of navigation or operation, in either case, in connection with which the Ship is actually or potentially liable to be arrested, attached, detained or injuncted and/or the Ship and/or any Obligor and/or any operator or manager of the Ship is at fault or allegedly at fault or otherwise liable to any legal or administrative action; or
- (c) any other incident in which Environmentally Sensitive Material is released, emitted, spilled or discharged into or upon the air, sea, land or soils (including the seabed) or surface water otherwise than from the Ship and in connection with which the Ship is actually or potentially liable to be arrested and/or where any Obligor and/or any operator or manager of the Ship 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.

**"Equator Principles"** means the standards entitled "A financial industry benchmark for determining, assessing and managing environmental and social risk in projects" dated June 2013 and adopted by certain financial institutions, as the same may be amended or supplemented from time to time.

**"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.

**"Euro"** and **"EUR"** means the single currency of the Participating Member States.

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**"Event of Default"** means any of the events or circumstances described in Clause ~~18.1~~ 19.1 (*Events of Default*).

**"Existing Indebtedness"** means Financial Indebtedness referred to in the financial statements of the Guarantor delivered to the Agent prior to the date of this Agreement.

**"Exporter Declaration"** means a declaration to be issued for Advances under Tranche A and Tranche B in respect of which interest is payable at the Fixed Interest Rate, in the form required by SIMEST at the relevant time duly signed by an authorised signatory of the Builder.

**"Facility"** means the term loan facility under Tranche A, Tranche B and Tranche C, made or to be made available under this Agreement as described in Clause 2.1 (*Amount of facility*).

**"Facility Agreement"** has the meaning given to such term in Recital (M).

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

**"Fallback Interest Payment"** means the aggregate amount of interest that is, or is scheduled to become, payable under paragraph (d) of Clause 7.8 (*Unavailability of Term SOFR*) and relates to a Term SOFR Loan.

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

**"FATCA 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 the Original Facility Agreement.

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"**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.

"**February 2021 Amendment and Restatement Agreement**" has the meaning given to such term in Recital (M).

"February 2021 Effective Date" has the meaning given to the term Effective Date in the February 2021 Amendment and Restatement Agreement.

"**Fee Letter**" means any letter dated on or about the date of the Original Facility Agreement between the SACE Agent and the Borrower setting out the fees referred to in paragraph (d) of Clause ~~9~~-10 (Fees).

"**Finance Documents**" means:

- (a) this Agreement;
  - (b) ~~(a)~~ the 2017 Amending and Restating Agreement;
  - (c) ~~(b)~~ the 2020 Amendment Agreement;
  - (d) ~~(c)~~ the February 2021 Amendment and Restatement Agreement;
  - (e) ~~(d)~~ the June 2021 Amendment and Restatement Agreement;
  - (f) ~~(e)~~ this the December 2021 Amendment Agreement;
  - (g) the December 2022 Amendment Agreement;
  - (h) the 2023 Amendment and Restatement Agreement;
  - (i) ~~(f)~~ any Fee Letter;
  - (j) ~~(g)~~ the Deferral Fee Letters;
  - (k) ~~(h)~~ the June 2021 Fee Letters;
  - (l) the December 2021 Fee Letters;
  - (m) the December 2022 Fee Letters;
  - (n) ~~(i)~~ the Guarantee;
  - (o) ~~(j)~~ the Pre-delivery Security;
  - (p) ~~(k)~~ the Supplemental Pre-Delivery Security;
  - (q) ~~(l)~~ the General Assignment;
  - (r) ~~(m)~~ the Mortgage;
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- (s) ~~(n)~~ the Post-Delivery Assignment;
- (t) ~~(e)~~ any Subordinated Debt Security;
- (u) ~~(p)~~ the Shares Security Deed;
- (v) ~~(e)~~ the Approved Manager's Undertaking;
- (w) ~~(r)~~ any Transfer Certificate;
- (x) ~~(s)~~ any Compliance Certificate;
- (y) ~~(t)~~ any Drawdown Notice;
- (z) ~~(t)~~ any other document (whether creating a Security Interest or not) which is executed as security for, or for the purpose of establishing any priority or subordination arrangement in relation to, the Secured Liabilities; and
- (aa) ~~(v)~~ any other document (whether creating a Security Interest or not) which is designated as a Finance Document by agreement between the Borrower, SACE and the Agent.

"**Final Contract Price**" has the meaning given in Recital (C).

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

- (a) for principal, interest or any other sum payable in respect of any moneys borrowed or raised by the debtor;
- (b) under any loan stock, bond, note or other security issued by the debtor;
- (c) under any acceptance credit, guarantee or letter of credit facility made available to the debtor;
- (d) under a financial lease, a deferred purchase consideration arrangement or any other agreement having the commercial effect of a borrowing or raising of money by the debtor;
- (e) under any 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;
- (f) under a guarantee, indemnity or similar obligation entered into by the debtor in respect of a liability of another person which would fall within paragraphs (a) to (e) if the references to the debtor referred to the other person; or
- (g) arising from receivables sold or discounted (other than receivables to the extent they are sold on a non-recourse basis).

"**First Instalment**" means the first instalment of the SACE Premium as more particularly described in paragraph (a) of Clause ~~8-1~~9.1 (*SACE Premium*).

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**"Fixed Interest Rate"** means, in respect of any Interest Period, the rate per annum determined by the Agent to be the aggregate of:

- (a) the applicable Margin; and
- (b) the CIRR.

**"Floating Interest Rate"** means, in respect of any Interest Period, the rate per annum determined by the Agent to be the aggregate of:

(a) in relation to each LIBOR Loan, the percentage rate per annum which is the aggregate of:

- (i) ~~(a)the applicable the~~ Margin; and
- (ii) ~~(b)LIBOR for the relevant period.~~

(b) In relation to each Term SOFR Loan, the percentage rate per annum which is the aggregate of:

- (i) the Margin;
- (ii) Term SOFR Reference Rate; and
- (iii) Credit Adjustment Spread.

**"FOREX Contracts"** means each actual purchase contract, spot or forward contract and any other contract, such as an option or collar arrangement, which is entered into in the foreign exchange markets for the acquisition of Euro intended to pay the instalments under the Shipbuilding Contract, which:

- (a) matures not later than each Drawdown Date, provided that for the Delivery Advance, option arrangements may mature up to one month after such date if at the time they are entered into there exists a reasonable uncertainty as to the date on which the Ship will be delivered;
- (b) is entered into by the Borrower or the Guarantor or a combination of the foregoing not later than two (2) days before the Conversion Rate Fixing Date so that the Borrower, directly or through the Guarantor, purchases or may purchase Euro with Dollars at a pre-agreed rate; and
- (c) is notified to the Agent within ten (10) days of its execution but in any event no later than the day preceding the Conversion Rate Fixing Date, with a Certified Copy of each such contract being delivered to the Agent at such time.

**"FOREX Contracts Weighted Average Rate"** means the rate determined by the Agent on the Conversion Rate Fixing Date in accordance with the following principles which (inter alia) are intended to take into account any maturity mismatch between the maturity of the FOREX Contracts and each Drawdown Date as well as FOREX Contracts that are unwound as part of the hedging strategy of the Borrower:

- (a) FOREX Contracts that are spot or forward foreign exchange contracts, if any, shall be valued at the contract value (taking into account any rescheduling);
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- (b) the difference between the Euro amount available under (a) above and the Euro amount balance payable to the Builder on each Drawdown Date is assumed to be purchased at the official daily fixing rate of the European Central Bank for the purchase of Euro with Dollars as displayed on World Markets Reuters (or such other pages as may replace that page on that service or a successor service) at or around 1 p.m. (London time) on the Conversion Rate Fixing Date;
- (c) any FOREX Contract which is an option or collar arrangement and is not unwound at the Conversion Rate Fixing Date will be marked to market and the resulting profit or loss shall reduce or increase the Dollar countervalue of the purchased Euro;
- (d) any FOREX Contract which is an option or collar arrangement and is sold or purchased back at the time FOREX Contract(s) are entered into for an identical Euro amount shall be accounted for the net premium cost or profit, as the case may be.

Any marked to market valuation, as required in paragraph (c) above, shall be performed by Crédit Agricole Corporate and Investment Bank's dedicated desk in accordance with market practices. The Borrower shall have the right to request indicative valuations from time to time prior to the Conversion Rate Fixing Date.

**"Funding Rate"** means any individual rate notified by a Lender to the Agent pursuant to sub-paragraph (ii) of paragraph (a) of Clause ~~6.9-7.11~~ 7.11 (*Cost of funds*).

**"GAAP"** means generally accepted accounting principles in the United States of America consistently applied (or, if not consistently applied, accompanied by details of the inconsistencies) including, without limitation, those set forth in the opinion and pronouncements of the Accounting Principles Board of the American Institute of Certified Public Accountants and statements and pronouncements of the Financial Accounting Standards Board.

**"General Assignment"** means an assignment of any Management Agreement, the Earnings, the Insurances and any Requisition Compensation, executed or to be executed by the Borrower and, in the event that the Approved Manager is not a member of the Group and is named as a co-assured in the Insurances, the Approved Manager in favour of the Security Trustee in the agreed form.

**"Gross Negligence"** means any act or omission, whether deliberate or not, which in the circumstances (including both the probability and seriousness of the consequences likely to result) would reasonably be regarded by those familiar with the nature of the activity in question and with the surrounding circumstances, as amounting to the reckless disregard of, or serious indifference to, the consequences, being in any case more than a negligent failure to exercise proper skill and care.

**"Group"** means the Guarantor and its Subsidiaries.

**"Guarantee"** means the Original Guarantee, as amended pursuant to the 2020 Amendment Agreement ~~and~~, as amended and restated pursuant to the February 2021 [Amendment and Restatement Agreement, as further amended pursuant to the December 2021 Amendment Agreement, as further amended pursuant to the December 2022 Amendment Agreement and as further amended and restated by the 2023](#) Amendment and Restatement Agreement, and as may be further amended and/or supplemented from time to time.

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"**Guarantor**" means NCL Corporation Ltd., a Bermuda company with its registered office at Park Place 55, 55 Par-la-Ville Road, Hamilton HM 11, Bermuda.

"**Historic Term SOFR**" means, in relation to any Term SOFR Loan, the most recent applicable Term SOFR for a period equal in length to the Interest Period of that Term SOFR Loan and which is as of a day which is no more than five US Government Securities Business Days before the Quotation Day.

"**Holding**" means Norwegian Cruise Line Holdings Ltd., a company incorporated under the laws of Bermuda with its registered office at Park Place 55, 55 Par-la-Ville Road, Hamilton HM 11, Bermuda.

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

"**IAPPC**" means a valid international air pollution prevention certificate for the Ship issued under Annex VI.

"**Illicit Origin**" means any origin which is illicit, fraudulent or in breach of Sanctions including, without limitation, drug trafficking, corruption, organised criminal activities, terrorism, money laundering or fraud.

"**Information Package**" means:

- (a) the information package in connection with the "Debt Holiday" application in the form set out in schedule 4 (*Information Package*) of the 2020 Amendment Agreement, submitted by the Borrower (or the Guarantor on its behalf) in order to obtain the benefit of the measures provided for in the Original Principles; and
- (b) the information package in connection with the "Debt Holiday" application in the form set out in schedule 4 (*Information Package*) of the February 2021 Amendment and Restatement Agreement, submitted by the Borrower (or the Guarantor on its behalf) in order to obtain the benefit of the measures provided for in the Principles for the purpose of this Agreement and certain of the Borrower's and the Guarantor's obligations under this Agreement.

"**Initial Contract Price**" has the meaning given in Recital (B).

"**Insurances**" means:

- (a) all policies and contracts of insurance, including entries of the Ship in any protection and indemnity or war risks association, which are effected in respect of the Ship, its Earnings or otherwise in relation to it; 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 a premium.

"**Intended Delivery Date**" means [\*] (the date on which the Ship will be ready for delivery pursuant to the Shipbuilding Contract as at the date of the Original Facility Agreement) or any other date notified by the Borrower to the Agent in accordance with paragraph (a) of Clause 3.13 (*No later than sixty (60) days before the Intended Delivery Date*) or paragraph (b) of Clause 3.15 (*No later than five (5) Business Days before the Intended Delivery Date*) as being the date

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on which the Builder and the Borrower have agreed that the Ship will be ready for delivery pursuant to the Shipbuilding Contract.

"**Interest Make-Up Agreement**" means an interest make up agreement (*Capitolato*) entered into between SIMEST and the Agent on behalf of the Lenders and in form and substance acceptable to the Joint Mandated Lead Arrangers, whereby, inter alia, the return to the Lenders on the Loan made hereunder will be supplemented by SIMEST so that it equals that which the Lenders would have received if interest were payable on the Loan at LIBOR plus the Margin.

"**Interest Period**" means a period determined in accordance with Clause ~~7-8~~ (*Interest Periods*).

"**Interpolated ~~Screen-Rate~~Historic Term SOFR**" means, in relation to ~~the Loan or any part of the~~ Term SOFR Loan, the rate (rounded to the same number of decimal places as Term SOFR) which results from interpolating on a linear basis between:

- (a) either:
  - (i) ~~(a)~~ the most recent applicable ~~Screen-Rate~~Term SOFR (as of a day which is not more than five US Government Securities Business Days before the Quotation Day) for the longest period (for which that ~~Screen-Rate~~Term SOFR is available) which is less than the Interest Period of ~~the Loan or that part of the~~Term SOFR Loan; and or
  - (ii) if no such Term SOFR is available for a period which is less than the Interest Period of that Term SOFR Loan, the most recent SOFR for a day which is no more than five US Government Securities Business Days (and no less than two US Government Securities Business Days) before the Quotation Day; and
- (b) the most recent applicable ~~Screen-Rate~~Term SOFR (as of a day which is not more than five US Government Securities Business Days before the Quotation Day) for the shortest period (for which ~~that Screen-Rate~~Term SOFR is available) which exceeds the Interest Period of ~~the Loan or that part of the Loan,~~that Term SOFR Loan.

"**Interpolated Screen Rate**" means, in relation to any LIBOR 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 that LIBOR Loan; and
- (b) the applicable Screen Rate for the shortest period (for which that Screen Rate is available) which exceeds the Interest Period of that LIBOR Loan.

each as of the Specified Time ~~for Dollars.~~

"**Interpolated Term SOFR**" means, in relation to any Term SOFR Loan, the rate (rounded to the same number of decimal places as Term SOFR) which results from interpolating on a linear basis between:

- (a) either
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(i) the applicable Term SOFR (as of the Quotation Day) for the longest period (for which Term SOFR is available) which is less than the Interest Period of that Term SOFR Loan;  
or

(ii) if no such Term SOFR is available for a period which is less than the Interest Period of that Term SOFR Loan, SOFR for the day which is five (5) US Government Securities Business Days before the Quotation Day; and

(b) the applicable Term SOFR (as of the Quotation Day) for the shortest period (for which Term SOFR is available) which exceeds the Interest Period of that Term SOFR Loan.

"**ISM Code**" means the International Safety Management Code for the safe operation of ships and for pollution prevention (including the guidelines on its implementation), adopted by the International Maritime Organisation as the same may be amended or supplemented from time to time.

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

"**Italian Authorities**" means SACE and/or SIMEST and any other relevant Italian authorities involved in the implementation of the Loan.

"**June 2021 Amendment and Restatement Agreement**" has the meaning given to this term in Recital (O).

"**June 2021 Fee Letters**" means any letter between the Agent or the SACE Agent and any Obligor which sets out the fees payable in connection with the arrangements contemplated by the June 2021 Amendment and Restatement Agreement.

"**Legislative Decree 231/01**" means the Italian legislative decree of 8 June 2001, no. 231 (*Disciplina della responsabilità amministrativa delle persone giuridiche, delle società e delle associazioni anche prive di personalità giuridica, a norma dell'articolo 11 della legge 29 settembre 2000, n.300*) as amended from time to time, on administrative vicarious liability of corporate entities.

"**Lender**" means a Tranche A Lender, a Tranche B Lender or a Tranche C Lender.

"**LIBOR**" means, in relation to ~~the Loan or any part of the~~ LIBOR 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~~ LIBOR Loan; or
- (b) as otherwise determined pursuant to Clause ~~6-6-7.6~~ (*Unavailability of Screen Rate before Rate Switch Date*).

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

"LIBOR Loan" means the Loan, any Deferral Tranche, any other part of the Loan or, if applicable, Unpaid Sum to which the Floating Interest Rate applies and which is not a Term SOFR Loan.

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"**Loan**" means 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 a part of a Tranche.

"**Majority Lenders**" means:

- (a) before the first Advance under Tranche A has been made, Lenders whose Commitments total [\*] per cent. of the Total Commitments; and
- (b) after any Advance under any Tranche has been made, Lenders whose Contributions total [\*] per cent. of the Loan.

"**Management Agreement**" means the management agreement (if any) entered or to be entered into between the Borrower and an Approved Manager which is not a member of the Group with respect to the Ship on terms reasonably acceptable to the Majority Lenders and SACE.

"**Margin**" means:

- (a) in relation to the Fixed Interest Rate zero point fifteen per cent. (0.15%) per annum; and
- (b) in relation to the Floating Interest Rate one point sixty-five per cent. (1.65%) per annum.

"**Marina Facility Agreement**" means, in respect of m.v. MARINA, a facility agreement originally dated 18 July 2008 (as amended by a supplemental agreement dated 25 October 2010, as further amended and restated by an amendment and restatement agreement dated 31 October 2014, as amended by a supplemental agreement dated 4 June 2020, as further amended and restated by an amendment and restatement agreement dated 17 February 2021, as further amended by a supplemental agreement dated 23 December 2021 and as further amended by a supplemental agreement dated 16 December 2022), as further amended, restated and supplemented from time to time.

"**Maritime Registry**" means the maritime registry which the Borrower will specify to the Lenders no later than 90 days before the Intended Delivery Date, being that of Bermuda, the Marshall Islands, Bahamas or such other registry as the Agent may, with the approval of the Italian Authorities and at least three Lenders representing as a minimum the Majority Lenders, approve.

"**Market Disruption Rate**" means the percentage rate per annum which is the aggregate of the Term SOFR Reference Rate and the applicable Credit Adjustment Spread.

"**Material Adverse Effect**" means the occurrence of any event or circumstance which reasonably would be expected to have a material adverse effect on:

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

**"Material Provisions"** means Article 1 (Subject of the Contract), Article 2 (Vessel's Classification – Rules and Regulations – Certificates), Article 8 (Delivery), Article 9 (Price), Article 13 (Speed – Liquidated Damages), Article 14 (Deadweight – Liquidated Damages), Article 17 (Fuel Oil Consumption – Liquidated Damages), Article 19 (Maximum Amount of Liquidated Damages), Article 20 (Termination of the Contract – Liquidated Damages to be paid by the Builder), Article 23 (Insurance), Article 25 (Guarantee – Liability), Article 26 (Permissible Delay), Article 29 (Assignment of the Contract), and Article 30 (Law of the Contract – Disputes) of the Shipbuilding Contract.

**"Minor Modification"** means a modification of the plans or the specification or the construction of the Ship under Article 24 of the Shipbuilding Contract, resulting in a contract price increase or decrease of less than [\*] Euros (€[\*]).

**"Model"** means the principles of the compliance system adopted by CDP pursuant to Legislative Decree 231/01, available on CDP's website ([http://www.cdp.it/static/upload/pri/\\_principles-of-the-compliance-system.pdf](http://www.cdp.it/static/upload/pri/_principles-of-the-compliance-system.pdf)).

**"Mortgage"** means the first priority mortgage on the Ship acceptable for registration on the Approved Flag and, if applicable, deed of covenant, executed or to be executed by the Borrower in favour of the Security Trustee in the agreed form.

**"Obligors"** means the Borrower, the Guarantor, the Shareholder and (in the event that the Approved Manager is a member of the Group) the Approved Manager.

**"Original Facility Agreement"** has the meaning given to such term in Recital (D).

**"Original Guarantee"** means the guarantee issued by the Guarantor in favour of the Security Trustee on 12 April 2017.

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

**"Original Maximum Loan Amount"** means the aggregate of:

- (a) the Dollar Equivalent of six hundred and forty million Euros (€640,000,000.00); and
- (b) one hundred per cent. (100%) of the SACE Premium to be paid in accordance with Clause ~~8-4~~ 9.1 (*SACE Premium*),

provided that such amount shall not, at any time, exceed eight hundred and sixty-eight million, one hundred and eight thousand, one hundred and eight Dollars and eleven Cents (\$868,108,108.11).

**"Original Principles"** has the meaning given in Recital (H)

**"Overnight LIBOR"** means, in relation to ~~the Loan or any part of the~~ LIBOR Loan:

- (a) on any date, the applicable day to day Screen Rate as of the Specified Time for Dollars; or
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- (b) as otherwise determined pursuant to Clause ~~6-6-7.6~~ (*Unavailability of Screen Rate before Rate Switch Date*),

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

"**Overseas Regulations**" means the United Kingdom Overseas Companies Regulations 2009.

"**Parallel Debt**" means any amount which an Obligor owes to the Security Trustee under Clause ~~27-2~~ 28.2 (*Parallel Debt (Covenant to pay the Security Trustee)*).

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

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

"**Permitted Financial Indebtedness**" means any Financial Indebtedness:

- (a) incurred under the Finance Documents; or
- (b) permitted pursuant to Clause ~~42.14-13.14~~ (*Financial Indebtedness and subordination of indebtedness*).

"**Permitted Security Interests**" means:

- (a) in the case of the Borrower:
- (i) any of the Security Interests referred to in paragraph (b)(ii)(A) below; and
  - (ii) any of the Security Interests referred to in paragraphs (b)(ii)(B), (b)(ii)(C), (b)(ii)(E), (b)(ii)(H) and (b)(ii)(I) below if, by reason of any chartering or management arrangements for the Ship approved by the Agent pursuant to the provisions of this Agreement, such Security Interests are created by the Borrower in the case of paragraphs (b)(ii)(C) or (b)(ii)(E) or incurred by the Borrower in the case of paragraphs (b)(ii)(B), (b)(ii)(H) or (b)(ii)(I); and
- (b) in the case of the Guarantor:
- (i) any of the Security Interests referred to in paragraphs (b)(ii)(A), (b)(ii)(D), (b)(ii)(F) and (b)(ii)(G) below; and
  - (ii) any of the Security Interests referred to in paragraphs (C), (E), (H) and (I) below if, by reason of any chartering or management arrangements for the Ship approved by the Agent pursuant to the provisions of this Agreement, such Security Interests are created by the Guarantor in the case of paragraphs (C) or (E) or incurred by the Guarantor in the case of paragraphs (H) or (I);
- (A) any Security Interest created by or pursuant to the Finance Documents and any deposits or other Security Interests placed or incurred in connection with any bond or other surety from time to time provided to the US Federal Maritime Commission in order to comply with laws, regulations and rules applicable to the operators of
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passenger vessels operating to or from ports in the United States of America;

- (B) liens on the Ship up to an aggregate amount at any time not exceeding [\*] Dollars (\$[\*]) for current crew's wages and salvage and liens incurred in the ordinary course of trading the Ship;
- (C) any deposits or pledges up to an aggregate amount at any time not exceeding [\*] Dollars (\$[\*]) to secure the performance of bids, tenders, bonds or contracts required in the ordinary course of business;
- (D) any other Security Interest including in relation to the Existing Indebtedness over the assets of any Obligor other than the Borrower notified by the Borrower or any of the Obligors to the Agent and accepted by it prior to the date of this Agreement;
- (E) (without prejudice to the provisions of Clause ~~12.14~~13.14 (*Financial Indebtedness and subordination of indebtedness*)) liens on assets leased, acquired or upgraded after the date of the Original Facility Agreement or assets newly constructed or converted after the date of the Original Facility Agreement provided that (i) such liens secure Financial Indebtedness otherwise permitted under this Agreement, (ii) such liens are incurred at the time of such lease, acquisition, upgrade, construction or conversion and (iii) the Financial Indebtedness secured by such liens does not exceed the cost of such upgrade or the cost of such assets acquired or leased;
- (F) other liens arising in the ordinary course of business of the Group unrelated to Financial Indebtedness and securing obligations not yet delinquent or which are being contested in good faith by appropriate proceedings and for which adequate reserves have been established provided that (i) the aggregate amount of all cash and the fair market value of all other property subject to such liens as are described in this paragraph (F) does not exceed [\*] Dollars (\$[\*]) and (ii) such cash and/or other property is not an asset of the Borrower;
- (G) subject to the other provisions of this Agreement and the Guarantee, any Security Interest in respect of existing Financial Indebtedness of a person which becomes a Subsidiary of the Guarantor or is merged with or into the Guarantor or any of its subsidiaries;
- (H) liens in favour of credit card companies on unearned customer deposits pursuant to agreements therewith; and
- (I) liens in favour of customers on unearned customer deposits.

**"Pertinent Document"** means:

- (a) any Finance Document;
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- (b) any policy or contract of insurance contemplated by or referred to in Clause ~~42-13~~ (*General Undertakings*) or any other provision of this Agreement or another Finance Document;
- (c) any other document contemplated by or referred to in any Finance Document; and
- (d) any document which has been or is at any time sent by or to the Agent in contemplation of or in connection with any Finance Document or any policy, contract or document falling within paragraphs (b) or (c).

**"Pertinent Matter"** means:

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

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

**"Poseidon Principles"** means the financial industry framework for assessing and disclosing the climate alignment of ship finance portfolios published in June 2019 as the same may be amended or replaced to reflect changes in applicable law or regulation or the introduction of or changes to mandatory requirements of the International Maritime Organisation from time to time.

**"Post-Delivery Assignment"** means an assignment of the rights of the Borrower in respect of the post-delivery guarantee liability of the Builder under Article 25 of the Shipbuilding Contract executed or to be executed by the Borrower in favour of the Security Trustee in the agreed form.

**"Pre-delivery Contracts"** means the Shipbuilding Contract and the Refund Guarantee.

**"Pre-delivery Security"** means:

- (a) any document creating security over the Pre-delivery Contracts in agreed form; and/or
- (b) an Account Pledge in agreed form.

**"Principles"** has the meaning given in Recital (K).

**"Prohibited Payment"** means:

- (a) any offer, gift, payment, promise to pay, commission, fee, loan or other consideration which would constitute bribery or an improper gift or payment under, or a breach of Sanctions, any laws of the Republic of Italy, England and Wales, Bermuda, the Council of the European Union, Germany, the United States of America or any other applicable jurisdiction; or
  - (b) any offer, gift, payment, promise to pay, commission, fee, loan or other consideration which would or might constitute bribery within the OECD Convention on Combating
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Bribery of Foreign Public Officials in International Business Transactions of 17 December 1997.

**"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.

**"Protocol of Delivery and Acceptance"** means the protocol of delivery and acceptance of the Ship to be signed by the Borrower and the Builder in accordance with Article 8 of the Shipbuilding Contract.

**"Qualifying Certificate"** means the certificate to be issued by the Builder on each Drawdown Date under Tranche A and under Tranche B and issued to the Agent and copied to the Borrower substantially in the form set out in Schedule 5 (*Qualifying Certificate*).

**"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 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);~~

(a) in relation to a LIBOR Loan, two Business Days in London (other than Saturdays and Sundays on which banks are open in London) before the first day of that period unless market practice differs in the Relevant Market in which case the Quotation Day will be determined by the Agent in accordance with that market practice (and if quotations would normally be given on more than one day, the Quotation Day will be the last of those days); and

(b) in relation to a Term SOFR Loan, two US Government Securities Business Days before the first day of that period unless market practice differs in the relevant syndicated loan market in which case the Quotation Day will be determined by the Agent in accordance with that market practice (and if quotations would normally be given on more than one day, the Quotation Day will be the last of those days).

**"Quoted Tenor"** means any period for which:

(a) in relation to a LIBOR Loan, the Screen Rate is customarily displayed on the relevant page or screen of an information service (other than for one week and two months); and

(b) in relation to a Term SOFR Loan, Term SOFR is customarily displayed on the relevant page or screen of an information service.

**"Rate Switch Date"** means the earlier of:

(a) the Backstop Rate Switch Date; and

(b) any Rate Switch Trigger Event Date.

**"Rate Switch Trigger Event"** means:

(1) \_\_\_\_\_

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(1)

(1) the administrator of the Screen Rate or its supervisor publicly announces that such administrator is insolvent; or

(2) information is published in any order, decree, notice, petition or filing, however described, of or filed with a court, tribunal, exchange, regulatory authority or similar administrative, regulatory or judicial body which reasonably confirms that the administrator of the Screen Rate is insolvent.

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

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

(3) the supervisor of the administrator of the Screen Rate publicly announces that the Screen Rate has been or will be permanently or indefinitely discontinued for any Quoted Tenor; or

(4) the administrator of the Screen Rate or its supervisor publicly announces that the Screen Rate for any Quoted Tenor may no longer be used; or

(2) the supervisor of the administrator of the Screen Rate publicly announces or publishes information:

(1) stating that the Screen Rate for any Quoted Tenor is no longer, or as of a specified future date will no longer be, representative of the underlying market and the economic reality that it is intended to measure and that such representativeness will not be restored (as determined by such supervisor); and

(2) with awareness that any such announcement or publication will engage certain triggers for fallback provisions in contracts which may be activated by any such pre-cessation announcement or publication.

**"Rate Switch Trigger Event Date" means:**

(1) in the case of an occurrence of a Rate Switch Trigger Event described in sub-paragraph (1) of paragraph (1) of the definition of Rate Switch Trigger Event, the date on which the Screen Rate ceases to be published or otherwise becomes unavailable;

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(2) in the case of an occurrence of a Rate Switch Trigger Event described in sub-paragraph (2), (3) or (4) of paragraph (1) of the definition of Rate Switch Trigger Event, the date on which the Screen Rate for the relevant Quoted Tenor ceases to be published or otherwise becomes unavailable; and

(3) in the case of an occurrence of a Rate Switch Trigger Event described in paragraph (2) of the definition of Rate Switch Trigger Event, the date on which the Screen Rate for the relevant Quoted Tenor ceases to be representative of the underlying market and the economic reality that it is intended to measure (as determined by the supervisor of the administrator of such Screen Rate).

**"Reference Bank Quotation"** means any quotation supplied to the 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 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 such entities as may be appointed by the Agent in consultation with the Borrower.

**"Refund Guarantee"** means any irrevocable and unconditional guarantee issued or to be issued by a Refund Guarantor in favour of the Borrower under the Shipbuilding Contract in the form annexed to the Sixth Addendum or in any other form acceptable to the Joint Mandated Lead Arrangers and the SACE Agent.

**"Refund Guarantor"** means a bank, insurance company or other financial institution acceptable to the Lenders and SACE which, at the time of issue by it of a Refund Guarantee, has a minimum credit rating of at least BBB- at Standard & Poor's (or, where the relevant Refund Guarantor is not rated by Standard & Poor's, the equivalent rating at Moody's or where the relevant Refund Guarantor is not rated by Standard & Poor's or Moody's, the equivalent rating at Fitch).

**~~"Relevant Interbank Market"~~** ~~means the London interbank market.~~

**"Reinstatement Event"** means the final 2021 Deferral Final Repayment Date or any date when all Deferral Tranches under the Delivered Vessel Facilities (as defined therein) are repaid or prepaid in full.

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**"Relevant Jurisdiction"** means, in relation to an Obligor:

- (a) its jurisdiction of incorporation;
- (b) any jurisdiction where any asset subject to, or intended to be subject to, any of the Security Interests created, or intended to be created, under the Finance Documents to which it is a party is situated;
- (c) any jurisdiction where it conducts its business; and
- (d) the jurisdiction whose laws govern the perfection of any of the Security Interests created, or intended to be created, under the Finance Documents to which it is a party.

**"Relevant Market" means:**

- (a) subject to paragraph (b) below, the London interbank market; and
- (b) on or after the Rate Switch Date, the market for overnight cash borrowing collateralised by US Government securities.

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

**"Repayment Date"** means a date on which a repayment is required to be made under Clause 5 (*Repayment*).

~~**"Replacement Benchmark" means a benchmark rate which is:**~~

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

**"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"**.

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

"Restricted Country" means a country or territory that is the subject of any comprehensive Sanctions barring dealings with such country or territory.

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

"RG Downgrade Event" means an event which occurs when a Refund Guarantor ceases to maintain a credit rating of at least BBB- at Standard & Poor's (or, where the relevant Refund Guarantor is not rated by Standard & Poor's, the equivalent rating at Moody's or where the relevant Refund Guarantor is not rated by Standard & Poor's or Moody's, the equivalent rating at Fitch).

"Riviera Facility Agreement" means, in respect of m.v. RIVIERA, a facility agreement originally dated 18 July 2008 (as amended by a supplemental agreement dated 25 October 2010, as amended by a side letter dated 29 March 2012, as amended and restated by an amendment and restatement agreement dated 31 October 2014, as amended by a framework agreement dated 31 January 2018, as amended by a supplemental agreement dated 4 June 2020, as further amended and restated by an amendment and restatement agreement dated 17 February 2021, as further amended by a supplemental agreement dated 23 December 2021 and as further amended by a supplemental agreement dated 16 December 2022), as further amended, restated and supplemented from time to time.

"SACE" means SACE S.p.A., an Italian joint stock company (*società per azioni*) with a sole shareholder, whose registered office is located at Piazza Poli 37/42, 00187 Rome, Italy and registered with the Companies Registry of Rome under number 05804521002.

"SACE Agent" means Crédit Agricole Corporate and Investment Bank, a French "*société anonyme*", having a share capital of seven billion eight hundred and fifty one million six hundred and thirty six thousand three hundred and forty two Euros (€7,851,636,342.00) and its registered office located at 12, Place des États-Unis, CS 70052, 92547 Montrouge Cedex, France, registered under the n° Siren 304 187 701 at the Registre du Commerce et des Sociétés of Nanterre or any successor of it appointed under Clause ~~26-27~~ (*Role of the Agent and the Joint Mandated Lead Arrangers*).

"SACE Insurance Policy" means the insurance policy (as amended and supplemented from time to time) in respect of this Agreement (which, in all material respects, is not inconsistent with the commercial terms of this Agreement) issued or to be issued by SACE for the benefit of the Lenders in respect of one hundred per cent. (100%) of the Loan in form and substance satisfactory to the Agent and all the Lenders.

"SACE Premium" means the amount payable by the Borrower to SACE directly or through the Agent in two instalments, being the SACE Premium Instalments, in respect of the SACE Insurance Policy as set out in Clause ~~8.1~~9.1 (*SACE Premium*).

"SACE Premium Instalments" means each of the First Instalment and Second Instalment.

"SACE Required Documents" means in relation to each Drawdown Notice under Tranche A and under Tranche B:

- (a) a duly completed and executed Qualifying Certificate; and
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- (b) each of the other documents, information and other evidence specified in or required to be enclosed with such Qualifying Certificate.

"**Safety Management Certificate**" 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 imposed by any member state of the European Union or Switzerland;
- (b) imposed by the U.S. Department of the Treasury's Office of Foreign Assets Control (OFAC); or
- (c) 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 (before any correction, recalculation or republication by the administrator) on page LIBOR01 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 Agent may specify another page or service displaying the relevant rate after consultation with the Borrower.

~~"Screen Rate Contingency Period" means fifteen (15) Business Days.~~

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

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

~~(b)~~

~~(i)~~

~~(A) the administrator of that Screen Rate or its supervisor publicly announces that such administrator is insolvent; or~~

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

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

~~(ii) the administrator of that Screen Rate publicly announces that it has ceased or will cease, to provide that Screen Rate permanently or indefinitely and, at that~~

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- ~~time, there is no successor administrator to continue to provide that Screen Rate;~~
- ~~(iii) the supervisor of the administrator of that Screen Rate publicly announces that such Screen Rate has been or will be permanently or indefinitely discontinued; or~~
  - ~~(iv) the administrator of that Screen Rate or its supervisor announces that that Screen Rate may no longer be used;~~
  - ~~(v) in the case of a Screen Rate for LIBOR, the supervisor of the administrator of that Screen Rate makes a public announcement or publishes information:
    - ~~(A) stating that that Screen Rate is no longer or, as of a specified future date will no longer be, representative of the underlying market or economic reality that it is intended to measure and that representativeness will not be restored (as determined by such supervisor); and~~
    - ~~(B) with awareness that any such announcement or publication will engage certain triggers for fallback provisions in contracts which may be activated by any such pre-cessation announcement or publication; or~~~~
  - ~~(e) the administrator of that Screen Rate determines that that Screen Rate should be calculated in accordance with its reduced submissions or other contingency or fallback policies or arrangements and either:
    - ~~(i) the circumstance(s) or event(s) leading to such determination are not (in the opinion of the Majority Lenders and the Borrower) temporary; or~~
    - ~~(ii) that Screen Rate is calculated in accordance with any such policy or arrangement for a period no less than the Screen Rate Contingency Period; or~~~~
  - ~~(e) in the opinion of the Majority Lenders and the Borrower, that Screen Rate is otherwise no longer appropriate for the purposes of calculating interest under this Agreement.~~

"**Second Instalment**" means the second instalment of the SACE Premium as more particularly described in paragraph (b) of Clause ~~8.4~~9.1 (*SACE Premium*).

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

"**Secured Party**" means SACE, the Agent, the Security Trustee, the SACE Agent, the Joint Mandated Lead Arrangers or any Lender whether at the date of the Original Facility Agreement or any later time.

"**Security Interest**" means:

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

**"Security Period"** means the period commencing on the date of the Original Facility Agreement and ending on the date on which:

- (a) all amounts which have become due for payment by the Borrower or any Obligor under the Finance Documents have been paid;
- (b) no amount is owing or has accrued (without yet having become due for payment) under any Finance Document;
- (c) neither the Borrower nor any other Obligor has any future or contingent liability under Clause ~~49~~ 20 (*Application of sums received*) below or any other provision of this Agreement or another Finance Document; and
- (d) the Agent does 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 the Borrower or an Obligor 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 Property"** means:

- (a) the Security Interests expressed to be granted in favour of the Security Trustee as trustee for the Secured Parties and all proceeds received or recovered by or on behalf of the Security Trustee under or by virtue of any Security Interest including any money or other assets which are received or recovered by it as a result of the enforcement or exercise by it of such a Security Interest or right;
  - (b) all obligations expressed to be undertaken by an Obligor to pay amounts in respect of the Secured Liabilities to the Security Trustee as trustee for the Secured Parties and secured by the Security Interests together with all representations and warranties expressed to be given by an Obligor in favour of the Security Trustee as trustee for the Secured Parties;
  - (c) the Security Trustee'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 Trustee is required by the terms of the Finance Documents to hold as trustee on trust for the Secured Parties,
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except:

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

**"Security Requirement"** means the amount in Dollars (as certified by the Agent whose certificate shall, in the absence of manifest error, be conclusive and binding on the Borrower and the Agent) which is at any relevant time one hundred and twenty-five per cent (125%) of the Loan.

**"Security Trustee"** means Crédit Agricole Corporate and Investment Bank, a French "*société anonyme*", having a share capital of seven billion eight hundred and fifty one million six hundred and thirty six thousand three hundred and forty two Euros (€7,851,636,342.00) and its registered office located at 12, Place des États-Unis, CS 70052, 92547 Montrouge Cedex, France, registered under the n° Siren 304 187 701 at the Registre du Commerce et des Sociétés of Nanterre or any successor of it appointed under Clause ~~27-28~~ (*The Security Trustee*).

**"Security Value"** means the amount in Dollars (as certified by the Agent whose certificate shall, in the absence of manifest error, be conclusive and binding on the Borrower and the Agent) which, at any relevant time, is the aggregate of (i) the charter free market value of the Ship as most recently determined in accordance with Clause ~~13.4~~ 14.4 (*Valuation of the Ship*); and (ii) the market value of any additional security for the time being actually provided to the Agent pursuant to Clause ~~15-16~~ (*Security Value Maintenance*).

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

**"Seven Seas Explorer Facility Agreement"** means, in respect of m.v. SEVEN SEAS EXPLORER, a facility agreement originally dated 31 July 2013 (as amended and restated by an amendment and restatement agreement dated 31 October 2014, as amended by a supplemental agreement dated 4 June 2020, as further amended and restated pursuant to an amendment and restatement agreement dated 17 February 2021, as further amended by a supplemental agreement dated 23 December 2021 and as further amended by a supplemental agreement dated 16 December 2022), as further amended, restated and supplemented from time to time.

**"Seven Seas Splendor Facility Agreement"** means, in respect of m.v. SEVEN SEAS SPLENDOR, a facility agreement originally dated 30 March 2016 (as amended by a supplemental agreement dated 4 June 2020, as further amended and restated pursuant to an amendment and restatement agreement dated 17 February 2021, as further amended by a supplemental agreement dated 23 December 2021 and as further amended by a supplemental agreement dated 16 December 2022), as further amended, restated and supplemented from time to time.

**"Shareholder"** means NCL International Ltd., a Bermuda company with its registered office at Park Place, 55 Par-la-Ville Road, Hamilton HM 11, Bermuda.

**"Shares Security Deed"** means a Bermudian law document dated 12 April 2017, executed by the Shareholder in favour of the Security Trustee and creating security over the share capital in the Borrower.

**"Shareholder"** means ~~NCL International Ltd., a Bermuda company with its registered office at Park Place 55, Par-la-Ville Road, Hamilton HM 11, Bermuda.~~

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"**Ship**" means the passenger cruise ship currently designated with Hull No. [\*] (as more particularly described in the Shipbuilding Contract) to be constructed under the Shipbuilding Contract and to be delivered to, and purchased by, the Borrower and registered in its name under an Approved Flag.

"**Shipbuilding Contract**" has the meaning given in Recital (N).

"**SIMEST**" means Società Italiana per Le Imprese all'Estero - SIMEST Spa, which grants export subsidies in Italy under and according to the Italian Legislative Decree n. 143/98 and its amendments.

"SOFR" means the secured overnight financing rate (SOFR) administered by the Federal Reserve Bank of New York (or any other person which takes over the administration of that rate) published (before any correction, recalculation or republication by the administrator) by the Federal Reserve Bank of New York (or any other person which takes over the publication of that rate).

"**Specified Time**" means a day or time determined in accordance with the following:

- (a) if LIBOR is fixed, the Quotation Day as of 11:00 am London time; and
- (b) in relation to a Reference Bank Rate calculated by reference to the available quotations in accordance with Clause ~~6-7~~7.7 (*Calculation of Reference Bank Rate*), noon on the Quotation Day.

"**Subordinated Debt Security**" has the meaning given in paragraph ~~(b) of~~ 13.14(b)(ii) of Clause ~~12-14~~ 13.14 (*Financial Indebtedness and subordination of indebtedness*).

"**Subsidiary**" has the following meaning:

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 attaching to the issued shares of S; or
- (c) P has the direct or indirect power to appoint or remove a majority of the directors of S; or
- (d) P otherwise has the direct or indirect power to ensure that the affairs of S are conducted in accordance with the wishes of P,

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

"**Supplemental Pre-delivery Security**" means a deed to be entered into pursuant to the June 2021 Amendment and Restatement Agreement between the Borrower and the Security Trustee, supplemental to the Pre-delivery Security, creating security over the Pre-delivery Contracts.

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"**Tax**" means any tax, levy, impost, duty, assessment, fee, deduction or other charge or withholding of a similar nature imposed by any governmental authority (including any penalty or interest payable in connection with any failure to pay or any delay in paying any of the same).

"**Term and Revolving Credit Facilities**" means the facilities granted pursuant to the credit agreement originally dated 24 May 2013 (as amended and restated from time to time) between, inter alios, the Guarantor and Voyager Vessel Company, LLC as borrowers, the lenders party thereto and JPMorgan Chase Bank, N.A., as administrative agent and collateral agent.

"**Term SOFR**" means a term SOFR reference rate administered by CME Group Benchmark Administration Limited (or any other person which takes over the administration of that rate) for the relevant period published (before any correction, recalculation or republication by the administrator) by CME Group Benchmark Administration Limited (or any other person which takes over the publication of that rate).

"**Term SOFR Loan**" means the Loan, any Deferral Tranche, any other part of the Loan or, if applicable, Unpaid Sum to which the Floating Interest Rate applies and which is, or becomes, a "Term SOFR Loan" pursuant to Clause 6 (Rate Switch).

"**Term SOFR Reference Rate**" means, in relation to any Term SOFR Loan:

(a) the applicable Term SOFR as of the Quotation Day and for a period equal in length to the Interest Period of that Term SOFR Loan; or

(b) as otherwise determined pursuant to Clause 7.8 (Unavailability of Term SOFR),

and if, in either case, the aggregate of that rate and the applicable Credit Adjustment Spread is less than zero, the Term SOFR Reference Rate shall be deemed to be such a rate that the aggregate of the Term SOFR Reference Rate and the Credit Adjustment Spread is zero.

"**Total Commitments**" means the aggregate of the Total Tranche A Commitments, the Total Tranche B Commitments and the Total Tranche C Commitments.

"**Total Loss**" means:

- (a) actual, constructive, compromised, agreed or arranged total loss of the Ship;
- (b) any expropriation, confiscation, requisition or acquisition of the 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 1 year without any right to an extension) unless it is within 1 month redelivered to the Borrower's full control;
- (c) any arrest, capture, seizure or detention of the Ship (including any hijacking or theft) unless it is within 1 month redelivered to the Borrower's full control.

"**Total Loss Date**" means:

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

**"Total Tranche A Commitments"** means the aggregate of the Tranche A Commitments, being eight hundred and sixty-eight million, one hundred and eight thousand, one hundred and eight Dollars and eleven ~~Cents~~ cents (\$868,108,108.11) as at the date of the Original Facility Agreement.

**"Total Tranche B Commitments"** means the aggregate of the Tranche B Commitments, being two hundred and fifty-eight million, seven hundred and forty-four thousand, four hundred and forty-four Dollars and forty-four ~~Cents~~ cents (\$258,744,444.44) as at the date of this Agreement.

**"Total Tranche C Commitments"** means the aggregate of the Tranche C Commitments, being sixteen million, eight hundred and sixty thousand, one hundred and fifty-six Dollars and thirty-two ~~Cents~~ cents (\$16,860,156.32) as at the date of this Agreement.

**"Tranche"** means Tranche A, Tranche B or Tranche C.

**"Tranche A"** means the part of the Facility made or to be made available by the Tranche A Lenders to the Borrower to finance (i) up to the Eligible Amount, the Dollar Equivalent of six hundred and forty million Euros (€640,000,000.00), corresponding to all or part of eighty per cent. (80%) of the Final Contract Price, (ii) the First Instalment of the SACE Premium and (iii) the Second Instalment of the SACE Premium.

**"Tranche A Commitments"** means, in relation to a Tranche A Lender, the amount set opposite its name under the heading "Tranche A Lenders" in Part A of Schedule 1 (*Lenders and Commitments*) and the amount of any other Tranche A Commitment transferred to it under this Agreement, to the extent not cancelled, reduced, terminated or transferred by it under this Agreement.

**"Tranche A Lender"** means a bank, financial institution, trust, fund or other entity listed in Part A of Schedule 1 (*Lenders and Commitments*) and acting through its Facility Office or its transferee, successor or ~~assign~~ assignee.

**"Tranche B"** means the part of the Facility to be made available by the Tranche B Lenders to the Borrower to finance:

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- (ii) up to the Upsize Allowance Eligible Amount, the Dollar Equivalent of Euros one hundred and eighty-five million six hundred thousand (€185,600,000), corresponding to all or part of eighty per cent. (80%) of the Upsize Allowance Price; and
- (iii) 100% of the Tranche B Premium to be paid in accordance with paragraph (a) of Clause 8.6 (*Tranche B Premium*).

**"Tranche B Commitments"** means, in relation to a Tranche B Lender, the amount set opposite its name under the heading "Tranche B Lenders" in Part B of Schedule 1 (*Lenders and Commitments*) and the amount of any other Tranche B Commitment transferred to it under this Agreement, to the extent not cancelled, reduced, terminated or transferred by it under this Agreement.

**"Tranche B Lender"** means a bank, financial institution, trust, fund or other entity listed in Part B of Schedule 1 (*Lenders and Commitments*) and acting through its Facility Office or its transferee, successor or ~~assign~~assignee.

**"Tranche B Premium"** has the meaning given to this term in paragraph (a) of Clause 8.6 (*Tranche B Premium*).

**"Tranche C"** means the part of the Facility to be made available by the Tranche C Lenders to the Borrower to finance, if applicable, the second instalment of the Additional SACE Premium, calculated in accordance with paragraph (a)(ii) of Clause ~~8.5~~9.5 (*Additional SACE Premium*).

**"Tranche C Commitments"** means, in relation to a Tranche C Lender, the amount set opposite its name under the heading "Tranche C Lenders" in Part C of Schedule 1 (*Lenders and Commitments*) and the amount of any other Tranche C Commitment transferred to it under this Agreement, to the extent not cancelled, reduced, terminated or transferred by it under this Agreement.

**"Tranche C Lender"** means a bank, financial institution, trust, fund or other entity listed in Part C of Schedule 1 (*Lenders and Commitments*) and acting through its Facility Office or its transferee, successor or ~~assign~~assignee.

**"Transaction Documents"** means the Finance Documents and the Underlying Documents.

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

**"UK Bail-In Legislation"** means (to the extent that the United Kingdom is not an EEA Member Country which has implemented, or implements, Article 55 BRRD) Part 1 of the United Kingdom Banking Act 2009 and any other law or regulation applicable in the United Kingdom relating to the resolution of unsound or failing banks, investment firms or other financial institutes or their affiliates (otherwise than through liquidation, administration or other insolvency proceedings).

**"Underlying Documents"** means the Shipbuilding Contract, the Refund Guarantee, any Management Agreement, any bareboat charter and any charter and associated guarantee in respect of which a notice of assignment is required to be served under the terms of the General Assignment.

**"Unpaid Sum"** means (i) any sum due and payable but unpaid by an Obligor under the Finance Documents and (ii) any part of the Aggregate SACE Premium unpaid by the Borrower.

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**"Upsize Allowance"** means an allowance in relation to:

- (a) the supplies, other items and services linked to the construction, decoration and operation of the Ship as provisionally listed in Section 0014 of the Specification (as defined in the Shipbuilding Contract) and as further agreed between the Borrower (as Owner under the Shipbuilding Contract) and the Builder, pursuant to article 9.2 of the Shipbuilding Contract; and
- (b) the improvements, changes and modifications agreed between the Borrower (as Owner under the Shipbuilding Contract) and the Builder, pursuant to article 9.2 of the Shipbuilding Contract.

**"Upsize Allowance Eligible Amount"** means eighty per cent. (80%) of the Dollar Equivalent of the Upsize Allowance Price.

**"Upsize Allowance Price"** means the price for the Upsize Allowance, in an amount of two hundred and thirty-two million Euros (€232,000,000).

**"US" means the United States of America.**

**"US Government Securities Business Day" means any day other than:**

- (a) a Saturday or a Sunday; and
- (b) a day on which the Securities Industry and Financial Markets Association (or any successor organisation) recommends that the fixed income departments of its members be closed for the entire day for purposes of trading in US Government securities.

**"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.

**"Write-down and Conversion Powers"** means:

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

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

## 1.2 Construction of certain terms

In this Agreement:

**"Agent"**, the **"SACE Agent"**, the **"Joint Mandated Lead Arranger"**, the **"Security Trustee"**, any **"Creditor Party"**, any **"Secured Party"**, any **"Lender"**, any **"Tranche A Lender"**, any **"Tranche B Lender"**, any **"Tranche C Lender"**, any **"Obligor"** or any other **"person"**, shall be construed so as to include its successors in title, permitted assigns and permitted transferees.

**"approved by the Lenders"** (or any similar determination or instruction by the Lenders) means approved in writing by the Agent acting on the instructions of all the Lenders and SACE (on such conditions as they may respectively impose) (or the Lenders only to the extent the SACE Insurance Policy does not cover the event for which such instruction or approval is required) and any requirement for approval by all the Lenders shall mean prior approval.

**"approved by the Majority Lenders"** (or any similar determination or instruction by the Majority Lenders) means approved in writing by the Agent acting on the instructions of the Majority Lenders and SACE (or the Majority Lenders only to the extent the SACE Insurance Policy does not cover the event for which such instruction or approval is required) (on such conditions as they may respectively impose) and otherwise approved means approved in writing by the Agent (on such conditions as the Agent may impose) and approval and approve shall be construed accordingly and any requirement for approval by the Agent or the Majority Lenders shall mean prior approval.

**"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.

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"**contingent liability**" means a liability which is not certain to arise and/or the amount of which remains unascertained.

"**date of this Agreement**" means ~~\_\_\_\_\_ 2024~~ the 2023 Effective Date.

"**document**" includes a deed; also a letter or electronic mail.

"**expense**" means any kind of cost, charge or expense (including all legal costs, charges and expenses) and any applicable Taxes including VAT.

a Lender's "cost of funds" in relation to its participation in the Loan or any part of the Loan is a reference to the average cost (determined either on an actual or a notional basis) which that Lender would incur if it were to fund, from whatever source(s) it may reasonably select, an amount equal to the amount of that participation in the Loan or that part of the Loan for a period equal in length to the Interest Period of the Loan or that part of the Loan;

"**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.

"**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;

"**law**" includes any order or decree, any form of delegated legislation, any treaty or international convention and any regulation or resolution of the Council of the European Union, the European Commission, the United Nations or its Security Council.

"**legal or administrative action**" means any legal proceeding or arbitration and any administrative or regulatory action or investigation.

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

"**months**" shall be construed in accordance with Clause 1.4 (*Meaning of "month"*).

"**parent company**" has the meaning given in the definition of "Subsidiary".

"**person**" includes any individual, firm, company, corporation, government, any state, political subdivision of a state and local or municipal authority, agency of a state or any association, trust, joint venture, consortium or partnership; and any international organisation (whether or not having a separate legal personality).

"**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.

"**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.

### 1.3 Construction of Insurance Terms

"**approved**" means, for the purposes of Clause ~~14~~ 15 (*Insurance Undertakings*), approved in writing by the Agent.

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

"**obligatory insurances**" means all insurances effected, or which the Borrower is obliged to effect, under Clause ~~44-15~~ 15 (*Insurance Undertakings*) or any other provision of this Agreement or another Finance Document.

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

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

"**war risks**" includes the risk of mines and all risks excluded by 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 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.

#### 1.5 Non-applicable provisions between the Obligors and German Lenders

The undertakings and covenants given under paragraph (d) of Clause ~~42-2-13.2~~ 13.2 (*Information*), Clause ~~42-4-13.4~~ 13.4 (*Illicit Payments*), Clause ~~42-5-13.5~~ 13.5 (*Prohibited Payments*), Clause ~~42-25-13.25~~ 13.25 (*Compliance with laws etc.*) or provisions contained in Clause ~~20-3-21.3~~ 21.3 (*Miscellaneous indemnities*) or Clause ~~24-4-22.1~~ 22.1 (*Illegality and Sanctions*) and the representations and warranties given under paragraphs (u), (v), (y), (z) and (jj) of Clause ~~44-2-12.2~~ 12.2 (*Continuing representations and warranties*) and paragraph (j) of Clause ~~44-3-12.3~~ 12.3 (*Representations on the Delivery Date*) respectively shall only be given, and be applicable to, a Lender incorporated in the Federal Republic of Germany insofar as the giving of and compliance with such undertakings and covenants and such representations and warranties do not result in a violation of or conflict with section 7 of the German Foreign Trade Regulation (*Außenwirtschaftsverordnung*) (in conjunction with section 4 paragraph 1 a no.3 foreign trade

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law (AWG) (*Außenwirtschaftsgesetz*)), any provision of Council Regulation (EC) 2271/1996 or any similar applicable anti-boycott law or regulation.

## 1.6 General Interpretation

In this Agreement:

- (a) references in Clause 1.1 (*Definitions*) to a Finance Document or any other document being an "**agreed form**" are to the form agreed between the Agent (acting with the authorisation of each of the Creditor Parties and SACE) and the Borrower with any modifications to that form which the Agent (with the authorisation of the Majority Lenders and SACE in the case of substantial modifications) approves or reasonably requires;
- (b) references to, or to a provision of, a Finance Document or any other document are references to it as amended, amended and restated or supplemented, whether before the date of this Agreement or otherwise;
- (c) references to Sanctions, for the purposes of Clause ~~11~~12 (*Representations and Warranties*), Clause ~~12~~13 (*General Undertakings*), Clause ~~20~~21 (*Indemnities*), Clause ~~21~~22 (*Illegality, etc.*) and the Security Documents shall mean "Sanctions" as defined in Clause 1.1 (*Definitions*), by which any Obligor is bound or to which it is subject or, as regards a regulation, compliance with which is reasonable in the ordinary course of business of any Obligor.
- (d) references to, or to a provision of, any law or regulation include any amendment, extension, re-enactment or replacement, whether made before the date of this Agreement or otherwise;
- (e) 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;
- (f) words denoting the singular number shall include the plural and vice versa; and
- (g) Clauses 1.1 (*Definitions*) to 1.6 (*General Interpretation*) apply unless the contrary intention appears.

## 1.7 Headings

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

## 1.8 Schedules

The schedules form an integral part of this Agreement.

# 2 FACILITY

## 2.1 Amount of facility

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Subject to the other provisions of this Agreement:

- (a) the Tranche A Lenders agree to make available to the Borrower a loan in relation to Tranche A in five (5) Advances not exceeding, in aggregate, the Total Tranche A Commitments intended to be applied as follows:
  - (i) in reimbursement to the Borrower or in payment to the Builder, up to the Eligible Amount, of all or part of eighty per cent. (80%) of the Final Contract Price;
  - (ii) in reimbursement to the Borrower of the amount of the First Instalment of the SACE Premium paid by it to SACE in accordance with paragraph (a) of Clause ~~8.4~~9.1 (*SACE Premium*); and
  - (iii) in payment to SACE of the amount of the Second Instalment of the SACE Premium payable by the Borrower to SACE in accordance with paragraph (b) of Clause ~~8.4~~9.1 (*SACE Premium*);
- (b) the Tranche B Lenders agree to make available to the Borrower a loan in relation to Tranche B in two (2) Advances not exceeding, in aggregate, the Total Tranche B Commitments intended to be applied as follows:
  - (i) in reimbursement to the Borrower or in payment to the Builder (as set out in the relevant Drawdown Notice) up to the Upsize Allowance Eligible Amount, of all or part of eighty per cent. (80%) of the Upsize Allowance Price; and
  - (ii) in reimbursement to the Borrower or in payment to SACE of the amount of the Tranche B Premium payable by the Borrower to SACE in accordance with paragraph (a)(i) of Clause ~~8.6~~9.6 (*Tranche B Premium*);
  - (iii) in payment to SACE of the amount of the Tranche B Premium payable by the Borrower to SACE in accordance with paragraph (a)(ii) of Clause 8.6 (*Tranche B Premium*).
- (c) the Tranche C Lenders agree to make available to the Borrower a loan in relation to Tranche C in one (1) Advance not exceeding the Total Tranche C Commitments intended to be applied in payment to SACE of the amount of the second instalment of the Additional SACE Premium which may be payable by the Borrower to SACE in accordance with paragraph (a)(ii) of Clause ~~8.5~~9.5 (*Additional SACE Premium*).

## **2.2 Lenders' participations in Loan**

Subject to the other provisions of this Agreement:

- (a) each Tranche A Lender shall participate in each Advance under Tranche A in the proportion which, as at the relevant Drawdown Date, its Tranche A Commitment bears to the Total Tranche A Commitments;
  - (b) each Tranche B Lender shall participate in each Advance under Tranche B in the proportion which, as at the relevant Drawdown Date, its Tranche B Commitment bears to the Total Tranche B Commitments; and
  - (c) each Tranche C Lender shall participate in the Advance under Tranche C in the proportion which, as at the relevant Drawdown Date, its Tranche C Commitment bears to the Total Tranche C Commitments.
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### 2.3 Purpose of Loan

The Borrower undertakes with each Secured Party to use:

- (a) each Advance under Tranche A only to pay for:
- (i) goods and services of Italian origin incorporated in the design, construction or delivery of the Ship;
  - (ii) subject to the limits and conditions fixed by the Italian Authorities, goods and services incorporated in the design, construction or delivery of the Ship and originating from countries other than Italy where the provision of such goods or services has been sub-contracted by the Builder and therefore remains the Builder's responsibility under the Shipbuilding Contract;
  - (iii) reimbursement to the Borrower of all or part of eighty per cent. (80%) of the First Shipbuilding Contract Instalment;
  - (iv) reimbursement to the Borrower of the First Instalment of the SACE Premium paid by the Borrower direct to SACE in accordance with paragraph (a) of Clause ~~8-4~~9.1 (*SACE Premium*); and
  - (v) the Second Instalment of the SACE Premium payable in accordance with paragraph (b) of Clause ~~8-4~~9.1 (*SACE Premium*);
- (b) each Advance under Tranche B only to pay:
- (i) for goods and services in relation to the Upsize Allowance; and
  - (ii) subject to the limits and conditions fixed by the Italian Authorities, goods and services incorporated in the design, construction or delivery of the Ship and originating from countries other than Italy where the provision of such goods or services has been sub-contracted by the Builder and therefore remains the Builder's responsibility under the Shipbuilding Contract;

provided that the first Advance under Tranche B shall also be used to pay 100% of the Tranche B Premium, payable in accordance with paragraph (a) (ii) of Clause ~~8-6~~9.6 (*Tranche B Premium*); and

- (c) the Advance under Tranche C only to pay for the second instalment of the Additional SACE Premium which may be payable in accordance with paragraph (a)(ii) of Clause ~~8-5~~9.5 (*Additional SACE Premium*).

### 2.4 Creditor Parties' rights and obligations

- (a) The obligations of each Creditor Party under the Finance Documents are several. Failure by a Creditor Party to perform its obligations under the Finance Documents does not affect the obligations of any other Party under the Finance Documents. No Creditor Party is responsible for the obligations of any other Creditor Party under the Finance Documents.
- (b) The rights of each Creditor Party and SACE under or in connection with the Finance Documents are separate and independent rights and any debt arising under the Finance Documents to a Creditor Party and SACE from an Obligor shall be a separate and independent debt.
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- (c) A Creditor Party and SACE may not, except as otherwise stated in the Finance Documents, separately enforce its rights under the Finance Documents.
- (d) Notwithstanding any other provision of the Finance Documents and subject to the prior written consent of SACE, a Creditor Party may separately sue for any Unpaid Sum due to it without the consent of any other Creditor Party or joining any other Creditor Party to the relevant proceedings (it being understood that a Creditor Party may file a claim noting the amounts due to it in the event insolvency proceedings are commenced against the Borrower by a third party).

## **2.5 Monitoring**

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

## **2.6 Obligations of Lenders several**

The obligations of the Lenders under this Agreement are several; and a failure of a Lender to perform its obligations under this Agreement shall not result in:

- (a) the obligations of the other Lenders being increased; nor
- (b) any Obligor or any other Lender being discharged (in whole or in part) from its obligations under any Finance Document,

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

## **3 CONDITIONS PRECEDENT**

### **3.1 General**

The Borrower may only draw an Advance under a Tranche when the following conditions have been fulfilled to the satisfaction of the Agent and provided no Event of Default shall have occurred and remains unremedied or is likely to occur as a consequence of the drawing of the Advance:

### **3.2 No later than the date of the Original Facility Agreement**

The Agent shall have received no later than the date of the Original Facility Agreement:

- (a) an opinion from legal counsel acceptable to the Secured Parties as to the laws of the state of Bermuda in form and substance satisfactory to the Agent and the Secured Parties, together with the company documentation of the Bermudian Obligors supporting the opinion, including but without limitation the Memorandum of Association and By-laws as filed with the competent authorities and a certificate of a competent officer or manager of each of the Bermudian Obligors containing specimen signatures of the persons authorised to sign the documents on behalf of each of the Bermudian Obligors, including, without limitation:
  - (i) the Bermudian Obligors have been duly formed and are validly existing as companies under the laws of Bermuda;



- (ii) the Finance Documents to which each Bermudian Obligor is a party to fall within the scope of the Bermudian Obligors' purpose as defined by their Memoranda of Association and By-laws;
  - (iii) each Bermudian Obligor's representatives were at the date of the Original Facility Agreement fully empowered to sign the Finance Documents to which it is a party;
  - (iv) either all administrative requirements applicable to the Bermudian Obligors (whether in Bermuda or elsewhere), concerning the transfer of funds abroad and acquisitions of Dollars to meet their obligations hereunder have been complied with, or that there are no such requirements;
  - (v) no withholding tax or stamp duty implications arise by virtue of the Bermudian Obligors entering into the Finance Documents to which they are a party respectively;
  - (vi) a judgment of an English Court in relation to this Agreement and any relevant Finance Documents to which each Bermudian Obligor is a party will be recognised by and acknowledged by the Courts in Bermuda; and
  - (vii) the Finance Documents to which each Bermudian Obligor is a party constitute the legal, valid and binding obligations of that Bermudian Obligor enforceable in accordance with its terms, and containing such qualifications and assumptions as are standard for opinions of this type;
- (b) an opinion from legal counsel to the Secured Parties as to English law in form and substance satisfactory to the Agent and the Secured Parties in respect of the validity and enforceability of the Original Facility Agreement and the Original Guarantee;
  - (c) an opinion from legal counsel to the Secured Parties as to Bermudian law in form and substance satisfactory to the Agent and the Secured Parties in respect of the validity and enforceability of the Shares Security Deed;
  - (d) a Certified Copy of the executed Shipbuilding Contract;
  - (e) such documentary evidence as the Agent and its legal advisers may require in relation to the due authorisation and execution by the Borrower and the Builder of the Shipbuilding Contract and of all documents to be executed by the Borrower and the Builder;
  - (f) a confirmation from EC3 Services Limited of The St Botolph Building, 138 Houndsditch, London EC3A 7AR that it will act for the Borrower and the Guarantor as agent for service of process in England in respect of the Original Facility Agreement and any other Finance Document;
  - (g) duly executed originals of the Original Guarantee and the Shares Security Deed and of each document to be submitted pursuant to it;
  - (h) such documentation and other evidence as is reasonably requested by the Agent (for itself or on behalf of any Lender or SACE) or any Lender or SACE (for itself) in order for the Agent and such Lender or SACE to carry out and be satisfied it has complied with all necessary "know your customer" or other similar checks under all applicable laws and regulations pursuant to the transactions contemplated in the Finance Documents;
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- (i) payment of [\*] per cent. ([\*]%) of the Joint Mandated Lead Arranger structuring fee payable in accordance with paragraph (a)(i) of Clause ~~9~~10 (*Fees*);
- (j) payment of the initial portion of the Agent Structuring Fee (as defined in the Fee Letter), payable in accordance with terms of the Fee Letter; and
- (k) an agreed form version of the Italian law tax opinion from legal counsel to the Creditor Parties in respect of the tax treatment of payments under the SACE Insurance Policy.

**3.3 No later than forty-five (45) days before the first Drawdown Date under Tranche A**

The Agent shall have received from the Borrower no later than forty-five (45) days before the first Drawdown Date under Tranche A (and on each subsequent date on which a Compliance Certificate is to be received by the Security Trustee pursuant to clause 11.3(c) of the Original Guarantee) a duly completed Compliance Certificate from the Guarantor.

**3.4 No later than [\*] ([\*]) days before the first Drawdown Date under Tranche A**

The Agent shall have received from the Borrower no later than [\*] ([\*]) days before the first Drawdown Date under Tranche A:

- (a) a notification, signed by a duly authorised signatory of the Borrower, specifying which of the Fixed Interest Rate or the Floating Interest Rate shall be applicable to all Advances until the date of payment of the final repayment instalment of the Loan in accordance with the provisions of Clause ~~6~~7.1 (*Fixed or Floating Interest Rate*);
- (b) the SACE Insurance Policy documentation relating to the transaction contemplated by this Agreement issued on terms whereby the SACE Insurance Policy will enter into full force and effect upon fulfilment of the conditions specified therein to be fulfilled on or before the first Drawdown Date; and
- (c) a certified true copy bank statement evidencing receipt by the Builder of the First Shipbuilding Contract Instalment (as described in Recital (B)).

**3.5 No later than five (5) Business Days before each Drawdown Date under any Tranche**

The Agent shall have received no later than five (5) Business Days before each Drawdown Date under any Tranche a Drawdown Notice from the Borrower, signed by a duly authorised signatory of the Borrower, specifying the amount of the Advance to be drawn down.

**3.6 No later than five (5) Business Days before the First Drawdown Date under Tranche A**

The Agent shall have received no later than five (5) Business Days before the first Drawdown Date under Tranche A:

- (a) an agreed form version of the Pre-delivery Security and of each document to be issued pursuant to it;
  - (b) an agreed form version of the opinion to be issued by legal counsel to the Secured Parties as to English law in form and substance satisfactory to the Agent and the Secured Parties in respect of the validity and enforceability of the Pre-delivery Security;
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- (c) an agreed form version of the opinion to be issued by legal counsel to the Secured Parties as to Bermuda law in form and substance satisfactory to the Agent and the Secured Parties in respect of the Borrower's execution of the Pre-delivery Security;
- (d) an original of the SACE Insurance Policy;
- (e) evidence that the First Instalment has been paid;
- (f) an agreed form version of the Interest Make-Up Agreement relative to the Loan;
- (g) an agreed form version of the opinion to be issued by legal counsel to the Creditor Parties as to Italian law in form and substance satisfactory to the Agent and the Secured Parties in respect of SACE's issuance of the SACE Insurance Policy and compliance with the principles governing the eligibility of credit risk mitigation techniques as per Article 194, paragraph 1, of the Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013;
- (h) if applicable, an agreed form version of the Subordinated Debt Security; and
- (i) the agreed form version of any opinions to be issued by legal counsel to the Secured Parties relating to the due execution, validity and enforceability of the Subordinated Debt Security (if applicable), in form and substance satisfactory to the Agent and the Secured Parties.

### **3.7 No later than the First Drawdown Date under Tranche A**

The Agent shall have received no later than the first Drawdown Date under Tranche A:

- (a) a duly executed original of the Pre-delivery Security (excluding any Account Pledge) and of each document to be issued pursuant to it;
- (b) an opinion from legal counsel to the Secured Parties as to English law in form and substance satisfactory to the Agent and the Secured Parties in respect of the validity and enforceability of the Pre-delivery Security (excluding any Account Pledge);
- (c) an opinion from legal counsel to the Secured Parties as to Bermuda law in form and substance satisfactory to the Agent and the Secured Parties in respect of the Borrower's execution of the Pre-delivery Security (excluding any Account Pledge);
- (d) an original of the Interest Make-Up Agreement relative to the Loan and in full force and effect;
- (e) an opinion from legal counsel to the Creditor Parties as to Italian law in form and substance satisfactory to the Agent and the Secured Parties in respect of SACE's issuance of the SACE Insurance Policy and compliance with the principles governing the eligibility of credit risk mitigation techniques as per Article 194, paragraph 1, of the Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013; and
- (f) an Italian law tax opinion from legal counsel to the Creditor Parties in respect of the tax treatment of payments under the SACE Insurance Policy.

### **3.8 No later than the First Drawdown Date under Tranche B**

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The Agent shall have received, no later than the first Drawdown Date under Tranche B:

- (a) a duly executed original of the Supplemental Pre-delivery Security and of each document to be issued pursuant to it;
- (b) a duly executed original of the relevant addendum to the Interest Make-Up Agreement;
- (c) a duly executed original of the relevant addendum to the SACE Insurance Policy;
- (d) a copy of the Seventh Addendum and any other relevant addendum to the Shipbuilding Contract;
- (e) an opinion from legal counsel to the Secured Parties as to English law in form and substance satisfactory to the Agent and the Secured Parties in respect of the validity and enforceability of the Supplemental Pre-delivery Security; and
- (f) an opinion from legal counsel to the Secured Parties as to Bermuda law in form and substance satisfactory to the Agent and the Secured Parties in respect of the Borrower's execution of the Supplemental Pre-delivery Security.

**3.9 No later than the Drawdown Date in respect of each Advance under Tranche A other than first Advance under Tranche A and the Delivery Advance under Tranche A**

The Agent shall have received no later than the Drawdown Date in respect of each Advance under Tranche A other than in respect of the first Advance under Tranche A and the Delivery Advance under Tranche A, a copy of the class milestone certificate in respect of the instalment due under the Shipbuilding Contract to which the Advance relates issued by the classification society.

**3.10 No later than the Drawdown Date in respect of each Advance under Tranche A and Tranche B other than the Delivery Advance under Tranche A and Tranche B**

The Agent shall have received no later than the Drawdown Date in respect of each Advance under Tranche A and Tranche B, other than the Delivery Advance under Tranche A and Tranche B:

- (i) a Certified Copy of any executed Refund Guarantee in respect of such Advance and of the power of attorney (or other form of authority) and related corporate authorities pursuant to which such Refund Guarantee was signed;
  - (ii) as regards any previous Advance, in the event the Refund Guarantee issued in respect of such previous Advance cannot be renewed or extended:
    - (A) evidence that an Acceptable Deposit has accordingly been transferred to the Account pursuant to the terms of the Shipbuilding Contract; and
    - (B) unless satisfied for any previous Advance, (x) a certified copy of the executed Account Pledge in respect of the Acceptable Deposit, granted by the Borrower in favour of the Security Trustee, the Joint Mandated Lead Arrangers, the Agent, the SACE Agent and the Lenders (as defined therein), (y) a certified copy of the power of attorney (or other form of authority) and related corporate authorities pursuant to which such Account Pledge was signed and (z) any usual standard form opinions from legal counsel to the Secured Parties
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required by the Secured Parties in respect of the execution and/or the validity and enforceability of the Account Pledge;

- (iii) a copy of the relevant invoice from the Builder in respect of the instalment under the Shipbuilding Contract to which the Advance relates;
  - (iv) written confirmation from the SACE Agent that there is no outstanding notice from SACE which terminates, cancels or repudiates, withdraws or suspends the SACE Insurance Policy or states that the SACE Insurance Policy is not effective or not guaranteed by the Republic of Italy;
  - (v)
    - (A) in relation to Tranche A, save for the First Shipbuilding Contract Instalment (in respect of which the Builder shall have received from the Borrower an amount equal to one hundred per cent (100%) of such instalment and the Agent shall have received a certified true copy bank statement evidencing receipt by the Builder of the First Shipbuilding Contract Instalment in accordance with Clause 3.4 (*No later than* [\*] (*[\*]*) *days before the first Drawdown Date*)), confirmation in writing from the Builder that it has received from the Borrower an amount equal to twenty per cent. (20%) of the relevant instalment due under the Shipbuilding Contract to which the Advance relates;
    - (B) in relation to Tranche B (save for an instalment in respect of which the Builder shall have received from the Borrower an amount equal to one hundred per cent (100%) of such instalment and the Agent shall have received a certified true copy bank statement evidencing receipt by the Builder of such full amount and of which 80% shall be reimbursed to the Borrower pursuant to the relevant Advance), confirmation in writing from the Builder that it has received from the Borrower an amount equal to twenty per cent. (20%) of the relevant instalment due under the Shipbuilding Contract to which the Advance relates;
  - (vi) a copy of a duly executed Qualifying Certificate;
  - (vii) a certificate confirming that:
    - (A) the Shipbuilding Contract continues to be in full force and effect; and,
    - (B) in relation to each instalment under a Pre-Delivery Contract, the proposed Refund Guarantee in respect of such instalment is or is to be provided by a Refund Guarantor who is not subject to an RG Downgrade Event; and
    - (C) in relation to any previous instalment under a Pre-Delivery Contract, in respect of which the issued Refund Guarantee cannot be renewed or extended and an Acceptable Deposit has accordingly been transferred to the Account pursuant to the terms of the Shipbuilding Contract, the Account Pledge continues to be in full force and effect;
  - (viii) a certificate of confirmation confirming that:
    - (A) no default or mandatory prepayment event pursuant to Clause ~~46~~17 (*Cancellation, Prepayment and Mandatory Prepayment*) is continuing or would result from the proposed Advance;
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- (B) the repeating representations and, in relation to the first Advance and first Drawdown Notice, all of the other representations set out in Clause ~~4-12~~ 12 (*Representations and Warranties*) (except the representations to be made on the Delivery Date pursuant to paragraph (b) of Clause ~~4-12.1~~ 12.1 (*Timing and repetition*)) are true;
- (ix) a certificate of confirmation attaching an original or a certified copy of each of the SACE Required Documents and the Agent shall be satisfied that the SACE Required Documents on their face appear properly completed and comply with the requirements of this Agreement and the requirements of the SACE Insurance Policy;
- (x) if applicable, a duly executed original of the Subordinated Debt Security; and
- (xi) any opinions from legal counsel to the Secured Parties relating to the due execution, validity and enforceability of the Subordinated Debt Security (if applicable), in form and substance satisfactory to the Agent and the Secured Parties.

**3.11 No later than four (4) years before the Intended Delivery Date**

The Agent shall have received no later than four (4) years before the Intended Delivery Date, payment of the remaining [\*] per cent. ([\*]%) of the Joint Mandated Lead Arranger structuring fee payable in accordance with paragraph (a)(ii) of Clause ~~9-10~~ 10 (*Fees*).

**3.12 No later than ninety (90) days before the Intended Delivery Date**

The Agent shall have received no later than ninety (90) days before the Intended Delivery Date:

- (a) notification from the Borrower of its chosen Maritime Registry; and
- (b) notification of the Approved Manager.

**3.13 No later than sixty (60) days before the Intended Delivery Date**

The Agent shall have received from the Borrower no later than sixty (60) days before the Intended Delivery Date:

- (a) notification of the Intended Delivery Date;
- (b) a notice from the Borrower as described in paragraph (a) of Clause ~~8-4-9.4~~ 9.4 (*Refund*) and in paragraph (f) of Clause ~~8-6-9.6~~ 9.6 (*Tranche B Premium*); and
- (c) a Bermudian tax opinion from legal counsel to the Secured Parties in respect of the tax treatment of the entry by the Bermudian incorporated Borrower into this Agreement and the other Finance Documents substantially in the form notified to the Borrower on or around the date of this Agreement and updated to reflect any changes in law.

**3.14 No later than fifteen (15) Business Days before the Intended Delivery Date**

The Agent shall have received no later than fifteen (15) Business Days before the Intended Delivery Date insurance documents in form and substance satisfactory to the Lenders confirming that the Insurances have been effected and will be in full force and effect on the Delivery Date.

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### 3.15 No later than five (5) Business Days before the Intended Delivery Date

The Agent shall have received no later than five (5) Business Days before the Intended Delivery Date:

- (a) a Certified Copy of any amendments to the Shipbuilding Contract which are not Minor Modifications arising in the general day to day construction period for a vessel of the type of the Ship and of the power of attorney pursuant to which the authorised signatory of the Borrower signed the relevant Drawdown Notice and a specimen of his signature; and
- (b) a final confirmation of the Intended Delivery Date signed by a duly authorised signatory of the Borrower, and counter-signed by a duly authorised signatory of the Builder.

### 3.16 No later than the Delivery Date

- (a) In respect of the Advance to be made available by the Tranche A Lenders on the Delivery Date, the Agent shall have received no later than the Delivery Date:
    - (i) if applicable, a duly executed original of the Subordinated Debt Security;
    - (ii) any opinions from legal counsel to the Secured Parties relating to the due execution, validity and enforceability of the Subordinated Debt Security, in form and substance satisfactory to the Agent and the Secured Parties;
    - (iii) evidence of payment to and receipt by the Builder of any other part of the Final Contract Price as at the Delivery Date not being financed hereunder;
    - (iv) payment of the remaining portion of the Agent Structuring Fee (as defined in the Fee Letter), payable in accordance with terms of the Fee Letter;
    - (v) evidence of payment of all amounts which are due and payable hereunder by the Borrower on or prior to the Delivery Date;
    - (vi) a certificate from the Borrower, signed by an authorised representative of the Borrower, confirming that the representations and warranties contained in Clause ~~41-12~~ (*Representations and Warranties*) are true and correct as of the Delivery Date in consideration of the facts and circumstances existing as of the Delivery Date;
    - (vii) a certificate of confirmation confirming that:
      - (A) the Shipbuilding Contract continues to be in full force and effect;
      - (B) no default or mandatory prepayment event pursuant to Clause ~~46-17~~ (*Cancellation, Prepayment and Mandatory Prepayment*) is continuing or would result from the Delivery Advances;
      - (C) the repeating representations as set out in Clause ~~41-12~~ (*Representations and Warranties*) are true; and
      - (D) the representations to be made on the Delivery Date pursuant to Clause ~~41.3-12.3~~ (*Representations on the Delivery Date*) are true;
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- (viii) an original or a certified copy of each of the SACE Required Documents and the Agent shall be satisfied that the SACE Required Documents on their face appear properly completed and comply with the requirements of this Agreement and the requirements of the SACE Insurance Policy;
- (b) In respect of the Advance to be made available by the Tranche B Lenders on Delivery Date, the Agent shall have received no later than the Delivery Date:
  - (i) a copy of the relevant invoice from the Builder in respect of the Upsize Allowance to which such Advance relates;
  - (ii) the documents, evidence or confirmations, as relevant, set out in paragraphs (a)(i), (a)(v), (a)(vi), (a)(vii) and (a)(viii) of this Clause 3.16 (*No later than the Delivery Date*) and
  - (iii) evidence of payment to and receipt by the Builder of any other part of the Upsize Allowance Price as at the Delivery Date not being financed hereunder;
- (c) If applicable, in respect of the Advance to be made available by the Tranche C Lenders on Delivery Date, the Agent shall have received no later than the Delivery Date the documents, evidence or confirmations, as relevant, set out in paragraphs (a)(i), (a)(ii) (a)(v), (a)(vi) and (a)(vii) of this Clause 3.16 (*No later than the Delivery Date*),

provided always that, in relation to paragraphs (a), (b) and (c) above, the obligations of the relevant Lenders to make such Advance under each of Tranche A, Tranche B and Tranche C, as applicable, available on the Delivery Date are subject to the Lenders remaining satisfied that each of the SACE Insurance Policy and the Interest Make-Up Agreement will cover the Loan following such Advances and delivery to the Agent of the documents listed in Schedule 3 (*Documents to be produced by the Builder to the Agent on Delivery*).

### **3.17 At Delivery**

Immediately prior to the delivery of the Ship by the Builder to the Borrower, the Agent shall have received:

- (a) evidence that immediately following delivery:
    - (i) the Ship will be registered in the name of the Borrower in the Maritime Registry;
    - (ii) title to the Ship will be held by the Borrower free of all Security Interests other than any maritime lien in respect of crew's wages and trade debts arising out of equipment, consumable and other stores placed on board the Ship prior to or concurrently with delivery, none of which is overdue;
    - (iii) the Mortgage will be duly registered in the Maritime Registry and constitutes a first priority security interest over the Ship and that all taxes and fees payable to the Maritime Registry in respect of the Ship have been paid in full; and
    - (iv) the opinions mentioned in paragraphs (b) and (c) of Clause 3.18 (*Immediately following Delivery*), in draft form immediately prior to the delivery of the Ship, and the documents mentioned in paragraph (e) of Clause 3.18 (*Immediately following Delivery*) will be issued to and received by the Agent;
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- (b) a Certified Copy of a classification certificate (or interim classification certificate) showing the Ship to be classed in accordance with paragraph (c) of Clause ~~41.3~~12.3 (*Representations on the Delivery Date*).
- (c) duly executed originals of the General Assignment, any Approved Manager's Undertaking and the Post-Delivery Assignment together with relevant notices of assignment and the acknowledgement of the notice of assignment to be issued pursuant to the General Assignment and the Post-Delivery Assignment;
- (d) a Certified Copy of any executed Management Agreement, any bareboat charter and any related security pursuant to paragraph (b) of Clause ~~13.1~~14.1 (*Pooling of earnings and charters*) (if applicable) and any time charterparty in respect of the Ship;
- (e) a Certified Copy of any current certificate of financial responsibility in respect of the Ship issued under OPA, a valid Safety Management Certificate (or interim Safety Management Certificate) issued to the Ship in respect of its management by the Approved Manager pursuant to the ISM Code, a valid Document of Compliance (or interim Document of Compliance) issued to the Approved Manager in respect of ships of the same type as the Ship pursuant to the ISM Code, a valid International Ship Security Certificate issued to the Ship in accordance with the ISPS Code and a valid IAPPC issued to the Ship in accordance with Annex VI and, if entered into, any carrier initiative agreement with the United States' Customs and Border Protection under the Customs-Trade Partnership Against Terrorism (C-TPAT) programme along with any other documents required under the ISM Code and the ISPS Code;
- (f) a Certified Copy of the power of attorney pursuant to which the authorised signatory(ies) of the Borrower signed the documents referred to in this Clause 3.17 (*At Delivery*) and to which the Borrower is a party and a specimen of his or their signature(s); and
- (g) a confirmation from Hannaford Turner LLP, currently of 107 Cheapside, London UK, EC2V 6DN, (or any replacement process agent satisfactory to the Agent acting reasonably) that it will act for each of the relevant Obligors as agent for service of process in England in respect of the deed of covenants constituting part of the Mortgage (if applicable), the General Assignment and the Post-Delivery Assignment.

### **3.18 Immediately following Delivery**

Immediately following the delivery of the Ship by the Builder to the Borrower, the Agent shall receive:

- (a) a duly executed original of the Mortgage;
  - (b) an opinion from legal counsel acceptable to the Secured Parties as to the law of the Maritime Registry in form and substance satisfactory to the Agent and the Secured Parties confirming:
    - (i) the valid registration of the Ship in the Maritime Registry; and
    - (ii) the Mortgage over the Ship is a first priority security and has been validly registered in the Maritime Registry;
  - (c) an opinion from legal counsel to the Secured Parties as to English law in form and substance satisfactory to the Agent and the Secured Parties in respect of the validity and enforceability of the deed of covenants constituting part of the Mortgage (if applicable), the General
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- Assignment, the Post-Delivery Assignment and any other relevant security document entered into at delivery;
- (d) an opinion from legal counsel acceptable to the Secured Parties as to the laws of the state of Bermuda in form and substance satisfactory to the Agent and the Secured Parties together with the company documentation of the Borrower and a certificate of a competent officer or manager of the Borrower containing specimen signatures of the persons authorised to sign the documents on behalf of the Borrower, confirming that, without limitation:
- (i) the Mortgage, the deed of covenants constituting part of the Mortgage, the General Assignment, the Post-Delivery Assignment and the bareboat charter (if applicable) fall within the scope of the Borrower's company purpose as defined by its Memorandum of Association and By-laws and are binding on it; and
  - (ii) the Borrower's representatives are fully empowered to sign the Protocol of Delivery and Acceptance, the Mortgage, the deed of covenants constituting part of the Mortgage, the General Assignment, the Post-Delivery Assignment and the bareboat charter (if applicable) and any related security pursuant to paragraph (b) of Clause ~~13.1~~14.1 (*Pooling of earnings and charters*); and
- (e) the documents listed in Schedule 3 (*Documents to be produced by the Builder to the Agent on Delivery*).

### **3.19 Notification of satisfaction of conditions precedent**

The Agent shall notify the Tranche A Lenders, the Tranche B Lenders, the Tranche C Lenders, SACE and SIMEST, as applicable, promptly upon being satisfied as to the satisfaction of the conditions precedent referred to in this Clause 3 (*Conditions Precedent*).

### **3.20 Waiver of conditions precedent**

If the Majority Lenders, at their discretion, subject to the prior written consent of SACE, permit an Advance under a Tranche to be borrowed before any of the conditions precedent referred to in Clause 3 (*Conditions Precedent*) has been satisfied, the Borrower shall ensure that that condition is satisfied within five (5) Business Days after the date (as specified in the relevant part of Clause 3 (*Conditions Precedent*)) or such later date as the Agent may agree in writing with the Borrower.

### **3.21 Changes to SACE's or SIMEST's requirements**

- (a) If SACE or SIMEST notifies the Agent in writing of a change of the SACE Insurance Policy or the Interest Make-Up Agreement (as applicable), or gives instructions to the SACE Agent with the effect that, in the opinion of the Agent, this Agreement or certain documents which the Borrower is or may be required to provide for the purpose of drawing an Advance under this Agreement shall be amended to comply with such change or instructions, then the SACE Agent shall promptly notify the Borrower of such a change in SACE's or SIMEST's requirements (as applicable) and of the relevant amendments to be made to this Agreement or any such documents as the Agent considers appropriate.
- (b) If the Agent notifies the Borrower of any proposed changes to this Agreement under paragraph (a) above, and provided that:
- (i) all the Lenders and the Borrower agree with such changes; and
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- (ii) the Borrower indemnifies and holds harmless the Agent and the Lenders for any reasonable costs that it may incur arising from or in connection with any such amendments (including legal fees),

then such changes will be made to this Agreement in accordance with the terms hereof.

- (c) If, in the opinion of the Lenders, there are any provisions of this Agreement that contradict or conflict with any provision of the SACE Insurance Policy or the Interest Make-Up Agreement (as applicable), such that compliance by any Creditor Party with the terms of the SACE Insurance Policy or the Interest Make-Up Agreement (as applicable) may result in a breach by such Creditor Party of the any of the terms of this Agreement or to an extent that the same may have the effect of rendering all or any part of the SACE Insurance Policy or the Interest Make-Up Agreement (as applicable) void, voidable or otherwise not in full force and effect, the Borrower agrees that any relevant terms of this Agreement will be amended to the extent agreed in writing between the Borrower and the Agent to ensure compliance with the terms of the SACE Insurance Policy or the Interest Make-Up Agreement (as applicable).

### **3.22 No claim against the Creditor Parties**

The Borrower agrees that the Creditor Parties may act on the instructions of the Italian Authorities in relation to this Agreement.

### **3.23 Examination and reliance on documents by the Agent**

- (a) The Agent shall ensure that an officer or employee or other person designated by it as its authorised representative is present at the Builder on the Delivery Date for the purpose of examining originals (or certified copies) of the SACE Required Documents duly signed by the parties thereto and collecting copies thereof (which copies shall be certified as true copies by an authorised signatory of the Builder and/or the Borrower, as applicable).
  - (b) The Agent shall be entitled (but not obliged) to rely and act upon any documentation or information provided under this Clause 3 (*Conditions Precedent*), which appears on its face to have been duly completed.
  - (c) The Agent's responsibility to the Borrower and the Lenders for the examination of any Drawdown Notice, and, when applicable, the documents provided by any person other than the Borrower in connection with each Drawdown Notice, shall be limited to the examination of their apparent compliance with the terms and conditions thereof in accordance with Articles 14 (Standard of examination of documents) and 34 (Disclaimer on effectiveness of documents) of the "Uniform Customs and Practice for Documentary Credits" (currently publication number 600 of the International Chamber of Commerce, latest edition) (except that no time limit for examination of documents shall apply).
  - (d) The Agent and the Lenders shall not be obliged to enquire as to, or be responsible for, the validity, truthfulness and genuineness and (where the relevant document is a conformed copy) conformity to the original of any Drawdown Notice or any other document which appears on its face to be in order, or of any signatures thereon or any of the statements set out therein and shall be entitled to rely on the accuracy of any such statements.
  - (e) In case of any discrepancy in any such documents, the Agent shall notify the Borrower in writing thereof and shall request its approval of such discrepancy in writing.
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The Agent and the Lenders shall not be responsible for any delay in making available any Advances resulting from any requirement for the delivery of further information or documents reasonably required by the Agent for the relevant conditions precedent in this Agreement to be satisfied.

#### **4 DRAWDOWN**

##### **4.1 Borrower's irrevocable payment instructions**

- (a) The Tranche A Lenders shall not be obliged to fulfil their obligation to make an Advance available under Tranche A other than (i) by reimbursing the Borrower or by paying the Builder all or part of eighty per cent. (80%) of the Final Contract Price on behalf of and in the name of the Borrower, (ii) by reimbursing the Borrower for the First Instalment of the SACE Premium which is to be paid by the Borrower to SACE on the earlier of (A) the date falling 30 days after the issuance of the SACE Insurance Policy and (B) the date falling 6 months after the date of SACE's board approval and (iii) by payment to SACE of the Second Instalment of the SACE Premium payable on the first Drawdown Date under Tranche A.
- (b) The Tranche B Lenders shall not be obliged to fulfil their obligation to make an Advance available under Tranche B other than:
- (i) by reimbursing the Borrower or by paying the Builder (as set out in the relevant Drawdown Notice) all or part of eighty per cent. (80%) of the Upsize Allowance Price on behalf of and in the name of the Borrower; and
  - (ii)
    - (A) by reimbursing to the Borrower or by paying SACE, as applicable, the amount of the Tranche B Premium referred to in paragraph (a)(i) of Clause 8.6 (Tranche B Premium); and
    - (B) by paying SACE the amount of the Tranche B Premium referred to in paragraph (a)(ii) of Clause 8.6 (Tranche B Premium),such amounts of the Tranche B Premium to be paid by the Borrower to SACE in accordance with paragraph (a) of Clause 8.6 (*Tranche B Premium*).
- (c) The Tranche C Lenders shall not be obliged to fulfil their obligation to make an Advance available under Tranche C other than by payment to SACE of the second instalment of the Additional SACE Premium which is to be paid by the Borrower to SACE in accordance with paragraph (a)(ii) of Clause ~~8-5~~9.5 (*Additional SACE Premium*).
- (d) The Borrower hereby instructs the Tranche A Lenders in accordance with this Clause 4.1 (*Borrower's irrevocable payment instructions*) and in accordance with Schedule 6 (*Drawdown Schedules*):
- (i) to reimburse to the Borrower and to pay to the Builder, up to the Eligible Amount, all or part of eighty per cent. (80%) of the Final Contract Price in five (5) Advances in accordance with Schedule 6 (*Drawdown Schedules*);
  - (ii) to reimburse the Borrower on the first Drawdown Date under Tranche A the amount of the First Instalment of the SACE Premium to be paid by the Borrower to SACE on the earlier of (i) the date falling 30 days after the issuance of the SACE Insurance Policy and
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- (ii) 16 June 2017, being the date falling 6 months after the date of SACE's board approval; and
    - (iii) to pay to the Agent on behalf of the Tranche A Lenders for onward payment to SACE (such payment to SACE to be made for value on the first Drawdown Date under Tranche A), by drawing under this Agreement, the amount of the Second Instalment of the SACE Premium.
  - (e) The Borrower hereby instructs the Tranche B Lenders in accordance with this Clause 4.1 (*Borrower's irrevocable payment instructions*) and in accordance with Schedule 6 (*Drawdown Schedules*) to:
    - (i) reimburse to the Borrower or pay to the Builder in accordance with the relevant Drawdown Notice, up to the Upsize Allowance Eligible Amount, all or part of eighty per cent. (80%) of the Upsize Allowance Price in four (4) Advances in accordance with Schedule 6 (*Drawdown Schedules*); and
    - (ii) pay to the Agent on behalf of the Tranche B Lenders:
      - (A) for reimbursement to the Borrower or for onward payment to SACE (such reimbursement to the Borrower or payment to SACE, as applicable, to be made for value on the first Drawdown Date under Tranche B), by drawing under this Agreement, the amount of the Tranche B Premium referred to in paragraph (a)(i) of Clause 8.6 (*Tranche B Premium*); and
      - (B) for onward payment to SACE (such payment to SACE to be made for value on the first Drawdown Date under Tranche B), by drawing under this Agreement, the amount of the Tranche B Premium referred to in paragraph (a)(ii) of Clause 8.6 (*Tranche B Premium*),such amounts of the Tranche B Premium to be paid by the Borrower to SACE pursuant to paragraph (a) of Clause 8.6 (*Tranche B Premium*).
  - (f) If applicable, the Borrower hereby instructs the Tranche C Lenders in accordance with this Clause 4.1 (*Borrower's irrevocable payment instructions*) to pay to the Agent on behalf of the Tranche C Lenders for onward payment to SACE (such payment to SACE to be made for value on the Delivery Date), by drawing under this Agreement, the amount of the second instalment of the Additional SACE Premium to be paid by the Borrower to SACE in accordance with paragraph (a)(ii) of Clause ~~8-5~~ 9.5 (*Additional SACE Premium*).
  - (g) Payment to the Builder of the amounts drawn under paragraph (d)(i) of this Clause 4.1 (*Borrower's irrevocable payment instructions*) above shall be made on the relevant Drawdown Date during usual banking hours in Italy to the Builder's account as specified by the Builder in accordance with the Shipbuilding Contract and, in respect of the Delivery Advance under Tranche A, after receipt and verification by the Agent of the documents provided under Schedule 3 (*Documents to be produced by the Builder to the Agent on Delivery*).
  - (h) Reimbursement to the Borrower or payment to the Builder of the amounts drawn under paragraph ~~(i)~~ (b) of this Clause 4.1 (*Borrower's irrevocable payment instructions*) above shall be made on the relevant Drawdown Date either during usual banking hours in Italy to the Builder's account as specified by the Builder in accordance with the Shipbuilding Contract or to the Borrower's account to be specified by the Borrower and, in respect of the Delivery
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Advance under Tranche B, after receipt and verification by the Agent of the documents provided under Schedule 3 (*Documents to be produced by the Builder to the Agent on Delivery*).

- (i) Save as contemplated in Clause 4.3 (*Modification of payment terms*) below, the payment instruction contained in this Clause 4.1 (*Borrower's irrevocable payment instructions*) is irrevocable.

#### 4.2 Conversion Rate for Loan

The Dollar amounts to be drawn down under paragraphs (a), (b) and (c) of Clause 4.1 (*Borrower's irrevocable payment instructions*) shall be calculated by the Agent on the Conversion Rate Fixing Date in accordance with the definitions of "Eligible Amount", "Upsize Allowance Eligible Amount" and "Conversion Rate" in Clause 1.1 (*Definitions*).

#### 4.3 Modification of payment terms

The Borrower expressly acknowledges that the payment terms set out in this Clause may only be modified with the agreement of the Italian Authorities, the Agent, the Security Trustee, the Lenders and the Borrower in the case of paragraphs (d)(i) and (e)(i) of Clause 4.1 (*Borrower's irrevocable payment instructions*) and with the agreement of the Italian Authorities, the Agent, the Lenders and the Borrower in the case of paragraphs (d)(ii), (d)(iii), (e)(ii) and (f) of Clause 4.1 (*Borrower's irrevocable payment instructions*); **provided that** it is the intention of the Borrower, the Lenders, the Security Trustee and the Agent that prior to the Conversion Rate Fixing Date agreement shall be reached with those financial institutions with whom the Borrower has entered into the FOREX Contracts (the "**Counterparties**") in order that the Euro payments due from the Counterparties under the FOREX Contracts shall be paid to the Agent for holding in escrow and to be released by the Agent simultaneously with (i) the payment of each Advance to the Builder denominated in Euro and (ii) the payment to the Counterparties of the Dollars due to them under the relevant FOREX Contracts out of the Dollar amount available under paragraph (d)(i) and (e)(i) of Clause 4.1 (*Borrower's irrevocable payment instructions*), subject to the Borrower having deposited with the Agent before each Drawdown Date, if and to the extent required, any Dollar and/or Euro amounts as may be needed to ensure the payment in full of both the balance of the relevant Advance in Euro and the Dollars owed to the Counterparties under all the relevant FOREX Contracts.

#### 4.4 Availability and conditions

- (a) A drawing may not be made under this Agreement (and an Advance shall not be available) after the expiry of the Availability Period and any Commitment which is not utilised on the last day of the Availability Period shall then be cancelled.
  - (b) Under this Agreement, there will be no more than:
    - (i) five (5) Advances under Tranche A;
    - (ii) two (2) Advances under Tranche B; and
    - (iii) one (1) Advance under Tranche C.
  - (c) The amount of the first Advance under Tranche A shall not exceed the aggregate of (i) the Dollar Equivalent of 80% of the First Shipbuilding Contract Instalment and (ii) the SACE Premium.
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- (d) The amount of each Advance under Tranche A (save for the first Advance under Tranche A) shall not exceed the Dollar Equivalent of eighty per cent. (80%) of the amount of the instalment due to the Builder under the Shipbuilding Contract to which that Advance relates.
- (e) The amount of the first Advance under Tranche B shall not exceed the aggregate of (i) the Dollar Equivalent of eighty per cent. (80%) of the amount of the instalment due to the Builder under the Shipbuilding Contract to which that Advance relates and (ii) 100% of the Tranche B Premium.
- (f) The amount of each Advance under Tranche B (save for the first Advance under Tranche B) shall not exceed the Dollar Equivalent of eighty per cent. (80%) of the amount of the instalment due to the Builder under the Shipbuilding Contract to which that Advance relates.
- (g) The amount of the Advance under Tranche C shall not exceed the lower of (i) the amount calculated pursuant to the provisions of paragraph (a)(ii) of Clause ~~8.5-9.5~~ (*Additional SACE Premium*) and (ii) the Total Tranche C Commitments.
- (h) The aggregate amount of:
  - (i) the Tranche A Advances cannot exceed the Total Tranche A Commitments;
  - (ii) the Tranche B Advances cannot exceed the Total Tranche B Commitments;
  - (iii) the Tranche C Advance cannot exceed the Total Tranche C Commitments; and
  - (iv) the Advances under all Tranches cannot exceed Total Commitments.
- (i) The Lenders shall not be under any obligation to lend any Advance to the Borrower if prior to that Advance any of the events specified in Article 20.2 of the Shipbuilding Contract occurs.

#### **4.5 Notification to Lenders of receipt of a Drawdown Notice**

The Agent shall promptly notify the Tranche A Lenders, the Tranche B Lenders and the Tranche C Lenders, as applicable, that it has received a Drawdown Notice in relation to a Tranche and shall inform each relevant Lender of:

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

#### **4.6 Lenders to make available Contributions**

Subject to the provisions of this Agreement, each Lender shall, on and with value on each Drawdown Date under a Tranche, make available to the Agent the amount due from that Lender under Clause 2.2 (*Lenders' participations in Loan*) on that Drawdown Date.

#### **4.7 Disbursement of Advance**

Subject to the provisions of this Agreement, the Agent shall on each Drawdown Date pay the amounts which the Agent receives from the Lenders under Clause 4.6 (*Lenders to make available Contributions*) in the like funds as the Agent received the payments from the Lenders:

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- (a) in the case of the amount referred to in paragraph (d)(i) of Clause 4.1 (*Borrower's irrevocable payment instructions*), to the account of the Builder and the Borrower which the Borrower specifies in the Drawdown Notice;
- (b) in the case of an amount referred to in paragraph (d)(ii) of Clause 4.1 (*Borrower's irrevocable payment instructions*) to the account of the Borrower which the Borrower shall specify;
- (c) in the case of an amount referred to in paragraph (d)(iii) of Clause 4.1 (*Borrower's irrevocable payment instructions*) to the account of SACE which the SACE Agent shall specify;
- (d) in the case of an amount referred to in paragraph (e)(i) of Clause 4.1 (*Borrower's irrevocable payment instructions*) to the account of the Builder or the Borrower which the Borrower specifies in the Drawdown Notice;
- (e) in the case of an amount referred to in paragraph (e)(ii)(A) of Clause 4.1 (*Borrower's irrevocable payment instructions*) to the account of the Borrower which the Borrower specifies in the Drawdown Notice or SACE which the SACE Agent shall specify;
- (f) in the case of an amount referred to in paragraph (e)(ii)(B) of Clause 4.1 (*Borrower's irrevocable payment instructions*) to the account of SACE which the SACE Agent shall specify; and
- (g) in the case of an amount referred to in paragraph (f) of Clause 4.1 (*Borrower's irrevocable payment instructions*) to the account of SACE which the SACE Agent shall specify.

#### 4.8 Disbursement of Advance to third party

The payment by the Agent under Clause 4.7 (*Disbursement of Advance*) shall constitute the making of the Advance and the Borrower shall at that time become indebted, as principal and direct obligor, to each relevant Lender in an amount equal to that Lender's Contributions.

## 5 REPAYMENT

### 5.1 Number of repayment instalments

The Borrower shall repay the Loan by twenty-four (24) consecutive six-monthly instalments from the earlier of (i) the Delivery Date and (ii) the date of actual disbursement of the respective delivery instalment (the "**Starting Point of Repayment**").

### 5.2 Repayment Dates

The first repayment instalment shall be repaid on the date falling six (6) months after the Starting Point of Repayment and the last repayment instalment on the date falling one hundred and forty-four (144) months after the Starting Point of Repayment, each date of payment of an instalment being a "**Repayment Date**".

### 5.3 Amount of repayment instalments

Each repayment instalment of the Loan shall be of an equal amount.

### 5.4 Final Repayment Date

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

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## **6** **RATE SWITCH**

### **6.1** **Switch to Term SOFR Reference Rate**

Subject to Clause 6.2 (Delayed switch for existing LIBOR Loans), on and from the Rate Switch Date, where the Floating Interest Rate applies:

- (a) use of the Term SOFR Reference Rate will replace the use of LIBOR for the calculation of interest for the Loan or any part of the Loan; and
- (b) the Loan or any part of the Loan or Unpaid Sum shall be a "Term SOFR Loan" and paragraph (b) of the definition of Floating Interest Rate shall apply to the Loan, any such part of the Loan or Unpaid Sum.

### **6.2** **Delayed Switch for Existing LIBOR Loans**

If the Rate Switch Date falls before the last day of an Interest Period for a LIBOR Loan:

- (a) the Loan, relevant part of the Loan or Unpaid Sum (as applicable) shall continue to be a LIBOR Loan for that Interest Period and paragraph (a) of the definition of Floating Interest Rate shall continue to apply to the Loan, relevant part of the Loan or Unpaid Sum (as applicable) for that Interest Period;
- (b) any provision of this Agreement which is expressed to relate solely to a Term SOFR Loan shall not apply in relation to the Loan, relevant part of the Loan or Unpaid Sum (as applicable) for that Interest Period; and
- (c) on and from the first day of the next Interest Period (if any) for the Loan, relevant part of the Loan or Unpaid Sum (as applicable):
  - (i) the Loan, relevant part of the Loan or Unpaid Sum (as applicable) shall be a "Term SOFR Loan"; and
  - (ii) paragraph (b) of the definition of Floating Interest Rate shall apply to it.

### **6.3** **Notifications by Agent**

- (1) Subject to paragraph (3) below, following the occurrence of a Rate Switch Trigger Event, the Agent shall:
    - (a) promptly upon becoming aware of the occurrence of that Rate Switch Trigger Event, notify the Borrower and the Lenders of that occurrence; and
    - (b) promptly upon becoming aware of the date of the Rate Switch Trigger Event Date applicable to that Rate Switch Trigger Event, notify the Borrower and the Lenders of that date.
  - (2) The Agent shall, promptly upon becoming aware of the occurrence of the Rate Switch Date, notify the Borrower and the Lenders of that occurrence.
  - (3) The Parties agree that the FCA Cessation Announcement constitutes a Rate Switch Trigger Event, that the Rate Switch Trigger Event Date applicable to such Rate Switch Trigger Event will be 1 July 2023 and that the Agent is not under any obligation under paragraph (1) above to
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notify any Party of such Rate Switch Trigger Event or Rate Switch Trigger Event Date resulting from the FCA Cessation Announcement.

- (4) For the purposes of paragraph (3) above, the "FCA Cessation Announcement" means the announcement on 5 March 2021 by the UK's Financial Conduct Authority that all LIBOR settings will, as of certain specified future dates, either cease to be provided by any administrator or no longer be representative of the market and economic reality that they are intended to measure and that such representativeness will not be restored.

## 7 **6INTEREST**

### **7.1 6-4Fixed or Floating Interest Rate**

The Borrower shall provide notification, signed by a duly authorised signatory of the Borrower, to the Agent at least [\*] ([\*]) days before the first Drawdown Date under Tranche A specifying which of the Fixed Interest Rate or the Floating Interest Rate shall be applicable to all Advances until the date of payment of the final repayment instalment of the Loan.

### **7.2 6-2Fixed Interest Rate**

If the Borrower has specified a Fixed Interest Rate pursuant to Clause ~~6-4-7.1~~ 7.1 (*Fixed or Floating Interest Rate*), the Loan shall bear interest in respect of each Interest Period at the Fixed Interest Rate. Such interest shall accrue on the actual number of days elapsed based upon a 360 day year and shall be paid on the last day of each Interest Period.

### **7.3 6-3Floating Interest Rate**

If:

- (a) the Borrower has specified a Floating Interest Rate pursuant to Clause ~~6-4-7.1~~ 7.1 (*Fixed or Floating Interest Rate*); or
- (b) the Borrower has specified a Fixed Interest Rate pursuant to Clause ~~6-4-7.1~~ 7.1 (*Fixed or Floating Interest Rate*) but thereafter for any reason whatsoever the Interest Make-Up Agreement is suspended or otherwise ceases to be in effect; or
- (c) SIMEST has requested a change of currency pursuant to the Interest Make-Up Agreement and such change of currency is not agreed by the Borrower or Lenders in accordance with Clause ~~6-4-7.17~~ 7.17 (*Change of currency*); or
- (d) SIMEST has failed to make a net payment of interest to the Lenders pursuant to the Interest Make-Up Agreement,

the rate of interest on the Loan in respect of any Interest Period shall be the Floating Interest Rate applicable for that Interest Period and the following provisions of this Clause 6 (*Interest*) shall apply (in the case of the circumstances referred to in paragraph (b) above, with effect from the date on which the Interest Make-Up Agreement ceases to be in effect, with such consequential amendments as shall be necessary to give effect to the switch from a Fixed Interest Rate to a Floating Interest Rate).

### **7.4 6-4Payment of Floating Interest Rate**

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Subject to the provisions of this Agreement, interest on the Loan, ~~as applicable~~, in respect of each Interest Period shall accrue on the actual number of days elapsed based upon a 360 day year and shall be paid by the Borrower on the last day of that Interest Period.

#### **7.5 6-5 Notification of Interest Periods and Floating Interest Rate**

- (a) ~~The Save where paragraph (d) of Clause 7.8 (Unavailability of Term SOFR) applies, the~~ Agent shall notify the Borrower and each relevant Lender of each Floating Interest Rate and the duration of each Interest Period as soon as reasonably practicable after each is determined and no later than the Quotation Day.
- (b) In respect of any Fallback Interest Payment, the Agent shall promptly upon a Fallback Interest Payment being determinable notify:
- (i) the Borrower of that Fallback Interest Payment;
  - (ii) each relevant Lender of the proportion of that Fallback Interest Payment which relates to that Lender's participation in the Loan or the relevant part of the Loan; and
  - (iii) the relevant Lenders and the Borrower of each applicable Daily Simple SOFR relating to the determination of that Fallback Interest Payment.
- (c) The Agent shall promptly notify the Borrower of each Funding Rate relating to the Loan or any part of the Loan.

This Clause 7.5 (Notification of Interest Periods and Floating Interest Rate) shall not require the Agent to make any notification to any Party on a day which is not a Business Day.

#### **7.6 6-6 Unavailability of Screen Rate before Rate Switch Date**

- (a) *Interpolated Screen Rate:* If no Screen Rate is available for ~~LIBOR for~~ the Interest Period of ~~the Loan or any part of the LIBOR~~ 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 LIBOR~~ Loan.
- (b) *Reference Bank Rate:* If no Screen Rate is available for LIBOR for:
- (i) Dollars;
  - (ii) the Interest Period of ~~the Loan or any part of the LIBOR~~ 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 LIBOR~~ 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 LIBOR~~ Loan (as applicable) and Clause ~~6-9-7.11~~ (Cost of funds) shall apply to the Loan or that part of the Loan for that Interest Period.

#### **7.7 6-4 Calculation of Reference Bank Rate**

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- (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.

#### 7.8 Unavailability of Term SOFR

- (a) Interpolated Term SOFR: If no Term SOFR is available for the Interest Period of any Term SOFR Loan, the applicable Term SOFR Reference Rate shall be the Interpolated Term SOFR for a period equal in length to the Interest Period of that Term SOFR Loan.
- (b) Historic Term SOFR: If no Term SOFR is available for the Interest Period of any Term SOFR Loan and it is not possible to calculate the Interpolated Term SOFR, the applicable Term SOFR Reference Rate shall be the Historic Term SOFR for that Term SOFR Loan.
- (c) Interpolated Historic Term SOFR: If paragraph (b) above applies but no Historic Term SOFR is available for the Interest Period of any Term SOFR Loan, the applicable Term SOFR Reference Rate shall be the Interpolated Historic Term SOFR for a period equal in length to the Interest Period of that Term SOFR Loan.
- (d) Daily Simple SOFR: If, after giving effect to paragraph (c) above, no Term SOFR is available for the Interest Period of a Term SOFR Loan and it is not possible to calculate the Interpolated Historic Term SOFR, that Term SOFR Loan shall bear interest for any day of the relevant Interest Period at a rate per annum equal to the aggregate of the applicable (i) Daily Simple SOFR; (ii) Margin; and (iii) Credit Adjustment Spread.

7.9 Cost of funds: If paragraph 7.8(d) above applies but it is not possible to calculate the Daily Simple SOFR, there shall be no Term SOFR Reference Rate for that Term SOFR Loan and Clause 7.11 (Cost of funds) shall apply to that Term SOFR Loan for that Interest Period.

#### 7.10 ~~6-2~~Market Disruption

- (a) ~~If~~ In the case of a LIBOR Loan, if before close of business in London on the Quotation Day for the relevant Interest Period the Agent receives notification from a Lender or Lenders (whose participations in the Loan or the relevant part of the Loan in aggregate exceed [\*] per cent. of the Loan or the relevant part of the Loan as appropriate) that the cost to it or each of them 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 6.9 (Cost of funds) shall apply to the Loan or that part of the Loan (as applicable) for the relevant Interest Period.~~ 7.11 (Cost of funds) shall apply to the Loan or that part of the Loan (as applicable) for the relevant Interest Period.
- (b) In the case of a Term SOFR Loan, if before close of business in London on the Quotation Day for the relevant Interest Period, the Agent receives notification from a Lender or Lenders (whose participations in the Loan or the relevant part of the Loan exceed 50 per cent. of the Loan or the relevant part of the Loan as appropriate) that its cost of funds relating to its participation in the Loan or that part of the Loan would be in excess of the Market Disruption Rate then Clause 7.11 (Cost of funds) shall apply to the Loan or that part of the Loan (as applicable) for the relevant Interest Period.

#### 7.11 ~~6-3~~Cost of funds

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- (a) If this Clause ~~6-9-7.11~~ (*Cost of funds*) applies, the rate of interest on the Loan or the relevant part of the Loan for the relevant Interest Period shall be the percentage rate per annum which is the sum of:
- (i) the applicable Margin; and
  - (ii) the weighted average of the rates notified to the Agent by each 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 cost of funds relating to~~ its participation in the Loan or that part of the Loan from whatever source it may reasonably select.
- (b) If this Clause ~~6-9-7.11~~ (*Cost of funds*) applies and the Agent or the Borrower so ~~require~~requires, the Agent and the Borrower shall enter into negotiations (for a period of not more than 30 days) with a view to agreeing a substitute basis for determining the rate of interest or (as the case may be) an alternative basis for funding.
- (c) Subject to Clause ~~6-10-7.12~~ (*Replacement of Screen Rate*Changes to reference rates), any substitute or alternative basis agreed pursuant to paragraph (b) above shall, with the prior consent of all the Lenders and the Borrower, be binding on all Parties.
- (d) If paragraph (e) below does not apply and any rate notified to the 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 ~~6-9-7.11~~ (*Cost of funds*) applies pursuant to Clause ~~6-8-7.8~~ (*Market disruption*) and:
- (i) in relation to a LIBOR Loan, a Lender's Funding Rate is less than LIBOR; or, that Lender's cost of funds relating to its participation in the Loan or the relevant part of the Loan for that Interest Period shall be deemed, for the purposes of sub-paragraph (ii) of paragraph (a) above, to be LIBOR.
  - (ii) in relation to a Term SOFR Loan, a Lender's Funding Rate is less than the Market Disruption Rate, that Lender's cost of funds relating to its participation in the Loan or the relevant part of the Loan for that Interest Period shall be deemed, for the purposes of sub-paragraph (ii) of paragraph (a) above, to be the Market Disruption Rate for that Term SOFR Loan.
  - (iii) ~~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 ~~6-9-7.11~~ (*Cost of funds*) applies but any Lender does not ~~supply a quotation~~notify a rate to the Agent by the time specified in sub-paragraph (ii) of paragraph (a) above, the rate of interest shall be calculated on the basis of the ~~quotations of~~rates notified by the remaining Lenders.

**6.4 Replacement of Screen Rate**

**7.12 Changes to the reference rates**

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~~If a Screen~~ If a Published Rate Replacement Event has occurred in relation to ~~the Screen~~ any Published Rate ~~for Dollars~~, any amendment or waiver which relates to:

- (a) providing for the use of a Replacement ~~Benchmark~~ Reference Rate; and
- (b)
  - (i) aligning any provision of any Finance Document to the use of that Replacement ~~Benchmark~~ Reference Rate;
  - (ii) enabling that Replacement ~~Benchmark~~ Reference Rate to be used for the calculation of interest under this Agreement (including, without limitation, any consequential changes required to enable that Replacement ~~Benchmark~~ Reference Rate to be used for the purposes of this Agreement);
  - (iii) implementing market conventions applicable to that Replacement ~~Benchmark~~ Reference Rate;
  - (iv) providing for appropriate fallback (and market disruption) provisions for that Replacement ~~Benchmark~~ Reference Rate; or
  - (v) adjusting the pricing to reduce or eliminate, to the extent reasonably practicable, any transfer of economic value from one Party to another as a result of the application of that Replacement ~~Benchmark~~ Reference Rate (and if any adjustment or method for calculating any adjustment has been formally designated, nominated or recommended by the Relevant Nominating Body, the adjustment shall be determined on the basis of that designation, nomination or recommendation),

may be made with the consent of the Agent (acting on the instructions of ~~all~~ the Majority Lenders), SACE and SIMEST (if applicable) and the Borrower.

~~(c) If, as at 30 September 2022, this Agreement provides that the rate of interest for the Loan in Dollars is to be determined by reference to the Screen Rate for LIBOR:~~

- ~~(i) a Screen Rate Replacement Event shall be deemed to have occurred on that date in relation to the Screen Rate for Dollars; and~~
- ~~(ii) the Agent (acting on the instructions of all Lenders) and the Obligors shall enter into negotiations in good faith with a view to agreeing the use of a Replacement Benchmark in relation to Dollars in place of that Screen Rate from and including a date no later than 30 November 2022, unless the Borrower and the Agent (acting on the instructions of all Lenders) agree to defer the date of the negotiations required under this sub-paragraph (ii) together with the date for the use of such a Replacement Benchmark, in which case such dates shall be those so agreed.~~

~~(a) If an amendment is required as contemplated in this Clause ~~6.10-7.12~~ (Replacement of Screen Rate Changes to reference rates), the Obligors shall reimburse each of the Agent and the Security Trustee for the amount of all costs and expenses (including legal fees and other professional expenses) incurred by each Secured Party in relation to such amendment.~~

~~(b) In this Clause 7.12:~~

~~"Published Rate" means:~~

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- (a) SOFR; or
- (b) Term SOFR for any Quoted Tenor.

**"Published Rate Contingency Period" means, in relation to:**

- (a) Term SOFR (all Quoted Tenors), ten US Government Securities Business Days; and
- (b) SOFR, ten US Government Securities Business Days.

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

(a) the methodology, formula or other means of determining that Published Rate has, in the opinion of the Majority Lenders, and the Borrower materially changed;

(b) \_\_\_\_\_

(i) \_\_\_\_\_

(A) the administrator of the Published Rate or its supervisor publicly announces that such administrator is insolvent; or

(B) information is published in any order, decree, notice, petition or filing, however described, or filed with a court, tribunal, exchange, regulatory authority or similar administrative, regulatory or judicial body which reasonably confirms that the administrator of that Published Rate is insolvent,

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

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

(iii) the supervisor of the administrator of that Published Rate publicly announces that such Published Rate has been or will be permanently or indefinitely discontinued; or

(iv) the administrator of that Published Rate or its supervisor announces that that Published Rate may no longer be used; or

(c) the administrator of that Published Rate (or the administrator of an interest rate which is a constituent element of that Published Rate) determines that that Published Rate should be calculated in accordance with its reduced submissions or other contingency or fallback policies or arrangements and either:

(A) the circumstance(s) or event(s) leading to such determination are not (in the opinion of the Majority Lenders and the Borrower) temporary; or

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- (B) that Published Rate is calculated in accordance with any such policy or arrangement for a period no less than the applicable Published Rate Contingency Period; or
- (d) in the opinion of the Majority Lenders and the Borrower, that Published Rate is otherwise no longer appropriate for the purposes of calculating interest under this Agreement.

**"Replacement Reference Rate"** means a reference rate which is:

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

#### **7.13 6-5 Notice of prepayment**

If no agreement is reached with the Borrower under Clause ~~6-10-7.12~~ (~~Replacement of Screen Rate Changes to reference rates~~), the Borrower may give the Agent not less than 15 Business Days', or, if the Fixed Interest Rate has been selected pursuant to Clause ~~6-4-7.1~~ (~~Fixed or Floating Interest Rate~~) the Borrower may give the Agent not less than 30 days' notice of its intention to prepay at the end of the interest period set by the Agent.

#### **7.14 6-6 Prepayment; termination of Commitments**

A notice under Clause ~~6-11-7.13~~ (~~Notice of prepayment~~) shall be irrevocable; the Agent shall promptly notify the Lenders and, if the Fixed Interest Rate has been selected by the Borrower, SIMEST of the Borrower's notice of intended prepayment; and:

- (a) on the date on which the Agent serves that notice, the Total Commitments shall be cancelled; and
- (b) on the last Business Day of the Interest Period set by the Agent, the Borrower shall prepay (without premium or penalty subject to the provisions of Clause ~~20-2-21.2~~ (~~Breakage costs and SIMEST arrangements~~)) the Loan, together with accrued interest thereon at the applicable rate (being either the Floating Interest Rate or the Fixed Interest Rate as specified by the Borrower pursuant to Clause ~~6-4-7.1~~ (~~Fixed or Floating Interest Rate~~)).
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#### 7.15 ~~6.7~~Application of prepayment

The provisions of Clause ~~46-17~~ (*Cancellation, Prepayment and Mandatory Prepayment*) shall apply in relation to the prepayment.

#### 7.16 ~~6.8~~Certain Circumstances

Notwithstanding anything to the contrary in this Agreement:

- (a) in the event of any circumstances falling within Clause ~~6-8-7.8~~ (*Market Disruption*) which might affect the advance of an Advance under any Tranche on a Drawdown Date (the "**Relevant Circumstances**"):
  - (i) occurring and being continuing on the date falling ninety (90) days before the proposed Drawdown Date (the "**Relevant Date**"), each Lender will notify the Borrower (through the Agent) of the Relevant Circumstances on the Relevant Date or, if the Relevant Date is not a Business Day, on the next following Business Day; and
  - (ii) occurring after the Relevant Date, each Lender will notify the Borrower (through the Agent) immediately each Lender become aware of the Relevant Circumstances;
- (b) in the event of any Relevant Circumstances falling within Clause ~~6-8-7.8~~ (*Market Disruption*) (the "**Pricing-Related Relevant Circumstances**") occurring before the Loan is made available, each Lender will fund its respective Contributions by reference to the agreed alternative rate of interest in accordance with Clauses ~~6-6-7.6~~ (*Unavailability of Screen Rate before Rate Switch Date*) ~~6-7-7.7~~ (*Calculation of Reference Bank Rate*), ~~6-8-7.8~~ (*Market Disruption*), ~~6-9-7.11~~ (*Cost of funds*) and ~~6-40 7.12~~ (*Replacement of Screen Rate Changes to reference rates*) as if the provisions of such Clauses applied not only in the event that the Pricing-Related Relevant Circumstances have been notified by the Agent to the Borrower after the making of the Loan but also before the making of the Loan.
- (c) in the event of any Relevant Circumstances falling within Clause ~~6-8-7.8~~ (*Market Disruption*) (the "**Availability-Related Relevant Circumstances**") occurring before the Loan is made and notwithstanding the provisions of Clause ~~6-6-7.6~~ (*Unavailability of Screen Rate*), ~~before Rate Switch Date~~, each Lender will enter into good faith discussions with the Borrower for a period not exceeding 10 Business Days in order to discuss a basis on which the Lenders could be able to fund their respective Contributions in Dollars (or, if unavailable in Dollars, then in any available currency). Such discussions shall be without obligation on the Lenders provided that during such discussion period, such circumstances continue.

#### 7.17 ~~6.9~~Change of currency

- (a) In the event that the Agent notifies the Borrower that SIMEST has requested a change in the currency of the Loan in accordance with clause 6.3 of the Interest Make-Up Agreement, the Borrower and the Lenders shall, without obligation, consider such request for a change of currency acting reasonably for a period of not exceeding 10 Business Days. Following such discussions the Agent shall report the decision of the Borrower and the Lenders to SIMEST, providing their reason for any negative decision.
  - (b) In the event that a change of currency is agreed the Parties agree to negotiate in good faith the necessary changes to this Agreement, the Finance Documents, the SACE Insurance Policy and the Interest Make-Up Agreement in order to document the change in currency.
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- (c) In the event that a change in currency is not acceptable to the Lenders or the Borrower, the provision of paragraph (c) of Clause ~~6-3~~7.3 (*Floating Interest Rate*) shall apply.

## 8 ~~7~~ **INTEREST PERIODS**

### **8.1** ~~7.4~~ **Commencement of Interest Periods**

The first Interest Period applicable to an Advance shall commence on the Drawdown Date in respect of that Advance and each subsequent Interest Period shall commence on the expiry of the preceding Interest Period.

### **8.2** ~~7.2~~ **Duration of Interest Periods**

Subject to Clause ~~7.3~~ 8.3 (*Duration of Interest Periods for Repayment Instalments*), each Interest Period shall be:

- (a) 6 months; or
- (b) in the case of the first Interest Period applicable to the second and any subsequent Advance, a period ending on the last day of the Interest Period then current, whereupon all of the Advances shall be consolidated and treated as a single Advance; and
- (c) if required, the Interest Period falling immediately prior to the Delivery Date shall be shortened in order for such Interest Period to end on the date falling immediately prior to the date of the Delivery Advances.

### **8.3** ~~7.3~~ **Duration of Interest Periods for Repayment Instalments**

Any Interest Period that includes a Repayment Date shall expire on such Repayment Date.

## 9 ~~8~~ **SACE PREMIUM AND ITALIAN AUTHORITIES**

### **9.1** ~~8.4~~ **SACE Premium**

The estimated SACE Premium for a maximum amount of [\*] Dollars and [\*] Cents (\$[\*]) (being [\*] per cent. ([\*]%) of the Original Maximum Loan Amount) is due and payable in two instalments as follows:

- (a) the first instalment of the SACE Premium being an amount of [\*] Dollars and [\*] Cents (\$[\*]) (calculated as being [\*] per cent. ([\*]%) of three point eighty per cent. ([\*]%) of the Original Maximum Loan Amount) (the "**First Instalment**") shall be paid by the Borrower to SACE (provided that the Borrower and the Tranche A Lenders have been notified by the SACE Agent that the SACE Insurance Policy has been issued) on the earlier of (i) the date falling 30 days after the issuance of the SACE Insurance Policy and (ii) 16 June 2017, being the date falling 6 months after the date of SACE's board approval; and
- (b) the second instalment of the SACE Premium being an amount of [\*] Dollars and [\*] Cents (\$[\*]) (calculated as being [\*] per cent. ([\*]%) of [\*] per cent. ([\*]%) of the Original Maximum Loan Amount) (the "**Second Instalment**") and shall be payable on the first Drawdown Date under Tranche A. For the sake of clarity, no set-off with the First Instalment shall be permitted.

### **9.2** ~~8.2~~ **Reimbursement by the Borrower of the SACE Premium**

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The Borrower irrevocably agrees to pay the First Instalment, and to instruct the Tranche A Lenders to pay the Second Instalment on behalf of the Borrower as follows:

- (a) the Borrower has requested and the Tranche A Lenders have agreed to reimburse the payment of one hundred per cent. (100%) of the First Instalment to the Borrower on the first Drawdown Date under Tranche A, it being agreed that such First Instalment shall be paid to SACE by the Borrower in accordance with paragraph (a) of Clause ~~8.4~~9.1 (*SACE Premium*) and upon notification by the Agent to the Borrower (i) of the issuance of the SACE Insurance Policy documentation in the form required by paragraph (d) of Clause 3.6 (*No later than five (5) Business Days before the First Drawdown Date*), and (ii) of the amount of the First Instalment; and
- (b) the Borrower has requested and the Tranche A Lenders have agreed to finance the payment of one hundred per cent. (100%) of the Second Instalment on the first Drawdown Date under Tranche A in accordance with paragraph (a)(iii) of Clause 2.1 (*Amount of facility*) of this Agreement.

Consequently, the Borrower hereby irrevocably instructs the Agent on behalf of the Tranche A Lenders to pay the Second Instalment to SACE on the first Drawdown Date under Tranche A in accordance with paragraph (a)(iii) of Clause 2.1 (*Amount of facility*) of this Agreement and to reimburse the Borrower by the Borrower drawing under the Loan the amount of the First Instalment in accordance with paragraph (a)(ii) of Clause 2.1 (*Amount of facility*) of this Agreement.

The First Instalment and Second Instalment each financed by the Loan will be repayable in any event by the Borrower to the Tranche A Lenders in the manner specified in Clause 5 (*Repayment*) and under any and all circumstances including but without limitation in the event of prepayment or acceleration of the Loan.

### **9.3 ~~8.3~~Italian Authorities**

- (a) The Borrower acknowledges and agrees that the Agent and the Lenders are entitled to provide the Italian Authorities with any information they may have relative to the Loan and the business of the Group, to allow the Italian Authorities to inspect all their records relating to this Agreement and the other Transaction Documents and to furnish them with copies thereof. Any such information relative to the Loan may also be given by any Italian Authorities to international institutions charged with collecting statistical data.
- (b) The Borrower acknowledges that, in the making of any decision or determination or the exercise of any discretion or the taking or refraining to take any action under this Agreement or any of the other Finance Documents, the Agent and the Lenders shall be deemed to have acted reasonably if they have acted on the instructions of either of the Italian Authorities.
- (c) Each Party further undertakes not to act in a manner which is inconsistent with the terms of the SACE Insurance Policy and the Interest Make-Up Agreement.

### **9.4 ~~8.4~~Refund**

- (a) The Borrower shall, at the latest on the date falling sixty (60) days before the Intended Delivery Date, provide a notice in writing to the SACE Agent (who will promptly forward it to other Lenders and SACE), signed by an authorised signatory of the Borrower, indicating the amount of the Delivery Advance under Tranche A, being the amount set out in Part A of Schedule 6 (*Drawdown Schedules*) under the column entitled "Advance to be drawn under this
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Agreement" to be drawn on the Delivery Date less (i) any amount cancelled based on the Conversion Rate and (ii) the Refund (as defined below) to be refunded in accordance with paragraph (b), such amount of the Refund to be confirmed by SACE at least six (6) Business Days prior to the Delivery Date. The Borrower hereby agrees and shall confirm in such notice that the remaining Tranche A Commitments shall be deemed to be cancelled. The Borrower acknowledges, for the avoidance of doubt, that the shortfall to be paid to the Builder at the Delivery Date shall be funded and paid directly by the Borrower to the Builder.

- (b) If the sum of the Advances under Tranche A drawn by the Borrower together with the amount notified by the Borrower pursuant to paragraph (a) above (being the amount set out in Part A of Schedule 6 (*Drawdown Schedules*) under the column entitled "Advance to be drawn under this Agreement" to be drawn on the Delivery Date, less any amount cancelled based on the Conversion Rate) equals an aggregate of less than the Original Maximum Loan Amount, and provided that no Event of Default has occurred and is then continuing and no loss has occurred under the SACE Insurance Policy, the Borrower shall be entitled to a refund of the Second Instalment of the SACE Premium in an amount calculated by SACE on the undrawn amount (the "**Refund**"). For the avoidance of doubt, the First Instalment of the SACE Premium is non-refundable, irrespective of whether any disbursements have been made under this Agreement and irrespective of whether the SACE Insurance Policy has been terminated.
- (c) Any refund of the Second Instalment of the SACE Premium, whether in whole or in part, must be expressly requested by the SACE Agent to SACE in writing following receipt by the SACE Agent of the Borrower's notice referred to in paragraph (a) above.
- (d) To the extent the Borrower is entitled to the Refund, SACE shall transfer the Refund as soon as practicably possible to the SACE Agent who shall as soon as practicably possible following receipt thereof transfer such amount to the Borrower. The Borrower hereby acknowledges that SACE shall not be liable to pay interest to the Borrower on the amount of the Refund.
- (e) Under the terms of the SACE Insurance Policy, the Parties acknowledge that SACE will withhold an amount of [\*] per cent. ([\*]%) from the amount of the SACE Premium to be refunded. Such withholding, charged as a lump sum to cover administration and management costs for the SACE Insurance Policy, may not, in any event, amount to less than the equivalent of three thousand Euros (€[\*]) or more than the equivalent of [\*] Euros (€[\*]), calculated by SACE at the European Central Bank EUR/USD exchange rate as at the date of the refund request.
- (f) Except as set out in paragraph (a) and (c) above, no part of the SACE Premium is refundable to any Obligor.
- (g) In no event shall the SACE Agent be liable for any refund of the SACE Premium to be made by SACE or for the calculation of any Refund and/or withholding thereof.

#### **9.5 8-5 Additional SACE Premium**

- (a) The Borrower shall pay (through the SACE Agent) to SACE an additional SACE premium in relation to the changes made to the Facility Agreement following the February 2021 ~~Deferral~~-Effective Date (the "**Additional SACE Premium**"). The Additional SACE Premium is payable, in accordance with the SACE Insurance Policy, in two instalments as follows:
    - (i) no later than the earlier of a) 30 days from the date of issuance of the relevant addendum to the SACE Insurance Policy in form and substance acceptable to the Lenders and b) the date of the Advance under a Tranche immediately following the
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February 2021 Deferral Effective Date, an amount of \$[\*], corresponding to the first instalment of the Additional SACE Premium; and

- (ii) no later than the Delivery Date, and unless the Guarantor's highest unsecured corporate credit rating is, 60 days before the Intended Delivery Date, BB+ or above at Standard & Poor's or Ba1 or above at Moody's, an amount of \$[\*], corresponding to the second instalment of the Additional SACE Premium; it being understood that if 60 days before the Intended Delivery Date, the Guarantor's highest unsecured corporate credit rating is between B+ at Standard & Poor's or B1 at Moody's and BB at Standard & Poor's or Ba2 at Moody's, this second instalment of the Additional SACE Premium shall correspond to a) [\*]% of (x) \$772,544,947.20 being the undrawn amount under the Loan as at 31 December 2020 times (y) the percentage applicable to the Guarantor's highest unsecured corporate credit rating between Standard & Poor's and Moody's in the table set out below (the "**Revised SACE Premium Rate**") divided by (z) one minus the Revised SACE Premium Rate less b) the Second Instalment of the original SACE Premium of \$[\*] already paid pursuant to Clause ~~8-4-9.1~~ 9.1 (*SACE Premium*). The amount of the second instalment of the Additional SACE Premium shall be recalculated by the SACE Agent in accordance with the SACE Insurance Policy and communicated by the SACE Agent to SACE no later than 60 days prior to the Intended Delivery Date for verification and then forwarded to the Borrower as soon as practically possible following approval by SACE.

Rating S&P and Moody's	Pricing
BB / Ba2	[*]%
BB- / Ba3	[*]%

- (b) The Borrower has requested, and the Tranche C Lenders have agreed to finance the payment of one hundred per cent. (100%) of the second instalment of the Additional SACE Premium to the Borrower on the Delivery Date, it being agreed that such second instalment shall be paid to SACE in accordance with paragraph (a)(ii) of this Clause ~~8-5-9.5~~ 9.5 (*Additional SACE Premium*) and upon notification by SACE to the SACE Agent and the Borrower of the amount of the second instalment of the Additional SACE Premium.
  - (c) Consequently, the Borrower hereby irrevocably instructs the Agent on behalf of the Tranche C Lenders to pay the amount of the second instalment of the Additional SACE Premium to SACE on the Delivery Date in accordance with paragraph (c) of Clause 2.1 (*Amount of facility*) of this Agreement.
  - (d) The second instalment of the Additional SACE Premium financed by Tranche C will be repayable in any event by the Borrower to the Tranche C Lenders in the manner specified in Clause 5 (*Repayment*) and under any and all circumstances including but without limitation in the event of prepayment or acceleration of the Loan.
  - (e) ~~(a)~~ If (i) the Guarantor's highest unsecured corporate credit rating is equal to or higher than BB+ at Standard & Poor's and Ba1 at Moody's at the time of the Intended Delivery Date (as such term is defined in the facility agreement originally dated 19 December 2018 (as amended from time to time) and entered into between, amongst others, (i) Leonardo Six, Ltd. as borrower, (ii) the lenders and mandated lead arrangers as stated therein, (iii) BNP Paribas as
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facility agent, (iv) Credit Agricole Corporate and Investment Bank as SACE agent and (v) HSBC Corporate Trustee Company (UK) Limited as security trustee in relation to the ship currently under construction and to be delivered to Leonardo Six, Ltd., such date, currently estimated to be 30 June 2027, the "**Leonardo Six Intended Delivery Date**"), and (ii) no event of default (howsoever defined) is continuing and no Loss has been incurred by SACE in respect of any Financial Indebtedness granted to any company within the Group and supported by SACE, the Borrower may request in writing through the SACE Agent a one-off refund of a portion of the second instalment of the Additional SACE Premium, calculated in accordance with the SACE Insurance Policy and the following formula.

- (f) ~~(b)~~ The refund pursuant to paragraph (e) above will be paid by SACE to the SACE Agent within 30 days in accordance with the terms and conditions of the SACE Insurance Policy and subsequently paid by the SACE Agent to the Borrower, upon which such amount shall be applied to mandatorily prepay part of the Loan in accordance with the provisions of Clause ~~46.7-17.7~~ (*Mandatory Prepayment in case of refund by SACE to the Borrower of the second instalment of the Additional SACE Premium*).

SACE Premium refund = Loan amount outstanding at the time of the Leonardo Six Intended Delivery Date x [\*]% x ((TTMi + 0.5)/2)/6.25 x (Revised SACE Premium Rate – p%),

where:

- (i) TTMi means Time To Maturity at the date of the Leonardo Six Intended Delivery Date being the number of years, with two decimals, between the Leonardo Six Intended Delivery Date and the final Repayment Date.
- (ii) p% equals to [\*]%.

For avoidance of doubt, in case of discrepancy between this Clause ~~8-5-9.5~~ (*Additional SACE Premium*) and the relevant provision of the SACE Insurance Policy, the SACE Insurance Policy shall prevail.

#### **9.6 ~~8-6~~Tranche B Premium**

- (a) The Borrower shall pay (through the SACE Agent) to SACE an additional SACE premium in relation to Tranche B (the "**Tranche B Premium**"). The Tranche B Premium is payable, in accordance with the SACE Insurance Policy, as follows:
- (i) no later than the earlier of (x) 30 days from the date of issuance of the relevant addendum to the SACE Insurance Policy and (y) the Drawdown Date in respect of the first Advance under Tranche B, an amount equal to \$2,483,946.67, corresponding to fifteen per cent (15%) of the Tranche B Premium; and
- (ii) no later than the Drawdown Date in respect of the first Advance under Tranche B, an amount equal to \$14,075,697.77, corresponding to eighty-five per cent (85%) of the Tranche B Premium.
- (b) The Borrower has requested, and the Tranche B Lenders have agreed to finance the payment of one hundred per cent. (100%) of the Tranche B Premium to the Borrower on the first Drawdown Date under Tranche B, it being agreed that:
- (i) the amount referred to in paragraph (a)(i) above shall, as applicable, be reimbursed to the Borrower or paid to SACE; and
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- (ii) the amount referred to in paragraph (a)(ii) above shall be paid to SACE,
- and upon notification by SACE to the SACE Agent and the Borrower of the amount of the Tranche B Premium.
- (c) Consequently, the Borrower hereby irrevocably instructs the Agent on behalf of the Tranche B Lenders to:
- (i) reimburse to the Borrower or pay to SACE, as applicable, the amount of the Tranche B Premium referred to in paragraph (a)(i) above; and
- (ii) pay to SACE the amount of the Tranche B Premium referred to in paragraph (a)(ii) above,
- no later than the first Drawdown Date under Tranche B in accordance with paragraphs (b)(ii) and (b)(iii) of Clause 2.1 (*Amount of facility*) of this Agreement.
- (d) The Tranche B Premium financed by part of Tranche B will be repayable in any event by the Borrower to the Tranche B Lenders in the manner specified in Clause 5 (*Repayment*) and under any and all circumstances including but without limitation in the event of prepayment or acceleration of the Loan.
- (e) The Borrower shall, at the latest on the date falling sixty (60) days before the Intended Delivery Date, provide a notice in writing to the SACE Agent (who will promptly forward it to other Lenders and SACE), signed by an authorised signatory of the Borrower, indicating the amount of the Delivery Advance under Tranche B, being the amount set out in Part B of Schedule 6 (*Drawdown Schedules*) under the column entitled "Advance to be drawn under this Agreement" to be drawn on the Delivery Date less (i) any amount cancelled based on the Conversion Rate and (ii) the Tranche B Refund (as defined below) to be refunded in accordance with paragraph (f), such amount of the Tranche B Refund to be confirmed by SACE at least six (6) Business Days prior to the Delivery Date. The Borrower hereby agrees and shall confirm in such notice that the remaining Tranche B Commitments shall be deemed to be cancelled. The Borrower acknowledges, for the avoidance of doubt, that the shortfall (if any) to be paid to the Builder at the Delivery Date shall be funded and paid directly by the Borrower to the Builder.
- (f) If the sum of the Advances under Tranche B drawn by the Borrower together with the amount notified by the Borrower pursuant to paragraph (e) above (being the amount set out in Part B of Schedule 6 (*Drawdown Schedules*) under the column entitled "Advance to be drawn under this Agreement" to be drawn on the Delivery Date, less any amount cancelled based on the Conversion Rate) equals an aggregate of less than the Total Tranche B Commitments, and provided that no Event of Default has occurred and is then continuing and no loss has occurred under the SACE Insurance Policy, the Borrower shall be entitled to a refund of the Tranche B Premium in an amount calculated by SACE on the undrawn amount (the "**Tranche B Refund**"). For the avoidance of doubt, the amount of the SACE Premium referred to in paragraph (a)(i) of this Clause 8.6 (*Tranche B Premium*) is non-refundable, irrespective of whether any disbursements have been made under this Agreement and irrespective of whether the SACE Insurance Policy has been terminated.
- (g) Any refund of the amount of the Tranche B Premium referred to in paragraph (a)(ii) of this Clause 8.6 (*Tranche B Premium*), whether in whole or in part, must be expressly requested by the SACE Agent to SACE in writing following receipt by the SACE Agent of the Borrower's notice referred to in paragraph (e) above.
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- (h) To the extent the Borrower is entitled to the Tranche B Refund, SACE shall transfer the Tranche B Refund as soon as practicably possible to the SACE Agent who shall as soon as practicably possible following receipt thereof transfer such amount to the Borrower. The Borrower hereby acknowledges that SACE shall not be liable to pay interest to the Borrower on the amount of the Tranche B Refund.
- (i) Under the terms of the SACE Insurance Policy, the Parties acknowledge that SACE will withhold an amount of five per cent. (5%) from the amount of the Tranche B Premium to be refunded. Such withholding, charged as a lump sum to cover administration and management costs for the SACE Insurance Policy, may not, in any event, amount to less than the equivalent of three thousand Euros (€3,000) or more than the equivalent of twenty-five thousand Euros (€25,000), calculated by SACE at the European Central Bank EUR/USD exchange rate as at the date of the refund request.
- (j) Except as set out in paragraph (e) and (g) above, no part of the Tranche B Premium is refundable to any Obligor.
- (k) In no event shall the SACE Agent be liable for any refund of the Tranche B Premium to be made by SACE or for the calculation of any Refund and/or withholding thereof.

## **10 FEES**

The following fees shall be paid to the Agent by the Borrower as required hereunder:

- (a) for the benefit of the Joint Mandated Lead Arrangers, a Joint Mandated Lead Arranger structuring fee in Euros, computed at the rate of [\*] per cent. ([\*]%) flat on [\*] Euros and [\*] Cents (€[\*]) being the Original Maximum Loan Amount converted into Euros at the Base Rate and:
    - (i) [\*] per cent. ([\*]%) of which is payable on the date of the Original Facility Agreement; and
    - (ii) [\*] per cent. ([\*]%) of which is payable four years prior to the Intended Delivery Date,
  - (b) for the benefit of the Lenders, a commitment fee in Dollars for the period from the date of the Original Facility Agreement to the Delivery Date of the Ship, or the date of receipt by the Agent of the written cancellation notice sent by the Borrower as described in Clause ~~16.1~~ 17.1 (*Cancellation*), whichever is the earliest, computed at the rate of:
    - (i) from the date of the Original Facility Agreement to and including 31 December 2017, [\*] per cent. ([\*]%) per annum;
    - (ii) from 1 January 2018 to and including 31 December 2019, [\*] per cent. ([\*]%) per annum;
    - (iii) from 1 January 2020 to and including 30 September 2020, [\*] per cent. ([\*]%) per annum; and
    - (iv) from 1 October 2020 to and including the Delivery Date, [\*] per cent. ([\*]%) per annum,and calculated on the undrawn amount of the Original Maximum Loan Amount prior to the date of this Agreement and thereafter of the Amended Maximum Loan Amount and payable
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in arrears on the date falling six (6) months after the date of the Original Facility Agreement and on each date falling at the end of each following consecutive six (6) month period, with the exception of the commitment fee due in respect of the last period, which shall be paid on the Delivery Date, or the date of receipt by the Agent of the written cancellation notice sent by the Borrower as described in Clause ~~46.4~~17.1 (*Cancellation*), whichever is the earliest, such commitment fee to be calculated on the actual number of days elapsed divided by three hundred and sixty (360). For the purpose of the computation of the periodical commitment fee payable to the Lenders, the Original Maximum Loan Amount is assumed to be eight hundred and sixty-eight million, one hundred and eight thousand, one hundred and eight Dollars and eleven Cents (\$868,108,108.11) and the Amended Maximum Loan Amount is assumed to be one billion, one hundred and forty-three million, seven hundred and twelve thousand, seven hundred and eight Dollars and eighty-seven Cents (\$1,143,712,708.87);

- (c) for the Agent, an agency fee of:
  - (i) [\*] Dollars (\$[\*]) payable on the date of the Original Facility Agreement and on or before each anniversary date thereof until the Delivery Date; and
  - (ii) [\*] Dollars (\$[\*]) payable (A) from the Delivery Date, unless an agency fee pursuant to sub-paragraph (i) above has been paid by the Borrower during the same calendar year as the Delivery Date in which case the first payment pursuant to this sub-paragraph (ii) shall occur in the year following the Delivery Date and (B) on or before each anniversary date thereof until total repayment of the Loan; and
- (d) for the SACE Agent an Agent structuring fee in the amount and payable at the time separately agreed in writing between the SACE Agent and the Borrower.

## 11 ~~40~~ **TAXES, INCREASED COSTS, COSTS AND RELATED CHARGES**

### 11.1 ~~40.1~~ **Definitions**

- (a) In this Agreement:

**"Protected Party"** means a Secured 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 Secured Party under Clause ~~40.2~~11.2 (*Tax gross-up*) or a payment under Clause ~~40.3~~11.3 (*Tax indemnity*).

- (b) Unless a contrary indication appears, in this Clause ~~40.11~~ (*Taxes, Increased Costs, Costs and Related Charges*) reference to "**determines**" or "**determined**" means a determination made in the absolute discretion of the person making the determination.

### 11.2 ~~40.2~~ **Tax gross-up**

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- (a) Each Obligor shall make all payments to be made by it under the Finance Documents without any Tax Deduction, unless a Tax Deduction is required by law.
- (b) The Borrower shall promptly upon becoming aware that an Obligor must make a Tax Deduction (or that there is any change in the rate or the basis of a Tax Deduction) notify the Agent accordingly. Similarly, a Lender shall notify the Agent on becoming so aware in respect of a payment payable to that Lender. If the Agent receives such notification from a Lender it shall notify the Borrower and that Obligor.
- (c) If a Tax Deduction is required by law to be made by an Obligor, the amount of the payment due from that Obligor shall be increased to an amount which (after making any Tax Deduction) leaves an amount equal to the payment which would have been due if no Tax Deduction had been required.
- (d) A payment shall not be increased under paragraph (c) above if on the date on which the payment falls due the Obligor making the payment is able to demonstrate that the payment could have been made to the Lender without the Tax Deduction had that Lender (having been given notice of the documentation requested under Clause ~~40.7-11.7~~ 11.7 (*Lender Status*) at least 30 Business Days prior to such payment date) complied with its obligations under Clause ~~40.7-11.7~~ 11.7 (*Lender Status*).
- (e) 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.
- (f) Within thirty 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 Agent for the Secured Party entitled to the payment evidence reasonably satisfactory to that Secured Party that the Tax Deduction has been made or (as applicable) any appropriate payment paid to the relevant taxing authority.

### **11.3 ~~40.3~~ Tax indemnity**

- (a) The Borrower shall (within three Business Days of demand by the Agent) pay to a Protected Party an amount equal to the loss, liability or cost which that Protected Party determines will be or has been (directly or indirectly) suffered for or on account of Tax by that Protected Party in respect of a Finance Document.
  - (b) Paragraph (a) above shall not apply:
    - (i) with respect to any Tax assessed on a Secured Party:
      - (A) under the law of the jurisdiction in which that Secured Party is incorporated or, if different, the jurisdiction (or jurisdictions) in which that Secured Party is treated as resident for tax purposes; or
      - (B) under the law of the jurisdiction in which that Lender'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 Secured Party; or
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- (ii) to the extent a loss, liability or cost is compensated for by an increased payment under Clause ~~10.2-11.2~~ (Tax gross-up) or would have been compensated for by an increased payment under Clause ~~10.2-11.2~~ (Tax gross-up) but was not so compensated solely because an exclusion in paragraph (d) of Clause ~~10.2-11.2~~ (Tax gross-up) applied, or relates to a FATCA Deduction required to be made by a Party; or
  - (iii) with respect to the Taxes in the nature of a branch profits tax imposed by Section 884(a) of the Code that is imposed by any jurisdiction described in paragraph (b)(i)(B) above.
- (c) A Protected Party making, or intending to make a claim under paragraph (a) above shall promptly notify the Agent of the event which will give, or has given, rise to the claim, following which the Agent shall notify the Borrower.
- (d) A Protected Party shall, on receiving a payment from an Obligor under this Clause ~~10.3-11.3~~ (Tax indemnity), notify the Agent.

#### **11.4 ~~10.4~~ Tax Credit**

If an Obligor makes a Tax Payment and the relevant Creditor Party determines that:

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

the Creditor Party shall pay an amount to the Obligor which that Creditor 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.

#### **11.5 ~~10.5~~ Stamp taxes**

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

#### **11.6 ~~10.6~~ VAT**

- (a) All amounts expressed to be payable under a Finance Document by any Party to a Secured 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 Secured Party to any Party under a Finance Document and such Secured Party is required to account to the relevant tax authority for the VAT, that Party must pay to such Secured 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 Secured Party must promptly provide an appropriate VAT invoice to that Party).
  - (b) If VAT is or becomes chargeable on any supply made by any Secured Party (the "**Supplier**") to any other Secured 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
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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 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 Secured Party for any cost or expense, that Party shall reimburse or indemnify (as the case may be) such Secured Party for the full amount of such cost or expense, including such part of it as represents VAT, save to the extent that such Secured 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 ~~10.6~~ 11.6 (VAT) to any Party being required to account to a tax authority for VAT shall, at any time when such Party is treated as a member of a group for VAT purposes, include a reference to another member of that group being required to so account to the relevant tax authority.
  - (e) In relation to any supply made by a Secured Party to any Party under a Finance Document, if reasonably requested by such Secured Party, that Party must promptly provide such Secured Party with details of that Party's VAT registration and such other information as is reasonably requested in connection with such Secured Party's VAT reporting requirements in relation to such supply.

#### **11.7 ~~10.7~~ Lender Status**

- (a) Any Lender that is entitled to an exemption from or reduction of withholding Tax with respect to payments made under a Finance Document shall deliver to the Agent and the Borrower, at the time or times reasonably requested by the Agent or the Borrower, such properly completed and executed documentation reasonably requested by the Agent or the Borrower (and which it is reasonable for the Lender to complete and execute) as will permit such payments to be made without withholding or at a reduced rate of withholding. In addition, any Lender, if reasonably requested by the Agent or the Borrower, shall deliver such other documentation as prescribed by applicable law and reasonably requested by the Agent or the Borrower as will enable the Agent or the Borrower to determine whether or not such Lender is subject to backup withholding or information reporting requirements.
  - (b) Any Lender shall, to the extent it is legally entitled to do so, and where it is entitled to an exemption from, or reduction of, U.S. federal withholding tax, deliver to the Agent and the Borrower on or prior to the date on which such Lender becomes a Lender under this Agreement or promptly thereafter (and from time to time thereafter as prescribed by applicable law or upon the request of the Agent or the Borrower), duly executed and properly
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completed copies of Internal Revenue Service Form W-9 or W-8, as applicable, certifying that it is not subject to U.S. federal backup withholding and, in the case of a non-U.S. Lender that is eligible for an exemption from, or reduction of, U.S. federal withholding Tax establishing an exemption from, or reduction of, U.S. federal withholding Tax.

**11.8 ~~10.8~~ FATCA Deduction**

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

**11.9 ~~10.9~~ FATCA Information**

- (a) Subject to paragraph (c) below, each Party shall, within ten Business Days of a reasonable request by another Party:
    - (i) confirm to that other Party whether it is:
      - (A) a FATCA Exempt Party; or
      - (B) not a FATCA Exempt Party;
    - (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 paragraph (i) 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 to do anything, and paragraph (a)(iii) 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 paragraph (a)(i) or (a)(ii) above (including, for the avoidance of doubt, where paragraph (c) above applies), then such
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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) Each Lender shall, within ten Business Days of (i) where the relevant Lender is a Lender at the date of the Original Facility Agreement, the date of the Original Facility Agreement, (ii) where the relevant Lender becomes a Lender at the date of this Agreement, the date of this Agreement and (iii) where the relevant Lender is a Transferee Lender, the effective date of a Transfer Certificate under Clause ~~24.4~~ 25.4 (*Effective Date of Transfer Certificate*), supply to the Agent:
  - (i) a withholding certificate on Form W-8, Form W-9 or any other relevant form; or
  - (ii) any withholding statement or other document, authorisation or waiver as the Agent may require to certify or establish the status of such Lender under FATCA or that other law or regulation.
- (f) The Agent shall provide any withholding certificate, withholding statement, document, authorisation or waiver it receives from a Lender pursuant to paragraph (e) above to the relevant Borrower.
- (g) If any withholding certificate, withholding statement, document, authorisation or waiver provided to the 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 Agent unless it is unlawful for the Lender to do so (in which case the Lender shall promptly notify the Agent). The Agent shall provide any such updated withholding certificate, withholding statement, document, authorisation or waiver to the relevant Borrower.
- (h) The 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 Agent shall not be liable for any action taken by it under or in connection with paragraphs (e), (f) or (g) above.
- (i) CDP confirms, and the Borrower acknowledges, that as at the date of this Agreement CPD is a FATCA Exempt Party.

#### **11.10 ~~40.40~~ Increased Costs**

- (a) If after the date of the Original Facility Agreement by reason of (x) any change in law or in its interpretation or administration and/or (y) compliance with any request from or requirement of any central bank or other fiscal, monetary or other authority including but without limitation the Basel Committee on Banking Regulations and Supervisory Practices whether or not having the force of law:
    - (i) any of the Lenders incurs a cost as a result of its performing its obligations under this Agreement and/or its making available its Commitment hereunder; or
    - (ii) there is any increase in the cost to any of the Lenders of funding or maintaining all or any of the advances comprised in a class of advances formed by or including its Commitment advanced or to be advanced by it hereunder; or
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- (iii) any of the Lenders incurs a cost as a result of its having entered into and/or its assuming or maintaining its commitment under this Agreement; or
- (iv) any of the Lenders becomes liable to make any payment on account of Tax or otherwise (other than Tax on its overall net income) on or calculated by reference to the amount of its Commitment advanced or to be advanced hereunder and/or any sum received or receivable by it hereunder; or
- (v) any of the Lenders suffers any decrease in its rate of return as a result of any changes in the requirements relating to capital ratios, monetary control ratios, the payment of special deposits, liquidity costs or other similar requirements affecting that Lender,

then the Borrower shall on demand pay to the Agent for the account of the relevant Lender or Lenders amounts sufficient to indemnify the relevant Lender or Lenders against, as the case may be, such cost, such increased cost (or such proportion of such increased cost as is in the reasonable opinion of the relevant Lender or Lenders attributable to the funding or maintaining of its or their Commitment(s) hereunder) or such liability.

- (b) This Clause ~~40.40-11.10~~ 11.10 (*Increased Costs*) does not apply to the extent any increased cost is:
  - (i) attributable to a Tax Deduction required by law to be made by an Obligor;
  - (ii) attributable to a FATCA Deduction required to be made by a Party;
  - (iii) compensated for by Clause ~~40.3-11.3~~ 11.3 (*Tax indemnity*) (or would have been compensated for under Clause ~~40.3-11.3~~ 11.3 (*Tax indemnity*) but was not compensated solely because any of the exclusions in paragraph (b) of Clause ~~40.3-11.3~~ 11.3 (*Tax indemnity*) applied); or
  - (iv) attributable to the wilful breach by the relevant Creditor Party or its Affiliates of any law of regulation.

In this Clause ~~40.40-11.10~~ 11.10 (*Increased Costs*), a reference to a "Tax Deduction" has the same meaning given to the term in Clause ~~40.4-11.1~~ 11.1 (*Definitions*).

- (c) A Lender affected by any provision of this Clause ~~40.40-11.10~~ 11.10 (*Increased Costs*) shall promptly inform the Agent after becoming aware of the relevant change and its possible results (which notice shall be conclusive evidence of the relevant change and its possible results) and the Agent shall, as soon as reasonably practicable thereafter, notify the Borrower of the change and its possible results. Without affecting the Borrower's obligations under this Clause ~~40.40-11.10~~ 11.10 (*Increased Costs*) and in consultation with the Agent and the Italian Authorities, the affected Lender will then take all such reasonable steps as may be open to it to mitigate the effect of the change (for example (if then possible) by changing its Facility Office or transferring some or all of its rights and obligations under this Agreement to another financial institution reasonably acceptable to the Borrower and the Agent and the Italian Authorities). The reasonable costs of mitigating the effect of any such change shall be borne by the Borrower save where such costs are of an internal administrative nature and are not incurred in dealings by any Lender with third parties.

#### **11.11 ~~40.44~~ Transaction Costs**

The Borrower undertakes to pay to the Agent, upon demand, all costs and expenses, duties and fees, including but without limitation pre-agreed legal costs (which, for avoidance of doubt

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are exclusive of VAT and disbursements) out of pocket expenses and travel costs, reasonably incurred by the Italian Authorities, the Joint Mandated Lead Arrangers and the Lenders (but not including any bank which becomes a Lender after the date of the Original Facility Agreement) in connection with the negotiation, preparation and execution of all agreements, guarantees, security agreements and related documents entered into, or to be entered into, for the purpose of the transaction contemplated hereby as well as all costs and expenses, duties and fees incurred by the Agent or the Lenders in connection with the registration, filing, enforcement or discharge of the said guarantees or security agreements, including without limitation the fees and expenses of legal advisers and insurance experts (provided that such insurance costs are not to exceed ten thousand Dollars (\$10,000)) and the fees and expenses of the Italian Authorities (including the fees and expenses of its legal advisers) payable by the Joint Mandated Lead Arrangers to the Italian Authorities, the cost of registration and discharge of security interests and the related travel and out of pocket expenses; the Borrower further undertakes to pay to the Agent all costs, expenses, duties and fees incurred by the Lenders and the Italian Authorities in connection with any variation of this Agreement and the related documents, guarantees and security agreements, any supplements thereto and waiver given in relation thereto, in connection with the investigation of any potential Event of Default, the enforcement or preservation of any rights under this Agreement and/or the related guarantees and security agreements, including in each case the fees and expenses of legal advisers, and in connection with the consultations or proceedings made necessary or in the opinion of the Agent desirable by the acts of, or failure to act on the part of, the Borrower.

#### **11.12 ~~40-42~~ Costs of delayed Delivery Date**

The Borrower undertakes to pay to the Agent, upon demand, any costs incurred by the Lenders and/or the Italian Authorities in funding the Loan in the event that the Delivery Date is later than the Intended Delivery Date unless the Borrower has given the Agent at least three (3) Business Days' notification of such delay in the Delivery Date.

#### **11.13 ~~40-43~~ SACE obligations**

To the extent that this Clause ~~40-11~~ (*Taxes, Increased Costs, Costs and Related Charges*) imposes obligations or restrictions on a Secured Party, such obligations or restrictions shall not apply to SACE and SACE shall have no obligations hereunder nor be constrained by such restrictions.

### **12 ~~44~~ REPRESENTATIONS AND WARRANTIES**

#### **12.1 ~~44-4~~ Timing and repetition**

The following applies in relation to the time at which representations and warranties are made and repeated:

- (a) the representations and warranties in Clause ~~44-2~~ 12.2 (*Continuing representations and warranties*) are made on the date of the Original Facility Agreement (apart from the representation at paragraphs (ee) and (ff) of Clause ~~44-2~~ 12.2 (*Continuing representations and warranties*) which shall only be made on the date of the Original Facility Agreement and shall not be repeated) and shall be deemed to be repeated, with reference *mutatis mutandis* to the facts and circumstances subsisting, as if made on each day until the Borrower has no remaining obligations, actual or contingent, under or pursuant to this Agreement or any of the other Finance Documents; and
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- (b) the representations and warranties in Clause ~~44.3~~-12.3 (*Representations on the Delivery Date*) are made on the Delivery Date and shall be deemed to be repeated, with reference mutatis mutandis to the facts and circumstances subsisting, as if made thereafter on each day until the Borrower has no remaining obligations, actual or contingent, under or pursuant to this Agreement or any of the other Finance Documents.

**12.2 ~~44.2~~Continuing representations and warranties**

The Borrower represents and warrants to each of the Secured Parties that:

- (a) each Obligor is a company or body corporate duly organised or (as the case may be) incorporated, constituted and validly existing under the laws of the country of its formation or (as the case may be) incorporation, possessing perpetual existence, the capacity to sue and be sued in its own name and the power to own and charge its assets and carry on its business as it is now being conducted;
- (b) the Borrower has an authorised share capital of 12,000 common shares of par value \$1 each all of which have been issued to the Shareholder;
- (c) the legal title to and beneficial interest in the equity in the Borrower is held free of any security (other than pursuant to the Shares Security Deed) or any other claim by the Shareholder;
- (d) none of the equity in the Borrower is subject to any option to purchase, pre-emption rights or similar rights;
- (e) each Obligor has the power to enter into and perform this Agreement and those of the other Transaction Documents to which it is a party and the transactions contemplated hereby and thereby and has taken all necessary action to authorise the entry into and performance of this Agreement and such other Transaction Documents and such transactions;
- (f) this Agreement and each other Transaction Document constitutes (or will constitute when executed) legal, valid and binding obligations of each Obligor expressed to be a party thereto enforceable in accordance with their respective terms and in entering into this Agreement and borrowing the Loan, the Borrower is acting on its own account;
- (g) the entry into and performance of this Agreement and the other Transaction Documents and the transactions contemplated hereby and thereby do not and will not conflict with:
- (i) any law or regulation or any official or judicial order; or
  - (ii) the constitutional documents of any Obligor; or
  - (iii) any agreement or document to which any Obligor is a party or which is binding upon such Obligor or any of its assets,
- nor result in the creation or imposition of any Security Interest on the Borrower or its assets pursuant to the provisions of any such agreement or document, except for Security Interests which qualify as Permitted Security Interests with respect to the Borrower;
- (h) all authorisations, approvals, consents, licences, exemptions, filings, registrations, notarisations and other matters, official or otherwise, required in connection with the entry into, performance, validity and enforceability of this Agreement and each of the other Transaction Documents to which any Obligor is a party and the transactions contemplated
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thereby have been obtained or effected and are in full force and effect except authorisations, approvals, consents, licences, exemptions, filings and registrations required in the normal day to day course of the operation of the Ship and not already obtained by the Borrower;

- (i) it is disregarded as an entity separate from its owner for U.S. federal Tax purposes;
  - (j) all information furnished by any Obligor relating to the business and affairs of any Obligor in connection with this Agreement and the other Transaction Documents was and remains true and correct in all material respects and there are no other material facts or considerations the omission of which would render any such information misleading;
  - (k) each Obligor has fully disclosed to the Agent all facts relating to each Obligor which it knows or should reasonably know and which might reasonably be expected to influence the Lenders in deciding whether or not to enter into this Agreement;
  - (l) the obligations of the Borrower, the Shareholder and the Guarantor under the Finance Documents rank at least *pari passu* with all its other present unsecured and unsubordinated indebtedness with the exception of any obligations which are mandatorily preferred by law;
  - (m) the Borrower is and shall remain, after the advance to it of the Loan, solvent in accordance with the laws of Bermuda and the United Kingdom and in particular with the provisions of the Insolvency Act 1986 (as from time to time amended) and the requirements thereof;
  - (n) neither the Borrower nor any other Obligor has taken any corporate action nor have any other steps been taken or legal proceedings been started or (to the best of its knowledge and belief) threatened against any of them for the reorganisation, winding-up, dissolution or for the appointment of a liquidator, administrator, receiver, administrative receiver, trustee or similar officer of any of them or any or all of their assets or revenues nor has it sought any other relief under any applicable insolvency or bankruptcy law;
  - (o) (in relation to any date on which this representation and warranty is deemed to be repeated pursuant to paragraph (a) of Clause ~~4.4~~ 12.1 (*Timing and repetition*)) the latest available annual consolidated audited accounts of the Guarantor at the date of repetition (which accounts have been prepared in accordance with GAAP) fairly represent the financial condition of the Guarantor as shown in such audited accounts;
  - (p) none of the Obligors nor any of their respective assets enjoys any right of immunity (sovereign or otherwise) from set-off, suit or execution in respect of their obligations under this Agreement or any of the other Transaction Documents or by any relevant or applicable law;
  - (q) all the shares in the Borrower and all shares or membership interest in any Approved Manager which is a member of the Group shall be legally and beneficially owned directly or indirectly by (in the case of the Borrower), the Shareholder and (in the case of such Approved Manager) the Guarantor and such structure shall remain so throughout the Security Period;
  - (r) the copies of the Pre-delivery Contracts are true and complete copies of each such document constituting valid and binding obligations of the parties thereto enforceable in accordance with their respective terms and, subject to paragraph (b) of Clause ~~4.2-23~~ 13.23 (*Pre-delivery Contracts and Pre-delivery Insurance*), no amendments thereto or variations thereof have been agreed nor has any action been taken by the parties thereto which would in any way render such document inoperative or unenforceable;
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- (s) the Borrower is the sole legal and beneficial owner of all rights and interests which each of the Pre-delivery Contracts creates in favour of the Borrower;
  - (t) any borrowing by the Borrower under this Agreement, and the performance of its obligations under this Agreement and the other Transaction Documents, will be for its own account and will not involve any breach by it of any law or regulatory measure relating to "money laundering" as defined in Article 1 of the Directive (91/308/EEC) of the Council of the European Communities (as amended by Directive 2001/97/EC of the European Parliament and of the Council of 4 December 2001); and
  - (u) no Obligor is:
    - (i) 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;
  - (v) 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;
  - (w) the choice of governing law of each Transaction Documents to which it is a party will be recognised and enforced in its Relevant Jurisdictions and 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;
  - (x) 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 situated outside of the European Union and it has no "establishment" (as that term is used in Article 2(h) of the Regulation) in European Union country;
  - (y) no payments made or to be made by the Borrower, the Shareholder or the Guarantor in respect of amounts due under this Agreement or any Finance Document have been or shall be funded out of funds of Illicit Origin and none of the sources of funds to be used by the Borrower, the Shareholder or the Guarantor in connection with the construction of the Ship or its business are of Illicit Origin;
  - (z) to the best of the Borrower's, the Shareholder's and the Guarantor's knowledge, no Prohibited Payment has been or will be made or provided, directly or indirectly, by (or on behalf of) it, any of its affiliates, its or its officers, directors or any other person acting on its behalf to, or for the benefit of, any authority (or any official, officer, director, agent or key employee of, or other person with management responsibilities in, of any authority) in connection with the Ship, this Agreement and/or the Finance Documents and/or the Pre-delivery Contracts;
  - (aa) no event has occurred which constitutes a default under or in respect of any Transaction Document to which any Obligor or the Builder is a party or by which any Obligor or the Builder may be bound (including (inter alia) this Agreement) and no event has occurred which constitutes a default under or in respect of any agreement or document to which any Obligor is a party or by which any Obligor may be bound to an extent or in a manner which might have
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- a material adverse effect on the ability of that Obligor to perform its obligations under the Transaction Documents to which it is a party;
- (bb) none of the assets or rights of the Borrower is subject to any Security Interest except any Security Interest which (i) qualifies as a Permitted Security Interest with respect to the Borrower or (ii) is permitted by Clause ~~42.8~~13.8 (*Negative pledge*) of this Agreement;
  - (cc) no litigation, arbitration or administrative proceedings are current or pending or, to its knowledge, threatened, which might, if adversely determined, have a material adverse effect on the ability of an Obligor to perform its obligations under the Transaction Documents to which it is a party;
  - (dd) to the best of its knowledge, each of the Obligors has complied with all taxation laws in all jurisdictions in which it is subject to taxation and has paid all Taxes due and payable by it;
  - (ee) it is not required to make any deduction for or on account of Tax from any payment it may make under any Finance Document to which it is a party with respect to any Lender that provides the documentation described in paragraph (b) of Clause ~~49.7~~11.7 (*Lender Status*) indicating that it is not subject to tax withholding;
  - (ff) under the laws of its Relevant Jurisdictions it is not necessary that any stamp 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;
  - (gg) each member of the Group has good and marketable title to all its assets which are reflected in the audited accounts referred to in paragraph (o) of Clause ~~44.2~~12.2 (*Continuing representations and warranties*);
  - (hh) none of the Obligors has a place of business in any jurisdiction (except as already disclosed) which requires any of the Finance Documents to be filed or registered in that jurisdiction to ensure the validity of the Finance Documents to which it is a party;
  - (ii) the Borrower does not have a place of business in any country (except as already disclosed) other than that of its Original Jurisdiction;
  - (jj) the Borrower is in all material respects (except in the case of compliance with Sanctions which must be complied with in all respects) compliant with all laws or regulations relating to it and its business generally;
  - (kk) each of the Obligors and each member of the Group:
    - (i) is in compliance with all Environmental Laws and Environmental Approvals provided that any non-compliance would not be expected to result in a Material Adverse Effect;
    - (ii) has not received any notice or threat of any Environmental Claim against any member of the Group and no person has claimed that an Environmental Incident has occurred in each case that would reasonably be expected to result in a Material Adverse Effect;
    - (iii) confirms that no Environmental Incident has occurred and no person has claimed that an Environmental Incident has occurred in each case that would reasonably be expected to result in a Material Adverse Effect;
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- (ll) each of the Pre-delivery Contracts constitutes legal, valid, binding and enforceable obligations of the Builder and the relevant Refund Guarantor respectively;
- (mm) neither the Borrower, the Builder or the relevant Refund Guarantor has waived any of their respective rights under any Pre-delivery Contract;
- (nn) the Borrower has read and acknowledged the principles provided under the Code of Ethics and Model;
- (oo) the Borrower has implemented adequate internal procedures aimed at preventing commission of crimes provided under Legislative Decree 231/01;
- (pp) no litigation is pending against the Borrower in relation to administrative liability provided under Legislative Decree 231/01;
- (qq) no final judgment under Legislative Decree 231/01 has been issued against the Borrower and no plea bargain (also known as *patteggiamento* under Italian law) has been agreed by the Borrower pursuant to article 444 of the Italian code of criminal procedure; and
- (rr) neither the Borrower nor any of its assets are subject to any precautionary measure provided under Legislative Decree 231/01.

### **12.3 ~~14.3~~ Representations on the Delivery Date**

The Borrower further represents and warrants to each of the Secured Parties on the Delivery Date that:

- (a) the Ship is in its absolute and unencumbered ownership save as contemplated by the Finance Documents;
  - (b) the Ship is registered in its name under the laws and flag of the Maritime Registry;
  - (c) the Ship is classed with the highest classification available for a Ship of its type free of all recommendations and qualifications with Lloyd's Register, RINA or Bureau Veritas;
  - (d) the Ship is operationally seaworthy and in compliance with all relevant provisions, regulations and requirements (statutory or otherwise) applicable to ships registered under the laws and flag of the Maritime Registry;
  - (e) the Ship is in compliance with the ISM Code, the ISPS Code and Annex VI as they relate to the Borrower, any Approved Manager and the Ship;
  - (f) the Ship is insured in accordance with the provisions of Clause ~~14~~15 (*Insurance Undertakings*) and in compliance with the requirements therein in respect of such insurances;
  - (g) the Ship is managed by the Approved Manager and, in the event that the Approved Manager is not a member of the Group, on and subject to the terms set out in the Management Agreement;
  - (h) there is no agreement or understanding to allow or pay any rebate, premium, inducement, commission, discount or other benefit or payment (however described) to the Borrower or any other member of the Group, the Builder or a third party in connection with the purchase by
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the Borrower of the Ship, other than as disclosed to the Agent in writing on or before the date of this Agreement;

- (i) no 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 Agent sufficient details to enable an accurate search against it to be undertaken by the Lenders at the Companies Registry;
- (j) the Borrower is in all material respects (except in the case of compliance with Sanctions which must be complied with in all respects) compliant with all laws or regulations relating to the Ship, its ownership, employment, operation, management and registration;
- (k) the copies of any Management Agreement, any charter and any charter guarantee which require a notice of assignment to be served under the terms of the General Assignment (if any) and any other relevant third party agreements including but without limitation the copies of any documents in respect of the Insurances delivered to the Agent are true and complete copies of each such document constituting valid and binding obligations of the parties thereto enforceable in accordance with their respective terms and, subject to Clause ~~13.2~~ 14.2 (*Management and employment*), no amendments thereto or variations thereof have been agreed nor has any action been taken by the parties thereto which would in any way render such document inoperative or unenforceable; and
- (l) except for:
  - (i) the filing of UCC-1 Financing Statements in such jurisdictions as the Security Trustee may reasonably require;
  - (ii) the recording of the Mortgage with the relevant Maritime Registry; and
  - (iii) the registration of the Ship under an Approved Flag,

all authorisations, approvals, consents, licences, exemptions, filings, registrations, notarisations and other matters, official or otherwise, required in connection with the entry into, performance, validity and enforceability of this Agreement and each of the other Transaction Documents to which any Obligor is a party and the transactions contemplated thereby have been obtained or effected and are in full force and effect except authorisations, approvals, consents, licences, exemptions, filings and registrations required in the normal day to day course of the operation of the Ship and not already obtained by the Borrower.

## 13 ~~42~~GENERAL UNDERTAKINGS

### 13.1 ~~42.1~~General

The Borrower undertakes with each Secured Party to comply with the following undertakings during the Security Period:

### 13.2 ~~42.2~~Information

The Borrower will provide to the Agent for the benefit of the Lenders and SACE (or will procure the provision of):

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- (a) as soon as practicable (and in any event within one hundred and twenty (120) days after the close of its financial year) a Certified Copy of the audited consolidated accounts of the Guarantor and its subsidiaries for that year (commencing with accounts made up to 31 December 2016 in the case of the consolidated accounts of the Guarantor);
- (b) as soon as practicable (and in any event within forty-five (45) days of the end of the contemplated quarter for the first three quarters in any fiscal year and within 90 days for the final quarter) a copy of the unaudited consolidated quarterly management accounts of the Guarantor (it being understood that the delivery by the Guarantor of quarterly or annual reports as filed with the Securities and Exchange Commission in respect of the Guarantor and its consolidated subsidiaries shall satisfy all the requirements of this paragraph (b));
- (c) promptly, such further information in its possession or control regarding the condition or operations of the Ship and its financial condition and operations of the Borrower and those of any company in the Group as the Agent may reasonably request for the benefit of the Secured Parties;
- (d) details of any material litigation, arbitration or administrative proceedings (including proceedings relating to any alleged or actual breach of Sanctions, the ISM Code of the ISPS Code) which affect any company in the Group as soon as the same are instituted and served, or, to the knowledge of the Borrower, threatened (and for this purpose proceedings shall be deemed to be material if they involve a claim in an amount exceeding twenty million Dollars or the equivalent in another currency provided that this threshold shall not apply to any proceedings relating to Sanctions); and
- (e) any reasonably requested information which the Agent requests about any interest or right of any kind which the Borrower has at any time to, in or in connection with, each of the Pre-delivery Contracts or in relation to any matter arising out of or in connection with any Pre-delivery Contract including the progress of the construction of the Ship, any material dispute, termination, cancellation or suspension, material breach of or under any Pre-delivery Contract or material claim proposed or actual amendments (excluding Minor Modifications) of or under any Pre-delivery Contract, and any material litigation, arbitration, proceeding or investigation in relation to the Borrower and of any other event or matter affecting a Pre-delivery Contract which has or is reasonably likely to have a Material Adverse Effect.

All accounts required under this Clause ~~42.2~~13.2 (*Information*) shall be prepared in accordance with GAAP and shall fairly represent the financial condition of the relevant company.

### **13.3 ~~42.3~~ Equator Principles Compliance**

Upon the request of the Agent, the Borrower shall provide to the Agent information as may be reasonably requested by the Lenders for the purposes of monitoring that the Borrower conducts its operations in all material respects in accordance with the Equator Principles.

### **13.4 ~~42.4~~ Illicit Payments**

No payments made by the Borrower, the Shareholder, the Guarantor or any Approved Manager which is a member of the Group in respect of amounts due under this Agreement or any Finance Document shall be funded out of funds of Illicit Origin and none of the sources of funds to be used by the Borrower, the Shareholder, the Guarantor or any Approved Manager which is a member of the Group in connection with the construction of the Ship or its business shall be of Illicit Origin.

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### **13.5 42-5 Prohibited Payments**

No Prohibited Payment shall be made or provided, directly or indirectly, by (or on behalf of) the Borrower, the Shareholder, the Guarantor or any of their affiliates, officers, directors or any other person acting on its behalf to, or for the benefit of, any authority (or any official, officer, director, agent or key employee of, or other person with management responsibilities in, of any authority) in connection with the Ship, this Agreement, the Finance Documents and/or the Pre-delivery Contracts.

### **13.6 42-6 Notification of default**

The Borrower will notify the Agent of any Event of Default forthwith upon becoming aware of the occurrence thereof. Upon the Agent's request from time to time the Borrower will issue a certificate stating whether any Obligor is aware of the occurrence of any Event of Default.

### **13.7 42-7 Consents and registrations**

The Borrower will procure that (and will promptly furnish Certified Copies to the Agent on the request of the Agent of) all such authorisations, approvals, consents, licences and exemptions as may be required under any applicable law or regulation to enable it or any Obligor to perform its obligations under, and ensure the validity or enforceability of, each of the Transaction Documents are obtained and promptly renewed from time to time and will procure that the terms of the same are complied with at all times. Insofar as such filings or registrations have not been completed on or before the relevant Drawdown Date the Borrower will procure the filing or registration within applicable time limits of each Finance Document which requires filing or registration together with all ancillary documents required to preserve the priority and enforceability of the Finance Documents.

### **13.8 42-8 Negative pledge**

The Borrower will not create or permit to subsist any Security Interest on the whole or any part of its present or future assets, except for the following:

- (a) Security Interests created with the prior consent of the Agent; or
- (b) Security Interests qualifying as Permitted Security Interests with respect to the Borrower and described in paragraphs (a) and (b) of the definition of "Permitted Security Interests" in Clause 1.1 (*Definitions*); or
- (c) Security Interests qualifying as Permitted Security Interests with respect to the Borrower and described in paragraphs (C), (E), (H) or (I) of such definition, provided that insofar as they are enforceable against the Ship they do not prevail over the Mortgage.

### **13.9 42-9 Disposals**

Except in the case of a sale of the Ship if the completion of the sale is contemporaneous with prepayment of the Loan in accordance with the provisions of Clause ~~46.3~~ 17.3 (*Mandatory prepayment – Sale and Total Loss*) and except for charters and other arrangements complying with Clause ~~43.4~~ 14.1 (*Pooling of earnings and charters*) the Borrower shall not without the consent of the Majority Lenders and SACE, either in a single transaction or in a series of transactions whether related or not and whether voluntarily or involuntarily, (i) sell, transfer, lease or otherwise dispose of the Ship or any of the Ship's equipment except in the case of items (a) being replaced (by an equivalent or superior item) or renewed or (b) that are being

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disposed of in the ordinary course of business **provided that** in the case of both (a) and (b) the net impact does not reduce the value of the Ship and, in the case of (b), the value of any such disposals during the term of this Agreement do not, in aggregate, exceed ten million Dollars (\$10,000,000) (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 the same 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.

#### **13.10 ~~42.40~~Change of business**

Except with the prior consent of the Agent, the Borrower shall not make or threaten to make any substantial change in its business as presently conducted, namely that of a single ship owning company for the Ship, or change its place of business to any country other than that of its Original Jurisdiction, or carry on any other business which is substantial in relation to its business as presently conducted so as to affect, in the opinion of the Agent, the Borrower's ability to perform its obligations hereunder.

#### **13.11 ~~42.41~~Mergers**

Except with the prior consent of the Lenders and SACE and subject to compliance with all necessary "know your customer" requirements, the Borrower will not enter into any amalgamation, restructure, substantial reorganisation, merger, de-merger or consolidation or anything analogous to the foregoing nor will it acquire any equity, share capital or obligations of any corporation or other entity.

#### **13.12 ~~42.42~~Maintenance of status and franchises**

The Borrower will do all such things as are necessary to maintain its company existence in good standing and will ensure that it has the right and is duly qualified to conduct its business as it is conducted in all applicable jurisdictions and will obtain and maintain all franchises and rights necessary for the conduct of its business.

#### **13.13 ~~42.43~~Financial records**

The Borrower will keep proper books of record and account, in which proper and correct entries shall be made of all financial transactions and the assets, liabilities and business of the Borrower in accordance with GAAP.

#### **13.14 ~~42.44~~Financial Indebtedness and subordination of indebtedness**

The following restrictions shall apply:

- (a) otherwise than in the ordinary course of business as owner of the Ship, except as contemplated by this Agreement and except any loan, advance or credit extended by the Guarantor or any member of the Group which is a wholly owned Subsidiary of the Guarantor, the Borrower will not create, incur, assume or allow to exist any financial indebtedness, enter into any finance lease or undertake any material capital commitment (including but not limited to the purchase of any capital asset); and
  - (b) the Borrower shall procure that:
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- (i) any and all indebtedness (and in particular with any other Obligor) is at all times fully subordinated to the Finance Documents and the obligations of the Borrower hereunder; and
- (ii) if required by any applicable laws, the subordinated liabilities created pursuant to such indebtedness shall be subject to security (in form and substance satisfactory to the Secured Parties) in favour of the Security Trustee ("**Subordinated Debt Security**") and any related legal opinions shall be issued if so required by the Secured Parties.

Upon the occurrence of an Event of Default, the Borrower shall not make any repayments of principal, payments of interest or of any other costs, fees, expenses or liabilities arising from or representing such indebtedness. In this paragraph (b) "fully subordinated" shall mean that any claim of the lender against the Borrower in relation to such indebtedness shall rank after and be in all respects subordinate to all of the rights and claims of the Secured Parties under this Agreement and the other Finance Documents and that the lender shall not take any steps to enforce its rights to recover any monies owing to it by the Borrower and in particular but without limitation the lender will not institute any legal or quasi-legal proceedings under any jurisdiction at any time against the Ship, her Earnings or Insurances or the Borrower and it will not compete with the Secured Parties or any of them in a liquidation or other winding-up or bankruptcy of the Borrower or in any proceedings in connection with the Ship, her Earnings or Insurances.

### **13.15 ~~42.45~~Investments**

The Borrower shall not:

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

### **13.16 ~~42.46~~Unlawfulness, invalidity and ranking; Security imperilled**

No Obligor shall 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 an Obligor to perform any of its obligations under the Transaction Documents;
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- (b) cause any obligation of an Obligor under the Finance Documents to cease to be legal, valid, binding or enforceable if that cessation individually or together with any other cessations materially or adversely affects the interests of the Secured Parties under the Transaction Documents;
- (c) cause any Transaction Document to cease to be in full force and effect;
- (d) cause any Security Interest to rank after, or lose its priority to, any other Security Interest; and
- (e) imperil or jeopardise any Security Interest.

**13.17 ~~42.47~~ Dividends and dividend restriction**

- (a) Subject to paragraph (b) below, the Borrower shall not make or pay any dividend or other distribution (in cash or in kind) in respect of its share capital other than dividends and distributions that are transferred to the Shareholder or the Guarantor provided that no Event of Default has occurred or is continuing or would result from the payment of any dividend.
- (b) During the Deferral Period, the Borrower shall not, and shall procure that the Guarantor, the Shareholder and the Holding shall not:
  - (i) declare, make or pay any dividend or other distribution (or interest on any unpaid dividend or other distribution) (whether in cash or in kind) on or in respect of its share capital (or any class of its share capital);
  - (ii) repay or distribute any dividend or share premium reserve;
  - (iii) make any repayment of any kind under any shareholder loan; or
  - (iv) redeem, repurchase (whether by way of share buy-back program or otherwise), defease, retire or repay any of its share capital or resolve to do so,

except that (A) any Obligor other than the Guarantor may pay dividends and other distributions, directly or indirectly, to the Guarantor for the purpose of providing liquidity to the Guarantor to enable the Guarantor to satisfy payment obligations for which the Guarantor is an obligor and (B) any Obligor may pay dividends in respect of the Tax liability to each relevant jurisdiction in respect of consolidated, combined, unitary or affiliated Tax returns for each relevant jurisdiction of the Group or the Holding or holder of the Guarantor's capital stock with respect to income taxable as a result of any member of the Group or the Holding being taxed as a pass-through entity for U.S. Federal, state and local income tax purposes or attributable to any member of the Group, (C) the Guarantor and the Holding may pay dividends and other distributions (x) in respect of a conversion, exchange, or repurchase of convertible or exchangeable notes and any conversion of preference shares to ordinary shares in connection therewith, provided that the cash portion of a repurchase of convertible or exchangeable notes is limited to the amount of interest that would otherwise be payable through maturity on the amount of such convertible or exchangeable notes being repurchased plus any amount in lieu of fractional shares, and (y) to the extent contractually owed to holders of equity in the Guarantor or the Holding and (D) the Guarantor may pay dividends and other distributions to the Holding for the purposes of providing cash to the Holding for the payment of any Tax payable in connection with the Holding's equity plan,

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provided that the actions in paragraphs (B) and (C) above shall only be permitted if there is no Event of Default which is continuing under this Agreement and no Event of Default would arise from the payment of such dividend.

**13.18 ~~42:48~~ Loans and guarantees by the Borrower**

Otherwise than in the ordinary course of business in its ownership and operation of the Ship following the Delivery Date, the Borrower will not make any loan or advance or extend credit to any person, firm or corporation (other than as permitted pursuant to paragraph (a) of Clause ~~42:15~~ 13.15 (*Investments*)), or issue or enter into any guarantee or indemnity or otherwise become directly or contingently liable for the obligations of any other person, firm or corporation.

**13.19 ~~42:49~~ Acquisition of shares**

The Borrower will not:

- (a) acquire any equity, share capital, assets or obligations of any corporation or other entity; or
- (b) permit any of its shares to be directly held other than by the Shareholder.

**13.20 ~~42:20~~ Further assurance**

The Borrower will, from time to time on being required to do so by the Agent, do or procure the doing of all such acts and/or execute or procure the execution of all such documents in a form satisfactory to the Agent as the Agent may reasonably consider necessary for giving full effect to any of the Transaction Documents, the Interest Make-Up Agreement or the SACE Insurance Policy or securing to the Secured Parties the full benefit of the rights, powers and remedies conferred upon the Secured Parties or any of them in any such Transaction Document the Interest Make-Up Agreement or the SACE Insurance Policy.

**13.21 ~~42:24~~ Irrevocable payment instructions**

The Borrower shall not modify, revoke or withhold the payment instructions set out in Clause 4.1 (*Borrower's irrevocable payment instructions*) without the agreement of the Builder (in the case of paragraphs (b)(i), (d)(i) and (e)(i) of Clause 4.1 (*Borrower's irrevocable payment instructions*) only), the Agent, SACE and the Lenders.

**13.22 ~~42:22~~ "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 the Original Facility Agreement;
    - (ii) any change in the status of the Borrower after the date of the Original Facility 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,
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obliges the Agent or any Lender (or, in the case of paragraph (a)(iii) of Clause ~~42.22~~13.22 ("*Know your customer*" checks), 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 or the Lenders (acting reasonably) require any additional documents to supplement those already provided, the Borrower shall promptly upon the request of the Agent or any Lender supply, or procure the supply of, such documentation and other evidence as is reasonably requested by the Agent (for itself or on behalf of any Lender) or any Lender (for itself or, in the case of the event described in paragraph (iii) of Clause ~~42.22~~13.22 ("*Know your customer*" checks), on behalf of any prospective new Lender) in order for the Agent and, such 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.

### **13.23 ~~42.23~~ Pre-delivery Contracts and Pre-delivery Insurance**

- (a) The Borrower shall:
- (i) observe and perform all its obligations and meet all its liabilities under or in connection with each Pre-delivery Contract;
  - (ii) use its best endeavours to ensure performance and observance by the other parties of their obligations and liabilities under each Pre-delivery Contract;
  - (iii) take any action, or refrain from taking any action, which the Agent (always acting reasonably and in good faith towards the Borrower) may specify in connection with any material breach, or possible future material breach, of a Pre-delivery Contract by the Borrower or any other party or with any other matter which arises or may later arise out of or in connection with a Pre-delivery Contract which is or could reasonably be expected to become materially prejudicial to the interests, rights or position of the Lenders; and
  - (iv) use its best endeavours to ensure that all interests and rights conferred by each Pre-delivery Contract remain valid and enforceable in all respects and retain the priority which they were intended to have.
- (b) The Pre-delivery Contracts constitute legal, valid and binding and enforceable obligations of the Builder and the relevant Refund Guarantor respectively, and accordingly the Borrower shall not:
- (i) waive, cancel or suspend any Pre-delivery Contract or assign or transfer any of its rights thereunder, and shall comply with any authorisations for the purposes of the Pre-delivery Contracts;
  - (ii) make any material modification(s) to the Material Provisions of the Shipbuilding Contract (excluding Article 9 (Price) of the Shipbuilding Contract in respect of any increase of the price due to any modifications of the plans or the specification or the
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construction of the Ship under Article 24 of the Shipbuilding Contract), (including, but not limited to, any written amendments or modifications which could reasonably be expected to be adverse to the interests of the Secured Parties of the SACE Insurance Policy) without the prior written consent of the Lenders and in any event may not modify the Shipbuilding Contract, directly or indirectly, in such a manner that would result in a change of the type, principal dimensions or class of the Ship or decrease the value of the Ship by equal to or greater than 5 per cent (in aggregate) or could reasonably be expected to be adverse to the interests of the Secured Parties or the SACE Insurance Policy; or

- (iii) modify any Refund Guarantee, once issued, without the prior written consent of the Lenders and the form of any Refund Guarantee to be issued will not be materially different from the agreed form Refund Guarantee attached to the Sixth Addendum and will not be modified if such modification could reasonably be expected to be adverse to the interests of the Secured Parties or the SACE Insurance Policy.

The Borrower will, therefore, submit to the Agent any proposals for any such modification and SACE and the Agent on behalf of the Lenders will indicate in a timely manner whether the modification proposed will allow the Loan to be maintained. The Borrower also undertakes to notify the Agent of any change in the Intended Delivery Date as soon as practicable after each change has occurred.

The Borrower shall notify the Agent promptly, and in any event within ten (10) Business Days (as defined in limb (a) of the definition of Business Day) of any changes to the Shipbuilding Contract (other than Minor Modifications arising in the general day to day construction period for a vessel of the type of the Ship) and provide copies of the same to the Agent.

- (c) The Borrower shall promptly notify the Agent upon any Obligor becoming aware of a Downgraded Refund Guarantor. Where there is a Downgraded Refund Guarantor, the Borrower shall promptly serve written notice on the Builder requiring the Builder to replace that Downgraded Refund Guarantor with a Refund Guarantor which is not subject to any such RG Downgrade Event within a 60 day period. If the Borrower requests any waiver of the above requirement from the Lenders, the Borrower acknowledges that the Lenders (acting on the instructions of SACE) shall not be obliged to provide any such waiver. If a RG Downgrade Event occurs and the Borrower is unable to satisfy the requirements of this paragraph (c), it shall be treated as a mandatory prepayment event pursuant to Clause ~~16.6~~17.6 (*Mandatory prepayment on default under Shipbuilding Contract*).
  - (d) The Borrower shall ensure that at all times during construction, the Ship is insured in accordance with the provisions of Article 23 of the Shipbuilding Contract.
  - (e) In the event that a previously issued Refund Guarantee cannot be extended or replaced, and pursuant to the terms of the Shipbuilding Contract the Builder has chosen to replace such Refund Guarantee with an Acceptable Deposit, the Account shall be opened and such Acceptable Deposit shall be transferred to the Account which shall be pledged in favour of the Lenders, the Joint Mandated Lead Arrangers, the Security Trustee, the Agent and the SACE Agent and shall be deemed to be Pre-delivery Security. For the avoidance of doubt:
    - (i) any amount of the Acceptable Deposit shall be transferred to and from the Account upon the terms of the Account Pledge and the conditions relating to the mechanics of the Account and Acceptable Deposit shall be set out in the Account Pledge; and
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- (ii) upon the instructions of the Beneficiaries (as defined in the Account Pledge), the Account Bank shall close the Account upon delivery of the Ship provided no potential Event of Default or Event of Default has occurred.

#### **13.24 ~~42-24~~FOREX Contracts**

The Borrower shall:

- (a) provide the Agent with a copy of all FOREX Contracts together with all relevant details within ten (10) days of their execution; and
- (b) inform the Agent, when requested by the Agent, of its intended hedging policy for purchasing Euro with Dollars.

The Agent shall inform the Lenders within ten (10) days of receipt of such information from the Borrower.

#### **13.25 ~~42-25~~Compliance with laws etc.**

The Borrower shall:

- (a) comply, or procure compliance with:
  - (i) in all material respects, all laws and regulations relating to it and its business generally; and
  - (ii) in all material respects (except in the case of compliance with Sanctions which must be complied with in all respects), all laws or regulations relating to the Ship, its ownership, employment, operation, management and registration,

including 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 Environment Approvals which are applicable to it; and
- (c) without limiting paragraph (a) above, not employ the Ship 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.

#### **13.26 ~~42-26~~Most favoured nations**

- (a) The Borrower shall procure that if at any time after the date of the Original Facility Agreement the Guarantor enters into any financial contract or financial document relating to any Financial Indebtedness with or which has the support of any export credit agency and which contains *pari passu* provisions or cross default provisions which are more favourable to the lenders than those contained in paragraph (l) of Clause ~~41-2~~ 12.2 (*Continuing representations and warranties*) and Clause ~~18-6~~ 19.6 (*Cross default*) respectively, the Borrower or the Guarantor shall immediately notify the Agent of such provisions and the relevant provisions contained in this Agreement shall be deemed amended so that such more favourable *pari passu* provisions or cross default provisions are granted to the Creditor Parties pursuant to this Agreement.
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- (b) The Borrower undertakes that if at any time after the date of this Agreement and until the occurrence of a Reinstatement Event, it or any other member of the Group is required to grant additional security in relation to a financial contract or financial document relating to any existing Financial Indebtedness:
- (i) with the support of any export credit agency (excluding any extensions, increases or changes to the terms and conditions thereof), such security shall be granted on a *pari passu* basis to the Lenders (and the Security Trustee agrees to enter and/or procure the entry by the relevant Secured Parties into such intercreditor documentation to reflect such *pari passu* ranking (in form and substance reasonably satisfactory to the Secured Parties) as may be required in connection with such arrangements); or
  - (ii) without the support of any export credit agency (excluding any extensions, increases or changes to the terms and conditions thereof), such security shall (without prejudice to any of the Obligors' other obligations under the Finance Documents), subject to the provisions of clause 11.11 (*Negative pledge*) of the Guarantee and Clause ~~12.8~~13.8 (*Negative pledge*), be permitted provided that it shall not have an adverse effect on any Security Interests or other rights granted to the Secured Parties under the Finance Documents.
- (c) ~~In~~ Until the occurrence of a Reinstatement Event, in respect of any new Financial Indebtedness (other than Permitted Financial Indebtedness), or any extensions, increases or changes to the terms and conditions of any existing Financial Indebtedness, in each case with or which has the support of any export credit agency, the Borrower shall enter into good faith negotiations with the Security Trustee to grant additional security for the purpose of further securing the Loan, provided that any failure to reach agreement under this paragraph (c) following such good faith negotiations shall not constitute an Event of Default.

### **13.27 ~~12.27~~ New capital raises or financing**

- (a) Save as provided below:
- (i) no new debt ~~or equity issuance~~ shall be raised and no new Financial Indebtedness shall be incurred by the Group (including, for the avoidance of doubt, inter-company loans);
  - (ii) no non-arm's length disposals of any asset relating to the Group fleet shall be made; and
  - (iii) no additional Security Interests securing existing Financial Indebtedness will be created or permitted to subsist by any Obligor (unless the Lenders benefit from this new security on a *pari passu* basis),
- ~~during the Deferral Period-~~
- until 31 December 2023.
- (b) The restrictions in paragraph (a) of this Clause ~~12.27~~13.27 (*New capital raises or financing*) above shall not apply in relation to:
- (i) any refinancing of any bond issuance of, or loan entered into by, the Group (A) which matures during such period or (B) where not maturing during such period, shall be on terms ~~which include any of the following (evidence of which shall be provided to the Agent by the Guarantor)~~ resulting, when taken as a whole, in an improvement of the
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ability of the Obligors to meet their obligations under the Finance Documents, which terms include any of the following: an extension of the repayment terms; or a decrease in the interest rate; or the conversion of such Financial Indebtedness from secured to unsecured or first to second priority;

- (ii) any debt ~~or equity issuance~~ provided prior to 31 December ~~2022-2023~~ to provide the Group with crisis and/or recovery related funding in respect of the impact of the Covid-19 pandemic;
  - (iii) any debt ~~or equity issuance~~ being raised on or after 31 December ~~2022-2023~~ to support the Group with the impact of the Covid-19 pandemic, made with the prior written consent of SACE;
  - (iv) any debt ~~or equity issuance~~ being raised to finance any instalment of a cruise vessel already contracted for or contracted for during such period or any refurbishment, maintenance, upgrade or lengthening of a cruise ship during such period (including without limitation any costs incurred by the owner of a cruise ship in connection therewith);
  - (v) any debt ~~or equity issuance~~ being raised to finance capital expenditure for projects which are already contracted for but in respect of which committed financing has not yet been obtained, and which, in each case has been (or will be) listed in the Information Package submitted to the Agent prior to the February 2021 Deferral Effective Date;
  - (vi) any extension or renewal of revolving credit facilities, and made with the prior written consent of SACE if any additional security is to be granted;
  - (vii) any new debt ~~or equity issuance~~ otherwise agreed by SACE; or
  - (viii) any inter-company loan or operating arrangement which from an accounting perspective has the effect of an intercompany loan (an "**intercompany arrangement**") which:
    - (A) is existing as at the date of the February 2021 Amendment and Restatement Agreement;  
or
    - (B) is made among any Group members or any Group member with the Holding provided that:
      - (1) any inter-company arrangement is made solely for the purpose of regulatory or Tax purposes carried out in the ordinary course of business and on an arm's length basis; and
      - (2) the aggregate principal amount of any inter-company arrangements outstanding pursuant to ~~this sub~~-paragraph (b)(viii)(B) of this Clause ~~42.27-13.27~~ (*New capital raises or financing*) does not exceed [\*] Dollars (\$[\*]) at any time; or
    - (C) has been approved with the prior written consent of SACE;
  - (ix) any Permitted Security Interest;
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- (x) any Security Interest otherwise approved with the prior written consent of SACE; and
- (xi) any Financial Indebtedness incurred in the ordinary course of business which in the aggregate does not exceed USD [\*] during any twelve-month period; ~~and~~, it being provided that:
  - (A) prior to 31 December 2022, this amount shall be increased to USD 150,000,000 for any Financial Indebtedness incurred to finance capital expenditure for Approved Projects; and
  - (B) if any part of such Financial Indebtedness allocated prior to 31 December 2022 to an Approved Project remains unused throughout the twelve-month period of year 2022, the surplus may be carried over to increase the relevant Financial Indebtedness throughout the twelve-month period of year 2023 for that Approved Project only; and
- (xii) without prejudice to Clauses ~~42-44-13.11~~ (Mergers) and ~~42-45-13.15~~ (Investments) and clause 11.13 (No merger etc.) of the Guarantee, the issuance of share capital by any Group member to another Group member; and
- (xiii) any extension, renewal, replacement or upsizing in respect of the Term and Revolving Credit Facilities (including the granting of additional Security Interests),
- (xiv) and, for the avoidance of doubt, no debt or equity issuance shall be raised in respect of any form of merger, sub-division, amalgamation, restructuring, consolidation, winding-up, dissolution or anything analogous thereto or acquisition of any entity, share capital or obligations of any corporation or other entity.

### **13.28 ~~42-28~~ Code of Ethics and Model**

- (a) The Borrower shall not behave so as to cause any of the following persons to violate the principles set out in the Code of Ethics and/or Model:
  - (i) persons who are representatives, administrators or managers of CDP or of any of its organizational units with financial and functional independence;
  - (ii) persons who are managed or supervised by one of the persons referred to in paragraph (i) above; or
  - (iii) external advisors of CDP.
- (b) The Borrower shall maintain adequate internal procedures aimed at preventing liabilities provided under Legislative Decree 231/01.
- (c) The Borrower shall inform CDP of any (i) new pending litigation against it in relation to administrative liability provided under Legislative Decree 231/01; (ii) new final judgment under Legislative Decree 231/01, including, without limitation, any plea bargain (also known as *patteggiamento* under Italian law) pursuant to article 444 of the Italian code of criminal procedure; and (iii) new precautionary measures under Legislative Decree 231/01.

## **14 ~~43~~SHIP UNDERTAKINGS**

### **14.1 ~~43.1~~ Pooling of earnings and charters**

The Borrower will not without the prior written consent of the Agent or SACE enter into in respect of the Ship (such consent for the purposes of paragraph (e) of Clause ~~13.1~~ 14.1 (*Pooling of earnings and charters*) shall not be unreasonably withheld or delayed), nor permit to exist at any time following the Delivery Date:

- (a) any pooling agreement or other arrangement for the sharing of any of the Earnings or the expenses of the Ship except with a member of the Group and provided that it does not adversely affect the rights of the Secured Parties under the Finance Documents in the reasonable opinion of the Agent; or
  - (b) any demise or bareboat charter, provided however that such consent shall not be unreasonably withheld in the event that the Borrower wishes to enter into a bareboat charter in a form approved by the Agent with another member of the Group on condition that if so requested by the Agent and without limitation:
    - (i) any such bareboat charterer shall enter into such deeds (including but not limited to a full subordination and assignment deed in respect of its rights under the bareboat charter and its interest in the Insurances and earnings payable to it arising out of its use of the Ship), agreements and indemnities as the Majority Lenders and SACE shall require prior to entering into the bareboat charter with the Borrower; and
    - (ii) the Borrower shall assign the benefit of any such bareboat charter and its interest in the Insurances to the Secured Parties by way of further security for the Borrower's obligations under the Finance Documents; or
  - (c) any charter whereunder two (2) months' charterhire (or the equivalent thereof) is payable in advance in respect of the Ship; or
  - (d) any charter of the Ship or employment which, with the exercise of options for extension, could be for a period longer than [\*] ([\*]) months; or
  - (e) any time charter of the Ship with a company outside the Group (other than a time charter entered into in the ordinary course of business which does not exceed [\*]([\*]) months **provided that** any such time charter (y) is assigned to the Security Trustee and (z) during the period of such time charter, the Ship continues to be managed by the existing Approved Manager), provided however that such consent shall not be unreasonably withheld in the event that:
    - (i) such time charter is assigned to the Security Trustee and the Borrower agrees to:
      - (A) serve a notice of assignment of any time charter, the Earnings therefrom and any guarantee of the charterer's obligations on the time charterer and any time charter guarantor; and
      - (B) use commercially reasonable endeavours to obtain an acknowledgement of such assignment,and each of the notice of assignment and acknowledgement of assignment being substantially in the form appended to the General Assignment;
  - (ii) the Agent is satisfied that the income from such time charter will be sufficient to cover the expenses of the Ship and to service repayment of the Loan and all other amounts from time to time outstanding under this Agreement; and
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- (iii) during the term of such time charter, the Ship continues to be managed by the existing Approved Manager.

#### **14.2 ~~13.2~~ Management and employment**

The Borrower will not as from the Delivery Date:

- (a) permit any person other than an Approved Manager to be the manager of, including providing crewing services to, the Ship, at all times acting upon terms approved in writing by the Agent and having entered into (in the case of the Approved Manager) an Approved Manager's Undertaking; and
- (b) permit any amendment to be made to the terms of any Management Agreement unless the amendment is advised by the Borrower's tax counsel or is deemed necessary by the parties thereto to reflect the prevailing circumstances but provided that the amendment does not imperil the security to be provided pursuant to the Finance Documents or adversely affect the ability of any Obligor to perform its obligations under the Transaction Documents; or
- (c) permit the Ship to be employed other than within the Norwegian Cruise Line brand unless the Borrower notifies the Lenders that they intend to employ the Ship within another brand of the Group and the ship remains employed within the Group.

#### **14.3 ~~13.3~~ Trading with the United States of America**

The Borrower shall in respect of the Ship take all reasonable precautions as from the Delivery Date to prevent any infringements of the Anti-Drug Abuse Act of 1986 of the United States of America (as the same may be amended and/or re-enacted from time to time hereafter) or any similar legislation applicable to the Ship in any other jurisdiction in which the Ship shall trade (a "**Relevant Jurisdiction**") where the Ship trades in the territorial waters of the United States of America or a Relevant Jurisdiction.

#### **14.4 ~~13.4~~ Valuation of the Ship**

The following shall apply in relation to the valuation of the Ship:

- (a) the Borrower will on or before 31 May of each year that commences after the delivery of the Ship and at annual intervals thereafter unless an Event of Default has occurred and remains unremedied, at the Borrower's expense, procure that the Ship is valued by an Approved Broker (such valuation to be made without taking into account the benefit or otherwise of any fixed employment relating to the Ship);
- (b) the Borrower shall procure that forthwith upon the issuance of any valuation obtained pursuant to this Clause ~~13.4~~ 14.4 (*Valuation of the Ship*) a copy thereof is sent directly to the Agent for review; and
- (c) in the event that the Borrower fails to procure a valuation in accordance with paragraph (a) of Clause ~~13.4~~ 14.4 (*Valuation of the Ship*), the Agent shall be entitled to procure a valuation of the Ship on the same basis.

#### **14.5 ~~13.5~~ Earnings**

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The Borrower will procure that the Earnings (if any) are paid in full without set off and free and clear of and without deduction for any taxes, levies, duties, imposts, charges, fees, restrictions or conditions of any nature whatsoever.

#### **14.6 ~~13-6~~ Operation and maintenance of the Ship**

From the Delivery Date until the end of the Security Period at its own expense the Borrower will keep the Ship in a good and efficient state of repair so as to maintain it to the highest classification notation available for the Ship of its age and type free of all recommendations and qualifications with Bureau Veritas or DNV. On the Delivery Date and annually thereafter, it will furnish to the Agent a statement by such classification society that such classification notation is maintained. It will comply with all recommendations, regulations and requirements (statutory or otherwise) from time to time applicable to the Ship and shall have on board as and when required thereby valid certificates showing compliance therewith and shall procure that all repairs to or replacements of any damaged, worn or lost parts or equipment are carried out (both as regards workmanship and quality of materials) so as not to diminish the value or class of the Ship. It will not make any substantial modifications or alterations to the Ship or any part thereof which would reduce the market and commercial value of the Ship determined in accordance with Clause ~~13-4~~ 14.4 (*Valuation of the Ship*).

#### **14.7 ~~13-7~~ Surveys and inspections**

The Borrower will:

- (a) submit the Ship to continuous survey in respect of its machinery and hull and such other surveys as may be required for classification purposes and, if so required by the Agent, supply to the Agent copies in English of the survey reports;
- (b) permit surveyors or agents appointed by the Agent to board the Ship to inspect its condition or satisfy themselves as to repairs proposed or already carried out and afford all proper facilities for such inspections **provided that**, unless an Event of Default has occurred or there is an accident to the Ship involving repairs the cost of which will or is likely to exceed [\*] Dollars (\$[\*]), such inspections shall be limited to one a year and shall be at all reasonable times.

#### **14.8 ~~13-8~~ ISM Code**

The Borrower will comply, or procure that the Approved Manager will comply, with the ISM Code (as the same may be amended from time to time) or any replacement of the ISM Code (as the same may be amended from time to time) and in particular, without prejudice to the generality of the foregoing, as and when required to do so by the ISM Code and at all times thereafter:

- (a) hold, or procure that the Approved Manager holds, a valid Document of Compliance duly issued to the Borrower or the Approved Manager (as the case may be) pursuant to the ISM Code and a valid Safety Management Certificate duly issued to the Ship pursuant to the ISM Code;
  - (b) provide the Agent with copies of any such Document of Compliance and Safety Management Certificate as soon as the same are issued; and
  - (c) keep, or procure that there is kept, on board the Ship a copy of any such Document of Compliance and the original of any such Safety Management Certificate.
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**14.9 ~~43-9~~ ISPS Code**

The Borrower will comply, or procure that the Approved Manager will comply, with the ISPS Code (as the same may be amended from time to time) or any replacement of the ISPS Code (as the same may be amended from time to time) and in particular, without prejudice to the generality of the foregoing, as and when required to do so by the ISPS Code and at all times thereafter:

- (a) keep, or procure that there is kept, on board the Ship the original of the International Ship Security Certificate required by the ISPS Code; and
- (b) keep, or procure that there is kept, on board the Ship a copy of the ship security plan prepared pursuant to the ISPS Code.

**14.10 ~~43-10~~ Annex VI**

The Borrower will comply with Annex VI (as the same may be amended from time to time) or any replacement of Annex VI (as the same may be amended from time to time) and in particular, without limitation, to:

- (a) procure that the Ship's master and crew are familiar with, and that the Ship complies with, Annex VI; and
- (b) maintain for the Ship throughout the Security Period a valid and current IAPPC and provide a copy to the Agent; and
- (c) notify the Agent immediately in writing of any actual or threatened withdrawal, suspension, cancellation or modification of the IAPPC.

**14.11 ~~43-11~~ Employment of Ship**

The Borrower shall:

- (a) not employ the Ship or permit its employment in any trade or business which is forbidden by any applicable law or is otherwise illicit or in carrying illicit or prohibited goods or in any manner whatsoever which may render it liable to condemnation in a prize court or to destruction, seizure or confiscation or that may expose the Ship to penalties. In the event of hostilities in any part of the world (whether war be declared or not) it will not employ the Ship or permit its employment in carrying any contraband goods; and
- (b) promptly provide the Agent with (i) all information which the Agent may reasonably require regarding the Ship, its employment, earnings, position and engagements (ii) particulars of all towages and salvages and (iii) copies of all charters and other contracts for its employment and otherwise concerning it.

**14.12 ~~43-12~~ Provision of information**

The Borrower shall give notice to the Agent promptly and in reasonable detail upon the Borrower or any other Obligor becoming aware of:

- (a) accidents to the Ship involving repairs the cost of which will or is likely to exceed [\*] Dollars (\$[\*]);
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- (b) the Ship becoming or being likely to become a Total Loss;
- (c) any recommendation or requirement made by any insurer or classification society or by any competent authority which is not complied with, or cannot be complied with, within any time limit relating thereto and that might reasonably affect the maintenance of either the Insurances or the classification of the Ship;
- (d) any writ or claim served against or any arrest of the Ship or the exercise of any lien or purported lien on the Ship, her Earnings or Insurances;
- (e) the Ship ceasing to be registered under the flag of the Maritime Registry or anything which is done or not done whereby such registration may be imperilled;
- (f) it becoming impossible or unlawful for it to fulfil any of its obligations under the Finance Documents; and
- (g) anything done or permitted or not done in respect of the Ship by any person which is likely to imperil the security created by the Finance Documents.

**14.13 ~~13.13~~ Payment of liabilities**

The Borrower shall promptly pay and discharge:

- (a) all debts, damages and liabilities, taxes, assessments, charges, fines, penalties, tolls, dues and other outgoing in respect of the Ship and keep proper books of account in respect thereof provided always that the Borrower shall not be obliged to compromise any debts, damages and liabilities as aforesaid which are being contested in good faith subject always that full details of any such contested debt, damage or liability which, either individually or in aggregate exceeds [\*] Dollars (\$[\*]) shall forthwith be provided to the Agent. As and when the Agent may so require the Borrower will make such books available for inspection on behalf of the Agent and provide evidence satisfactory to the Agent that the wages and allotments and the insurance and pension contributions of the master and crew are being regularly paid, that all deductions of crew's wages in respect of any tax liability are being properly accounted for and that the master has no claim for disbursements other than those incurred in the ordinary course of trading on the voyage then in progress or completed prior to such inspection;
  - (b) all liabilities which have given rise, or may give rise, to liens or claims enforceable against the Ship under the laws of all countries to whose jurisdiction the Ship may from time to time be subject and in particular the Borrower hereby agrees to indemnify and hold the Secured Parties, their successors, assigns, directors, officers, shareholders, employees and agents harmless from and against any and all claims, losses, liabilities, damages, expenses (including attorneys, fees and expenses and consultant fees) and injuries of any kind whatsoever asserted against the Secured Parties, with respect to or as a result of the presence, escape, seepage, spillage, release, leaking, discharge or migration from the Ship or other properties owned or operated by the Borrower of any hazardous substance, including without limitation, any claims asserted or arising under any applicable environmental, health and safety laws, codes and ordinances, and all rules and regulations promulgated thereunder of all governmental agencies, regardless of whether or not caused by or within the control of the Borrower subject to the following:
    - (i) it is the parties' understanding that the Secured Parties do not now, have never and do not intend in the future to exercise any operational control or maintenance over the Ship or any other properties and operations owned or operated by the Borrower,
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nor in the past, presently, or intend in the future to, maintain an ownership interest in the Ship or any other properties owned or operated by the Borrower except as may arise upon enforcement of the Lenders' rights under the Mortgage;

- (ii) unless and until an Event of Default shall have occurred and without prejudice to the right of each Lender to be indemnified pursuant to this paragraph (b):
  - (A) each Lender will, if it is reasonably practicable to do so, notify the Borrower upon receiving a claim in respect of which the relevant Lender is or may become entitled to an indemnity under this paragraph (b); and
  - (B) subject to the prior written approval of the relevant Lender which the Lender shall have the right to withhold, the Borrower will be entitled to take, in the name of the relevant Lender, such action as the Borrower may see fit to avoid, dispute, resist, appeal, compromise or defend any such claims, losses, liabilities, damages, expenses and injuries as are referred to above in this paragraph (b) or to recover the same from any third party, subject to the Borrower first ensuring that the relevant Lender is secured to its reasonable satisfaction against all expenses thereby incurred or to be incurred,

provided always that the Borrower shall not be obliged to compromise any liabilities as aforesaid which are being contested in good faith subject always that full details of any such contested liabilities which, either individually or in aggregate, exceed [\*] Dollars (\$[\*]) shall be forthwith provided to the Agent. If the Ship is arrested or detained for any reason it will procure its immediate release by providing bail or taking such other steps as the circumstances may require.

#### **14.14 ~~13-14~~ Certificate as to liabilities**

The Borrower shall give to the Agent at such times as it may from time to time reasonably require a certificate, duly signed on its behalf, as to the total amount of any debts, damages and liabilities relating to the Ship and details of such of those debts, damages and liabilities as are over a certain amount to be specified by the Agent at the relevant time and, if so required by the Agent, forthwith discharge such of those debts, damages and liabilities as the Agent shall require other than those being contested in good faith.

#### **14.15 ~~13-15~~ Modifications**

The Borrower shall maintain the type of the Ship as at the Delivery Date and not put the Ship into the possession of any person for the purpose of work being done on it in an amount exceeding or likely to exceed [\*] Dollars (\$[\*]) unless such person shall first have given to the Agent a written undertaking addressed to the Agent in terms satisfactory to the Agent agreeing not to exercise a lien on the Ship or her Earnings for the cost of such work or for any other reason (or the Borrower is able to demonstrate to the reasonable satisfaction of the Agent that the Borrower or the relevant Group company has set aside and will have funds readily available for payment when due of the cost of the work (to the extent not fully covered by insurance proceeds in the case of a partial loss)).

#### **14.16 ~~13-16~~ Registration of Ship**

The Borrower shall maintain the registration of the Ship under and fly the flag of the Maritime Registry and not do or permit anything to be done whereby such registration may be forfeited or imperilled.

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#### **14.17 ~~43-17~~ Environmental Law**

The Borrower shall comply with all Environmental Laws, obtain, maintain and ensure compliance with all requisite Environmental Approvals, and implement procedures to monitor compliance with and to prevent liability under any Environmental Law.

#### **14.18 ~~43-18~~ Notice of Mortgage**

The Borrower shall keep the Mortgage registered against the Ship as a valid first preferred mortgage, carry on board the Ship a certified copy of the Mortgage and place and maintain in a conspicuous place in the navigation room and the master's cabin of the Ship a framed printed notice stating that the Ship is mortgaged by the Borrower to the Security Trustee.

#### **14.19 ~~43-19~~ Environmental claims**

Each Obligor shall, (through the Guarantor), promptly upon becoming aware of the same, inform the Agent in writing of:

- (a) any Environmental Claim which is likely to result in a Material Adverse Effect 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 which is likely to result in a Material Adverse Effect.

#### **14.20 ~~43-20~~ Trading in war zones**

In the event of hostilities in any part of the world (whether war is declared or not), the Borrower shall not cause or permit the Ship to enter or trade to any zone which is declared a war zone by the Ship's war risks insurers unless:

- (a) the prior written consent of the Security Trustee has been given; and
- (b) the Borrower has (at its expense) effected any special, additional or modified insurance cover which the Security Trustee may require.

#### **14.21 ~~43-21~~ Poseidon Principles**

The Borrower shall, upon the request of the Agent and at the cost of the Borrower, on or before 31st July in each calendar year, supply to the Agent all information necessary in order for the Lenders to comply with their obligations under the Poseidon Principles in respect of the preceding year, including, without limitation, all ship fuel oil consumption data required to be collected and reported in accordance with Regulation 22A of Annex VI and any Statement of Compliance, in each case relating to the Ship for the preceding calendar year provided always that, for the avoidance of doubt, such information shall be "Confidential Information" for the purposes of Clause ~~33-34~~ (Confidentiality) but the Borrower acknowledges that, in accordance with the Poseidon Principles, such information will form part of the information published regarding the Lenders' portfolio climate alignment.

### **15 ~~44~~ INSURANCE UNDERTAKINGS**

#### **15.1 ~~44-1~~ General**

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The undertakings in this Clause ~~14-15~~ (*Insurance Undertakings*) remain in force on and from the Delivery Date and throughout the rest of the Security Period except as the Agent may otherwise permit.

#### **15.2 ~~14.2~~ Maintenance of obligatory insurances**

The Borrower shall insure the Ship in its name and keep the Ship insured on an agreed value basis for an amount in the currency in which the Loan is denominated approved by the Agent but not being less than the greater of (x) [\*] per cent. ([\*]%) of the amount of the Loan; and (y) the full market and commercial value of the Ship determined in accordance with Clause ~~13.4-14.4~~ (*Valuation of the Ship*) from time to time through internationally recognised independent first class insurance companies, underwriters, war risks and protection and indemnity associations acceptable to the Agent, acting reasonably, in each instance on terms and conditions approved by the Agent including as to deductibles but at least in respect of:

- (a) fire and marine risks including but without limitation hull and machinery and all other risks customarily and usually covered by first-class and prudent shipowners in the global insurance markets under English or Norwegian marine policies or Agent-approved policies containing the ordinary conditions applicable to similar Ships;
- (b) war risks (including terrorism, piracy, blocking and trapping and protection and indemnity war risks) up to the insured amount;
- (c) excess risks that is to say the proportion of claims for general average and salvage charges and under the running down clause not recoverable in consequence of the value at which the Ship is assessed for the purpose of such claims exceeding the insured value;
- (d) protection and indemnity risks with full standard coverage as offered by first-class protection and indemnity associations which are a member of the International Group of P&I Association and up to the highest limit of liability available (for oil pollution risk the highest limit currently available is one billion Dollars (\$1,000,000,000) and this to be increased if reasonably requested by the Agent and the increase is possible in accordance with the standard protection and indemnity cover for Ships of its type and is compatible with prudent insurance practice for first class cruise shipowners or operators in waters where the Ship trades from time to time from the Delivery Date until the end of the Security Period);
- (e) when and while the Ship is laid-up, in lieu of hull insurance, normal port risks; and
- (f) such other risks as the Agent may from time to time reasonably require;

and in any event in respect of those risks and at those levels covered by first class and prudent owners and/or financiers in the international market in respect of similar tonnage provided that if any of such insurances are also effected in the name of any other person (other than the Borrower and/or a Secured Party) such person shall if so required by the Agent execute a first priority assignment of its interest in such insurances in favour of the Secured Parties in similar terms mutatis mutandis to the relevant provisions of the General Assignment.

#### **15.3 ~~14.3~~ Mortgagee's interest and pollution risks insurances**

The Agent shall take out mortgagee interest insurance on such conditions as the Agent may reasonably require and mortgagee interest insurance for pollution risks as from time to time agreed each for an amount in the currency in which the Loan is denominated of [\*] per cent. ([\*]%) of the amount of the Loan, the Borrower having no interest or entitlement in respect of

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such policies; the Borrower shall upon demand of the Agent reimburse the Agent for the costs of effecting and/or maintaining any such insurance(s).

#### **15.4 ~~14.4~~ Trading in the United States of America**

If the Ship shall trade in the United States of America and/or the Exclusive Economic Zone of the United States of America (the "EEZ") as such term is defined in the US Oil Pollution Act 1990 ("OPA"), to comply strictly with the requirements of OPA and any similar legislation which may from time to time be enacted in any jurisdiction in which the Ship presently trades or may or will trade at any time during the existence of this Agreement and in particular before such trade is commenced and during the entire period during which such trade is carried on:

- (a) to pay any additional premiums required to maintain full standard protection and indemnity cover for oil pollution up to the highest limit available to it for the Ship in the market;
- (b) to make all such quarterly or other voyage declarations as may from time to time be required by the Ship's protection and indemnity association and to comply with all obligations in order to maintain such cover, and promptly to deliver to the Agent copies of such declarations;
- (c) to submit the Ship to such additional periodic, classification, structural or other surveys which may be required by the Ship's protection and indemnity insurers to maintain cover for such trade and promptly to deliver to the Agent copies of reports made in respect of such surveys;
- (d) to implement any recommendations contained in the reports issued following the surveys referred to in paragraph (c) of Clause ~~14.4~~ 15.4 (*Trading in the United States of America*) within the time limit specified therein and to provide evidence satisfactory to the Agent that the protection and indemnity insurers are satisfied that this has been done;
- (e) in particular strictly to comply with the requirements of any applicable law, convention, regulation, proclamation or order with regard to financial responsibility for liabilities imposed on the Borrower or the Ship with respect to pollution by any state or nation or political subdivision thereof, including but not limited to OPA, and to provide the Agent on demand with such information or evidence as it may reasonably require of such compliance;
- (f) to procure that the protection and indemnity insurances do not contain a clause excluding the Ship from trading in waters of the United States of America and the EEZ or any other provision analogous thereto and to provide the Agent with evidence that this is so; and
- (g) strictly to comply with any operational or structural regulations issued from time to time by any relevant authorities under OPA so that at all times the Ship falls within the provisions which limit strict liability under OPA for oil pollution.

#### **15.5 ~~14.5~~ Protections for Secured Parties**

- (a) The Borrower shall give notice forthwith of any assignment of its interest in the Insurances to the relevant brokers, insurance companies, underwriters and/or associations in the form approved by the Agent;
  - (b) The Borrower shall execute and deliver all such documents and do all such things as may be necessary to confer upon the Secured Parties legal title to the Insurances in respect of the Ship and to procure that the interest of the Secured Parties is at all times filed with all slips, cover notes, policies and certificates of entry and to procure (a) that a loss payable clause in the form approved by the Agent shall be filed with all the hull, machinery and equipment and war risks
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policies in respect of the Ship and (b) that a loss payable clause in the form approved by the Agent shall be endorsed upon the protection and indemnity certificates of entry in respect of the Ship; and

- (c) In the event of the Borrower making default in insuring and keeping insured the Ship as hereinbefore provided then the Agent may (but shall not be bound to) insure the Ship or enter the Ship in such manner and to such extent as the Agent in its discretion thinks fit and in such case all the cost of effecting and maintaining such insurance together with interest thereon at the interest rate shall be paid on demand by the Borrower to the Agent.

**15.6 ~~14.6~~Copies of policies; letters of undertaking**

The Borrower will procure that each of the relevant brokers and associations furnishes the Agent with a letter of undertaking in the standard form available in the relevant insurance market or otherwise in such form as may be required by the Agent and waives any lien for premiums or calls except in relation to premiums or calls solely attributable to the Ship.

**15.7 ~~14.7~~Payment of premiums**

The Borrower shall punctually pay all premiums, calls, contributions or other sums payable in respect of the Insurances on the Ship and to produce all relevant receipts when so required by the Agent.

**15.8 ~~14.8~~Renewal of obligatory insurances**

The Borrower shall notify the Agent of the renewal of the obligatory insurances at least five (5) days before the expiry thereof and shall procure that the relevant brokers or associations shall promptly confirm in writing to the Agent that such renewal is effected it being understood by the Borrower that any failure to renew the Insurances on the Ship at least two (2) days before the expiry thereof or to give or procure the relevant notices of such renewal shall constitute an Event of Default.

**15.9 ~~14.9~~Guarantees**

The Borrower shall arrange for the execution of such guarantees as may from time to time be required by any protection and indemnity and/or war risks association.

**15.10 ~~14.10~~Provision of insurances information**

The Borrower will furnish the Agent from time to time on request with full information about all Insurances maintained on the Ship and the names of the offices, companies, underwriters, associations or clubs with which such Insurances are placed.

**15.11 ~~14.11~~Alteration to terms of insurances**

The Borrower shall not make or agree to any variation in the terms of any of the Insurances on the Ship without the prior approval of the Agent nor to do any act or voluntarily suffer or permit any act to be done whereby any Insurances shall or may be rendered invalid, void, voidable, suspended, defeated or unenforceable and not to suffer or permit the Ship to engage in any voyage nor to carry any cargo not permitted under any of the Insurances without first obtaining the consent of the insurers or reinsurers concerned and complying with such requirements as to payment of extra premiums or otherwise as the insurers or reinsurers may impose.

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#### **15.12 ~~14.12~~ Settlement of claims**

The Borrower shall not settle, compromise or abandon any claim in respect of any of the Insurances on the Ship other than a claim of less than [\*] Dollars (\$[\*]) or the equivalent in any other currency and not being a claim arising out of a Total Loss.

#### **15.13 ~~14.13~~ Application of insurance proceeds**

The Borrower shall apply or ensure the appliance of all such sums receivable in respect of the Insurances on the Ship for the purpose of making good the loss and fully repairing all damage in respect whereof the insurance monies shall have been received.

#### **15.14 ~~14.14~~ Insurance advisers**

The Agent shall be entitled, immediately prior to the Delivery Date and thereafter no more frequently than annually on renewals but also additionally at any time when there is a proposed change of underwriters or the terms of any Insurances, to instruct independent reputable insurance advisers for the purpose of obtaining any advice or information regarding any matter concerning the Insurances which the Agent shall deem necessary, it being hereby specifically agreed that the Borrower shall reimburse the Agent on demand for the costs and expenses incurred by the Agent in connection with the instruction of such advisers subject to a limit of ten thousand Dollars (\$10,000) at the time of delivery of the Ship or in the event of a change of underwriters or of terms of any Insurances and otherwise ten thousand Dollars (\$10,000) annually thereafter.

### **16 ~~15~~ SECURITY VALUE MAINTENANCE**

#### **16.1 ~~15.1~~ Security Shortfall**

If, upon receipt of a valuation of the Ship in accordance with Clause ~~13.4~~ 14.4 (*Valuation of the Ship*), the Security Value shall be less than the Security Requirement, the Agent may give notice to the Borrower requiring that such deficiency be remedied and then the Borrower shall (unless the Ship has become a Total Loss) either:

- (a) prepay within a period of 30 days of the date of receipt by the Borrower of the Agent's said notice such sum in Dollars as will result in the Security Requirement after such repayment (taking into account any other repayment of the Loan made between the date of the notice and the date of such repayment) being equal to the Security Value; or
- (b) within 30 days of the date of receipt by the Borrower of the Agent's said notice constitute to the reasonable satisfaction of the Agent such further security for the Loan as shall be reasonably acceptable to the Agent having a value for security purposes (as determined by the Agent in its absolute discretion) at the date upon which such further security shall be constituted which, when added to the Security Value, shall not be less than the Security Requirement as at such date.

Clauses ~~15.2~~ 16.2 (*Costs*) and ~~15.4~~ 16.4 (*Documents and evidence*) and paragraph (c) of Clause ~~16.2~~ 17.2 (*Voluntary prepayment*) shall apply to prepayments under paragraph (a) of Clause ~~15.1~~ 16.1 (*Security Shortfall*).

#### **16.2 ~~15.2~~ Costs**

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All costs in connection with the Agent obtaining any valuation of the Ship referred to in Clause ~~13.4~~ 14.4 (*Valuation of the Ship*), and obtaining any valuation either of any additional security for the purposes of ascertaining the Security Value at any time or necessitated by the Borrower electing to constitute additional security pursuant to paragraph (b) of Clause ~~15.4~~ 16.1 (*Security Shortfall*) shall be borne by the Borrower.

**16.3 ~~15.3~~ Valuation of additional security**

For the purpose of this Clause ~~15.16~~ (*Security Value Maintenance*), the market value of any additional security provided or to be provided to the Agent shall be determined by the Agent in its absolute discretion without any necessity for the Agent assigning any reason thereto.

**16.4 ~~15.4~~ Documents and evidence**

In connection with any additional security provided in accordance with this Clause ~~15.16~~ (*Security Value Maintenance*), the Agent shall be entitled to receive such evidence and documents of the kind referred to in Clause 3 (*Conditions Precedent*) in respect of other Finance Documents as may in the Agent's opinion be appropriate.

**16.5 ~~15.5~~ Valuations binding**

Any valuation under this Clause ~~15.16~~ (*Security Value Maintenance*) shall be binding and conclusive as regards the Borrower.

**16.6 ~~15.6~~ Provision of information**

- (a) The Borrower shall promptly provide the Agent and any shipbroker acting under this Clause ~~15.16~~ (*Security Value Maintenance*) with any information which the Agent or the shipbroker may reasonably request for the purposes of the valuation.
- (b) If the 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 Agent considers prudent.

**17 ~~16~~ CANCELLATION, PREPAYMENT AND MANDATORY PREPAYMENT**

**17.1 ~~16.1~~ Cancellation**

At any time prior to the end of the Availability Period, the Borrower may give notice to the Agent in writing that it wishes to cancel the whole or any part of the available Commitments in relation to a Tranche whereupon (without penalty to the Borrower but without prejudice to any liabilities of the Borrower including, without limitation, in respect of fees payable or accrued under this Agreement, arising prior to the date of such cancellation) such available Commitments under that Tranche shall terminate upon the date specified in such notice. Any cancellation under this Clause ~~16.1~~ 17.1 (*Cancellation*) shall reduce the remaining Commitments under that Tranche of the relevant Lenders rateably.

**17.2 ~~16.2~~ Voluntary prepayment**

- (a) The Borrower may prepay all or part of the Loan on a pro rata basis amongst the Tranches (but if in part being an amount that reduces the Loan by a minimum amount of one (1) repayment instalment of principal of the Loan) together with interest thereon. Such prepayment shall, regardless of the date on which such prepayment is made, be made together with all of the
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amounts that SIMEST is entitled to charge, whether for taxes, costs, expenses, indemnities, penalties, losses or liabilities whatsoever, under and in accordance with the Interest Make-Up Agreement and Clause ~~20-2-21.2~~ 21.2 (*Breakage costs and SIMEST arrangements*) but without any other penalty provided that the prepayment is made on the last day of an Interest Period and thirty-five (35) days prior written notice indicating the intended date of prepayment is given to the Agent and the SACE Agent. However, the following amounts shall be payable to the Agent if any prepayment made pursuant to this Clause ~~16-2-17.2~~ 17.2 (*Voluntary prepayment*) is not made on the last day of an Interest Period:

- (i) for the account of the relevant Lenders, whether the Borrower elected a Floating Interest Rate or a Fixed Interest Rate pursuant to Clause ~~6-4-7.1~~ 7.1 (*Fixed or Floating Interest Rate*), the difference (if positive), calculated by the relevant Lenders and notified by them to the Agent, between the actual cost for those Lenders of the funding for the relevant Advance or Advances under a Tranche and the rate of interest for the monies to be invested by those Lenders, applied to the amounts so prepaid for the period from the said prepayment until the last day of the Interest Period during which the prepayment occurs (if prepayment does not occur on the last day of that Interest Period), details of any such calculation being supplied to the Borrower by the Agent on behalf of the Lenders; or
  - (ii) for the account of SIMEST, if the Borrower elected a Fixed Interest Rate pursuant to Clause ~~6-4-7.1~~ 7.1 (*Fixed or Floating Interest Rate*), the sum of charges (if any) imposed by SIMEST representing funding or breakage costs of the Italian Authorities as more specifically set out in Clause ~~20-21~~ 21 (*Indemnities*).
- (b) For the avoidance of doubt, regardless of the date on which a voluntary prepayment is made, such prepayment shall be paid together with all amounts payable in accordance with Clause ~~20-2-21.2~~ 21.2 (*Breakage costs and SIMEST arrangements*) and if a voluntary prepayment is made other than on the last day of an Interest Period, the prepayment shall be paid together with such other amounts payable in accordance with Clauses ~~20-4-21.1~~ 21.1 (*Indemnities regarding borrowing and repayment of Loan*) and ~~20-2-21.2~~ 21.2 (*Breakage costs and SIMEST arrangements*).
- (c) If the Borrower has selected the Fixed Interest Rate pursuant to Clause ~~6-4-7.1~~ 7.1 (*Fixed or Floating Interest Rate*), the SACE Agent shall give SIMEST thirty (30) days written notice of the intended date of prepayment.
- (d) There may be no more than two voluntary prepayments in part of the Loan made in each 12-month period beginning on the Delivery Date unless the relevant prepayment is made at the end of an Interest Period relating to the Loan or the relevant part of the Loan (as applicable).

#### **17.3 ~~16-3~~ Mandatory prepayment – Sale and Total Loss**

The Borrower shall be obliged to prepay the whole of the Loan if the Ship is sold or becomes a Total Loss:

- (a) in the case of a sale, on or before the date on which the sale is completed by delivery of the Ship to the buyer; or
- (b) in the case of a Total Loss, on the earlier of the date falling 120 days after the Total Loss Date and the date of receipt by the Agent of the proceeds of insurance relating to such Total Loss.

#### **17.4 ~~16-4~~ Mandatory prepayment – SACE Insurance Policy**

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- (a) The Borrower shall be obliged to prepay the whole of the Loan if the SACE Insurance Policy is revoked, rescinded, cancelled, terminated, suspended or otherwise becomes unenforceable or ceases to be in full force and effect.
- (b) In the event that any other event occurs or any other circumstances arise or develop which would have a material adverse effect on SACE's ability to perform its obligations under the SACE Insurance Policy, the Borrower and the Lenders shall, provided that no Event of Default has occurred and is continuing, negotiate in good faith for a period of not less than 30 days with a view to agreeing such revised terms and conditions as the Lenders may require to enable the Lenders to maintain the entire Loan (and during such 30 day period, no Lender shall be obliged to make available to the Borrower their portion of the Loan to the extent such amounts have not already been drawn). In the event that following such negotiations the Borrower and the Lenders fail to agree on such revised terms, the Borrower shall be obliged to prepay, on demand by the Agent, the outstanding principal amount of the Loan to the extent of the amount covered pursuant to the SACE Insurance Policy. If, during the period while negotiations are on-going pursuant to this paragraph (b) the events described in paragraph (a) of Clause ~~16.4~~ 17.4 (*Mandatory prepayment – SACE Insurance Policy*) should occur, the Borrower shall be obliged to prepay the Loan in full as required by paragraph (a) of Clause ~~16.4~~ 17.4 (*Mandatory prepayment – SACE Insurance Policy*).

**17.5 ~~16.5~~ Breach of new covenants or the Principles**

- (a) Failure to comply, until the end of the Deferral Period, with the provisions of Clause ~~12.17~~ 13.17 (*Dividends and dividend restriction*) and Clause ~~12.27~~ 13.27 (*New capital raises or financing*) or the provisions of paragraph (f) of clause 11.3 (*Additional financial reporting*), paragraph (c) of clause 11.17 (*Dividend restriction*), clause 11.19 (*New capital raises or financing*) and clause 11.20 (*Payments under the Shipbuilding contracts*) of the Guarantee, or to otherwise duly perform and observe the other requirements and obligations set out in the Principles shall, in each case, not constitute an Event of Default under this Agreement but (in the case of any failure that is capable of remedy (in the opinion of the Agent, at its sole discretion) including any failure to comply with such provisions, only if such failure is not remedied within the Relevant Period pursuant to Clause ~~18.4~~ 19.4 (*Breach of other obligations*) from the date of such failure to comply) shall result in the reinstatement by the Agent from the date of such breach of the requirement to comply with the financial covenants set out in paragraphs (b) and (c) of clause 11.15 (*Financial covenants*) of the Guarantee which was otherwise suspended during the Deferral Period.
  - (b) Save as permitted by Clause ~~12.27~~ 13.27 (*New capital raises or financing*), if at any time after the ~~February 2021 Deferral~~-Effective Date and until the occurrence of a Reinstatement Event:
    - (i) the Guarantor or any other Group member enters into any financial contract or financial document relating to any Financial Indebtedness and which contains any debt deferral or covenant waivers of existing debt, or the raising of any new debt intended to reimburse existing debt that benefits from additional security or more favourable terms than those available to the Lenders (unless they are granted to the Lenders on a *pari passu* basis), the requirement to comply with the financial covenants set out in paragraphs (b) and (c) of clause 11.15 (*Financial covenants*) of the Guarantee which was otherwise suspended during the Deferral Period shall be reinstated (it being provided that such covenants shall not be reinstated in case of such financial contract or financial document relating to the Term and Revolving Credit Facilities); or
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- (ii) the Guarantor or any other Group member makes a prepayment (save for any mandatory prepayment necessary to avoid an event of default (however defined)) of any Financial Indebtedness (unless this is done on a *pari passu* basis with the obligations owed to the Lenders hereunder), the requirement to comply with the financial covenants set out in paragraphs (b) and (c) of clause 11.15 (*Financial covenants*) of the Guarantee which was otherwise suspended during the Deferral Period shall be reinstated, it being provided that such covenants shall not be reinstated in case of a prepayment relating to the revolving tranche of the Term and Revolving Credit Facilities within the ordinary course of business.

**17.6 ~~16.6~~ Mandatory prepayment on default under Shipbuilding Contract**

If:

- (a) prior to the delivery of the Ship it becomes unlawful for the Builder to perform its obligations under the Shipbuilding Contract;
- (b) prior to the delivery of the Ship any of the events specified in Article 20.2 of the Shipbuilding Contract occurs;
- (c) prior to the delivery of the Ship there is a repudiation or termination of the Shipbuilding Contract;
- (d) prior to the delivery of the Ship the Builder ceases to carry on all or a substantial part of its cruise ship building business; or
- (e) the Ship has not been delivered to, and accepted by, the Borrower by the date specified in Article 8.9 of the Shipbuilding Contract,

then:

- (i) the Borrower shall promptly notify the Agent upon becoming aware of that event; and
- (ii) if the Majority Lenders so require, the Agent shall, by not less than 3 Business Days' notice to the Borrower, cancel the Facility and declare the Loan, together with accrued interest, and all other amounts accrued under the Finance Documents immediately due and payable, whereupon the Facility will be cancelled and all such outstanding amounts will become immediately due and payable.

**17.7 ~~16.7~~ Mandatory Prepayment in case of refund by SACE to the Borrower of the second instalment of the Additional SACE Premium**

If at any time on or after the Leonardo Six Intended Delivery Date the Borrower receives a refund of the portion of the second instalment of the Additional SACE Premium pursuant to paragraphs (e) and (f) of Clause ~~8.5-9.5~~ 9.5 (*Additional SACE Premium*), the Agent shall declare the part of the Loan that corresponds to that refunded portion, together with any accrued interest thereon, due and payable on demand.

**17.8 ~~16.8~~ Other amounts**

Any prepayment of the whole of the Loan shall be made together with all other sums due under this Agreement (including, without limitation, the compensation calculated in accordance with Clause ~~16.2~~ 17.2 (*Voluntary prepayment*)).

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**17.9 ~~46.9~~ Application of partial prepayment**

Amounts prepaid shall be applied in accordance with paragraph (b) of Clause ~~49.1~~ 20.1 (*Receipts*).

**17.10 ~~46.10~~ No reborrowing**

Amounts prepaid may not be reborrowed.

**18 ~~47~~ INTEREST ON LATE PAYMENTS**

**18.1 ~~47.1~~ Default rate of interest**

Without prejudice to the provisions of Clause ~~48~~ 19 (*Events of Default*) and without this Clause in any way constituting a waiver of terms of payment, all sums due by the Borrower under this Agreement will automatically bear interest on a day to day basis from the date when they are payable until the date of actual payment at a rate per annum equal to ~~the higher of:~~

(a) before the Rate Switch Date, where the Floating Interest Rate is applicable, the aggregate of:

- (i) Overnight LIBOR;
- (ii) the applicable Margin; and
- (iii) [\*] per cent. ([\*]%) per annum; or

(b) after the Rate Switch Date, where the Floating Interest Rate is applicable, the aggregate of:

- (i) Daily Simple SOFR;
- (ii) the Credit Adjustment Spread;
- (iii) the Margin; and
- (iv) [\*] per cent. ([\*]%) per annum; or

(c) ~~(b)~~ before the Rate Switch Date, where the Fixed Interest Rate is applicable, the higher of:

- (i) the Fixed Interest Rate plus [\*] per cent. ([\*]%) per annum; and
- (ii) Overnight LIBOR plus the applicable Margin plus [\*] per cent. ([\*]%) per annum; or

(d) after the Rate Switch Date, where the Fixed Interest Rate is applicable, the higher of:

- (i) the Fixed Interest Rate plus [\*] per cent. ([\*]%) per annum; and
- (ii) Daily Simple SOFR plus the Credit Adjustment Spread plus the Margin plus [\*] per cent. ([\*]%) per annum.

**18.2 ~~47.2~~ Compounding of default interest**

To the extent permitted by applicable law, any such interest will itself bear interest at the above rate if it is due for at least three (3) months and thereafter at three monthly intervals.

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## 19 ~~48~~EVENTS OF DEFAULT

### 19.1 ~~48.4~~Events of Default

An Event of Default occurs if any of the events or circumstances described in Clauses ~~48.2-19.2~~ (*Non-payment*) to ~~48.20-19.20~~ (*Material Adverse Change*) occur.

### 19.2 ~~48.2~~Non-payment

Any Obligor 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 and such failure is not remedied within three (3) Business Days of the due date or (if payable on demand) within three (3) Business Days of receiving the demand.

### 19.3 ~~48.3~~Non-remediable breaches

The Borrower fails to comply with the provisions of Clauses ~~42.8-13.8~~ (*Negative pledge*), ~~42.9-13.9~~ (*Disposals*), ~~42.11-13.11~~ (*Mergers*) or ~~42.18-13.18~~ (*Loans and guarantees by the Borrower*).

### 19.4 ~~48.4~~Breach of other obligations

- (a) Any Obligor fails to comply with any provision of any Finance Document (other than a failure to comply covered by any of the other provisions of Clauses ~~48.2-19.2~~ (*Non-payment*) to ~~48.20-19.20~~ (*Material Adverse Change*)) and in particular but without limitation the Guarantor fails to comply with the provisions of clause 11 (*Undertakings*) of its Guarantee or there is any material breach in the opinion of the Majority Lenders and SACE of any of the Underlying Documents provided that (save in respect of Clause ~~42.28-13.28~~ (*Code of Ethics and Model*)) no Event of Default shall be deemed to have occurred if, in the opinion of the Majority Lenders and SACE, such failure or material breach is capable of remedy and is remedied within the Relevant Period (as defined below) from the date of its occurrence, if the failure or material breach was known to that Obligor, or from the date the relevant Obligor is notified by the Agent of the failure or material breach, if the failure or material breach was not known to that Obligor, unless in any such case as aforesaid the Majority Lenders and SACE consider that the failure or material breach is or could reasonably be expected to become materially prejudicial to the interests, rights or position of the Lenders, "**Relevant Period**" meaning for the purposes of this Clause fifteen (15) days in respect of a remedy period commencing after the date of this Agreement;
- (b) There is a repudiation or termination of any Transaction Document (save for the Shipbuilding Contract, and, to the extent replaced, (either by another Refund Guarantee or an Acceptable Deposit in the Account subject to the Account Pledge) any of the Refund Guarantee, any Management Agreement and any charter) or any of the parties thereto becomes entitled to terminate or repudiate any of them and evidences an intention so to do;
- (c) Prior to the delivery of the Ship, any of the parties to the Shipbuilding Contract becomes entitled to terminate or repudiate the Shipbuilding Contract and commences the exercise of their rights to do so.

### 19.5 ~~48.5~~Misrepresentation

Any representation, warranty or statement made or repeated in, or in connection with, any Transaction Document or the SACE Insurance Policy or in any accounts, certificate, statement

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or opinion delivered by or on behalf of any Obligor thereunder or in connection therewith is materially incorrect or misleading when made or would, if repeated at any time hereafter by reference to the facts subsisting at such time, no longer be materially correct.

**19.6 ~~18.6~~Cross default**

- (a) Any event of default occurs under any financial contract or financial document relating to any Financial Indebtedness of the Borrower; or
- (b) any such Financial Indebtedness or any sum payable in respect thereof is not paid when due (after the expiry of any applicable grace period(s)) whether by acceleration or otherwise; or
- (c) any other Financial Indebtedness of any member of the Group is not paid when due or is or becomes capable of being declared due prematurely by reason of default or any Security Interest securing the same becomes enforceable by reason of default provided that no Event of Default will arise if the aggregate amount of the relevant Financial Indebtedness and liabilities secured by the relevant Security Interests is less than [\*] Dollars (\$[\*]) or its equivalent in other currencies; or
- (d) any other Security Interest over any assets of any member of the Group securing any alleged liability that does not qualify as Financial Indebtedness becomes enforceable where the alleged liability is in respect of a sum of, or sum aggregating, [\*] Dollars (\$[\*]) or its equivalent in other currencies, unless the alleged liability is being contested in good faith by appropriate means by the relevant Group member and the Agent is reasonably satisfied that the relevant member of the Group has reasonable grounds for succeeding in its action;
- (e) No Event of Default will occur, or be deemed to have occurred, under this Clause ~~18.6-19.6~~ (Cross default) if such Event of Default occurs during the Deferral Period (but without prejudice to the rights of the Lenders in respect of any further breach that may occur following the expiry of the Deferral Period) and is caused solely as a result of a breach of the financial covenants in respect of the Group equivalent to those set out in paragraphs (b) and (c) of clause 11.15 (*Financial Covenants*) of the Guarantee, under, or in relation to, any other SACE-backed facility agreement to which a Guarantor is a Party or has executed a guarantee and to which the Principles apply, unless at the time of such Event of Default, an event resulting in mandatory prepayment of the Loan pursuant to Clause ~~16.3-17.3~~ (*Mandatory prepayment – sale and total loss*) or Clause ~~16.4-17.4~~ (*Mandatory prepayment – SACE insurance policy*) has occurred.

**19.7 ~~18.7~~Winding-up**

Any order is made or an effective resolution passed or other action taken for the suspension of payments or reorganisation, dissolution, termination of existence, liquidation, winding-up or bankruptcy of any Obligor.

**19.8 ~~18.8~~Appointment of liquidators etc.**

A liquidator, trustee, administrator, receiver, administrative receiver, manager or similar officer is appointed in respect of any Obligor or in respect of all or any substantial part of the assets of any Obligor.

**19.9 ~~18.9~~Enforcement of any security**

Any corporate action, legal proceeding or other procedure or step is taken in relation to enforcement of any security interests over any assets of the Borrower.

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**19.10 ~~48.40~~ Insolvency**

- (a) An Obligor is unable or admits inability to pay its debts as they fall due, is deemed to or declared to be unable to pay its debts under applicable law, suspends or threatens to suspend making payments on any of its debts.
- (b) The value of the assets of any Obligor is less than its liabilities (taking into account contingent liabilities).
- (c) A moratorium in respect of all or any debts of any Obligor or a compromise, composition, assignment or an arrangement with creditors of any Obligor or any similar proceeding or arrangement by which the assets of any Obligor are submitted to the control of its creditors is applied for, ordered or declared or any Obligor commences negotiations with any one or more of its creditors with a view to the general readjustment or rescheduling of all or a significant part of its Financial Indebtedness. If a moratorium occurs, the ending of the moratorium will not remedy any Event of Default caused by that moratorium.

**19.11 ~~48.44~~ Legal process**

Any corporate action, legal proceeding, distress, execution, attachment or other process affects the whole or any substantial part of the assets of any Obligor and remains undischarged for a period of thirty (30) days, any step is taken in relation to enforcement of any security interests over any assets of any Obligor (other than the Borrower) or any uninsured judgment which, in each case, is in excess of [\*] Dollars (\$[\*]) following final appeal, remains unsatisfied for a period of ten (10) days.

**19.12 ~~48.42~~ Analogous events**

Anything analogous to or having a substantially similar effect to any of the events specified in Clauses ~~48.7-19.7~~ 19.7 (*Winding-up*) to ~~48.41-19.11~~ 19.11 (*Legal process*) shall occur under the laws of any applicable jurisdiction.

**19.13 ~~48.43~~ Cessation of business**

Any Obligor ceases to carry on all or a substantial part of its business.

**19.14 ~~48.44~~ Revocation of consents**

Any authorisation, approval, consent, licence, exemption, filing, registration or notarisation or other requirement necessary to enable any Obligor to comply with any of its obligations under any of the Transaction Documents is materially adversely modified, revoked or withheld or does not remain in full force and effect and within ninety (90) days of the date of its occurrence such event is not remedied to the satisfaction of the Agent consider that such failure is or might be expected to become materially prejudicial to the interests, rights or position of the Lenders provided that the Borrower shall not be entitled to the aforesaid ninety (90) day period if the modification, revocation or withholding of the authorisation, approval or consent is due to an act or omission of any Obligor and the Majority Lenders and SACE are satisfied that the Lenders' interests might reasonably be expected to be materially adversely affected.

**19.15 ~~48.45~~ Unlawfulness**

At any time it is unlawful or impossible for any Obligor to perform any of its material (to the Secured Parties or any of them) obligations under any Transaction Document to which it is a

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party or it is unlawful or impossible for the Secured Parties or any Lender to exercise any of their or its rights under any of the Transaction Documents provided that no Event of Default shall be deemed to have occurred where the unlawfulness or impossibility does not relate to the payment obligation of any Obligor under any Transaction Document and is cured within the period of twenty one (21) days of the date of occurrence of the event giving rise to the unlawfulness or impossibility and the affected Obligor performs its obligation within such period.

#### **19.16 ~~48-46~~ Insurances**

The Borrower fails to insure the Ship in the manner specified in Clause ~~44-15~~ 13.28 (*Insurance Undertakings*) or fails to renew the Insurances at least five (5) days prior to the date of expiry thereof and produce prompt confirmation of such renewal to the Agent provided that if the insurers withdraw their cover an Event of Default shall be deemed to have occurred upon issue of the insurer's notice of withdrawal.

#### **19.17 ~~48-47~~ Disposals**

If the Borrower or any other Obligor shall have concealed, removed, or permitted to be concealed or removed, any part of its property, with intent to hinder, delay or defraud its creditors or any of them, or made or suffered a transfer of any of its property which may be fraudulent under any bankruptcy, fraudulent conveyance or similar law; or shall have made any transfer of its property to or for the benefit of a creditor with the intention of preferring such creditor over any other creditor.

#### **19.18 ~~48-48~~ Prejudice to security**

Anything is done or suffered or omitted to be done by any Obligor which in the reasonable opinion of the Agent would or might be expected to imperil the security created by any of the Finance Documents.

#### **19.19 ~~48-49~~ Governmental intervention**

The authority of any Obligor in the conduct of its business is wholly or substantially curtailed by any seizure or intervention by or on behalf of any authority and within ninety (90) days of the date of its occurrence any such seizure or intervention is not relinquished or withdrawn and the Agent reasonably considers that the relevant occurrence is or might be expected to become materially prejudicial to the interests, rights or position of the Lenders provided that the Borrower shall not be entitled to the aforesaid ninety (90) day period if the seizure or intervention executed by any authority is due to an act or omission of any Obligor and the Majority Lenders and SACE are satisfied that the Lenders' interest might reasonably be expected to be materially adversely affected.

#### **19.20 ~~48-20~~ Material Adverse Change**

- (a) Any event or circumstance occurs which results in a Material Adverse Effect; and/or
- (b) any event or circumstance occurs (including, without limitation, following the sending of a notice by the Borrower under paragraph (c) of Clause ~~42-28~~ 13.28 (*Code of Ethics and Model*)), which results in a material adverse effect on the ability of the Borrower, also under an economic and/or financial standpoint, to perform its obligations under this Agreement.

#### **19.21 ~~48-24~~ Actions following an Event of Default**

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On, or at any time after, the occurrence of an Event of Default the Agent may, and if so instructed by the Majority Lenders and SACE, the Agent shall:

- (a) serve on the Borrower a notice stating that the Commitments and all other obligations of each Lender to the Borrower under this Agreement are terminated; and/or
- (b) serve on the Borrower a notice stating that the Loan (including but without limitation the amount representing the financed First Instalment and Second Instalment of the SACE Premium, the financed second instalment of the Additional SACE Premium and the financed Tranche B Premium), 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
- (c) take any other action which, as a result of the Event of Default or any notice served under paragraph (a) or (b), the Agent and/or the Lenders are entitled to take under any Finance Document or any applicable law.

**19.22 ~~48.22~~ Termination of Commitments**

On the service of a notice under paragraph (a) of Clause ~~48.24~~19.21 (*Actions following an Event of Default*), the Commitments and all other obligations of each Lender to the Borrower under this Agreement shall terminate.

**19.23 ~~48.23~~ Acceleration of Loan**

On the service of a notice under paragraph (b) of Clause ~~48.24~~19.21 (*Actions following an Event of Default*), the Loan, all accrued interest and all other amounts accrued or owing from the Borrower or any Obligor under this Agreement and every other Finance Document shall become immediately due and payable or, as the case may be, payable on demand.

**19.24 ~~48.24~~ Further amounts payable**

Upon an acceleration of repayment of the Loan following an Event of Default the Borrower shall be liable to pay compensation calculated in accordance with Clause ~~46.2~~17.2 (*Voluntary prepayment*).

**19.25 ~~48.25~~ Multiple notices; action without notice**

The Agent may serve notices under paragraphs (a) and (b) of Clause ~~48.24~~19.21 (*Actions following an Event of Default*) simultaneously or on different dates and it may take any action referred to in paragraph (c) of Clause ~~48.24~~19.21 (*Actions following an Event of Default*) if no such notice is served or simultaneously with or at any time after the service of both or either of such notices.

**19.26 ~~48.26~~ Notification of Secured Parties and Obligors**

The Agent shall send to the Italian Authorities, each Lender and each Obligor a copy or the text of any notice which the Agent serves on the Borrower under Clause ~~48.24~~19.21 (*Actions following an Event of Default*); but the notice shall become effective when it is served on the Borrower, and no failure or delay by the Agent to send a copy or the text of the notice to any other person shall invalidate the notice or provide any Obligor with any form of claim or defence.

**19.27 ~~48.27~~ Lender's rights unimpaired**

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Nothing in this Clause ~~18-19~~ 19 (*Events of Default*) 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 Clauses 2.4 (*Creditor Parties' rights and obligations*) and 2.6 (*Obligations of Lenders several*).

#### **19.28** ~~18.28~~ **Exclusion of Secured Party liability**

No Secured Party, and no receiver or manager appointed by the Agent, shall have any liability to an Obligor:

- (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.

#### **20** ~~19~~ **APPLICATION OF SUMS RECEIVED**

##### **20.1** ~~19.1~~ **Receipts**

Except as any Finance Document may otherwise provide, all sums received under this Agreement or any other Finance Document by the Agent, on behalf of the Lenders, or by any of the Lenders for any reason whatsoever will be applied:

- (a) in priority, to payments of any kind due or in arrears in the order of their due payment dates and first, to fees, charges and expenses, second, to interest payable pursuant to Clause ~~17-18~~ 18 (*Interest on Late Payments*), third, to interest payable pursuant to Clause 6 (*Interest*), fourth, to the principal of the Loan payable pursuant to Clause 5 (*Repayment*), fifth, to any sums due pursuant to Clause ~~20.2-21.2~~ 21.2 (*Breakage costs and SIMEST arrangements*) and, sixth, to any other sums due under this Agreement or any other Finance Document and, if relevant, *pro rata* to each of the Lenders; or
- (b) if no payments are in arrears or if these payments have been discharged as set out above, then and to sums remaining due under this Agreement or any other Finance Document and, if relevant, *pro rata* to each of the Lenders and in each case in inverse order of maturity, the interest being recalculated accordingly.

#### **21** ~~20~~ **INDEMNITIES**

##### **21.1** ~~20.1~~ **Indemnities regarding borrowing and repayment of Loan**

The Borrower shall fully indemnify the Agent and each relevant Lender or SIMEST (but without double counting to the extent that a Lender is making a claim in respect of amounts owing to SIMEST) on the Agent's demand in respect of all claims, expenses, liabilities and losses which are made or brought against or incurred by that Secured Party, or which that Secured Party reasonably and with due diligence estimates that it will incur, as a result of or in connection with:

- (a) any part of the Loan not being borrowed on the date specified in a Drawdown Notice for any reason other than a default by the Lender claiming the indemnity;
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- (b) the receipt or recovery of all or any part of the Loan or an overdue sum otherwise than on the last day of an Interest Period or other relevant period;
- (c) any failure (for whatever reason) by the Borrower to make payment of any amount due under a Finance Document on the due date or, if so payable, on demand (after giving credit for any default interest paid by the Borrower on the amount concerned under Clause ~~47-18~~ 47-18 (*Interest on Late Payments*)); and
- (d) the occurrence and/or continuance of an Event of Default and/or the acceleration of repayment of the Loan under Clause ~~18-19~~ 18-19 (*Events of Default*).

#### **21.2 ~~20-2~~ Breakage costs and SIMEST arrangements**

Without limiting its generality, Clause ~~20-1-21.1~~ 20-1-21.1 (*Indemnities regarding borrowing and repayment of Loan*) covers:

- (a) any claim, expense, liability or loss, including a loss of a prospective profit, incurred by a Lender in liquidating or employing deposits from third parties acquired or arranged to fund or maintain all or any part of its Contributions and/or any overdue amount (or an aggregate amount which includes its Contributions or any overdue amount);
- (b) if the Borrower has selected the Fixed Interest Rate in accordance with Clause ~~6-1-7.1~~ 6-1-7.1 (*Fixed or Floating Interest Rate*), all of the amounts that SIMEST is entitled to charge, whether for taxes, costs, expenses, indemnities, penalties, losses or liabilities whatsoever, under and in accordance with the Interest Make-Up Agreement, including without limitation, as a result of any prepayment of all or any part of the Loan under this Agreement (whether voluntary, mandatory, following acceleration of the Loan or otherwise), as a result of an Interest Make-Up Event or as a result of the Borrower deciding to switch from the Fixed Interest Rate to another interest rate after the Drawdown Date and/or an Interest Make-Up Event. Such amounts include, without limitation, (i) breakage costs, (ii) any amount due as a consequence of the close-out of any hedging arrangement entered into by SIMEST in relation to this Agreement, (iii) default interest and penalties (*maggiorazioni*) whenever applicable, and (iv) all amounts (if any) to be returned by the Agent to SIMEST under and pursuant to the Interest Make-Up Agreement; and
- (c) any other costs whatsoever or howsoever arising under or in respect of the Interest Make-Up Agreement which are passed to the Agent,

and any such costs imposed by SIMEST shall be paid by the Borrower to SIMEST through the Agent.

For the purposes of this Clause ~~20-2-21.2~~ 20-2-21.2 (*Breakage costs and SIMEST arrangements*) "**Interest Make-Up Event**" means the occurrence of any circumstances which result in the termination, cancellation, revocation, cessation or suspension (in each case, in whole or in part) of the Interest Make-Up Agreement or the Interest Make-Up Agreement otherwise ceases or may cease to be in full force and effect or the Agent notifies the Borrower that the Fixed Interest Rate is not available for any reason, in each case, in accordance with the terms of the Interest Make-Up Agreement.

#### **21.3 ~~20-3~~ Miscellaneous indemnities**

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

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

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

Without prejudice to its generality, this Clause ~~20.3-21.3~~ 21.3 (*Miscellaneous indemnities*) covers (i) any claims, expenses, liabilities and losses which arise, or are asserted, under or in connection with any law relating to safety at sea, the ISM Code or any Environmental Laws or any Sanctions and (ii) any claims, expenses, liabilities (including, without limitation, under a reputational standpoint) and losses which arise, or are asserted, against CDP under or in connection with any breach by the Borrower of any of the provisions paragraphs (nn) to (rr) of Clause ~~41.2-12.2~~ 12.2 (*Continuing representations and warranties*) and/or of Clause ~~42.28-13.28~~ 13.28 (*Code of Ethics and Model*).

#### **21.4 ~~20.4~~Currency indemnity**

If any sum due from an Obligor to a Secured 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 an Obligor, whether in its liquidation, any arrangement involving it or otherwise; or
- (b) obtaining an order or judgment from any court or other tribunal; or
- (c) enforcing any such order or judgment,

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

In this Clause ~~20.4-21.4~~ 21.4 (*Currency indemnity*) the "**available rate of exchange**" means the rate at which the Secured Party concerned is able at the opening of business (Paris time) on the Business Day after it receives the sum concerned to purchase the Contractual Currency with the Payment Currency.

This Clause ~~20.4-21.4~~ 21.4 (*Currency indemnity*) creates a separate liability of the 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.

#### **21.5 ~~20.5~~Certification of amounts**

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A notice which is signed by 2 officers of a Secured Party, which states that a specified amount, or aggregate amount, is due to that Secured Party under this Clause ~~20-21~~ 21 (*Indemnities*) and which indicates (without necessarily specifying a detailed breakdown) the matters in respect of which the amount, or aggregate amount, is due shall be prima facie evidence that the amount, or aggregate amount, is due.

#### **21.6 ~~20-6~~Sums deemed due to a Lender**

For the purposes of this Clause ~~20-21~~ 21 (*Indemnities*), a sum payable by the Borrower to the Agent for distribution to a Lender shall be treated as a sum due to that Lender.

#### **21.7 ~~20-7~~SACE obligations**

To the extent that this Clause ~~20-21~~ 21 (*Indemnities*) imposes obligations or restrictions on a Secured Party, such obligations or restrictions shall not apply to SACE and SACE shall have no obligations hereunder nor be constrained by such restrictions.

### **22 ~~24~~ILLEGALITY, ETC.**

#### **22.1 ~~24-4~~Illegality and Sanctions**

This Clause ~~24-22~~ 22 (*Illegality, etc.*) applies if:

- (a) a Lender (the "**Notifying Lender**") notifies the Agent that:
  - (i) it becomes unlawful or contrary to any law, regulation or Sanctions – including by way of civil, administrative or criminal liability - in any applicable jurisdiction for the Notifying Lender to perform any of its obligations as contemplated by the Finance Documents or to fund its participation in the Loan; and/or
  - (ii) it becomes unlawful or contrary to any law, regulation or Sanctions – including by way of civil, administrative or criminal liability - in any applicable jurisdiction for the Notifying Lender to maintain its participation in the Loan; or
- (b) an Obligor is or becomes a Prohibited Person,  
(such event, an "**Illegality or Sanctions Event**").

#### **22.2 ~~24-2~~Notification of illegality**

- (a) The Agent shall promptly notify the Borrower, the Obligors and the other Lenders of the notice under Clause ~~24-22~~ 22 (*Illegality, etc.*) which the Agent receives from the Notifying Lender.
  - (b) Upon receipt of the notice under paragraph (a) above and provided that such Illegality or Sanctions Event is not applicable with immediate effect (in which case paragraph (a) of Clause ~~24-3-22.3~~ 22.3 (*Prepayment; termination of Commitment*) will apply immediately and this paragraph (b) will not apply), the Agent shall, where the Borrower has selected the Fixed Interest Rate pursuant to Clause ~~6-4-7.1~~ 7.1 (*Fixed or Floating Interest Rate*), inform SIMEST in writing in order to start consultations between themselves (pursuant to clause 6 of the Interest Make-Up Agreement) with a view to exploring any possible solution to mitigate the Illegality or Sanctions Event preventing that Lender from performing any of its obligations under a Finance Document or funding or maintaining its share in the Loan. Any solution agreed between the Agent and SIMEST at the end of the consultation period (which shall last for a period of ten (10) days from
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the service of such notice on SIMEST) will be binding among themselves and shall be notified by the Agent to each Obligor immediately thereafter (and in any case no later than ten (10) days following such decision).

- (c) If at the end of the consultation procedure set out in paragraph (b) above, no solution is agreed between the Agent and SIMEST, the Agent must immediately notify the Lenders and the Obligors.

### **22.3 ~~21.3~~Prepayment; termination of Commitment**

- (a) After notification under paragraph (c) of Clause ~~21.2-22.2~~ (*Notification of illegality*) or (in case the Interest Make-Up Agreement has ceased to be in force and effect or the Fixed Interest Rate has not been selected pursuant to Clause ~~6.4-7.1~~ (*Fixed or Floating Interest Rate*)) after notification under paragraph (a) of Clause ~~21.2-22.2~~ (*Notification of illegality*) and subject to Clause ~~21.4-22.4~~ (*Mitigation*) below the Borrower must repay or prepay that Lender's share in the Loan on the date specified in paragraph (c) below together with any breakage costs payable under Clause ~~20.2-21.2~~ (*Breakage costs and SIMEST arrangements*) and any indemnity payable under paragraph (c) of Clause ~~20.2-21.2~~ (*Breakage costs and SIMEST arrangements*) in respect of the Interest Make-Up Agreement;
- (b) On the Agent notifying the Borrower under paragraph (c) of Clause ~~21.2-22.2~~ (*Notification of illegality*), the Notifying Lender's Commitment shall terminate; and thereupon or, if later, on the date specified in the Notifying Lender's notice under Clause ~~21.4-22.1~~ (*Illegality and Sanctions*) as the date on which the notified event would become effective the Borrower shall prepay the Notifying Lender's Contributions and shall pay compensation to the Notifying Lender calculated in accordance with Clause ~~16.2-17.2~~ (*Voluntary prepayment*).
- (c) The date for repayment or prepayment of a Lender's share in the Loan will be:
  - (i) the date specified by the Agent in the notification under paragraph (b) above; or
  - (ii) in case the Interest Make-Up Agreement has ceased to be in full force and effect or the Fixed Interest Rate has not been selected pursuant to Clause ~~6.4-7.1~~ (*Fixed or Floating Interest Rate*), the last day of the current Interest Period for the relevant Advance or Advances under a Tranche or, if earlier, the date specified by the Lender in the notification under paragraph (a) above and which must not be earlier than the last day of any applicable grace period allowed by law.

### **22.4 ~~21.4~~Mitigation**

- (a) Each Secured Party shall, in consultation with the Borrower, take all reasonable steps to mitigate any circumstances which arise and which would result in any amount becoming payable under or pursuant to, or cancelled pursuant to Clause ~~21.4-22.1~~ (*Illegality and Sanctions*) including (but not limited to) transferring its rights and obligations under the Finance Documents to another Affiliate or Facility Office.
- (b) Paragraph (a) above does not in any way limit the obligations of any Obligor under the Finance Documents.

## **23 ~~22~~SET-OFF**

### **23.1 ~~22.1~~Application of credit balances**

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

### **23.2 ~~22.2~~ Existing rights unaffected**

No Creditor Party shall be obliged to exercise any of its rights under Clause ~~22.4~~ 23.1 (*Application of credit balances*); and those rights shall be without prejudice and in addition to any right of set-off, combination of accounts, charge, lien or other right or remedy to which a Creditor Party is entitled (whether under the general law or any document).

### **23.3 ~~22.3~~ Sums deemed due to a Lender**

For the purposes of this Clause ~~22-23~~ (*Set-Off*), a sum payable by the Borrower to the Agent for distribution to, or for the account of, a Lender shall be treated as a sum due to that Lender; and each Lender's proportion of a sum so payable for distribution to, or for the account of, the Lenders shall be treated as a sum due to such Lender.

### **23.4 ~~22.4~~ No Security Interest**

This Clause ~~22-23~~ (*Set-Off*) gives the Creditor Parties a contractual right of set-off only, and does not create any equitable charge or other Security Interest over any credit balance of the Borrower.

## **24 ~~23~~ 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
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- (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.

## **25 24 CHANGES TO THE LENDERS**

### **25.1 24.1 Transfer by a Lender**

Subject to Clause ~~24.5~~ 25.5 (*No transfer without Transfer Certificate*), Clause ~~24.17~~ 25.17 (*Assignment or transfer to SACE*) and Clause ~~24.14~~ 25.14 (*Change of Facility Office*), a Lender (the "**Transferor Lender**") may at any time provided they have obtained the prior written consent of the Italian Authorities cause:

- (a) its rights in respect of all or part of its Contributions; 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, in whole or in part any of its Affiliates or another bank or financial institution or 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 (a "**Transferee Lender**") by delivering to the Agent a completed certificate in the form set out in Schedule 4 (*Form of Transfer Certificate*) with any modifications approved or required by the Agent (a "**Transfer Certificate**") executed by the Transferor Lender and the Transferee Lender.

However any rights and obligations of the Transferor Lender in its capacity as Agent or Security Trustee will have to be dealt with separately in accordance with the provisions of Clauses ~~26~~ 27 (*Role of the Agent and the Joint Mandated Lead Arrangers*) and ~~27~~ 28 (*The Security Trustee*) respectively.

### **25.2 24.2 Conditions of assignment or transfer**

- (a) The consent of the Borrower is required at all times (subject to the provisions of Clauses ~~24.5~~ 25.5 (*No transfer without Transfer Certificate*) and ~~24.17~~ 25.17 (*Assignment or transfer to SACE*)) for an assignment or transfer by a Lender (the "**Existing Lender**"), unless (i) there is an Event of Default or (ii) the assignment or transfer is to another Lender or an Affiliate of a Lender.
- (b) The consent of the Borrower to an assignment or transfer must not be unreasonably withheld or delayed. The Borrower will be deemed to have given its consent ten (10) Business Days after the Existing Lender has requested it unless consent is expressly refused by that Borrower within that time.
- (c) The assignment or transfer must be with respect to a minimum Commitment of [\*] Dollars (\$[\*]) or, if less, the Existing Lender's full Commitment.

### **25.3 24.3 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):

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- (a) sign the Transfer Certificate on behalf of itself, the Borrower, any other Obligors, the Security Trustee and each of the other Lenders;
- (b) on behalf of the Transferee Lender, send to the Borrower and each Obligor letters or emails notifying them of the Transfer Certificate and attaching a copy of it; and
- (c) send to the Transferee Lender copies of the letters or emails sent under paragraph (b) above,

but the Agent shall only be obliged to execute a Transfer Certificate delivered to it by the Transferor Lender and the Transferee 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 that Transferee Lender.

#### **25.4 ~~24.4~~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 ~~24.3~~25.3 (*Transfer Certificate, delivery and notification*) on or before that date.

#### **25.5 ~~24.5~~No transfer without Transfer Certificate**

Except as provided in Clause ~~24.16~~25.16 (*Security over Lenders' rights*), no assignment or transfer of any right or obligation of a Lender under any Finance Document is binding on, or effective in relation to, the Borrower, any Obligor, the Agent or the Security Trustee unless it is effected, evidenced or perfected by a Transfer Certificate.

#### **25.6 ~~24.6~~Lender re-organisation; waiver of Transfer Certificate**

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

#### **25.7 ~~24.7~~Effect of Transfer Certificate**

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

- (a) to the extent specified in the Transfer Certificate, all rights and interests (present, future or contingent) which the Transferor Lender has under or by virtue of the Finance Documents are assigned to the Transferee Lender absolutely, free of any defects in the Transferor Lender's title and of any rights or equities which the Borrower or any Obligor 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 Contributions 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
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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 the Borrower or any Obligor 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 ~~6-8~~7.8 (*Market Disruption*) and Clause ~~9-10~~ (*Fees*), and to the extent that the Transferee Lender becomes entitled to such rights, the Transferor Lender ceases to be entitled to them; and
- (g) in respect of any breach of a warranty, undertaking, condition or other provision of a Finance Document or any misrepresentation made in or in connection with a Finance Document, the Transferee Lender shall be entitled to recover damages by reference to the loss incurred by it as a result of the breach or misrepresentation, irrespective of whether the original Lender would have incurred a loss of that kind or amount.

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

#### **25.8 ~~24.8~~ Maintenance of register of Lenders**

During the Security Period the Agent shall maintain a register in which it shall record the name, Commitment, Contributions and administrative details (including the Facility Office) from time to time of each Lender holding a Transfer Certificate and the effective date (in accordance with Clause ~~24.4~~25.4 (*Effective Date of Transfer Certificate*)) of the Transfer Certificate; and the Agent shall make the register available for inspection by any Lender, the Security Trustee and the Borrower during normal banking hours, subject to receiving at least 3 Business Days' prior notice.

#### **25.9 ~~24.9~~ 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.

#### **25.10 ~~24.10~~ Authorisation of Agent to sign Transfer Certificates**

The Borrower, the Security Trustee and each Lender irrevocably authorise the Agent to sign Transfer Certificates on its behalf.

#### **25.11 ~~24.11~~ Fees and Costs**

In respect of any Transfer Certificate:

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- (a) the Agent shall be entitled to recover a registration fee of five thousand Euros (€5,000) from the Transferor Lender or (at the Agent's option) the Transferee Lender;
- (b) the Transferee Lender shall pay to the Agent, upon demand, all reasonable costs and expenses, duties and fees, including but without limitation legal costs and out of pocket expenses, incurred by the Agent or the Lenders in connection with any necessary amendment to or supplementing of the Transaction Documents or any of them or the SACE Insurance Policy as a consequence of the assignment or transfer; and
- (c) the Transferee Lender shall pay to the Agent, upon demand, such amount as is payable to the Italian Authorities to cover its costs of giving its approval under Clause ~~24.1~~25.1 (*Transfer by a Lender*).

**25.12 ~~24.12~~Sub-participation; subrogation assignment**

A Lender may sub-participate all or any part of its rights and/or obligations under or in connection with the Finance Documents without the consent of, or any notice to, the Borrower, any Obligor, the Agent or the Security Trustee but with the prior written consent of SACE.

**25.13 ~~24.13~~Disclosure of information**

A Lender may disclose to a potential Transferee Lender or sub participant any information which the Lender has received in relation to the Borrower, any Obligor or their affairs under or in connection with any Finance Document, unless the information is clearly of a confidential nature.

**25.14 ~~24.14~~Change of Facility Office**

Subject to the prior written consent of SACE, a Lender may change its Facility 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, provided that if (i) a Lender assigns or transfers any of its rights or obligations under the Finance Documents or changes its Facility Office, and (ii) as a result of circumstances existing at the date the assignment, transfer or change occurs, an Obligor would be obliged to make a payment or an increased payment to the new Lender or Lender acting through its new Facility Office under Clause ~~40-11~~11 (*Taxes, Increased Costs, Costs and Related Charges*), then the new Lender or Lender acting through its new Facility Office is only entitled to receive payment under that Clause 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.

**25.15 ~~24.15~~Notification**

On receiving such a notice, the Agent shall notify the Borrower and the Security Trustee; and, until the Agent receives such a notice, it shall be entitled to assume that a Lender is acting through the Facility Office of which the Agent last had notice.

**25.16 ~~24.16~~Security over Lenders' rights**

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In addition to the other rights provided to Lenders under this Clause ~~24-25~~ (*Changes to the Lenders*) each Lender may without consulting with or obtaining consent from the Borrower or any Obligor but subject to the prior written consent of SACE, 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 (i) to the benefit of any Affiliate and/or (ii) within the framework of its, or its Affiliates, direct or indirect funding operations including, without limitation:

- (a) any charge, assignment or other Security Interest to secure obligations to a federal reserve, central bank or a multilateral development bank (including the European Investment Bank and the European Investment Fund); 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) alter the obligations of the Obligor or require any payments to be made by the Borrower or any Obligor 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.

#### **25.17 ~~24.17~~ Assignment or transfer to SACE**

- (a) Notwithstanding the above provisions of this Clause ~~24-25~~ (*Changes to the Lenders*) each Lender and the Agent shall, if so instructed by SACE in accordance with the provisions of the SACE Insurance Policy and without any requirement for the consent of any Obligor, assign its rights or (as the case may be) transfer its rights and obligations to SACE (but for the avoidance of doubt, SACE will not assume any of the Lenders' obligations pursuant to Clauses ~~40-11~~ (*Taxes, Increased Costs, Costs and Related Charges*) or ~~33-34~~ (*Confidentiality*) of this Agreement), which assignment or transfer shall take effect upon the date stated in the relevant documentation subject to SACE being satisfied that it has complied with all necessary "know your customer" requirements in relation to such assignment or transfer;
- (b) The Agent shall promptly notify the Obligors of any such assignment or transfer to SACE and, following an Event of Default, the Obligors shall pay to the Agent, upon demand, all reasonable costs and expenses, duties and fees, including but without limitation legal costs and out of pocket expenses, incurred by SACE, the Agent or the Lenders in connection with any such assignment or transfer.

#### **25.18 ~~24.18~~ No prejudice to SACE rights**

Nothing in the Finance Documents shall prejudice or otherwise limit:

- (a) the rights of any Lender to assign its rights or transfer its rights and obligations, under, or in connection with, any Finance Document to SACE or as directed by SACE; and
  - (b) the right of SACE to be subrogated to any Lender's rights under, or in connection with, any Finance Document.
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**25.19 ~~24.19~~SACE's power to direct**

The Creditor Parties agree and the Obligors acknowledge that SACE has the right to direct the decision-making of the Agent and/or the Security Trustee, including (without limitation) following an Event of Default.

**25.20 ~~24.20~~Definition of Affiliate**

For the purposes of this Clause ~~24.25~~ 25 (*Changes to the Lenders*), the definition of "Affiliate" in respect of Crédit Agricole Corporate and Investment Bank shall, for the avoidance of doubt, include any other member of Crédit Agricole Group, and in particular:

- (a) Crédit Agricole S.A.;
- (b) Caisses Régionales de Crédit Agricole;
- (c) Crédit Agricole Assurances;
- (d) LCL SA; and/or
- (e) any company or legal entity in which one or more of the companies or entities referred to in paragraphs (a) to (d) above, together or separately, owns a direct majority interest.

**26 ~~25~~CHANGES TO THE OBLIGORS**

**26.1 ~~25.1~~No change without consent**

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

**27 ~~26~~ROLE OF THE AGENT AND THE JOINT MANDATED LEAD ARRANGERS**

**27.1 ~~26.1~~Appointment of the Agent**

- (a) Each other Secured Party appoints the Agent to act as its agent under and in connection with this Agreement and the other Finance Documents, the SACE Insurance Policy and the Interest Make-Up Agreement.
- (b) Each other Secured Party authorises the Agent to exercise the rights, powers, authorities and discretions specifically given to the Agent under or in connection with the Finance Documents together with any other incidental rights, powers, authorities and discretions.

**27.2 ~~26.2~~Duties of the Agent**

- (a) The Agent shall promptly forward to a Party the original or a copy of any document which is delivered to the Agent for that Party by any other Party.
  - (b) Except where a Finance Document specifically provides otherwise, the Agent is not obliged to review or check the adequacy, accuracy or completeness of any document it forwards to another Party.
  - (c) If the Agent receives notice from a Party referring to this Agreement, describing an Event of Default and stating that the circumstance described is an Event of Default, it shall promptly notify the other Secured Parties.
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- (d) If the Agent is aware of the non-payment of any principal, interest, commitment fee or other fee payable to a Secured Party (other than the Agent or a Joint Mandated Lead Arranger) under this Agreement it shall promptly notify the other Secured Parties.
- (e) The Agent's duties under the Finance Documents are solely administrative in nature.

**27.3 ~~26-3~~Role of Joint Mandated Lead Arrangers**

None of the Joint Mandated Lead Arrangers has any obligations of any kind to any other Party under or in connection with any Transaction Document, the Interest Make-Up Agreement or the SACE Insurance Policy.

**27.4 ~~26-4~~No fiduciary duties**

- (a) Nothing in this Agreement constitutes the Agent or any of the Joint Mandated Lead Arrangers as a trustee or fiduciary of any other person.
- (b) Neither the Agent nor any of the Joint Mandated Lead Arrangers shall be bound to account to any Lender for any sum or the profit element of any sum received by it for its own account.

**27.5 ~~26-5~~Business with the Guarantor**

The Agent and each of the Joint Mandated Lead Arrangers may accept deposits from, lend money to and generally engage in any kind of banking or other business with any Affiliate or Subsidiary of the Guarantor.

**27.6 ~~26-6~~Rights and discretions of the Agent**

- (a) The Agent may rely on:
    - (i) any representation, notice or document believed by it to be genuine, correct and appropriately authorised; and
    - (ii) any statement made by a director, authorised signatory or employee of any person regarding any matters which may reasonably be assumed to be within his knowledge or within his power to verify.
  - (b) The Agent may assume (unless it has received notice to the contrary in its capacity as agent for the Lenders) that:
    - (i) no Event of Default has occurred (unless it has actual knowledge of an Event of Default); and
    - (ii) any right, power, authority or discretion vested in any Party or the Lenders has not been exercised.
  - (c) The Agent may engage, pay for and rely on the advice or services of any lawyers, accountants, surveyors or other experts.
  - (d) The Agent may act in relation to the Finance Documents through its personnel and agents.
  - (e) The Agent may disclose to any other Party any information it reasonably believes it has received as the Agent under this Agreement.
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- (f) Notwithstanding any other provision of any Finance Document to the contrary, neither the Agent nor any of the Joint Mandated Lead Arrangers 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.

**27.7 ~~26.7~~Lenders' and SACE's instructions**

- (a) Unless a contrary indication appears in a Finance Document, the Agent shall:
- (i) exercise any right, power, authority or discretion vested in it as Agent in accordance with any instructions given to it by the Majority Lenders and SACE (or, if so instructed by the Majority Lenders and SACE, refrain from exercising any right, power, authority or discretion vested in it as the Agent); and
  - (ii) not be liable for any act (or omission) if it acts (or refrains from taking any action) in accordance with an instruction of the Majority Lenders and SACE.
- (b) Unless a contrary indication appears in a Finance Document, any instructions given by the Majority Lenders and SACE will be binding on all the Secured Parties.
- (c) The Agent may refrain from acting in accordance with the instructions of the Majority Lenders and SACE until it has received such security as it may require for any cost, loss or liability (together with any associated VAT) which it may incur in complying with the instructions.
- (d) In the absence of instructions from the Majority Lenders and SACE the Agent may act (or refrain from taking action) as it considers to be in the best interest of the Secured Parties.
- (e) The Agent is not authorised to act on behalf of a Lender (without first obtaining that Lender's consent) in any legal or arbitration proceedings relating to any Finance Document.
- (f) Notwithstanding anything to the contrary, the Lenders agree that if the Agent (acting in its sole discretion) is of the opinion that or if any Lender notifies the Agent that it is of the opinion that, the prior approval of the Italian Authorities should be obtained in relation to the exercise or non-exercise by the Agent or the Lenders of any power, authority or discretion specifically given to them under or in connection with the Finance Documents or in relation to any other incidental rights, powers, authorities or discretions, then the Agent shall seek such approval of the Italian Authorities prior to such exercise or non-exercise.

**27.8 ~~26.8~~Responsibility for documentation**

The Agent is not responsible for:

- (a) the adequacy, accuracy and/or completeness of any information (whether oral or written) supplied by the Agent, a Joint Mandated Lead Arranger, an Obligor or any other person given in or in connection with any Transaction Document, the SACE Insurance Policy or the Interest Make-Up Agreement; nor for
  - (b) the legality, validity, effectiveness, adequacy or enforceability of any Transaction Document the SACE Insurance Policy or the Interest Make-Up Agreement or any other agreement, arrangement or document entered into, made or executed in anticipation of or in connection with any Transaction Document, the SACE Insurance Policy or the Interest Make-Up Agreement.
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## **27.9 ~~26.9~~ Exclusion of liability**

- (a) Without limiting paragraph (b) of Clause ~~26.9-27.9~~ (*Exclusion of liability*), the Agent will not be liable for any action taken by it under or in connection with any Finance Document, the SACE Insurance Policy or the Interest Make-Up Agreement, unless directly caused by its Gross Negligence or wilful misconduct.
- (b) No Party (other than the Agent) may take any proceedings against any officer, employee or agent of the Agent in respect of any claim it might have against the Agent or in respect of any act or omission of any kind by that officer, employee or agent in relation to any Finance Document, the SACE Insurance Policy or the Interest Make-Up Agreement and any officer, employee or agent of the Agent may rely on this Clause subject to Clause ~~36.4-37.4~~ (*Third party rights*) and the provisions of the Third Parties Rights Act.
- (c) The Agent will not be liable for any delay (or any related consequences) in crediting an account with an amount required under the Finance Documents, the SACE Insurance Policy or the Interest Make-Up Agreement to be paid by the Agent if the 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 Agent for that purpose.
- (d) Nothing in this Agreement shall oblige the Agent or a Joint Mandated Lead Arranger to carry out any "know your customer" or other checks in relation to any person on behalf of any Lender and each Lender confirms to the Agent and the Joint Mandated Lead Arrangers that it is solely responsible for any such checks it is required to carry out and that it may not rely on any statement in relation to such checks made by the Agent or a Joint Mandated Lead Arranger.

## **27.10 ~~26.10~~ Lenders' indemnity to the Agent**

Each Lender shall (in proportion to its share of the Total Commitments or, if the Total Commitments are then zero, to its share of the Total Commitments immediately prior to their reduction to zero) indemnify the Agent, within three (3) Business Days of demand, against any cost, loss or liability incurred by the Agent (otherwise than by reason of the Agent's Gross Negligence or wilful misconduct) in acting as Agent under the Finance Documents (unless the Agent has been reimbursed by an Obligor pursuant to a Finance Document).

## **27.11 ~~26.11~~ Resignation of the Agent**

- (a) The Agent may resign and appoint one of its Affiliates as successor by giving notice to the other Creditor Parties, the Borrower and SACE and with the consent of SACE.
  - (b) Alternatively the Agent may resign by giving notice to the other Secured Parties and the Borrower, in which case the Lenders (after consultation with the Borrower and the prior consent of SACE) may appoint a successor Agent.
  - (c) If the Lenders have not appointed a successor Agent in accordance with paragraph (b) of Clause ~~26.11~~ 27.11 (*Resignation of the Agent*) within thirty (30) days after notice of resignation was given, the Agent (after consultation with the Borrower and SACE) may appoint a successor Agent.
  - (d) The retiring Agent shall, at its own cost, make available to the successor Agent such documents and records and provide such assistance as the successor Agent may reasonably request for the purposes of performing its functions as Agent under the Finance Documents.
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- (e) The Agent's resignation notice shall only take effect upon the appointment of a successor.
- (f) Upon the appointment of a successor, the retiring Agent shall be discharged from any further obligation in respect of the Finance Documents but shall remain entitled to the benefit of this Clause ~~26-27~~ (*Role of the Agent and the Joint Mandated Lead Arrangers*). Its successor and each of the other Parties shall have the same rights and obligations amongst themselves as they would have had if such successor had been an original Party.
- (g) After consultation with the Italian Authorities, the Majority Lenders may, subject to the prior consent of the Italian Authorities, by notice to the Agent, require it to resign in accordance with paragraph (b) of Clause ~~26-41~~27.11 (*Resignation of the Agent*). In this event, the Agent shall resign in accordance with paragraph (b) of Clause ~~26-41~~27.11 (*Resignation of the Agent*) but the cost referred to in paragraph (d) above shall be for the account of the Borrower.
- (h) The appointment of a successor Agent pursuant to this Clause ~~26-41~~27.11 (*Resignation of the Agent*) shall be subject to compliance with all necessary "know your customer" requirements of the Lenders.

#### **27.12 ~~26-42~~Confidentiality**

- (a) In acting as agent for the Secured Parties, the 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 another division or department of the Agent, it may be treated as confidential to that division or department and the Agent shall not be deemed to have notice of it.

#### **27.13 ~~26-43~~Relationship with the Lenders**

The Agent may treat each Lender as a Lender, entitled to payments under this Agreement and acting through its Facility Office unless it has received not less than five (5) Business Days' prior notice from that Lender to the contrary in accordance with the terms of this Agreement.

#### **27.14 ~~26-44~~Credit appraisal by the Lenders**

Without affecting the responsibility of any Obligor for information supplied by it or on its behalf in connection with any Finance Document, each Lender confirms to the Agent and each of the Joint Mandated Lead Arrangers that it has been, and will continue to be, solely responsible for making its own independent appraisal and investigation of all risks arising under or in connection with any Finance Document including but not limited to:

- (a) the financial condition, status and nature of the Guarantor and each Subsidiary of the Guarantor;
  - (b) the legality, validity, effectiveness, adequacy or enforceability of any Finance Document and any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Finance Document;
  - (c) whether that Lender has recourse, and the nature and extent of that recourse, against any Party or any of its respective assets under or in connection with any Finance Document, the transactions contemplated by the Finance Documents or any other agreement, arrangement
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- or document entered into, made or executed in anticipation of, under or in connection with any Finance Document;
- (d) the adequacy, accuracy and/or completeness of any information provided by the Agent, any Party or by any other person under or in connection with any Finance Document, the transactions contemplated by the Finance Documents or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Finance Document; and
  - (e) the right or title of any person in or to or the value or sufficiency of any part of the Charged Property, the priority of any Security Interests or the existence of any Security Interest affecting the Charged Property.

**27.15 ~~26.45~~ Deduction from amounts payable by the Agent**

If any Party owes an amount to the Agent under the Finance Documents the Agent may, after giving notice to that Party, deduct an amount not exceeding that amount from any payment to that Party which the Agent would otherwise be obliged to make under the Finance Documents and apply the amount deducted in or towards satisfaction of the amount owed. For the purposes of the Finance Documents that Party shall be regarded as having received any amount so deducted.

**27.16 ~~26.46~~ Full freedom to enter into transactions**

Notwithstanding any rule of law or equity to the contrary, the 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 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 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 Obligor or any other person; or
  - (ii) any options or other derivatives in connection with such securities; and
- (c) to provide advice or other services to the Borrower or any person who is a party to, or referred to in, a Finance Document,

and, in particular, the 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.

**27.17 ~~26.47~~ SACE Agent, SACE Insurance Policy and Interest Make-Up Agreement**

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- (a) Where the context permits, references to the Agent shall include the SACE Agent. The Agent and the SACE Agent shall be the same entity throughout the Security Period.
- (b) With the prior written consent of each of the Lenders, the SACE Agent may amend or modify the SACE Insurance Policy and the Interest Make-Up Agreement provided that such amendments are not inconsistent with the commercial terms of this Agreement, otherwise, the SACE Agent undertakes not to amend or modify the SACE Insurance Policy or the Interest Make-Up Agreement.

#### **27.18 ~~26.18~~ Resignation of the Agent in relation to FATCA**

The Agent shall resign in accordance with Clause ~~26.14~~ 27.11 (*Resignation of the Agent*) (and, to the extent applicable, shall use reasonable endeavours to appoint a successor Agent pursuant to paragraph (c) of Clause ~~26.14~~ 27.11 (*Resignation of the Agent*)) if on or after the date which is three months before the earliest FATCA Application Date relating to any payment to the Agent under the Finance Documents, either:

- (a) the Agent fails to respond to a request under Clause ~~10.9~~ 11.9 (*FATCA Information*) and a Lender reasonably believes that the Agent will not be (or will have ceased to be) a FATCA Exempt Party on or after that FATCA Application Date;
- (b) the information supplied by the Agent pursuant to Clause ~~10.9~~ 11.9 (*FATCA Information*) indicates that the Agent will not be (or will have ceased to be) a FATCA Exempt Party on or after that FATCA Application Date; or
- (c) the Agent notifies the Borrower and the Lenders that the Agent will not be (or will have ceased to be) a FATCA Exempt Party on or after that FATCA Application Date;

and (in each case) a Lender reasonably believes that a Party will be required to make a FATCA Deduction that would not be required if the Agent were a FATCA Exempt Party, and that Lender, by notice to the Agent, requires it to resign.

#### **28 ~~27~~ THE SECURITY TRUSTEE**

##### **28.1 ~~27.1~~ Trust**

- (a) The Security Trustee declares that it shall hold the Security Property on trust for the Secured Parties on the terms contained in this Agreement and shall deal with the Security Property in accordance with this Clause ~~27.28~~ 28.1 (*The Security Trustee*) and the other provisions of the Finance Documents.
  - (b) Each of the parties to this Agreement agrees that the Security Trustee shall have only those duties, obligations and responsibilities expressly specified in this Agreement or in the Finance Documents (and no others shall be implied).
  - (c) The Security Trustee shall not have any liability to any person in respect of its duties, obligations and responsibilities under this Agreement or the other Finance Documents except as expressly set out in paragraph (a) of Clause ~~27.4~~ 28.1 (*Trust*) and as excluded or limited by this Clause ~~27.28~~ 28.1 (*The Security Trustee*) including in particular Clause ~~27.8~~ 28.8 (*Instructions to Security Trustee and exercise of discretion*), Clause ~~27.13~~ 28.13 (*Responsibility for documentation*), Clause ~~27.14~~ 28.14 (*Exclusion of liability*), Clause ~~27.16~~ 28.16 (*Lenders' indemnity to the Security Trustee*), Clause ~~27.23~~ 28.23 (*Business with the Group*) and Clause ~~27.28~~ 28.28 (*Full freedom to enter into transactions*).
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**28.2 ~~27.2~~ Parallel Debt (Covenant to pay the Security Trustee)**

- (a) Each Obligor irrevocably and unconditionally undertakes to pay to the Security Trustee 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 purposes of this Clause ~~27.2~~28.2 (*Parallel Debt (Covenant to pay the Security Trustee)*), the Security Trustee:
  - (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 Secured 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 Trustee in connection with this Clause ~~27.2~~28.2 (*Parallel Debt (Covenant to pay the Security Trustee)*) to the extent permitted by applicable law, shall be applied in accordance with Clause ~~19~~20 (*Application of sums received*).
- (f) This Clause ~~27.2~~28.2 (*Parallel Debt (Covenant to pay the Security Trustee)*) shall apply, with any necessary modifications, to each Finance Document.

**28.3 ~~27.3~~ No independent power**

The Secured Parties shall not have any independent power to enforce, or have recourse to, any Security Interest created by any of the Finance Documents or to exercise any rights or

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powers arising under the Finance Documents creating the Security Interest except through the Security Trustee.

#### **28.4 ~~27.4~~Application of receipts**

- (a) Except as expressly stated to the contrary in any Finance Document, any moneys which the Security Trustee receives or recovers and which are, or are attributable to, Security Property (for the purposes of this Clause ~~27.4-28~~ 27.4-28.4 (*The Security Trustee*), the "**Recoveries**") shall be transferred to the Agent for application in accordance with Clause ~~19-20~~ 19-20 (*Application of sums received*).
- (b) Paragraph (a) above is without prejudice to the rights of the Security Trustee, any receiver:
  - (i) under Clause ~~26.10-27.10~~ 26.10-27.10 (*Lenders' indemnity to the Agent*) to be indemnified out of the Charged Property; and
  - (ii) under any Finance Document to credit any moneys received or recovered by it to any suspense account.
- (c) Any transfer by the Security Trustee to the Agent in accordance with paragraph (a) above shall be a good discharge, to the extent of that payment, by the Security Trustee.
- (d) The Security Trustee is under no obligation to make the payments to the Agent under paragraph (a) of this Clause ~~27.4-28.4~~ 27.4-28.4 (*Application of receipts*) in the same currency as that in which the obligations and liabilities owing to the relevant Secured Party are denominated.

#### **28.5 ~~27.5~~Deductions from receipts**

- (a) Before transferring any moneys to the Agent under Clause ~~27.4-28.4~~ 27.4-28.4 (*Application of receipts*), the Security Trustee may, in its discretion:
  - (i) deduct any sum then due and payable under this Agreement or any other Finance Documents to the Security Trustee or any receiver and retain that sum for itself or, as the case may require, pay it to another person to whom it is then due and payable;
  - (ii) set aside by way of reserve amounts required to meet, and to make and pay, any deductions and withholdings (on account of Taxes or otherwise) which it is or may be required by any applicable law to make from any distribution or payment made by it under this Agreement; and
  - (iii) pay all Taxes which may be assessed against it in respect of any of the Security Property, or as a consequence of performing its duties, or by virtue of its capacity as Security Trustee under any of the Finance Documents or otherwise (other than in connection with its remuneration for performing its duties under this Agreement).
- (b) For the purposes of paragraph (i) above, if the Security Trustee 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.

#### **28.6 ~~27.6~~Prospective liabilities**

Following acceleration of any Security Interest, the Security Trustee may, in its discretion, or at the request of the Agent, hold any Recoveries in an interest bearing suspense or impersonal

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account(s) in the name of the Security Trustee with such financial institution (including itself) and for so long as the Security Trustee shall think fit (the interest being credited to the relevant account) for later payment to the Agent for application in accordance with Clause ~~49-20~~20 (*Application of sums received*) in respect of:

- (a) any sum to the Security Trustee, any receiver; and
- (b) any part of the Secured Liabilities,

that the Security Trustee or, in the case of paragraph (b) only, the Agent, reasonably considers, in each case, might become due or owing at any time in the future.

#### **28.7 ~~27.7~~ Investment of proceeds**

Prior to the payment of the proceeds of the Recoveries to the Agent for application in accordance with Clause ~~49-20~~20 (*Application of sums received*) the Security Trustee 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 Trustee with such financial institution (including itself) and for so long as the Security Trustee shall think fit (the interest being credited to the relevant account) pending the payment from time to time of those moneys in the Security Trustee's discretion in accordance with the provisions of this Clause ~~27.7-28.7~~28.7 (*Investment of proceeds*).

#### **28.8 ~~27.8~~ Instructions to Security Trustee and exercise of discretion**

- (a) Subject to paragraph (d) below, the Security Trustee shall act in accordance with any instructions given to it by the Agent (acting on the instructions of SACE and the Majority Lenders or all the Lenders (as appropriate)) or, if so instructed by the Agent (acting on the instructions of SACE and the Majority Lenders or all the Lenders (as appropriate)), refrain from exercising any right, power, authority or discretion vested in it as Security Trustee and shall be entitled to assume that:
    - (i) any instructions received by it from the Agent (acting on the instructions of SACE and the Majority Lenders or all the Lenders (as appropriate)) are duly given in accordance with the terms of the Finance Documents; and
    - (ii) unless it has received actual notice of revocation, that those instructions or directions have not been revoked.
  - (b) The Security Trustee shall be entitled to request instructions, or clarification of any direction, from the Agent (acting on the instructions of SACE and the Majority Lenders or all the Lenders (as appropriate)) as to whether, and in what manner, it should exercise or refrain from exercising any rights, powers, authorities and discretions and the Security Trustee may refrain from acting unless and until those instructions or clarification are received by it.
  - (c) Any instructions given to the Security Trustee by the Agent (acting on the instructions of SACE and the Majority Lenders or all the Lenders (as appropriate)) shall override any conflicting instructions given by any other Party.
  - (d) Paragraph (a) above shall not apply:
    - (i) where a contrary indication appears in this Agreement;
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- (ii) where this Agreement requires the Security Trustee to act in a specified manner or to take a specified action;
- (iii) in respect of any provision which protects the Security Trustee's own position in its personal capacity as opposed to its role of Security Trustee for the Secured Parties including, without limitation, the provisions set out in Clauses ~~27-10~~28.10 (*Security Trustee's discretions*) to Clause ~~27-28~~28.28 (*Full freedom to enter into transactions*); and
- (iv) in respect of the exercise of the Security Trustee's discretion to exercise a right, power or authority under any of Clause ~~27-5~~28.5 (*Deductions from receipts*) and Clause ~~27-6~~28.6 (*Prospective liabilities*).

#### **28.9 ~~27-9~~ Security Trustee's Actions**

Without prejudice to the provisions of Clause ~~27-4~~28.4 (*Application of receipts*), the Security Trustee may (but shall not be obliged to), in the absence of any instructions to the contrary, take such action in the exercise of any of its powers and duties under the Finance Documents as it considers in its discretion to be appropriate.

#### **28.10 ~~27-10~~ Security Trustee's discretions**

- (a) The Security Trustee may:
    - (i) assume (unless it has received actual notice to the contrary from the Agent) that (i) no Event of Default has occurred and no Obligor is in breach of or default under its obligations under any of the Finance Documents and (ii) any right, power, authority or discretion vested by any Finance Document in any person has not been exercised;
    - (ii) assume that any notice or request made by the Borrower (other than a Drawdown Notice) is made on behalf of and with the consent and knowledge of all the Obligors;
    - (iii) if it receives any instructions or directions to take any action in relation to a Security Interest under the Finance Documents, assume that all applicable conditions under the Finance Documents for taking that action have been satisfied;
    - (iv) engage, pay for and rely on the advice or services of any legal advisers, accountants, tax advisers, surveyors or other experts (whether obtained by the Security Trustee or by any other Secured Party) whose advice or services may at any time seem necessary, expedient or desirable;
    - (v) act in relation to the Finance Documents through its personnel and agents;
    - (vi) disclose to any other Party any information it reasonably believes it has received as Security Trustee under this Agreement;
    - (vii) rely upon any communication or document believed by it to be genuine and, as to any matters of fact which might reasonably be expected to be within the knowledge of a Secured Party or an Obligor, upon a certificate signed by or on behalf of that person; and
    - (viii) refrain from acting in accordance with the instructions of any Party (including bringing any legal action or proceeding arising out of or in connection with the Finance
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Documents) until it has received any indemnification and/or security that it may in its discretion require (whether by way of payment in advance or otherwise) for all costs, losses and liabilities which it may incur in so acting.

- (b) Notwithstanding any other provision of any Finance Document to the contrary, the Security Trustee 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.

**28.11 ~~27.44~~ Security Trustee's obligations**

The Security Trustee shall promptly:

- (a) copy to the Agent the contents of any notice or document received by it from any Obligor under any Finance Document;
- (b) forward to a Party the original or a copy of any document which is delivered to the Security Trustee for that Party by any other Party provided that, except where a Finance Document expressly provides otherwise, the Security Trustee is not obliged to review or check the adequacy, accuracy or completeness of any document it forwards to another Party; and
- (c) inform the Agent of the occurrence of any Event of Default or any default by an Obligor in the due performance of or compliance with its obligations under any Finance Document of which the Security Trustee has received notice from any other party to this Agreement.

**28.12 ~~27.42~~ Excluded obligations**

Notwithstanding anything to the contrary expressed or implied in the Finance Documents, the Security Trustee shall not:

- (a) be bound to enquire as to (i) whether or not any Event of Default has occurred or (ii) the performance, default or any breach by an Obligor of its obligations under any of the Finance Documents;
- (b) 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;
- (c) be bound to disclose to any other person (including but not limited to any Secured Party) (i) any confidential information or (ii) any other information if disclosure would, or might in its reasonable opinion, constitute a breach of any law or be a breach of fiduciary duty;
- (d) have or be deemed to have any relationship of trust or agency with, any Obligor.

**28.13 ~~27.43~~ Responsibility for documentation**

None of the Security Trustee, any receiver shall accept responsibility or be liable for:

- (a) the adequacy, accuracy or completeness of any information (whether oral or written) supplied by the Security Trustee or any other person in or in connection with any Finance Document or the transactions contemplated in the Finance Documents, or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Finance Document;
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- (b) the legality, validity, effectiveness, adequacy or enforceability of any Finance Document, the Security Property or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Finance Document or the Security Property;
- (c) any losses to any person or any liability arising as a result of taking or refraining from taking any action in relation to any of the Finance Documents, the Security Property or otherwise, whether in accordance with an instruction from the Agent or otherwise unless directly caused by its Gross Negligence or wilful misconduct;
- (d) the exercise of, or the failure to exercise, any judgment, discretion or power given to it by or in connection with any of the Finance Documents, the Security Property or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with, the Finance Documents or the Security Property; or
- (e) any shortfall which arises on the enforcement or realisation of the Security Property.

**28.14 ~~27-14~~ Exclusion of liability**

- (a) Without limiting Clause ~~27-15~~ 28.15 (*No proceedings*), none of the Security Trustee or any receiver will be liable for any action taken by it or not taken by it under or in connection with any Finance Document or any Security Interest, unless directly caused by its Gross Negligence or wilful misconduct.
- (b) The Security Trustee 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 it if it 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 it for that purpose.
- (c) Nothing in this Agreement shall oblige the Security Trustee to carry out any "know your customer" or other checks in relation to any person on behalf of any Lender and each Lender confirms to the Security Trustee 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 Trustee.

**28.15 ~~27-15~~ No proceedings**

No Party (other than the Security Trustee or that receiver) may take any proceedings against any officer, employee or agent of the Security Trustee or a receiver in respect of any claim it might have against the Security Trustee or a receiver in respect of any act or omission of any kind by that officer, employee or agent in relation to any Finance Document or any Security Property and any officer, employee or agent of the Security Trustee or a receiver may rely on this Clause subject to Clause ~~36-4~~ 37.4 (*Third party rights*) and the provisions of the Third Parties Rights Act.

**28.16 ~~27-16~~ Lenders' indemnity to the Security Trustee**

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 Trustee and every receiver within three Business Days of demand, against any cost, loss or liability incurred by any of them (otherwise than by reason of the relevant Security Trustee's or receiver's Gross Negligence or wilful misconduct)

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in acting as Security Trustee or receiver under the Finance Documents (unless the relevant Security Trustee or receiver has been reimbursed by an Obligor pursuant to a Finance Document).

**28.17 ~~27.17~~ Own responsibility**

Without affecting the responsibility of any Obligor for information supplied by it or on its behalf in connection with any Finance Document, each Creditor Party confirms to the Security Trustee that it has been, and will continue to be, solely responsible for making its own independent appraisal and investigation of all risks arising under or in connection with any Finance Document including but not limited to:

- (a) the financial condition, status and nature of each member of the Group;
- (b) the legality, validity, effectiveness, adequacy and enforceability of any Finance Document, the Security Property and any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Finance Document or the Security Property;
- (c) whether that Creditor Party has recourse, and the nature and extent of that recourse, against any Party or any of its respective assets under or in connection with any Finance Document, the Security Property, the transactions contemplated by the Finance Documents or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Finance Document or the Security Property;
- (d) the adequacy, accuracy and/or completeness of any information provided by the Security Trustee or by any other person under or in connection with any Finance Document, the transactions contemplated by any Finance Document or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Finance Document; and
- (e) the right or title of any person in or to, or the value or sufficiency of any part of the Charged Property, the priority of any of the Security Interests created by the Finance Documents or the existence of any Security Interest affecting the Charged Property,

and each Creditor Party warrants to the Security Trustee that it has not relied on and will not at any time rely on the Security Trustee in respect of any of these matters.

**28.18 ~~27.18~~ No responsibility to perfect Security Interests**

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

- (a) require the deposit with it of any deed or document certifying, representing or constituting the title of any Obligor to any of the Charged Property;
  - (b) obtain any licence, consent or other authority for the execution, delivery, legality, validity, enforceability or admissibility in evidence of any of the Finance Documents or any Security Interest;
  - (c) register, file or record or otherwise protect any Security Interests (or the priority of any of Security Interest) under any applicable laws in any jurisdiction or to give notice to any person of the execution of any of the Finance Documents or of any Security Interest;
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- (d) take, or to require any of the Obligors to take, any steps to perfect its title to any of the Charged Property or to render any Security Interest effective or to secure the creation of any ancillary security under the laws of any jurisdiction; or
- (e) require any further assurances in relation to any of the Finance Documents creating the Security Interests.

**28.19 ~~27.49~~ Insurance by Security Trustee**

- (a) The Security Trustee shall not be under any obligation to insure any of the Charged Property, to require any other person to maintain any insurance or to verify any obligation to arrange or maintain insurance contained in the Finance Documents. The Security Trustee shall not be responsible for any loss which may be suffered by any person as a result of the lack of or inadequacy of any such insurance.
- (b) Where the Security Trustee is named on any insurance policy as an insured party, it shall not be responsible for any loss which may be suffered by reason of, directly or indirectly, 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 Agent shall have requested it to do so in writing and the Security Trustee shall have failed to do so within fourteen (14) days after receipt of that request.

**28.20 ~~27.20~~ Custodians and nominees**

The Security Trustee may appoint and pay any person to act as a custodian or nominee on any terms in relation to any assets of the trust as the Security Trustee 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 Trustee 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.

**28.21 ~~27.24~~ Acceptance of title**

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

**28.22 ~~27.22~~ Refrain from illegality**

Notwithstanding anything to the contrary expressed or implied in the Finance Documents, the Security Trustee may refrain from doing anything which in its opinion will or may be contrary to any relevant law, directive or regulation of any jurisdiction and the Security Trustee may do anything which is, in its opinion, necessary to comply with any such law, directive or regulation.

**28.23 ~~27.23~~ Business with the Group**

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

**28.24 ~~27.24~~ Winding up of trust**

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If the Security Trustee, with the approval of the Agent determines that (a) all of the Secured Liabilities and all other obligations secured by the Finance Documents creating the Security Interests have been fully and finally discharged and (b) none of the Secured Parties is under any commitment, obligation or liability (actual or contingent) to make advances or provide other financial accommodation to any Obligor pursuant to the Finance Documents:

- (a) the trusts set out in this Agreement shall be wound up and the Security Trustee shall release, without recourse or warranty, all of the Security Interests and the rights of the Security Trustee under each of the Finance Documents creating the Security Interests; and
- (b) any Retiring Security Trustee shall release, without recourse or warranty, all of its rights under each of the Finance Documents creating the Security Interests.

**28.25 ~~27-25~~ Powers supplemental**

The rights, powers and discretions conferred upon the Security Trustee by this Agreement 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 Trustee by general law or otherwise.

**28.26 ~~27-26~~ Trustee division separate**

- (a) In acting as trustee for the Secured Parties, the Security Trustee shall be regarded as acting through its trustee division which shall be treated as a separate entity from any of its other divisions or departments.
- (b) If information is received by another division or department of the Security Trustee, it may be treated as confidential to that division or department and the Security Trustee shall not be deemed to have notice of it nor shall it be obliged to disclose such information to any Party.

**28.27 ~~27-27~~ Disapplication**

In addition to its rights under or by virtue of this Agreement and the other Finance Documents, the Security Trustee shall have all the rights conferred on a trustee by the Trustee Act 1925, the Trustee Delegation Act 1999, the Trustee Act 2000 and by general law or otherwise, provided that:

- (a) section 1 of the Trustee Act 2000 shall not apply to the duties of the Security Trustee in relation to the trusts constituted by this Agreement and the other Finance Documents; and
- (b) 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 allowed by law, prevail and, in the case of any inconsistency with the Trustee Act 2000, such provisions shall constitute a restriction or exclusion for the purposes of the Trustee Act 2000.

**28.28 ~~27-28~~ Full freedom to enter into transactions**

Notwithstanding any rule of law or equity to the contrary, the Security Trustee shall be absolutely entitled:

- (a) to enter into and arrange banking, derivative, investment and/or other transactions of every kind with or affecting any 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,
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whether related to this Agreement or not, and acting as syndicate agent and/or security trustee for, and/or participating in, other facilities to such 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 Obligor or any other person; or
  - (ii) any options or other derivatives in connection with such securities; and
- (c) to provide advice or other services to the Borrower or any person who is a party to, or referred to in, a Finance Document,

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

#### **28.29 ~~27-29~~ Resignation of the Security Trustee**

- (a) The Security Trustee may resign and appoint one of its affiliates as successor by giving notice to the Borrower and each Secured Party.
  - (b) Alternatively the Security Trustee may resign by giving notice to the other Parties in which case the Majority Lenders (with the prior consent of SACE) may appoint a successor Security Trustee.
  - (c) If the Majority Lenders have not appointed a successor Security Trustee in accordance with paragraph (b) above within 30 days after the notice of resignation was given, the Security Trustee (after consultation with the Agent and SACE) may appoint a successor Security Trustee.
  - (d) The retiring Security Trustee (the "**Retiring Security Trustee**") shall, at its own cost, make available to the successor Security Trustee such documents and records and provide such assistance as the successor Security Trustee may reasonably request for the purposes of performing its functions as Security Trustee under the Finance Documents.
  - (e) The Security Trustee'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 of the Security Property to that successor.
  - (f) Upon the appointment of a successor, the Retiring Security Trustee 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 ~~27-24~~ 28.24 (*Winding up of trust*) and under paragraph (d) above) but shall, in respect of any act or omission by it whilst it was the Security Trustee, remain entitled to the benefit of Clause ~~27-28~~ 28 (*The Security Trustee*), Clause ~~27-5~~ 28.5 (*Deductions from receipts*), Clause ~~27-16~~ 28.16 (*Lenders' indemnity to the Security Trustee*) and any other provisions of a Finance Document which are expressed to limit or exclude its liability in acting as Security Trustee. Its successor and each of the other Parties shall have the same rights and obligations amongst themselves as they would have had if that successor had been an original Party.
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- (g) The Majority Lenders may, by notice to the Security Trustee, require it to resign in accordance with paragraph (b) above. In this event, the Security Trustee shall resign in accordance with paragraph (b) above but the cost referred to in paragraph (d) above shall be for the account of the Borrower.
- (h) The consent of the Borrower (or any other Obligor) is not required for an assignment or transfer of rights and/or obligations by the Security Trustee.
- (i) The appointment of a successor Security Trustee pursuant to this Clause ~~27-29~~28.29 (*Resignation of the Security Trustee*) shall be subject to compliance with all necessary "know your customer" requirements of the Lenders.

**28.30 ~~27-30~~ Delegation**

- (a) Each of the Security Trustee or any receiver may, at any time, delegate by power of attorney or otherwise to any person for any period, all or any of the rights, powers and discretions vested in it by any of the Finance Documents.
- (b) That delegation may be made upon any terms and conditions and subject to any restrictions that the Security Trustee or that receiver (as the case may be) may, in its discretion, think fit in the interests of the Secured Parties and it shall not be bound to supervise, or be in any way responsible for any loss incurred by reason of any misconduct or default on the part of any such delegate.

**28.31 ~~27-34~~ Additional Security Trustee**

- (a) The Security Trustee may at any time appoint (and subsequently remove) any person to act as a separate trustee or as a co-trustee jointly with it:
  - (i) if it considers that appointment to be in the interests of the Secured Parties; or
  - (ii) for the purposes of conforming to any legal requirements, restrictions or conditions which the Security Trustee deems to be relevant; or
  - (iii) for obtaining or enforcing any judgment in any jurisdiction,and the Security Trustee shall give prior notice to the Borrower and the Agent of that appointment.
- (b) Any person so appointed shall have the rights, powers and discretions (not exceeding those conferred on the Security Trustee by this Agreement) and the duties and obligations that are conferred or imposed by the instrument of appointment.
- (c) The remuneration that the Security Trustee 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 Trustee.

**29 ~~28~~ CONDUCT OF BUSINESS BY THE CREDITOR PARTIES**

**29.1 ~~28-4~~ No provision of this Agreement will:**

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- (a) interfere with the right of any Creditor Party to arrange its affairs (Tax or otherwise) in whatever manner it thinks fit;
- (b) oblige any Creditor 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 Creditor Party to disclose any information relating to its affairs (Tax or otherwise) or any computations in respect of Tax.

## **30 ~~29~~ SHARING AMONG THE CREDITOR PARTIES**

### **30.1 ~~29-1~~ Payments to Creditor Parties**

If a Creditor Party (a "**Recovering Creditor Party**") receives or recovers any amount from an Obligor other than in accordance with this Clause ~~29-30~~ 29-30 (*Sharing among the Creditor Parties*) and applies that amount to a payment due under the Finance Documents then:

- (a) the Recovering Creditor Party shall, within three (3) Business Days, notify details of the receipt or recovery to the Agent;
- (b) the Agent shall determine whether the receipt or recovery is in excess of the amount the Recovering Creditor Party would have been paid had the receipt or recovery been received or made by the Agent and distributed in accordance with Clause ~~49-20~~ 49-20 (*Application of sums received*) and Clause ~~30-31~~ 30-31 (*Payment Mechanics*), without taking account of any Tax which would be imposed on the Agent in relation to the receipt, recovery or distribution; and
- (c) the Recovering Creditor Party shall, within three (3) Business Days of demand by the Agent, pay to the Agent an amount (the "**Sharing Payment**") equal to such receipt or recovery less any amount which the Agent determines may be retained by the Recovering Creditor Party as its share of any payment to be made, in accordance with Clause ~~49-20~~ 49-20 (*Application of sums received*) and Clause ~~30-31~~ 30-31 (*Payment Mechanics*).

### **30.2 ~~29-2~~ Redistribution of payments**

The Agent shall treat the Sharing Payment as if it had been paid by the relevant Obligor and distribute it between the Creditor Parties (other than the Recovering Creditor Party) in accordance with Clause ~~49-20~~ 49-20 (*Application of sums received*) and Clause ~~30-31~~ 30-31 (*Payment Mechanics*).

### **30.3 ~~29-3~~ Recovering Creditor Party's rights**

- (a) On a distribution by the Agent under Clause ~~29-2-30.2~~ 29-2-30.2 (*Redistribution of payments*), the Recovering Creditor Party will, if possible under the relevant applicable laws, be subrogated to the rights of the Creditor Parties which have shared in the redistribution.
- (b) If and to the extent that the Recovering Creditor Party is not able to rely on its rights under paragraph (a) of Clause ~~29-3-30.3~~ 29-3-30.3 (*Recovering Creditor Party's rights*), the relevant Obligor shall be liable to the Recovering Creditor Party for a debt equal to the Sharing Payment which is immediately due and payable.

### **30.4 ~~29-4~~ Reversal of redistribution**

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If any part of the Sharing Payment received or recovered by a Recovering Creditor Party becomes repayable and is repaid by that Recovering Creditor Party, then:

- (a) each Lender which has received a share of the relevant Sharing Payment pursuant to Clause ~~29.2~~ 30.2 (*Redistribution of payments*) shall, upon request of the Agent, pay to the Agent for account of that Recovering Creditor 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 Creditor Party for its proportion of any interest on the Sharing Payment which that Recovering Creditor Party is required to pay); and
- (b) that Recovering Creditor Party's rights of subrogation in respect of any reimbursement shall be cancelled and the relevant Obligor will be liable to the reimbursing Creditor Party for the amount so reimbursed.

### **30.5** ~~29.5~~ **Exceptions**

- (a) This Clause ~~29-30~~ (*Sharing among the Creditor Parties*) shall not apply to the extent that the Recovering Creditor Party would not, after making any payment pursuant to this Clause, have a valid and enforceable claim against the relevant Obligor.
- (b) A Recovering Creditor Party is not obliged to share with any other Creditor Party any amount which the Recovering Creditor Party has received or recovered as a result of taking legal or arbitration proceedings, if:
  - (i) it notified that other Creditor Party of the legal or arbitration proceedings; and
  - (ii) that other Creditor 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.
- (c) Following full indemnification by SACE of the SACE Agent (on behalf of the Lenders) under the SACE Insurance Policy, the provisions relating to the sharing of proceeds among the Creditor Parties in this Clause ~~29-30~~ (*Sharing among the Creditor Parties*) shall not apply to any payment made to SACE by a Lender or the Borrower following a payment by SACE to any Lender under the SACE Insurance Policy.

## **31** ~~30~~ **PAYMENT MECHANICS**

### **31.1** ~~30.1~~ **Payments to the Agent**

- (a) On each date on which an Obligor or a Lender is required to make a payment under a Finance Document, that Obligor or Lender shall make the same available to the Agent (unless a contrary indication appears in a Finance Document) for value on the due date at the time and in such funds specified by the Agent as being customary at the time for settlement of transactions in the relevant currency in the place of payment.
  - (b) Payment shall be made to such account in the principal financial centre of the country of that currency (or, in relation to Euro, in a principal financial centre in a Participating Member State or London) with such bank as the Agent specifies.
  - (c) Payment shall be made before 11.00 a.m. New York time or 11.00 a.m. Paris time (in the case of a payment in Euro).
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- (d) For each payment by the Borrower, it shall notify the Agent on the third Business Day prior to the due date for payment that it will issue to its bank (which shall be named in such notification) to make the payment.

**31.2 ~~30.2~~Distributions by the Agent**

Each payment received by the Agent under the Finance Documents for another Party shall, subject to Clause ~~30.3~~31.3 (*Distributions to an Obligor*), Clause ~~30.4~~31.4 (*Clawback*) be made available by the Agent as soon as practicable after receipt to the Party entitled to receive payment in accordance with this Agreement (in the case of a Lender, for the account of its Facility Office), to such account as that Party may notify to the Agent by not less than five (5) Business Days' notice with a bank 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).

**31.3 ~~30.3~~Distributions to an Obligor**

The Agent may in accordance with Clause ~~22-23~~ (*Set-Off*) apply any amount received by it for that Obligor in or towards payment (on the date and in the currency and funds of receipt) of any amount due from that Obligor under the Finance Documents or in or towards purchase of any amount of any currency to be so applied.

**31.4 ~~30.4~~Clawback**

- (a) Where a sum is to be paid to the Agent under the Finance Documents for another Party, the Agent is not obliged to pay that sum to that other Party (or to enter into or perform any related exchange contract) until it has been able to establish to its satisfaction that it has actually received that sum.
- (b) If the Agent pays an amount to another Party and it proves to be the case that the Agent had not actually received that amount, then the Party to whom that amount (or the proceeds of any related exchange contract) was paid by the Agent shall on demand refund the same to the Agent together with interest on that amount from the date of payment to the date of receipt by the Agent, calculated by the Agent to reflect its cost of funds.

**31.5 ~~30.5~~No set-off by Obligor**

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

**31.6 ~~30.6~~Business Days**

- (a) Any payment which is due to be made on a day that is not a Business Day shall be made on the next Business Day in the same calendar month (if there is one) or the preceding Business Day (if there is not).
- (b) During any extension of the due date for payment of any principal or unpaid sum under this Agreement interest is payable on the principal or unpaid sum at the rate payable on the original due date.

**31.7 ~~30.7~~Currency of account**

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- (a) Subject to paragraphs (b) and (c) of Clause ~~30.7~~31.7 (*Currency of account*) Dollars is the currency of account and payment for any sum from an Obligor under any Finance Document.
- (b) Each payment in respect of costs, expenses or Taxes shall be made in the currency in which the costs, expenses or taxes are incurred.
- (c) Any amount expressed to be payable in a currency other than Dollars shall be paid in that other currency.

### **31.8** ~~30.8~~Change of currency

- (a) Unless otherwise prohibited by law, if more than one currency or currency unit are at the same time recognised by the central bank of any country as the lawful currency of that country, then:
  - (i) any reference in the Finance Documents to, and any obligations arising under the Finance Documents in, the currency of that country shall be translated into, or paid in, the currency or currency unit of that country designated by the Agent (after consultation with the Lenders and the Borrower); and
  - (ii) any translation from one currency or currency unit to another shall be at the official rate of exchange recognised by the central bank for the conversion of that currency or currency unit into the other, rounded up or down by the Agent (acting reasonably).
- (b) If a change in any currency of a country occurs, this Agreement will, to the extent the Agent (acting reasonably and after consultation with the Lenders and the Borrower) specifies to be necessary, be amended to comply with any generally accepted conventions and market practice in the Relevant ~~Interbank~~Market and otherwise to reflect the change in currency.

### **31.9** ~~30.9~~Distributions under the Interest Make-Up Agreement

Each payment received by the Agent under the Interest Make-Up Agreement for a Lender shall be made available by the Agent as soon as practicable after receipt to the Lender entitled to receive such payment in accordance with this Agreement (for the account of its Facility Office), to such account as that Lender may notify to the Agent by not less than five (5) Business Days' notice with a bank 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).

## **32** ~~34~~VARIATIONS AND WAIVERS

### **32.1** ~~34.4~~Variations, waivers etc. by Majority Lenders

Subject to Clause ~~34.2~~32.2 (*Variations, waivers etc. requiring agreement of all Lenders*), a document shall be effective to vary, waive, amend, 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 email, by the Borrower, by the Agent on behalf of the Majority Lenders, by the Agent and the Security Trustee in their own rights, and, if the document relates to a Finance Document to which an Obligor is party, by an Obligor (provided that no amendment or variation may be made to this Agreement or any other Finance Document without the consent of the Italian Authorities); provided, further, that no amendment or variation may be made before the date falling ten Business Days after the terms of that amendment or variation have been notified by the Agent to the Lenders. The Agent shall notify the Lenders reasonably promptly of any amendments or variations proposed by the Borrower.

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### **32.2** ~~31.2~~ Variations, waivers etc. requiring agreement of all Lenders

However, as regards the following, Clause ~~31.1~~32.1 (*Variations, waivers etc. by Majority Lenders*) applies as if the words "by the Agent on behalf of the Majority Lenders" were replaced by the words "by or on behalf of every Lender":

- (a) a reduction in the Margin;
- (b) a postponement to the date for, or a reduction in the amount of, any payment of principal, interest, fees, commission or other sum payable under this Agreement;
- (c) an increase in or extension of any Lender's Commitment under a Tranche or any requirement that a cancellation of Commitments under any Tranche reduces the Commitments rateably under the Loan;
- (d) a change to the definition of "**Majority Lenders**";
- (e) a change to Clause 2 (*Facility*), Clause 6 (*Interest*), Clause ~~24~~25 (*Changes to the Lenders*) or this Clause ~~31~~32 (*Variations and Waivers*);
- (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.

### **32.3** ~~31.3~~ Exclusion of other or implied variations

Except for a document which satisfies the requirements of Clauses ~~31.1~~32.1 (*Variations, waivers etc. by Majority Lenders*) and ~~31.2~~32.2 (*Variations, waivers etc. requiring agreement of all Lenders*), no document, and no act, course of conduct, failure or neglect to act, delay or acquiescence on the part of the Creditor Parties or any of them (or any person acting on behalf of any of them) shall result in the Creditor Parties or any of them (or any person acting on behalf of any of them) being taken to have varied, waived, suspended or limited, or being precluded (permanently or temporarily) from enforcing, relying on or exercising:

- (a) a provision of this Agreement or another Finance Document; or
- (b) an Event of Default; or
- (c) a breach by the Borrower or an Obligor 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.

## **33** ~~32~~ NOTICES

### **33.1** ~~32.1~~ General

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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.

### **33.2 ~~32.2~~Addresses for communications**

A notice shall be sent:

- (a) to the Borrower:

7665 Corporate Center Drive  
Miami FL33126, USA  
Attention: Chief Financial Officer and General Counsel

Email: [\*] / [\*]

- (b) to a Lender:

At the address below its name in Schedule 1 (*Lenders and Commitments*) or (as the case may require) in the relevant Transfer Certificate.

- (c) to the Agent or the SACE Agent:

12, Place des Etats-Unis  
CS 70052  
92547 Montrouge Cedex, France  
Fax No. (33) 1 41 89 19 34  
Attn: Shipping Middle Office – Ms Clémentine Costil and Romy Roussel

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

### **33.3 ~~32.3~~Effective date of notices**

Subject to Clauses ~~32.4~~33.4 (*Service outside business hours*) and ~~32.5~~33.5 (*Electronic communication*), 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.

### **33.4 ~~32.4~~Service outside business hours**

However, if under Clause ~~32.3~~33.3 (*Effective date of notices*) a notice would be deemed to be served:

- (a) on a day which is not a business day in the place of receipt; or  
(b) on such a business day, but after 6 p.m. local time;

the notice shall (subject to Clause ~~32.5~~33.5 (*Electronic communication*)) be deemed to be served, and shall take effect, at 9 a.m. on the next day which is such a business day.

### **33.5 ~~32.5~~Electronic communication**

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- (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, 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 and if those two Parties:
  - (i) notify each other in writing of their electronic mail address and/or any other information required to enable the sending and receipt of information by that means; and
  - (ii) notify each other of any change to their address or any other such information supplied by them by not less than five Business Days' notice.
- (b) Any electronic communication made between those two Parties will be effective only when actually received in readable form and in the case of any electronic communication made by a Party to the Agent only if it is addressed in such a manner as the Agent shall specify for this purpose.
- (c) Any electronic communication which becomes effective, in accordance with paragraph (b) above, after 5.00 p.m. in the place of receipt shall be deemed only to become effective on the following day.

**33.6 ~~32.6~~ Illegible notices**

Clauses ~~32.3~~33.3 (*Effective date of notices*) and ~~32.4~~33.4 (*Service outside business hours*) do not apply if the recipient of a notice notifies the sender within 1 hour after the time at which the notice would otherwise be deemed to be served that the notice has been received in a form which is illegible in a material respect.

**33.7 ~~32.7~~ 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.

**33.8 ~~32.8~~ English language**

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

**33.9 ~~32.9~~ Meaning of "notice"**

In this Clause ~~32~~33 (*Notices*), "notice" includes any demand, consent, authorisation, approval, instruction, waiver or other communication.

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## 34 ~~33~~CONFIDENTIALITY

### 34.1 ~~33.1~~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 Clause ~~33.2~~-34.2 (*Disclosure of Confidential Information*) 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.

### 34.2 ~~33.2~~Disclosure of Confidential Information

Any Creditor Party may disclose:

- (a) to the Italian Authorities, to any of its Affiliates 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 and to any of that person's Affiliates, Representatives and professional advisers;
    - (ii) with (or through) whom it enters into (or may potentially enter into), whether directly or indirectly, any sub-participation in relation to, or any other transaction under which payments are to be made or may be made by reference to, one or more Finance Documents and/or one or more Obligors and to any of that person's Affiliates, Representatives and professional advisers;
    - (iii) appointed by any Creditor Party or by a person to whom paragraph (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 (i) or (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, arbitrations, administrative or other investigations, proceedings or disputes;
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- (vii) which is a classification society or other entity which a Lender has engaged to make the calculations necessary to enable that Lender to comply with its reporting obligations under the Poseidon Principles;
- (viii) who is a Party, a member of the Group or any related entity of an 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; or
- (xi) any employee, officer, director or Representative of any Italian Authorities to whom information is required to be disclosed in the course of such person's employment or duties;
- (xii) to whom or for whose benefit that Creditor Party charges, assigns or otherwise creates a Security Interest (or may do so) pursuant to Clause ~~24.16~~ 25.16 (*Security over Lenders' rights*).

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

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

#### **34.3 ~~33-3~~Entire agreement**

This Clause ~~33-34~~ 34 (*Confidentiality*) constitutes the entire agreement between the Parties in relation to the obligations of the Creditor Parties under the Finance Documents regarding Confidential Information and supersedes any previous agreement, whether express or implied, regarding Confidential Information.

#### **34.4 ~~33-4~~Disclosure to information services**

- (a) Any Creditor Party may disclose to any national or international information service company such as Dealogic, TF, GTR, TXF, IFR and any other similar information service company appointed by that Creditor Party, the following information:

- (i) names of Parties;
- (ii) country of domicile of Obligors;
- (iii) place of incorporation of Obligors;
- (iv) date of this Agreement;
- (v) Clause ~~37-38~~ 38 (*Governing Law*);
- (vi) the name of the Agent;
- (vii) amount of Total Commitments;
- (viii) currency of the Facility;
- (ix) type of Facility;
- (x) ranking of Facility; and
- (xi) duration of Facility,

to enable such information service company to provide its usual services.

- (b) Each Obligor represents that none of the information set out in sub-paragraphs (i) to (xi) of paragraph (a) above is, nor will at any time be, unpublished price-sensitive information.

#### **34.5 ~~33-5~~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.

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#### **34.6 ~~33-6~~ Notification of disclosure**

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

- (a) of the circumstances of any disclosure of Confidential Information made pursuant to paragraph (b)(v) of Clause ~~33-2~~ 34.2 (*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 ~~33-34~~ 34 (*Confidentiality*).

#### **34.7 ~~33-7~~ Continuing obligations**

The obligations in this Clause ~~33-34~~ 34 (*Confidentiality*) 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 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 Creditor Party otherwise ceases to be a Creditor Party.

#### **34.8 ~~33-8~~ Disclosure by SACE**

Notwithstanding any other provision of this Agreement to the contrary, SACE may disclose any Confidential Information:

- (a) to its ultimate shareholder, holding subsidiary, parent and affiliate companies;
- (b) to the Ministry of Economy and Finance of the Republic of Italy and its departments, other Italian Ministries (including any of their department), Interministerial committees of the Italian Government and any other Italian authority, committee, agency or governmental entity;
- (c) to providers of any reinsurance/counter-guarantee or any form of risk enhancement (including their agents, brokers and consultants) subject to such persons undertaking confidentiality obligations with SACE, unless they are subject to professional duties of confidentiality;
- (d) for the purposes of the State guarantee in favour of SACE pursuant to article 32 of law-decree n. 91/2014 converted into law 116/2014 and for the purposes of article 2 of law decree 23/2020 converted into law 40/2020; or;
- (e) following any payment due under the SACE Insurance Policy; or
- (f) with the consent of the Borrower, such consent not to be unreasonably withheld.

#### **34.9 ~~33-9~~ Press release**

Neither SACE nor the Borrower will issue any press release or make any public announcement in relation to the SACE Insurance Policy without the prior consent of the other party (such consent not to be unreasonably withheld).

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## **35 ~~34~~LEGAL INDEPENDENCE AND UNCONDITIONAL OBLIGATIONS OF THE BORROWER**

### **35.1 ~~34.1~~Legal independence and Unconditional Obligations of the Borrower**

This Agreement is legally independent from the Shipbuilding Contract. The obligations of the Borrower to make payments and to observe and perform its obligations under the Transaction Documents are absolute, unconditional, irrevocable and several and such obligations shall not:

- (a) in any way be affected or discharged by reason of any matter affecting any of the Pre-delivery Contracts including their performance, frustration or validity, the insolvency or dissolution of any party to any of the Pre-delivery Contracts or the destruction, non-completion or non-functioning of the goods and equipment supplied under the Shipbuilding Contract;
- (b) in any way be affected or discharged by reason of any dispute under any of the Pre-delivery Contracts or any claim which it or any other person may have against, or consider that it has against, any person under any of the Pre-delivery Contracts;
- (c) in any way be affected or discharged by reason of unenforceability, illegality or invalidity of any obligation of the Borrower or any other person under any of the Pre-delivery Contracts or any documents or agreements relating to any of the Pre-delivery Contracts;
- (d) in any way be affected by the fact that all or any part of the amount requested referred to in a Drawdown Notice is not or was not due or payable to the Builder;
- (e) be conditional on the performance by the Creditor Parties of any obligations (except as otherwise stated herein) in order to give rise to a relevant obligation of the Borrower hereunder; or
- (f) in any way be affected or discharged by the insolvency or dissolution of the Borrower.

## **36 ~~35~~SACE SUBROGATION AND REIMBURSEMENT**

### **36.1 ~~35.1~~Acknowledgement of Subrogation**

Each Obligor and each Creditor Party acknowledges that, immediately upon any payment being made by SACE of any amount under the SACE Insurance Policy, SACE will be subrogated to the rights of the Lenders in the amount of such payment under the Finance Documents in accordance with the SACE Insurance Policy.

### **36.2 ~~35.2~~Reimbursement**

- (a) Without prejudice to Clause ~~35.1~~36.1 (*Acknowledgement of Subrogation*), each Obligor, jointly and severally undertakes to pay to SACE, and keep SACE indemnified from and against, each and every amount paid (whether by direct payment or set-off) by SACE to the Creditor Parties or any person on any of their behalf under the SACE Insurance Policy;
  - (b) Each Obligor undertakes to pay SACE an amount in Dollars equal to:
    - (i) for each payment made by SACE to any of the Creditor Parties or any person on any of their behalf under the SACE Insurance Policy, the amount of such payment; and
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- (ii) for each deduction or withholding imposed, levied, collected, withheld or assessed on any payment by SACE to any of the Creditor Parties or any person on any of their behalf under the SACE Insurance Policy, the amount of such deduction or withholding,

in each case together with interest thereon (calculated in accordance with Clause ~~47.4~~ 18.1 (*Default rate of interest*) of this Agreement).

- (c) Each Obligor further agrees that its obligations under this Clause ~~35.2~~ 36.2 (*Reimbursement*) are separate from and in no way conditional upon the Obligor's obligations under this Agreement or any of the other Finance Documents and will not be affected or discharged by any matter relating thereto including, but not limited to, whether or not the Obligor is itself liable to make payment, or is disputing its liability to make payment, under this Agreement or any of the other Finance Documents.
- (d) SACE will promptly inform the Obligors of any amounts to be reimbursed and indemnified under this Clause ~~35.2~~ 36.2 (*Reimbursement*).
- (e) Each amount that is payable by the Obligors pursuant to Clause ~~35.2~~ 36.2 (*Reimbursement*) is due and payable to SACE in Dollars within five (5) Business Days of demand by SACE to the Obligors.

### **36.3 ~~35.3~~ Obligations Absolute**

The obligations of the Obligors under this Clause ~~35.2~~ 36.2 (*Reimbursement*), to the extent permitted by applicable law:

- (a) are absolute and unconditional;
  - (b) are to be discharged and/or performed strictly in accordance with this Agreement under all circumstances;
  - (c) are continuing obligations and will extend to the ultimate balance of sums payable by SACE to any Creditor Party or any person on any of their behalf under the SACE Insurance Policy, regardless of any intermediate payment or discharge in whole or in part;
  - (d) will not be affected by an act, omission, matter or thing which, but for this Clause, would reduce, release or prejudice any of its obligations under Clause ~~35.2~~ 36.2 (*Reimbursement*) (without limitation and whether or not known to it or any Creditor Party) including:
    - (i) any time, waiver or consent granted to, or composition with any Obligor;
    - (ii) any lack of validity or enforceability of, or any amendment or other modifications of, or waiver with respect to, any of the Finance Documents;
    - (iii) any reduction or release of any other obligations under this Agreement;
    - (iv) the release of any Obligor or any other person under the terms of any composition or arrangement;
    - (v) the taking, variation, compromise, exchange, renewal, discharge, substitution or release of, or refusal or neglect to perfect, take up, realise or enforce, any rights against, or security over assets of, any Obligor or any non-presentation or non-
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observance of any formality or other requirement in respect of any instrument or any failure to realise the full value of any security;

- (vi) any incapacity or lack of power, authority or legal personality of or dissolution or change in the members or status of any Obligor, any Creditor Party or any other person;
- (vii) any amendment (however fundamental) or replacement of a Finance Document, the SACE Insurance Policy or any other document or security;
- (viii) any unenforceability, illegality or invalidity of any obligation of any person under any Finance Document, the SACE Insurance Policy or any other document or security;
- (ix) any insolvency or similar proceedings;
- (x) the existence of any claim, set-off, defence, reduction, abatement or other right which any Obligor may have at any time against SACE;
- (xi) any document presented in connection with the SACE Insurance Policy proving to be forged, fraudulent, invalid or insufficient in any respect or any statement therein being untrue or inaccurate in any respect;
- (xii) any payment by SACE against presentation of a demand for payment substantially, on its face, in the form of a claim under the SACE Insurance Policy where any certificate or other document required to be provided with such claim in accordance with the terms of the SACE Insurance Policy either is not provided or does not comply with the terms of the SACE Insurance Policy; and
- (xiii) any other circumstances which might otherwise constitute a defence available to, or discharge of any Obligor.

## **37 36 SUPPLEMENTAL**

### **37.1 36.1 Rights cumulative, non-exclusive**

The rights and remedies which the Finance Documents give to each Secured 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.

### **37.2 36.2 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.

### **37.3 36.3 Counterparts**

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

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### **37.4 ~~36.4~~Third party rights**

- (a) Except for SACE and its successors, transferees and assignees or as otherwise provided 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 Party Act**") to enforce or to enjoy the benefit of any term of this Agreement.
- (b) Notwithstanding any provision of any Finance Document, the consent of any person (other than SACE or its successors, transferees and assignees) who is not a party to a Finance Document is not required to rescind, vary or terminate any Finance Document at any time.
- (c) Subject to the provisions of the Third Party Act, and without prejudice to the provisions of paragraphs (a) and (b) above, SACE has the right to enforce and to enjoy the benefit of Clause ~~35-36~~ (SACE Subrogation and Reimbursement), Clause ~~47-18~~ (Interest on Late Payments), Clause ~~8-9~~ (SACE Premium and Italian Authorities), Clause ~~40.2-11.2~~ (Tax gross-up), Clause ~~40.3-11.3~~ (Tax indemnity), Clause ~~40.41-11.11~~ (Transaction Costs), Clause ~~20.4-21.1~~ (Indemnities regarding borrowing and repayment of Loan), Clause ~~20.3-21.3~~ (Miscellaneous indemnities), Clause ~~20.4-21.4~~ (Currency indemnity), Clause ~~22-23~~ (Set-Off), Clause ~~27-28~~ (The Security Trustee), Clause ~~40.6-11.6~~ (VAT), Clause ~~40.13-11.13~~ (SACE obligations), Clauses ~~33.8-34.8~~ (Disclosure by SACE) and ~~33.9-34.9~~ (Press release) and Clause ~~38-39~~ (Enforcement).
- (d) Any amendment or waiver which relates to the rights of SACE under this Agreement, including under Clause ~~35-36~~ (SACE Subrogation and Reimbursement), Clause ~~47-18~~ (Interest on Late Payments), Clause ~~8-9~~ (SACE Premium and Italian Authorities), Clause ~~40.2-11.2~~ (Tax gross-up), Clause ~~40.3-11.3~~ (Tax indemnity), Clause ~~20.4-21.4~~ (Currency indemnity), Clause ~~22-23~~ (Set-Off), Clause ~~27-28~~ (The Security Trustee), Clause ~~20.3-21.3~~ (Miscellaneous indemnities), Clause ~~40.6-11.6~~ (VAT), Clause ~~40.41-11.11~~ (Transaction Costs), Clause ~~20.4-21.1~~ (Indemnities regarding borrowing and repayment of Loan), Clauses ~~33.8-34.8~~ (Disclosure by SACE) and ~~33.9-34.9~~ (Press release) and Clause ~~38-39~~ (Enforcement) may not be effected without the consent of SACE.

### **37.5 ~~36.5~~No waiver**

No failure or delay on the part of a Secured Party in exercising any right, power or privilege hereunder shall operate as a waiver thereof; nor shall any single or partial exercise thereof preclude any other or further exercise thereof by the Secured Parties or the exercise by the Secured Parties of any other right, power or privilege. The rights and remedies of the Secured Parties herein provided are cumulative and not exclusive of any rights or remedies provided by law.

### **37.6 ~~36.6~~Writing required**

This Agreement shall not be capable of being modified otherwise than by an express modification in writing signed by the Borrower, the Agent and the Lenders.

### **38 ~~37~~GOVERNING LAW**

#### **38.1 37.1Law**

This Agreement and any non-contractual obligations arising out of or in connection with it are governed by and construed in accordance with English law.

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## 39 ~~38~~ ENFORCEMENT

### 39.1 ~~38.4~~ Jurisdiction of English Courts

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) (a "**Dispute**"). Each Party agrees that the courts of England are the most appropriate and convenient courts to settle Disputes and accordingly no Party will argue to the contrary.

### 39.2 ~~38.2~~ Service of process

Without prejudice to any other mode of service allowed under any relevant law, the Borrower:

- (a) irrevocably appoints Hannaford Turner LLP, currently of 107 Cheapside, London UK, EC2V 6DN, as its agent for service of process in relation to any proceedings before the English courts in connection with any Finance Document; and
- (b) agrees that failure by a process agent to notify the Borrower of the process will not invalidate the proceedings concerned.

If any person appointed as an agent for service of process is unable for any reason to act as agent for service of process, the Borrower (on behalf of all the Obligors) must immediately (and in any event within 15 days of such event taking place) appoint another agent on terms acceptable to the Agent. Failing this, the Agent may appoint another agent for this purpose.

## 40 ~~39~~ CONFIDENTIALITY OF FUNDING RATES AND REFERENCE BANK QUOTATIONS

### 40.1 ~~39.4~~ Confidentiality and disclosure

- (a) The Agent and each Obligor agree to keep each Funding Rate (and, in the case of the 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 Agent may disclose:
    - (i) any Funding Rate (but not, for the avoidance of doubt, any Reference Bank Quotation) to the Borrower pursuant to Clause ~~6-5-7.5~~ (*Notification of Interest Periods and Floating Interest Rate*);
    - (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 Agent and the relevant Lender or Reference Bank, as the case may be.
  - (c) The Agent may disclose any Funding Rate or any Reference Bank Quotation, and each Obligor may disclose any Funding Rate, to:
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- (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 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 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 Agent's obligations in this Clause ~~39-40~~ (*Confidentiality of Funding Rates and Reference Bank Quotations*) relating to Reference Bank Quotations are without prejudice to its obligations to make notifications under Clause ~~6-5-7.5~~ (*Notification of Interest Periods and Floating Interest Rate*) provided that (other than pursuant to sub-paragraph (i) of paragraph (b) above) the Agent shall not include the details of any individual Reference Bank Quotation as part of any such notification.

**40.2 ~~39-2~~ Related obligations**

- (a) The Agent and each Obligor acknowledge that each Funding Rate (and, in the case of the 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 Agent and each Obligor undertake not to use any Funding Rate or, in the case of the Agent, any Reference Bank Quotation for any unlawful purpose.
  - (b) The 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 (c) of Clause ~~39-1-40.1~~ (*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 ~~39-40~~ 40 (*Confidentiality of Funding Rates and Reference Bank Quotations*).

**40.3 ~~39-3~~ No Event of Default**

No Event of Default will occur under Clause ~~18-4-19.4~~ 19.4 (*Breach of other obligations*) by reason only of an Obligor's failure to comply with this Clause ~~39-40~~ 40 (*Confidentiality of Funding Rates and Reference Bank Quotations*).

**41 EFFECTIVE DATE**

[This Agreement is effective from the 2023 Effective Date.](#)

**This Agreement has been entered into and amended and restated on the date stated at the beginning of this Agreement.**

---

EXECUTION PAGES

**BORROWER**

SIGNED by )  
 )  
for and on behalf of )  
**LEONARDO ONE, LTD.** )  
in the presence of: )

**TRANCHE A LENDERS**

SIGNED by )  
 )  
for and on behalf of )  
~~GRÉDIT AGRICOLE CORPORATE~~ }  
~~AND INVESTMENT BANK~~ }  
~~in the presence of:~~ }

~~SIGNED by~~ }  
~~for and on behalf of~~ }  
~~BNP PARIBAS FORTIS S.A./N.V.~~ )  
~~in the presence of:~~ }

~~SIGNED by~~ }  
~~for and on behalf of~~ }  
~~KFW IPEX BANK GMBH~~ }  
~~in the presence of:~~ }

~~SIGNED by~~ }  
~~for and on behalf of~~ }  
~~HSBC CONTINENTAL EUROPE, ITALY~~ }  
in the presence of: )

SIGNED by )  
 )  
for and on behalf of )  
**CASSA DEPOSITI E PRESTITI S.P.A.** )  
in the presence of: )

**TRANCHE B LENDERS**

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SIGNED by )  
 )  
for and on behalf of )  
**CRÉDIT AGRICOLE CORPORATE** )  
**AND INVESTMENT BANK** ) )  
in the presence of: )

SIGNED by )  
 )  
for and on behalf of )  
HSBC BANK PLC )  
in the presence of: )

SIGNED by )  
 )  
for and on behalf of )  
KFW IPEX-BANK GMBH )  
in the presence of: )

TRANCHE B LENDERS

SIGNED by )  
 )  
for and on behalf of )  
**BNP PARIBAS FORTIS S.A./N.V.** ) )  
~~in the presence of:~~ }

~~SIGNED by~~ )  
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~~for and on behalf of~~ )  
~~KFW IPEX-BANK GMBH~~ )  
~~in the presence of:~~ }

~~SIGNED by~~ )  
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~~for and on behalf of~~ )  
~~HSBC CONTINENTAL EUROPE, ITALY~~ ) )  
~~in the presence of:~~ )

SIGNED by )  
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for and on behalf of )  
**CASSA DEPOSITI E PRESTITI S.P.A.** ) )  
in the presence of: )

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SIGNED by \_\_\_\_\_ )  
\_\_\_\_\_)  
for and on behalf of \_\_\_\_\_ )  
CREDIT AGRICOLE CORPORATE \_\_\_\_\_ )  
AND INVESTMENT BANK \_\_\_\_\_ )  
in the presence of: \_\_\_\_\_ )

SIGNED by \_\_\_\_\_ )  
\_\_\_\_\_)  
for and on behalf of \_\_\_\_\_ )  
HSBC BANK PLC \_\_\_\_\_ )  
in the presence of: \_\_\_\_\_ )

SIGNED by \_\_\_\_\_ )  
\_\_\_\_\_)  
for and on behalf of \_\_\_\_\_ )  
KFW IPEX-BANK GMBH \_\_\_\_\_ )  
in the presence of: \_\_\_\_\_ )

**TRANCHE C LENDERS**

**SIGNED by** \_\_\_\_\_ )  
\_\_\_\_\_)  
**for and on behalf of** \_\_\_\_\_ )  
**GRÉDIT AGRICOLE CORPORATE** \_\_\_\_\_ )  
**AND INVESTMENT BANK** \_\_\_\_\_ )  
**in the presence of:** \_\_\_\_\_ )

**SIGNED by** \_\_\_\_\_ )  
\_\_\_\_\_)  
**for and on behalf of** \_\_\_\_\_ )  
**BNP PARIBAS FORTIS S.A./N.V.** \_\_\_\_\_ )  
**in the presence of:** \_\_\_\_\_ )

**SIGNED by** \_\_\_\_\_ )  
\_\_\_\_\_)  
**for and on behalf of** \_\_\_\_\_ )  
**KFW IPEX-BANK GMBH** \_\_\_\_\_ )  
**in the presence of:** \_\_\_\_\_ )

**SIGNED by** \_\_\_\_\_ )  
\_\_\_\_\_)  
**for and on behalf of** \_\_\_\_\_ )  
**HSBC CONTINENTAL EUROPE, ITALY** \_\_\_\_\_ )

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in the presence of: )

**SIGNED** by )  
)  
for and on behalf of )  
**CASSA DEPOSITI E PRESTITI S.P.A.** )  
in the presence of: )

**SIGNED** by )  
)  
for and on behalf of )  
**CRÉDIT AGRICOLE CORPORATE** )  
**AND INVESTMENT BANK** )  
in the presence of: )

**SIGNED** by )  
)  
for and on behalf of )  
**HSBC BANK PLC** )  
in the presence of: )

**SIGNED** by )  
)  
for and on behalf of )  
**KFW IPEX-BANK GMBH** )  
in the presence of: )

**JOINT MANDATED LEAD ARRANGERS**

**SIGNED** by )  
)  
for and on behalf of )  
**CRÉDIT AGRICOLE CORPORATE** )  
**AND INVESTMENT BANK** )  
in the presence of: )

**SIGNED** by )  
)  
for and on behalf of )  
**BNP PARIBAS FORTIS S.A./N.V.** )  
in the presence of: )

**SIGNED** by )  
)  
for and on behalf of )



~~KFW IPEX-BANK GMBH~~ )  
CASSA DEPOSITI E PRESTITI S.P.A. )  
in the presence of: )

SIGNED by )  
 )  
for and on behalf of )  
CRÉDIT AGRICOLE CORPORATE )  
AND INVESTMENT BANK )  
in the presence of: )

**SIGNED by** )  
 )  
for and on behalf of )  
**HSBC BANK PLC** )  
in the presence of: )

**SIGNED by** )  
 )  
for and on behalf of )  
~~CASSA DEPOSITI E PRESTITI S.P.A.~~ )  
KFW IPEX-BANK GMBH )  
in the presence of: )

**AGENT**

**SIGNED by** )  
 )  
for and on behalf of )  
**CRÉDIT AGRICOLE CORPORATE** )  
**AND INVESTMENT BANK** )  
in the presence of: )

**SACE AGENT**

**SIGNED by** )  
 )  
for and on behalf of )  
**CRÉDIT AGRICOLE CORPORATE** )  
**AND INVESTMENT BANK** )  
in the presence of: )

**SECURITY TRUSTEE**

**SIGNED by** )  
 )

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for and on behalf of )  
**CRÉDIT AGRICOLE CORPORATE** ) )  
**AND INVESTMENT BANK** ) )  
in the presence of: )

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**APPENDIX 2**

**FORM OF AMENDED AND RESTATED GUARANTEE (MARKED TO INDICATE AMENDMENTS)**

Amendments are indicated as follows:

- 1 additions are indicated by underlined text in blue; and
- 2 deletions are shown by strike-through text in red.



Originally dated 12 April 2017  
(as previously amended from time to time, including by a supplemental agreement dated 4 June 2020 ~~and~~, as further amended and restated pursuant to an amendment and restatement agreement dated 17 February 2021, as further amended by a supplemental agreement dated 23 December 2021, as further amended by a supplemental agreement dated 16 December 2022 and as further amended and restated by an amendment and restatement agreement dated \_\_\_\_\_ February 2021/2023)

**NCL CORPORATION LTD.**  
as Guarantor

and

**CRÉDIT AGRICOLE CORPORATE AND INVESTMENT BANK**  
as Security Trustee

and

**NORWEGIAN CRUISE LINE HOLDINGS LTD.**  
as the Holding

#### **AMENDED AND RESTATED GUARANTEE**

relating to a facility agreement originally dated 12 April 2017 (as previously amended from time to time, including as amended and restated by an amendment and restatement agreement dated 21 November 2017, as further amended by a supplemental agreement dated 4 June 2020, as further amended and restated by an amendment and restatement agreement dated 17 February 2021, as further amended and restated by an amendment and restatement agreement dated 17 June 2021, as further amended by a supplemental agreement dated 23 December 2021, as further amended by a supplemental agreement dated 16 December 2022 and as further amended and restated by an amendment and restatement agreement dated \_\_\_\_\_ ~~February 2021~~2023)

in respect of the part financing of the 3,300 passenger cruise ship ~~new building presently designated as Hull No. v. 6298 at Fincantieri S.p.A.~~ "NORWEGIAN PRIMA"

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**THIS GUARANTEE** is originally made on 12 April 2017 (as amended from time to time, including by a supplemental agreement dated 4 June 2020~~–as further amended and restated by an amendment and restatement agreement dated 17 February 2021, as further amended by a supplemental agreement dated 23 December 2021, as further amended by a supplemental agreement dated 16 December 2022~~ and as further amended and restated by an amendment and restatement agreement dated \_\_\_\_ ~~February 2021~~2023)

#### **BETWEEN**

- (1) **NCL CORPORATION LTD.**, an exempted company incorporated under the laws of Bermuda with its registered office at Park Place~~–55, 55~~55 Par-la-Ville Road, Hamilton HM 11, Bermuda (the "**Guarantor**")
- (2) **CRÉDIT AGRICOLE CORPORATE AND INVESTMENT BANK** a *société anonyme*, having a share capital of EUR 7,851,636,342.00 and its registered office located at 12, Place des États-Unis, CS70052 92547, Montrouge Cedex, France registered under the no. Siren: 304 187 701~~†~~ at the Registre du Commerce et des Sociétés of Nanterre as security trustee on behalf of the Secured Parties (the "**Security Trustee**", which expression includes its successors, transferees and assigns)
- (3) **NORWEGIAN CRUISE LINE HOLDINGS LTD.**, a company incorporated under the laws of Bermuda with its registered office at Park Place~~–55, 55~~55 Par-la-Ville Road, Hamilton HM 11, Bermuda (the "**Holding**")

#### **BACKGROUND**

- (A) By a shipbuilding contract dated 21 October 2016 (as amended from time to time including on 14 December 2016, 30 January 2017, 27 February 2017, 30 March 2017, 10 April 2017 and 21 November 2017 and as may be further amended or supplemented from time to time prior to the date of this Agreement) (the "**Shipbuilding Contract**") entered into between (i) Fincantieri S.p.A, a company incorporated in Italy with registered office in Trieste, via Genova, 1, and having fiscal code 00397130584 (the "**Builder**") and (ii) Leonardo One, Ltd. (the "**Borrower**"), the Builder has agreed to design, construct and deliver, and the Borrower has agreed to purchase, a 3,300 passenger cruise ship ~~currently~~ having hull number [\*] as more particularly described in the Shipbuilding Contract ~~to be~~ delivered on [\*] subject to any adjustments of such delivery date in accordance with the Shipbuilding Contract.
- (B) By a loan agreement dated 12 April 2017 (as amended from time to time, the "**Original Loan Agreement**") and made between (i) the Borrower, (ii) the Lenders, (iii) the Joint Mandated Lead Arrangers, (iv) the Agent and SACE Agent and (v) the Security Trustee, it was agreed that the Lenders would make available to the Borrower a loan facility of the Dollar Equivalent of up to six hundred and forty million Euros (€ 640,000,000.00) and the amount of the SACE Premium (but not exceeding eight hundred and sixty eight million, one hundred and eight thousand, one hundred and eight Dollars and eleven cents (\$868,108,108.11)) for the purpose of assisting the Borrower in financing (a) payment or reimbursement under the Shipbuilding Contract of all or part of 80% of the Final Contract Price up to the Eligible Amount and (b) reimbursement to the Borrower of 100% of the First Instalment of the SACE Premium paid by it to SACE and payment to SACE of 100% of the Second Instalment of the SACE Premium (as defined therein).
- (C) The execution and delivery to the Security Trustee of a guarantee by the Guarantor, which was executed on 12 April 2017 (the "**Original Guarantee**"), was one of the conditions precedent to the availability of the facility under the Original Loan Agreement.

- (D) By an amending and restating agreement dated 21 November 2017 (the "**2017 Amending and Restating Agreement**") entered into between the Borrower, the Lenders, the Agent and the Security Trustee, the Secured Parties agreed to amend the Original Loan Agreement and the other Finance Documents, including the Original Guarantee, to reflect the changes to the Shipbuilding Contract pursuant to the terms of the Sixth Addendum, provided that:
- (i) the Acceptable Deposit be held in an account opened by the Borrower with the Account Bank which shall be pledged in favour of the Lenders, the Joint Mandated Lead Arrangers, the Agent, the SACE Agent and the Security Trustee; and
  - (ii) the next instalment under the Shipbuilding Contract is covered by a Refund Guarantee.
- (E) Due to the unprecedented and extraordinary impacts of the Covid-19 pandemic on the cruise sector and cruise operators, SACE informed the cruise operators of its availability to evaluate certain measures (the "**Temporary Measures**") applicable in relation to certain qualifying loan agreements in order to assist companies which are financially sound but dealing with the impact of the temporary but unprecedented Covid-19 pandemic; the possibility to access to such measures was subject, amongst other things, to certain principles dated 15 April 2020 for cruise lines offered by SACE (the "**Original Principles**").
- (F) Pursuant to the consent request letter dated 18 April 2020, the Borrower and the Guarantor notified the Agent and the SACE Agent of their wish to benefit from the Temporary Measures in relation to certain loan agreements listed therein, including the Original Loan Agreement (as amended and restated by the 2017 Amending and Restating Agreement), and requested, amongst other things, the temporary suspension of certain covenants under the Original Guarantee and the addition of certain covenants under the Original Loan Agreement (as amended and restated by the 2017 Amending and Restating Agreement) for a period of one year from 1 April 2020 to 31 March 2021 (the "**First Borrower Request**").
- (G) On 25 May 2020, the Agent (for and on behalf of the Lenders) provided its consent to part of the First Borrower Request in accordance with and subject to certain conditions as set out in an amendment to the Original Loan Agreement (as amended and restated by the 2017 Amending and Restating Agreement) and to the Original Guarantee dated 4 June 2020 between, amongst others, the Borrower, the Agent and the SACE Agent (the "**2020 Amendment Agreement**") ~~(the Original Loan Agreement as amended pursuant to the 2017 Amending and Restating Agreement and the 2020 Amendment Agreement, the "**Amended Loan Agreement**").~~
- (H) Due to the continued impacts of the Covid-19 pandemic on the cruise sector and cruise operators, SACE confirmed on 31 December 2020 its availability to evaluate an extension of the Temporary Measures (the "**Extended Temporary Measures**"), again subject to certain principles dated 26 November 2020 for cruise lines offered by SACE (together with the Original Principles, the "**Principles**").
- (I) Pursuant to the consent request letter dated 3 December 2020, the Borrower and the Guarantor notified the Agent and the SACE Agent of their wish to benefit from the Extended Temporary Measures in relation to certain loan agreements listed therein, including the ~~Amended-Original~~ Loan Agreement (as amended and restated by the 2017 Amending and Restating Agreement and as further amended by the 2020 Amendment Agreement), and requested, amongst other things, the further temporary suspension of certain covenants under the Original Guarantee (as amended by the 2020 Amendment Agreement) and the addition of certain covenants under the ~~Amended-Original~~ Loan Agreement (as amended and

- restated by the 2017 Amending and Restating Agreement and as further amended by the 2020 Amendment Agreement) for a further period from 1 April 2021 to 31 December 2022 (the "**Second Borrower Request**").
- (J) On 25 January 2021, the Agent (for and on behalf of the Lenders) provided its consent to part of the Second Borrower Request in accordance with and subject to certain conditions as set out in an amendment and restatement agreement to the ~~Amended-Original~~ Loan Agreement (as amended and restated by the 2017 Amending and Restating Agreement and as further amended by the 2020 Amendment Agreement) and to the Original Guarantee (as amended pursuant to the 2020 Amendment Agreement, ~~the "Amended Guarantee"~~) dated ~~\_\_\_\_\_~~ 17 February 2021 between, amongst others, the Borrower, the Guarantor, the Agent and the SACE Agent (the "~~2021-February 2021 Amendment and Restatement Agreement~~").
- (K) By an amending and restating agreement dated 17 June 2021 and made between, amongst others, the Borrower, the Agent and the SACE Agent (the "June 2021 Amendment and Restatement Agreement"), the Parties agreed to, *inter alia*, provide for an increase of the Facility for the purpose of (i) financing an amount to be applied towards payments relating to the Upsize Allowance, (ii) financing an amount to be applied towards the second instalment of the Additional SACE Premium and (iii) financing an amount to be applied towards the Tranche B Premium.
- (L) By a supplemental agreement dated 23 December 2021 and made between, amongst others, the Borrower, the Agent and the SACE Agent (the "December 2021 Amendment Agreement"), the Parties agreed to, *inter alia*, amend certain financial covenants and certain other provisions under the Original Loan Agreement (as amended and restated by the 2017 Amending and Restating Agreement, as amended by the 2020 Amendment Agreement, as amended and restated by the February 2021 Amendment and Restatement Agreement and as amended and restated by the June 2021 Amendment and Restatement Agreement) and the Original Guarantee (as amended by the 2020 Amendment Agreement and as amended and restated by the February 2021 Amendment and Restatement Agreement).
- (M) By a supplemental agreement dated 16 December 2022 and made between, amongst others, the Borrower, the Agent and the SACE Agent (the "December 2022 Amendment Agreement"), the Parties agreed to, *inter alia*, amend certain financial covenants and certain other provisions under the Original Loan Agreement (as amended and restated by the 2017 Amending and Restating Agreement, as amended by the 2020 Amendment Agreement, as amended and restated by the February 2021 Amendment and Restatement Agreement, as amended and restated by the June 2021 Amendment and Restatement Agreement and as amended by the December 2021 Amendment Agreement) and the Original Guarantee (as amended by the 2020 Amendment Agreement, as amended and restated by the February 2021 Amendment and Restatement Agreement and as amended by the December 2021 Amendment Agreement).
- (N) (+)The Parties have agreed to enter into an amendment and restatement agreement to the Original Loan Agreement (as amended and restated by the 2017 Amending and Restating Agreement, as amended by the 2020 Amendment Agreement, as amended and restated by the February 2021 Amendment and Restatement Agreement, as amended and restated by the June 2021 Amendment and Restatement Agreement, as amended by the December 2021 Amendment Agreement and as amended by the December 2022 ~~Amendment and Restatement Agreement~~ and the Amended Loan Agreement as amended and restated by the ~~2021~~ Amendment and Restatement Agreement, the "~~Loan Agreement~~"), ~~Amendment Agreement, the "Amended Loan Agreement")~~ and to the Original Guarantee (as amended by the 2020 Amendment Agreement, as amended and restated by the February 2021

Amendment and Restatement Agreement, as amended by the December 2021 Amendment Agreement and as amended by the December 2022 Amendment Agreement, the "Amended Guarantee" dated 2023 to, *inter alia*, incorporate certain amendments including the switch from LIBOR to SOFR (as defined therein) (the "2023 Amendment and Restatement Agreement" and the Amended Loan Agreement as amended and restated by the 2023 Amendment and Restatement Agreement, the "Loan Agreement").

(Q) ~~(K)~~ This Guarantee sets out the terms and conditions of the Amended Guarantee as amended and restated by the ~~2024~~-2023 Amendment and Restatement Agreement.

## OPERATIVE PROVISIONS

### 1 INTERPRETATION

#### 1.1 Defined expressions

Words and expressions defined in the Loan Agreement shall have the same meanings when used in this Guarantee unless the context otherwise requires.

#### 1.2 Construction of certain terms

In this Guarantee:

"**Bankruptcy**" includes a liquidation, receivership or administration and any form of suspension of payments, arrangement with creditors or reorganisation under any corporate or insolvency law of any country.

"**Capital Stock**" means:

- (a) in the case of a corporation or company, corporate stock or shares;
- (b) in the case of an association or business entity, any and all shares, interests, participations, rights or other equivalents (however designated) of corporate stock;
- (c) in the case of a partnership or limited liability company, partnership or membership interests (whether general or limited); and
- (d) any other interest or participation that confers on a person the right to receive a share of the profits and losses of, or distributions of assets of, the issuing person.

"**First Financial Quarter**" means the financial quarter ending immediately prior to or on the date falling forty five (45) days before the first Drawdown Date.

"**Loan Agreement**" has the meaning given to such term in Recital ~~(J)~~(N).

~~"**Management**" means the employees of the Guarantor and its subsidiaries or their dependants or any trust for which such persons are the intended beneficiary.~~

"**Shareholder**" means NCL International Ltd., a Bermuda company with its registered office at Park Place ~~55~~, 56 Par-la-Ville Road, Hamilton HM 11, Bermuda.

### **1.3 Application of construction and interpretation provisions of Loan Agreement**

Clauses 1.2 (*Construction of certain terms*) to 1.6 (*General Interpretation*) of the Loan Agreement apply, with any necessary modifications, to this Guarantee.

### **1.4 Inconsistency between Loan Agreement and this Guarantee**

This Guarantee shall be read together with the Loan Agreement, but in case of any conflict between the Loan Agreement and this Guarantee, unless expressly provided to the contrary in this Guarantee, the provisions of the Loan Agreement shall prevail.

### **1.5 Non-applicable provisions between the Guarantor and German Lenders**

The Guarantor acknowledges and agrees that to the extent required for compliance with Section 7 of the Foreign Commerce Regulation (*Außenwirtschaftsverordnung*) (the "Foreign Commerce Regulation") and any other anti-boycott legislation, in connection with section 4 paragraph (1)(a)(3) of the Foreign Trade Law (*Außenwirtschaftsgesetz*) by any Lender incorporated or having its registered office or Facility Office in the Federal Republic of Germany (a "**German Lender**"), the Guarantor does not make (a) any representation under Clause 10.12 (*Sanctions*) or (b) any undertakings under any of Clause 11.19 (*Illicit Payments*), Clause 11.23 (*Prohibited Payments*), and Clause 11.24 (*Sanctions*) of this Guarantee, to or in favour of any German Lender.

## **2 GUARANTEE**

### **2.1 Guarantee and indemnity**

The Guarantor unconditionally and irrevocably:

- (a) guarantees to the Security Trustee punctual performance by the Borrower of all the Borrower's obligations under or in connection with the Loan Agreement and every other Finance Document;
- (b) undertakes to the Security Trustee that whenever the Borrower does not pay any amount when due under or in connection with the Loan Agreement and the other Finance Documents, the Guarantor shall immediately on demand pay that amount as if it was the principal obligor;
- (c) agrees that if any obligation guaranteed by it is or becomes unenforceable, invalid or illegal, it will, as an independent and primary obligation, indemnify the Security Trustee and each other Secured Party immediately on demand by the Security Trustee against any cost, loss or liability it incurs as a result of the Borrower not paying any amount which would, but for such unenforceability, invalidity or illegality, have been payable by it under the Loan Agreement or any other Finance Document on the date when it would have been due. Any such demand for indemnification shall be made through the Security Trustee, for itself or on behalf of the Secured Parties. The amount payable by the Guarantor under this indemnity will not exceed the amount it would have had to pay under this Clause 2.1 (*Guarantee and indemnity*) if the amount claimed had been recoverable on the basis of a guarantee.

### **2.2 No limit on number of demands**

The Security Trustee may serve any number of demands under Clause 2.1 (*Guarantee and indemnity*).



### **3 LIABILITY AS PRINCIPAL AND INDEPENDENT DEBTOR**

#### **3.1 Principal and independent debtor**

The Guarantor shall be liable under this Guarantee as a principal and independent debtor and accordingly it shall not have, as regards this Guarantee, any of the rights or defences of a surety.

#### **3.2 Waiver of rights and defences**

Without limiting the generality of Clause 3.1 (*Principal and independent debtor*), the obligations of the Guarantor under this Guarantee will not be affected or discharged by an act, omission, matter or thing which, but for this Clause, would reduce, release or prejudice any of its obligations under this Guarantee (without limitation and whether or not known to it or any Secured Party) including:

- (a) any time, waiver or consent granted to, or composition with, the Borrower or other person;
- (b) the release of the Borrower or any other person under the terms of any composition or arrangement with any creditor of any affiliate of the Borrower;
- (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, the Borrower or other person or any non-presentation or non-observance of any formality or other requirement in respect of any instrument or any failure to realise the full value of any security;
- (d) any incapacity or lack of power, authority or legal personality of or dissolution or change in the members or status of the Borrower or any other person;
- (e) any amendment, novation, supplement, extension, restatement (however fundamental and whether or not more onerous) or replacement of any Finance Document or any other document or security including without limitation any change in the purpose of, any extension of or any increase in any facility or the addition of any new facility under any Finance Document or other document or security;
- (f) any insolvency or similar proceedings;
- (g) any arrangement or concession (including a rescheduling or acceptance of partial payments) relating to, or affecting, the Finance Documents;
- (h) any release or loss whatsoever of any guarantee, right or Security Interest created by the Finance Documents;
- (i) any failure whatsoever promptly or properly to exercise or enforce any such right or Security Interest, including a failure to realise for its full market value an asset covered by such a Security Interest;
- (j) any other Finance Document or any Security Interest now being or later becoming void, unenforceable, illegal or invalid or otherwise defective for any reason, including a neglect to register it; or

- (k) any unenforceability, illegality or invalidity of any obligation of any person under any Finance Document or any other document or security.

#### **4 EXPENSES**

##### **4.1 Costs of preservation of rights, enforcement etc**

The Guarantor shall pay to the Security Trustee on its demand the amount of all expenses incurred by the Security Trustee or any other Secured Party in connection with any matter arising out of this Guarantee or any Security Interest connected with it, including any advice, claim or proceedings relating to this Guarantee or such a Security Interest.

##### **4.2 Fees and expenses payable under Loan Agreement**

Clause 4.1 (*Costs of preservation of rights, enforcement etc*) is without prejudice to the Guarantor's liabilities in respect of the Borrower's obligations under clauses 9 (*Fees*) and 10 (*Taxes, Increased Costs, Costs and Related Charges*) of the Loan Agreement and under similar provisions of other Finance Documents.

#### **5 ADJUSTMENT OF TRANSACTIONS**

##### **5.1 Reinstatement of obligation to pay**

The Guarantor shall pay to the Security Trustee on its demand any amount which any Secured Party is required, or agrees, to pay pursuant to any claim by, or settlement with, a trustee in **bankruptcy** [Bankruptcy](#) of the Borrower or of any other Obligor (or similar person) on the ground that the Loan Agreement or any other Finance Document, or a payment by the Borrower or of such other Obligor, was invalid or on any similar ground.

#### **6 PAYMENTS**

##### **6.1 Method of payments**

Any amount due under this Guarantee shall be paid:

- (a) in immediately available funds;
- (b) to such account as the Security Trustee may from time to time notify to the Guarantor;
- (c) without any form of set-off, cross-claim or condition; and
- (d) free and clear of any tax deduction except a tax deduction which the Guarantor is required by law to make.

##### **6.2 Grossing-up for taxes**

If the Guarantor is required by law to make a tax deduction, the amount due to the Security Trustee shall be increased by the amount necessary to ensure that the Security Trustee and (if the payment is not due to the Security Trustee for its own account) the Secured Party beneficially interested in the payment receives and retains a net amount which, after the tax deduction, is equal to the full amount that it would otherwise have received.

### **6.3 Tax Credits**

If an additional payment is made by the Guarantor under this Clause and any Secured Party determines that it has received or been granted a credit against or relief of or calculated with reference to the deduction giving rise to such additional payment, such Secured Party shall, to the extent that it can do so without prejudice to the retention of the amount of such credit, relief, remission or repayment and provided that it has received the cash benefit of such credit, relief or remission, pay to the Guarantor such amount as such Secured Party shall in its reasonable opinion have concluded to be attributable to the relevant deduction. Any such payment shall be conclusive evidence of the amount due to the Guarantor hereunder and shall be accepted by the Guarantor in full and final settlement of its rights of reimbursement hereunder in respect of such deduction. Nothing herein contained shall interfere with the right of each Secured Party to arrange its tax affairs in whatever manner it thinks fit.

- 6.4** To the extent that this Clause 6 (*Payments*) imposes obligations or restrictions on a Secured Party, such obligations or restrictions shall not apply to SACE and SACE shall have no obligations hereunder nor be constrained by such restrictions.

## **7 INTEREST**

### **7.1 Accrual of interest**

Any amount due under this Guarantee shall carry interest after the date on which the Security Trustee demands payment of it until it is actually paid, unless interest on that same amount also accrues under the Loan Agreement.

### **7.2 Calculation of interest**

Interest on sums payable under this Guarantee shall be calculated and accrue in the same way as interest under clause 6 (*Interest*) of the Loan Agreement.

### **7.3 Guarantee extends to interest payable under Loan Agreement**

For the avoidance of doubt, it is confirmed that this Guarantee covers all interest payable under the Loan Agreement, including that payable under clause 17 (*Interest on Late Payments*) of the Loan Agreement.

## **8 SUBORDINATION**

### **8.1 Subordination of rights of Guarantor**

Until all amounts which may be or become payable by the Obligors under or in connection with the Finance Documents have been irrevocably paid in full and unless the Agent otherwise directs, all rights which the Guarantor at any time has (whether in respect of this Guarantee or any other transaction) against the Borrower, any other Obligor or their respective assets shall be fully subordinated to the rights of the Secured Parties under the Finance Documents; and in particular, the Guarantor shall not:

- (a) claim, or in a ~~bankruptcy~~ Bankruptcy of the Borrower or any other Obligor prove for, any amount payable to the Guarantor by the Borrower or any other Obligor, whether in respect of this Guarantee or any other transaction;
- (b) take or enforce any Security Interest for any such amount;

- (c) exercise any right to be indemnified by an Obligor;
- (d) bring legal or other proceedings for an order requiring the Borrower or any other Obligor to make any payment, or perform any obligation, in respect of which ~~any~~ the Guarantor has given a guarantee, undertaking or indemnity under this Guarantee;
- (e) claim to set-off any such amount against any amount payable by the Guarantor to the Borrower or any other Obligor; or
- (f) claim any subrogation or right of contribution or other right in respect of any Finance Document or any sum received or recovered by any Secured Party under a Finance Document.

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 Secured Parties by the Obligors under or in connection with the Finance Documents to be repaid in full on trust for the Secured Parties and shall promptly pay or transfer the same to the Security Trustee or as the Security Trustee may direct for application in accordance with the Loan Agreement and the Finance Documents.

## **9 ENFORCEMENT**

### **9.1 No requirement to commence proceedings against Borrower**

The Guarantor waives any right it may have of first requiring the Security Trustee or any other Secured Party to proceed against or enforce any other rights or security or claim payment from any person before claiming from ~~that~~ the Guarantor under this Guarantee. Neither the Security Trustee nor any other Secured Party will need to make any demand under, commence any proceedings under, or enforce any guarantee or any Security Interest contained in or created by, the Loan Agreement or any other Finance Document before claiming or commencing proceedings under this Guarantee. This waiver applies irrespective of any law or any provision of a Finance Document to the contrary.

### **9.2 Conclusive evidence of certain matters**

However, as against the Guarantor:

- (a) any judgment or order of a court in England or the jurisdiction of the Approved Flag or Bermuda or the United States of America in connection with the Loan Agreement; and
  - (b) any statement or admission by the Borrower in connection with the Loan Agreement,
- shall be binding and conclusive as to all matters of fact and law to which it relates.

### **9.3 Suspense account**

Until all amounts which may be or become payable by the Obligors under or in connection with the Finance Documents have been irrevocably paid in full, the Security Trustee and any Secured Party may:

- (a) refrain from applying or enforcing any other moneys, security or rights held or received by it (or any trustee or agent on its behalf which, in the case of a Secured Party, shall include the Agent and the Security Trustee) 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 ~~any~~the Guarantor or on account of ~~any~~the Guarantor's liability under this Guarantee.

## **10 REPRESENTATIONS AND WARRANTIES**

### **10.1 General**

The Guarantor represents and warrants to the Security Trustee as follows on the date of this Guarantee, which representations and warranties shall be deemed to be repeated, with reference mutatis mutandis to the facts and circumstances subsisting, as if made on each day from the date of this Guarantee to the end of the Security Period.

### **10.2 Status**

The Guarantor is duly incorporated and validly existing and in good standing under the laws of Bermuda as an exempted company.

### **10.3 Corporate power**

The Guarantor has the corporate capacity, and has taken all corporate action and obtained all consents necessary for it:

- (a) to execute this Guarantee; and
- (b) to make all the payments contemplated by, and to comply with, this Guarantee.

### **10.4 Consents in force**

All the consents referred to in Clause 10.3 (*Corporate power*) remain in force and nothing has occurred which makes any of them liable to revocation.

### **10.5 Legal validity**

This Guarantee constitutes the Guarantor's legal, valid and binding obligations enforceable against the Guarantor in accordance with its terms subject to any relevant insolvency laws affecting creditors' rights generally.

### **10.6 No conflicts**

The execution by the Guarantor of this Guarantee and its compliance with this Guarantee will not involve or lead to a contravention of:

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

**10.7 No withholding taxes**

All payments which the Guarantor is liable to make under this Guarantee may be made without deduction or withholding for or on account of any tax payable under any law of Bermuda or the United States of America.

**10.8 No default**

To the knowledge of the Guarantor, no Event of Default has occurred which is continuing.

**10.9 Information**

All information which has been provided in writing by or on behalf of the Guarantor to the Security Trustee or any other Secured Party in connection with any Finance Document satisfied the requirements of Clause 11.2 (*Information provided to be accurate*); all audited and unaudited accounts which have been so provided satisfied the requirements of Clause 11.4 (*Form of financial statements*); and there has been no material adverse change in the financial position or state of affairs of the Guarantor from that disclosed in the latest of those accounts.

**10.10 No litigation**

No legal or administrative action involving the Guarantor has been commenced or taken or, to the Guarantor's knowledge, is likely to be commenced or taken which, in either case, would be likely to have a material adverse effect on the Guarantor's financial position or profitability.

**10.11 No Security Interests**

None of the assets or rights of the Guarantor is subject to any Security Interest except any Security Interest which (i) qualifies as a Permitted Security Interest with respect to the Guarantor or (ii) is permitted by Clause 11.11 (*Negative pledge*).

**10.12 Sanctions**

- (a) No payments made or to be made by the Guarantor in respect of amounts due under the Loan Agreement or any Finance Document have been or shall be funded out of funds of Illicit Origin and none of the sources of funds to be used by the Guarantor in connection with the construction of the Ship or its business are of Illicit Origin.
- (b) To the best of the Guarantor's knowledge, no Prohibited Payment has been or will be made or provided, directly or indirectly, by (or on behalf of) it, any of its affiliates, its or its officers, directors or any other person acting on its behalf to, or for the benefit of, any authority (or any official, officer, director, agent or key employee of, or other person with management responsibilities in, of any authority) in connection with the Ship, the Loan Agreement and/or the Finance Documents.
- (c) The Guarantor:
  - (i) is not a Prohibited Person;
  - (ii) is not owned or controlled by or acting directly or indirectly on behalf of or for the benefit of, a Prohibited Person; or
  - (iii) does not own or control a Prohibited Person.

## 11 UNDERTAKINGS

### 11.1 General

The Guarantor undertakes with the Security Trustee to comply with the following provisions of this Clause 11 (*Undertakings*) at all times from the date of this Guarantee to the end of the Security Period, except as the Security Trustee may otherwise permit.

### 11.2 Information provided to be accurate

All financial and other information which is provided in writing by or on behalf of the Guarantor under or in connection with this Guarantee will be true and not misleading and will not omit any material fact or consideration.

### 11.3 Provision of financial statements

The Guarantor will send to the Security Trustee:

- (a) as soon as practicable, but in no event later than 120 days after the end of each financial year of the Guarantor beginning with the year ending 31 December 2016, the audited consolidated accounts of the Guarantor and its subsidiaries;
- (b) as soon as practicable (and in any event within forty-five (45) days of the end of the contemplated quarter in respect of the first three quarters of each fiscal year and 90 days in respect of the final quarter) a copy of the unaudited consolidated quarterly management accounts of the Guarantor certified as to their correctness by the chief financial officer of the Guarantor (it being understood that the delivery by the Guarantor of quarterly or annual reports as filed with the Securities and Exchange Commission in respect of the Guarantor and its consolidated subsidiaries shall satisfy all the requirements of this paragraph (b));
- (c) a compliance certificate in the form set out in Schedule 1 (*Form of Compliance Certificate*) to this Guarantee or in such other form as the Security Trustee may reasonably require (each a "**Compliance Certificate**"):
  - (i) for the first time, no later than the First Financial Quarter on the basis of the latest available quarterly financial statements, and
  - (ii) at the same time as there is delivered to the Security Trustee, and together with, each set of unaudited consolidated quarterly management accounts under paragraph (b) and, if applicable, audited consolidated accounts under paragraph (a), duly signed by the chief financial officer of the Guarantor and certifying whether or not the requirements of Clause 11.15 (*Financial Covenants*) are then complied with;
- (d) such additional financial or other relevant information regarding the Guarantor and the Group as the Security Trustee may reasonably request; and
- (e) as soon as practicable (and in any event not later than January 31 of each fiscal year):
  - (i) updated financial projections of the Group for at least the next five years (including an income statement, balance sheet statement and cash flow statement and quarterly break downs for the first of those five years); and

- (ii) an outline of the assumptions supporting such budget and financial projections including but without limitation any scheduled drydockings.
- (f) **Additional financial reporting**

In addition to the information to be provided in accordance with clause 12.2 (*Information*) of the Loan Agreement and this Clause 11.3 (*Provision of financial statements*), the Guarantor undertakes to provide to the Agent a written report (in form and substance satisfactory to SACE) from the 2021 Deferral Effective Date ~~until the end of the Deferral Period~~, covering the information requested in the document entitled "Regular Monitoring Requirements", the form of which is included in Schedule 2 (*Regular Monitoring Requirements*), within the timelines specified therein.
- (g) For the avoidance of doubt, subject to the provisions of the Loan Agreement, paragraph (h) below and Clause 11.21 (*Breach of new covenants or the Principles*), the financial covenants contained in Clause 11.15 (*Financial Covenants*) will continue to be tested and the reporting obligations shall continue to apply in accordance with this Clause 11.3 (*Provision of financial statements*) in respect of the Deferral Period.
- (h) Any breach of any financial covenant contained in paragraphs (b) and (c) of Clause 11.15 (*Financial Covenants*) arising on a testing date during the Deferral Period, by reference to the financial position of the Group (on a consolidated basis), shall not (without prejudice to the rights of the Lenders in respect of any further breach of such financial covenants that may occur following the expiry of the Deferral Period (including, without limitation, the ability to terminate the waiver of the financial covenants granted pursuant to paragraphs (b) and (c) of Clause 11.15 (*Financial Covenants*) having occurred), and subject further to no Event of Default under clauses 18.7 (*Winding-up*) to clause 18.13 (*Cessation of business*) (inclusive) of the Loan Agreement having occurred and being continuing), result in an Event of Default.

#### **11.4 Form of financial statements**

All accounts (audited and unaudited) delivered under Clause 11.3 (*Provision of financial statements*) will:

- (a) be prepared in accordance with GAAP;
- (b) when required to be audited, be audited by the auditors which are the Guarantor's auditors at the date of this Guarantee or other auditors approved by the Security Trustee, provided that, such approval by the Security Trustee shall not be unreasonably withheld or delayed;
- (c) give a true and fair view of the state of affairs of the Guarantor and its subsidiaries at the date of those accounts and of their profit for the period to which those accounts relate; and
- (d) fully disclose or provide for all significant liabilities of the Guarantor and its subsidiaries.

#### **11.5 Shareholder and creditor notices**

The Guarantor will send the Security Trustee, at the same time as they are despatched, copies of all communications which are despatched to the Guarantor's shareholders or creditors generally or any class of them.



## **11.6 Consents**

The Guarantor will maintain in force and promptly obtain or renew, and will promptly send certified copies to the Security Trustee of, all consents required:

- (a) for the Guarantor to perform its obligations under this Guarantee;
- (b) for the validity or enforceability of this Guarantee,

and the Guarantor will comply with the terms of all such consents.

## **11.7 Notification of litigation**

The Guarantor will provide the Security Trustee with details of any material legal or administrative action involving the Guarantor as soon as such action is instituted or it becomes apparent to the Guarantor that it is likely to be instituted (and for this purpose proceedings shall be deemed to be material if they involve a claim in an amount exceeding twenty million Dollars (\$20,000,000) or the equivalent in another currency).

## **11.8 Domicile and principal place of business**

The Guarantor:

- (a) will maintain its domicile and registered office at the address stated at the commencement of this Guarantee or at such other address in Bermuda as is notified beforehand to the Security Trustee;
- (b) will maintain its principal place of business and keep its corporate documents and records in the United States of America at 7665 Corporate Center Drive, Miami, 33126, Florida or at such other address in the United States of America as is notified beforehand to the Security Trustee; and
- (c) will not move its domicile out of Bermuda nor its principal place of business out of the United States of America without the prior agreement of the Security Trustee, acting with the authorisation of the Secured Parties, such agreement not to be unreasonably withheld.

## **11.9 Notification of default**

The Guarantor will notify the Security Trustee as soon as the Guarantor becomes aware of the occurrence of an Event of Default and will thereafter keep the Security Trustee fully up-to-date with all developments.

## **11.10 Maintenance of status**

The Guarantor will maintain its separate corporate existence and remain in good standing under the laws of Bermuda.

## **11.11 Negative pledge**

The Guarantor shall not, and shall procure that the Borrower will not, create or permit to arise any Security Interest over any asset present or future except Security Interests created or permitted by the Finance Documents and except for the following:

- (a) Security Interests created with the prior consent of the Security Trustee or otherwise permitted by the Finance Documents;
- (b) in the case of the Guarantor, Security Interests which qualify as Permitted Security Interests with respect to the Guarantor;
- (c) in the case of the Borrower, Security Interests permitted under clause 12.8 (*Negative pledge*) of the Loan Agreement;
- (d) Security Interests provided in favour of lenders under and in connection with any refinancing of the Existing Indebtedness or any financing arrangements entered into by any member of the Group for the acquisition of additional or replacement ship(s) (including any refinancing of any such arrangement) but limited to:
  - (i) pledges of the share capital of the relevant ship owning subsidiary(/ies); and/or
  - (ii) ship mortgages and other securities over the financed ship(s).

**11.12 No disposal of assets, change of business**

The Guarantor will:

- (a) not, and shall procure that its subsidiaries, as a group, shall not, transfer all or substantially all of the cruise vessels owned by them and shall procure that any cruise vessels which are disposed of in compliance with the foregoing shall be disposed on a willing seller willing buyer basis at or about market rate and at arm's length subject always to the provisions of any pertinent loan documentation, and
- (b) continue to be a holding company for a group of companies whose main business is the operation of cruise vessels as well as the marketing of cruises on board such vessels and the Guarantor will not change its main line of business so as to affect any Obligor's ability to perform its obligations under the Finance Documents or to imperil, in the opinion of the Security Trustee, the security created by any of the Finance Documents or the SACE Insurance Policy.

**11.13 No merger etc**

The Guarantor shall not enter into any form of merger, sub-division, amalgamation, restructuring, consolidation, winding-up, dissolution or anything analogous thereto or acquire any entity, share capital or obligations of any corporation or other entity (each of the foregoing being a "**Transaction**") unless:

- (a) the Guarantor has notified the Security Trustee in writing of the agreed terms of the relevant Transaction promptly after such terms have been agreed as heads of terms (or similar) and thereafter notified the Security Trustee in writing of any significant amendments to such terms during the course of the negotiation of the relevant Transaction; and
- (b) the relevant Transaction does not require or involve or result in any dissolution of the Guarantor so that at all times the Guarantor remains in existence; and
- (c) each notice delivered to the Security Trustee pursuant to paragraph (a) above is accompanied by a certificate signed by the chief financial officer of the Guarantor whereby the Guarantor represents and warrants to the Security Trustee that the relevant Transaction will not:

- (i) adversely affect the ability of any Obligor to perform its obligations under the Finance Documents;
  - (ii) imperil the security created by any of the Finance Documents or the SACE Insurance Policy; or
  - (iii) affect the ability of the Guarantor to comply with the financial covenants contained in Clause 11.15 (*Financial Covenants*); and
- (d) if the merger or analogous transaction involves the Guarantor or the Borrower, all the necessary "Know your customer requirements" have been complied with.

**11.14 Maintenance of ownership of Borrower and Shareholder**

- (a) The Guarantor shall remain the direct or indirect beneficial owner of the entire issued and allotted share capital of the Shareholder, free from any Security Interest and the Shareholder shall remain the legal holder and direct beneficial owner of all shares in the Borrower, free from any Security Interest, except that created in favour of the Security Trustee; or
- (b) no person or "group" (within the meaning of Rules 13d-3 and 13d-5 under the Securities Exchange Act of 1934 (15 USC §78a et seq.) (the "**Exchange Act**") as in effect on the date of this Guarantee) shall acquire beneficial ownership of 35% or more on a fully diluted basis of the voting interest in the Guarantor's equity interests.

**11.15 Financial Covenants**

- (a) The Guarantor will not permit the Free Liquidity to be less than fifty million Dollars (\$50,000,000) at any time, save that ~~during the Deferral Period until 30 September 2026~~, this amount shall be increased to two hundred ~~and fifty~~ million Dollars (~~\$200,000,000~~\$250,000,000).
- (b) The Guarantor will not permit the ratio of Total Net Funded Debt to Total Capitalization to be greater than 0.70:1.00 at any time, save that from 1 January 2023 until 30 September 2026, this ratio shall be computed in accordance with the table below.
- (c) The Guarantor will not permit the ratio of Consolidated EBITDA to Consolidated Debt Service for the Group at the end of any fiscal quarter, computed for the period of the four consecutive fiscal quarters ending as at the end of the relevant fiscal quarter, to be less than 1.25:1.00 unless the Free Liquidity of the Group at all times during such period of four consecutive fiscal quarters ending as at the end of such fiscal quarter was equal to or greater than one hundred million Dollars (\$100,000,000); save that from 1 January 2023 until 30 September 2026, this amount shall be increased to three hundred million Dollars (\$300,000,000).

	<u>1Q 2023</u>	<u>2Q 2023</u>	<u>3Q 2023</u>	<u>4Q 2023</u>	<u>1Q 2024</u>	<u>2Q 2024</u>	<u>3Q 2024</u>	<u>4Q 2024</u>	<u>1Q 2025</u>	<u>2Q 2025</u>	<u>3Q 2025</u>	<u>4Q 2025</u>	<u>1Q 2026</u>	<u>2Q 2026</u>	<u>3Q 2026</u>
<u>Total Net Funded Debt to Total Capitalization</u>	<u>0.93</u>	<u>0.92</u>	<u>0.91</u>	<u>0.91</u>	<u>0.91</u>	<u>0.90</u>	<u>0.88</u>	<u>0.87</u>	<u>0.87</u>	<u>0.85</u>	<u>0.82</u>	<u>0.79</u>	<u>0.79</u>	<u>0.76</u>	<u>0.73</u>

## 11.16 Financial definitions

For the purposes of Clause 11.15 (*Financial Covenants*):

- (a) "**Cash Balance**" shall mean, at any date of determination, the unencumbered and otherwise unrestricted cash and Cash Equivalents of the Group;
- (b) "**Cash Equivalents**" shall mean (i) securities issued or directly and fully guaranteed or insured by the United States or any agency or instrumentality thereof (provided that the full faith and credit of the United States is pledged in support thereof) having maturities of not more than one year from the date of acquisition, (ii) time deposits and certificates of deposit of any commercial bank having, or which is the principal banking subsidiary of a bank holding company having capital, surplus and undivided profits aggregating in excess of two hundred million Dollars (\$200,000,000), with maturities of not more than one year from the date of acquisition by any person, (iii) repurchase obligations with a term of not more than 90 days for underlying securities of the types described in clause (i) above entered into with any bank meeting the qualifications specified in clause (ii) above, (iv) commercial paper issued by any person incorporated in the United States rated at least A-1 or the equivalent thereof by S&P or at least B-1 or the equivalent thereof by Moody's and in each case maturing not more than one year after the date of acquisition by any other person, and (v) investments in money market funds substantially all of whose assets are comprised of securities of the types described in clauses (i) through (iv) above;
- (c) "**Consolidated Debt Service**" shall mean, for any relevant period, the sum (without double counting), determined in accordance with GAAP, of:
  - (i) the aggregate principal payable or paid during such period on any Indebtedness for Borrowed Money of any member of the Group, other than:
    - (A) principal of any such Indebtedness for Borrowed Money prepaid at the option of the relevant member of the Group or by virtue of "cash sweep" or "special liquidity" cash sweep provisions (or analogous provisions) in any debt facility of the Group;
    - (B) principal of any such Indebtedness for Borrowed Money prepaid upon a sale or a Total Loss of any ship (as if references in that definition were to all ships and not just the Ship) owned or leased under a capital lease by any member of the Group; and
    - (C) balloon payments of any such Indebtedness for Borrowed Money payable during such period (and for the purpose of this paragraph (c) a "balloon payment" shall not include any scheduled repayment instalment of such Indebtedness for Borrowed Money which forms part of the balloon);
  - (ii) Consolidated Interest Expense for such period;
  - (iii) the aggregate amount of any dividend or distribution of present or future assets, undertakings, rights or revenues to any shareholder of any member of the Group (other than the Guarantor, or one of its wholly owned Subsidiaries) or any dividends or distributions other than tax distributions in each case paid during such period; and

- (iv) all rent under any capital lease obligations by which the Guarantor or any consolidated Subsidiary is bound which are payable or paid during such period and the portion of any debt discount that must be amortized in such period;

as calculated in accordance with GAAP and derived from the then latest accounts delivered under Clause 11.3 (*Provision of financial statements*);

- (d) "**Consolidated EBITDA**" shall mean, for any relevant period, the aggregate of:
  - (i) Consolidated Net Income from the Guarantor's operations for such period; and
  - (ii) the aggregate amounts deducted in determining Consolidated Net Income for such period in respect of gains and losses from the sale of assets or reserves relating thereto, Consolidated Interest Expense, depreciation and amortization, impairment charges and any other non-cash charges and deferred income tax expense for such period.
- (e) "**Consolidated Interest Expense**" shall mean, for any relevant period, the consolidated interest expense (excluding capitalized interest) of the Group for such period;
- (f) "**Consolidated Net Income**" shall mean, for any relevant period, the consolidated net income (or loss) of the Group for such period as determined in accordance with GAAP;
- (g) "**Free Liquidity**" shall mean, at any date of determination, the aggregate of the Cash Balance or any other amounts available for drawing under other revolving or other credit facilities of the Group, which remain undrawn, could be drawn for general working capital purposes or other general corporate purposes and would not, if drawn, be repayable within six months;
- (h) "**Indebtedness**" shall mean any obligation for the payment or repayment of money, whether as principal or as surety and whether present or future, actual or contingent including, without limitation, pursuant to an Interest Rate Protection Agreement or Other Hedging Agreement;
- (i) "**Indebtedness for Borrowed Money**" shall mean Indebtedness (whether present or future, actual or contingent, long-term or short-term, secured or unsecured) in respect of:
  - (i) moneys borrowed or raised;
  - (ii) the advance or extension of credit (including interest and other charges on or in respect of any of the foregoing);
  - (iii) the amount of any liability in respect of leases which, in accordance with GAAP, are capital leases;
  - (iv) the amount of any liability in respect of the purchase price for assets or services payment of which is deferred for a period in excess of 180 days;
  - (v) all reimbursement obligations whether contingent or not in respect of amounts paid under a letter of credit or similar instrument; and
  - (vi) (without double counting) any guarantee of Indebtedness falling within paragraphs (i) to (v) above;

**PROVIDED THAT** the following shall not constitute Indebtedness for Borrowed Money:

- (A) loans and advances made by other members of the Group which are subordinated to the rights of the Secured Parties;
  - (B) loans and advances made by any shareholder of the Guarantor which are subordinated to the rights of the Secured Parties on terms reasonably satisfactory to the Agent; and
  - (C) any liabilities of the Guarantor or any other member of the Group under any Interest Rate Protection Agreement or any Other Hedging Agreement or other derivative transactions of a non-speculative nature;
- (j) **"Interest Rate Protection Agreement"** shall mean any interest rate swap agreement, interest rate cap agreement, interest collar agreement, interest rate hedging agreement, interest rate floor agreement or other similar agreement or arrangement entered into between a Lender or its Affiliate, or a Joint Mandated Lead Arranger or its Affiliate, and the Guarantor and/or the Borrower in relation to the Secured Liabilities of the Borrower under the Loan Agreement;
- (k) **"Other Hedging Agreement"** shall mean any foreign exchange contracts, currency swap agreements, commodity agreements or other similar agreements or arrangements entered into between a Lender or its Affiliate, or a Joint Mandated Lead Arranger or its Affiliates, and the Guarantor and/or the Borrower in relation to the Secured Liabilities of the Borrower under the Loan Agreement and designed to protect against the fluctuations in currency or commodity values;
- (l) **"Total Capitalization"** means, at any date of determination, the Total Net Funded Debt plus the consolidated stockholders' equity of the Group at such date determined in accordance with GAAP and derived from the then latest accounts delivered under Clause 11.3 (*Provision of financial statements*); provided it is understood that the effect of any impairment of intangible assets and, in relation to exchangeable or convertible notes or other debt instruments containing similar equity mechanisms, any non-cash loss, charge or expense shall be added back to stockholders' equity;~~and~~
- (m) **"Total Net Funded Debt"** shall mean, as at any relevant date:
- (i) Indebtedness for Borrowed Money of the Group on a consolidated basis; and
  - (ii) the amount of any Indebtedness for Borrowed Money of any person which is not a member of the Group but which is guaranteed by a member of the Group as at such date;
- less an amount equal to any Cash Balance as at such date; provided that any Commitments and other amounts available for drawing under other revolving or other credit facilities of the Group which remain undrawn shall not be counted as cash or indebtedness for the purposes of this Guarantee.

#### 11.17 Negative Undertakings

- (a) The Guarantor may, subject to the provisions of paragraph (c) below:
- (i) at any time prior to the end of the First Financial Quarter, declare or pay dividends or make other distributions or payment in respect of Financial Indebtedness owed to its shareholders without the prior written consent of the Security Trustee;

- (ii) at any time after the end of the First Financial Quarter, declare or pay dividends or make other distributions or payment in respect of Financial Indebtedness owed to its shareholders without the prior written consent of the Security Trustee, subject to it on each such occasion satisfying the Security Trustee acting on behalf of the Secured Parties that it will continue to meet all the requirements of Clause 11.15 (*Financial Covenants*), if such covenants were to be tested immediately following the payment of any such dividend; and
- (iii) pay dividends (x) to persons responsible for paying the tax liability in respect of consolidated, combined, unitary or affiliated tax returns for each relevant jurisdiction of the Group, or (y) to holders of the Guarantor's Capital Stock with respect to income taxable as a result of a member of the Group being taxed as a pass-through entity for U.S. Federal, state and local income tax purposes or attributable to any member of the Group,

provided that the actions in paragraphs (ii) and (iii) above shall only be permitted if there is no Event of Default which is continuing under the Loan Agreement and no Event of Default would arise from the payment of such dividend.

- (b) ~~Subject to the restrictions set out in~~ Save as permitted by Clause 11.19 (*New capital raises or financing*) the Guarantor shall not, and shall procure that none of its subsidiaries shall:

- (i) make loans to any person that is not the Guarantor or a direct or indirect subsidiary of the Guarantor; or
- (ii) issue or enter into one or more guarantees covering the obligations of any person which is not the Guarantor or a direct or indirect subsidiary of the Guarantor,

except if such loan is granted to a non subsidiary or such guarantee is issued in the ordinary course of business covering the obligations of a non subsidiary and the aggregate amount of all such loans and guarantees made or issued by the Guarantor and its subsidiaries does not exceed [\*] Dollars (\$[\*]) or is otherwise approved by the Security Trustee which approval shall not be unreasonably withheld if such loan or guarantee in respect of a non subsidiary would neither:

- (A) affect the ability of any Obligor to perform its obligations under the Finance Documents; nor
- (B) imperil the security created by any of the Finance Documents or the SACE Insurance Policy; nor
- (C) affect the ability of the Guarantor to comply with the financial covenants contained in Clause 11.15 (*Financial Covenants*) if such covenants were to be tested immediately following the grant of such loan or the issuance of such guarantee, as demonstrated by evidence satisfactory to the Security Trustee.

**(c) Dividend Restriction**

Neither the Guarantor nor the Holding shall, and the Guarantor shall procure that none of its subsidiaries shall:

- (i) declare, make or pay any dividend or other distribution (or interest on any unpaid dividend or other distribution) (whether in cash or in kind) on or in respect of its share capital (or any class of its share capital);
- (ii) repay or distribute any dividend or share premium reserve;
- (iii) make any repayment of any kind under any shareholder loan; or
- (iv) redeem, repurchase (whether by way of share buy-back program or otherwise), defease, retire or repay any of its share capital or resolve to do so,

during the period up to and including 31 December 2022, except that (A) any Obligor other than the Guarantor may pay dividends and other distributions, directly or indirectly, to the Guarantor for the purpose of providing liquidity to the Guarantor to enable the Guarantor to satisfy payment obligations for which the Guarantor is an obligor, (B) any Obligor may pay dividends in respect of the Tax liability to each relevant jurisdiction in respect of consolidated, combined, unitary or affiliated Tax returns for each relevant jurisdiction of the Group or the Holding or holder of the Guarantor's ~~capital stock~~ Capital Stock with respect to income taxable as a result of any member of the Group or the Holding being taxed as a pass-through entity for U.S. Federal, state and local income Tax purposes or attributable to any member of the Group, (C) the Guarantor and the Holding may pay dividends and other distributions (x) in respect of a conversion, exchange, or repurchase of convertible or exchangeable notes and any conversion of preference shares to ordinary shares in connection therewith, provided that the cash portion of a repurchase of convertible or exchangeable notes is limited to the amount of interest that would otherwise be payable through maturity on the amount of such convertible or exchangeable notes being repurchased plus any amount in lieu of fractional shares, and (y) to the extent contractually owed to holders of equity in the Guarantor or the Holding and (D) the Guarantor may pay dividends and other distributions to the Holding for the purposes of providing cash to the Holding for the payment of any Tax payable in connection with the Holding's equity plan,

provided that the actions in paragraph (B) and (C) above shall only be permitted if there is no Event of Default which is continuing under the Loan Agreement and no Event of Default would arise from the payment of such dividend.

- (d) For the avoidance of doubt, the Holding gives no guarantee of any kind nor undertakes any obligations under this Guarantee other than the undertaking as expressly specified in paragraph (c) above.

#### **11.18 Most favoured nations**

- (a) The Guarantor undertakes that if at any time after the date of this Guarantee it enters into any financial contract or financial document relating to any Financial Indebtedness with or which has the support of any export credit agency and which contains *pari passu* provisions or cross default provisions which are more favourable to the lenders than those contained in paragraph (l) of clause 11.2 (*Continuing representations and warranties*) of the Loan Agreement and clause 18.6 (*Cross default*) of the Loan Agreement respectively, the Guarantor shall immediately notify the Borrower and the Agent of such provisions and the relevant provisions contained in the Loan Agreement shall be deemed amended so that such more favourable *pari passu* provisions or cross default provisions are granted to the Creditor Parties pursuant to the Loan Agreement.



- (b) The Guarantor undertakes that if at any time after the date of this Guarantee and until the occurrence of a Reinstatement Event, it or any other member of the Group is required to grant additional security in relation to a financial contract or financial document relating to any existing Financial Indebtedness:
- (i) with the support of any export credit agency (excluding any extensions, increases or changes to the terms and conditions thereof), such security shall be granted on a *pari passu* basis to the Lenders (and the Security Trustee agrees to enter and/or procure the entry by the relevant Secured Parties into such intercreditor documentation to reflect such *pari passu* ranking (in form and substance reasonably satisfactory to the Secured Parties) as may be required in connection with such arrangements), or
  - (ii) without the support of any export credit agency (excluding any extensions, increases or changes to the terms and conditions thereof), such security shall (without prejudice to any of the Obligors' other obligations under the Finance Documents), subject to the provisions of Clause 11.11 (*Negative pledge*) of this Guarantee and clause 12.8 (*Negative pledge*) of the Loan Agreement, be permitted provided that it shall not have an adverse effect on any Security Interests or other rights granted to the Secured Parties under the Finance Documents.
- (c) ~~In~~ Until the occurrence of a Reinstatement Event, in respect of any new Financial Indebtedness (other than Permitted Financial Indebtedness), or any extensions, increases or changes to the terms and conditions of any existing Financial Indebtedness, in each case with or which has the support of any export credit agency, the Guarantor shall enter into good faith negotiations with the Security Trustee to grant additional security for the purpose of further securing the Loan, provided that any failure to reach agreement under this paragraph (c) following such good faith negotiations shall not constitute an Event of Default.

#### 11.19 New capital raises or financing

- (a) Save as provided below:
- (i) no new debt ~~or equity issuance~~ shall be raised and no new Financial Indebtedness shall be incurred by the Group (including, for the avoidance of doubt, inter-company loans);
  - (ii) no non-arm's length disposals of any asset relating to the Group fleet shall be made; and
  - (iii) no additional Security Interests securing existing Financial Indebtedness will be created or permitted to subsist by any Obligor (unless the Lenders benefit from this new security on a *pari passu* basis),
- ~~during the Deferral Period-~~
- until 31 December 2023.
- (b) The restrictions in paragraph (a) above shall not apply in relation to:
- (i) any refinancing of any bond issuance of, or loan entered into by, the Group (A) which matures during such period or (B) where not maturing during such period, which shall be on terms ~~which include any of the following (evidence of which shall be provided to the Agent by the Guarantor)~~ resulting, when taken as a whole, in an improvement of the ability of the Obligors to meet their obligations under the Finance Documents.

which terms include any of the following: an extension of the repayment terms; a decrease in the interest rate; or the conversion of such Financial Indebtedness from secured to unsecured or first to second priority;

- (ii) any debt ~~or equity issuance~~ provided prior to 31 December ~~2022-2023~~ to provide the Group with crisis and/or recovery related funding in respect of the impact of the Covid-19 pandemic;
- (iii) any debt ~~or equity issuance~~ being raised on or after 31 December ~~2022-2023~~ to support the Group with the impact of the Covid-19 pandemic, made with the prior written consent of SACE;
- (iv) any debt ~~or equity issuance~~ being raised to finance any instalment of a cruise vessel already contracted for or contracted for during such period or any refurbishment, maintenance, upgrade or lengthening of a cruise ship during such period (including without limitation any costs incurred by the owner of a cruise ship in connection therewith);
- (v) any debt ~~or equity issuance~~ being raised to finance capital expenditure for projects which are already contracted for but in respect of which committed financing has not yet been obtained, and which, in each case has been (or will be) listed in the Information Package submitted to the Agent prior to the February 2021 ~~Deferral~~ Effective Date;
- (vi) any extension or renewal of revolving credit facilities, and made with the prior written consent of SACE if any additional security is to be granted;
- (vii) any new debt ~~or equity issuance~~ otherwise agreed by SACE;
- (viii) any inter-company loan or operating arrangement which from an accounting perspective has the effect of an intercompany loan (an "intercompany arrangement") which:
  - (A) is existing as at the date of the February 2021 Amendment and Restatement Agreement;  
or
  - (B) is made among any Group members or any Group member with the Holding provided that:
    - (1) any inter-company arrangement is made solely for the purpose of regulatory or Tax purposes carried out in the ordinary course of business and on an arm's length basis; and
    - (2) the aggregate principal amount of any inter-company arrangements pursuant to this ~~paragraph~~ ~~(B)~~ ~~sub-paragraph(b)(viii)(B)~~ of this Clause 11.19 (New capital raises or financing) does not exceed [\*] Dollars (\$[\*]) at any time; or
  - (C) has been approved with the prior written consent of SACE.
- (ix) any Permitted Security Interest;
- (x) any Security Interest otherwise approved with the prior written consent of SACE; ~~or~~

- (xi) any Financial Indebtedness incurred in the ordinary course of business which in the aggregate does not exceed USD [\*] during any twelve-month period; it being provided that:
- (A) prior to 31 December 2022, this amount shall be increased to USD [\*] for any Financial Indebtedness incurred to finance capital expenditure for Approved Projects; and
- (B) if any part of such Financial Indebtedness allocated to an Approved Project remains unused throughout the twelve-month period of year 2022, the surplus may be carried over to increase the relevant Financial Indebtedness throughout the twelve-month period of year 2023 for that Approved Project only;
- (xii) without prejudice to clauses 12.11 (*Mergers*) and 12.15 (*Investments*) of the Loan Agreement and Clause 11.13 (*No merger etc*), the issuance of share capital by any Group member to another Group member; and
- (xiii) any extension, renewal, replacement or upsizing in respect of the Term and Revolving Credit Facilities (including the granting of additional Security Interests);
- and, for the avoidance of doubt, no debt or equity issuance shall be raised in respect of any form of merger, sub-division, amalgamation, restructuring, consolidation, winding-up, dissolution or anything analogous thereto or acquisition of any entity, share capital or obligations of any corporation or other entity.

#### **11.20 Payments under the Shipbuilding Contracts**

Until the end of the Deferral Period:

- (a) the Guarantor shall and the Guarantor shall procure that any member of the Group that has entered into a shipbuilding contract with a shipbuilder or enters into any such shipbuilding contract, in each case which is financed with the support of SACE (the "**Covered Shipbuilding Contracts**") shall continue to perform all of their respective obligations as set out in any Covered Shipbuilding Contract (including without limitation the payment of any instalments due under any Covered Shipbuilding Contract (as the same may have been amended prior to the 2021 Deferral Effective Date), and subject to any amendment agreed pursuant to paragraph (b) below). The Guarantor shall and the Guarantor shall procure that any member of the Group shall promptly notify the Agent and SACE of any failure by it to comply with any due and owing obligations under a Covered Shipbuilding Contract; and
- (b) the Guarantor shall and the Guarantor shall procure that any member of the Group further undertakes to consult with the Agent and SACE in respect of any proposed amendment to a Covered Shipbuilding Contract insofar as any such proposed amendment relates to a payment instalment or (save as expressly permitted by the Loan Agreement) a delivery date or any other substantial amendment which may affect the related financing and to obtain the Agent and SACE's approval prior to executing any such amendment.

#### **11.21 Breach of new covenants or the Principles**

- (a) Failure to comply, until the end of the Deferral Period, with the provisions of paragraph (f) of clauses 11.3 (*Additional financial reporting*), paragraph (c) of clause 11.17 (*Dividend Restriction*), 11.19 (*New capital raises or financing*), 11.20 (*Payments under the Shipbuilding*

*Contracts*), or to otherwise duly perform and observe the other requirements and obligations set out in the Principles shall, in each case, not constitute an Event of Default under the Loan Agreement but shall (in the case of any failure that is capable of remedy (in the opinion of the Agent, at its sole discretion), including any failure to comply with Clause 11.20 (*Payments under the Shipbuilding Contracts*) or paragraph (f) of clause 11.3 (*Additional financial reporting*), only if such failure is not remedied within the Relevant Period pursuant to clause 18.4 (*Breach of other obligations*) of the Loan Agreement from the date of such failure to comply) result in the reinstatement by the Agent from the date of such breach of the requirement to comply with the financial covenants set out in paragraphs (b) and (c) of Clause 11.15 (*Financial covenants*) which was otherwise suspended during the Deferral Period.

- (b) Save as permitted by Clause 11.19 (*New capital raises or financing*), if at any time after the February 2021 ~~Deferral~~-Effective Date and until the occurrence of a Reinstatement Event:
- (i) the Guarantor or any other Group member enters into any financial contract or financial document relating to any Financial Indebtedness and which contains any debt deferral or covenant waivers of existing debt, or the raising of any new debt intended to reimburse existing debt that benefits from additional security or more favourable terms than those available to the Lenders (unless they are granted to the Lenders on a *pari passu* basis), the requirement to comply with the financial covenants set out in paragraphs (b) and (c) of Clause 11.15 (*Financial covenants*) which was otherwise suspended during the Deferral Period shall be reinstated (it being provided that such covenants shall not be reinstated in case of such financial contract or financial document relating to the Term and Revolving Credit Facilities); or
- (ii) the Guarantor or any other Group member makes a prepayment (save for any mandatory prepayment necessary to avoid an event of default (however defined)) of any Financial Indebtedness (unless this is done on a *pari passu* basis with the obligations owed to the Lenders hereunder), the requirement to comply with the financial covenants set out in paragraphs (b) and (c) of Clause 11.15 (*Financial covenants*) which was otherwise suspended during the Deferral Period shall be reinstated (it being provided that such covenants shall not be reinstated in case of a prepayment relating to the revolving tranche of the Term and Revolving Credit Facilities within the ordinary course of business).

#### **11.22 Illicit Payments**

No payments made by the Guarantor in respect of amounts due under the Loan Agreement or any Finance Document shall be funded out of funds of Illicit Origin and none of the sources of funds to be used by the Guarantor in connection with the construction of the Ship or its business shall be of Illicit Origin.

#### **11.23 Prohibited Payments**

No Prohibited Payment shall be made or provided, directly or indirectly, by (or on behalf of) the Guarantor or any of its affiliates, officers, directors or any other person acting on its behalf to, or for the benefit of, any authority (or any official, officer, director, agent or key employee of, or other person with management responsibilities in, of any authority) in connection with the Ship, the Loan Agreement and/or the Finance Documents.

#### **11.24 Sanctions**

The Guarantor shall comply, or procure compliance with all Sanctions.

### **11.25 Additional Undertakings**

The Guarantor shall not and shall procure that no Obligor shall 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 an Obligor to perform any of its obligations under the Transaction Documents;
- (b) cause any obligation of an Obligor under the Finance Documents to cease to be legal, valid, binding or enforceable if that cessation individually or together with any other cessations materially or adversely affects the interests of the Secured Parties under the Transaction Documents;
- (c) cause any Transaction Document to cease to be in full force and effect;
- (d) cause any Security Interest to lose its priority or ranking; and
- (e) imperil or jeopardise any Security Interest.

## **12 JUDGMENTS AND CURRENCY INDEMNITY**

### **12.1 Judgments relating to Loan Agreement**

This Guarantee shall cover any amount payable by the Borrower under or in connection with any judgment relating to the Loan Agreement.

### **12.2 Currency indemnity**

In addition, clause 20.4 (*Currency indemnity*) of the Loan Agreement shall apply, with any necessary adaptations, in relation to this Guarantee.

## **13 SET-OFF**

### **13.1 Application of credit balances**

Each Secured 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 the Guarantor at any office in any country of that Secured Party in or towards satisfaction of any sum then due from the Guarantor to that Secured Party under this Guarantee; and
- (b) for that purpose:
  - (i) break, or alter the maturity of, all or any part of a deposit of the Guarantor;
  - (ii) convert or translate all or any part of a deposit or other credit balance into Dollars;
  - (iii) enter into any other transaction or make any entry with regard to the credit balance which the Secured Party concerned considers appropriate.

### **13.2 Existing rights unaffected**

No Secured Party shall be obliged to exercise any of its rights under Clause 13.1 (*Application of credit balances*); and those rights shall be without prejudice and in addition to any right of set-off, combination of accounts, charge, lien or other right or remedy to which a Secured Party is entitled (whether under the general law or any document).

### **13.3 Sums deemed due to a Lender**

For the purposes of this Clause 13 (*Set-Off*), a sum payable by the Guarantor to 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 that Lender.

## **14 SUPPLEMENTAL**

### **14.1 Continuing guarantee**

This Guarantee shall remain in force as a continuing security at all times during the Security Period, regardless of any intermediate payment or discharge in whole or in part.

### **14.2 Rights cumulative, non-exclusive**

The Security Trustee's rights under and in connection with this Guarantee are cumulative, may be exercised as often as appears expedient and shall not be taken to exclude or limit any right or remedy conferred by law.

### **14.3 No impairment of rights under Guarantee**

If the Security Trustee omits to exercise, delays in exercising or invalidly exercises any of its rights under this Guarantee, that shall not impair that or any other right of the Security Trustee under this Guarantee.

### **14.4 Severability of provisions**

If any provision of this Guarantee is or subsequently becomes void, illegal, unenforceable or otherwise invalid, that shall not affect the validity, legality or enforceability of its other provisions.

### **14.5 Guarantee not affected by other security**

This Guarantee is in addition to and shall not impair, nor be impaired by, any other guarantee, any Security Interest or any right of set-off or netting or to combine accounts which the Security Trustee or any Secured Party may now or later hold in connection with the Loan Agreement.

### **14.6 Guarantor bound by Loan Agreement**

- (a) The Guarantor is fully familiar with, and agrees to all the provisions of the Loan Agreement and the other Finance Documents to which it is not a party.

- (b) The Guarantor agrees with the Security Trustee:
  - (i) to be bound by all provisions of the Loan Agreement which are applicable to the Obligors in the same way as if those provisions had been set out (with any necessary modifications) in this Guarantee; and
  - (ii) that any provision of the Loan Agreement which, by its terms, applies or relates to the Finance Documents generally applies to this Guarantee.
- (c) Clause 23 (*Bail-In*) of the Loan Agreement shall apply to this Guarantee as if it was expressly incorporated in this Guarantee with any necessary modifications.

#### **14.7 Applicability of provisions of Guarantee to other Security Interests**

Any Security Interest which the Guarantor creates (whether at the time at which it signs this Guarantee or at any later time) to secure any liability under this Guarantee shall be a principal and independent security, and Clauses 3 (*Liability as Principal and Independent Debtor*) and 17 (*Invalidity of Loan Agreement*) shall, with any necessary modifications, apply to it, notwithstanding that the document creating the Security Interest neither describes it as a principal or independent security nor includes provisions similar to Clauses 3 (*Liability as Principal and Independent Debtor*) and Clause 17 (*Invalidity of Loan Agreement*).

#### **14.8 Applicability of provisions of Guarantee to other rights**

Clauses 3 (*Liability as Principal and Independent Debtor*) and 17 (*Invalidity of Loan Agreement*) shall also apply to any right of set-off or netting or to combine accounts which the Guarantor creates by an agreement entered into at the time of this Guarantee or at any later time (notwithstanding that the agreement does not include provisions similar to Clauses 3 (*Liability as Principal and Independent Debtor*) and 17 (*Invalidity of Loan Agreement*)), being an agreement referring to this Guarantee.

#### **14.9 Third party rights**

Other than a Secured Party or the Italian Authorities, no person who is not a party to this Guarantee has any right under the Contracts (Rights of Third Parties) Act 1999 to enforce or to enjoy the benefit of any term of this Guarantee.

#### **14.10 Waiver of rights against SACE**

Nothing in this Guarantee or any of the Finance Documents is intended to grant to the Guarantor or any other person any right of contribution from or any other right or claim against SACE and the Guarantor hereby waives irrevocably any right of contribution or other right or claim as between itself and SACE.

#### **14.11 Reinstatement**

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

#### **14.12 Guarantor intent**

Without prejudice to the generality of Clause 1.3 (*Application of construction and interpretation provisions of Loan Agreement*) and Clause 3.2 (*Waiver of rights and defences*), the Guarantor expressly confirms that it intends that this Guarantee and any Security Interest created by it under 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.

#### **14.13 Certification or determination**

Any certification or determination by the Security Trustee of a rate or amount under any Finance Document or this Guarantee is, in the absence of manifest error, conclusive evidence of the matters to which it relates.

#### **14.14 SACE subrogation**

The Guarantor acknowledges that immediately upon any payment by SACE of any amount due under the SACE Insurance Policy, SACE shall be automatically subrogated to the extent of such payment to the rights of the Security Trustee under this Guarantee in accordance with the SACE Insurance Policy.

### **15 ASSIGNMENT AND TRANSFER**

#### **15.1 Assignment and transfer by Security Trustee**

- (a) The Security Trustee may assign or transfer its rights under and in connection with this Guarantee to the same extent as it may assign or transfer its rights under the Loan Agreement.
- (b) The Guarantor may not assign or transfer its rights under and in connection with this Guarantee.

### **16 NOTICES**

#### **16.1 Notices to Guarantor**

Any notice or demand to the Guarantor under or in connection with this Guarantee shall be given by letter or email at:

NCL Corporation Ltd.  
7665 Corporate Center Drive  
Miami  
Florida, 33126  
Attention: Chief Financial Officer and General Counsel

Email: [\*] / [\*]



or to such other address which the Guarantor may notify to the Security Trustee.

## **16.2 Application of certain provisions of Loan Agreement**

Clauses 32.3 (*Effective date of notices*) to 32.9 (*Meaning of "notice"*) of the Loan Agreement apply to any notice or demand under or in connection with this Guarantee.

## **16.3 Validity of demands**

A demand under this Guarantee shall be valid notwithstanding that it is served:

- (a) on the date on which the amount to which it relates is payable by the Borrower under the Loan Agreement;
- (b) at the same time as the service of a notice under clause 18.21 (*Actions following an Event of Default*) of the Loan Agreement;

and a demand under this Guarantee may refer to all amounts payable under or in connection with the Loan Agreement without specifying a particular sum or aggregate sum.

## **16.4 Notices to Security Trustee**

Any notice to the Security Trustee under or in connection with this Guarantee shall be sent to the same address and in the same manner as notices to the Security Trustee under the Loan Agreement.

## **17 INVALIDITY OF LOAN AGREEMENT**

### **17.1 Invalidity of Loan Agreement**

In the event of:

- (a) the Loan Agreement or any provision thereof now being or later becoming, with immediate or retrospective effect, void, illegal, unenforceable or otherwise invalid for any reason whatsoever; or
- (b) without limiting the scope of paragraph (a), a ~~bankruptcy~~ Bankruptcy of the Borrower, the introduction of any law or any other matter resulting in the Borrower being discharged from liability under the Loan Agreement, or the Loan Agreement ceasing to operate (for example, by interest ceasing to accrue);

this Guarantee shall cover any amount which would have been or become payable under or in connection with the Loan Agreement if the Loan Agreement had been and remained entirely valid, legal and enforceable, or the Borrower had not suffered ~~bankruptcy~~ Bankruptcy, or any combination of such events or circumstances, as the case may be, and the Borrower had remained fully liable under it for liabilities whether invalidly incurred or validly incurred but subsequently retrospectively invalidated; and references in this Guarantee to amounts payable by the Borrower under or in connection with the Loan Agreement shall include references to any amount which would have so been or become payable as aforesaid.

## 17.2 Invalidity of Finance Documents

Clause 17.1 (*Invalidity of Loan Agreement*) also applies to each of the other Finance Documents to which the Borrower is a party.

## 18 GOVERNING LAW AND JURISDICTION

### 18.1 English law

This Guarantee and any non-contractual obligations arising out of or in connection with it shall be governed by, and construed in accordance with, English law.

### 18.2 Exclusive English jurisdiction

The courts of England shall have exclusive jurisdiction to settle any Dispute.

### 18.3 Process agent

The Guarantor irrevocably appoints Hannaford Turner LLP, currently of ~~9 Cleak Lane~~ [107 Cheapside](#), London ~~EC4R 2RU~~, [EC2V 6DN](#), United Kingdom, 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.

### 18.4 Secured Parties' rights unaffected

Nothing in this Clause 18 (*Governing Law and Jurisdiction*) shall exclude or limit any right which any Secured 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.

### 18.5 Meaning of "proceedings"

In this Clause 18 (*Governing Law and Jurisdiction*), "**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 Guarantee (including a dispute relating to the existence, validity or termination of this Guarantee) or any non-contractual obligation arising out of or in connection with this Guarantee.

**This Amended and Restated Guarantee has been entered into on the date stated at the beginning of this Guarantee.**

**EXECUTION PAGE**

**GUARANTOR**

**SIGNED** by )  
duly authorised )  
for and on behalf of )  
**NCL CORPORATION LTD.** )  
as its duly appointed attorney-in-fact )  
in the presence of: )

**SECURITY TRUSTEE**

**SIGNED** by )  
for and on behalf of )  
**CRÉDIT AGRICOLE CORPORATE** )  
**AND INVESTMENT BANK** )  
as its duly appointed attorney-in-fact )  
in the presence of: )

**HOLDING**

**SIGNED** by )  
for and on behalf of )  
**NORWEGIAN CRUISE LINE** )  
**HOLDINGS LTD.** )  
as its duly appointed attorney-in-fact )  
in the presence of: )

[\*]: THE IDENTIFIED INFORMATION HAS BEEN OMITTED FROM THE AGREEMENT BECAUSE IT IS BOTH (i) NOT MATERIAL AND (ii) WOULD BE COMPETITIVELY HARMFUL IF PUBLICLY DISCLOSED

Dated 19 May 2023

**LEONARDO TWO, LTD.**  
as Borrower

and

**NCL CORPORATION LTD.**  
as Guarantor

and

**NCL INTERNATIONAL, LTD.**  
as Shareholder

and

**NORWEGIAN CRUISE LINE HOLDINGS LTD.**  
as the Holding

and

**THE BANKS AND FINANCIAL INSTITUTIONS LISTED IN SCHEDULE 1**  
as Lenders

and

**CRÉDIT AGRICOLE CORPORATE AND INVESTMENT BANK**  
**BNP PARIBAS FORTIS S.A./N.V.**  
**HSBC BANK PLC**  
**CASSA DEPOSITI E PRESTITI S.P.A.**  
as Joint Mandated Lead Arrangers

and

**CRÉDIT AGRICOLE CORPORATE AND INVESTMENT BANK**  
as Agent  
and SACE Agent

and

**CRÉDIT AGRICOLE CORPORATE AND INVESTMENT BANK**  
as Security Trustee

**AMENDMENT AND RESTATEMENT AGREEMENT**

WATSON FARLEY  
&  
WILLIAMS

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relating to a facility agreement originally dated 12 April 2017  
(as amended from time to time, including as amended and restated by an amendment and restatement agreement dated 21 November 2017, as further amended by a supplemental agreement dated 4 June 2020, as further amended and restated by an amendment and restatement agreement dated 17 February 2021, as further amended and restated by an amendment and restatement agreement dated 17 June 2021, as further amended by a supplemental agreement dated 23 December 2021 and as further amended by a supplemental agreement dated 16 December 2022)  
in respect of the part financing of the 3,300 passenger cruise ship newbuilding presently designated as Hull No. [\*] at Fincantieri S.p.A.

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THIS AGREEMENT is made on 19 May 2023

## PARTIES

- (1) **LEONARDO TWO, LTD.**, an exempted company incorporated under the laws of Bermuda whose registered office is at Park Place, 55 Par-la-Ville Road, Hamilton HM11, Bermuda as borrower (the "**Borrower**")
- (2) **NCL CORPORATION LTD.**, an exempted company incorporated under the laws of Bermuda with its registered office at Park Place, 55 Par-la-Ville Road, Hamilton HM11, Bermuda (the "**Guarantor**")
- (3) **NCL INTERNATIONAL, LTD.**, a company incorporated under the laws of Bermuda and having its registered office at Park Place, 55 Par-la-Ville Road, Hamilton HM11, Bermuda (the "**Shareholder**")
- (4) **NORWEGIAN CRUISE LINE HOLDINGS LTD.**, a company incorporated under the laws of Bermuda with its registered office at Park Place, 55 Par-la-Ville Road, Hamilton HM11, Bermuda (the "**Holding**")
- (5) **THE FINANCIAL INSTITUTIONS** listed in Schedule 1 (*The Lenders*) as lenders (the "**Lenders**")
- (6) **CRÉDIT AGRICOLE CORPORATE AND INVESTMENT BANK**, a French société anonyme having its registered office located at 12, Place des États-Unis, CS 70052, 92547 Montrouge Cedex, France registered under number Siren 304 187 701 at the Registre du Commerce et des Sociétés of Nanterre, France, **BNP PARIBAS FORTIS S.A./N.V.** of 3, Montagne du Parc, 1 KA1E, 1000 Brussels, Belgium, **HSBC BANK PLC** of Level 2, 8 Canada Square, London, E14 5HQ, United Kingdom and **CASSA DEPOSITI E PRESTITI S.P.A.** of Via Goito, 4 – 00185, Roma, Italy as joint mandated lead arrangers (the "**Mandated Lead Arrangers**")
- (7) **CRÉDIT AGRICOLE CORPORATE AND INVESTMENT BANK**, a French société anonyme having its registered office located at 12, Place des États-Unis, CS 70052, 92547 Montrouge Cedex, France registered under number Siren 304 187 701 at the Registre du Commerce et des Sociétés of Nanterre, France as agent and SACE agent (the "**Agent**" and the "**SACE Agent**")
- (8) **CRÉDIT AGRICOLE CORPORATE AND INVESTMENT BANK**, a French société anonyme having its registered office located at 12, Place des États-Unis, CS 70052, 92547 Montrouge Cedex, France registered under number Siren 304 187 701 at the Registre du Commerce et des Sociétés of Nanterre, France as security trustee (the "**Security Trustee**")

## BACKGROUND

- (A) By the Original Facility Agreement, the Lenders agreed to make available to the Borrower a facility of (originally) the Dollar Equivalent of up to €640,000,000.00 and the amount of the SACE Premium (but not exceeding \$868,108,108.11) for the purpose of assisting the Borrower in financing (a) the payment or reimbursement under the Shipbuilding Contract of all or part of 80% of the Final Contract Price up to the Eligible Amount and (b) reimbursement to the Borrower of 100% of the First Instalment of the SACE Premium paid by it to SACE and payment to SACE of 100% of the Second Instalment of the SACE Premium (as defined therein).
  - (B) Due to the unprecedented and extraordinary impacts of the Covid-19 pandemic on the cruise sector and cruise operators, the Original Facility Agreement was amended pursuant to an amendment agreement dated 4 June 2020 (the "**2020 Amendment Agreement**"), further
-

amended and restated pursuant to an amendment and restatement agreement dated 17 February 2021 (the "**February 2021 Amendment and Restatement Agreement**"), further amended and restated pursuant to an amendment and restatement agreement dated 17 June 2021 (the "**June 2021 Amendment and Restatement Agreement**"), further amended by a supplemental agreement dated 23 December 2021 (the "**December 2021 Amendment Agreement**") and further amended by a supplemental agreement dated 16 December 2022 (the "**December 2022 Amendment Agreement**") pursuant to which the parties agreed, *inter alia*, the temporary suspension and amendment of certain covenants under the Guarantee and addition of certain covenants under the Original Facility Agreement.

- (C) The Parties have agreed to amend and restate the Facility Agreement as set out in this Agreement for the purposes of, *inter alia*, documenting the transition from LIBOR to SOFR (as defined below).

## **OPERATIVE PROVISIONS**

### **1 DEFINITIONS AND INTERPRETATION**

#### **1.1 Definitions**

In this Agreement:

"**2023 Finance Document**" means this Agreement.

"**Amended and Restated Facility Agreement**" means the Facility Agreement as amended and restated by this Agreement in the form set out in Appendix 1.

"**Amended and Restated Guarantee**" means the Guarantee as amended and restated by this Agreement in the form set out in Appendix 2.

"**Effective Date**" means the date on which the Agent notifies the Borrower, the other Creditor Parties and SACE as to the satisfaction of the conditions precedent as provided in paragraph (a) of Clause 2.1 (*Conditions Precedent*).

"**Facility Agreement**" means the Original Facility Agreement, as amended by the 2020 Amendment Agreement, as further amended and restated by the February 2021 Amendment and Restatement Agreement, as further amended and restated by the June 2021 Amendment and Restatement Agreement, as further amended by the December 2021 Amendment Agreement and as further amended by the December 2022 Amendment Agreement.

"**Obligors**" means the Borrower, the Guarantor, the Holding and the Shareholder.

"**Original Facility Agreement**" means the facility agreement dated 12 April 2017 (as amended and restated by an amendment and restatement agreement dated 21 November 2017) and made between, amongst others, (i) the Borrower, (ii) the Lenders, (iii) the Mandated Lead Arrangers, (iv) the Agent and the SACE Agent and (v) the Security Trustee.

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

"**SOFR**" means the secured overnight financing rate (SOFR) administered by the Federal Reserve Bank of New York (or any other person which takes over the administration of that rate) published by the Federal Reserve Bank of New York (or for any other person which takes over the publication of that rate).

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## 1.2 Defined expressions

Defined expressions in the Facility Agreement and, with effect from the Effective Date, the Amended and Restated Facility Agreement, shall have the same meanings when used in this Agreement unless the context otherwise requires or unless otherwise defined in this Agreement.

## 1.3 Application of construction and interpretation provisions of Facility Agreement

Clause 1.2 (*Construction of certain terms*) of the Facility Agreement applies to this Agreement as if it were expressly incorporated in it with any necessary modifications.

## 1.4 Designation as a Finance Document

The Borrower and the Agent designate this Agreement as a Finance Document.

## 1.5 Third party rights

- (a) Unless 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 enjoy the benefit of any term of this Agreement other than SACE and SIMEST, who may enforce or enjoy the benefit of and rely on the provisions of this Agreement and the Amended and Restated Facility Agreement subject to the provisions of the Third Parties Act.
- (b) Notwithstanding any term of any Finance Document, the consent of any person who is not a Party (other than SACE and SIMEST) is not required to rescind or vary this Agreement at any time.
- (c) For the avoidance of doubt and in accordance with clause 36.4 (*Third party rights*) of the Facility Agreement, nothing in this Clause 1.5 (*Third party rights*) shall limit or prejudice the exercise by SACE of its rights under this Agreement or the Finance Documents in the event that such rights are subrogated or assigned to it pursuant to the terms of the SACE Insurance Policy.

## 2 CONDITIONS PRECEDENT

### 2.1 The Effective Date cannot occur unless:

- (a) the Agent has received (or on the instructions of all the Lenders, waived receipt of) all of the documents and other evidence listed in Schedule 2 (*Conditions Precedent*) in form and substance satisfactory to the Agent;
  - (b) save as disclosed in writing to the Agent and SACE prior to the date of this Agreement, the representations and warranties contained in Clause 3 (*Representations*) are true and correct on, and as of, each such time as if each was made with respect to the facts and circumstances existing at such time;
  - (c) save as disclosed in writing to the Agent and SACE prior to the date of this Agreement, no Event of Default, event or circumstance specified in clause 18 (*Events of Default*) of the Facility Agreement 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, event resulting in mandatory prepayment of the Loan pursuant to clause 16.3 (*Mandatory prepayment – Sale and Total Loss*) and clause 16.4 (*Mandatory prepayment – SACE Insurance Policy*) of the Facility Agreement shall have occurred and be
-

continuing or would result from the amendment and restatement of the Facility Agreement pursuant to this Agreement; and

- (d) the Agent is satisfied that the Effective Date can occur and has not provided any instructions to the contrary informing the Parties that the Effective Date cannot occur.
- 2.2 Upon fulfilment or waiver of the conditions set out in Clause 2.1 above, the Agent shall provide the Borrower and the Creditor Parties and SACE with a copy of the executed certificate in the form set out in Schedule 3 (*Form of Effective Date Certificate*) confirming that the Effective Date has occurred and such certificate shall be binding on all Parties.
- 2.3 Other than to the extent that the Majority Lenders notify the Agent in writing to the contrary before the Agent provides the certificate described in Clause 2.3 above, the Creditor Parties authorise (but do not require) the Agent to execute and provide such certificate. The Agent shall not be liable for any damages, costs or losses whatsoever as a result of giving any such certificate.

### **3 REPRESENTATIONS**

#### **3.1 Facility Agreement representations**

On the date of this Agreement and on the Effective Date, each Obligor that is a party to the Facility Agreement makes each of the representations and warranties as set out in clause 11 (*Representations and warranties*) of the Facility Agreement, as amended and restated by this Agreement and updated with appropriate modifications to refer to this Agreement and (where relevant) the Amended and Restated Facility Agreement and the Amended and Restated Guarantee, by reference to the circumstances then existing.

#### **3.2 Finance Document representations**

On the date of this Agreement and on the Effective Date, each Obligor (save for the Holding) makes the representations and warranties set out in the Finance Documents (other than the Facility Agreement) to which it is a party, as amended and restated and/or supplemented by this Agreement and updated with appropriate modifications to refer to this Agreement and, where appropriate, the Amended and Restated Guarantee, by reference to the circumstances then existing.

### **4 AMENDMENT AND RESTATEMENT OF FACILITY AGREEMENT AND OTHER FINANCE DOCUMENTS**

#### **4.1 Specific amendments to the Facility Agreement**

With effect on and from the Effective Date, the Facility Agreement shall be amended and restated in the form of the Amended and Restated Facility Agreement and, as so amended and restated, the Facility Agreement shall continue to be binding on each of the parties to it in accordance with its terms as so amended and restated.

#### **4.2 Specific amendments to the Guarantee**

With effect on and from the Effective Date, the Guarantee shall be amended and restated in the form of the Amended and Restated Guarantee and, as so amended and restated, the Guarantor confirms that:

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- (a) its Guarantee extends to the obligations of the Borrower under the Finance Documents as amended, restated and/or supplemented by this Agreement;
- (b) the obligations of the relevant Obligors under the Finance Documents as amended, restated and/or supplemented by this Agreement are included in the Secured Liabilities (as defined in the Facility Agreement); and
- (c) the Guarantee shall continue to be binding on each of the parties to it and have full force and effect in accordance with its terms as so amended and restated.

#### **4.3 Holding confirmation**

On the Effective Date, the Holding confirms that, notwithstanding the amendments made to the Finance Documents pursuant to this Agreement, the undertakings given by the Holding under the Guarantee, as amended and restated by this Agreement and updated with appropriate modifications to refer to this Agreement shall remain in full force and effect in accordance with its original terms and the amendments to the Finance Documents as amended, restated and/or supplemented by this Agreement.

#### **4.4 Security Confirmation**

On the Effective Date, each Obligor confirms that:

- (a) any Security Interest created by it under the Finance Documents extends to the obligations of the relevant Obligors under the Finance Documents as amended, restated and/or supplemented by this Agreement;
- (b) the obligations of the relevant Obligors under the Finance Documents as amended, restated and/or supplemented by this Agreement are included in the Secured Liabilities (as defined in the Finance Documents to which it is a party);
- (c) the Security Interests created under the Finance Documents continue in full force and effect on the terms of the respective Finance Documents; and
- (d) to the extent that this confirmation creates a new Security Interest, such Security Interest shall be on the terms of the Finance Documents in respect of which this confirmation is given.

#### **4.5 Finance Documents to remain in full force and effect**

The Finance Documents shall remain in full force and effect and, from the Effective Date:

- (a) in the case of the Facility Agreement as amended and restated pursuant to Clause 4.1 (*Specific amendments to the Facility Agreement*);
  - (b) in the case of the Guarantee, as amended and restated pursuant to Clause 4.2 (*Specific amendments to the Guarantee*);
  - (c) the Facility Agreement and the applicable provisions of this Agreement will be read and construed as one document;
  - (d) the Guarantee and the applicable provisions of this Agreement will be read and construed as one document; and
-

- (e) except to the extent expressly waived by the amendments effected by this Agreement, no waiver is given by this Agreement and the Lenders expressly reserve all their rights and remedies in respect of any breach of or other default under the Finance Documents.

## **5 FURTHER ASSURANCE**

Clause 12.20 (*Further assurance*) of the Facility Agreement, as amended and restated by this Agreement, applies to this Agreement as if it were expressly incorporated in it with any necessary modifications.

## **6 COSTS, EXPENSES AND FEES**

Clause 10.11 (*Transaction Costs*) of the Facility Agreement, as amended and restated by this Agreement, applies to this Agreement as if it were expressly incorporated in it with any necessary modifications.

## **7 NOTICES**

Clause 32 (*Notices*) of the Facility Agreement, as amended and restated by this Agreement, applies to this Agreement as if it were expressly incorporated in it with any necessary modifications.

## **8 COUNTERPARTS**

This Agreement may be executed in any number of counterparts, and this has the same effect as if the signatures on the counterparts were on a single copy of this Agreement.

## **9 SIGNING ELECTRONICALLY**

The Parties acknowledge and agree that they may execute this Agreement and any variation or amendment to the same, by electronic instrument. The Parties agree that the electronic signatures appearing on the documents shall have the same effect as handwritten signatures and the use of an electronic signature on this Agreement shall have the same validity and legal effect as the use of a signature affixed by hand and is made with the intention of authenticating this Agreement, and evidencing the Parties' intention to be bound by the terms and conditions contained herein. For the purposes of using an electronic signature, the Parties authorise each other to conduct the lawful processing of personal data of the signers for contract performance and their legitimate interests including contract management.

## **10 GOVERNING LAW**

This Agreement and any non-contractual obligations arising out of or in connection with it are governed by English law.

## **11 ENFORCEMENT**

### **11.1 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.

**11.2 Service of process**

- (a) Without prejudice to any other mode of service allowed under any relevant law, each Obligor (other than an Obligor incorporated in England and Wales):
  - (i) irrevocably appoints Hannaford Turner LLP, currently of 107 Cheapside, London UK, EC2V 6DN, as its agent for service of process in relation to any proceedings before the English courts in connection with any Finance Document; and
  - (ii) agrees that failure by a process agent to notify the relevant Obligor of the process will not invalidate the proceedings concerned.
- (b) If any person appointed as an agent for service of process is unable for any reason to act as agent for service of process, the Borrower (on behalf of all the Obligors) must immediately (and in any event within 10 days of such event taking place) appoint another agent on terms acceptable to the Agent. Failing this, the Agent may appoint another agent for this purpose.

**This Agreement has been entered into on the date stated at the beginning of this Agreement.**

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**EXECUTION PAGES**

**BORROWER**

**SIGNED** by )  
duly authorised )  
for and on behalf of )  
**LEONARDO TWO, LTD.** )

/s/  Daniel S. Farkas

**GUARANTOR**

**SIGNED** by )  
duly authorised )  
for and on behalf of )  
**NCL CORPORATION LTD.** )

/s/  Daniel S. Farkas

**SHAREHOLDER**

**SIGNED** by )  
for and on behalf of )  
**NCL INTERNATIONAL, LTD.** )  
as its duly appointed attorney-in-fact )  
in the presence of: )

/s/  Daniel S. Farkas

**HOLDING**

**SIGNED** by )  
for and on behalf of )  
**NORWEGIAN CRUISE LINE** )  
**HOLDINGS LTD.** )  
as its duly appointed attorney-in-fact )  
in the presence of: )

/s/  Daniel S. Farkas

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**LENDERS**

**SIGNED** by ) /s/ Chloe Konstantinides  
duly authorised )  
for and on behalf of )  
**BANCO BPM S.P.A.** )

**SIGNED** by ) /s/ Isabella Roberts  
duly authorised )  
for and on behalf of )  
**BNP PARIBAS FORTIS S.A./N.V** )

**SIGNED** by ) /s/ Daniela Rotellini  
duly authorised )  
for and on behalf of )  
**CASSA DEPOSITI E PRESTITI S.P.A.** )

**SIGNED** by ) /s/ Anne-Laure Orange  
duly authorised )  
for and on behalf of )  
**CRÉDIT AGRICOLE CORPORATE** )  
**AND INVESTMENT BANK** ) /s/ Jérôme Leblond

**SIGNED** by ) /s/ Megan Parry  
duly authorised )  
for and on behalf of )  
**DEKABANK DEUTSCHE GIROZENTRALE** )

**SIGNED** by ) /s/ Varsha Sharan  
duly authorised )  
for and on behalf of )  
**HSBC BANK PLC** )

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**MANDATED LEAD ARRANGERS**

**SIGNED** by ) /s/ Isabella Roberts  
duly authorised )  
for and on behalf of )  
**BNP PARIBAS FORTIS S.A./N.V** )

**SIGNED** by ) /s/ Daniela Rotellini  
duly authorised )  
for and on behalf of )  
**CASSA DEPOSITI E PRESTITI S.P.A.** )

**SIGNED** by ) /s/ Anne-Laure Orange  
duly authorised )  
for and on behalf of )  
**CRÉDIT AGRICOLE CORPORATE** )  
**AND INVESTMENT BANK** ) /s/ Daniela Rotellini

**SIGNED** by ) /s/ Varsha Sharan  
duly authorised )  
for and on behalf of )  
**HSBC BANK PLC** )

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**AGENT**

SIGNED by ) /s/ Anne-Laure Orange  
duly authorised )  
for and on behalf of )  
**CRÉDIT AGRICOLE CORPORATE AND** )  
**INVESTMENT BANK** ) /s/ Jérôme Leblond

**SACE AGENT**

SIGNED by ) /s/ Anne-Laure Orange  
duly authorised )  
for and on behalf of )  
**CRÉDIT AGRICOLE CORPORATE AND** )  
**INVESTMENT BANK** ) /s/ Jérôme Leblond

**SECURITY TRUSTEE**

SIGNED by ) /s/ Anne-Laure Orange  
duly authorised )  
for and on behalf of )  
**CRÉDIT AGRICOLE CORPORATE AND** )  
**INVESTMENT BANK** ) /s/ Jérôme Leblond

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**APPENDIX 1**

**FORM OF AMENDED AND RESTATED FACILITY AGREEMENT (MARKED TO INDICATE AMENDMENTS)**

Amendments are indicated as follows:

- 1 additions are indicated by underlined text in blue; and
  - 2 deletions are shown by strike-through text in red.
-

Originally dated 12 April 2017

(as amended from time to time, including as amended and restated by an amendment and restatement agreement dated 21 November 2017, as amended by a supplemental agreement dated 4 June 2020, as amended and restated by an amendment and restatement agreement dated 17 February 2021 ~~and~~, as further amended and restated by an amendment and restatement agreement dated ~~2021~~ 17 June 2021, as further amended by a supplemental agreement dated 23 December 2021, as further amended by a supplemental agreement dated 16 December 2022 and as amended and restated by an amendment and restatement agreement dated 2023)

**TERM LOAN FACILITY**

**LEONARDO TWO, LTD.**  
as Borrower

and

**THE BANKS AND FINANCIAL INSTITUTIONS  
LISTED IN SCHEDULE 1**  
as Lenders

and

**CRÉDIT AGRICOLE CORPORATE AND INVESTMENT BANK  
BNP PARIBAS FORTIS S.A./N.V.  
HSBC BANK PLC  
CASSA DEPOSITI E PRESTITI S.P.A.**  
as Joint Mandated Lead Arrangers

and

**CRÉDIT AGRICOLE CORPORATE AND INVESTMENT BANK**  
as Agent and SACE Agent

and

**CRÉDIT AGRICOLE CORPORATE AND INVESTMENT BANK**  
as Security Trustee

with the support of

**SACE S.P.A.**

**AMENDED AND RESTATED FACILITY AGREEMENT**

relating to the part financing of the 3,300 passenger cruise ship  
newbuilding presently designated as  
Hull No. [\*] at Fincantieri S.p.A.

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**THIS AGREEMENT** is originally made on 12 April 2017 (as amended from time to time, including as amended and restated by an amendment and restatement agreement dated 21 November 2017, as amended by a supplemental agreement dated 4 June 2020, as amended and restated by an amendment and restatement dated 17 February 2021 ~~and~~, as further amended and restated by an amendment and restatement agreement dated 17 June 2021, as further amended by a supplemental agreement dated 23 December 2021, as further amended by a supplemental agreement dated 16 December 2022 and as further amended and restated by an amendment and restatement agreement dated ~~\_\_\_\_\_2021\_\_\_\_\_~~ \_\_\_\_\_2023\_\_\_\_\_)

## **PARTIES**

- (1) **LEONARDO TWO, LTD.**, an exempted company incorporated under the laws of Bermuda whose registered office is at Park Place ~~55~~, 55 Par-la-Ville Road, Hamilton HM 11, Bermuda as borrower (the "**Borrower**")
- (2) **THE BANKS AND FINANCIAL INSTITUTIONS** listed in Schedule 1 (*Lenders and Commitments*) as lenders (the "**Lenders**")
- (3) **CRÉDIT AGRICOLE CORPORATE AND INVESTMENT BANK, BNP PARIBAS FORTIS S.A./N.V., HSBC BANK PLC** and **CASSA DEPOSITI E PRESTITI S.P.A.** as joint mandated lead arrangers (the "**Joint Mandated Lead Arrangers**")
- (4) **CRÉDIT AGRICOLE CORPORATE AND INVESTMENT BANK**, acting through its office at 12 Place des États-Unis, CS 70052, 92547, Montrouge Cedex, France, as agent (the "**Agent**") and SACE agent (the "**SACE Agent**")
- (5) **CRÉDIT AGRICOLE CORPORATE AND INVESTMENT BANK**, acting through its office at 12 Place des États-Unis, CS 70052, 92547, Montrouge Cedex, France, as security trustee (the "**Security Trustee**")

## **BACKGROUND**

- (A) By a shipbuilding contract originally dated as of 21 October 2016 (as amended or supplemented from time to time, including on 14 December 2016, 30 January 2017, 27 February 2017, 30 March 2017 and 10 April 2017 (the "**Original Shipbuilding Contract**")) entered into between (i) Fincantieri S.p.A., a company incorporated in Italy with registered office in Trieste, via Genova, 1, and having fiscal code 00397130584 (the "**Builder**") and (ii) the Borrower, the Builder agreed to design, construct and deliver, and the Borrower agreed to purchase, a 3,300 passenger cruise ship with hull number [\*], which is to be delivered to the Borrower on ~~31 May~~ 3 August 2023 subject to any adjustments of such delivery date in accordance with the Shipbuilding Contract.
  - (B) The total price payable by the Borrower to the Builder under the Shipbuilding Contract is eight hundred million Euros (€800,000,000) (the "**Initial Contract Price**") payable on the following terms:
    - (i) as to [\*] per cent. ([\*]%), being [\*] Euros (€[\*]), by an initial payment which is to be within 5 Business Days after the effective date of the Shipbuilding Contract in accordance with Article 10.1(A) of the Shipbuilding Contract ("**First Shipbuilding Contract Instalment**");
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- (ii) as to [\*] per cent. ([\*]%), being [\*] million Euros (€[\*]), on the later of the date of commencement of steel cutting and the date falling 24 months prior to the Intended Delivery Date;
  - (iii) as to [\*] per cent. ([\*]%), being [\*] million Euros (€[\*]), on the later of keel laying in dry-dock and the date falling 18 months prior to the Intended Delivery Date;
  - (iv) as to [\*] per cent. ([\*]%), being [\*] Euros (€[\*]), on the later of launching and the date falling 12 months prior to the Intended Delivery Date; and
  - (v) as to [\*] per cent. ([\*]%), being [\*] Euros (€[\*]), on delivery of the Ship on the Delivery Date,
- as each such event is described in the Shipbuilding Contract.
- (C) The agreement was that the Initial Contract Price may be decreased at delivery of the Ship under Articles 13, 14, 16, 17, 19 and 20 of the Shipbuilding Contract (~~in aggregate the "Liquidated Damages"~~) or by mutual agreement between the parties (the Initial Contract Price adjusted as aforesaid being the "**Final Contract Price**"). For the avoidance of doubt, under the Shipbuilding Contract the price of the Ship may be increased or decreased pursuant to Article 24 thereof but, for the purposes of this Agreement, the Final Contract Price will not include any increase in the price under Article 24.
- (D) By a facility agreement dated 12 April 2017 (the "**Original Facility Agreement**") entered into between the Borrower, the Lenders, the Joint Mandated Lead Arrangers, the Agent, the SACE Agent and the Security Trustee (as defined therein), the Lenders agreed to make available to the Borrower a Dollar loan facility for the purpose of assisting the Borrower in financing, subject to exchange rate fluctuations, up to eighty per cent. (80%) of the Final Contract Price (and subject to an aggregate amount no greater than the Eligible Amount) and one hundred per cent. (100%) of the SACE Premium.
- (E) It is a condition precedent:
- (i) under the Original Shipbuilding Contract that each instalment of the price payable under the Original Shipbuilding Contract (save for the delivery instalment) be covered by a Refund Guarantee issued by a Refund Guarantor; and
  - (ii) under the Original Facility Agreement that no later than the Drawdown Date in respect of each Advance under Tranche A (save for the Delivery Advance under Tranche A), the Agent shall have received a certified copy of any executed Refund Guarantee.
- (F) The Builder requested that a sixth addendum to the Original Shipbuilding Contract (the "**Sixth Addendum**") be signed in order that the Builder should have the option, in case a Refund Guarantee cannot be renewed or extended, to replace any previously issued Refund Guarantee with a cash deposit (the "**Acceptable Deposit**").
- (G) By an ~~amending and restating~~ amendment and restatement agreement dated 21 November 2017 (the "**2017 Amending and Restating Agreement**") entered into between the Borrower, the Lenders, the Agent and the Security Trustee (as defined therein), the Secured Parties agreed to amend the Original Facility Agreement and the other Finance Documents to reflect the changes to the Shipbuilding Contract pursuant to the terms of the Sixth Addendum, provided that:
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- (i) the Acceptable Deposit be held in an account opened by the Borrower with the Account Bank which shall be pledged in favour of the Lenders, the Joint Mandated Lead Arrangers, the Agent, the SACE Agent and the Security Trustee; and
    - (ii) the next instalment under the Shipbuilding Contract is covered by a Refund Guarantee.
  - (H) Due to the unprecedented and extraordinary impacts of the Covid-19 pandemic on the cruise sector and cruise operators, SACE informed the cruise operators of its availability to evaluate certain measures (the "**Temporary Measures**") applicable in relation to certain qualifying loan agreements in order to assist companies which are financially sound but dealing with the impact of the temporary but unprecedented Covid-19 pandemic; the possibility to access to such measures was subject, amongst other things, to certain principles titled "Cruise Debt Holiday Principles" offered by SACE dated 15 April 2020 for cruise lines (the "**Original Principles**").
  - (I) Pursuant to the consent request letter dated 18 April 2020, the Borrower and the Guarantor notified the Agent and the SACE Agent of the wish to benefit from the Temporary Measures in relation to certain loan agreements listed therein, including the Original Facility Agreement (as amended and restated by the 2017 Amending and Restating Agreement), and requested, amongst other things, the temporary suspension of certain covenants under the Original Guarantee (as defined below) and the addition of certain covenants under the Original Facility Agreement (as amended and restated by the 2017 Amending and Restating Agreement) for a period of one year from 1 April 2020 to 31 March 2021 (the "**Borrower Request**").
  - (J) On 25 May 2020, the Agent (for and on behalf of the Lenders (as defined in the Original Facility Agreement (as amended and restated by the 2017 Amending and Restating Agreement))) provided its consent to part of the Borrower Request in accordance with and subject to certain conditions as set out in an amendment to the Original Facility Agreement (as amended and restated by the 2017 Amending and Restating Agreement) and to the Original Guarantee dated 4 June 2020 between, amongst others, the Borrower, the Agent and the SACE Agent (the "**2020 Amendment Agreement**").
  - (K) Due to the continued impacts of the Covid-19 pandemic on the cruise sector and cruise operators, SACE confirmed on 31 December 2020 its availability to evaluate an extension of the Temporary Measures (the "**Extended Temporary Measures**"), again subject to certain principles set out in a document titled "Debt Deferral Extension Framework for ECA-backed Export Financings" dated 26 November 2020 for cruise lines offered by SACE (together with the Original Principles, the "**Principles**").
  - (L) Pursuant to the consent request letter dated 3 December 2020, the Borrower and the Guarantor notified the Agent and the SACE Agent of the wish to benefit from the Extended Temporary Measures in relation to certain loan agreements listed therein, including the Original Facility Agreement (as amended and restated by the 2017 Amending and Restating Agreement and as amended by the 2020 Amendment Agreement), and requested, amongst other things, the further temporary suspension of certain covenants under the Original Guarantee (as amended by the 2020 Amendment Agreement) and the addition of certain covenants under the under the Original Facility Agreement (as defined below amended and restated by the 2017 Amending and Restating Agreement and as amended by the 2020 Amendment Agreement) for a further period from 1 April 2021 to 31 December 2022 (the "**Second Borrower Request**").
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- (M) On 25 January 2021, the Agent (for and on behalf of the Lenders (as defined in the 2020 Amendment Agreement)) provided its consent to part of the Second Borrower Request in accordance with and subject to certain conditions as set out in an amendment and restatement agreement to the Original Facility Agreement (as amended and restated by the 2017 Amending and Restating Agreement and as amended by the 2020 Amendment Agreement) dated 17 February 2021 between, amongst others, the Borrower, the Agent and the SACE Agent (the "**February 2021 Amendment and Restatement Agreement**") ~~(the Original Facility Agreement as amended and restated by the 2017 Amending and Restating Agreement, as amended by the 2020 Amendment Agreement and as amended and restated by the February 2021 Amendment and Restatement Agreement, the "Facility Agreement")~~.
- (N) A seventh addendum to the Original Shipbuilding Contract (the "**Seventh Addendum**") ~~has been~~ was entered into in order to include the option of a new allowance of two hundred and thirty-two million Euros (€232,000,000) for owner supplies and change orders in the Original Shipbuilding Contract (the Original Shipbuilding Contract as amended pursuant to the Sixth Addendum and the Seventh Addendum, the "**Shipbuilding Contract**").
- (O) ~~The Parties have agreed to amend and restate the Facility Agreement as set out in~~ By an amendment and restatement agreement dated ~~\_\_\_\_\_~~ 17 June 2021 and made between, amongst others, the Borrower, the Agent, the SACE Agent and the Security Trustee ~~in order (the "June 2021 Amendment and Restatement Agreement")~~, the Parties agreed to, *inter alia*, provide for an increase of the Facility for the purpose of (i) financing an amount to be applied towards payments relating to the Upsize Allowance (as defined below), (ii) financing an amount to be applied towards the second instalment of the Additional SACE Premium (as defined below) and (iii) financing an amount to be applied towards the Tranche B Premium (as defined below).
- (P) By a supplemental agreement dated 23 December 2021 and made between, amongst others, the Borrower, the Agent, the SACE Agent and the Security Trustee (the "December 2021 Amendment Agreement"), the Parties agreed to, inter alia, amend certain financial covenants and certain other provisions under the Original Facility Agreement (~~(the "June 2021 Amendment and Restatement Agreement")~~ as amended and restated by the 2017 Amending and Restating Agreement, as amended by the 2020 Amendment Agreement, as amended and restated by the February 2021 Amendment and Restatement Agreement and as amended and restated by the June 2021 Amendment and Restatement Agreement).
- (Q) By a supplemental agreement dated 16 December 2022 and made between, amongst others, the Borrower, the Agent, the SACE Agent and the Security Trustee (the "December 2022 Amendment Agreement"), the Parties agreed to, inter alia, amend certain financial covenants and certain other provisions under the Original Facility Agreement (as amended and restated by the 2017 Amending and Restating Agreement, as amended by the 2020 Amendment Agreement, as amended and restated by the February 2021 Amendment and Restatement Agreement, as amended and restated by the June 2021 Amendment and Restatement Agreement and as amended by the December 2021 Amendment Agreement).
- (R) The Parties have agreed to enter into an amendment and restatement agreement (the "2023 Amendment and Restatement Agreement") to amend and restate the Original Facility Agreement (as amended and restated by the 2017 Amending and Restating Agreement, as amended by the 2020 Amendment Agreement, as amended and restated by the February 2021 Amendment and Restatement Agreement, as amended and restated by the June 2021 Amendment and Restatement Agreement and as amended by the December 2021 Amendment Agreement) in order to inter alia, incorporate certain amends to the Facility
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Agreement including the switch from LIBOR to SOFR (as defined below) (the Original Facility Agreement as amended and restated by the 2017 Amending and Restating Agreement, as amended by the 2020 Amendment Agreement, as amended and restated by the February 2021 Amendment and Restatement Agreement, as amended and restated by the June 2021 Amendment and Restatement Agreement and as amended by the December 2021 Amendment Agreement, the "Facility Agreement").

(S) ~~(P)~~ This Agreement sets out the terms and conditions of the Facility Agreement as amended and restated by the ~~June 2021~~ 2023 Amendment and Restatement Agreement.

## OPERATIVE PROVISIONS

### 1 INTERPRETATION

#### 1.1 Definitions

Subject to Clause 1.6 (*General Interpretation*), in this Agreement:

"**2017 Amending and Restating Agreement**" has the meaning given to such term in Recital ~~E~~ (G).

"**2020 Amendment Agreement**" has the meaning given to such term in Recital ~~J~~ (J).

"**2020 Deferral Fee Letters**" means any letter between the Agent and any Obligor which sets out the fees payable in connection with the arrangements contemplated by the 2020 Amendment Agreement.

~~"2021 Deferral Effective Date" has the meaning given to the term Effective Date in the February 2021 Amendment and Restatement Agreement.~~

"**2021 Deferral Fee Letters**" means any letter between the Agent or the SACE Agent and any Obligor which sets out the fees payable in connection with the arrangements contemplated by the February 2021 Amendment and Restatement Agreement.

"2021 Deferral Final Repayment Date" means:

- (a) in relation to the Marina Facility Agreement, 19 January 2027;
- (b) in relation to the Riviera Facility Agreement, 27 October 2026;
- (c) in relation to the Seven Seas Explorer Facility Agreement, 31 December 2026; and
- (d) in relation to the Seven Seas Splendor Facility Agreement, 29 January 2027.

"2023 Amendment and Restatement Agreement" has the meaning given to such term in Recital (R).

"2023 Effective Date" has the meaning given to the term Effective Date in the 2023 Amendment and Restatement Agreement.

"**Acceptable Deposit**" means a cash deposit for an amount equal to the cumulative total of the principal and interest secured by the relevant Refund Guarantee which is to be paid by the Builder (a) for security purposes in favour of the Borrower and under its control, the Builder agreeing that it shall not have any control rights in respect of the deposit, that the Borrower

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may freely assign, charge, pledge or otherwise convey its rights in relation to the deposit to its financiers and SACE without the need to seek or obtain any approval or consent from the Builder, and that the Borrower shall be entitled to claim payment of the deposit in the same circumstances that it could claim payment of a Refund Guarantee, and (b) to the Account Bank by or before the relevant due date for payment of the deposit in accordance with Article 10.3 of the Shipbuilding Contract.

**"Account"** means a Euro account of the Borrower opened or to be opened with the Account Bank and subject to an Account Pledge.

**"Account Bank"** means Cr dit Agricole Corporate and Investment Bank, being pursuant to the terms of the Shipbuilding Contract, the legal person designated by written notice by the Borrower to the Builder at any time to hold an Acceptable Deposit.

**"Account Pledge"** means any pledge of an Acceptable Deposit granted in favour of the Security Trustee, the Joint Mandated Lead Arrangers, the Agent, the SACE Agent and the Lenders.

**"Additional SACE Premium"** has the meaning given to such term in Clause ~~8-5~~9.5 (*Additional SACE Premium*).

**"Advance"** means the principal amount of each borrowing of all or part of a Tranche by the Borrower 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.

**"Agent"** means Cr dit Agricole Corporate and Investment Bank, a French "*soci t  anonyme*", having a share capital of seven billion eight hundred and fifty one million six hundred and thirty six thousand three hundred and forty two Euros ( 7,851,636,342.00) and its registered office located at 12, Place des  tats-Unis, CS 70052, 92547 Montrouge Cedex, France, registered under the n  Siren 304 187 701 at the Registre du Commerce et des Soci t s of Nanterre or any successor of it appointed under Clause ~~26-27~~ (*Role of the Agent*~~-and-~~the Joint Mandated Lead Arrangers and the SACE Agent).

**"Aggregate SACE Premium"** means, together, the SACE Premium, the Additional SACE Premium and the Tranche B Premium.

**"Amended Maximum Loan Amount"** means the aggregate of:

- (a) the Original Maximum Loan Amount, financed or to be financed pursuant to Tranche A, provided that such amount shall not, at any time, exceed the Total Tranche A Commitments;
  - (b)
    - (i) the Dollar Equivalent of Euros one hundred eighty-five million six hundred thousand ( 185,600,000), corresponding to the amount to be financed in relation to the Upsize Allowance, financed or to be financed pursuant to Tranche B;
    - (ii) 100% of the Tranche B Premium to be paid in accordance with paragraph (a) of Clause ~~8-6~~9.6 (*Tranche B Premium*),
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provided that such amount shall not, at any time, exceed the Total Tranche B Commitments;  
and

- (c) the second instalment of the Additional SACE Premium, calculated in accordance with [sub-paragraph \(ii\) of paragraph \(a\) \(ii\)](#) of Clause [8-5-9.5](#) (*Additional SACE Premium*), financed or to be financed pursuant to Tranche C, provided that such amount shall not, at any time, exceed the Total Tranche C Commitments,

provided that such aggregate amount shall not, at any time, exceed the Total Commitments.

**"Annex VI"** means Annex VI (Regulations for the Prevention of Air Pollution from Ships, entered into on 19 May, 2005) to the International Convention for the Prevention of Pollution from Ships 1973, as modified by the Protocol of 1978 relating thereto and by the Protocol of 1997 (MARPOL) and as further revised in October 2008 with such revised version having entered into force on 1 July 2010.

**"Approved Broker"** means Clarkson Platou, Barry Rogliano Salles, Fearnleys AS, Rocca & Partners, Brax Shipbrokers AS (or any Affiliate of such person through which valuations are commonly issued) or such other shipbroker or ship valuer experienced in valuing cruise ships nominated by the Borrower and approved by the Agent.

**"Approved Flag"** means the Bermudian flag, the Marshall Islands flag, the Bahamas flag or such other flag as the Agent may, with the approval of the Italian Authorities and at least three Lenders representing as a minimum the Majority Lenders, approve from time to time.

**"Approved Manager"** means any of the Borrower, NCL Corporation Ltd., NCL (Bahamas) Ltd. or other member of the Group, or any company which is not a member of the Group which the Agent may, with the authorisation of the Majority Lenders, approve from time to time as the manager of the Ship.

**"Approved Manager's Undertaking"** means, in the event that the Approved Manager is a company other than the Borrower, a letter of undertaking executed or to be executed by the Approved Manager in favour of the Agent, which will include, without limitation, an agreement by the Approved Manager to subordinate its rights against the Ship and the Borrower to the rights of the Secured Parties under the Finance Documents, in the agreed form.

**"Approved Project"** means [any of the projects identified in the Approved Projects List](#).

**"Approved Projects List"** means [the approved projects list provided by the Guarantor and accepted by the Agent prior to the December 2021 Effective Date](#).

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

**"Availability Period"** means, in relation to Tranche A, the period commencing on the date of the Original Facility Agreement and, in relation to Tranche B and Tranche C, the period commencing on the date of this Agreement, and ending on:

- (a) the earlier to occur of (i) the Delivery Date and (ii) 26 January 2024 (or such later date as the Agent may, with the authorisation of the Lenders, agree with the Borrower); or
- (b) if earlier, the date on which the Total Commitments are fully borrowed, cancelled or terminated.
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**"Backstop Rate Switch Date"** means 30 June 2023 or any other date agreed between the Agent, the Majority Lenders and the Borrower.

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

**"Bail-In Legislation"** means:

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

**"Base Rate"** means one Euro for 1.304875 Dollars.

**"Bermudian Obligors"** means the Borrower, the Shareholder and the Guarantor.

**"Builder"** has the meaning given in Recital (A).

**"Business Day"** means:

- (a) for the purposes of Recital (B) above, a day (other than a Saturday or a Sunday) on which banks are open in Paris, New York, Milan and Rome; ~~and~~
- (b) for the purposes of any other provision in this Agreement, a day (other than a Saturday or a Sunday) on which banks are open in London, Frankfurt, Rome, Brussels and Paris and, in relation to any payment to be made to the Builder, Milan and, in respect of a day on which a payment is required to be made under a Finance Document, also in New York City; and

(c) (in relation to the fixing of an interest rate for a Term SOFR Loan) which is a US Government Securities Business Day.

**"CDP"** means Cassa Depositi e Prestiti S.p.A..

**"Central Bank Rate"** means:

- (a) the short-term interest rate target set by the US Federal Open Market Committee as published by the Federal Reserve Bank of New York from time to time; or
- (b) if that target is not a single figure, the arithmetic mean of:
  - (i) the upper bound of the short-term interest rate target range set by the US Federal Open Market Committee and published by the Federal Reserve Bank of New York; and
  - (ii) the lower bound of that target range.

**"Central Bank Rate Adjustment"** means in relation to the Central Bank Rate prevailing at close of business on any US Government Securities Business Day, the 20 per cent trimmed arithmetic mean calculated by the Agent (or by any other Creditor Party which agrees to determine that

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mean in place of the Agent), of the Central Bank Rate Spreads for the five most immediately preceding US Government Securities Business Days for which SOFR is available.

"Central Bank Rate Spread" means in relation to any US Government Securities Business Day, the difference (expressed as a percentage rate per annum) calculated by the Agent (or by any other Creditor Party which agrees to calculate that rate in place of the Agent) of:

- (a) SOFR for that US Government Securities Business Day; and
- (b) the Central Bank Rate prevailing at close of business on that US Government Securities Business Day.

"**Certified Copy**" means in relation to any document delivered or issued by or on behalf of any company, a copy of such document certified as a true, complete and up-to-date copy of the original by any of the directors or the secretary or assistant secretary or any attorney-in-fact for the time being of that company.

"**Charged Property**" means all of the assets which from time to time are, or are expressed to be, the subject of Security Interests pursuant to the Finance Documents.

"**CIRR**" (Commercial Interest Reference Rate) means two point fifty-three per cent. (2.53%) per annum or any other CIRR rate being the fixed rate for medium and long term export credits in Dollars applicable to the financing of the Ship according to the Organisation for Economic Co-operation and Development rules as determined by the competent Italian Authorities.

"**Code**" means the United States Internal Revenue Code of 1986.

"**Code of Ethics**" means the code of ethics adopted by CDP, available on CDP's website ([http://www.cdp.it/static/upload/cdp/cdp\\_code\\_ethics.pdf](http://www.cdp.it/static/upload/cdp/cdp_code_ethics.pdf)).

"**Commitment**" means a Tranche A Commitment, a Tranche B Commitment or a Tranche C Commitment.

"**Compliance Certificate**" has the meaning given to the term "Compliance Certificate" in the Guarantee.

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

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

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

- (i) is or becomes public information other than as a direct or indirect result of any breach by that Secured Party of Clause ~~33~~34 (*Confidentiality*); or
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- (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 Secured Party before the date the information is disclosed to it in accordance with paragraphs (a) or (b) above or is lawfully obtained by that Secured Party after that date, from a source which is, as far as that Secured Party is aware, unconnected with the Group and which, in either case, as far as that Secured Party is aware, has not been obtained in breach of, and is not otherwise subject to, any obligation of confidentiality.

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

**"Contribution"** means, in relation to a Lender, the part of the Loan which is owing to that Lender.

**"Conversion Rate"** means the rate determined by the Agent on the Conversion Rate Fixing Date and notified to the Borrower as being the lower of:

- (a) the Base Rate; or
- (b) the FOREX Contracts Weighted Average Rate.

**"Conversion Rate Fixing Date"** means:

- (a) in respect of each Advance under a Tranche save for the Delivery Advance under that Tranche, the date falling [\*] ([\*]) days before the relevant Drawdown Date under that Tranche; and
- (b) in respect of the Delivery Advance under a Tranche, the date falling [\*] ([\*]) days before the Delivery Date.

**"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.

**"Credit Adjustment Spread" means 0.42826% per annum.**

**"Creditor Party"** means the Agent, the Security Trustee, the SACE Agent, the Joint Mandated Lead Arrangers or any Lender, whether as at the date of the Original Facility Agreement or at any later time.

**"Daily Rate" means for any US Government Securities Business Day:**

- (a) SOFR for that US Government Securities Business Day; or
  - (b) if SOFR is not available for that US Government Securities Business Day, the percentage rate per annum which is the aggregate of:
    - (i) the Central Bank Rate for that US Government Securities Business Day; and
    - (ii) the applicable Central Bank Rate Adjustment; or
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(c) if paragraph (b) above applies but the Central Bank Rate for that US Government Securities Business Day is not available, the percentage rate per annum which is the aggregate of:

(i) the most recent Central Bank Rate for a day which is no more than five US Government Securities Business Days before that US Government Securities Business Day; and

(ii) the applicable Central Bank Rate Adjustment,

rounded, in either case, to five decimal places and if, in either case, the aggregate of that rate and the applicable Credit Adjustment Spread is less than zero, the Daily Rate shall be deemed to be such a rate that the aggregate of the Daily Rate and the applicable Credit Adjustment Spread is zero.

"Daily Simple SOFR" means, for any day, a rate per annum equal to the Daily Rate for the day that is:

(a) for as long as the Interest Make-Up Agreement is in full force and effect, ten (10) US Government Securities Business Days; or

(b) if the Interest Make-Up Agreement ceases to be in full force and effect, five (5) US Government Securities Business Days,

prior to (i) if such day is a US Government Securities Business Day, that day or (ii) if such day is not a US Government Securities Business Day, the US Government Securities Business Day immediately preceding such day.

"December 2021 Amendment Agreement" has the meaning given to such term in Recital (P).

"December 2021 Effective Date" has the meaning given to the term Effective Date in the December 2021 Amendment Agreement.

"December 2021 Fee Letters" means any letter between the Agent (or the SACE Agent, as applicable) and any Obligor which sets out the fees payable in connection with the arrangements contemplated by the December 2021 Amendment Agreement.

"December 2022 Amendment Agreement" has the meaning given to such term in Recital (Q).

"December 2022 Fee Letters" means any letter between the Agent (or the SACE Agent, as applicable) and any Obligor which sets out the fees payable in connection with the arrangements contemplated by the December 2022 Amendment Agreement.

"Deferral Fee Letters" means any of the 2020 Deferral Fee Letters and/or the 2021 Deferral Fee Letters.

"Deferral Period" means the period from 1 April 2020 to 31 December 2022.

"Delivered Vessel Facilities" means, together, Marina Facility Agreement, Riviera Facility Agreement, Seven Seas Explorer Facility Agreement and Seven Seas Splendor Facility Agreement.

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"**Delivery Advance**" means, subject to the provisions of Clause ~~8-4~~ 9.4 (*Refund*) and paragraphs (e) and (f) of Clause ~~8-6~~ 9.6 (*Tranche B Premium*), the Advance under a Tranche to be made available (as applicable) for drawing on the Delivery Date.

"**Delivery Date**" means the date and time of delivery of the Ship by the Builder to the Borrower as stated in the Protocol of Delivery and Acceptance.

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

"**Dollar Equivalent**" means such amount in Dollars as is calculated by the Agent on the Conversion Rate Fixing Date to be the equivalent of an amount in Euro at the Conversion Rate.

"**Dollars**" and "\$" means the lawful currency for the time being of the United States of America.

"**Downgraded Refund Guarantor**" means a Refund Guarantor who has become subject to a RG Downgrade Event.

"**Drawdown Date**" means, in relation to an Advance under a Tranche, the date on which that Advance is drawn down and applied in accordance with Clause 2 (*Facility*).

"**Drawdown Notice**" means a notice in the form set out in Schedule 2 (*Form of Drawdown Notice*) (or in any other form which the Agent approves or reasonably requires).

"**Earnings**" means all moneys whatsoever which are now, or later become, payable (actually or contingently) to the Borrower and which arise out of the use or operation of the Ship, including (but not limited to):

- (a) all freight, hire, fare and passage moneys, compensation payable to the Borrower or the Agent in the event of requisition of the Ship for hire, remuneration for salvage and towage services, demurrage and detention moneys and damages for breach (or payments for variation or termination) of any charterparty or other contract for the employment of the Ship;
- (b) all moneys which are at any time payable under Insurances in respect of loss of earnings;
- (c) all moneys which are at any time payable to the Borrower in respect of the general average contribution; and
- (d) if and whenever the 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 the Ship.

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

"**Eligible Amount**" means eighty per cent. (80%) of the lesser of:

- (a) the Dollar Equivalent of eight hundred million Euros (€800,000,000); and
  - (b) the Dollar Equivalent of the Final Contract Price.
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**"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 the Ship or into or upon the air, sea, land or soils (including the seabed) or surface water of Environmentally Sensitive Material within or from the Ship; 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 the Ship and which involves a collision between the Ship and such other vessel or some other incident of navigation or operation, in either case, in connection with which the Ship is actually or potentially liable to be arrested, attached, detained or injuncted and/or the Ship and/or any Obligor and/or any operator or manager of the Ship is at fault or allegedly at fault or otherwise liable to any legal or administrative action; or
- (c) any other incident in which Environmentally Sensitive Material is released, emitted, spilled or discharged into or upon the air, sea, land or soils (including the seabed) or surface water otherwise than from the Ship and in connection with which the Ship is actually or potentially liable to be arrested and/or where any Obligor and/or any operator or manager of the Ship 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.

**"Equator Principles"** means the standards entitled "A financial industry benchmark for determining, assessing and managing environmental and social risk in projects" dated June 2013 and adopted by certain financial institutions, as the same may be amended or supplemented from time to time.

**"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.

**"Euro"** and **"EUR"** means the single currency of the Participating Member States.

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**"Event of Default"** means any of the events or circumstances described in Clause ~~18.1~~ 19.1 (*Events of Default*).

**"Existing Indebtedness"** means Financial Indebtedness referred to in the financial statements of the Guarantor delivered to the Agent prior to the date of this Agreement.

**"Exporter Declaration"** means a declaration to be issued for Advances under Tranche A and Tranche B in respect of which interest is payable at the Fixed Interest Rate, in the form required by SIMEST at the relevant time duly signed by an authorised signatory of the Builder.

**"Facility"** means the term loan facility under Tranche A, Tranche B and Tranche C, made or to be made available under this Agreement as described in Clause 2.1 (*Amount of facility*).

**"Facility Agreement"** has the meaning given to such term in Recital ~~(M)~~ (R).

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

**"Fallback Interest Payment"** means the aggregate amount of interest that is, or is scheduled to become, payable under paragraph (d) of Clause 7.8 (*Unavailability of Term SOFR*) and relates to a Term SOFR Loan.

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

**"FATCA 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 the Original Facility Agreement.

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"**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.

"**February 2021 Amendment and Restatement Agreement**" has the meaning given to such term in Recital (M).

"February 2021 Effective Date" has the meaning given to the term Effective Date in the February 2021 Amendment and Restatement Agreement.

"**Fee Letter**" means any letter dated on or about the date of the Original Facility Agreement between the SACE Agent and the Borrower setting out the fees referred to in paragraph (d) of Clause ~~9~~-10 (Fees).

"**Finance Documents**" means:

- (a) this Agreement;
  - (b) ~~(a)~~ the 2017 Amending and Restating Agreement;
  - (c) ~~(b)~~ the 2020 Amendment Agreement;
  - (d) ~~(c)~~ the February 2021 Amendment and Restatement Agreement;
  - (e) ~~(d)~~ the June 2021 Amendment and Restatement Agreement;
  - (f) ~~(e)~~ this the December 2021 Amendment Agreement;
  - (g) the December 2022 Amendment Agreement;
  - (h) the 2023 Amendment and Restatement Agreement;
  - (i) ~~(f)~~ any Fee Letter;
  - (j) ~~(g)~~ the Deferral Fee Letters;
  - (k) ~~(h)~~ the June 2021 Fee Letters;
  - (l) the December 2021 Fee Letters;
  - (m) the December 2022 Fee Letters;
  - (n) ~~(i)~~ the Guarantee;
  - (o) ~~(j)~~ the Pre-delivery Security;
  - (p) ~~(k)~~ the Supplemental Pre-Delivery Security;
  - (q) ~~(l)~~ the General Assignment;
  - (r) ~~(m)~~ the Mortgage;
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- (s) ~~(n)~~ the Post-Delivery Assignment;
- (t) ~~(e)~~ any Subordinated Debt Security;
- (u) ~~(p)~~ the Shares Security Deed;
- (v) ~~(e)~~ the Approved Manager's Undertaking;
- (w) ~~(r)~~ any Transfer Certificate;
- (x) ~~(s)~~ any Compliance Certificate;
- (y) ~~(t)~~ any Drawdown Notice;
- (z) ~~(t)~~ any other document (whether creating a Security Interest or not) which is executed as security for, or for the purpose of establishing any priority or subordination arrangement in relation to, the Secured Liabilities; and
- (aa) ~~(v)~~ any other document (whether creating a Security Interest or not) which is designated as a Finance Document by agreement between the Borrower, SACE and the Agent.

"**Final Contract Price**" has the meaning given in Recital (C).

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

- (a) for principal, interest or any other sum payable in respect of any moneys borrowed or raised by the debtor;
- (b) under any loan stock, bond, note or other security issued by the debtor;
- (c) under any acceptance credit, guarantee or letter of credit facility made available to the debtor;
- (d) under a financial lease, a deferred purchase consideration arrangement or any other agreement having the commercial effect of a borrowing or raising of money by the debtor;
- (e) under any 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;
- (f) under a guarantee, indemnity or similar obligation entered into by the debtor in respect of a liability of another person which would fall within paragraphs (a) to (e) if the references to the debtor referred to the other person; or
- (g) arising from receivables sold or discounted (other than receivables to the extent they are sold on a non-recourse basis).

"**First Instalment**" means the first instalment of the SACE Premium as more particularly described in paragraph (a) of Clause ~~8-4~~9.1 (*SACE Premium*).

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**"Fixed Interest Rate"** means, in respect of any Interest Period, the rate per annum determined by the Agent to be the aggregate of:

- (a) the applicable Margin; and
- (b) the CIRR.

**"Floating Interest Rate"** means, in respect of any Interest Period, the rate per annum determined by the Agent to be ~~the aggregate of:~~

(a) in relation to each LIBOR Loan, the percentage rate per annum which is the aggregate of:

~~(a)(i) the applicable~~ Margin; and

~~(b) LIBOR for the relevant period:~~

(ii) LIBOR.

(b) In relation to each Term SOFR Loan, the percentage rate per annum which is the aggregate of:

(i) the Margin;

(ii) Term SOFR Reference Rate; and

(iii) Credit Adjustment Spread.

**"FOREX Contracts"** means each actual purchase contract, spot or forward contract and any other contract, such as an option or collar arrangement, which is entered into in the foreign exchange markets for the acquisition of Euro intended to pay the instalments under the Shipbuilding Contract, which:

- (a) matures not later than each Drawdown Date, provided that for the Delivery Advance, option arrangements may mature up to one month after such date if at the time they are entered into there exists a reasonable uncertainty as to the date on which the Ship will be delivered;
- (b) is entered into by the Borrower or the Guarantor or a combination of the foregoing not later than two (2) days before the Conversion Rate Fixing Date so that the Borrower, directly or through the Guarantor, purchases or may purchase Euro with Dollars at a pre-agreed rate; and
- (c) is notified to the Agent within ten (10) days of its execution but in any event no later than the day preceding the Conversion Rate Fixing Date, with a Certified Copy of each such contract being delivered to the Agent at such time.

**"FOREX Contracts Weighted Average Rate"** means the rate determined by the Agent on the Conversion Rate Fixing Date in accordance with the following principles which (inter alia) are intended to take into account any maturity mismatch between the maturity of the FOREX Contracts and each Drawdown Date as well as FOREX Contracts that are unwound as part of the hedging strategy of the Borrower:

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- (a) FOREX Contracts that are spot or forward foreign exchange contracts, if any, shall be valued at the contract value (taking into account any rescheduling);
- (b) the difference between the Euro amount available under (a) above and the Euro amount balance payable to the Builder on each Drawdown Date is assumed to be purchased at the official daily fixing rate of the European Central Bank for the purchase of Euro with Dollars as displayed on World Markets Reuters (or such other pages as may replace that page on that service or a successor service) at or around 1 p.m. (London time) on the Conversion Rate Fixing Date;
- (c) any FOREX Contract which is an option or collar arrangement and is not unwound at the Conversion Rate Fixing Date will be marked to market and the resulting profit or loss shall reduce or increase the Dollar countervalue of the purchased Euro;
- (d) any FOREX Contract which is an option or collar arrangement and is sold or purchased back at the time FOREX Contract(s) are entered into for an identical Euro amount shall be accounted for the net premium cost or profit, as the case may be.

Any marked to market valuation, as required in paragraph (c) above, shall be performed by Crédit Agricole Corporate and Investment Bank's dedicated desk in accordance with market practices. The Borrower shall have the right to request indicative valuations from time to time prior to the Conversion Rate Fixing Date.

**"Funding Rate"** means any individual rate notified by a Lender to the Agent pursuant to sub-paragraph (ii) of paragraph (a) of Clause ~~6.9-7.10~~ [7.10](#) (*Cost of funds*).

**"GAAP"** means generally accepted accounting principles in the United States of America consistently applied (or, if not consistently applied, accompanied by details of the inconsistencies) including, without limitation, those set forth in the opinion and pronouncements of the Accounting Principles Board of the American Institute of Certified Public Accountants and statements and pronouncements of the Financial Accounting Standards Board.

**"General Assignment"** means an assignment of any Management Agreement, the Earnings, the Insurances and any Requisition Compensation, executed or to be executed by the Borrower and, in the event that the Approved Manager is not a member of the Group and is named as a co-assured in the Insurances, the Approved Manager in favour of the Security Trustee in the agreed form.

**"Gross Negligence"** means any act or omission, whether deliberate or not, which in the circumstances (including both the probability and seriousness of the consequences likely to result) would reasonably be regarded by those familiar with the nature of the activity in question and with the surrounding circumstances, as amounting to the reckless disregard of, or serious indifference to, the consequences, being in any case more than a negligent failure to exercise proper skill and care.

**"Group"** means the Guarantor and its Subsidiaries.

**"Guarantee"** means the Original Guarantee, as amended pursuant to the 2020 Amendment Agreement ~~and~~ as amended and restated pursuant to the February 2021 [Amendment and Restatement Agreement](#), as further amended pursuant to the December 2021 [Amendment Agreement](#), as further amended pursuant to the December 2022 [Amendment Agreement](#) and

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as further amended and restated by the 2023 Amendment and Restatement Agreement, and as may be further amended and/or supplemented from time to time.

"**Guarantor**" means NCL Corporation Ltd., a Bermuda company with its registered office at Park Place 55, 55 Par-la-Ville Road, Hamilton HM 11, Bermuda.

"Historic Term SOFR" means, in relation to any Term SOFR Loan, the most recent applicable Term SOFR for a period equal in length to the Interest Period of that Term SOFR Loan and which is as of a day which is no more than five US Government Securities Business Days before the Quotation Day.

"**Holding**" means Norwegian Cruise Line Holdings Ltd., a company incorporated under the laws of Bermuda with its registered office at Park Place ~~55~~, 55 Par-la-Ville Road, Hamilton HM 11, Bermuda.

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

"**IAPPC**" means a valid international air pollution prevention certificate for the Ship issued under Annex VI.

"**Illicit Origin**" means any origin which is illicit, fraudulent or in breach of Sanctions including, without limitation, drug trafficking, corruption, organised criminal activities, terrorism, money laundering or fraud.

"**Information Package**" means:

- (a) the information package in connection with the "Debt Holiday" application in the form set out in schedule 4 (*Information Package*) of the 2020 Amendment Agreement, submitted by the Borrower (or the Guarantor on its behalf) in order to obtain the benefit of the measures provided for in the Original Principles; and
- (b) the information package in connection with the "Debt Holiday" application in the form set out in schedule 4 (*Information Package*) of the February 2021 Amendment and Restatement Agreement, submitted by the Borrower (or the Guarantor on its behalf) in order to obtain the benefit of the measures provided for in the Principles for the purpose of this Agreement and certain of the Borrower's and the Guarantor's obligations under this Agreement.

"**Initial Contract Price**" has the meaning given in Recital (B).

"**Insurances**" means:

- (a) all policies and contracts of insurance, including entries of the Ship in any protection and indemnity or war risks association, which are effected in respect of the Ship, its Earnings or otherwise in relation to it; 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 a premium.

"**Intended Delivery Date**" means [\*] (the date on which the Ship will be ready for delivery pursuant to the Shipbuilding Contract as at the date of the Original Facility Agreement) or any other date notified by the Borrower to the Agent in accordance with paragraph (a) of Clause

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3.13 (No later than sixty (60) days before the Intended Delivery Date) or paragraph (b) of Clause 3.15 (No later than five (5) Business Days before the Intended Delivery Date) as being the date on which the Builder and the Borrower have agreed that the Ship will be ready for delivery pursuant to the Shipbuilding Contract.

"Interest Make-Up Agreement" means an interest make up agreement (*Capitolato*) entered into between SIMEST and the Agent on behalf of the Lenders and in form and substance acceptable to the Joint Mandated Lead Arrangers, whereby, inter alia, the return to the Lenders on the Loan made hereunder will be supplemented by SIMEST so that it equals that which the Lenders would have received if interest were payable on the Loan at LIBOR plus the Margin.

"Interest Period" means a period determined in accordance with Clause ~~7-8~~ (*Interest Periods*).

"Interpolated ~~Screen-Rate~~ Historic Term SOFR" means, in relation to ~~the Loan or any part of the Term SOFR~~ Loan, the rate (rounded to the same number of decimal places as Term SOFR), which results from interpolating on a linear basis between:

(a) either:

(i) ~~(a)~~ the most recent applicable Screen-Rate-Term SOFR (as of a day which is not more than five US Government Securities Business Days before the Quotation Day) for the longest period (for which that Screen-Rate-Term SOFR is available) which is less than the Interest Period of ~~the Loan or that part of the Term SOFR~~ Loan; and or

(ii) if no such Term SOFR is available for a period which is less than the Interest Period of that Term SOFR Loan, the most recent SOFR for a day which is no more than five US Government Securities Business Days (and no less than two US Government Securities Business Days) before the Quotation Day; and

(b) the most recent applicable Screen-Rate-Term SOFR (as of a day which is not more than five US Government Securities Business Days before the Quotation Day) for the shortest period (for which ~~that Screen-Rate-Term SOFR~~ is available) which exceeds the Interest Period of ~~the Loan or that part of the Loan~~, that Term SOFR Loan.

"Interpolated Screen Rate" means, in relation to any LIBOR 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 that LIBOR Loan; and

(b) the applicable Screen Rate for the shortest period (for which that Screen Rate is available) which exceeds the Interest Period of that LIBOR Loan.

each as of the Specified Time.

"Interpolated Term SOFR" means, in relation to any Term SOFR Loan, the rate (rounded to the same number of decimal places as Term SOFR) which results from interpolating on a linear basis between:

(a) either

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(i) the applicable Term SOFR (as of the Quotation Day) for the longest period (for which Term SOFR is available) which is less than the Interest Period of that Term SOFR Loan;  
or

(ii) if no such Term SOFR is available for a period which is less than the Interest Period of that Term SOFR Loan, SOFR for the day which is five (5) US Government Securities Business Days before the Quotation Day; and

(b) the applicable Term SOFR (as of the Quotation Day) for the shortest period (for which Term SOFR is available) which exceeds the Interest Period of that Term SOFR 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 adopted by the International Maritime Organisation (IMO) Diplomatic Conference of December 2002, as the same may be amended or supplemented from time to time.

"**Italian Authorities**" means SACE and/or SIMEST and any other relevant Italian authorities involved in the implementation of the Loan.

"**June 2021 Amendment and Restatement Agreement**" has the meaning given to this term in Recital (O).

"**June 2021 Fee Letters**" means any letter between the Agent or the SACE Agent and any Obligor which sets out the fees payable in connection with the arrangements contemplated by the June 2021 Amendment and Restatement Agreement.

"**Legislative Decree 231/01**" means the Italian legislative decree of 8 June 2001, no. 231 (*Disciplina della responsabilità amministrativa delle persone giuridiche, delle società e delle associazioni anche prive di personalità giuridica, a norma dell'articolo 11 della legge 29 settembre 2000, n.300*) as amended from time to time, on administrative vicarious liability of corporate entities.

"**Lender**" means a Tranche A Lender, a Tranche B Lender or a Tranche C Lender.

"**LIBOR**" means, in relation to ~~the Loan or any part of the~~ LIBOR 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~~ LIBOR Loan; or

(b) as otherwise determined pursuant to Clause ~~6-6-7.6~~ (~~Unavailability of Screen Rate~~) ~~before~~ Rate Switch Date),

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

"LIBOR Loan" means the Loan, any Deferral Tranche, any other part of the Loan or, if applicable, Unpaid Sum to which the Floating Interest Rate applies and which is not a Term SOFR Loan.

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"**Loan**" means 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 a part of a Tranche.

"**Majority Lenders**" means:

- (a) before the first Advance under Tranche A has been made, Lenders whose Commitments total [\*] per cent. of the Total Commitments; and
- (b) after any Advance under any Tranche has been made, Lenders whose Contributions total [\*] per cent. of the Loan.

"**Management Agreement**" means the management agreement (if any) entered or to be entered into between the Borrower and an Approved Manager which is not a member of the Group with respect to the Ship on terms reasonably acceptable to the Majority Lenders and SACE.

"**Margin**" means:

- (a) in relation to the Fixed Interest Rate zero point twenty-four per cent. (0.24%) per annum; and
- (b) in relation to the Floating Interest Rate one point seventy-four per cent. (1.74%) per annum.

"**Marina Facility Agreement**" means, in respect of m.v. MARINA, a facility agreement originally dated 18 July 2008 (as amended by a supplemental agreement dated 25 October 2010, as further amended and restated by an amendment and restatement agreement dated 31 October 2014, as amended by a supplemental agreement dated 4 June 2020, as further amended and restated by an amendment and restatement agreement dated 17 February 2021, as further amended by a supplemental agreement dated 23 December 2021 and as further amended by a supplemental agreement dated 16 December 2022), as further amended, restated and supplemented from time to time.

"**Maritime Registry**" means the maritime registry which the Borrower will specify to the Lenders no later than 90 days before the Intended Delivery Date, being that of Bermuda, the Marshall Islands, Bahamas or such other registry as the Agent may, with the approval of the Italian Authorities and at least three Lenders representing as a minimum the Majority Lenders, approve.

"**Market Disruption Rate**" means the percentage rate per annum which is the aggregate of the Term SOFR Reference Rate and the applicable Credit Adjustment Spread.

"**Material Adverse Effect**" means the occurrence of any event or circumstance which reasonably would be expected to have a material adverse effect on:

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

**"Material Provisions"** means Article 1 (*Subject of the Contract*), Article 2 (*Vessel's Classification – Rules and Regulations – Certificates*), Article 8 (*Delivery*), Article 9 (*Price*), Article 13 (*Speed – Liquidated Damages*), Article 14 (*Deadweight – Liquidated Damages*), Article 17 (*Fuel Oil Consumption – Liquidated Damages*), Article 19 (*Maximum Amount of Liquidated Damages*), Article 20 (*Termination of the Contract – Liquidated Damages to be paid by the Builder*), Article 23 (*Insurance*), Article 25 (*Guarantee – Liability*), Article 26 (*Permissible Delay*), Article 29 (*Assignment of the Contract*), and Article 30 (*Law of the Contract – Disputes*) of the Shipbuilding Contract.

**"Minor Modification"** means a modification of the plans or the specification or the construction of the Ship under Article 24 of the Shipbuilding Contract, resulting in a contract price increase or decrease of less than [\*] Euros (€[\*]).

**"Model"** means the principles of the compliance system adopted by CDP pursuant to Legislative Decree 231/01, available on CDP's website (<http://www.cdp.it/static/upload/principles-of-the-compliance-system.pdf>).

**"Mortgage"** means the first priority mortgage on the Ship acceptable for registration on the Approved Flag and, if applicable, deed of covenant, executed or to be executed by the Borrower in favour of the Security Trustee in the agreed form.

**"Obligors"** means the Borrower, the Guarantor, the Shareholder and (in the event that the Approved Manager is a member of the Group) the Approved Manager.

**"Original Facility Agreement"** has the meaning given to such term in Recital (D).

**"Original Guarantee"** means the guarantee issued by the Guarantor in favour of the Security Trustee on 12 April 2017.

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

**"Original Maximum Loan Amount"** means the aggregate of:

- (a) the Dollar Equivalent of six hundred and forty million Euros (€640,000,000.00); and
- (b) one hundred per cent. (100%) of the SACE Premium to be paid in accordance with Clause ~~8-4~~ 9.1 (*SACE Premium*),

provided that such amount shall not, at any time, exceed eight hundred and sixty-eight million, one hundred and eight thousand, one hundred and eight Dollars and eleven Cents (\$868,108,108.11).

**"Original Principles"** has the meaning given in Recital (H)

**"Original Shipbuilding Contract"** has the meaning given in Recital (A).

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"Overnight LIBOR" means, in relation to ~~the Loan or any part of the~~ LIBOR Loan:

- (a) on any date, the applicable day to day Screen Rate as of the Specified Time for Dollars; or
- (b) as otherwise determined pursuant to Clause ~~6-6-7.6~~ (Unavailability of Screen Rate before Rate Switch Date),

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

"Overseas Regulations" means the United Kingdom Overseas Companies Regulations 2009.

"Parallel Debt" means any amount which an Obligor owes to the Security Trustee under Clause ~~27-2~~ 28.2 (*Parallel Debt (Covenant to pay the Security Trustee)*).

"Participating Member State" means any member state of the European Union that adopts or has adopted the ~~euro~~ 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 from time to time.

"Permitted Financial Indebtedness" means any Financial Indebtedness:

- (a) incurred under the Finance Documents; or
- (b) permitted pursuant to Clause ~~12-14~~ 13.14 (*Financial Indebtedness and subordination of indebtedness*).

"Permitted Security Interests" means:

- (a) in the case of the Borrower:
    - (i) any of the Security Interests referred to in paragraph (b)(ii)(A) below; and
    - (ii) any of the Security Interests referred to in paragraphs (b)(ii)(B), (b)(ii)(C), (b)(ii)(E), (b)(ii)(H) and (b)(ii)(I) below if, by reason of any chartering or management arrangements for the Ship approved by the Agent pursuant to the provisions of this Agreement, such Security Interests are created by the Borrower in the case of paragraphs (b)(ii)(C) or (b)(ii)(E) or incurred by the Borrower in the case of paragraphs (b)(ii)(B), (b)(ii)(H) or (b)(ii)(I); and
  - (b) in the case of the Guarantor:
    - (i) any of the Security Interests referred to in paragraphs (b)(ii)(A), (b)(ii)(D), (b)(ii)(F) and (b)(ii)(G) below; and
    - (ii) any of the Security Interests referred to in paragraphs (C), (E), (H) and (I) below if, by reason of any chartering or management arrangements for the Ship approved by the Agent pursuant to the provisions of this Agreement, such Security Interests are created by the Guarantor in the case of paragraphs (C) or (E) or incurred by the Guarantor in the case of paragraphs (H) or (I);
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- (A) any Security Interest created by or pursuant to the Finance Documents and any deposits or other Security Interests placed or incurred in connection with any bond or other surety from time to time provided to the US Federal Maritime Commission in order to comply with laws, regulations and rules applicable to the operators of passenger vessels operating to or from ports in the United States of America;
  - (B) liens on the Ship up to an aggregate amount at any time not exceeding [\*] (\$[\*]) for current crew's wages and salvage and liens incurred in the ordinary course of trading the Ship;
  - (C) any deposits or pledges up to an aggregate amount at any time not exceeding [\*] Dollars (\$[\*]) to secure the performance of bids, tenders, bonds or contracts required in the ordinary course of business;
  - (D) any other Security Interest including in relation to the Existing Indebtedness over the assets of any Obligor other than the Borrower notified by the Borrower or any of the Obligors to the Agent and accepted by it prior to the date of this Agreement;
  - (E) (without prejudice to the provisions of Clause ~~12.14~~ 13.14 (*Financial Indebtedness and subordination of indebtedness*)) liens on assets leased, acquired or upgraded after the date of the Original Facility Agreement or assets newly constructed or converted after the date of the Original Facility Agreement provided that (i) such liens secure Financial Indebtedness otherwise permitted under this Agreement, (ii) such liens are incurred at the time of such lease, acquisition, upgrade, construction or conversion and (iii) the Financial Indebtedness secured by such liens does not exceed the cost of such upgrade or the cost of such assets acquired or leased;
  - (F) other liens arising in the ordinary course of business of the Group unrelated to Financial Indebtedness and securing obligations not yet delinquent or which are being contested in good faith by appropriate proceedings and for which adequate reserves have been established provided that (i) the aggregate amount of all cash and the fair market value of all other property subject to such liens as are described in this paragraph (F) does not [\*] exceed Dollars (\$[\*]) and (ii) such cash and/or other property is not an asset of the Borrower;
  - (G) subject to the other provisions of this Agreement and the Guarantee, any Security Interest in respect of existing Financial Indebtedness of a person which becomes a Subsidiary of the Guarantor or is merged with or into the Guarantor or any of its subsidiaries;
  - (H) liens in favour of credit card companies on unearned customer deposits pursuant to agreements therewith; and
  - (I) liens in favour of customers on unearned customer deposits.
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**"Pertinent Document"** means:

- (a) any Finance Document;
- (b) any policy or contract of insurance contemplated by or referred to in Clause ~~42-13~~ 13 (*General Undertakings*) or any other provision of this Agreement or another Finance Document;
- (c) any other document contemplated by or referred to in any Finance Document; and
- (d) any document which has been or is at any time sent by or to the Agent in contemplation of or in connection with any Finance Document or any policy, contract or document falling within paragraphs (b) or (c).

**"Pertinent Matter"** means:

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

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

**"Poseidon Principles"** means the financial industry framework for assessing and disclosing the climate alignment of ship finance portfolios published in June 2019 as the same may be amended or replaced to reflect changes in applicable law or regulation or the introduction of or changes to mandatory requirements of the International Maritime Organisation from time to time.

**"Post-Delivery Assignment"** means an assignment of the rights of the Borrower in respect of the post-delivery guarantee liability of the Builder under Article 25 of the Shipbuilding Contract executed or to be executed by the Borrower in favour of the Security Trustee in the agreed form.

**"Pre-delivery Contracts"** means the Shipbuilding Contract and the Refund Guarantee.

**"Pre-delivery Security"** means:

- (a) any document creating security over the Pre-delivery Contracts in agreed form; and/or
- (b) an Account Pledge in agreed form.

**"Principles"** has the meaning given in Recital (K).

**"Prohibited Payment"** means:

- (a) any offer, gift, payment, promise to pay, commission, fee, loan or other consideration which would constitute bribery or an improper gift or payment under, or a breach of Sanctions, any laws of the Republic of Italy, England and Wales, Bermuda, the Council of the European Union, Germany, the United States of America or any other applicable jurisdiction; or
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- (b) any offer, gift, payment, promise to pay, commission, fee, loan or other consideration which would or might constitute bribery within the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions of 17 December 1997.

**"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.

**"Protocol of Delivery and Acceptance"** means the protocol of delivery and acceptance of the Ship to be signed by the Borrower and the Builder in accordance with Article 8 of the Shipbuilding Contract.

**"Qualifying Certificate"** means the certificate to be issued by the Builder on each Drawdown Date under Tranche A and under Tranche B and issued to the Agent and copied to the Borrower substantially in the form set out in Schedule 5 (*Qualifying Certificate*).

**"Quotation Day"** means ~~two Business Days~~ 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 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).

(a) in relation to a LIBOR Loan, two Business Days in London (other than Saturdays and Sundays on which banks are open in London) before the first day of that period unless market practice differs in the Relevant Market in which case the Quotation Day will be determined by the Agent in accordance with that market practice (and if quotations would normally be given on more than one day, the Quotation Day will be the last of those days); and

(b) in relation to a Term SOFR Loan, two US Government Securities Business Days before the first day of that period unless market practice differs in the relevant syndicated loan market in which case the Quotation Day will be determined by the Agent in accordance with that market practice (and if quotations would normally be given on more than one day, the Quotation Day will be the last of those days).

**"Quoted Tenor"** means any period for which:

(a) in relation to a LIBOR Loan, the Screen Rate is customarily displayed on the relevant page or screen of an information service (other than for one week and two months); and

(b) in relation to a Term SOFR Loan, Term SOFR is customarily displayed on the relevant page or screen of an information service.

**"Rate Switch Date"** means the earlier of:

(a) the Backstop Rate Switch Date; and

(b) any Rate Switch Trigger Event Date.

**"Rate Switch Trigger Event"** means:

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(1)

(1)

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

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

- (2) the administrator of the Screen Rate publicly announces that it has ceased or will cease, to provide the Screen Rate for any Quoted Tenor permanently or indefinitely and, at that time, there is no successor administrator to continue to provide the Screen Rate for that Quoted Tenor;
  - (3) the supervisor of the administrator of the Screen Rate publicly announces that the Screen Rate has been or will be permanently or indefinitely discontinued for any Quoted Tenor; or
  - (4) the administrator of the Screen Rate or its supervisor publicly announces that the Screen Rate for any Quoted Tenor may no longer be used; or
- (2) the supervisor of the administrator of the Screen Rate publicly announces or publishes information:
- (1) stating that the Screen Rate for any Quoted Tenor is no longer, or as of a specified future date will no longer be, representative of the underlying market and the economic reality that it is intended to measure and that such representativeness will not be restored (as determined by such supervisor); and
  - (2) with awareness that any such announcement or publication will engage certain triggers for fallback provisions in contracts which may be activated by any such pre-cessation announcement or publication.

**"Rate Switch Trigger Event Date" means:**

- (1) in the case of an occurrence of a Rate Switch Trigger Event described in sub-paragraph (1) of paragraph (1) of the definition of Rate Switch Trigger Event, the date on which the Screen Rate ceases to be published or otherwise becomes unavailable;
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- (2) in the case of an occurrence of a Rate Switch Trigger Event described in sub-paragraph (2), (3) or (4) of paragraph (1) of the definition of Rate Switch Trigger Event, the date on which the Screen Rate for the relevant Quoted Tenor ceases to be published or otherwise becomes unavailable; and
- (3) in the case of an occurrence of a Rate Switch Trigger Event described in paragraph (2) of the definition of Rate Switch Trigger Event, the date on which the Screen Rate for the relevant Quoted Tenor ceases to be representative of the underlying market and the economic reality that it is intended to measure (as determined by the supervisor of the administrator of such Screen Rate).

**"Reference Bank Quotation"** means any quotation supplied to the 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 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 such entities as may be appointed by the Agent in consultation with the Borrower.

**"Refund Guarantee"** means any irrevocable and unconditional guarantee issued or to be issued by a Refund Guarantor in favour of the Borrower under the Shipbuilding Contract in the form annexed to the Sixth Addendum or in any other form acceptable to the Joint Mandated Lead Arrangers and the SACE Agent.

**"Refund Guarantor"** means a bank, insurance company or other financial institution acceptable to the Lenders and SACE which, at the time of issue by it of a Refund Guarantee, has a minimum credit rating of at least BBB- at Standard & Poor's (or, where the relevant Refund Guarantor is not rated by Standard & Poor's, the equivalent rating at Moody's or where the relevant Refund Guarantor is not rated by Standard & Poor's or Moody's, the equivalent rating at Fitch).

~~**"Relevant Interbank Market"** means the London interbank market.~~

**"Reinstatement Event"** means the final 2021 Deferral Final Repayment Date or any date when all Deferral Tranches under the Delivered Vessel Facilities (as defined therein) are repaid or prepaid in full.

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**"Relevant Jurisdiction"** means, in relation to an Obligor:

- (a) its jurisdiction of incorporation;
- (b) any jurisdiction where any asset subject to, or intended to be subject to, any of the Security Interests created, or intended to be created, under the Finance Documents to which it is a party is situated;
- (c) any jurisdiction where it conducts its business; and
- (d) the jurisdiction whose laws govern the perfection of any of the Security Interests created, or intended to be created, under the Finance Documents to which it is a party.

**"Relevant Market" means:**

- (a) subject to paragraph (b) below, the London interbank market; and
- (b) on or after the Rate Switch Date, the market for overnight cash borrowing collateralised by US Government securities.

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

**"Repayment Date"** means a date on which a repayment is required to be made under Clause 5 (*Repayment*).

~~**"Replacement Benchmark" means a benchmark rate which is:**~~

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

**"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"**.

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

"Restricted Country" means a country or territory that is the subject of any comprehensive Sanctions barring dealings with such country or territory.

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

"RG Downgrade Event" means an event which occurs when a Refund Guarantor ceases to maintain a credit rating of at least BBB- at Standard & Poor's (or, where the relevant Refund Guarantor is not rated by Standard & Poor's, the equivalent rating at Moody's or where the relevant Refund Guarantor is not rated by Standard & Poor's or Moody's, the equivalent rating at Fitch).

"Riviera Facility Agreement" means, in respect of m.v. RIVIERA, a facility agreement originally dated 18 July 2008 (as amended by a supplemental agreement dated 25 October 2010, as amended by a side letter dated 29 March 2012, as amended and restated by an amendment and restatement agreement dated 31 October 2014, as amended by a framework agreement dated 31 January 2018, as amended by a supplemental agreement dated 4 June 2020, as further amended and restated by an amendment and restatement agreement dated 17 February 2021, as further amended by a supplemental agreement dated 23 December 2021 and as further amended by a supplemental agreement dated 16 December 2022), as further amended, restated and supplemented from time to time.

"SACE" means SACE S.p.A., an Italian joint stock company (*società per azioni*) with a sole shareholder, whose registered office is located at Piazza Poli 37/42, 00187 Rome, Italy and registered with the Companies Registry of Rome under number 05804521002.

"SACE Agent" means Crédit Agricole Corporate and Investment Bank, a French "*société anonyme*", having a share capital of seven billion eight hundred and fifty one million six hundred and thirty six thousand three hundred and forty two Euros (€7,851,636,342.00) and its registered office located at 12, Place des États-Unis, CS 70052, 92547 Montrouge Cedex, France, registered under the n° Siren 304 187 701 at the Registre du Commerce et des Sociétés of Nanterre or any successor of it appointed under Clause ~~26-27~~ (*Role of the Agent* ~~and~~ the Joint Mandated Lead Arrangers and the SACE Agent).

"SACE Insurance Policy" means the insurance policy (as amended and supplemented from time to time) in respect of this Agreement (which, in all material respects, is not inconsistent with the commercial terms of this Agreement) issued or to be issued by SACE for the benefit of the Lenders in respect of one hundred per cent. (100%) of the Loan in form and substance satisfactory to the Agent and all the Lenders.

"SACE Premium" means the amount payable by the Borrower to SACE directly or through the Agent in two instalments, being the SACE Premium Instalments, in respect of the SACE Insurance Policy as set out in Clause ~~8-1~~ 9.1 (*SACE Premium*).

"SACE Premium Instalments" means each of the First Instalment and Second Instalment.

"SACE Required Documents" means in relation to each Drawdown Notice under Tranche A and under Tranche B:

- (a) a duly completed and executed Qualifying Certificate; and
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- (b) each of the other documents, information and other evidence specified in or required to be enclosed with such Qualifying Certificate.

"**Safety Management Certificate**" 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 imposed by any member state of the European Union or Switzerland;
- (b) imposed by the U.S. Department of the Treasury's Office of Foreign Assets Control (OFAC); or
- (c) 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 (before any correction, recalculation or republication by the administrator) on page LIBOR01 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 Agent may specify another page or service displaying the relevant rate after consultation with the Borrower.

~~"Screen Rate Contingency Period" means fifteen (15) Business Days.~~

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

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

~~(b)~~

~~(i)~~

~~(A) the administrator of that Screen Rate or its supervisor publicly announces that such administrator is insolvent; or~~

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

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

~~(ii) the administrator of that Screen Rate publicly announces that it has ceased or will cease, to provide that Screen Rate permanently or indefinitely and, at that~~

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- ~~time, there is no successor administrator to continue to provide that Screen Rate;~~
- ~~(iii) the supervisor of the administrator of that Screen Rate publicly announces that such Screen Rate has been or will be permanently or indefinitely discontinued; or~~
  - ~~(iv) the administrator of that Screen Rate or its supervisor announces that that Screen Rate may no longer be used;~~
  - ~~(v) in the case of a Screen Rate for LIBOR, the supervisor of the administrator of that Screen Rate makes a public announcement or publishes information:
    - ~~(A) stating that that Screen Rate is no longer or, as of a specified future date will no longer be, representative of the underlying market or economic reality that it is intended to measure and that representativeness will not be restored (as determined by such supervisor); and~~
    - ~~(B) with awareness that any such announcement or publication will engage certain triggers for fallback provisions in contracts which may be activated by any such pre-cessation announcement or publication; or~~~~
  - ~~(e) the administrator of that Screen Rate determines that that Screen Rate should be calculated in accordance with its reduced submissions or other contingency or fallback policies or arrangements and either:
    - ~~(i) the circumstance(s) or event(s) leading to such determination are not (in the opinion of the Majority Lenders and the Borrower) temporary; or~~
    - ~~(ii) that Screen Rate is calculated in accordance with any such policy or arrangement for a period no less than the Screen Rate Contingency Period; or~~~~
  - ~~(e) in the opinion of the Majority Lenders and the Borrower, that Screen Rate is otherwise no longer appropriate for the purposes of calculating interest under this Agreement.~~

"**Second Instalment**" means the second instalment of the SACE Premium as more particularly described in paragraph (b) of Clause ~~8.4~~9.1 (*SACE Premium*).

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

"**Secured Party**" means SACE, the Agent, the Security Trustee, the SACE Agent, the Joint Mandated Lead Arrangers or any Lender whether at the date of the Original Facility Agreement or any later time.

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**"Security Interest"** means:

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

**"Security Period"** means the period commencing on the date of the Original Facility Agreement and ending on the date on which:

- (a) all amounts which have become due for payment by the Borrower or any Obligor under the Finance Documents have been paid;
- (b) no amount is owing or has accrued (without yet having become due for payment) under any Finance Document;
- (c) neither the Borrower nor any other Obligor has any future or contingent liability under Clause ~~49~~ 20 (*Application of sums received*) below or any other provision of this Agreement or another Finance Document; and
- (d) the Agent does 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 the Borrower or an Obligor 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 Property"** means:

- (a) the Security Interests expressed to be granted in favour of the Security Trustee as trustee for the Secured Parties and all proceeds received or recovered by or on behalf of the Security Trustee under or by virtue of any Security Interest including any money or other assets which are received or recovered by it as a result of the enforcement or exercise by it of such a Security Interest or right;
  - (b) all obligations expressed to be undertaken by an Obligor to pay amounts in respect of the Secured Liabilities to the Security Trustee as trustee for the Secured Parties and secured by the Security Interests together with all representations and warranties expressed to be given by an Obligor in favour of the Security Trustee as trustee for the Secured Parties;
  - (c) the Security Trustee's interest in any turnover trust created under the Finance Documents;
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- (d) any other amounts or property, whether rights, entitlements, choses in action or otherwise, actual or contingent, which the Security Trustee is required by the terms of the Finance Documents to hold as trustee on trust for the Secured Parties,

except:

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

**"Security Requirement"** means the amount in Dollars (as certified by the Agent whose certificate shall, in the absence of manifest error, be conclusive and binding on the Borrower and the Agent) which is at any relevant time one hundred and twenty-five per cent (125%) of the Loan.

**"Security Trustee"** means Crédit Agricole Corporate and Investment Bank, a French "*société anonyme*", having a share capital of seven billion eight hundred and fifty one million six hundred and thirty six thousand three hundred and forty two Euros (€7,851,636,342.00) and its registered office located at 12, Place des États-Unis, CS 70052, 92547 Montrouge Cedex, France, registered under the n° Siren 304 187 701 at the Registre du Commerce et des Sociétés of Nanterre or any successor of it appointed under Clause ~~27-28~~ (*The Security Trustee*).

**"Security Value"** means the amount in Dollars (as certified by the Agent whose certificate shall, in the absence of manifest error, be conclusive and binding on the Borrower and the Agent) which, at any relevant time, is the aggregate of (i) the charter free market value of the Ship as most recently determined in accordance with Clause ~~13-4~~ 14.4 (*Valuation of the Ship*); and (ii) the market value of any additional security for the time being actually provided to the Agent pursuant to Clause ~~15-16~~ (*Security Value Maintenance*).

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

**"Seven Seas Explorer Facility Agreement"** means, in respect of m.v. SEVEN SEAS EXPLORER, a facility agreement originally dated 31 July 2013 (as amended and restated by an amendment and restatement agreement dated 31 October 2014, as amended by a supplemental agreement dated 4 June 2020, as further amended and restated pursuant to an amendment and restatement agreement dated 17 February 2021, as further amended by a supplemental agreement dated 23 December 2021 and as further amended by a supplemental agreement dated 16 December 2022), as further amended, restated and supplemented from time to time.

**"Seven Seas Splendor Facility Agreement"** means, in respect of m.v. SEVEN SEAS SPLENDOR, a facility agreement originally dated 30 March 2016 (as amended by a supplemental agreement dated 4 June 2020, as further amended and restated pursuant to an amendment and restatement agreement dated 17 February 2021, as further amended by a supplemental agreement dated 23 December 2021 and as further amended by a supplemental agreement dated 16 December 2022), as further amended, restated and supplemented from time to time.

**"Shareholder"** means NCL International Ltd., a Bermuda company with its registered office at Park Place, 55 Par-la-Ville Road, Hamilton HM 11, Bermuda.

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"**Shares Security Deed**" means a Bermudian law document dated 12 April 2017, executed by the Shareholder in favour of the Security Trustee and creating security over the share capital in the Borrower.

~~"Shareholder" means NCL International Ltd., a Bermuda company with its registered office at Park Place 56, Par-la-Ville Road, Hamilton HM 11, Bermuda.~~

"**Ship**" means the passenger cruise ship currently designated with Hull No. [\*] (as more particularly described in the Shipbuilding Contract) to be constructed under the Shipbuilding Contract and to be delivered to, and purchased by, the Borrower and registered in its name under an Approved Flag.

"**Shipbuilding Contract**" has the meaning given in Recital (N).

"**SIMEST**" means Società Italiana per Le Imprese all'Estero - SIMEST Spa, which grants export subsidies in Italy under and according to the Italian Legislative Decree n. 143/98 and its amendments.

"SOFR" means the secured overnight financing rate (SOFR) administered by the Federal Reserve Bank of New York (or any other person which takes over the administration of that rate) published (before any correction, recalculation or republication by the administrator) by the Federal Reserve Bank of New York (or any other person which takes over the publication of that rate).

"**Specified Time**" means a day or time determined in accordance with the following:

- (a) if LIBOR is fixed, the Quotation Day as of 11:00 am London time; and
- (b) in relation to a Reference Bank Rate calculated by reference to the available quotations in accordance with Clause ~~6.7~~7.7 (*Calculation of Reference Bank Rate*), noon on the Quotation Day.

"**Subordinated Debt Security**" has the meaning given in sub-paragraph (b)(ii) of Clause ~~12.14~~13.14 (*Financial Indebtedness and subordination of indebtedness*).

"**Subsidiary**" has the following meaning:

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 attaching to the issued shares of S; or
- (c) P has the direct or indirect power to appoint or remove a majority of the directors of S; or
- (d) P otherwise has the direct or indirect power to ensure that the affairs of S are conducted in accordance with the wishes of P,

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

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**"Supplemental Pre-delivery Security"** means a deed to be entered into pursuant to the June 2021 Amendment and Restatement Agreement between the Borrower and the Security Trustee, supplemental to the Pre-delivery Security, creating security over the Pre-delivery Contracts.

**"Tax"** means any tax, levy, impost, duty, assessment, fee, deduction or other charge or withholding of a similar nature imposed by any governmental authority (including any penalty or interest payable in connection with any failure to pay or any delay in paying any of the same).

**"Term and Revolving Credit Facilities"** means the facilities granted pursuant to the credit agreement originally dated 24 May 2013 (as amended and restated from time to time) between, inter alios, the Guarantor and Voyager Vessel Company, LLC as borrowers, the lenders party thereto and JPMorgan Chase Bank, N.A., as administrative agent and collateral agent.

**"Term SOFR"** means a term SOFR reference rate administered by CME Group Benchmark Administration Limited (or any other person which takes over the administration of that rate) for the relevant period published (before any correction, recalculation or republication by the administrator) by CME Group Benchmark Administration Limited (or any other person which takes over the publication of that rate).

**"Term SOFR Loan"** means the Loan, any Deferral Tranche, any other part of the Loan or, if applicable, Unpaid Sum to which the Floating Interest Rate applies and which is, or becomes, a "Term SOFR Loan" pursuant to Clause 6 (Rate Switch).

**"Term SOFR Reference Rate"** means, in relation to any Term SOFR Loan:

- (a) the applicable Term SOFR as of the Quotation Day and for a period equal in length to the Interest Period of that Term SOFR Loan; or
- (b) as otherwise determined pursuant to Clause 7.8 (Unavailability of Term SOFR).

and if, in either case, the aggregate of that rate and the applicable Credit Adjustment Spread is less than zero, the Term SOFR Reference Rate shall be deemed to be such a rate that the aggregate of the Term SOFR Reference Rate and the Credit Adjustment Spread is zero.

**"Total Commitments"** means the aggregate of the Total Tranche A Commitments, the Total Tranche B Commitments and the Total Tranche C Commitments.

**"Total Loss"** means:

- (a) actual, constructive, compromised, agreed or arranged total loss of the Ship;
  - (b) any expropriation, confiscation, requisition or acquisition of the 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 1 year without any right to an extension) unless it is within 1 month redelivered to the Borrower's full control;
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- (c) any arrest, capture, seizure or detention of the Ship (including any hijacking or theft) unless it is within 1 month redelivered to the Borrower's full control.

**"Total Loss Date"** means:

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

**"Total Tranche A Commitments"** means the aggregate of the Tranche A Commitments, being eight hundred and sixty-eight million, one hundred and eight thousand, one hundred and eight Dollars and eleven ~~Gent~~cents (\$868,108,108.11) as at the date of the Original Facility Agreement.

**"Total Tranche B Commitments"** means the aggregate of the Tranche B Commitments, being two hundred fifty-eight million, seven hundred and forty-four thousand, four hundred and forty-four Dollars and forty-four ~~Gent~~cents (\$258,744,444.44) as at the date of this Agreement.

**"Total Tranche C Commitments"** means the aggregate of the Tranche C Commitments, being nineteen million, six hundred and twenty-four thousand, eleven Dollars and nine ~~Gent~~cents (\$19,624,011.09) as at the date of this Agreement.

**"Tranche"** means Tranche A, Tranche B or Tranche C.

**"Tranche A"** means the part of the Facility made or to be made available by the Tranche A Lenders to the Borrower to finance (i) up to the Eligible Amount, the Dollar Equivalent of six hundred and forty million Euros (€640,000,000.00), corresponding to all or part of eighty per cent. (80%) of the Final Contract Price, (ii) the First Instalment of the SACE Premium and (iii) the Second Instalment of the SACE Premium.

**"Tranche A Commitments"** means, in relation to a Tranche A Lender, the amount set opposite its name under the heading "Tranche A Lenders" in Part A of Schedule 1 (*Lenders and Commitments*) and the amount of any other Tranche A Commitment transferred to it under this Agreement, to the extent not cancelled, reduced, terminated or transferred by it under this Agreement.

**"Tranche A Lender"** means a bank, financial institution, trust, fund or other entity listed in Part A of Schedule 1 (*Lenders and Commitments*) and acting through its Facility Office or its transferee, successor or ~~assign~~assignee.

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"**Tranche B**" means the part of the Facility to be made available by the Tranche B Lenders to the Borrower to finance:

- (ii) up to the Upsize Allowance Eligible Amount, the Dollar Equivalent of Euros one hundred eighty-five million six hundred thousand (€185,600,000), corresponding to all or part of eighty per cent. (80%) of the Upsize Allowance Price; and
- (iii) 100% of the Tranche B Premium to be paid in accordance with paragraph (a) of Clause 8.6 (*Tranche B Premium*).

"**Tranche B Commitments**" means, in relation to a Tranche B Lender, the amount set opposite its name under the heading "Tranche B Lenders" in Part B of Schedule 1 (*Lenders and Commitments*) and the amount of any other Tranche B Commitment transferred to it under this Agreement, to the extent not cancelled, reduced, terminated or transferred by it under this Agreement.

"**Tranche B Lender**" means a bank, financial institution, trust, fund or other entity listed in Part B of Schedule 1 (*Lenders and Commitments*) and acting through its Facility Office or its transferee, successor or ~~assign~~assignee.

"**Tranche B Premium**" has the meaning given to this term in paragraph (a) of Clause 8.6 (*Tranche B Premium*).

"**Tranche C**" means the part of the Facility to be made available by the Tranche C Lenders to the Borrower to finance, if applicable, the second instalment of the Additional SACE Premium, calculated in accordance with paragraph (a)(ii) of Clause ~~8-5-9.5~~ (*Additional SACE Premium*).

"**Tranche C Commitments**" means, in relation to a Tranche C Lender, the amount set opposite its name under the heading "Tranche C Lenders" in Part C of Schedule 1 (*Lenders and Commitments*) and the amount of any other Tranche C Commitment transferred to it under this Agreement, to the extent not cancelled, reduced, terminated or transferred by it under this Agreement.

"**Tranche C Lender**" means a bank, financial institution, trust, fund or other entity listed in Part C of Schedule 1 (*Lenders and Commitments*) and acting through its Facility Office or its transferee, successor or assign.

"**Transaction Documents**" means the Finance Documents and the Underlying Documents.

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

"**UK Bail-In Legislation**" means (to the extent that the United Kingdom is not an EEA Member Country which has implemented, or implements, Article 55 BRRD) Part 1 of the United Kingdom Banking Act 2009 and any other law or regulation applicable in the United Kingdom relating to the resolution of unsound or failing banks, investment firms or other financial institutes or their affiliates (otherwise than through liquidation, administration or other insolvency proceedings).

"**Underlying Documents**" means the Shipbuilding Contract, the Refund Guarantee, any Management Agreement, any bareboat charter and any charter and associated guarantee in respect of which a notice of assignment is required to be served under the terms of the General Assignment.

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**"Unpaid Sum"** means (i) any sum due and payable but unpaid by an Obligor under the Finance Documents and (ii) any part of the Aggregate SACE Premium unpaid by the Borrower.

**"Upsize Allowance"** means an allowance in relation to:

- (a) the supplies, other items and services linked to the construction, decoration and operation of the Ship as provisionally listed in Section 0014 of the Specification (as defined in the Shipbuilding Contract) and as further agreed between the Borrower (as Owner under the Shipbuilding Contract) and the Builder, pursuant to article 9.2 of the Shipbuilding Contract; and
- (b) the improvements, changes and modifications agreed between the Borrower (as Owner under the Shipbuilding Contract) and the Builder, pursuant to article 9.2 of the Shipbuilding Contract.

**"Upsize Allowance Eligible Amount"** means eighty per cent. (80%) of the Dollar Equivalent of the Upsize Allowance Price.

**"Upsize Allowance Price"** means the price for the Upsize Allowance, in an amount of two hundred and thirty-two million Euros (€232,000,000).

**"US"** means the United States of America.

**"US Government Securities Business Day"** means any day other than:

- (a) a Saturday or a Sunday; and
- (b) a day on which the Securities Industry and Financial Markets Association (or any successor organisation) recommends that the fixed income departments of its members be closed for the entire day for purposes of trading in US Government securities.

**"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.

**"Write-down and Conversion Powers"** means:

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

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

## 1.2 Construction of certain terms

In this Agreement:

**"Agent"**, the **"SACE Agent"**, the **"Joint Mandated Lead Arranger"**, the **"Security Trustee"**, any **"Creditor Party"**, any **"Secured Party"**, any **"Lender"**, any **"Tranche A Lender"**, any **"Tranche B Lender"**, any **"Tranche C Lender"**, any **"Obligor"** or any other **"person"**, shall be construed so as to include its successors in title, permitted assigns and permitted transferees.

**"approved by the Lenders"** (or any similar determination or instruction by the Lenders) means approved in writing by the Agent acting on the instructions of all the Lenders and SACE (on such conditions as they may respectively impose) (or the Lenders only to the extent the SACE Insurance Policy does not cover the event for which such instruction or approval is required) and any requirement for approval by all the Lenders shall mean prior approval.

**"approved by the Majority Lenders"** (or any similar determination or instruction by the Majority Lenders) means approved in writing by the Agent acting on the instructions of the Majority Lenders and SACE (or the Majority Lenders only to the extent the SACE Insurance Policy does not cover the event for which such instruction or approval is required) (on such conditions as they may respectively impose) and otherwise approved means approved in writing by the Agent (on such conditions as the Agent may impose) and approval and approve shall be construed accordingly and any requirement for approval by the Agent or the Majority Lenders shall mean prior approval.

**"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.

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"**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.

"**date of this Agreement**" means ~~\_\_\_\_\_~~ ~~2024~~ the 2023 Effective Date.

"**document**" includes a deed; also a letter or electronic mail.

"**expense**" means any kind of cost, charge or expense (including all legal costs, charges and expenses) and any applicable Taxes including VAT.

a Lender's "cost of funds" in relation to its participation in the Loan or any part of the Loan is a reference to the average cost (determined either on an actual or a notional basis) which that Lender would incur if it were to fund, from whatever source(s) it may reasonably select, an amount equal to the amount of that participation in the Loan or that part of the Loan for a period equal in length to the Interest Period of the Loan or that part of the Loan.

"**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.

"**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;

"**law**" includes any order or decree, any form of delegated legislation, any treaty or international convention and any regulation or resolution of the Council of the European Union, the European Commission, the United Nations or its Security Council.

"**legal or administrative action**" means any legal proceeding or arbitration and any administrative or regulatory action or investigation.

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

"**months**" shall be construed in accordance with Clause 1.4 (*Meaning of "month"*).

"**parent company**" has the meaning given in the definition of "Subsidiary".

"**person**" includes any individual, firm, company, corporation, government, any state, political subdivision of a state and local or municipal authority, agency of a state or any association, trust, joint venture, consortium or partnership; and any international organisation (whether or not having a separate legal personality).

"**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.

"**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.

### 1.3 Construction of Insurance Terms

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"**approved**" means, for the purposes of Clause ~~44-15~~15 (*Insurance Undertakings*), approved in writing by the Agent.

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

"**obligatory insurances**" means all insurances effected, or which the Borrower is obliged to effect, under Clause ~~44-15~~15 (*Insurance Undertakings*) or any other provision of this Agreement or another Finance Document.

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

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

"**war risks**" includes the risk of mines and all risks excluded by 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 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.

#### 1.5 Non-applicable provisions between the Obligors and German Lenders

The undertakings and covenants given under paragraph (d) of Clause ~~42-2-13.2~~13.2 (*Information*), Clause ~~42-4-13.4~~13.4 (*Illicit Payments*), Clause ~~42-5-13.5~~13.5 (*Prohibited Payments*), Clause ~~42-25-13.25~~13.25 (*Compliance with laws etc.*) or provisions contained in Clause ~~20-3-21.3~~21.3 (*Miscellaneous indemnities*) or Clause ~~24-4-22.1~~22.1 (*Illegality and Sanctions*) and the representations and warranties given under paragraphs (u), (v), (y), (z) and (jj) of Clause ~~44-2-12.2~~12.2 (*Continuing representations and warranties*) and paragraph (j) of Clause ~~44-3-12.3~~12.3 (*Representations on the Delivery Date*) respectively shall only be given, and be applicable to, a Lender incorporated in the Federal Republic of Germany insofar as the giving of and compliance with such

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undertakings and covenants and such representations and warranties do not result in a violation of or conflict with section 7 of the German Foreign Trade Regulation (*Außenwirtschaftsverordnung*) (in conjunction with section 4 paragraph 1 a no.3 foreign trade law (AWG) (*Außenwirtschaftsgesetz*)), any provision of Council Regulation (EC) 2271/1996 or any similar applicable anti-boycott law or regulation.

## 1.6 General Interpretation

In this Agreement:

- (a) references in Clause 1.1 (*Definitions*) to a Finance Document or any other document being an "**agreed form**" are to the form agreed between the Agent (acting with the authorisation of each of the Creditor Parties and SACE) and the Borrower with any modifications to that form which the Agent (with the authorisation of the Majority Lenders and SACE in the case of substantial modifications) approves or reasonably requires;
- (b) references to, or to a provision of, a Finance Document or any other document are references to it as amended, amended and restated or supplemented, whether before the date of this Agreement or otherwise;
- (c) references to Sanctions, for the purposes of Clause ~~44-12~~ (*Representations and Warranties*), Clause ~~42-13~~ (*General Undertakings*), Clause ~~20-21~~ (*Indemnities*), Clause ~~24-22~~ (*Illegality, etc.*) and the Security Documents shall mean "Sanctions" as defined in Clause 1.1 (*Definitions*), by which any Obligor is bound or to which it is subject or, as regards a regulation, compliance with which is reasonable in the ordinary course of business of any Obligor.
- (d) references to, or to a provision of, any law or regulation include any amendment, extension, re-enactment or replacement, whether made before the date of this Agreement or otherwise;
- (e) 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;
- (f) words denoting the singular number shall include the plural and vice versa; and
- (g) Clauses 1.1 (*Definitions*) to 1.6 (*General Interpretation*) apply unless the contrary intention appears.

## 1.7 Headings

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

## 1.8 Schedules

The schedules form an integral part of this Agreement.

## 2 FACILITY

### 2.1 Amount of facility

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Subject to the other provisions of this Agreement:

- (a) the Tranche A Lenders agree to make available to the Borrower a loan in relation to Tranche A in five (5) Advances not exceeding, in aggregate, the Total Tranche A Commitments intended to be applied as follows:
  - (i) in reimbursement to the Borrower or in payment to the Builder, up to the Eligible Amount, of all or part of eighty per cent. (80%) of the Final Contract Price;
  - (ii) in reimbursement to the Borrower of the amount of the First Instalment of the SACE Premium paid by it to SACE in accordance with paragraph (a) of Clause ~~8.4~~9.1 (*SACE Premium*); and
  - (iii) in payment to SACE of the amount of the Second Instalment of the SACE Premium payable by the Borrower to SACE in accordance with paragraph (b) of Clause ~~8.4~~9.1 (*SACE Premium*);
- (b) the Tranche B Lenders agree to make available to the Borrower a loan in relation to Tranche B in four (4) Advances not exceeding, in aggregate, the Total Tranche B Commitments intended to be applied as follows:
  - (i) in reimbursement to the Borrower or in payment to the Builder (as set out in the relevant Drawdown Notice) up to the Upsize Allowance Eligible Amount, of all or part of eighty per cent. (80%) of the Upsize Allowance Price; and
  - (ii) in reimbursement to the Borrower or in payment to SACE of the amount of the Tranche B Premium payable by the Borrower to SACE in accordance with paragraph (a)(i) of Clause 8.6 (*Tranche B Premium*);
  - (iii) in payment to SACE of the amount of the Tranche B Premium payable by the Borrower to SACE in accordance with paragraph (a)(ii) of Clause ~~8.6~~9.6 (*Tranche B Premium*).
- (c) the Tranche C Lenders agree to make available to the Borrower a loan in relation to Tranche C in one (1) Advance not exceeding the Total Tranche C Commitments intended to be applied in payment to SACE of the amount of the second instalment of the Additional SACE Premium which may be payable by the Borrower to SACE in accordance with paragraph (a)(ii) of Clause ~~8.5~~9.5 (*Additional SACE Premium*).

## **2.2 Lenders' participations in Loan**

Subject to the other provisions of this Agreement:

- (a) each Tranche A Lender shall participate in each Advance under Tranche A in the proportion which, as at the relevant Drawdown Date, its Tranche A Commitment bears to the Total Tranche A Commitments;
  - (b) each Tranche B Lender shall participate in each Advance under Tranche B in the proportion which, as at the relevant Drawdown Date, its Tranche B Commitment bears to the Total Tranche B Commitments; and
  - (c) each Tranche C Lender shall participate in the Advance under Tranche C in the proportion which, as at the relevant Drawdown Date, its Tranche C Commitment bears to the Total Tranche C Commitments.
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## 2.3 Purpose of Loan

The Borrower undertakes with each Secured Party to use:

- (a) each Advance under Tranche A only to pay for:
- (i) goods and services of Italian origin incorporated in the design, construction or delivery of the Ship;
  - (ii) subject to the limits and conditions fixed by the Italian Authorities, goods and services incorporated in the design, construction or delivery of the Ship and originating from countries other than Italy where the provision of such goods or services has been sub-contracted by the Builder and therefore remains the Builder's responsibility under the Shipbuilding Contract;
  - (iii) reimbursement to the Borrower of all or part of eighty per cent. (80%) of the First Shipbuilding Contract Instalment;
  - (iv) reimbursement to the Borrower of the First Instalment of the SACE Premium paid by the Borrower direct to SACE in accordance with paragraph (a) of Clause ~~8-4~~9.1 (*SACE Premium*); and
  - (v) the Second Instalment of the SACE Premium payable in accordance with paragraph (b) of Clause ~~8-4~~9.1 (*SACE Premium*);
- (b) each Advance under Tranche B only to pay:
- (i) for goods and services in relation to the Upsize Allowance; and
  - (ii) subject to the limits and conditions fixed by the Italian Authorities, goods and services incorporated in the design, construction or delivery of the Ship and originating from countries other than Italy where the provision of such goods or services has been sub-contracted by the Builder and therefore remains the Builder's responsibility under the Shipbuilding Contract;

provided that the first Advance under Tranche B shall also be used to pay 100% of the Tranche B Premium, payable in accordance with paragraph (a) of Clause ~~8-6~~9.6 (*Tranche B Premium*); and

- (c) the Advance under Tranche C only to pay for the second instalment of the Additional SACE Premium which may be payable in accordance with paragraph (a)(ii) of Clause ~~8-5~~9.5 (*Additional SACE Premium*).

## 2.4 Creditor Parties' rights and obligations

- (a) The obligations of each Creditor Party under the Finance Documents are several. Failure by a Creditor Party to perform its obligations under the Finance Documents does not affect the obligations of any other Party under the Finance Documents. No Creditor Party is responsible for the obligations of any other Creditor Party under the Finance Documents.
- (b) The rights of each Creditor Party and SACE under or in connection with the Finance Documents are separate and independent rights and any debt arising under the Finance Documents to a Creditor Party and SACE from an Obligor shall be a separate and independent debt.
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- (c) A Creditor Party and SACE may not, except as otherwise stated in the Finance Documents, separately enforce its rights under the Finance Documents.
- (d) Notwithstanding any other provision of the Finance Documents and subject to the prior written consent of SACE, a Creditor Party may separately sue for any Unpaid Sum due to it without the consent of any other Creditor Party or joining any other Creditor Party to the relevant proceedings (it being understood that a Creditor Party may file a claim noting the amounts due to it in the event insolvency proceedings are commenced against the Borrower by a third party).

## **2.5 Monitoring**

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

## **2.6 Obligations of Lenders several**

The obligations of the Lenders under this Agreement are several; and a failure of a Lender to perform its obligations under this Agreement shall not result in:

- (a) the obligations of the other Lenders being increased; nor
- (b) any Obligor or any other Lender being discharged (in whole or in part) from its obligations under any Finance Document,

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

## **3 CONDITIONS PRECEDENT**

### **3.1 General**

The Borrower may only draw an Advance under a Tranche when the following conditions have been fulfilled to the satisfaction of the Agent and provided no Event of Default shall have occurred and remains unremedied or is likely to occur as a consequence of the drawing of the Advance:

### **3.2 No later than the date of the Original Facility Agreement**

The Agent shall have received no later than the date of the Original Facility Agreement:

- (a) an opinion from legal counsel acceptable to the Secured Parties as to the laws of the state of Bermuda in form and substance satisfactory to the Agent and the Secured Parties, together with the company documentation of the Bermudian Obligors supporting the opinion, including but without limitation the Memorandum of Association and By-laws as filed with the competent authorities and a certificate of a competent officer or manager of each of the Bermudian Obligors containing specimen signatures of the persons authorised to sign the documents on behalf of each of the Bermudian Obligors, including, without limitation:
    - (i) the Bermudian Obligors have been duly formed and are validly existing as companies under the laws of Bermuda;
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- (ii) the Finance Documents to which each Bermudian Obligor is a party to fall within the scope of the Bermudian Obligors' purpose as defined by their Memoranda of Association and By-laws;
  - (iii) each Bermudian Obligor's representatives were at the date of the Original Facility Agreement fully empowered to sign the Finance Documents to which it is a party;
  - (iv) either all administrative requirements applicable to the Bermudian Obligors (whether in Bermuda or elsewhere), concerning the transfer of funds abroad and acquisitions of Dollars to meet their obligations hereunder have been complied with, or that there are no such requirements;
  - (v) no withholding tax or stamp duty implications arise by virtue of the Bermudian Obligors entering into the Finance Documents to which they are a party respectively;
  - (vi) a judgment of an English Court in relation to this Agreement and any relevant Finance Documents to which each Bermudian Obligor is a party will be recognised by and acknowledged by the Courts in Bermuda; and
  - (vii) the Finance Documents to which each Bermudian Obligor is a party constitute the legal, valid and binding obligations of that Bermudian Obligor enforceable in accordance with its terms, and containing such qualifications and assumptions as are standard for opinions of this type;
- (b) an opinion from legal counsel to the Secured Parties as to English law in form and substance satisfactory to the Agent and the Secured Parties in respect of the validity and enforceability of the Original Facility Agreement and the Original Guarantee;
  - (c) an opinion from legal counsel to the Secured Parties as to Bermudian law in form and substance satisfactory to the Agent and the Secured Parties in respect of the validity and enforceability of the Shares Security Deed;
  - (d) a Certified Copy of the executed Shipbuilding Contract;
  - (e) such documentary evidence as the Agent and its legal advisers may require in relation to the due authorisation and execution by the Borrower and the Builder of the Shipbuilding Contract and of all documents to be executed by the Borrower and the Builder;
  - (f) a confirmation from EC3 Services Limited of The St Botolph Building, 138 Houndsditch, London EC3A 7AR that it will act for the Borrower and the Guarantor as agent for service of process in England in respect of the Original Facility Agreement and any other Finance Document;
  - (g) duly executed originals of the Original Guarantee and the Shares Security Deed and of each document to be submitted pursuant to it;
  - (h) such documentation and other evidence as is reasonably requested by the Agent (for itself or on behalf of any Lender or SACE) or any Lender or SACE (for itself) in order for the Agent and such Lender or SACE to carry out and be satisfied it has complied with all necessary "know your customer" or other similar checks under all applicable laws and regulations pursuant to the transactions contemplated in the Finance Documents;
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- (i) payment of [\*] per cent. ([\*]%) of the Joint Mandated Lead Arranger structuring fee payable in accordance with paragraph (a)(i) of Clause ~~9~~10 (*Fees*);
- (j) payment of the initial portion of the Agent Structuring Fee (as defined in the Fee Letter), payable in accordance with terms of the Fee Letter; and
- (k) an agreed form version of the Italian law tax opinion from legal counsel to the Creditor Parties in respect of the tax treatment of payments under the SACE Insurance Policy.

**3.3 No later than forty-five (45) days before the first Drawdown Date under Tranche A**

The Agent shall have received from the Borrower no later than forty-five (45) days before the first Drawdown Date under Tranche A (and on each subsequent date on which a Compliance Certificate is to be received by the Security Trustee pursuant to clause 11.3(c) of the Original Guarantee) a duly completed Compliance Certificate from the Guarantor.

**3.4 No later than [\*] ([\*]) days before the first Drawdown Date under Tranche A**

The Agent shall have received from the Borrower no later than [\*] ([\*]) days before the first Drawdown Date under Tranche A:

- (a) a notification, signed by a duly authorised signatory of the Borrower, specifying which of the Fixed Interest Rate or the Floating Interest Rate shall be applicable to all Advances until the date of payment of the final repayment instalment of the Loan in accordance with the provisions of Clause ~~6.4~~7.1 (*Fixed or Floating Interest Rate*);
- (b) the SACE Insurance Policy documentation relating to the transaction contemplated by this Agreement issued on terms whereby the SACE Insurance Policy will enter into full force and effect upon fulfilment of the conditions specified therein to be fulfilled on or before the first Drawdown Date; and
- (c) a certified true copy bank statement evidencing receipt by the Builder of the First Shipbuilding Contract Instalment (as described in Recital (B)).

**3.5 No later than five (5) Business Days before each Drawdown Date under any Tranche**

The Agent shall have received no later than five (5) Business Days before each Drawdown Date under any Tranche a Drawdown Notice from the Borrower, signed by a duly authorised signatory of the Borrower, specifying the amount of the Advance to be drawn down.

**3.6 No later than five (5) Business Days before the First Drawdown Date under Tranche A**

The Agent shall have received no later than five (5) Business Days before the first Drawdown Date under Tranche A:

- (a) an agreed form version of the Pre-delivery Security and of each document to be issued pursuant to it;
  - (b) an agreed form version of the opinion to be issued by legal counsel to the Secured Parties as to English law in form and substance satisfactory to the Agent and the Secured Parties in respect of the validity and enforceability of the Pre-delivery Security;
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- (c) an agreed form version of the opinion to be issued by legal counsel to the Secured Parties as to Bermuda law in form and substance satisfactory to the Agent and the Secured Parties in respect of the Borrower's execution of the Pre-delivery Security;
- (d) an original of the SACE Insurance Policy;
- (e) evidence that the First Instalment has been paid;
- (f) an agreed form version of the Interest Make-Up Agreement relative to the Loan;
- (g) an agreed form version of the opinion to be issued by legal counsel to the Creditor Parties as to Italian law in form and substance satisfactory to the Agent and the Secured Parties in respect of SACE's issuance of the SACE Insurance Policy and compliance with the principles governing the eligibility of credit risk mitigation techniques as per Article 194, paragraph 1, of the Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013;
- (h) if applicable, an agreed form version of the Subordinated Debt Security; and
- (i) the agreed form version of any opinions to be issued by legal counsel to the Secured Parties relating to the due execution, validity and enforceability of the Subordinated Debt Security (if applicable), in form and substance satisfactory to the Agent and the Secured Parties.

### **3.7 No later than the First Drawdown Date under Tranche A**

The Agent shall have received no later than the first Drawdown Date under Tranche A:

- (a) a duly executed original of the Pre-delivery Security (excluding any Account Pledge) and of each document to be issued pursuant to it;
- (b) an opinion from legal counsel to the Secured Parties as to English law in form and substance satisfactory to the Agent and the Secured Parties in respect of the validity and enforceability of the Pre-delivery Security (excluding any Account Pledge);
- (c) an opinion from legal counsel to the Secured Parties as to Bermuda law in form and substance satisfactory to the Agent and the Secured Parties in respect of the Borrower's execution of the Pre-delivery Security (excluding any Account Pledge);
- (d) an original of the Interest Make-Up Agreement relative to the Loan and in full force and effect;
- (e) an opinion from legal counsel to the Creditor Parties as to Italian law in form and substance satisfactory to the Agent and the Secured Parties in respect of SACE's issuance of the SACE Insurance Policy and compliance with the principles governing the eligibility of credit risk mitigation techniques as per Article 194, paragraph 1, of the Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013; and
- (f) an Italian law tax opinion from legal counsel to the Creditor Parties in respect of the tax treatment of payments under the SACE Insurance Policy.

### **3.8 No later than the First Drawdown Date under Tranche B**

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The Agent shall have received, no later than the first Drawdown Date under Tranche B:

- (a) a duly executed original of the Supplemental Pre-delivery Security and of each document to be issued pursuant to it;
- (b) a duly executed original of the relevant addendum to the Interest Make-Up Agreement;
- (c) a duly executed original of the relevant addendum to the SACE Insurance Policy;
- (d) a copy of the Seventh Addendum and any other relevant addendum to the Shipbuilding Contract;
- (e) an opinion from legal counsel to the Secured Parties as to English law in form and substance satisfactory to the Agent and the Secured Parties in respect of the validity and enforceability of the Supplemental Pre-delivery Security;
- (f) an opinion from legal counsel to the Secured Parties as to Bermuda law in form and substance satisfactory to the Agent and the Secured Parties in respect of the Borrower's execution of the Supplemental Pre-delivery Security; and
- (g) A legal opinion of Watson Farley & Williams LLP, legal advisers to the Agent (acting on behalf of the Lenders) and SACE in Italy, substantially in the form and substance satisfactory to the Lenders.

**3.9 No later than the Drawdown Date in respect of each Advance under Tranche A other than first Advance under Tranche A and the Delivery Advance under Tranche A**

The Agent shall have received no later than the Drawdown Date in respect of each Advance under Tranche A other than in respect of the first Advance under Tranche A and the Delivery Advance under Tranche A, a copy of the class milestone certificate in respect of the instalment due under the Shipbuilding Contract to which the Advance relates issued by the classification society.

**3.10 No later than the Drawdown Date in respect of each Advance under Tranche A and Tranche B other than the Delivery Advance under Tranche A and Tranche B**

The Agent shall have received no later than the Drawdown Date in respect of each Advance under Tranche A and Tranche B, other than the Delivery Advance under Tranche A and Tranche B:

- (i) a Certified Copy of any executed Refund Guarantee in respect of such Advance and of the power of attorney (or other form of authority) and related corporate authorities pursuant to which such Refund Guarantee was signed;
  - (ii) as regards any previous Advance, in the event the Refund Guarantee issued in respect of such previous Advance cannot be renewed or extended:
    - (A) evidence that an Acceptable Deposit has accordingly been transferred to the Account pursuant to the terms of the Shipbuilding Contract; and
    - (B) unless satisfied for any previous Advance, (x) a certified copy of the executed Account Pledge in respect of the Acceptable Deposit, granted by the Borrower in favour of the Security Trustee, the Joint Mandated Lead Arrangers, the
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Agent, the SACE Agent and the Lenders (as defined therein), (y) a certified copy of the power of attorney (or other form of authority) and related corporate authorities pursuant to which such Account Pledge was signed and (z) any usual standard form opinions from legal counsel to the Secured Parties required by the Secured Parties in respect of the execution and/or the validity and enforceability of the Account Pledge;

- (iii) a copy of the relevant invoice from the Builder in respect of the instalment under the Shipbuilding Contract to which the Advance relates;
  - (iv) written confirmation from the SACE Agent that there is no outstanding notice from SACE which terminates, cancels or repudiates, withdraws or suspends the SACE Insurance Policy or states that the SACE Insurance Policy is not effective or not guaranteed by the Republic of Italy;
  - (v)
    - (A) in relation to Tranche A, save for the First Shipbuilding Contract Instalment (in respect of which the Builder shall have received from the Borrower an amount equal to one hundred per cent (100%) of such instalment and the Agent shall have received a certified true copy bank statement evidencing receipt by the Builder of the First Shipbuilding Contract Instalment in accordance with Clause 3.4 (*No later than* [\*] (*[\*]*) *days before the first Drawdown Date*)), confirmation in writing from the Builder that it has received from the Borrower an amount equal to twenty per cent. (20%) of the relevant instalment due under the Shipbuilding Contract to which the Advance relates;
    - (B) in relation to Tranche B (save for an instalment in respect of which the Builder shall have received from the Borrower an amount equal to one hundred per cent (100%) of such instalment and the Agent shall have received a certified true copy bank statement evidencing receipt by the Builder of such full amount and of which 80% shall be reimbursed to the Borrower pursuant to the relevant Advance), confirmation in writing from the Builder that it has received from the Borrower an amount equal to twenty per cent. (20%) of the relevant instalment due under the Shipbuilding Contract to which the Advance relates;
  - (vi) a copy of a duly executed Qualifying Certificate;
  - (vii) a certificate confirming that:
    - (A) the Shipbuilding Contract continues to be in full force and effect; and,
    - (B) in relation to each instalment under a Pre-Delivery Contract, the proposed Refund Guarantee in respect of such instalment is or is to be provided by a Refund Guarantor who is not subject to an RG Downgrade Event; and
    - (C) in relation to any previous instalment under a Pre-Delivery Contract, in respect of which the issued Refund Guarantee cannot be renewed or extended and an Acceptable Deposit has accordingly been transferred to the Account pursuant to the terms of the Shipbuilding Contract, the Account Pledge continues to be in full force and effect;
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- (viii) a certificate of confirmation confirming that:
  - (A) no default or mandatory prepayment event pursuant to Clause ~~46-17~~ (*Cancellation, Prepayment and Mandatory Prepayment*) is continuing or would result from the proposed Advance;
  - (B) the repeating representations and, in relation to the first Advance and first Drawdown Notice, all of the other representations set out in Clause ~~44-12~~ (*Representations and Warranties*) (except the representations to be made on the Delivery Date pursuant to paragraph (b) of Clause ~~44-12.1~~ (*Timing and repetition*)) are true;
- (ix) a certificate of confirmation attaching an original or a certified copy of each of the SACE Required Documents and the Agent shall be satisfied that the SACE Required Documents on their face appear properly completed and comply with the requirements of this Agreement and the requirements of the SACE Insurance Policy;
- (x) if applicable, a duly executed original of the Subordinated Debt Security; and
- (xi) any opinions from legal counsel to the Secured Parties relating to the due execution, validity and enforceability of the Subordinated Debt Security (if applicable), in form and substance satisfactory to the Agent and the Secured Parties.

**3.11 No later than four (4) years before the Intended Delivery Date**

The Agent shall have received no later than four (4) years before the Intended Delivery Date, payment of the remaining [\*] per cent. ([\*]%) of the Joint Mandated Lead Arranger structuring fee payable in accordance with paragraph (a)(ii) of Clause ~~9-10~~ (*Fees*).

**3.12 No later than ninety (90) days before the Intended Delivery Date**

The Agent shall have received no later than ninety (90) days before the Intended Delivery Date:

- (a) notification from the Borrower of its chosen Maritime Registry; and
- (b) notification of the Approved Manager.

**3.13 No later than sixty (60) days before the Intended Delivery Date**

The Agent shall have received from the Borrower no later than sixty (60) days before the Intended Delivery Date:

- (a) notification of the Intended Delivery Date;
- (b) a notice from the Borrower as described in paragraph (a) of Clause ~~8-4-9.4~~ (*Refund*) and in paragraph (f) of Clause ~~8-6-9.6~~ (*Tranche B Premium*); and
- (c) a Bermudian tax opinion from legal counsel to the Secured Parties in respect of the tax treatment of the entry by the Bermudian incorporated Borrower into this Agreement and the other Finance Documents substantially in the form notified to the Borrower on or around the date of this Agreement and updated to reflect any changes in law.

**3.14 No later than fifteen (15) Business Days before the Intended Delivery Date**

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The Agent shall have received no later than fifteen (15) Business Days before the Intended Delivery Date insurance documents in form and substance satisfactory to the Lenders confirming that the Insurances have been effected and will be in full force and effect on the Delivery Date.

**3.15 No later than five (5) Business Days before the Intended Delivery Date**

The Agent shall have received no later than five (5) Business Days before the Intended Delivery Date:

- (a) a Certified Copy of any amendments to the Shipbuilding Contract which are not Minor Modifications arising in the general day to day construction period for a vessel of the type of the Ship and of the power of attorney pursuant to which the authorised signatory of the Borrower signed the relevant Drawdown Notice and a specimen of his signature; and
- (b) a final confirmation of the Intended Delivery Date signed by a duly authorised signatory of the Borrower, and counter-signed by a duly authorised signatory of the Builder.

**3.16 No later than the Delivery Date**

- (a) In respect of the Advance to be made available by the Tranche A Lenders on the Delivery Date, the Agent shall have received no later than the Delivery Date:
    - (i) if applicable, a duly executed original of the Subordinated Debt Security;
    - (ii) any opinions from legal counsel to the Secured Parties relating to the due execution, validity and enforceability of the Subordinated Debt Security, in form and substance satisfactory to the Agent and the Secured Parties;
    - (iii) evidence of payment to and receipt by the Builder of any other part of the Final Contract Price as at the Delivery Date not being financed hereunder;
    - (iv) payment of the remaining portion of the Agent Structuring Fee (as defined in the Fee Letter), payable in accordance with terms of the Fee Letter;
    - (v) evidence of payment of all amounts which are due and payable hereunder by the Borrower on or prior to the Delivery Date;
    - (vi) a certificate from the Borrower, signed by an authorised representative of the Borrower, confirming that the representations and warranties contained in Clause ~~44-12~~ 12 (*Representations and Warranties*) are true and correct as of the Delivery Date in consideration of the facts and circumstances existing as of the Delivery Date;
    - (vii) a certificate of confirmation confirming that:
      - (A) the Shipbuilding Contract continues to be in full force and effect;
      - (B) no default or mandatory prepayment event pursuant to Clause ~~46-17~~ 17 (*Cancellation, Prepayment and Mandatory Prepayment*) is continuing or would result from the Delivery Advances;
      - (C) the repeating representations as set out in Clause ~~44-12~~ 12 (*Representations and Warranties*) are true; and
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- (D) the representations to be made on the Delivery Date pursuant to Clause ~~41.3~~12.3 (*Representations on the Delivery Date*) are true;
- (viii) an original or a certified copy of each of the SACE Required Documents and the Agent shall be satisfied that the SACE Required Documents on their face appear properly completed and comply with the requirements of this Agreement and the requirements of the SACE Insurance Policy;
- (b) In respect of the Advance to be made available by the Tranche B Lenders on Delivery Date, the Agent shall have received no later than the Delivery Date:
- (i) a copy of the relevant invoice from the Builder in respect of the Upsize Allowance to which such Advance relates;
- (ii) the documents, evidence or confirmations, as relevant, set out in paragraphs (a)(i), (a)(v)(v), (a)(vi), (a)(vii) and (a)(viii) of this Clause 3.16 (*No later than the Delivery Date*) and
- (iii) evidence of payment to and receipt by the Builder of any other part of the Upsize Allowance Price as at the Delivery Date not being financed hereunder;
- (c) If applicable, in respect of the Advance to be made available by the Tranche C Lenders on Delivery Date, the Agent shall have received no later than the Delivery Date the documents, evidence or confirmations, as relevant, set out in paragraphs (a)(i), (a)(v), (a)(vi) and (a)(vii) of this Clause 3.16 (*No later than the Delivery Date*),

provided always that, in relation to paragraphs (a), (b) and (c) above, the obligations of the relevant Lenders to make such Advance under each of Tranche A, Tranche B and Tranche C, as applicable, available on the Delivery Date are subject to the Lenders remaining satisfied that each of the SACE Insurance Policy and the Interest Make-Up Agreement will cover the Loan following such Advances and delivery to the Agent of the documents listed in Schedule 3 (*Documents to be produced by the Builder to the Agent on Delivery*).

### **3.17 At Delivery**

Immediately prior to the delivery of the Ship by the Builder to the Borrower, the Agent shall have received:

- (a) evidence that immediately following delivery:
- (i) the Ship will be registered in the name of the Borrower in the Maritime Registry;
- (ii) title to the Ship will be held by the Borrower free of all Security Interests other than any maritime lien in respect of crew's wages and trade debts arising out of equipment, consumable and other stores placed on board the Ship prior to or concurrently with delivery, none of which is overdue;
- (iii) the Mortgage will be duly registered in the Maritime Registry and constitutes a first priority security interest over the Ship and that all taxes and fees payable to the Maritime Registry in respect of the Ship have been paid in full; and
- (iv) the opinions mentioned in paragraphs (b) and (c) of Clause 3.18 (*Immediately following Delivery*), in draft form immediately prior to the delivery of the Ship, and the
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documents mentioned in paragraph (e) of Clause 3.18 (*Immediately following Delivery*) will be issued to and received by the Agent;

- (b) a Certified Copy of a classification certificate (or interim classification certificate) showing the Ship to be classed in accordance with paragraph (c) of Clause ~~4.3~~12.3 (*Representations on the Delivery Date*).
- (c) duly executed originals of the General Assignment, any Approved Manager's Undertaking and the Post-Delivery Assignment together with relevant notices of assignment and the acknowledgement of the notice of assignment to be issued pursuant to the General Assignment and the Post-Delivery Assignment;
- (d) a Certified Copy of any executed Management Agreement, any bareboat charter and any related security pursuant to paragraph (b) of Clause ~~4.3~~14.1 (*Pooling of earnings and charters*) (if applicable) and any time charterparty in respect of the Ship;
- (e) a Certified Copy of any current certificate of financial responsibility in respect of the Ship issued under OPA, a valid Safety Management Certificate (or interim Safety Management Certificate) issued to the Ship in respect of its management by the Approved Manager pursuant to the ISM Code, a valid Document of Compliance (or interim Document of Compliance) issued to the Approved Manager in respect of ships of the same type as the Ship pursuant to the ISM Code, a valid International Ship Security Certificate issued to the Ship in accordance with the ISPS Code and a valid IAPPC issued to the Ship in accordance with Annex VI and, if entered into, any carrier initiative agreement with the United States' Customs and Border Protection under the Customs-Trade Partnership Against Terrorism (C-TPAT) programme along with any other documents required under the ISM Code and the ISPS Code;
- (f) a Certified Copy of the power of attorney pursuant to which the authorised signatory(ies) of the Borrower signed the documents referred to in this Clause 3.17 (*At Delivery*) and to which the Borrower is a party and a specimen of his or their signature(s); and
- (g) a confirmation from Hannaford Turner LLP, currently of 107 Cheapside, London UK, EC2V 6DN, (or any replacement process agent satisfactory to the Agent acting reasonably) that it will act for each of the relevant Obligors as agent for service of process in England in respect of the deed of covenants constituting part of the Mortgage (if applicable), the General Assignment and the Post-Delivery Assignment.

### **3.18 Immediately following Delivery**

Immediately following the delivery of the Ship by the Builder to the Borrower, the Agent shall receive:

- (a) a duly executed original of the Mortgage;
  - (b) an opinion from legal counsel acceptable to the Secured Parties as to the law of the Maritime Registry in form and substance satisfactory to the Agent and the Secured Parties confirming:
    - (i) the valid registration of the Ship in the Maritime Registry; and
    - (ii) the Mortgage over the Ship is a first priority security and has been validly registered in the Maritime Registry;
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- (c) an opinion from legal counsel to the Secured Parties as to English law in form and substance satisfactory to the Agent and the Secured Parties in respect of the validity and enforceability of the deed of covenants constituting part of the Mortgage (if applicable), the General Assignment, the Post-Delivery Assignment and any other relevant security document entered into at delivery;
- (d) an opinion from legal counsel acceptable to the Secured Parties as to the laws of the state of Bermuda in form and substance satisfactory to the Agent and the Secured Parties together with the company documentation of the Borrower and a certificate of a competent officer or manager of the Borrower containing specimen signatures of the persons authorised to sign the documents on behalf of the Borrower, confirming that, without limitation:
  - (i) the Mortgage, the deed of covenants constituting part of the Mortgage, the General Assignment, the Post-Delivery Assignment and the bareboat charter (if applicable) fall within the scope of the Borrower's company purpose as defined by its Memorandum of Association and By-laws and are binding on it; and
  - (ii) the Borrower's representatives are fully empowered to sign the Protocol of Delivery and Acceptance, the Mortgage, the deed of covenants constituting part of the Mortgage, the General Assignment, the Post-Delivery Assignment and the bareboat charter (if applicable) and any related security pursuant to paragraph (b) of Clause ~~13.1~~14.1 (*Pooling of earnings and charters*); and
- (e) the documents listed in Schedule 3 (*Documents to be produced by the Builder to the Agent on Delivery*).

### **3.19 Notification of satisfaction of conditions precedent**

The Agent shall notify the Tranche A Lenders, the Tranche B Lenders, the Tranche C Lenders, SACE and SIMEST, as applicable, promptly upon being satisfied as to the satisfaction of the conditions precedent referred to in this Clause 3 (*Conditions Precedent*).

### **3.20 Waiver of conditions precedent**

If the Majority Lenders, at their discretion, subject to the prior written consent of SACE, permit an Advance under a Tranche to be borrowed before any of the conditions precedent referred to in Clause 3 (*Conditions Precedent*) has been satisfied, the Borrower shall ensure that that condition is satisfied within five (5) Business Days after the date (as specified in the relevant part of Clause 3 (*Conditions Precedent*)) or such later date as the Agent may agree in writing with the Borrower.

### **3.21 Changes to SACE's or SIMEST's requirements**

- (a) If SACE or SIMEST notifies the Agent in writing of a change of the SACE Insurance Policy or the Interest Make-Up Agreement (as applicable), or gives instructions to the SACE Agent with the effect that, in the opinion of the Agent, this Agreement or certain documents which the Borrower is or may be required to provide for the purpose of drawing an Advance under this Agreement shall be amended to comply with such change or instructions, then the SACE Agent shall promptly notify the Borrower of such a change in SACE's or SIMEST's requirements (as applicable) and of the relevant amendments to be made to this Agreement or any such documents as the Agent considers appropriate.
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- (b) If the Agent notifies the Borrower of any proposed changes to this Agreement under paragraph (a) above, and provided that:
  - (i) all the Lenders and the Borrower agree with such changes; and
  - (ii) the Borrower indemnifies and holds harmless the Agent and the Lenders for any reasonable costs that it may incur arising from or in connection with any such amendments (including legal fees),

then such changes will be made to this Agreement in accordance with the terms hereof.

- (c) If, in the opinion of the Lenders, there are any provisions of this Agreement that contradict or conflict with any provision of the SACE Insurance Policy or the Interest Make-Up Agreement (as applicable), such that compliance by any Creditor Party with the terms of the SACE Insurance Policy or the Interest Make-Up Agreement (as applicable) may result in a breach by such Creditor Party of the any of the terms of this Agreement or to an extent that the same may have the effect of rendering all or any part of the SACE Insurance Policy or the Interest Make-Up Agreement (as applicable) void, voidable or otherwise not in full force and effect, the Borrower agrees that any relevant terms of this Agreement will be amended to the extent agreed in writing between the Borrower and the Agent to ensure compliance with the terms of the SACE Insurance Policy or the Interest Make-Up Agreement (as applicable).

### **3.22 No claim against the Creditor Parties**

The Borrower agrees that the Creditor Parties may act on the instructions of the Italian Authorities in relation to this Agreement.

### **3.23 Examination and reliance on documents by the Agent**

- (a) The Agent shall ensure that an officer or employee or other person designated by it as its authorised representative is present at the Builder on the Delivery Date for the purpose of examining originals (or certified copies) of the SACE Required Documents duly signed by the parties thereto and collecting copies thereof (which copies shall be certified as true copies by an authorised signatory of the Builder and/or the Borrower, as applicable).
  - (b) The Agent shall be entitled (but not obliged) to rely and act upon any documentation or information provided under this Clause 3 (*Conditions Precedent*), which appears on its face to have been duly completed.
  - (c) The Agent's responsibility to the Borrower and the Lenders for the examination of any Drawdown Notice, and, when applicable, the documents provided by any person other than the Borrower in connection with each Drawdown Notice, shall be limited to the examination of their apparent compliance with the terms and conditions thereof in accordance with Articles 14 (*Standard of examination of documents*) and 34 (*Disclaimer on effectiveness of documents*) of the "Uniform Customs and Practice for Documentary Credits" (currently publication number 600 of the International Chamber of Commerce, latest edition) (except that no time limit for examination of documents shall apply).
  - (d) The Agent and the Lenders shall not be obliged to enquire as to, or be responsible for, the validity, truthfulness and genuineness and (where the relevant document is a conformed copy) conformity to the original of any Drawdown Notice or any other document which appears on its face to be in order, or of any signatures thereon or any of the statements set out therein and shall be entitled to rely on the accuracy of any such statements.
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- (e) In case of any discrepancy in any such documents, the Agent shall notify the Borrower in writing thereof and shall request its approval of such discrepancy in writing.

The Agent and the Lenders shall not be responsible for any delay in making available any Advances resulting from any requirement for the delivery of further information or documents reasonably required by the Agent for the relevant conditions precedent in this Agreement to be satisfied.

#### **4 DRAWDOWN**

##### **4.1 Borrower's irrevocable payment instructions**

- (a) The Tranche A Lenders shall not be obliged to fulfil their obligation to make an Advance available under Tranche A other than (i) by reimbursing the Borrower or by paying the Builder all or part of eighty per cent. (80%) of the Final Contract Price on behalf of and in the name of the Borrower, (ii) by reimbursing the Borrower for the First Instalment of the SACE Premium which is to be paid by the Borrower to SACE on the earlier of (A) the date falling 30 days after the issuance of the SACE Insurance Policy and (B) the date falling 6 months after the date of SACE's board approval and (iii) by payment to SACE of the Second Instalment of the SACE Premium payable on the first Drawdown Date under Tranche A.
- (b) The Tranche B Lenders shall not be obliged to fulfil their obligation to make an Advance available under Tranche B other than:
- (i) by reimbursing the Borrower or by paying the Builder (as set out in the relevant Drawdown Notice) all or part of eighty per cent. (80%) of the Upsize Allowance Price on behalf of and in the name of the Borrower; and
  - (ii)
    - (A) by reimbursing to the Borrower or by paying SACE, as applicable, the amount of the Tranche B Premium referred to in paragraph (a)(i) of Clause 8.6 (*Tranche B Premium*); and
    - (B) by paying SACE the amount of the Tranche B Premium referred to in paragraph (a)(ii) of Clause 8.6 (*Tranche B Premium*),such amounts of the Tranche B Premium to be paid by the Borrower to SACE in accordance with paragraph (a) of Clause 8.6 (*Tranche B Premium*).
- (c) The Tranche C Lenders shall not be obliged to fulfil their obligation to make an Advance available under Tranche C other than by payment to SACE of the second instalment of the Additional SACE Premium which is to be paid by the Borrower to SACE in accordance with paragraph (a)(ii) of Clause ~~8.5~~9.5 (*Additional SACE Premium*).
- (d) The Borrower hereby instructs the Tranche A Lenders in accordance with this Clause 4.1 (*Borrower's irrevocable payment instructions*) and in accordance with Schedule 6 (*Drawdown Schedules*):
- (i) to reimburse to the Borrower and to pay to the Builder, up to the Eligible Amount, all or part of eighty per cent. (80%) of the Final Contract Price in five (5) Advances in accordance with Schedule 6 (*Drawdown Schedules*);
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- (ii) to reimburse the Borrower on the first Drawdown Date under Tranche A the amount of the First Instalment of the SACE Premium to be paid by the Borrower to SACE on the earlier of (i) the date falling 30 days after the issuance of the SACE Insurance Policy and (ii) 16 June 2017, being the date falling 6 months after the date of SACE's board approval; and
    - (iii) to pay to the Agent on behalf of the Tranche A Lenders for onward payment to SACE (such payment to SACE to be made for value on the first Drawdown Date under Tranche A), by drawing under this Agreement, the amount of the Second Instalment of the SACE Premium.
  - (e) The Borrower hereby instructs the Tranche B Lenders in accordance with this Clause 4.1 (*Borrower's irrevocable payment instructions*) and in accordance with Schedule 6 (*Drawdown Schedules*) to:
    - (i) reimburse to the Borrower or pay to the Builder in accordance with the relevant Drawdown Notice, up to the Upsize Allowance Eligible Amount, all or part of eighty per cent. (80%) of the Upsize Allowance Price in four (4) Advances in accordance with Schedule 6 (*Drawdown Schedules*); and
    - (ii) pay to the Agent on behalf of the Tranche B Lenders:
      - (A) for reimbursement to the Borrower or for onward payment to SACE (such reimbursement to the Borrower or payment to SACE, as applicable, to be made for value on the first Drawdown Date under Tranche B), by drawing under this Agreement, the amount of the Tranche B Premium referred to in paragraph (a)(i) of Clause 8.6 (*Tranche B Premium*); and
      - (B) for onward payment to SACE (such payment to SACE to be made for value on the first Drawdown Date under Tranche B), by drawing under this Agreement, the amount of the Tranche B Premium referred to in paragraph (a)(ii) of Clause 8.6 (*Tranche B Premium*),such amounts of the Tranche B Premium to be paid by the Borrower to SACE pursuant to paragraph (a) of Clause 8.6 (*Tranche B Premium*).
  - (f) If applicable, the Borrower hereby instructs the Tranche C Lenders in accordance with this Clause 4.1 (*Borrower's irrevocable payment instructions*) to pay to the Agent on behalf of the Tranche C Lenders for onward payment to SACE (such payment to SACE to be made for value on the Delivery Date), by drawing under this Agreement, the amount of the second instalment of the Additional SACE Premium to be paid by the Borrower to SACE in accordance with paragraph (a)(ii) of Clause ~~8.5~~9.5 (*Additional SACE Premium*).
  - (g) Payment to the Builder of the amounts drawn under paragraph (d)(i) of this Clause 4.1 (*Borrower's irrevocable payment instructions*) above shall be made on the relevant Drawdown Date during usual banking hours in Italy to the Builder's account as specified by the Builder in accordance with the Shipbuilding Contract and, in respect of the Delivery Advance under Tranche A, after receipt and verification by the Agent of the documents provided under Schedule 3 (*Documents to be produced by the Builder to the Agent on Delivery*).
  - (h) Reimbursement to the Borrower or payment to the Builder of the amounts drawn under paragraph ~~(b)~~(e) of this Clause 4.1 (*Borrower's irrevocable payment instructions*) above shall be made on the relevant Drawdown Date either during usual banking hours in Italy to the
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Builder's account as specified by the Builder in accordance with the Shipbuilding Contract or to the Borrower's account to be specified by the Borrower and, in respect of the Delivery Advance under Tranche B, after receipt and verification by the Agent of the documents provided under Schedule 3 (*Documents to be produced by the Builder to the Agent on Delivery*).

- (i) Save as contemplated in Clause 4.3 (*Modification of payment terms*) below, the payment instruction contained in this Clause 4.1 (*Borrower's irrevocable payment instructions*) is irrevocable.

#### **4.2 Conversion Rate for Loan**

The Dollar amounts to be drawn down under paragraphs ~~(a)~~ 4.1(a), (b) and (c) of Clause 4.1 (*Borrower's irrevocable payment instructions*) shall be calculated by the Agent on the Conversion Rate Fixing Date in accordance with the definitions of "Eligible Amount", "Upsize Allowance Eligible Amount" and "Conversion Rate" in Clause 1.1 (*Definitions*).

#### **4.3 Modification of payment terms**

The Borrower expressly acknowledges that the payment terms set out in this Clause may only be modified with the agreement of the Italian Authorities, the Agent, the Security Trustee, the Lenders and the Borrower in the case of paragraphs (d)(i) and (e)(i) of Clause 4.1 (*Borrower's irrevocable payment instructions*) and with the agreement of the Italian Authorities, the Agent, the Lenders and the Borrower in the case of paragraphs (d)(ii), (d)(iii), (e)(ii) and (f) of Clause 4.1 (*Borrower's irrevocable payment instructions*); **provided that** it is the intention of the Borrower, the Lenders, the Security Trustee and the Agent that prior to the Conversion Rate Fixing Date agreement shall be reached with those financial institutions with whom the Borrower has entered into the FOREX Contracts (the "**Counterparties**") in order that the Euro payments due from the Counterparties under the FOREX Contracts shall be paid to the Agent for holding in escrow and to be released by the Agent simultaneously with (i) the payment of each Advance to the Builder denominated in Euro and (ii) the payment to the Counterparties of the Dollars due to them under the relevant FOREX Contracts out of the Dollar amount available under paragraph (d)(i) and (e)(i) of Clause 4.1 (*Borrower's irrevocable payment instructions*), subject to the Borrower having deposited with the Agent before each Drawdown Date, if and to the extent required, any Dollar and/or Euro amounts as may be needed to ensure the payment in full of both the balance of the relevant Advance in Euro and the Dollars owed to the Counterparties under all the relevant FOREX Contracts.

#### **4.4 Availability and conditions**

- (a) A drawing may not be made under this Agreement (and an Advance shall not be available) after the expiry of the Availability Period and any Commitment which is not utilised on the last day of the Availability Period shall then be cancelled.
  - (b) Under this Agreement, there will be no more than:
    - (i) five (5) Advances under Tranche A;
    - (ii) four (4) Advances under Tranche B; and
    - (iii) one (1) Advance under Tranche C.
-

- (c) The amount of the first Advance under Tranche A shall not exceed the aggregate of (i) the Dollar Equivalent of 80% of the First Shipbuilding Contract Instalment and (ii) the SACE Premium.
- (d) The amount of each Advance under Tranche A (save for the first Advance under Tranche A) shall not exceed the Dollar Equivalent of eighty per cent. (80%) of the amount of the instalment due to the Builder under the Shipbuilding Contract to which that Advance relates.
- (e) The amount of the first Advance under Tranche B shall not exceed the aggregate of (i) the Dollar Equivalent of eighty per cent. (80%) of the amount of the instalment due to the Builder under the Shipbuilding Contract to which that Advance relates and (ii) 100% of the Tranche B Premium.
- (f) The amount of each Advance under Tranche B (save for the first Advance under Tranche B) shall not exceed the Dollar Equivalent of eighty per cent. (80%) of the amount of the instalment due to the Builder under the Shipbuilding Contract to which that Advance relates.
- (g) The amount of the Advance under Tranche C shall not exceed the lower of (i) the amount calculated pursuant to the provisions of paragraph (a)(ii) of Clause ~~8.5~~9.5 (*Additional SACE Premium*) and (ii) the Total Tranche C Commitments.
- (h) The aggregate amount of:
  - (i) the Tranche A Advances cannot exceed the Total Tranche A Commitments;
  - (ii) the Tranche B Advances cannot exceed the Total Tranche B Commitments;
  - (iii) the Tranche C Advance cannot exceed the Total Tranche C Commitments; and
  - (iv) the Advances under all Tranches cannot exceed Total Commitments.
- (i) The Lenders shall not be under any obligation to lend any Advance to the Borrower if prior to that Advance any of the events specified in Article 20.2 of the Shipbuilding Contract occurs.

#### 4.5 Notification to Lenders of receipt of a Drawdown Notice

The Agent shall promptly notify the Tranche A Lenders, the Tranche B Lenders and the Tranche C Lenders, as applicable, that it has received a Drawdown Notice in relation to a Tranche and shall inform each relevant Lender of:

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

#### 4.6 Lenders to make available Contributions

Subject to the provisions of this Agreement, each Lender shall, on and with value on each Drawdown Date under a Tranche, make available to the Agent the amount due from that Lender under Clause 2.2 (*Lenders' participations in Loan*) on that Drawdown Date.

#### 4.7 Disbursement of Advance

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Subject to the provisions of this Agreement, the Agent shall on each Drawdown Date pay the amounts which the Agent receives from the Lenders under Clause 4.6 (*Lenders to make available Contributions*) in the like funds as the Agent received the payments from the Lenders:

- (a) in the case of the amount referred to in paragraph (d)(i) of Clause 4.1 (*Borrower's irrevocable payment instructions*), to the account of the Builder and the Borrower which the Borrower specifies in the Drawdown Notice;
- (b) in the case of an amount referred to in paragraph (d)(ii) of Clause 4.1 (*Borrower's irrevocable payment instructions*) to the account of the Borrower which the Borrower shall specify;
- (c) in the case of an amount referred to in paragraph (d)(iii) of Clause 4.1 (*Borrower's irrevocable payment instructions*) to the account of SACE which the SACE Agent shall specify;
- (d) in the case of an amount referred to in paragraph (e)(i) of Clause 4.1 (*Borrower's irrevocable payment instructions*) to the account of the Builder or the Borrower which the Borrower specifies in the Drawdown Notice;
- (e) in the case of an amount referred to in paragraph (e)(ii)(A) of Clause 4.1 (*Borrower's irrevocable payment instructions*) to the account of the Borrower which the Borrower specifies in the Drawdown Notice or SACE which the SACE Agent shall specify;
- (f) in the case of an amount referred to in paragraph (e)(ii)(B) of Clause 4.1 (*Borrower's irrevocable payment instructions*) to the account of SACE which the SACE Agent shall specify; and
- (g) in the case of an amount referred to in paragraph ~~(f)~~ 4.1(f) of Clause 4.1 (*Borrower's irrevocable payment instructions*) to the account of SACE which the SACE Agent shall specify.

#### **4.8 Disbursement of Advance to third party**

The payment by the Agent under Clause 4.7 (*Disbursement of Advance*) shall constitute the making of the Advance and the Borrower shall at that time become indebted, as principal and direct obligor, to each relevant Lender in an amount equal to that Lender's Contributions.

## **5 REPAYMENT**

### **5.1 Number of repayment instalments**

The Borrower shall repay the Loan by twenty-four (24) consecutive six-monthly instalments from the earlier of (i) the Delivery Date and (ii) the date of actual disbursement of the respective delivery instalment (the "**Starting Point of Repayment**").

### **5.2 Repayment Dates**

The first repayment instalment shall be repaid on the date falling six (6) months after the Starting Point of Repayment and the last repayment instalment on the date falling one hundred and forty-four (144) months after the Starting Point of Repayment, each date of payment of an instalment being a "**Repayment Date**".

### **5.3 Amount of repayment instalments**

Each repayment instalment of the Loan shall be of an equal amount.

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#### 5.4 Final Repayment Date

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

### 6 RATE SWITCH

#### 6.1 Switch to Term SOFR Reference Rate

Subject to Clause 6.2 (Delayed switch for existing LIBOR Loans), on and from the Rate Switch Date, where the Floating Interest Rate applies:

- (a) use of the Term SOFR Reference Rate will replace the use of LIBOR for the calculation of interest for the Loan or any part of the Loan; and
- (b) the Loan or any part of the Loan or Unpaid Sum shall be a "Term SOFR Loan" and paragraph (b) of the definition of Floating Interest Rate shall apply to the Loan, any such part of the Loan or Unpaid Sum.

#### 6.2 Delayed Switch for Existing LIBOR Loans

If the Rate Switch Date falls before the last day of an Interest Period for a LIBOR Loan:

- (a) the Loan, relevant part of the Loan or Unpaid Sum (as applicable) shall continue to be a LIBOR Loan for that Interest Period and paragraph (a) of the definition of Floating Interest Rate shall continue to apply to the Loan, relevant part of the Loan or Unpaid Sum (as applicable) for that Interest Period;
- (b) any provision of this Agreement which is expressed to relate solely to a Term SOFR Loan shall not apply in relation to the Loan, relevant part of the Loan or Unpaid Sum (as applicable) for that Interest Period; and
- (c) on and from the first day of the next Interest Period (if any) for the Loan, relevant part of the Loan or Unpaid Sum (as applicable):
  - (i) the Loan, relevant part of the Loan or Unpaid Sum (as applicable) shall be a "Term SOFR Loan"; and
  - (ii) paragraph (b) of the definition of Floating Interest Rate shall apply to it.

#### 6.3 Notifications by Agent

- (1) Subject to paragraph (b) below, following the occurrence of a Rate Switch Trigger Event, the Agent shall:
    - (a) promptly upon becoming aware of the occurrence of that Rate Switch Trigger Event, notify the Borrower and the Lenders of that occurrence; and
    - (b) promptly upon becoming aware of the date of the Rate Switch Trigger Event Date applicable to that Rate Switch Trigger Event, notify the Borrower and the Lenders of that date.
  - (2) The Agent shall, promptly upon becoming aware of the occurrence of the Rate Switch Date, notify the Borrower and the Lenders of that occurrence.
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- (3) The Parties agree that the FCA Cessation Announcement constitutes a Rate Switch Trigger Event, that the Rate Switch Trigger Event Date applicable to such Rate Switch Trigger Event will be 1 July 2023 and that the Agent is not under any obligation under paragraph (1) above to notify any Party of such Rate Switch Trigger Event or Rate Switch Trigger Event Date resulting from the FCA Cessation Announcement.
- (4) For the purposes of paragraph (3) above, the "FCA Cessation Announcement" means the announcement on 5 March 2021 by the UK's Financial Conduct Authority that all LIBOR settings will, as of certain specified future dates, either cease to be provided by any administrator or no longer be representative of the market and economic reality that they are intended to measure and that such representativeness will not be restored.

## 7 **6INTEREST**

### **7.1 6-4Fixed or Floating Interest Rate**

The Borrower shall provide notification, signed by a duly authorised signatory of the Borrower, to the Agent at least [\*] ([\*]) days before the first Drawdown Date under Tranche A specifying which of the Fixed Interest Rate or the Floating Interest Rate shall be applicable to all Advances until the date of payment of the final repayment instalment of the Loan.

### **7.2 6-2Fixed Interest Rate**

If the Borrower has specified a Fixed Interest Rate pursuant to Clause ~~6-4~~7.1 (*Fixed or Floating Interest Rate*), the Loan shall bear interest in respect of each Interest Period at the Fixed Interest Rate. Such interest shall accrue on the actual number of days elapsed based upon a 360 day year and shall be paid on the last day of each Interest Period.

### **7.3 6-3Floating Interest Rate**

If:

- (a) the Borrower has specified a Floating Interest Rate pursuant to Clause ~~6-4~~7.1 (*Fixed or Floating Interest Rate*); or
- (b) the Borrower has specified a Fixed Interest Rate pursuant to Clause ~~6-4~~7.1 (*Fixed or Floating Interest Rate*) but thereafter for any reason whatsoever the Interest Make-Up Agreement is suspended or otherwise ceases to be in effect; or
- (c) SIMEST has requested a change of currency pursuant to the Interest Make-Up Agreement and such change of currency is not agreed by the Borrower or Lenders in accordance with Clause ~~6-15~~7.16 (*Change of currency*); or
- (d) SIMEST has failed to make a net payment of interest to the Lenders pursuant to the Interest Make-Up Agreement,

the rate of interest on the Loan in respect of any Interest Period shall be the Floating Interest Rate applicable for that Interest Period and the following provisions of this Clause 6 (*Interest*) shall apply (in the case of the circumstances referred to in paragraph (b) above, with effect from the date on which the Interest Make-Up Agreement ceases to be in effect, with such consequential amendments as shall be necessary to give effect to the switch from a Fixed Interest Rate to a Floating Interest Rate).

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#### 7.4 **6.4** Payment of Floating Interest Rate

Subject to the provisions of this Agreement, interest on the Loan, ~~as applicable~~, in respect of each Interest Period shall accrue on the actual number of days elapsed based upon a 360 day year and shall be paid by the Borrower on the last day of that Interest Period.

#### 7.5 **6.5** Notification of Interest Periods and Floating Interest Rate

- (a) ~~The Save where paragraph (d) of Clause 7.8 (Unavailability of Term SOFR) applies, the~~ Agent shall notify the Borrower and each relevant Lender of each Floating Interest Rate and the duration of each Interest Period as soon as reasonably practicable after each is determined and no later than the Quotation Day.
- (b) In respect of any Fallback Interest Payment, the Agent shall promptly upon a Fallback Interest Payment being determinable notify:
- (i) the Borrower of that Fallback Interest Payment;
  - (ii) each relevant Lender of the proportion of that Fallback Interest Payment which relates to that Lender's participation in the Loan or the relevant part of the Loan; and
  - (iii) the relevant Lenders and the Borrower of each applicable Daily Simple SOFR relating to the determination of that Fallback Interest Payment.
- (c) The Agent shall promptly notify the Borrower of each Funding Rate relating to the Loan or any part of the Loan.
- (d) This Clause 7.5 (Notification of Interest Periods and Floating Interest Rates) shall not require the Agent to make any notification to any Party on a day which is not a Business Day.

#### 7.6 **6.6** Unavailability of Screen Rate before Rate Switch Date

- (a) *Interpolated Screen Rate:* If no Screen Rate is available for ~~LIBOR for~~ the Interest Period of ~~the Loan or any part of the LIBOR~~ 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 LIBOR~~ Loan.
- (b) *Reference Bank Rate:* If no Screen Rate is available for LIBOR for:
- (i) Dollars;
  - (ii) the Interest Period of ~~the Loan or any part of the LIBOR~~ Loan and it is not possible to calculate the Interpolated Screen Rate,
  - (iii) 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 LIBOR~~ 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 LIBOR~~ Loan (as applicable) and Clause ~~6.9-7.10~~ 7.10 (*Cost of funds*) shall apply to the Loan or that part of the Loan for that Interest Period.

#### 7.7 **6.7** Calculation of Reference Bank Rate

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- (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.

#### 7.8 Unavailability of Term SOFR

- (a) Interpolated Term SOFR: If no Term SOFR is available for the Interest Period of any Term SOFR Loan, the applicable Term SOFR Reference Rate shall be the Interpolated Term SOFR for a period equal in length to the Interest Period of that Term SOFR Loan.
- (b) Historic Term SOFR: If no Term SOFR is available for the Interest Period of any Term SOFR Loan and it is not possible to calculate the Interpolated Term SOFR, the applicable Term SOFR Reference Rate shall be the Historic Term SOFR for that Term SOFR Loan.
- (c) Interpolated Historic Term SOFR: If paragraph (b) above applies but no Historic Term SOFR is available for the Interest Period of any Term SOFR Loan, the applicable Term SOFR Reference Rate shall be the Interpolated Historic Term SOFR for a period equal in length to the Interest Period of that Term SOFR Loan.
- (d) Daily Simple SOFR: If, after giving effect to paragraph (c) above, no Term SOFR is available for the Interest Period of a Term SOFR Loan and it is not possible to calculate the Interpolated Historic Term SOFR, that Term SOFR Loan shall bear interest for any day of the relevant Interest Period at a rate per annum equal to the aggregate of the applicable (i) Daily Simple SOFR; (ii) Margin; and (iii) Credit Adjustment Spread.
- (e) Cost of funds: If paragraph (d) above applies but it is not possible to calculate the Daily Simple SOFR there shall be no Term SOFR Reference Rate for that Term SOFR Loan and Clause 7.10 (Cost of funds) shall apply to that Term SOFR Loan for that Interest Period.

#### 7.9 ~~6-8~~Market Disruption

- (a) ~~If~~ In the case of a LIBOR Loan, if before close of business in London on the Quotation Day for the relevant Interest Period the Agent receives notification from a Lender or Lenders (whose participations in the Loan or the relevant part of the Loan in aggregate exceed 50 per cent. of the Loan or the relevant part of the Loan as appropriate) that the cost to it or each of them 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 ~~6-9 (Cost of funds) shall apply to the Loan or that part of the Loan (as applicable) for the relevant Interest Period.~~ 7.10 (Cost of funds) shall apply to the Loan or that part of the Loan (as applicable) for the relevant Interest Period.
- (b) In the case of a Term SOFR Loan, if before close of business in London on the Quotation Day for the relevant Interest Period, the Agent receives notification from a Lender or Lenders (whose participations in the Loan or the relevant part of the Loan exceed [\*] per cent. of the Loan or the relevant part of the Loan as appropriate) that its cost of funds relating to its participation in the Loan or that part of the Loan would be in excess of the Market Disruption Rate then Clause 7.10 (Cost of funds) shall apply to the Loan or that part of the Loan (as applicable) for the relevant Interest Period.

#### 7.10 ~~6-9~~Cost of funds

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- (a) If this Clause ~~6-9-7.10~~ (*Cost of funds*) applies, the rate of interest on the Loan or the relevant part of the Loan for the relevant Interest Period shall be the percentage rate per annum which is the sum of:
- (i) the applicable Margin; and
  - (ii) the weighted average of the rates notified to the Agent by each 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 cost of funds relating to~~ its participation in the Loan or that part of the Loan from whatever source it may reasonably select.
- (b) If this Clause ~~6-9-7.10~~ (*Cost of funds*) applies and the Agent or the Borrower so ~~require~~requires, the Agent and the Borrower shall enter into negotiations (for a period of not more than 30 days) with a view to agreeing a substitute basis for determining the rate of interest or (as the case may be) an alternative basis for funding.
- (c) Subject to Clause ~~6-10-7.11~~ (*Replacement of Screen Rate*Changes to reference rates), any substitute or alternative basis agreed pursuant to paragraph (b) above shall, with the prior consent of all the Lenders and the Borrower, be binding on all Parties.
- (d) If paragraph (e) below does not apply and any rate notified to the 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 ~~6-9-7.10~~ (*Cost of funds*) applies pursuant to Clause ~~6-8-7.9~~ (*Market disruption*) and:
- (i) in relation to a LIBOR Loan, a Lender's Funding Rate is less than LIBOR; or, that Lender's cost of funds relating to its participation in the Loan or the relevant part of the Loan for that Interest Period shall be deemed, for the purposes of sub-paragraph (ii) of paragraph (a) above, to be LIBOR.
  - (ii) in relation to a Term SOFR Loan, a Lender's Funding Rate is less than the Market Disruption Rate, that Lender's cost of funds relating to its participation in the Loan or the relevant part of the Loan for that Interest Period shall be deemed, for the purposes of sub-paragraph (ii) of paragraph (a) above, to be the Market Disruption Rate for that Term SOFR Loan.
  - (iii) ~~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 ~~6-9-7.10~~ (*Cost of funds*) applies but any Lender does not ~~supply a quotation~~notify a rate to the Agent by the time specified in sub-paragraph (ii) of paragraph (a) above, the rate of interest shall be calculated on the basis of the ~~quotations of~~rates notified by the remaining Lenders.

**6.10 Replacement of Screen Rate**

**7.11 Changes to reference rates**

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~~If a Screen~~ If a Published Rate Replacement Event has occurred in relation to ~~the Screen~~ any Published Rate ~~for Dollars~~, any amendment or waiver which relates to:

- (a) providing for the use of a Replacement ~~Benchmark~~ Reference Rate; and
- (b)
  - (i) aligning any provision of any Finance Document to the use of that Replacement ~~Benchmark~~ Reference Rate;
  - (ii) enabling that Replacement ~~Benchmark~~ Reference Rate to be used for the calculation of interest under this Agreement (including, without limitation, any consequential changes required to enable that Replacement ~~Benchmark~~ Reference Rate to be used for the purposes of this Agreement);
  - (iii) implementing market conventions applicable to that Replacement ~~Benchmark~~ Reference Rate;
  - (iv) providing for appropriate fallback (and market disruption) provisions for that Replacement ~~Benchmark~~ Reference Rate; or
  - (v) adjusting the pricing to reduce or eliminate, to the extent reasonably practicable, any transfer of economic value from one Party to another as a result of the application of that Replacement ~~Benchmark~~ Reference Rate (and if any adjustment or method for calculating any adjustment has been formally designated, nominated or recommended by the Relevant Nominating Body, the adjustment shall be determined on the basis of that designation, nomination or recommendation),

may be made with the consent of the Agent (acting on the instructions of ~~all~~ the Majority Lenders), SACE and SIMEST (if applicable) and the Borrower.

~~(e) If, as at 30 September 2022, this Agreement provides that the rate of interest for the Loan in Dollars is to be determined by reference to the Screen Rate for LIBOR:~~

- ~~(i) a Screen Rate Replacement Event shall be deemed to have occurred on that date in relation to the Screen Rate for Dollars; and~~
- ~~(ii) the Agent (acting on the instructions of all Lenders) and the Obligors shall enter into negotiations in good faith with a view to agreeing the use of a Replacement Benchmark in relation to Dollars in place of that Screen Rate from and including a date no later than 30 November 2022, unless the Borrower and the Agent (acting on the instructions of all Lenders) agree to defer the date of the negotiations required under this sub-paragraph (ii) together with the date for the use of such a Replacement Benchmark, in which case such dates shall be those so agreed.~~

~~(a)~~ (a) If an amendment is required as contemplated in this Clause ~~6.10-7.11~~ (Replacement of Screen Rate Changes to reference rates), the Obligors shall reimburse each of the Agent and the Security Trustee for the amount of all costs and expenses (including legal fees and other professional expenses) incurred by each Secured Party in relation to such amendment.

(b) In this Clause 7.11:

"Published Rate" means:

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- (a) SOFR; or
- (b) Term SOFR for any Quoted Tenor.

**"Published Rate Contingency Period"** means, in relation to:

- (c) Term SOFR (all Quoted Tenors), ten US Government Securities Business Days; and
- (d) SOFR, ten US Government Securities Business Days.

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

- (a) the methodology, formula or other means of determining that Published Rate has, in the opinion of the Majority Lenders and the Borrower, materially changed;
- (b)
  - (i)
    - (A) the administrator of the Published Rate or its supervisor publicly announces that such administrator is insolvent; or
    - (B) information is published in any order, decree, notice, petition or filing, however described, or filed with a court, tribunal, exchange, regulatory authority or similar administrative, regulatory or judicial body which reasonably confirms that the administrator of that Published Rate is insolvent,  
provided that, in each case, at that time, there is no successor administrator to continue to provide that Published Rate;
  - (ii) the administrator of that Published Rate publicly announces that it has ceased or will cease to provide that Published Rate permanently or indefinitely and, at that time, there is no successor administrator to continue to provide that Published Rate;
  - (iii) the supervisor of the administrator of that Published Rate publicly announces that such Published Rate has been or will be permanently or indefinitely discontinued; or
  - (iv) the administrator of that Published Rate or its supervisor announces that that Published Rate may no longer be used; or
- (c) the administrator of that Published Rate (or the administrator of an interest rate which is a constituent element of that Published Rate) determines that that Published Rate should be calculated in accordance with its reduced submissions or other contingency or fallback policies or arrangements and either:
  - (i) the circumstance(s) or event(s) leading to such determination are not (in the opinion of the Majority Lenders and the Borrower) temporary; or



- (ii) that Published Rate is calculated in accordance with any such policy or arrangement for a period no less than the applicable Published Rate Contingency Period; or
- (d) in the opinion of the Majority Lenders and the Borrower, that Published Rate is otherwise no longer appropriate for the purposes of calculating interest under this Agreement.

"Replacement Reference Rate" means a reference rate which is:

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

#### **7.12 ~~6.44~~ Notice of prepayment**

If no agreement is reached with the Borrower under Clause ~~6.10-7.11~~ (~~Replacement of Screen Rate Changes to reference rates~~), the Borrower may give the Agent not less than 15 Business Days', or, if the Fixed Interest Rate has been selected pursuant to Clause ~~6.4-7.1~~ (~~Fixed or Floating Interest Rate~~) the Borrower may give the Agent not less than 30 days' notice of its intention to prepay at the end of the interest period set by the Agent.

#### **7.13 ~~6.42~~ Prepayment; termination of Commitments**

A notice under Clause ~~6.44-7.12~~ (~~Notice of prepayment~~) shall be irrevocable; the Agent shall promptly notify the Lenders and, if the Fixed Interest Rate has been selected by the Borrower, SIMEST of the Borrower's notice of intended prepayment; and:

- (a) on the date on which the Agent serves that notice, the Total Commitments shall be cancelled; and
  - (b) on the last Business Day of the Interest Period set by the Agent, the Borrower shall prepay (without premium or penalty subject to the provisions of Clause ~~20.2-21.2~~ (~~Breakage costs and SIMEST arrangements~~)) the Loan, together with accrued interest thereon at the applicable rate (being either the Floating Interest Rate or the Fixed Interest Rate as specified by the Borrower pursuant to Clause ~~6.4-7.1~~ (~~Fixed or Floating Interest Rate~~)).
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#### 7.14 ~~6.13~~ Application of prepayment

The provisions of Clause ~~46-17~~ (*Cancellation, Prepayment and Mandatory Prepayment*) shall apply in relation to the prepayment.

#### 7.15 ~~6.14~~ Certain Circumstances

Notwithstanding anything to the contrary in this Agreement:

- (a) in the event of any circumstances falling within Clause ~~6-8-7.8~~ (*Market Disruption*) which might affect the advance of an Advance under any Tranche on a Drawdown Date (the "**Relevant Circumstances**"):
- (i) occurring and being continuing on the date falling ninety (90) days before the proposed Drawdown Date (the "**Relevant Date**"), each Lender will notify the Borrower (through the Agent) of the Relevant Circumstances on the Relevant Date or, if the Relevant Date is not a Business Day, on the next following Business Day; and
  - (ii) occurring after the Relevant Date, each Lender will notify the Borrower (through the Agent) immediately each Lender become aware of the Relevant Circumstances;
- (b) in the event of any Relevant Circumstances falling within Clause ~~6-8-7.8~~ (*Market Disruption*) (the "**Pricing-Related Relevant Circumstances**") occurring before the Loan is made available, each Lender will fund its respective Contributions by reference to the agreed alternative rate of interest in accordance with Clauses ~~6-6-7.6~~ (*Unavailability of Screen Rate*), ~~6-7~~ *before Rate Switch Date*, ~~7.7~~ (*Calculation of Reference Bank Rate*), ~~6-8-7.8~~ (*Market Disruption*), ~~6-9-7.10~~ (*Cost of funds*) and ~~6-10~~ *7.11* (*Replacement of Screen Rate*) *Changes to the reference rates* as if the provisions of such Clauses applied not only in the event that the Pricing-Related Relevant Circumstances have been notified by the Agent to the Borrower after the making of the Loan but also before the making of the Loan.
- (c) in the event of any Relevant Circumstances falling within Clause ~~6-8-7.8~~ (*Market Disruption*) (the "**Availability-Related Relevant Circumstances**") occurring before the Loan is made and notwithstanding the provisions of Clause ~~6-6-7.6~~ (*Unavailability of Screen Rate*), ~~before Rate Switch Date~~, each Lender will enter into good faith discussions with the Borrower for a period not exceeding 10 Business Days in order to discuss a basis on which the Lenders could be able to fund their respective Contributions in Dollars (or, if unavailable in Dollars, then in any available currency). Such discussions shall be without obligation on the Lenders provided that during such discussion period, such circumstances continue.

#### 7.16 ~~6.15~~ Change of currency

- (a) In the event that the Agent notifies the Borrower that SIMEST has requested a change in the currency of the Loan in accordance with clause 6.3 of the Interest Make-Up Agreement, the Borrower and the Lenders shall, without obligation, consider such request for a change of currency acting reasonably for a period of not exceeding 10 Business Days. Following such discussions the Agent shall report the decision of the Borrower and the Lenders to SIMEST, providing their reason for any negative decision.
- (b) In the event that a change of currency is agreed the Parties agree to negotiate in good faith the necessary changes to this Agreement, the Finance Documents, the SACE Insurance Policy and the Interest Make-Up Agreement in order to document the change in currency.
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- (c) In the event that a change in currency is not acceptable to the Lenders or the Borrower, the provision of paragraph (c) of Clause ~~6-3~~7.3 (*Floating Interest Rate*) shall apply.

## 8 ~~7~~INTEREST PERIODS

### 8.1 ~~7.4~~Commencement of Interest Periods

The first Interest Period applicable to an Advance shall commence on the Drawdown Date in respect of that Advance and each subsequent Interest Period shall commence on the expiry of the preceding Interest Period.

### 8.2 ~~7.2~~Duration of Interest Periods

Subject to Clause ~~7.3~~ 8.3 (*Duration of Interest Periods for Repayment Instalments*), each Interest Period shall be:

- (a) 6 months; or
- (b) in the case of the first Interest Period applicable to the second and any subsequent Advance, a period ending on the last day of the Interest Period then current, whereupon all of the Advances shall be consolidated and treated as a single Advance; and
- (c) if required, the Interest Period falling immediately prior to the Delivery Date shall be shortened in order for such Interest Period to end on the date falling immediately prior to the date of the Delivery Advances.

### 8.3 ~~7.3~~Duration of Interest Periods for Repayment Instalments

Any Interest Period that includes a Repayment Date shall expire on such Repayment Date.

## 9 ~~8~~SACE PREMIUM AND ITALIAN AUTHORITIES

### 9.1 ~~8.4~~SACE Premium

The estimated SACE Premium for a maximum amount of [\*] Dollars and [\*] Cents (\$[\*]) (being [\*] per cent. ([\*]%) of the Original Maximum Loan Amount) is due and payable in two instalments as follows:

- (a) the first instalment of the SACE Premium being an amount of [\*] Dollars and [\*] Cents (\$[\*]) (calculated as being [\*] per cent. ([\*]%) of [\*] per cent. ([\*]%) of the Original Maximum Loan Amount) (the "**First Instalment**") shall be paid by the Borrower to SACE (provided that the Borrower and the Tranche A Lenders have been notified by the SACE Agent that the SACE Insurance Policy has been issued) on the earlier of (i) the date falling 30 days after the issuance of the SACE Insurance Policy and (ii) 16 June 2017, being the date falling 6 months after the date of SACE's board approval; and
- (b) the second instalment of the SACE Premium being an amount of [\*] Dollars and [\*] Cents (\$[\*]) (calculated as being [\*] per cent. ([\*]%) of [\*] per cent. ([\*]%) of the Original Maximum Loan Amount) (the "**Second Instalment**") and shall be payable on the first Drawdown Date under Tranche A. For the sake of clarity, no set-off with the First Instalment shall be permitted.

### 9.2 ~~8.2~~Reimbursement by the Borrower of the SACE Premium

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The Borrower irrevocably agrees to pay the First Instalment, and to instruct the Tranche A Lenders to pay the Second Instalment on behalf of the Borrower as follows:

- (a) the Borrower has requested and the Tranche A Lenders have agreed to reimburse the payment of one hundred per cent. (100%) of the First Instalment to the Borrower on the first Drawdown Date under Tranche A, it being agreed that such First Instalment shall be paid to SACE by the Borrower in accordance with paragraph (a) of Clause ~~8.4~~9.1 (*SACE Premium*) and upon notification by the Agent to the Borrower (i) of the issuance of the SACE Insurance Policy documentation in the form required by paragraph (d) of Clause 3.6 (*No later than five (5) Business Days before the First Drawdown Date*), and (ii) of the amount of the First Instalment; and
- (b) the Borrower has requested and the Tranche A Lenders have agreed to finance the payment of one hundred per cent. (100%) of the Second Instalment on the first Drawdown Date under Tranche A in accordance with paragraph (a)(iii) of Clause 2.1 (*Amount of facility*) of this Agreement.

Consequently, the Borrower hereby irrevocably instructs the Agent on behalf of the Tranche A Lenders to pay the Second Instalment to SACE on the first Drawdown Date under Tranche A in accordance with paragraph (a)(iii) of Clause 2.1 (*Amount of facility*) of this Agreement and to reimburse the Borrower by the Borrower drawing under the Loan the amount of the First Instalment in accordance with paragraph (a)(ii) of Clause 2.1 (*Amount of facility*) of this Agreement.

The First Instalment and Second Instalment each financed by the Loan will be repayable in any event by the Borrower to the Tranche A Lenders in the manner specified in Clause 5 (*Repayment*) and under any and all circumstances including but without limitation in the event of prepayment or acceleration of the Loan.

### **9.3 ~~8.3~~Italian Authorities**

- (a) The Borrower acknowledges and agrees that the Agent and the Lenders are entitled to provide the Italian Authorities with any information they may have relative to the Loan and the business of the Group, to allow the Italian Authorities to inspect all their records relating to this Agreement and the other Transaction Documents and to furnish them with copies thereof. Any such information relative to the Loan may also be given by any Italian Authorities to international institutions charged with collecting statistical data.
- (b) The Borrower acknowledges that, in the making of any decision or determination or the exercise of any discretion or the taking or refraining to take any action under this Agreement or any of the other Finance Documents, the Agent and the Lenders shall be deemed to have acted reasonably if they have acted on the instructions of either of the Italian Authorities.
- (c) Each Party further undertakes not to act in a manner which is inconsistent with the terms of the SACE Insurance Policy and the Interest Make-Up Agreement.

### **9.4 ~~8.4~~Refund**

- (a) The Borrower shall, at the latest on the date falling sixty (60) days before the Intended Delivery Date, provide a notice in writing to the SACE Agent (who will promptly forward it to other Lenders and SACE), signed by an authorised signatory of the Borrower, indicating the amount of the Delivery Advance under Tranche A, being the amount set out in Part A of Schedule 6 (*Drawdown Schedules*) under the column entitled "Advance to be drawn under this
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Agreement" to be drawn on the Delivery Date less (i) any amount cancelled based on the Conversion Rate and (ii) the Refund (as defined below) to be refunded in accordance with paragraph (b), such amount of the Refund to be confirmed by SACE at least six (6) Business Days prior to the Delivery Date. The Borrower hereby agrees and shall confirm in such notice that the remaining Tranche A Commitments shall be deemed to be cancelled. The Borrower acknowledges, for the avoidance of doubt, that the shortfall to be paid to the Builder at the Delivery Date shall be funded and paid directly by the Borrower to the Builder.

- (b) If the sum of the Advances under Tranche A drawn by the Borrower together with the amount notified by the Borrower pursuant to paragraph (a) above (being the amount set out in Part A of Schedule 6 (*Drawdown Schedules*) under the column entitled "Advance to be drawn under this Agreement" to be drawn on the Delivery Date, less any amount cancelled based on the Conversion Rate) equals an aggregate of less than the Original Maximum Loan Amount, and provided that no Event of Default has occurred and is then continuing and no loss has occurred under the SACE Insurance Policy, the Borrower shall be entitled to a refund of the Second Instalment of the SACE Premium in an amount calculated by SACE on the undrawn amount (the "**Refund**"). For the avoidance of doubt, the First Instalment of the SACE Premium is non-refundable, irrespective of whether any disbursements have been made under this Agreement and irrespective of whether the SACE Insurance Policy has been terminated.
- (c) Any refund of the Second Instalment of the SACE Premium, whether in whole or in part, must be expressly requested by the SACE Agent to SACE in writing following receipt by the SACE Agent of the Borrower's notice referred to in paragraph (a) above.
- (d) To the extent the Borrower is entitled to the Refund, SACE shall transfer the Refund as soon as practicably possible to the SACE Agent who shall as soon as practicably possible following receipt thereof transfer such amount to the Borrower. The Borrower hereby acknowledges that SACE shall not be liable to pay interest to the Borrower on the amount of the Refund.
- (e) Under the terms of the SACE Insurance Policy, the Parties acknowledge that SACE will withhold an amount of [\*] per cent. ([\*]%) from the amount of the SACE Premium to be refunded. Such withholding, charged as a lump sum to cover administration and management costs for the SACE Insurance Policy, may not, in any event, amount to less than the dollar equivalent of [\*] Euros (€[\*]) or more than the dollar equivalent of twenty-five thousand Euros (€25,000), calculated by SACE at the European Central Bank EUR/USD exchange rate as at the date of the refund request.
- (f) Except as set out in paragraph (a) and (c) above, no part of the SACE Premium is refundable to any Obligor.
- (g) In no event shall the SACE Agent be liable for any refund of the SACE Premium to be made by SACE or for the calculation of any Refund and/or withholding thereof.

#### **9.5 8-5 Additional SACE Premium**

- (a) The Borrower shall pay (through the SACE Agent) to SACE an additional SACE premium in relation to the changes made to the Facility Agreement following the February 2021 ~~Deferral~~-Effective Date (the "**Additional SACE Premium**"). The Additional SACE Premium is payable, in accordance with the SACE Insurance Policy, in two instalments as follows:
    - (i) no later than the earlier of a) 30 days from the date of issuance of the relevant addendum to the SACE Insurance Policy in form and substance acceptable to the Lenders and b) the date of the Advance under a Tranche immediately following the
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February 2021 Deferral Effective Date, an amount of \$[\*], corresponding to the first instalment of the Additional SACE Premium; and

- (ii) no later than the Delivery Date, and unless the Guarantor's highest unsecured corporate credit rating is, 60 days before the Intended Delivery Date, BB+ or above at Standard & Poor's or Ba1 or above at Moody's, an amount of \$[\*], corresponding to the second instalment of the Additional SACE Premium; it being understood that if 60 days before the Intended Delivery Date, the Guarantor's highest unsecured corporate credit rating is between B+ at Standard & Poor's or B1 at Moody's and BB at Standard & Poor's or Ba2 at Moody's, this second instalment of the Additional SACE Premium shall correspond to a) [\*]% of (x) \$820,099,507.20 being the undrawn amount under the Loan as at 31 December 2020 times (y) the percentage applicable to the Guarantor's highest unsecured corporate credit rating between Standard & Poor's and Moody's in the table set out below (the "**Revised SACE Premium Rate**") divided by (z) one minus the Revised SACE Premium Rate less b) the Second Instalment of the original SACE Premium of \$[\*] already paid pursuant to Clause ~~8-4~~9.1 (*SACE Premium*). The amount of the second instalment of the Additional SACE Premium shall be recalculated by the SACE Agent in accordance with the SACE Insurance Policy and communicated by the SACE Agent to SACE no later than 60 days prior to the Intended Delivery Date for verification and then forwarded to the Borrower as soon as practically possible following approval by SACE.

Rating S&P and Moody's	Pricing
BB / Ba2	[*]%
BB- / Ba3	[*]%

- (b) The Borrower has requested, and the Tranche C Lenders have agreed to finance the payment of one hundred per cent. (100%) of the second instalment of the Additional SACE Premium to the Borrower on the Delivery Date, it being agreed that such second instalment shall be paid to SACE in accordance with paragraph (a)(ii) of this Clause ~~8-5~~9.5 (*Additional SACE Premium*) and upon notification by SACE to the SACE Agent and the Borrower of the amount of the second instalment of the Additional SACE Premium.
- (c) Consequently, the Borrower hereby irrevocably instructs the Agent on behalf of the Tranche C Lenders to pay the amount of the second instalment of the Additional SACE Premium to SACE on the Delivery Date in accordance with paragraph (c) of Clause 2.1 (*Amount of facility*) of this Agreement.
- (d) The second instalment of the Additional SACE Premium financed by Tranche C will be repayable in any event by the Borrower to the Tranche C Lenders in the manner specified in Clause 5 (*Repayment*) and under any and all circumstances including but without limitation in the event of prepayment or acceleration of the Loan.
- (e) If (i) the Guarantor's highest unsecured corporate credit rating is equal to or higher than BB+ at Standard & Poor's and Ba1 at Moody's at the time of the Intended Delivery Date (as such term is defined in the facility agreement originally dated 19 December 2018 (as amended from time to time) and entered into between, amongst others, (i) Leonardo Six, Ltd. as borrower, (ii) the lenders and mandated lead arrangers as stated therein, (iii) BNP Paribas as facility
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agent, (iv) Credit Agricole Corporate and Investment Bank as SACE agent and (v) HSBC Corporate Trustee Company (UK) Limited as security trustee in relation to the ship currently under construction and to be delivered to Leonardo Six, Ltd., such date, currently estimated to be 30 June 2027, the "**Leonardo Six Intended Delivery Date**"), and (ii) no event of default (howsoever defined) is continuing and no Loss has been incurred by SACE in respect of any Financial Indebtedness granted to any company within the Group and supported by SACE, the Borrower may request in writing through the SACE Agent a one-off refund of a portion of the second instalment of the Additional SACE Premium, calculated in accordance with the SACE Insurance Policy and the following formula.

- (f) The refund pursuant to paragraph (e) above will be paid by SACE to the SACE Agent within 30 days in accordance with the terms and conditions of the SACE Insurance Policy and subsequently paid by the SACE Agent to the Borrower, upon which such amount shall be applied to mandatorily prepay part of the Loan in accordance with the provisions of Clause ~~16.7~~-17.7 (*Mandatory Prepayment in case of refund by SACE to the Borrower of the second instalment of the Additional SACE Premium*).

SACE Premium refund = Loan amount outstanding at the time of the Leonardo Six Intended Delivery Date x [\*]% x ((TTMi + 0.5)/2)/6.25 x (Revised SACE Premium Rate – p%),

where:

- (i) TTMi means Time To Maturity at the date of the Leonardo Six Intended Delivery Date being the number of years, with two decimals, between the Leonardo Six Intended Delivery Date and the final Repayment Date.
- (ii) p% equals to [\*]%.

For avoidance of doubt, in case of discrepancy between this Clause ~~8.5~~-9.5 (*Additional SACE Premium*) and the relevant provision of the SACE Insurance Policy, the SACE Insurance Policy shall prevail.

#### **9.6 ~~8.6~~Tranche B Premium**

- (a) The Borrower shall pay (through the SACE Agent) to SACE an additional SACE premium in relation to Tranche B (the "**Tranche B Premium**"). The Tranche B Premium is payable, in accordance with the SACE Insurance Policy, as follows:
- (i) no later than the earlier of (x) 30 days from the date of issuance of the relevant addendum to the SACE Insurance Policy and (y) the Drawdown Date in respect of the first Advance under Tranche B, an amount equal to \$2,483,946.67, corresponding to fifteen per cent (15%) of the Tranche B Premium; and
- (ii) no later than the Drawdown Date in respect of the first Advance under Tranche B, an amount equal to \$14,075,697.77, corresponding to eighty-five per cent (85%) of the Tranche B Premium.
- (b) The Borrower has requested, and the Tranche B Lenders have agreed to finance the payment of one hundred per cent. (100%) of the Tranche B Premium to the Borrower on the First Drawdown Date under Tranche B, it being agreed that:
- (i) the amount referred to in paragraph (a)(i) above shall, as applicable, be reimbursed to the Borrower or paid to SACE; and
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- (ii) the amount referred to in paragraph (a)(ii) above shall be paid to SACE,  
and upon notification by SACE to the SACE Agent and the Borrower of the amount of the Tranche B Premium.
  - (c) Consequently, the Borrower hereby irrevocably instructs the Agent on behalf of the Tranche B Lenders to:
    - (i) reimburse to the Borrower or pay to SACE, as applicable, the amount of the Tranche B Premium referred to in paragraph (a)(i) above; and
    - (ii) pay to SACE the amount of the Tranche B Premium referred to in paragraph (a)(ii) above,  
no later than the first Drawdown Date under Tranche B in accordance with paragraphs ~~(c)~~~~(b)~~~~(ii)~~ and (b)(iii) of Clause 2.1 (*Amount of facility*) of this Agreement.
  - (d) The Tranche B Premium financed by part of Tranche B will be repayable in any event by the Borrower to the Tranche B Lenders in the manner specified in Clause 5 (*Repayment*) and under any and all circumstances including but without limitation in the event of prepayment or acceleration of the Loan.
  - (e) The Borrower shall, at the latest on the date falling sixty (60) days before the Intended Delivery Date, provide a notice in writing to the SACE Agent (who will promptly forward it to other Lenders and SACE), signed by an authorised signatory of the Borrower, indicating the amount of the Delivery Advance under Tranche B, being the amount set out in Part B of Schedule 6 (*Drawdown Schedules*) under the column entitled "Advance to be drawn under this Agreement" to be drawn on the Delivery Date less (i) any amount cancelled based on the Conversion Rate and (ii) the Tranche B Refund (as defined below) to be refunded in accordance with paragraph (f), such amount of the Tranche B Refund to be confirmed by SACE at least six (6) Business Days prior to the Delivery Date. The Borrower hereby agrees and shall confirm in such notice that the remaining Tranche B Commitments shall be deemed to be cancelled. The Borrower acknowledges, for the avoidance of doubt, that the shortfall (if any) to be paid to the Builder at the Delivery Date shall be funded and paid directly by the Borrower to the Builder.
  - (f) If the sum of the Advances under Tranche B drawn by the Borrower together with the amount notified by the Borrower pursuant to paragraph (e) above (being the amount set out in Part B of Schedule 6 (*Drawdown Schedules*) under the column entitled "Advance to be drawn under this Agreement" to be drawn on the Delivery Date, less any amount cancelled based on the Conversion Rate) equals an aggregate of less than the Total Tranche B Commitments, and provided that no Event of Default has occurred and is then continuing and no loss has occurred under the SACE Insurance Policy, the Borrower shall be entitled to a refund of the Tranche B Premium in an amount calculated by SACE on the undrawn amount (the "**Tranche B Refund**"). For the avoidance of doubt, the amount of the SACE Premium referred to in paragraph (a)(i) of this Clause 8.6 (*Tranche B Premium*) is non-refundable, irrespective of whether any disbursements have been made under this Agreement and irrespective of whether the SACE Insurance Policy has been terminated.
  - (g) Any refund of the amount of the Tranche B Premium referred to in paragraph (a)(ii) of this Clause 8.6 (*Tranche B Premium*), whether in whole or in part, must be expressly requested by the SACE Agent to SACE in writing following receipt by the SACE Agent of the Borrower's notice referred to in paragraph (e) above.
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- (h) To the extent the Borrower is entitled to the Tranche B Refund, SACE shall transfer the Tranche B Refund as soon as practicably possible to the SACE Agent who shall as soon as practicably possible following receipt thereof transfer such amount to the Borrower. The Borrower hereby acknowledges that SACE shall not be liable to pay interest to the Borrower on the amount of the Tranche B Refund.
- (i) Under the terms of the SACE Insurance Policy, the Parties acknowledge that SACE will withhold an amount of five per cent. (5%) from the amount of the Tranche B Premium to be refunded. Such withholding, charged as a lump sum to cover administration and management costs for the SACE Insurance Policy, may not, in any event, amount to less than the equivalent of three thousand Euros (€3,000) or more than the equivalent of twenty-five thousand Euros (€25,000), calculated by SACE at the European Central Bank EUR/USD exchange rate as at the date of the refund request.
- (j) Except as set out in paragraph (a)e and (c)g above, no part of the Tranche B Premium is refundable to any Obligor.
- (k) In no event shall the SACE Agent be liable for any refund of the Tranche B Premium to be made by SACE or for the calculation of any Refund and/or withholding thereof.

## 10 ~~9~~FEES

The following fees shall be paid to the Agent by the Borrower as required hereunder:

- (a) for the benefit of the Joint Mandated Lead Arrangers, a Joint Mandated Lead Arranger structuring fee in Euros, computed at the rate of [\*] per cent. ([\*]%) flat on [\*] being the Original Maximum Loan Amount converted into Euros at the Base Rate and:
  - (i) [\*] per cent. ([\*]%) of which is payable on the date of the Original Facility Agreement; and
  - (ii) [\*] per cent. ([\*]%) of which is payable four years prior to the Intended Delivery Date,
- (b) for the benefit of the Lenders, a commitment fee in Dollars for the period from the date of the Original Facility Agreement to the Delivery Date of the Ship, or the date of receipt by the Agent of the written cancellation notice sent by the Borrower as described in Clause ~~16.1~~ 17.1 (*Cancellation*), whichever is the earliest, computed at the rate of:
  - (i) from the date of the Original Facility Agreement to and including 31 December 2017, [\*] per cent. ([\*]%) per annum;
  - (ii) from 1 January 2018 to and including 31 December 2019, [\*] per cent. ([\*]%) per annum;
  - (iii) from 1 January 2020 to and including 31 May 2021, [\*] per cent. ([\*]%) per annum; and
  - (iv) from 1 June 2021 to and including the Delivery Date, [\*] per cent. ([\*]%) per annum,

and calculated on the undrawn amount of the Original Maximum Loan Amount prior to the date of this Agreement and thereafter of the Amended Maximum Loan Amount and payable in arrears on the date falling six (6) months after the date of the Original Facility Agreement and on each date falling at the end of each following consecutive six (6) month period, with the exception of the commitment fee due in respect of the last period, which shall be paid on

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the Delivery Date, or the date of receipt by the Agent of the written cancellation notice sent by the Borrower as described in Clause ~~46.4~~17.1 (*Cancellation*), whichever is the earliest, such commitment fee to be calculated on the actual number of days elapsed divided by three hundred and sixty (360).

For the purpose of the computation of the periodical commitment fee payable to the Lenders, the Original Maximum Loan Amount is assumed to be eight hundred and sixty-eight million, one hundred and eight thousand, one hundred and eight Dollars and eleven Cents (\$868,108,108.11) and the Amended Maximum Loan Amount is assumed to be one billion, one hundred and forty six million, four hundred and seventy six thousand, five hundred and sixty three Dollars and sixty five Cents (\$1,146,476,563.65);

- (c) for the Agent, an agency fee of:
  - (i) [\*] Dollars (\$[\*]) payable on the date of the Original Facility Agreement and on or before each anniversary date thereof until the Delivery Date; and
  - (ii) [\*] Dollars (\$[\*]) payable (A) from the Delivery Date, unless an agency fee pursuant to sub-paragraph (i) above has been paid by the Borrower during the same calendar year as the Delivery Date in which case the first payment pursuant to this sub-paragraph (ii) shall occur in the year following the Delivery Date and (B) on or before each anniversary date thereof until total repayment of the Loan; and
- (d) for the SACE Agent an Agent structuring fee in the amount and payable at the time separately agreed in writing between the SACE Agent and the Borrower.

## 11 ~~40~~ **TAXES, INCREASED COSTS, COSTS AND RELATED CHARGES**

### 11.1 ~~40.1~~ **Definitions**

- (a) In this Agreement:

**"Protected Party"** means a Secured 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 Secured Party under Clause ~~40.2~~11.2 (*Tax gross-up*) or a payment under Clause ~~40.3~~11.3 (*Tax indemnity*).

- (b) Unless a contrary indication appears, in this Clause ~~40.11~~11 (*Taxes, Increased Costs, Costs and Related Charges*) reference to "**determines**" or "**determined**" means a determination made in the absolute discretion of the person making the determination.

### 11.2 ~~40.2~~ **Tax gross-up**

- (a) Each Obligor shall make all payments to be made by it under the Finance Documents without any Tax Deduction, unless a Tax Deduction is required by law.
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- (b) The Borrower shall promptly upon becoming aware that an Obligor must make a Tax Deduction (or that there is any change in the rate or the basis of a Tax Deduction) notify the Agent accordingly. Similarly, a Lender shall notify the Agent on becoming so aware in respect of a payment payable to that Lender. If the Agent receives such notification from a Lender it shall notify the Borrower and that Obligor.
- (c) If a Tax Deduction is required by law to be made by an Obligor, the amount of the payment due from that Obligor shall be increased to an amount which (after making any Tax Deduction) leaves an amount equal to the payment which would have been due if no Tax Deduction had been required.
- (d) A payment shall not be increased under paragraph (c) above if on the date on which the payment falls due the Obligor making the payment is able to demonstrate that the payment could have been made to the Lender without the Tax Deduction had that Lender (having been given notice of the documentation requested under Clause ~~40.7-11.7~~ 11.7 (*Lender Status*) at least 30 Business Days prior to such payment date) complied with its obligations under Clause ~~40.7-11.7~~ 11.7 (*Lender Status*).
- (e) 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.
- (f) Within thirty 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 Agent for the Secured Party entitled to the payment evidence reasonably satisfactory to that Secured Party that the Tax Deduction has been made or (as applicable) any appropriate payment paid to the relevant taxing authority.

### **11.3 ~~40.3~~ Tax indemnity**

- (a) The Borrower shall (within three Business Days of demand by the Agent) pay to a Protected Party an amount equal to the loss, liability or cost which that Protected Party determines will be or has been (directly or indirectly) suffered for or on account of Tax by that Protected Party in respect of a Finance Document.
  - (b) Paragraph (a) above shall not apply:
    - (i) with respect to any Tax assessed on a Secured Party:
      - (A) under the law of the jurisdiction in which that Secured Party is incorporated or, if different, the jurisdiction (or jurisdictions) in which that Secured Party is treated as resident for tax purposes; or
      - (B) under the law of the jurisdiction in which that Lender'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 Secured Party; or
    - (ii) to the extent a loss, liability or cost is compensated for by an increased payment under Clause ~~40.2-11.2~~ 11.2 (*Tax gross-up*) or would have been compensated for by an increased payment under Clause ~~40.2-11.2~~ 11.2 (*Tax gross-up*) but was not so compensated solely
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because an exclusion in paragraph (d) of Clause ~~40-2~~11.2 (*Tax gross-up*) applied, or relates to a FATCA Deduction required to be made by a Party; or

- (iii) with respect to the Taxes in the nature of a branch profits tax imposed by Section 884(a) of the Code that is imposed by any jurisdiction described in paragraph (b)(~~+~~i)(B) above.
- (c) A Protected Party making, or intending to make a claim under paragraph (a) above shall promptly notify the Agent of the event which will give, or has given, rise to the claim, following which the Agent shall notify the Borrower.
- (d) A Protected Party shall, on receiving a payment from an Obligor under this Clause ~~40-3~~11.3 (*Tax indemnity*), notify the Agent.

#### **11.4 ~~40-4~~Tax Credit**

If an Obligor makes a Tax Payment and the relevant Creditor Party determines that:

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

the Creditor Party shall pay an amount to the Obligor which that Creditor 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.

#### **11.5 ~~40-5~~Stamp taxes**

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

#### **11.6 ~~40-6~~VAT**

- (a) All amounts expressed to be payable under a Finance Document by any Party to a Secured 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 Secured Party to any Party under a Finance Document and such Secured Party is required to account to the relevant tax authority for the VAT, that Party must pay to such Secured 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 Secured Party must promptly provide an appropriate VAT invoice to that Party).
  - (b) If VAT is or becomes chargeable on any supply made by any Secured Party (the "**Supplier**") to any other Secured 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):
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- (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 Secured Party for any cost or expense, that Party shall reimburse or indemnify (as the case may be) such Secured Party for the full amount of such cost or expense, including such part of it as represents VAT, save to the extent that such Secured 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 ~~40-6~~ [11.6](#) (VAT) to any Party being required to account to a tax authority for VAT shall, at any time when such Party is treated as a member of a group for VAT purposes, include a reference to another member of that group being required to so account to the relevant tax authority.
- (e) In relation to any supply made by a Secured Party to any Party under a Finance Document, if reasonably requested by such Secured Party, that Party must promptly provide such Secured Party with details of that Party's VAT registration and such other information as is reasonably requested in connection with such Secured Party's VAT reporting requirements in relation to such supply.

#### **11.7 ~~40-7~~ Lender Status**

- (a) Any Lender that is entitled to an exemption from or reduction of withholding Tax with respect to payments made under a Finance Document shall deliver to the Agent and the Borrower, at the time or times reasonably requested by the Agent or the Borrower, such properly completed and executed documentation reasonably requested by the Agent or the Borrower (and which it is reasonable for the Lender to complete and execute) as will permit such payments to be made without withholding or at a reduced rate of withholding. In addition, any Lender, if reasonably requested by the Agent or the Borrower, shall deliver such other documentation as prescribed by applicable law and reasonably requested by the Agent or the Borrower as will enable the Agent or the Borrower to determine whether or not such Lender is subject to backup withholding or information reporting requirements.
  - (b) Any Lender shall, to the extent it is legally entitled to do so, and where it is entitled to an exemption from, or reduction of, U.S. federal withholding tax, deliver to the Agent and the Borrower on or prior to the date on which such Lender becomes a Lender under this Agreement or promptly thereafter (and from time to time thereafter as prescribed by applicable law or upon the request of the Agent or the Borrower), duly executed and properly completed copies of Internal Revenue Service Form W-9 or W-8, as applicable, certifying that it is not subject to U.S. federal backup withholding and, in the case of a non-U.S. Lender that is
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eligible for an exemption from, or reduction of, U.S. federal withholding Tax establishing an exemption from, or reduction of, U.S. federal withholding Tax.

#### **11.8 ~~40-8~~FATCA Deduction**

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

#### **11.9 ~~40-9~~FATCA Information**

- (a) Subject to paragraph (c) below, each Party shall, within ten Business Days of a reasonable request by another Party:
    - (i) confirm to that other Party whether it is:
      - (A) a FATCA Exempt Party; or
      - (B) not a FATCA Exempt Party;
    - (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 paragraph (i) 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 to do anything, and paragraph (a)(iii) 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 paragraph (a)(i) or (a)(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 (and payments under them)
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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) Each Lender shall, within ten Business Days of (i) where the relevant Lender is a Lender at the date of the Original Facility Agreement, the date of the Original Facility Agreement, (ii) where the relevant Lender becomes a Lender at the date of this Agreement, the date of this Agreement and (iii) where the relevant Lender is a Transferee Lender, the effective date of a Transfer Certificate under Clause ~~24.4~~ 25.4 (*Effective Date of Transfer Certificate*), supply to the Agent:
  - (i) a withholding certificate on Form W-8, Form W-9 or any other relevant form; or
  - (ii) any withholding statement or other document, authorisation or waiver as the Agent may require to certify or establish the status of such Lender under FATCA or that other law or regulation.
- (f) The Agent shall provide any withholding certificate, withholding statement, document, authorisation or waiver it receives from a Lender pursuant to paragraph (e) above to the relevant Borrower.
- (g) If any withholding certificate, withholding statement, document, authorisation or waiver provided to the 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 Agent unless it is unlawful for the Lender to do so (in which case the Lender shall promptly notify the Agent). The Agent shall provide any such updated withholding certificate, withholding statement, document, authorisation or waiver to the relevant Borrower.
- (h) The 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 Agent shall not be liable for any action taken by it under or in connection with paragraphs (e), (f) or (g) above.
- (i) CDP confirms, and the Borrower acknowledges, that as at the date of this Agreement CPD is a FATCA Exempt Party.

#### **11.10 ~~40.40~~ Increased Costs**

- (a) If after the date of the Original Facility Agreement by reason of (x) any change in law or in its interpretation or administration and/or (y) compliance with any request from or requirement of any central bank or other fiscal, monetary or other authority including but without limitation the Basel Committee on Banking Regulations and Supervisory Practices whether or not having the force of law:
    - (i) any of the Lenders incurs a cost as a result of its performing its obligations under this Agreement and/or its making available its Commitment hereunder; or
    - (ii) there is any increase in the cost to any of the Lenders of funding or maintaining all or any of the advances comprised in a class of advances formed by or including its Commitment advanced or to be advanced by it hereunder; or
    - (iii) any of the Lenders incurs a cost as a result of its having entered into and/or its assuming or maintaining its commitment under this Agreement; or
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- (iv) any of the Lenders becomes liable to make any payment on account of Tax or otherwise (other than Tax on its overall net income) on or calculated by reference to the amount of its Commitment advanced or to be advanced hereunder and/or any sum received or receivable by it hereunder; or
- (v) any of the Lenders suffers any decrease in its rate of return as a result of any changes in the requirements relating to capital ratios, monetary control ratios, the payment of special deposits, liquidity costs or other similar requirements affecting that Lender,

then the Borrower shall on demand pay to the Agent for the account of the relevant Lender or Lenders amounts sufficient to indemnify the relevant Lender or Lenders against, as the case may be, such cost, such increased cost (or such proportion of such increased cost as is in the reasonable opinion of the relevant Lender or Lenders attributable to the funding or maintaining of its or their Commitment(s) hereunder) or such liability.

- (b) This Clause ~~40.40~~ 11.10 (*Increased Costs*) does not apply to the extent any increased cost is:
  - (i) attributable to a Tax Deduction required by law to be made by an Obligor;
  - (ii) attributable to a FATCA Deduction required to be made by a Party;
  - (iii) compensated for by Clause ~~40.3~~ 11.3 (*Tax indemnity*) (or would have been compensated for under Clause ~~40.3~~ 11.3 (*Tax indemnity*) but was not compensated solely because any of the exclusions in paragraph (b) of Clause ~~40.3~~ 11.3 (*Tax indemnity*) applied); or
  - (iv) attributable to the wilful breach by the relevant Creditor Party or its Affiliates of any law of regulation.

In this Clause ~~40.40~~ 11.10 (*Increased Costs*), a reference to a "Tax Deduction" has the same meaning given to the term in Clause ~~40.4~~ 11.1 (*Definitions*).

- (c) A Lender affected by any provision of this Clause ~~40.40~~ 11.10 (*Increased Costs*) shall promptly inform the Agent after becoming aware of the relevant change and its possible results (which notice shall be conclusive evidence of the relevant change and its possible results) and the Agent shall, as soon as reasonably practicable thereafter, notify the Borrower of the change and its possible results. Without affecting the Borrower's obligations under this Clause ~~40.40~~ 11.10 (*Increased Costs*) and in consultation with the Agent and the Italian Authorities, the affected Lender will then take all such reasonable steps as may be open to it to mitigate the effect of the change (for example (if then possible) by changing its Facility Office or transferring some or all of its rights and obligations under this Agreement to another financial institution reasonably acceptable to the Borrower and the Agent and the Italian Authorities). The reasonable costs of mitigating the effect of any such change shall be borne by the Borrower save where such costs are of an internal administrative nature and are not incurred in dealings by any Lender with third parties.

#### **11.11 ~~40.44~~ Transaction Costs**

The Borrower undertakes to pay to the Agent, upon demand, all costs and expenses, duties and fees, including but without limitation pre-agreed legal costs (which, for avoidance of doubt are exclusive of VAT and disbursements) out of pocket expenses and travel costs, reasonably incurred by the Italian Authorities, the Joint Mandated Lead Arrangers and the Lenders (but not including any bank which becomes a Lender after the date of the Original Facility

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Agreement) in connection with the negotiation, preparation and execution of all agreements, guarantees, security agreements and related documents entered into, or to be entered into, for the purpose of the transaction contemplated hereby as well as all costs and expenses, duties and fees incurred by the Agent or the Lenders in connection with the registration, filing, enforcement or discharge of the said guarantees or security agreements, including without limitation the fees and expenses of legal advisers and insurance experts (provided that such insurance costs are not to exceed ten thousand Dollars (\$10,000)) and the fees and expenses of the Italian Authorities (including the fees and expenses of its legal advisers) payable by the Joint Mandated Lead Arrangers to the Italian Authorities, the cost of registration and discharge of security interests and the related travel and out of pocket expenses; the Borrower further undertakes to pay to the Agent all costs, expenses, duties and fees incurred by the Lenders and the Italian Authorities in connection with any variation of this Agreement and the related documents, guarantees and security agreements, any supplements thereto and waiver given in relation thereto, in connection with the investigation of any potential Event of Default, the enforcement or preservation of any rights under this Agreement and/or the related guarantees and security agreements, including in each case the fees and expenses of legal advisers, and in connection with the consultations or proceedings made necessary or in the opinion of the Agent desirable by the acts of, or failure to act on the part of, the Borrower.

#### **11.12 ~~40.42~~ Costs of delayed Delivery Date**

The Borrower undertakes to pay to the Agent, upon demand, any costs incurred by the Lenders and/or the Italian Authorities in funding the Loan in the event that the Delivery Date is later than the Intended Delivery Date unless the Borrower has given the Agent at least three (3) Business Days' notification of such delay in the Delivery Date.

#### **11.13 ~~40.43~~ SACE obligations**

To the extent that this Clause ~~40-11~~ (*Taxes, Increased Costs, Costs and Related Charges*) imposes obligations or restrictions on a Secured Party, such obligations or restrictions shall not apply to SACE and SACE shall have no obligations hereunder nor be constrained by such restrictions.

### **12 ~~44~~ REPRESENTATIONS AND WARRANTIES**

#### **12.1 ~~44.4~~ Timing and repetition**

The following applies in relation to the time at which representations and warranties are made and repeated:

- (a) the representations and warranties in Clause ~~44.2-12.2~~ (*Continuing representations and warranties*) are made on the date of the Original Facility Agreement (apart from the representation at paragraphs (ee) and (ff) of Clause ~~44.2-12.2~~ (*Continuing representations and warranties*) which shall only be made on the date of the Original Facility Agreement and shall not be repeated) and shall be deemed to be repeated, with reference *mutatis mutandis* to the facts and circumstances subsisting, as if made on each day until the Borrower has no remaining obligations, actual or contingent, under or pursuant to this Agreement or any of the other Finance Documents; and
  - (b) the representations and warranties in Clause ~~44.3-12.3~~ (*Representations on the Delivery Date*) are made on the Delivery Date and shall be deemed to be repeated, with reference *mutatis mutandis* to the facts and circumstances subsisting, as if made thereafter on each day until the
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Borrower has no remaining obligations, actual or contingent, under or pursuant to this Agreement or any of the other Finance Documents.

## **12.2 ~~11.2~~ Continuing representations and warranties**

The Borrower represents and warrants to each of the Secured Parties that:

- (a) each Obligor is a company or body corporate duly organised or (as the case may be) incorporated, constituted and validly existing under the laws of the country of its formation or (as the case may be) incorporation, possessing perpetual existence, the capacity to sue and be sued in its own name and the power to own and charge its assets and carry on its business as it is now being conducted;
- (b) the Borrower has an authorised share capital of 12,000 common shares of par value \$1 each all of which have been issued to the Shareholder;
- (c) the legal title to and beneficial interest in the equity in the Borrower is held free of any security (other than pursuant to the Shares Security Deed) or any other claim by the Shareholder;
- (d) none of the equity in the Borrower is subject to any option to purchase, pre-emption rights or similar rights;
- (e) each Obligor has the power to enter into and perform this Agreement and those of the other Transaction Documents to which it is a party and the transactions contemplated hereby and thereby and has taken all necessary action to authorise the entry into and performance of this Agreement and such other Transaction Documents and such transactions;
- (f) this Agreement and each other Transaction Document constitutes (or will constitute when executed) legal, valid and binding obligations of each Obligor expressed to be a party thereto enforceable in accordance with their respective terms and in entering into this Agreement and borrowing the Loan, the Borrower is acting on its own account;
- (g) the entry into and performance of this Agreement and the other Transaction Documents and the transactions contemplated hereby and thereby do not and will not conflict with:
  - (i) any law or regulation or any official or judicial order; or
  - (ii) the constitutional documents of any Obligor; or
  - (iii) any agreement or document to which any Obligor is a party or which is binding upon such Obligor or any of its assets,

nor result in the creation or imposition of any Security Interest on the Borrower or its assets pursuant to the provisions of any such agreement or document, except for Security Interests which qualify as Permitted Security Interests with respect to the Borrower;

- (h) all authorisations, approvals, consents, licences, exemptions, filings, registrations, notarisations and other matters, official or otherwise, required in connection with the entry into, performance, validity and enforceability of this Agreement and each of the other Transaction Documents to which any Obligor is a party and the transactions contemplated thereby have been obtained or effected and are in full force and effect except authorisations, approvals, consents, licences, exemptions, filings and registrations required in the normal day to day course of the operation of the Ship and not already obtained by the Borrower;
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- (i) it is disregarded as an entity separate from its owner for U.S. federal Tax purposes;
  - (j) all information furnished by any Obligor relating to the business and affairs of any Obligor in connection with this Agreement and the other Transaction Documents was and remains true and correct in all material respects and there are no other material facts or considerations the omission of which would render any such information misleading;
  - (k) each Obligor has fully disclosed to the Agent all facts relating to each Obligor which it knows or should reasonably know and which might reasonably be expected to influence the Lenders in deciding whether or not to enter into this Agreement;
  - (l) the obligations of the Borrower, the Shareholder and the Guarantor under the Finance Documents rank at least *pari passu* with all its other present unsecured and unsubordinated indebtedness with the exception of any obligations which are mandatorily preferred by law;
  - (m) the Borrower is and shall remain, after the advance to it of the Loan, solvent in accordance with the laws of Bermuda and the United Kingdom and in particular with the provisions of the Insolvency Act 1986 (as from time to time amended) and the requirements thereof;
  - (n) neither the Borrower nor any other Obligor has taken any corporate action nor have any other steps been taken or legal proceedings been started or (to the best of its knowledge and belief) threatened against any of them for the reorganisation, winding-up, dissolution or for the appointment of a liquidator, administrator, receiver, administrative receiver, trustee or similar officer of any of them or any or all of their assets or revenues nor has it sought any other relief under any applicable insolvency or bankruptcy law;
  - (o) (in relation to any date on which this representation and warranty is deemed to be repeated pursuant to paragraph (a) of Clause ~~4.4~~ 12.1 (*Timing and repetition*)) the latest available annual consolidated audited accounts of the Guarantor at the date of repetition (which accounts have been prepared in accordance with GAAP) fairly represent the financial condition of the Guarantor as shown in such audited accounts;
  - (p) none of the Obligors nor any of their respective assets enjoys any right of immunity (sovereign or otherwise) from set-off, suit or execution in respect of their obligations under this Agreement or any of the other Transaction Documents or by any relevant or applicable law;
  - (q) all the shares in the Borrower and all shares or membership interest in any Approved Manager which is a member of the Group shall be legally and beneficially owned directly or indirectly by (in the case of the Borrower), the Shareholder and (in the case of such Approved Manager) the Guarantor and such structure shall remain so throughout the Security Period;
  - (r) the copies of the Pre-delivery Contracts are true and complete copies of each such document constituting valid and binding obligations of the parties thereto enforceable in accordance with their respective terms and, subject to paragraph (b) of Clause ~~12.23~~ 13.23 (*Pre-delivery Contracts and Pre-delivery Insurance*), no amendments thereto or variations thereof have been agreed nor has any action been taken by the parties thereto which would in any way render such document inoperative or unenforceable;
  - (s) the Borrower is the sole legal and beneficial owner of all rights and interests which each of the Pre-delivery Contracts creates in favour of the Borrower;
  - (t) any borrowing by the Borrower under this Agreement, and the performance of its obligations under this Agreement and the other Transaction Documents, will be for its own account and
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will not involve any breach by it of any law or regulatory measure relating to "money laundering" as defined in Article 1 of the Directive (91/308/EEC) of the Council of the European Communities (as amended by Directive 2001/97/EC of the European Parliament and of the Council of 4 December 2001); and

- (u) no Obligor is:
    - (i) 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;
  - (v) 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;
  - (w) the choice of governing law of each Transaction Documents to which it is a party will be recognised and enforced in its Relevant Jurisdictions and 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;
  - (x) 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 situated outside of the European Union and it has no "establishment" (as that term is used in Article 2(h) of the Regulation) in European Union country;
  - (y) no payments made or to be made by the Borrower, the Shareholder or the Guarantor in respect of amounts due under this Agreement or any Finance Document have been or shall be funded out of funds of Illicit Origin and none of the sources of funds to be used by the Borrower, the Shareholder or the Guarantor in connection with the construction of the Ship or its business are of Illicit Origin;
  - (z) to the best of the Borrower's, the Shareholder's and the Guarantor's knowledge, no Prohibited Payment has been or will be made or provided, directly or indirectly, by (or on behalf of) it, any of its affiliates, its or its officers, directors or any other person acting on its behalf to, or for the benefit of, any authority (or any official, officer, director, agent or key employee of, or other person with management responsibilities in, of any authority) in connection with the Ship, this Agreement and/or the Finance Documents and/or the Pre-delivery Contracts;
  - (aa) no event has occurred which constitutes a default under or in respect of any Transaction Document to which any Obligor or the Builder is a party or by which any Obligor or the Builder may be bound (including (inter alia) this Agreement) and no event has occurred which constitutes a default under or in respect of any agreement or document to which any Obligor is a party or by which any Obligor may be bound to an extent or in a manner which might have a material adverse effect on the ability of that Obligor to perform its obligations under the Transaction Documents to which it is a party;
  - (bb) none of the assets or rights of the Borrower is subject to any Security Interest except any Security Interest which (i) qualifies as a Permitted Security Interest with respect to the Borrower or (ii) is permitted by Clause ~~12.8~~ 13.8 (*Negative pledge*) of this Agreement;
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- (cc) no litigation, arbitration or administrative proceedings are current or pending or, to its knowledge, threatened, which might, if adversely determined, have a material adverse effect on the ability of an Obligor to perform its obligations under the Transaction Documents to which it is a party;
  - (dd) to the best of its knowledge, each of the Obligors has complied with all taxation laws in all jurisdictions in which it is subject to taxation and has paid all Taxes due and payable by it;
  - (ee) it is not required to make any deduction for or on account of Tax from any payment it may make under any Finance Document to which it is a party with respect to any Lender that provides the documentation described in paragraph (b) of Clause ~~40.7~~11.7 (*Lender Status*) indicating that it is not subject to tax withholding;
  - (ff) under the laws of its Relevant Jurisdictions it is not necessary that any stamp 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;
  - (gg) each member of the Group has good and marketable title to all its assets which are reflected in the audited accounts referred to in paragraph (o) of Clause ~~41.2~~12.2 (*Continuing representations and warranties*);
  - (hh) none of the Obligors has a place of business in any jurisdiction (except as already disclosed) which requires any of the Finance Documents to be filed or registered in that jurisdiction to ensure the validity of the Finance Documents to which it is a party;
  - (ii) the Borrower does not have a place of business in any country (except as already disclosed) other than that of its Original Jurisdiction;
  - (jj) the Borrower is in all material respects (except in the case of compliance with Sanctions which must be complied with in all respects) compliant with all laws or regulations relating to it and its business generally;
  - (kk) each of the Obligors and each member of the Group:
    - (i) is in compliance with all Environmental Laws and Environmental Approvals provided that any non-compliance would not be expected to result in a Material Adverse Effect;
    - (ii) has not received any notice or threat of any Environmental Claim against any member of the Group and no person has claimed that an Environmental Incident has occurred in each case that would reasonably be expected to result in a Material Adverse Effect;
    - (iii) confirms that no Environmental Incident has occurred and no person has claimed that an Environmental Incident has occurred in each case that would reasonably be expected to result in a Material Adverse Effect;
  - (ll) each of the Pre-delivery Contracts constitutes legal, valid, binding and enforceable obligations of the Builder and the relevant Refund Guarantor respectively;
  - (mm) neither the Borrower, the Builder or the relevant Refund Guarantor has waived any of their respective rights under any Pre-delivery Contract;
  - (nn) the Borrower has read and acknowledged the principles provided under the Code of Ethics and Model;
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- (oo) the Borrower has implemented adequate internal procedures aimed at preventing commission of crimes provided under Legislative Decree 231/01;
- (pp) no litigation is pending against the Borrower in relation to administrative liability provided under Legislative Decree 231/01;
- (qq) no final judgment under Legislative Decree 231/01 has been issued against the Borrower and no plea bargain (also known as *patteggiamento* under Italian law) has been agreed by the Borrower pursuant to article 444 of the Italian code of criminal procedure; and
- (rr) neither the Borrower nor any of its assets are subject to any precautionary measure provided under Legislative Decree 231/01.

### **12.3 ~~44.3~~ Representations on the Delivery Date**

The Borrower further represents and warrants to each of the Secured Parties on the Delivery Date that:

- (a) the Ship is in its absolute and unencumbered ownership save as contemplated by the Finance Documents;
  - (b) the Ship is registered in its name under the laws and flag of the Maritime Registry;
  - (c) the Ship is classed with the highest classification available for a Ship of its type free of all recommendations and qualifications with Lloyd's Register, RINA or Bureau Veritas;
  - (d) the Ship is operationally seaworthy and in compliance with all relevant provisions, regulations and requirements (statutory or otherwise) applicable to ships registered under the laws and flag of the Maritime Registry;
  - (e) the Ship is in compliance with the ISM Code, the ISPS Code and Annex VI as they relate to the Borrower, any Approved Manager and the Ship;
  - (f) the Ship is insured in accordance with the provisions of Clause ~~44-15~~ 15 (*Insurance Undertakings*) and in compliance with the requirements therein in respect of such insurances;
  - (g) the Ship is managed by the Approved Manager and, in the event that the Approved Manager is not a member of the Group, on and subject to the terms set out in the Management Agreement;
  - (h) there is no agreement or understanding to allow or pay any rebate, premium, inducement, commission, discount or other benefit or payment (however described) to the Borrower or any other member of the Group, the Builder or a third party in connection with the purchase by the Borrower of the Ship, other than as disclosed to the Agent in writing on or before the date of this Agreement;
  - (i) no 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 Agent sufficient details to enable an accurate search against it to be undertaken by the Lenders at the Companies Registry;
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- (j) the Borrower is in all material respects (except in the case of compliance with Sanctions which must be complied with in all respects) compliant with all laws or regulations relating to the Ship, its ownership, employment, operation, management and registration;
- (k) the copies of any Management Agreement, any charter and any charter guarantee which require a notice of assignment to be served under the terms of the General Assignment (if any) and any other relevant third party agreements including but without limitation the copies of any documents in respect of the Insurances delivered to the Agent are true and complete copies of each such document constituting valid and binding obligations of the parties thereto enforceable in accordance with their respective terms and, subject to ~~Clauses 13.2~~ Clause 14.2 (*Management and employment*), no amendments thereto or variations thereof have been agreed nor has any action been taken by the parties thereto which would in any way render such document inoperative or unenforceable; and
- (l) except for:
  - (i) the filing of UCC-1 Financing Statements in such jurisdictions as the Security Trustee may reasonably require;
  - (ii) the recording of the Mortgage with the relevant Maritime Registry; and
  - (iii) the registration of the Ship under an Approved Flag,

all authorisations, approvals, consents, licences, exemptions, filings, registrations, notarisations and other matters, official or otherwise, required in connection with the entry into, performance, validity and enforceability of this Agreement and each of the other Transaction Documents to which any Obligor is a party and the transactions contemplated thereby have been obtained or effected and are in full force and effect except authorisations, approvals, consents, licences, exemptions, filings and registrations required in the normal day to day course of the operation of the Ship and not already obtained by the Borrower.

## 13 ~~42~~ GENERAL UNDERTAKINGS

### 13.1 ~~42.1~~ General

The Borrower undertakes with each Secured Party to comply with the following undertakings during the Security Period:

### 13.2 ~~42.2~~ Information

The Borrower will provide to the Agent for the benefit of the Lenders and SACE (or will procure the provision of):

- (a) as soon as practicable (and in any event within one hundred and twenty (120) days after the close of its financial year) a Certified Copy of the audited consolidated accounts of the Guarantor and its subsidiaries for that year (commencing with accounts made up to 31 December 2016 in the case of the consolidated accounts of the Guarantor);
  - (b) as soon as practicable (and in any event within forty-five (45) days of the end of the contemplated quarter for the first three quarters in any fiscal year and within 90 days for the final quarter) a copy of the unaudited consolidated quarterly management accounts of the Guarantor (it being understood that the delivery by the Guarantor of quarterly or annual
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reports as filed with the Securities and Exchange Commission in respect of the Guarantor and its consolidated subsidiaries shall satisfy all the requirements of this paragraph (b));

- (c) promptly, such further information in its possession or control regarding the condition or operations of the Ship and its financial condition and operations of the Borrower and those of any company in the Group as the Agent may reasonably request for the benefit of the Secured Parties;
- (d) details of any material litigation, arbitration or administrative proceedings (including proceedings relating to any alleged or actual breach of Sanctions, the ISM Code of the ISPS Code) which affect any company in the Group as soon as the same are instituted and served, or, to the knowledge of the Borrower, threatened (and for this purpose proceedings shall be deemed to be material if they involve a claim in an amount exceeding twenty million Dollars or the equivalent in another currency provided that this threshold shall not apply to any proceedings relating to Sanctions); and
- (e) any reasonably requested information which the Agent requests about any interest or right of any kind which the Borrower has at any time to, in or in connection with, each of the Pre-delivery Contracts or in relation to any matter arising out of or in connection with any Pre-delivery Contract including the progress of the construction of the Ship, any material dispute, termination, cancellation or suspension, material breach of or under any Pre-delivery Contract or material claim proposed or actual amendments (excluding Minor Modifications) of or under any Pre-delivery Contract, and any material litigation, arbitration, proceeding or investigation in relation to the Borrower and of any other event or matter affecting a Pre-delivery Contract which has or is reasonably likely to have a Material Adverse Effect.

All accounts required under this Clause ~~42.2~~13.2 (*Information*) shall be prepared in accordance with GAAP and shall fairly represent the financial condition of the relevant company.

### **13.3 ~~42.3~~ Equator Principles Compliance**

Upon the request of the Agent, the Borrower shall provide to the Agent information as may be reasonably requested by the Lenders for the purposes of monitoring that the Borrower conducts its operations in all material respects in accordance with the Equator Principles.

### **13.4 ~~42.4~~ Illicit Payments**

No payments made by the Borrower, the Shareholder, the Guarantor or any Approved Manager which is a member of the Group in respect of amounts due under this Agreement or any Finance Document shall be funded out of funds of Illicit Origin and none of the sources of funds to be used by the Borrower, the Shareholder, the Guarantor or any Approved Manager which is a member of the Group in connection with the construction of the Ship or its business shall be of Illicit Origin.

### **13.5 ~~42.5~~ Prohibited Payments**

No Prohibited Payment shall be made or provided, directly or indirectly, by (or on behalf of) the Borrower, the Shareholder, the Guarantor or any of their affiliates, officers, directors or any other person acting on its behalf to, or for the benefit of, any authority (or any official, officer, director, agent or key employee of, or other person with management responsibilities in, of any authority) in connection with the Ship, this Agreement, the Finance Documents and/or the Pre-delivery Contracts.

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### 13.6 ~~42-6~~ Notification of default

The Borrower will notify the Agent of any Event of Default forthwith upon becoming aware of the occurrence thereof. Upon the Agent's request from time to time the Borrower will issue a certificate stating whether any Obligor is aware of the occurrence of any Event of Default.

### 13.7 ~~42-7~~ Consents and registrations

The Borrower will procure that (and will promptly furnish Certified Copies to the Agent on the request of the Agent of) all such authorisations, approvals, consents, licences and exemptions as may be required under any applicable law or regulation to enable it or any Obligor to perform its obligations under, and ensure the validity or enforceability of, each of the Transaction Documents are obtained and promptly renewed from time to time and will procure that the terms of the same are complied with at all times. Insofar as such filings or registrations have not been completed on or before the relevant Drawdown Date the Borrower will procure the filing or registration within applicable time limits of each Finance Document which requires filing or registration together with all ancillary documents required to preserve the priority and enforceability of the Finance Documents.

### 13.8 ~~42-8~~ Negative pledge

The Borrower will not create or permit to subsist any Security Interest on the whole or any part of its present or future assets, except for the following:

- (a) Security Interests created with the prior consent of the Agent; or
- (b) Security Interests qualifying as Permitted Security Interests with respect to the Borrower and described in paragraphs (a) and (b) of the definition of "Permitted Security Interests" in Clause 1.1 (*Definitions*); or
- (c) Security Interests qualifying as Permitted Security Interests with respect to the Borrower and described in paragraphs (C), (E), (H) or (I) of such definition, provided that insofar as they are enforceable against the Ship they do not prevail over the Mortgage.

### 13.9 ~~42-9~~ Disposals

Except in the case of a sale of the Ship if the completion of the sale is contemporaneous with prepayment of the Loan in accordance with the provisions of Clause ~~46-3~~ 17.3 (*Mandatory prepayment – Sale and Total Loss*) and except for charters and other arrangements complying with Clause ~~43-4~~ 14.1 (*Pooling of earnings and charters*) the Borrower shall not without the consent of the Majority Lenders and SACE, either in a single transaction or in a series of transactions whether related or not and whether voluntarily or involuntarily, (i) sell, transfer, lease or otherwise dispose of the Ship or any of the Ship's equipment except in the case of items (a) being replaced (by an equivalent or superior item) or renewed or (b) that are being disposed of in the ordinary course of business **provided that** in the case of both (a) and (b) the net impact does not reduce the value of the Ship and, in the case of (b), the value of any such disposals during the term of this Agreement do not, in aggregate, exceed ten million Dollars (\$10,000,000) (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 the same 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.

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**13.10 ~~42.40~~Change of business**

Except with the prior consent of the Agent, the Borrower shall not make or threaten to make any substantial change in its business as presently conducted, namely that of a single ship owning company for the Ship, or change its place of business to any country other than that of its Original Jurisdiction, or carry on any other business which is substantial in relation to its business as presently conducted so as to affect, in the opinion of the Agent, the Borrower's ability to perform its obligations hereunder.

**13.11 ~~42.41~~Mergers**

Except with the prior consent of the Lenders and SACE and subject to compliance with all necessary "know your customer" requirements, the Borrower will not enter into any amalgamation, restructure, substantial reorganisation, merger, de-merger or consolidation or anything analogous to the foregoing nor will it acquire any equity, share capital or obligations of any corporation or other entity.

**13.12 ~~42.42~~Maintenance of status and franchises**

The Borrower will do all such things as are necessary to maintain its company existence in good standing and will ensure that it has the right and is duly qualified to conduct its business as it is conducted in all applicable jurisdictions and will obtain and maintain all franchises and rights necessary for the conduct of its business.

**13.13 ~~42.43~~Financial records**

The Borrower will keep proper books of record and account, in which proper and correct entries shall be made of all financial transactions and the assets, liabilities and business of the Borrower in accordance with GAAP.

**13.14 ~~42.44~~Financial Indebtedness and subordination of indebtedness**

The following restrictions shall apply:

- (a) otherwise than in the ordinary course of business as owner of the Ship, except as contemplated by this Agreement and except any loan, advance or credit extended by the Guarantor or any member of the Group which is a wholly owned Subsidiary of the Guarantor, the Borrower will not create, incur, assume or allow to exist any financial indebtedness, enter into any finance lease or undertake any material capital commitment (including but not limited to the purchase of any capital asset); and
  - (b) the Borrower shall procure that:
    - (i) any and all indebtedness (and in particular with any other Obligor) is at all times fully subordinated to the Finance Documents and the obligations of the Borrower hereunder; and
    - (ii) if required by any applicable laws, the subordinated liabilities created pursuant to such indebtedness shall be subject to security (in form and substance satisfactory to the Secured Parties) in favour of the Security Trustee ("**Subordinated Debt Security**") and any related legal opinions shall be issued if so required by the Secured Parties.
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Upon the occurrence of an Event of Default, the Borrower shall not make any repayments of principal, payments of interest or of any other costs, fees, expenses or liabilities arising from or representing such indebtedness. In this paragraph (b) "fully subordinated" shall mean that any claim of the lender against the Borrower in relation to such indebtedness shall rank after and be in all respects subordinate to all of the rights and claims of the Secured Parties under this Agreement and the other Finance Documents and that the lender shall not take any steps to enforce its rights to recover any monies owing to it by the Borrower and in particular but without limitation the lender will not institute any legal or quasi-legal proceedings under any jurisdiction at any time against the Ship, her Earnings or Insurances or the Borrower and it will not compete with the Secured Parties or any of them in a liquidation or other winding-up or bankruptcy of the Borrower or in any proceedings in connection with the Ship, her Earnings or Insurances.

**13.15 ~~42-45~~Investments**

The Borrower shall not:

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

**13.16 ~~42-46~~Unlawfulness, invalidity and ranking; Security imperilled**

No Obligor shall 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 an Obligor to perform any of its obligations under the Transaction Documents;
  - (b) cause any obligation of an Obligor under the Finance Documents to cease to be legal, valid, binding or enforceable if that cessation individually or together with any other cessations materially or adversely affects the interests of the Secured Parties under the Transaction Documents;
  - (c) cause any Transaction Document to cease to be in full force and effect;
  - (d) cause any Security Interest to rank after, or lose its priority to, any other Security Interest; and
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- (e) imperil or jeopardise any Security Interest.

**13.17 ~~42.17~~ Dividends and dividend restriction**

- (a) Subject to paragraph (b) below, the Borrower shall not make or pay any dividend or other distribution (in cash or in kind) in respect of its share capital other than dividends and distributions that are transferred to the Shareholder or the Guarantor provided that no Event of Default has occurred or is continuing or would result from the payment of any dividend.
- (b) During the Deferral Period, the Borrower shall not, and shall procure that the Guarantor, the Shareholder and the Holding shall not:
  - (i) declare, make or pay any dividend or other distribution (or interest on any unpaid dividend or other distribution) (whether in cash or in kind) on or in respect of its share capital (or any class of its share capital);
  - (ii) repay or distribute any dividend or share premium reserve;
  - (iii) make any repayment of any kind under any shareholder loan; or
  - (iv) redeem, repurchase (whether by way of share buy-back program or otherwise), defease, retire or repay any of its share capital or resolve to do so,

except that (A) any Obligor other than the Guarantor may pay dividends and other distributions, directly or indirectly, to the Guarantor for the purpose of providing liquidity to the Guarantor to enable the Guarantor to satisfy payment obligations for which the Guarantor is an obligor and (B) any Obligor may pay dividends in respect of the Tax liability to each relevant jurisdiction in respect of consolidated, combined, unitary or affiliated Tax returns for each relevant jurisdiction of the Group or the Holding or holder of the Guarantor's capital stock with respect to income taxable as a result of any member of the Group or the Holding being taxed as a pass-through entity for U.S. Federal, state and local income tax purposes or attributable to any member of the Group, (C) the Guarantor and the Holding may pay dividends and other distributions (x) in respect of a conversion, exchange, or repurchase of convertible or exchangeable notes and any conversion of preference shares to ordinary shares in connection therewith, provided that the cash portion of a repurchase of convertible or exchangeable notes is limited to the amount of interest that would otherwise be payable through maturity on the amount of such convertible or exchangeable notes being repurchased plus any amount in lieu of fractional shares, and (y) to the extent contractually owed to holders of equity in the Guarantor or the Holding and (D) the Guarantor may pay dividends and other distributions to the Holding for the purposes of providing cash to the Holding for the payment of any Tax payable in connection with the Holding's equity plan,

provided that the actions in paragraphs (B) and (C) above shall only be permitted if there is no Event of Default which is continuing under this Agreement and no Event of Default would arise from the payment of such dividend.

**13.18 ~~42.18~~ Loans and guarantees by the Borrower**

Otherwise than in the ordinary course of business in its ownership and operation of the Ship following the Delivery Date, the Borrower will not make any loan or advance or extend credit to any person, firm or corporation (other than as permitted pursuant to paragraph (a) of Clause ~~42.15~~ 13.15 (*Investments*)), or issue or enter into any guarantee or indemnity or otherwise

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become directly or contingently liable for the obligations of any other person, firm or corporation.

**13.19 ~~42.19~~ Acquisition of shares**

The Borrower will not:

- (a) acquire any equity, share capital, assets or obligations of any corporation or other entity; or
- (b) permit any of its shares to be directly held other than by the Shareholder.

**13.20 ~~42.20~~ Further assurance**

The Borrower will, from time to time on being required to do so by the Agent, do or procure the doing of all such acts and/or execute or procure the execution of all such documents in a form satisfactory to the Agent as the Agent may reasonably consider necessary for giving full effect to any of the Transaction Documents, the Interest Make-Up Agreement or the SACE Insurance Policy or securing to the Secured Parties the full benefit of the rights, powers and remedies conferred upon the Secured Parties or any of them in any such Transaction Document the Interest Make-Up Agreement or the SACE Insurance Policy.

**13.21 ~~42.21~~ Irrevocable payment instructions**

The Borrower shall not modify, revoke or withhold the payment instructions set out in Clause 4.1 (*Borrower's irrevocable payment instructions*) without the agreement of the Builder (in the case of paragraphs (b)(i), (d)(i) and (e)(i) of Clause 4.1 (*Borrower's irrevocable payment instructions*) only), the Agent, SACE and the Lenders.

**13.22 ~~42.22~~ "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 the Original Facility Agreement;
  - (ii) any change in the status of the Borrower after the date of the Original Facility Agreement; or
  - (iii) a proposed assignment or transfer by a Lender of any of its rights and obligations under this Agreement to a party that is not a Lender prior to such assignment or transfer,

obliges the Agent or any Lender (or, in the case of paragraph (a)(iii) of Clause ~~42.22-13.22~~ (*"Know your customer" checks*), 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 or the Lenders (acting reasonably) require any additional documents to supplement those already provided, the Borrower shall promptly upon the request of the Agent or any Lender supply, or procure the supply of, such documentation and other evidence as is reasonably requested by the Agent (for itself or on behalf of any Lender) or any Lender (for itself or, in the case of the event described in paragraph (iii) of Clause ~~42.22-13.22~~ (*"Know your customer" checks*), on behalf of any prospective new Lender) in order for the Agent and, such Lender to carry out and be satisfied it has complied with all necessary "know your customer" or other similar checks under all

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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.

**13.23 ~~42.23~~ Pre-delivery Contracts and Pre-delivery Insurance**

- (a) The Borrower shall:
    - (i) observe and perform all its obligations and meet all its liabilities under or in connection with each Pre-delivery Contract;
    - (ii) use its best endeavours to ensure performance and observance by the other parties of their obligations and liabilities under each Pre-delivery Contract;
    - (iii) take any action, or refrain from taking any action, which the Agent (always acting reasonably and in good faith towards the Borrower) may specify in connection with any material breach, or possible future material breach, of a Pre-delivery Contract by the Borrower or any other party or with any other matter which arises or may later arise out of or in connection with a Pre-delivery Contract which is or could reasonably be expected to become materially prejudicial to the interests, rights or position of the Lenders; and
    - (iv) use its best endeavours to ensure that all interests and rights conferred by each Pre-delivery Contract remain valid and enforceable in all respects and retain the priority which they were intended to have.
  - (b) The Pre-delivery Contracts constitute legal, valid and binding and enforceable obligations of the Builder and the relevant Refund Guarantor respectively, and accordingly the Borrower shall not:
    - (i) waive, cancel or suspend any Pre-delivery Contract or assign or transfer any of its rights thereunder, and shall comply with any authorisations for the purposes of the Pre-delivery Contracts;
    - (ii) make any material modification(s) to the Material Provisions of the Shipbuilding Contract (excluding Article 9 (*Price*) of the Shipbuilding Contract in respect of any increase of the price due to any modifications of the plans or the specification or the construction of the Ship under Article 24 of the Shipbuilding Contract), (including, but not limited to, any written amendments or modifications which could reasonably be expected to be adverse to the interests of the Secured Parties of the SACE Insurance Policy) without the prior written consent of the Lenders and in any event may not modify the Shipbuilding Contract, directly or indirectly, in such a manner that would result in a change of the type, principal dimensions or class of the Ship or decrease the value of the Ship by equal to or greater than 5 per cent (in aggregate) or could reasonably be expected to be adverse to the interests of the Secured Parties or the SACE Insurance Policy; or
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- (iii) modify any Refund Guarantee, once issued, without the prior written consent of the Lenders and the form of any Refund Guarantee to be issued will not be materially different from the agreed form Refund Guarantee attached to the Sixth Addendum and will not be modified if such modification could reasonably be expected to be adverse to the interests of the Secured Parties or the SACE Insurance Policy.

The Borrower will, therefore, submit to the Agent any proposals for any such modification and SACE and the Agent on behalf of the Lenders will indicate in a timely manner whether the modification proposed will allow the Loan to be maintained. The Borrower also undertakes to notify the Agent of any change in the Intended Delivery Date as soon as practicable after each change has occurred.

The Borrower shall notify the Agent promptly, and in any event within ten (10) Business Days (as defined in limb (a) of the definition of Business Day) of any changes to the Shipbuilding Contract (other than Minor Modifications arising in the general day to day construction period for a vessel of the type of the Ship) and provide copies of the same to the Agent.

- (c) The Borrower shall promptly notify the Agent upon any Obligor becoming aware of a Downgraded Refund Guarantor. Where there is a Downgraded Refund Guarantor, the Borrower shall promptly serve written notice on the Builder requiring the Builder to replace that Downgraded Refund Guarantor with a Refund Guarantor which is not subject to any such RG Downgrade Event within a 60 day period. If the Borrower requests any waiver of the above requirement from the Lenders, the Borrower acknowledges that the Lenders (acting on the instructions of SACE) shall not be obliged to provide any such waiver. If a RG Downgrade Event occurs and the Borrower is unable to satisfy the requirements of this paragraph (c), it shall be treated as a mandatory prepayment event pursuant to Clause ~~16.6~~ 17.6 (*Mandatory prepayment on default under Shipbuilding Contract*).
- (d) The Borrower shall ensure that at all times during construction, the Ship is insured in accordance with the provisions of Article 23 of the Shipbuilding Contract.
- (e) In the event that a previously issued Refund Guarantee cannot be extended or replaced, and pursuant to the terms of the Shipbuilding Contract the Builder has chosen to replace such Refund Guarantee with an Acceptable Deposit, the Account shall be opened and such Acceptable Deposit shall be transferred to the Account which shall be pledged in favour of the Lenders, the Joint Mandated Lead Arrangers, the Security Trustee, the Agent and the SACE Agent and shall be deemed to be Pre-delivery Security. For the avoidance of doubt:
  - (i) any amount of the Acceptable Deposit shall be transferred to and from the Account upon the terms of the Account Pledge and the conditions relating to the mechanics of the Account and Acceptable Deposit shall be set out in the Account Pledge; and
  - (ii) upon the instructions of the Beneficiaries (as defined in the Account Pledge), the Account Bank shall close the Account upon delivery of the Ship provided no potential Event of Default or Event of Default has occurred.

#### **13.24 ~~12.24~~ FOREX Contracts**

The Borrower shall:

- (a) provide the Agent with a copy of all FOREX Contracts together with all relevant details within ten (10) days of their execution; and
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- (b) inform the Agent, when requested by the Agent, of its intended hedging policy for purchasing Euro with Dollars.

The Agent shall inform the Lenders within ten (10) days of receipt of such information from the Borrower.

**13.25 ~~42-25~~ Compliance with laws etc.**

The Borrower shall:

- (a) comply, or procure compliance with:
  - (i) in all material respects, all laws and regulations relating to it and its business generally; and
  - (ii) in all material respects (except in the case of compliance with Sanctions which must be complied with in all respects), all laws or regulations relating to the Ship, its ownership, employment, operation, management and registration,  
  
including 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 Environment Approvals which are applicable to it; and
- (c) without limiting paragraph (a) above, not employ the Ship 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.

**13.26 ~~42-26~~ Most favoured nations**

- (a) The Borrower shall procure that if at any time after the date of the Original Facility Agreement the Guarantor enters into any financial contract or financial document relating to any Financial Indebtedness with or which has the support of any export credit agency and which contains *pari passu* provisions or cross default provisions which are more favourable to the lenders than those contained in paragraph (l) of Clause ~~44-2-12.2~~ (*Continuing representations and warranties*) and Clause ~~48-6-19.6~~ (*Cross default*) respectively, the Borrower or the Guarantor shall immediately notify the Agent of such provisions and the relevant provisions contained in this Agreement shall be deemed amended so that such more favourable *pari passu* provisions or cross default provisions are granted to the Creditor Parties pursuant to this Agreement.
  - (b) The Borrower undertakes that if at any time after the date of this Agreement and until the occurrence of a Reinstatement Event, it or any other member of the Group is required to grant additional security in relation to a financial contract or financial document relating to any existing Financial Indebtedness:
    - (i) with the support of any export credit agency (excluding any extensions, increases or changes to the terms and conditions thereof), such security shall be granted on a *pari passu* basis to the Lenders (and the Security Trustee agrees to enter and/or procure the entry by the relevant Secured Parties into such intercreditor documentation to reflect such *pari passu* ranking (in form and substance reasonably satisfactory to the Secured Parties) as may be required in connection with such arrangements); or
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- (ii) without the support of any export credit agency (excluding any extensions, increases or changes to the terms and conditions thereof), such security shall (without prejudice to any of the Obligors' other obligations under the Finance Documents), subject to the provisions of clause 11.11 (*Negative pledge*) of the Guarantee and Clause ~~42-8-13.8~~ (*Negative pledge*), be permitted provided that it shall not have an adverse effect on any Security Interests or other rights granted to the Secured Parties under the Finance Documents.
- (c) ~~In-Until the occurrence of a Reinstatement Event, in~~ respect of any new Financial Indebtedness (other than Permitted Financial Indebtedness), or any extensions, increases or changes to the terms and conditions of any existing Financial Indebtedness, in each case with or which has the support of any export credit agency, the Borrower shall enter into good faith negotiations with the Security Trustee to grant additional security for the purpose of further securing the Loan, provided that any failure to reach agreement under this paragraph (c) following such good faith negotiations shall not constitute an Event of Default.

### **13.27 ~~42.27~~ New capital raises or financing**

- (a) Save as provided below:
    - (i) no new debt ~~or equity issuance~~ shall be raised and no new Financial Indebtedness shall be incurred by the Group (including, for the avoidance of doubt, inter-company loans);
    - (ii) no non-arm's length disposals of any asset relating to the Group fleet shall be made; and
    - (iii) no additional Security Interests securing existing Financial Indebtedness will be created or permitted to subsist by any Obligor (unless the Lenders benefit from this new security on a *pari passu* basis),  
~~during the Deferral Period:~~  
until 31 December 2023.
  - (b) The restrictions in paragraph (a) of this Clause ~~42.27-13.27~~ (*New capital raises or financing*) above shall not apply in relation to:
    - (i) any refinancing of any bond issuance of, or loan entered into by, the Group (A) which matures during such period or (B) where not maturing during such period, shall be on terms ~~which include any of the following (evidence of which shall be provided to the Agent by the Guarantor)~~ resulting, when taken as a whole, in an improvement of the ability of the Obligors to meet their obligations under the Finance Documents, which terms shall include any of the following: an extension of the repayment terms; a decrease in the interest rate; or the conversion of such Financial Indebtedness from secured to unsecured or first to second priority;
    - (ii) any debt ~~or equity issuance~~ provided prior to 31 December ~~2022-2023~~ to provide the Group with crisis and/or recovery related funding in respect of the impact of the Covid-19 pandemic;
    - (iii) any debt ~~or equity issuance~~ being raised on or after 31 December ~~2022-2023~~ to support the Group with the impact of the Covid-19 pandemic, made with the prior written consent of SACE;
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- (iv) any debt ~~or equity issuance~~ being raised to finance any instalment of a cruise vessel already contracted for or contracted for during such period or any refurbishment, maintenance, upgrade or lengthening of a cruise ship during such period (including without limitation any costs incurred by the owner of a cruise ship in connection therewith);
  - (v) any debt ~~or equity issuance~~ being raised to finance capital expenditure for projects which are already contracted for but in respect of which committed financing has not yet been obtained, and which, in each case has been (or will be) listed in the Information Package submitted to the Agent prior to the February 2021 Deferral Effective Date;
  - (vi) any extension or renewal of revolving credit facilities, and made with the prior written consent of SACE if any additional security is to be granted;
  - (vii) any new debt ~~or equity issuance~~ otherwise agreed by SACE; or
  - (viii) any inter-company loan or operating arrangement which from an accounting perspective has the effect of an intercompany loan (an "intercompany arrangement") which:
    - (A) is existing as at the date of the February 2021 Amendment and Restatement Agreement;  
or
    - (B) is made among any Group members or any Group member with the Holding provided that:
      - (1) any inter-company arrangement is made solely for the purpose of regulatory or Tax purposes carried out in the ordinary course of business and on an arm's length basis; and
      - (2) the aggregate principal amount of any inter-company arrangements outstanding pursuant to ~~this sub-paragraph (b)(viii)~~(viii)(B) of this Clause 12.27-13.27 (*New capital raises or financing*) does not exceed [\*] Dollars (\$[\*]) at any time; or
    - (C) has been approved with the prior written consent of SACE;
  - (ix) any Permitted Security Interest;
  - (x) any Security Interest otherwise approved with the prior written consent of SACE; and
  - (xi) any Financial Indebtedness incurred in the ordinary course of business which in the aggregate does not exceed USD [\*] during any twelve-month period; ~~and, it being provided that:~~
    - (A) prior to 31 December 2022, this amount shall be increased to USD [\*] for any Financial Indebtedness incurred to finance capital expenditure for Approved Projects; and
    - (B) if any part of such Financial Indebtedness allocated prior to 31 December 2022 to an Approved Project remains unused throughout the twelve-month period of year 2022, the surplus may be carried over to increase the relevant Financial
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Indebtedness throughout the twelve-month period of year 2023 for that Approved Project only; and

(xii) without prejudice to Clauses ~~42.44~~-13.11 (*Mergers*) and ~~42.45~~-13.15 (*Investments*) and clause 11.13 (*No merger*) of the Guarantee, the issuance of share capital by any Group member to another Group member; and

(xiii) any extension, renewal, replacement or upsizing in respect of the Term and Revolving Credit Facilities (including the granting of additional Security Interests),

and, for the avoidance of doubt, no debt or equity issuance shall be raised in respect of any form of merger, sub-division, amalgamation, restructuring, consolidation, winding-up, dissolution or anything analogous thereto or acquisition of any entity, share capital or obligations of any corporation or other entity.

**13.28 ~~42.28~~ Code of Ethics and Model**

- (a) The Borrower shall not behave so as to cause any of the following persons to violate the principles set out in the Code of Ethics and/or Model:
- (i) persons who are representatives, administrators or managers of CDP or of any of its organizational units with financial and functional independence;
  - (ii) persons who are managed or supervised by one of the persons referred to in paragraph (i) above; or
  - (iii) external advisors of CDP.
- (b) The Borrower shall maintain adequate internal procedures aimed at preventing liabilities provided under Legislative Decree 231/01.
- (c) The Borrower shall inform CDP of any (i) new pending litigation against it in relation to administrative liability provided under Legislative Decree 231/01; (ii) new final judgment under Legislative Decree 231/01, including, without limitation, any plea bargain (also known as *patteggiamento* under Italian law) pursuant to article 444 of the Italian code of criminal procedure; and (iii) new precautionary measures under Legislative Decree 231/01.

**14 ~~43~~SHIP UNDERTAKINGS**

**14.1 ~~43.1~~ Pooling of earnings and charters**

The Borrower will not without the prior written consent of the Agent or SACE enter into in respect of the Ship (such consent for the purposes of paragraph (e) of Clause ~~43.1~~-14.1 (*Pooling of earnings and charters*) shall not be unreasonably withheld or delayed), nor permit to exist at any time following the Delivery Date:

- (a) any pooling agreement or other arrangement for the sharing of any of the Earnings or the expenses of the Ship except with a member of the Group and provided that it does not adversely affect the rights of the Secured Parties under the Finance Documents in the reasonable opinion of the Agent; or
  - (b) any demise or bareboat charter, provided however that such consent shall not be unreasonably withheld in the event that the Borrower wishes to enter into a bareboat charter
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in a form approved by the Agent with another member of the Group on condition that if so requested by the Agent and without limitation:

- (i) any such bareboat charterer shall enter into such deeds (including but not limited to a full subordination and assignment deed in respect of its rights under the bareboat charter and its interest in the Insurances and earnings payable to it arising out of its use of the Ship), agreements and indemnities as the Majority Lenders and SACE shall require prior to entering into the bareboat charter with the Borrower; and
  - (ii) the Borrower shall assign the benefit of any such bareboat charter and its interest in the Insurances to the Secured Parties by way of further security for the Borrower's obligations under the Finance Documents; or
- (c) any charter whereunder two (2) months' charterhire (or the equivalent thereof) is payable in advance in respect of the Ship; or
- (d) any charter of the Ship or employment which, with the exercise of options for extension, could be for a period longer than [\*] ([\*]) months; or
- (e) any time charter of the Ship with a company outside the Group (other than a time charter entered into in the ordinary course of business which does not exceed [\*] ([\*]) months **provided that** any such time charter (y) is assigned to the Security Trustee and (z) during the period of such time charter, the Ship continues to be managed by the existing Approved Manager), provided however that such consent shall not be unreasonably withheld in the event that:
- (i) such time charter is assigned to the Security Trustee and the Borrower agrees to:
    - (A) serve a notice of assignment of any time charter, the Earnings therefrom and any guarantee of the charterer's obligations on the time charterer and any time charter guarantor; and
    - (B) use commercially reasonable endeavours to obtain an acknowledgement of such assignment,

and each of the notice of assignment and acknowledgement of assignment being substantially in the form appended to the General Assignment;

- (ii) the Agent is satisfied that the income from such time charter will be sufficient to cover the expenses of the Ship and to service repayment of the Loan and all other amounts from time to time outstanding under this Agreement; and
- (iii) during the term of such time charter, the Ship continues to be managed by the existing Approved Manager.

#### **14.2 ~~13.2~~ Management and employment**

The Borrower will not as from the Delivery Date:

- (a) permit any person other than an Approved Manager to be the manager of, including providing crewing services to, the Ship, at all times acting upon terms approved in writing by the Agent and having entered into (in the case of the Approved Manager) an Approved Manager's Undertaking; and
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- (b) permit any amendment to be made to the terms of any Management Agreement unless the amendment is advised by the Borrower's tax counsel or is deemed necessary by the parties thereto to reflect the prevailing circumstances but provided that the amendment does not imperil the security to be provided pursuant to the Finance Documents or adversely affect the ability of any Obligor to perform its obligations under the Transaction Documents; or
- (c) permit the Ship to be employed other than within the Norwegian Cruise Line brand unless the Borrower notifies the Lenders that they intend to employ the Ship within another brand of the Group and the ship remains employed within the Group.

#### **14.3 ~~13.3~~ Trading with the United States of America**

The Borrower shall in respect of the Ship take all reasonable precautions as from the Delivery Date to prevent any infringements of the Anti-Drug Abuse Act of 1986 of the United States of America (as the same may be amended and/or re-enacted from time to time hereafter) or any similar legislation applicable to the Ship in any other jurisdiction in which the Ship shall trade (a "**Relevant Jurisdiction**") where the Ship trades in the territorial waters of the United States of America or a Relevant Jurisdiction.

#### **14.4 ~~13.4~~ Valuation of the Ship**

The following shall apply in relation to the valuation of the Ship:

- (a) the Borrower will on or before 31 May of each year that commences after the delivery of the Ship and at annual intervals thereafter unless an Event of Default has occurred and remains unremedied, at the Borrower's expense, procure that the Ship is valued by an Approved Broker (such valuation to be made without taking into account the benefit or otherwise of any fixed employment relating to the Ship);
- (b) the Borrower shall procure that forthwith upon the issuance of any valuation obtained pursuant to this Clause ~~13.4~~ 14.4 (*Valuation of the Ship*) a copy thereof is sent directly to the Agent for review; and
- (c) in the event that the Borrower fails to procure a valuation in accordance with paragraph (a) of Clause ~~13.4~~ 14.4 (*Valuation of the Ship*), the Agent shall be entitled to procure a valuation of the Ship on the same basis.

#### **14.5 ~~13.5~~ Earnings**

The Borrower will procure that the Earnings (if any) are paid in full without set off and free and clear of and without deduction for any taxes, levies, duties, imposts, charges, fees, restrictions or conditions of any nature whatsoever.

#### **14.6 ~~13.6~~ Operation and maintenance of the Ship**

From the Delivery Date until the end of the Security Period at its own expense the Borrower will keep the Ship in a good and efficient state of repair so as to maintain it to the highest classification notation available for the Ship of its age and type free of all recommendations and qualifications with Bureau Veritas or DNV. On the Delivery Date and annually thereafter, it will furnish to the Agent a statement by such classification society that such classification notation is maintained. It will comply with all recommendations, regulations and requirements (statutory or otherwise) from time to time applicable to the Ship and shall have on board as and when required thereby valid certificates showing compliance therewith and shall procure

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that all repairs to or replacements of any damaged, worn or lost parts or equipment are carried out (both as regards workmanship and quality of materials) so as not to diminish the value or class of the Ship. It will not make any substantial modifications or alterations to the Ship or any part thereof which would reduce the market and commercial value of the Ship determined in accordance with Clause ~~13.4~~ 14.4 (*Valuation of the Ship*).

#### **14.7 ~~13.7~~ Surveys and inspections**

The Borrower will:

- (a) submit the Ship to continuous survey in respect of its machinery and hull and such other surveys as may be required for classification purposes and, if so required by the Agent, supply to the Agent copies in English of the survey reports;
- (b) permit surveyors or agents appointed by the Agent to board the Ship to inspect its condition or satisfy themselves as to repairs proposed or already carried out and afford all proper facilities for such inspections **provided that**, unless an Event of Default has occurred or there is an accident to the Ship involving repairs the cost of which will or is likely to exceed [\*] Dollars (\$[\*]), such inspections shall be limited to one a year and shall be at all reasonable times.

#### **14.8 ~~13.8~~ ISM Code**

The Borrower will comply, or procure that the Approved Manager will comply, with the ISM Code (as the same may be amended from time to time) or any replacement of the ISM Code (as the same may be amended from time to time) and in particular, without prejudice to the generality of the foregoing, as and when required to do so by the ISM Code and at all times thereafter:

- (a) hold, or procure that the Approved Manager holds, a valid Document of Compliance duly issued to the Borrower or the Approved Manager (as the case may be) pursuant to the ISM Code and a valid Safety Management Certificate duly issued to the Ship pursuant to the ISM Code;
- (b) provide the Agent with copies of any such Document of Compliance and Safety Management Certificate as soon as the same are issued; and
- (c) keep, or procure that there is kept, on board the Ship a copy of any such Document of Compliance and the original of any such Safety Management Certificate.

#### **14.9 ~~13.9~~ ISPS Code**

The Borrower will comply, or procure that the Approved Manager will comply, with the ISPS Code (as the same may be amended from time to time) or any replacement of the ISPS Code (as the same may be amended from time to time) and in particular, without prejudice to the generality of the foregoing, as and when required to do so by the ISPS Code and at all times thereafter:

- (a) keep, or procure that there is kept, on board the Ship the original of the International Ship Security Certificate required by the ISPS Code; and
  - (b) keep, or procure that there is kept, on board the Ship a copy of the ship security plan prepared pursuant to the ISPS Code.
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**14.10 ~~43-40~~Annex VI**

The Borrower will comply with Annex VI (as the same may be amended from time to time) or any replacement of Annex VI (as the same may be amended from time to time) and in particular, without limitation, to:

- (a) procure that the Ship's master and crew are familiar with, and that the Ship complies with, Annex VI; and
- (b) maintain for the Ship throughout the Security Period a valid and current IAPPC and provide a copy to the Agent; and
- (c) notify the Agent immediately in writing of any actual or threatened withdrawal, suspension, cancellation or modification of the IAPPC.

**14.11 ~~43-44~~Employment of Ship**

The Borrower shall:

- (a) not employ the Ship or permit its employment in any trade or business which is forbidden by any applicable law or is otherwise illicit or in carrying illicit or prohibited goods or in any manner whatsoever which may render it liable to condemnation in a prize court or to destruction, seizure or confiscation or that may expose the Ship to penalties. In the event of hostilities in any part of the world (whether war be declared or not) it will not employ the Ship or permit its employment in carrying any contraband goods; and
- (b) promptly provide the Agent with (i) all information which the Agent may reasonably require regarding the Ship, its employment, earnings, position and engagements (ii) particulars of all towages and salvages and (iii) copies of all charters and other contracts for its employment and otherwise concerning it.

**14.12 ~~43-42~~Provision of information**

The Borrower shall give notice to the Agent promptly and in reasonable detail upon the Borrower or any other Obligor becoming aware of:

- (a) accidents to the Ship involving repairs the cost of which will or is likely to [\*] Dollars (\$[\*]);
  - (b) the Ship becoming or being likely to become a Total Loss;
  - (c) any recommendation or requirement made by any insurer or classification society or by any competent authority which is not complied with, or cannot be complied with, within any time limit relating thereto and that might reasonably affect the maintenance of either the Insurances or the classification of the Ship;
  - (d) any writ or claim served against or any arrest of the Ship or the exercise of any lien or purported lien on the Ship, her Earnings or Insurances;
  - (e) the Ship ceasing to be registered under the flag of the Maritime Registry or anything which is done or not done whereby such registration may be imperilled;
  - (f) it becoming impossible or unlawful for it to fulfil any of its obligations under the Finance Documents; and
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- (g) anything done or permitted or not done in respect of the Ship by any person which is likely to imperil the security created by the Finance Documents.

**14.13 ~~43.43~~ Payment of liabilities**

The Borrower shall promptly pay and discharge:

- (a) all debts, damages and liabilities, taxes, assessments, charges, fines, penalties, tolls, dues and other outgoings in respect of the Ship and keep proper books of account in respect thereof provided always that the Borrower shall not be obliged to compromise any debts, damages and liabilities as aforesaid which are being contested in good faith subject always that full details of any such contested debt, damage or liability which, either individually or in aggregate exceeds [\*] Dollars (\$[\*]) shall forthwith be provided to the Agent. As and when the Agent may so require the Borrower will make such books available for inspection on behalf of the Agent and provide evidence satisfactory to the Agent that the wages and allotments and the insurance and pension contributions of the master and crew are being regularly paid, that all deductions of crew's wages in respect of any tax liability are being properly accounted for and that the master has no claim for disbursements other than those incurred in the ordinary course of trading on the voyage then in progress or completed prior to such inspection;
- (b) all liabilities which have given rise, or may give rise, to liens or claims enforceable against the Ship under the laws of all countries to whose jurisdiction the Ship may from time to time be subject and in particular the Borrower hereby agrees to indemnify and hold the Secured Parties, their successors, assigns, directors, officers, shareholders, employees and agents harmless from and against any and all claims, losses, liabilities, damages, expenses (including attorneys, fees and expenses and consultant fees) and injuries of any kind whatsoever asserted against the Secured Parties, with respect to or as a result of the presence, escape, seepage, spillage, release, leaking, discharge or migration from the Ship or other properties owned or operated by the Borrower of any hazardous substance, including without limitation, any claims asserted or arising under any applicable environmental, health and safety laws, codes and ordinances, and all rules and regulations promulgated thereunder of all governmental agencies, regardless of whether or not caused by or within the control of the Borrower subject to the following:
  - (i) it is the parties' understanding that the Secured Parties do not now, have never and do not intend in the future to exercise any operational control or maintenance over the Ship or any other properties and operations owned or operated by the Borrower, nor in the past, presently, or intend in the future to, maintain an ownership interest in the Ship or any other properties owned or operated by the Borrower except as may arise upon enforcement of the Lenders' rights under the Mortgage;
  - (ii) unless and until an Event of Default shall have occurred and without prejudice to the right of each Lender to be indemnified pursuant to this paragraph (b):
    - (A) each Lender will, if it is reasonably practicable to do so, notify the Borrower upon receiving a claim in respect of which the relevant Lender is or may become entitled to an indemnity under this paragraph (b); and
    - (B) subject to the prior written approval of the relevant Lender which the Lender shall have the right to withhold, the Borrower will be entitled to take, in the name of the relevant Lender, such action as the Borrower may see fit to avoid, dispute, resist, appeal, compromise or defend any such claims, losses,

liabilities, damages, expenses and injuries as are referred to above in this paragraph (b) or to recover the same from any third party, subject to the Borrower first ensuring that the relevant Lender is secured to its reasonable satisfaction against all expenses thereby incurred or to be incurred,

provided always that the Borrower shall not be obliged to compromise any liabilities as aforesaid which are being contested in good faith subject always that full details of any such contested liabilities which, either individually or in aggregate, exceed [\*] Dollars (\$[\*]) shall be forthwith provided to the Agent. If the Ship is arrested or detained for any reason it will procure its immediate release by providing bail or taking such other steps as the circumstances may require.

**14.14 ~~13.14~~ Certificate as to liabilities**

The Borrower shall give to the Agent at such times as it may from time to time reasonably require a certificate, duly signed on its behalf, as to the total amount of any debts, damages and liabilities relating to the Ship and details of such of those debts, damages and liabilities as are over a certain amount to be specified by the Agent at the relevant time and, if so required by the Agent, forthwith discharge such of those debts, damages and liabilities as the Agent shall require other than those being contested in good faith.

**14.15 ~~13.15~~ Modifications**

The Borrower shall maintain the type of the Ship as at the Delivery Date and not put the Ship into the possession of any person for the purpose of work being done on it in an amount exceeding or likely to exceed [\*] Dollars (\$) unless such person shall first have given to the Agent a written undertaking addressed to the Agent in terms satisfactory to the Agent agreeing not to exercise a lien on the Ship or her Earnings for the cost of such work or for any other reason (or the Borrower is able to demonstrate to the reasonable satisfaction of the Agent that the Borrower or the relevant Group company has set aside and will have funds readily available for payment when due of the cost of the work (to the extent not fully covered by insurance proceeds in the case of a partial loss)).

**14.16 ~~13.16~~ Registration of Ship**

The Borrower shall maintain the registration of the Ship under and fly the flag of the Maritime Registry and not do or permit anything to be done whereby such registration may be forfeited or imperilled.

**14.17 ~~13.17~~ Environmental Law**

The Borrower shall comply with all Environmental Laws, obtain, maintain and ensure compliance with all requisite Environmental Approvals, and implement procedures to monitor compliance with and to prevent liability under any Environmental Law.

**14.18 ~~13.18~~ Notice of Mortgage**

The Borrower shall keep the Mortgage registered against the Ship as a valid first preferred mortgage, carry on board the Ship a certified copy of the Mortgage and place and maintain in a conspicuous place in the navigation room and the master's cabin of the Ship a framed printed notice stating that the Ship is mortgaged by the Borrower to the Security Trustee.

**14.19 ~~13.19~~ Environmental claims**

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Each Obligor shall, (through the Guarantor), promptly upon becoming aware of the same, inform the Agent in writing of:

- (a) any Environmental Claim which is likely to result in a Material Adverse Effect 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 which is likely to result in a Material Adverse Effect.

#### **14.20 ~~13.20~~ Trading in war zones**

In the event of hostilities in any part of the world (whether war is declared or not), the Borrower shall not cause or permit the Ship to enter or trade to any zone which is declared a war zone by the Ship's war risks insurers unless:

- (a) the prior written consent of the Security Trustee has been given; and
- (b) the Borrower has (at its expense) effected any special, additional or modified insurance cover which the Security Trustee may require.

#### **14.21 ~~13.21~~ Poseidon Principles**

The Borrower shall, upon the request of the Agent and at the cost of the Borrower, on or before 31st July in each calendar year, supply to the Agent all information necessary in order for the Lenders to comply with their obligations under the Poseidon Principles in respect of the preceding year, including, without limitation, all ship fuel oil consumption data required to be collected and reported in accordance with Regulation 22A of Annex VI and any Statement of Compliance, in each case relating to the Ship for the preceding calendar year provided always that, for the avoidance of doubt, such information shall be "Confidential Information" for the purposes of Clause ~~33~~34 (*Confidentiality*) but the Borrower acknowledges that, in accordance with the Poseidon Principles, such information will form part of the information published regarding the Lenders' portfolio climate alignment.

### **15 ~~14~~ INSURANCE UNDERTAKINGS**

#### **15.1 ~~14.1~~ General**

The undertakings in this Clause ~~14~~15 (*Insurance Undertakings*) remain in force on and from the Delivery Date and throughout the rest of the Security Period except as the Agent may otherwise permit.

#### **15.2 ~~14.2~~ Maintenance of obligatory insurances**

The Borrower shall insure the Ship in its name and keep the Ship insured on an agreed value basis for an amount in the currency in which the Loan is denominated approved by the Agent but not being less than the greater of (x) [\*] per cent. ([\*]%) of the amount of the Loan; and (y) the full market and commercial value of the Ship determined in accordance with Clause ~~13.4~~14.4 (*Valuation of the Ship*) from time to time through internationally recognised independent first class insurance companies, underwriters, war risks and protection and indemnity associations acceptable to the Agent, acting reasonably, in each instance on terms and conditions approved by the Agent including as to deductibles but at least in respect of:

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- (a) fire and marine risks including but without limitation hull and machinery and all other risks customarily and usually covered by first-class and prudent shipowners in the global insurance markets under English or Norwegian marine policies or Agent-approved policies containing the ordinary conditions applicable to similar Ships;
- (b) war risks (including terrorism, piracy, blocking and trapping and protection and indemnity war risks) up to the insured amount;
- (c) excess risks that is to say the proportion of claims for general average and salvage charges and under the running down clause not recoverable in consequence of the value at which the Ship is assessed for the purpose of such claims exceeding the insured value;
- (d) protection and indemnity risks with full standard coverage as offered by first-class protection and indemnity associations which are a member of the International Group of P&I Association and up to the highest limit of liability available (for oil pollution risk the highest limit currently available is one billion Dollars (\$1,000,000,000) and this to be increased if reasonably requested by the Agent and the increase is possible in accordance with the standard protection and indemnity cover for Ships of its type and is compatible with prudent insurance practice for first class cruise shipowners or operators in waters where the Ship trades from time to time from the Delivery Date until the end of the Security Period);
- (e) when and while the Ship is laid-up, in lieu of hull insurance, normal port risks; and
- (f) such other risks as the Agent may from time to time reasonably require;

and in any event in respect of those risks and at those levels covered by first class and prudent owners and/or financiers in the international market in respect of similar tonnage provided that if any of such insurances are also effected in the name of any other person (other than the Borrower and/or a Secured Party) such person shall if so required by the Agent execute a first priority assignment of its interest in such insurances in favour of the Secured Parties in similar terms mutatis mutandis to the relevant provisions of the General Assignment.

#### **15.3 ~~14.3~~ Mortgagee's interest and pollution risks insurances**

The Agent shall take out mortgagee interest insurance on such conditions as the Agent may reasonably require and mortgagee interest insurance for pollution risks as from time to time agreed each for an amount in the currency in which the Loan is denominated of [\*] per cent. ([\*]%) of the amount of the Loan, the Borrower having no interest or entitlement in respect of such policies; the Borrower shall upon demand of the Agent reimburse the Agent for the costs of effecting and/or maintaining any such insurance(s).

#### **15.4 ~~14.4~~ Trading in the United States of America**

If the Ship shall trade in the United States of America and/or the Exclusive Economic Zone of the United States of America (the "EEZ") as such term is defined in the US Oil Pollution Act 1990 ("OPA"), to comply strictly with the requirements of OPA and any similar legislation which may from time to time be enacted in any jurisdiction in which the Ship presently trades or may or will trade at any time during the existence of this Agreement and in particular before such trade is commenced and during the entire period during which such trade is carried on:

- (a) to pay any additional premiums required to maintain full standard protection and indemnity cover for oil pollution up to the highest limit available to it for the Ship in the market;
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- (b) to make all such quarterly or other voyage declarations as may from time to time be required by the Ship's protection and indemnity association and to comply with all obligations in order to maintain such cover, and promptly to deliver to the Agent copies of such declarations;
- (c) to submit the Ship to such additional periodic, classification, structural or other surveys which may be required by the Ship's protection and indemnity insurers to maintain cover for such trade and promptly to deliver to the Agent copies of reports made in respect of such surveys;
- (d) to implement any recommendations contained in the reports issued following the surveys referred to in paragraph (c) of Clause ~~14.4~~15.4 (*Trading in the United States of America*) within the time limit specified therein and to provide evidence satisfactory to the Agent that the protection and indemnity insurers are satisfied that this has been done;
- (e) in particular strictly to comply with the requirements of any applicable law, convention, regulation, proclamation or order with regard to financial responsibility for liabilities imposed on the Borrower or the Ship with respect to pollution by any state or nation or political subdivision thereof, including but not limited to OPA, and to provide the Agent on demand with such information or evidence as it may reasonably require of such compliance;
- (f) to procure that the protection and indemnity insurances do not contain a clause excluding the Ship from trading in waters of the United States of America and the EEZ or any other provision analogous thereto and to provide the Agent with evidence that this is so; and
- (g) strictly to comply with any operational or structural regulations issued from time to time by any relevant authorities under OPA so that at all times the Ship falls within the provisions which limit strict liability under OPA for oil pollution.

**15.5 ~~14.5~~ Protections for Secured Parties**

- (a) The Borrower shall give notice forthwith of any assignment of its interest in the Insurances to the relevant brokers, insurance companies, underwriters and/or associations in the form approved by the Agent;
- (b) The Borrower shall execute and deliver all such documents and do all such things as may be necessary to confer upon the Secured Parties legal title to the Insurances in respect of the Ship and to procure that the interest of the Secured Parties is at all times filed with all slips, cover notes, policies and certificates of entry and to procure (a) that a loss payable clause in the form approved by the Agent shall be filed with all the hull, machinery and equipment and war risks policies in respect of the Ship and (b) that a loss payable clause in the form approved by the Agent shall be endorsed upon the protection and indemnity certificates of entry in respect of the Ship; and
- (c) In the event of the Borrower making default in insuring and keeping insured the Ship as hereinbefore provided then the Agent may (but shall not be bound to) insure the Ship or enter the Ship in such manner and to such extent as the Agent in its discretion thinks fit and in such case all the cost of effecting and maintaining such insurance together with interest thereon at the interest rate shall be paid on demand by the Borrower to the Agent.

**15.6 ~~14.6~~ Copies of policies; letters of undertaking**

The Borrower will procure that each of the relevant brokers and associations furnishes the Agent with a letter of undertaking in the standard form available in the relevant insurance

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market or otherwise in such form as may be required by the Agent and waives any lien for premiums or calls except in relation to premiums or calls solely attributable to the Ship.

**15.7 ~~14.7~~Payment of premiums**

The Borrower shall punctually pay all premiums, calls, contributions or other sums payable in respect of the Insurances on the Ship and to produce all relevant receipts when so required by the Agent.

**15.8 ~~14.8~~Renewal of obligatory insurances**

The Borrower shall notify the Agent of the renewal of the obligatory insurances at least five (5) days before the expiry thereof and shall procure that the relevant brokers or associations shall promptly confirm in writing to the Agent that such renewal is effected it being understood by the Borrower that any failure to renew the Insurances on the Ship at least two (2) days before the expiry thereof or to give or procure the relevant notices of such renewal shall constitute an Event of Default.

**15.9 ~~14.9~~Guarantees**

The Borrower shall arrange for the execution of such guarantees as may from time to time be required by any protection and indemnity and/or war risks association.

**15.10 ~~14.10~~Provision of insurances information**

The Borrower will furnish the Agent from time to time on request with full information about all Insurances maintained on the Ship and the names of the offices, companies, underwriters, associations or clubs with which such Insurances are placed.

**15.11 ~~14.11~~Alteration to terms of insurances**

The Borrower shall not make or agree to any variation in the terms of any of the Insurances on the Ship without the prior approval of the Agent nor to do any act or voluntarily suffer or permit any act to be done whereby any Insurances shall or may be rendered invalid, void, voidable, suspended, defeated or unenforceable and not to suffer or permit the Ship to engage in any voyage nor to carry any cargo not permitted under any of the Insurances without first obtaining the consent of the insurers or reinsurers concerned and complying with such requirements as to payment of extra premiums or otherwise as the insurers or reinsurers may impose.

**15.12 ~~14.12~~Settlement of claims**

The Borrower shall not settle, compromise or abandon any claim in respect of any of the Insurances on the Ship other than a claim of less than [\*] Dollars (\$[\*]) or the equivalent in any other currency and not being a claim arising out of a Total Loss.

**15.13 ~~14.13~~Application of insurance proceeds**

The Borrower shall apply or ensure the appliance of all such sums receivable in respect of the Insurances on the Ship for the purpose of making good the loss and fully repairing all damage in respect whereof the insurance monies shall have been received.

**15.14 ~~14.14~~Insurance advisers**

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The Agent shall be entitled, immediately prior to the Delivery Date and thereafter no more frequently than annually on renewals but also additionally at any time when there is a proposed change of underwriters or the terms of any Insurances, to instruct independent reputable insurance advisers for the purpose of obtaining any advice or information regarding any matter concerning the Insurances which the Agent shall deem necessary, it being hereby specifically agreed that the Borrower shall reimburse the Agent on demand for the costs and expenses incurred by the Agent in connection with the instruction of such advisers subject to a limit of ten thousand Dollars (\$10,000) at the time of delivery of the Ship or in the event of a change of underwriters or of terms of any Insurances and otherwise ten thousand Dollars (\$10,000) annually thereafter.

## **16 ~~45~~ SECURITY VALUE MAINTENANCE**

### **16.1 ~~45.4~~ Security Shortfall**

If, upon receipt of a valuation of the Ship in accordance with Clause ~~13.4~~ 14.4 (*Valuation of the Ship*), the Security Value shall be less than the Security Requirement, the Agent may give notice to the Borrower requiring that such deficiency be remedied and then the Borrower shall (unless the Ship has become a Total Loss) either:

- (a) prepay within a period of 30 days of the date of receipt by the Borrower of the Agent's said notice such sum in Dollars as will result in the Security Requirement after such repayment (taking into account any other repayment of the Loan made between the date of the notice and the date of such prepayment) being equal to the Security Value; or
- (b) within 30 days of the date of receipt by the Borrower of the Agent's said notice constitute to the reasonable satisfaction of the Agent such further security for the Loan as shall be reasonably acceptable to the Agent having a value for security purposes (as determined by the Agent in its absolute discretion) at the date upon which such further security shall be constituted which, when added to the Security Value, shall not be less than the Security Requirement as at such date.

Clauses ~~15.2~~ 16.2 (*Costs*) and ~~15.4~~ 16.4 (*Documents and evidence*) and paragraph (c) of Clause ~~16.2~~ 17.2 (*Voluntary prepayment*) shall apply to prepayments under paragraph (a) of Clause ~~15.4~~ 16.1 (*Security Shortfall*).

### **16.2 ~~45.2~~ Costs**

All costs in connection with the Agent obtaining any valuation of the Ship referred to in Clause ~~13.4~~ 14.4 (*Valuation of the Ship*), and obtaining any valuation either of any additional security for the purposes of ascertaining the Security Value at any time or necessitated by the Borrower electing to constitute additional security pursuant to paragraph (b) of Clause ~~15.4~~ 16.1 (*Security Shortfall*) shall be borne by the Borrower.

### **16.3 ~~45.3~~ Valuation of additional security**

For the purpose of this Clause ~~15~~ 16 (*Security Value Maintenance*), the market value of any additional security provided or to be provided to the Agent shall be determined by the Agent in its absolute discretion without any necessity for the Agent assigning any reason thereto.

### **16.4 ~~45.4~~ Documents and evidence**

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In connection with any additional security provided in accordance with this Clause ~~45-16~~ (*Security Value Maintenance*), the Agent shall be entitled to receive such evidence and documents of the kind referred to in Clause 3 (*Conditions Precedent*) in respect of other Finance Documents as may in the Agent's opinion be appropriate.

#### **16.5 ~~45.5~~ Valuations binding**

Any valuation under this Clause ~~45-16~~ (*Security Value Maintenance*) shall be binding and conclusive as regards the Borrower.

#### **16.6 ~~45.6~~ Provision of information**

- (a) The Borrower shall promptly provide the Agent and any shipbroker acting under this Clause ~~45-16~~ (*Security Value Maintenance*) with any information which the Agent or the shipbroker may reasonably request for the purposes of the valuation.
- (b) If the 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 Agent considers prudent.

### **17 ~~46~~ CANCELLATION, PREPAYMENT AND MANDATORY PREPAYMENT**

#### **17.1 ~~46.1~~ Cancellation**

At any time prior to the end of the Availability Period, the Borrower may give notice to the Agent in writing that it wishes to cancel the whole or any part of the available Commitments in relation to a Tranche whereupon (without penalty to the Borrower but without prejudice to any liabilities of the Borrower including, without limitation, in respect of fees payable or accrued under this Agreement, arising prior to the date of such cancellation) such available Commitments under that Tranche shall terminate upon the date specified in such notice. Any cancellation under this Clause ~~46.1-17.1~~ (*Cancellation*) shall reduce the remaining Commitments under that Tranche of the relevant Lenders rateably.

#### **17.2 ~~46.2~~ Voluntary prepayment**

- (a) The Borrower may prepay all or part of the Loan on a pro rata basis amongst the Tranches (but if in part being an amount that reduces the Loan by a minimum amount of one (1) repayment instalment of principal of the Loan) together with interest thereon. Such prepayment shall, regardless of the date on which such prepayment is made, be made together with all of the amounts that SIMEST is entitled to charge, whether for taxes, costs, expenses, indemnities, penalties, losses or liabilities whatsoever, under and in accordance with the Interest Make-Up Agreement and Clause ~~20.2-21.2~~ (*Breakage costs and SIMEST arrangements*) but without any other penalty provided that the prepayment is made on the last day of an Interest Period and thirty-five (35) days prior written notice indicating the intended date of prepayment is given to the Agent and the SACE Agent. However, the following amounts shall be payable to the Agent if any prepayment made pursuant to this Clause ~~46.2-17.2~~ (*Voluntary prepayment*) is not made on the last day of an Interest Period:
    - (i) for the account of the relevant Lenders, whether the Borrower elected a Floating Interest Rate or a Fixed Interest Rate pursuant to Clause ~~6.1-7.1~~ (*Fixed or Floating Interest Rate*), the difference (if positive), calculated by the relevant Lenders and notified by them to the Agent, between the actual cost for those Lenders of the funding for the relevant Advance or Advances under a Tranche and the rate of interest for the
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monies to be invested by those Lenders, applied to the amounts so prepaid for the period from the said prepayment until the last day of the Interest Period during which the prepayment occurs (if prepayment does not occur on the last day of that Interest Period), details of any such calculation being supplied to the Borrower by the Agent on behalf of the Lenders; or

- (ii) for the account of SIMEST, if the Borrower elected a Fixed Interest Rate pursuant to Clause ~~6-4~~ 7.1 (*Fixed or Floating Interest Rate*), the sum of charges (if any) imposed by SIMEST representing funding or breakage costs of the Italian Authorities as more specifically set out in Clause ~~20-21~~ 21.1 (*Indemnities*).
- (b) For the avoidance of doubt, regardless of the date on which a voluntary prepayment is made, such prepayment shall be paid together with all amounts payable in accordance with Clause ~~20-2~~ 21.2 (*Breakage costs and SIMEST arrangements*) and if a voluntary prepayment is made other than on the last day of an Interest Period, the prepayment shall be paid together with such other amounts payable in accordance with Clauses ~~20-4~~ 21.1 (*Indemnities regarding borrowing and repayment of Loan*) and ~~20-2~~ 21.2 (*Breakage costs and SIMEST arrangements*).
- (c) If the Borrower has selected the Fixed Interest Rate pursuant to Clause ~~6-4~~ 7.1 (*Fixed or Floating Interest Rate*), the SACE Agent shall give SIMEST thirty (30) days written notice of the intended date of prepayment.
- (d) There may be no more than two voluntary prepayments in part of the Loan made in each 12-month period beginning on the Delivery Date unless the relevant prepayment is made at the end of an Interest Period relating to the Loan or the relevant part of the Loan (as applicable).

### **17.3 ~~16-3~~ Mandatory prepayment – Sale and Total Loss**

The Borrower shall be obliged to prepay the whole of the Loan if the Ship is sold or becomes a Total Loss:

- (a) in the case of a sale, on or before the date on which the sale is completed by delivery of the Ship to the buyer; or
- (b) in the case of a Total Loss, on the earlier of the date falling 120 days after the Total Loss Date and the date of receipt by the Agent of the proceeds of insurance relating to such Total Loss.

### **17.4 ~~16-4~~ Mandatory prepayment – SACE Insurance Policy**

- (a) The Borrower shall be obliged to prepay the whole of the Loan if the SACE Insurance Policy is revoked, rescinded, cancelled, terminated, suspended or otherwise becomes unenforceable or ceases to be in full force and effect.
  - (b) In the event that any other event occurs or any other circumstances arise or develop which would have a material adverse effect on SACE's ability to perform its obligations under the SACE Insurance Policy, the Borrower and the Lenders shall, provided that no Event of Default has occurred and is continuing, negotiate in good faith for a period of not less than 30 days with a view to agreeing such revised terms and conditions as the Lenders may require to enable the Lenders to maintain the entire Loan (and during such 30 day period, no Lender shall be obliged to make available to the Borrower their portion of the Loan to the extent such amounts have not already been drawn). In the event that following such negotiations the Borrower and the Lenders fail to agree on such revised terms, the Borrower shall be obliged to prepay, on demand by the Agent, the outstanding principal amount of the Loan to the extent of the
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amount covered pursuant to the SACE Insurance Policy. If, during the period while negotiations are on-going pursuant to this paragraph (b) the events described in paragraph (a) of Clause ~~16.4-17.4~~ (Mandatory prepayment – SACE Insurance Policy) should occur, the Borrower shall be obliged to prepay the Loan in full as required by paragraph (a) of Clause ~~16.4-17.4~~ (Mandatory prepayment – SACE Insurance Policy).

#### **17.5 ~~16.5~~Breach of new covenants or the Principles**

- (a) Failure to comply, until the end of the Deferral Period, with the provisions of Clause ~~12.17-13.17~~ (Dividends and dividend restriction) and Clause ~~12.27-13.27~~ (New capital raises or financing) or the provisions of paragraph (f) of clause 11.3 (Additional financial reporting), paragraph (c) of clause 11.17 (Dividend restriction), clause 11.19 (New capital raises or financing) and clause 11.20 (Payments under the Shipbuilding contracts) of the Guarantee, or to otherwise duly perform and observe the other requirements and obligations set out in the Principles shall, in each case, not constitute an Event of Default under this Agreement but (in the case of any failure that is capable of remedy (in the opinion of the Agent, at its sole discretion) including any failure to comply with such provisions, only if such failure is not remedied within the Relevant Period pursuant to Clause ~~18.4-19.4~~ (Breach of other obligations) from the date of such failure to comply) shall result in the reinstatement by the Agent from the date of such breach of the requirement to comply with the financial covenants set out in paragraphs (b) and (c) of clause 11.15 (Financial covenants) of the Guarantee which was otherwise suspended during the Deferral Period.
- (b) Save as permitted by Clause ~~12.27-13.27~~ (New capital raises or financing), if at any time after the February 2021 Deferral Effective Date and until the occurrence of a Reinstatement Event:
- (i) the Guarantor or any other Group member enters into any financial contract or financial document relating to any Financial Indebtedness and which contains any debt deferral or covenant waivers of existing debt, or the raising of any new debt intended to reimburse existing debt that benefits from additional security or more favourable terms than those available to the Lenders (unless they are granted to the Lenders on a *pari passu* basis), the requirement to comply with the financial covenants set out in paragraphs (b) and (c) of clause 11.15 (Financial covenants) of the Guarantee which was otherwise suspended during the Deferral Period shall be reinstated (it being provided that such covenants shall not be reinstated in case of such financial contract or financial document relating to the Term and Revolving Credit Facilities); or
- (ii) the Guarantor or any other Group member makes a prepayment (save for any mandatory prepayment necessary to avoid an event of default (however defined)) of any Financial Indebtedness (unless this is done on a *pari passu* basis with the obligations owed to the Lenders hereunder), the requirement to comply with the financial covenants set out in paragraphs (b) and (c) of clause 11.15 (Financial covenants) of the Guarantee which was otherwise suspended during the Deferral Period shall be reinstated it being provided that such covenants shall not be reinstated in case of a prepayment relating to the revolving tranche of the Term and Revolving Credit Facilities within the ordinary course of business.

#### **17.6 ~~16.6~~Mandatory prepayment on default under Shipbuilding Contract**

If:

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- (a) prior to the delivery of the Ship it becomes unlawful for the Builder to perform its obligations under the Shipbuilding Contract;
- (b) prior to the delivery of the Ship any of the events specified in Article 20.2 of the Shipbuilding Contract occurs;
- (c) prior to the delivery of the Ship there is a repudiation or termination of the Shipbuilding Contract;
- (d) prior to the delivery of the Ship the Builder ceases to carry on all or a substantial part of its cruise ship building business; or
- (e) the Ship has not been delivered to, and accepted by, the Borrower by the date specified in Article 8.9 of the Shipbuilding Contract,

then:

- (i) the Borrower shall promptly notify the Agent upon becoming aware of that event; and
- (ii) if the Majority Lenders so require, the Agent shall, by not less than 3 Business Days' notice to the Borrower, cancel the Facility and declare the Loan, together with accrued interest, and all other amounts accrued under the Finance Documents immediately due and payable, whereupon the Facility will be cancelled and all such outstanding amounts will become immediately due and payable.

**17.7 ~~46.7~~ Mandatory Prepayment in case of refund by SACE to the Borrower of the second instalment of the Additional SACE Premium**

If at any time on or after the Leonardo Six Intended Delivery Date the Borrower receives a refund of the portion of the second instalment of the Additional SACE Premium pursuant to paragraphs ~~(e)9.5(e)~~ and ~~(f)9.5(f)~~ of Clause ~~8.5-9.5~~ (*Additional SACE Premium*), the Agent shall declare the part of the Loan that corresponds to that refunded portion, together with any accrued interest thereon, due and payable on demand.

**17.8 ~~46.8~~ Other amounts**

Any prepayment of the whole of the Loan shall be made together with all other sums due under this Agreement (including, without limitation, the compensation calculated in accordance with Clause ~~46.2~~ 17.2 (*Voluntary prepayment*)).

**17.9 ~~46.9~~ Application of partial prepayment**

Amounts prepaid shall be applied in accordance with paragraph (b) of Clause ~~49.4~~ 20.1 (*Receipts*).

**17.10 ~~46.10~~ No reborrowing**

Amounts prepaid may not be reborrowed.

**18 ~~47~~ INTEREST ON LATE PAYMENTS**

**18.1 ~~47.4~~ Default rate of interest**

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Without prejudice to the provisions of Clause ~~48-19~~ (*Events of Default*) and without this Clause in any way constituting a waiver of terms of payment, all sums due by the Borrower under this Agreement will automatically bear interest on a day to day basis from the date when they are payable until the date of actual payment at a rate per annum equal to ~~the higher of:~~

- (a) before the Rate Switch Date, where the Floating Interest Rate is applicable, the aggregate of:
- (i) Overnight LIBOR;
  - (ii) the applicable Margin; and
  - (iii) [\*] per cent. ([\*]%) per annum; or
- (b) after the Rate Switch Date, where the Floating Interest Rate is applicable, the aggregate of:
- (i) Daily Simple SOFR;
  - (ii) the Credit Adjustment Spread;
  - (iii) the Margin; and
  - (iv) two per cent. (2%) per annum; or
- (c) ~~(b)~~ before the Rate Switch Date, where the Fixed Interest Rate is applicable, the higher of:
- (i) the Fixed Interest Rate plus [\*] per cent. ([\*]%) per annum; and
  - (ii) Overnight LIBOR plus the applicable Margin plus [\*] per cent. ([\*]%) per annum; or
- (d) after the Rate Switch Date, where the Fixed Interest Rate is applicable, the higher of:
- (i) the Fixed Interest Rate plus [\*] per cent. ([\*]%) per annum; and
  - (ii) Daily Simple SOFR plus the Credit Adjustment Spread plus the Margin plus [\*] per cent. ([\*]%) per annum.

## **18.2 ~~47.2~~ Compounding of default interest**

To the extent permitted by applicable law, any such interest will itself bear interest at the above rate if it is due for at least three (3) months and thereafter at three monthly intervals.

## **19 ~~48~~ EVENTS OF DEFAULT**

### **19.1 ~~48.1~~ Events of Default**

An Event of Default occurs if any of the events or circumstances described in Clauses ~~48.2-19.2~~ (*Non-payment*) to ~~48.20-19.20~~ (*Material Adverse Change*) occur.

### **19.2 ~~48.2~~ Non-payment**

Any Obligor 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 and such failure is not remedied within three (3) Business Days of the due date or (if payable on demand) within three (3) Business Days of receiving the demand.

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### 19.3 ~~48-3~~ Non-remediable breaches

The Borrower fails to comply with the provisions of Clauses ~~42-8-13.8~~ (Negative pledge), ~~42-9-13.9~~ (Disposals), ~~42-11-13.11~~ (Mergers) or ~~42-18-13.18~~ (Loans and guarantees by the Borrower).

### 19.4 ~~48-4~~ Breach of other obligations

- (a) Any Obligor fails to comply with any provision of any Finance Document (other than a failure to comply covered by any of the other provisions of Clauses ~~48-2-19.2~~ (Non-payment) to ~~48-20-19.20~~ (Material Adverse Change)) and in particular but without limitation the Guarantor fails to comply with the provisions of clause 11 (Undertakings) of its Guarantee or there is any material breach in the opinion of the Majority Lenders and SACE of any of the Underlying Documents provided that (save in respect of Clause ~~42-28-13.28~~ (Code of Ethics and Model)) no Event of Default shall be deemed to have occurred if, in the opinion of the Majority Lenders and SACE, such failure or material breach is capable of remedy and is remedied within the Relevant Period (as defined below) from the date of its occurrence, if the failure or material breach was known to that Obligor, or from the date the relevant Obligor is notified by the Agent of the failure or material breach, if the failure or material breach was not known to that Obligor, unless in any such case as aforesaid the Majority Lenders and SACE consider that the failure or material breach is or could reasonably be expected to become materially prejudicial to the interests, rights or position of the Lenders, "**Relevant Period**" meaning for the purposes of this Clause fifteen (15) days in respect of a remedy period commencing after the date of this Agreement;
- (b) There is a repudiation or termination of any Transaction Document (save for the Shipbuilding Contract, and, to the extent replaced, (either by another Refund Guarantee or an Acceptable Deposit in the Account subject to the Account Pledge) any of the Refund Guarantee, any Management Agreement and any charter) or any of the parties thereto becomes entitled to terminate or repudiate any of them and evidences an intention so to do;
- (c) Prior to the delivery of the Ship, any of the parties to the Shipbuilding Contract becomes entitled to terminate or repudiate the Shipbuilding Contract and commences the exercise of their rights to do so.

### 19.5 ~~48-5~~ Misrepresentation

Any representation, warranty or statement made or repeated in, or in connection with, any Transaction Document or the SACE Insurance Policy or in any accounts, certificate, statement or opinion delivered by or on behalf of any Obligor thereunder or in connection therewith is materially incorrect or misleading when made or would, if repeated at any time hereafter by reference to the facts subsisting at such time, no longer be materially correct.

### 19.6 ~~48-6~~ Cross default

- (a) Any event of default occurs under any financial contract or financial document relating to any Financial Indebtedness of the Borrower; or
  - (b) any such Financial Indebtedness or any sum payable in respect thereof is not paid when due (after the expiry of any applicable grace period(s)) whether by acceleration or otherwise; or
  - (c) any other Financial Indebtedness of any member of the Group is not paid when due or is or becomes capable of being declared due prematurely by reason of default or any Security
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Interest securing the same becomes enforceable by reason of default provided that no Event of Default will arise if the aggregate amount of the relevant Financial Indebtedness and liabilities secured by the relevant Security Interests is less than [\*] Dollars (\$[\*]) or its equivalent in other currencies; or

- (d) any other Security Interest over any assets of any member of the Group securing any alleged liability that does not qualify as Financial Indebtedness becomes enforceable where the alleged liability is in respect of a sum of, or sum aggregating, [\*] Dollars (\$[\*]) or its equivalent in other currencies, unless the alleged liability is being contested in good faith by appropriate means by the relevant Group member and the Agent is reasonably satisfied that the relevant member of the Group has reasonable grounds for succeeding in its action;
- (e) No Event of Default will occur, or be deemed to have occurred, under this Clause ~~18.6-19.6~~ (*Cross default*) if such Event of Default occurs during the Deferral Period (but without prejudice to the rights of the Lenders in respect of any further breach that may occur following the expiry of the Deferral Period) and is caused solely as a result of a breach of the financial covenants in respect of the Group equivalent to those set out in paragraphs (b) and (c) of clause 11.15 (*Financial Covenants*) of the Guarantee, under, or in relation to, any other SACE-backed facility agreement to which a Guarantor is a Party or has executed a guarantee and to which the Principles apply, unless at the time of such Event of Default, an event resulting in mandatory prepayment of the Loan pursuant to Clause ~~16.3-17.3~~ (*Mandatory prepayment – sale and total loss*) or Clause ~~16.4-17.4~~ (*Mandatory prepayment – SACE insurance policy*) has occurred.

#### **19.7 ~~18.7~~Winding-up**

Any order is made or an effective resolution passed or other action taken for the suspension of payments or reorganisation, dissolution, termination of existence, liquidation, winding-up or bankruptcy of any Obligor.

#### **19.8 ~~18.8~~Appointment of liquidators etc.**

A liquidator, trustee, administrator, receiver, administrative receiver, manager or similar officer is appointed in respect of any Obligor or in respect of all or any substantial part of the assets of any Obligor.

#### **19.9 ~~18.9~~Enforcement of any security**

Any corporate action, legal proceeding or other procedure or step is taken in relation to enforcement of any security interests over any assets of the Borrower.

#### **19.10 ~~18.10~~Insolvency**

- (a) An Obligor is unable or admits inability to pay its debts as they fall due, is deemed to or declared to be unable to pay its debts under applicable law, suspends or threatens to suspend making payments on any of its debts.
  - (b) The value of the assets of any Obligor is less than its liabilities (taking into account contingent liabilities).
  - (c) A moratorium in respect of all or any debts of any Obligor or a compromise, composition, assignment or an arrangement with creditors of any Obligor or any similar proceeding or arrangement by which the assets of any Obligor are submitted to the control of its creditors is applied for, ordered or declared or any Obligor commences negotiations with any one or more
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of its creditors with a view to the general readjustment or rescheduling of all or a significant part of its Financial Indebtedness. If a moratorium occurs, the ending of the moratorium will not remedy any Event of Default caused by that moratorium.

**19.11 ~~48.44~~Legal process**

Any corporate action, legal proceeding, distress, execution, attachment or other process affects the whole or any substantial part of the assets of any Obligor and remains undischarged for a period of thirty (30) days, any step is taken in relation to enforcement of any security interests over any assets of any Obligor (other than the Borrower) or any uninsured judgment which, in each case, is in excess of [\*] Dollars (\$[\*]) following final appeal, remains unsatisfied for a period of ten (10) days.

**19.12 ~~48.42~~Analogous events**

Anything analogous to or having a substantially similar effect to any of the events specified in Clauses ~~48.7~~ 19.7 (*Winding-up*) to ~~48.41~~ 19.11 (*Legal process*) shall occur under the laws of any applicable jurisdiction.

**19.13 ~~48.43~~Cessation of business**

Any Obligor ceases to carry on all or a substantial part of its business.

**19.14 ~~48.44~~Revocation of consents**

Any authorisation, approval, consent, licence, exemption, filing, registration or notarisation or other requirement necessary to enable any Obligor to comply with any of its obligations under any of the Transaction Documents is materially adversely modified, revoked or withheld or does not remain in full force and effect and within ninety (90) days of the date of its occurrence such event is not remedied to the satisfaction of the Agent consider that such failure is or might be expected to become materially prejudicial to the interests, rights or position of the Lenders provided that the Borrower shall not be entitled to the aforesaid ninety (90) day period if the modification, revocation or withholding of the authorisation, approval or consent is due to an act or omission of any Obligor and the Majority Lenders and SACE are satisfied that the Lenders' interests might reasonably be expected to be materially adversely affected.

**19.15 ~~48.45~~Unlawfulness**

At any time it is unlawful or impossible for any Obligor to perform any of its material (to the Secured Parties or any of them) obligations under any Transaction Document to which it is a party or it is unlawful or impossible for the Secured Parties or any Lender to exercise any of their or its rights under any of the Transaction Documents provided that no Event of Default shall be deemed to have occurred where the unlawfulness or impossibility does not relate to the payment obligation of any Obligor under any Transaction Document and is cured within the period of twenty one (21) days of the date of occurrence of the event giving rise to the unlawfulness or impossibility and the affected Obligor performs its obligation within such period.

**19.16 ~~48.46~~Insurances**

The Borrower fails to insure the Ship in the manner specified in Clause ~~44~~ 15 (*Insurance Undertakings*) or fails to renew the Insurances at least five (5) days prior to the date of expiry thereof and produce prompt confirmation of such renewal to the Agent provided that if the

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insurers withdraw their cover an Event of Default shall be deemed to have occurred upon issue of the insurer's notice of withdrawal.

**19.17 ~~48-17~~ Disposals**

If the Borrower or any other Obligor shall have concealed, removed, or permitted to be concealed or removed, any part of its property, with intent to hinder, delay or defraud its creditors or any of them, or made or suffered a transfer of any of its property which may be fraudulent under any bankruptcy, fraudulent conveyance or similar law; or shall have made any transfer of its property to or for the benefit of a creditor with the intention of preferring such creditor over any other creditor.

**19.18 ~~48-18~~ Prejudice to security**

Anything is done or suffered or omitted to be done by any Obligor which in the reasonable opinion of the Agent would or might be expected to imperil the security created by any of the Finance Documents.

**19.19 ~~48-19~~ Governmental intervention**

The authority of any Obligor in the conduct of its business is wholly or substantially curtailed by any seizure or intervention by or on behalf of any authority and within ninety (90) days of the date of its occurrence any such seizure or intervention is not relinquished or withdrawn and the Agent reasonably considers that the relevant occurrence is or might be expected to become materially prejudicial to the interests, rights or position of the Lenders provided that the Borrower shall not be entitled to the aforesaid ninety (90) day period if the seizure or intervention executed by any authority is due to an act or omission of any Obligor and the Majority Lenders and SACE are satisfied that the Lenders' interest might reasonably be expected to be materially adversely affected.

**19.20 ~~48-20~~ Material Adverse Change**

- (a) Any event or circumstance occurs which results in a Material Adverse Effect; and/or
- (b) any event or circumstance occurs (including, without limitation, following the sending of a notice by the Borrower under paragraph (c) of Clause ~~42-28~~ 13.28 (*Code of Ethics and Model*)), which results in a material adverse effect on the ability of the Borrower, also under an economic and/or financial standpoint, to perform its obligations under this Agreement.

**19.21 ~~48-24~~ Actions following an Event of Default**

On, or at any time after, the occurrence of an Event of Default the Agent may, and if so instructed by the Majority Lenders and SACE, the Agent shall:

- (a) serve on the Borrower a notice stating that the Commitments and all other obligations of each Lender to the Borrower under this Agreement are terminated; and/or
  - (b) serve on the Borrower a notice stating that the Loan (including but without limitation the amount representing the financed First Instalment and Second Instalment of the SACE Premium, the financed second instalment of the Additional SACE Premium and the financed Tranche B Premium), 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
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- (c) take any other action which, as a result of the Event of Default or any notice served under paragraph (a) or (b), the Agent and/or the Lenders are entitled to take under any Finance Document or any applicable law.

**19.22 ~~48-22~~ Termination of Commitments**

On the service of a notice under paragraph (a) of Clause ~~48-24-19.21~~ (*Actions following an Event of Default*), the Commitments and all other obligations of each Lender to the Borrower under this Agreement shall terminate.

**19.23 ~~48-23~~ Acceleration of Loan**

On the service of a notice under paragraph (b) of Clause ~~48-24-19.21~~ (*Actions following an Event of Default*), the Loan, all accrued interest and all other amounts accrued or owing from the Borrower or any Obligor under this Agreement and every other Finance Document shall become immediately due and payable or, as the case may be, payable on demand.

**19.24 ~~48-24~~ Further amounts payable**

Upon an acceleration of repayment of the Loan following an Event of Default the Borrower shall be liable to pay compensation calculated in accordance with Clause ~~46-2-17.2~~ (*Voluntary prepayment*).

**19.25 ~~48-25~~ Multiple notices; action without notice**

The Agent may serve notices under paragraphs (a) and (b) of Clause ~~48-24-19.21~~ (*Actions following an Event of Default*) simultaneously or on different dates and it may take any action referred to in paragraph (c) of Clause ~~48-24-19.21~~ (*Actions following an Event of Default*) if no such notice is served or simultaneously with or at any time after the service of both or either of such notices.

**19.26 ~~48-26~~ Notification of Secured Parties and Obligors**

The Agent shall send to the Italian Authorities, each Lender and each Obligor a copy or the text of any notice which the Agent serves on the Borrower under Clause ~~48-24-19.21~~ (*Actions following an Event of Default*); but the notice shall become effective when it is served on the Borrower, and no failure or delay by the Agent to send a copy or the text of the notice to any other person shall invalidate the notice or provide any Obligor with any form of claim or defence.

**19.27 ~~48-27~~ Lender's rights unimpaired**

Nothing in this Clause ~~48-19~~ (*Events of Default*) 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 Clauses 2.4 (*Creditor Parties' rights and obligations*) and 2.6 (*Obligations of Lenders several*).

**19.28 ~~48-28~~ Exclusion of Secured Party liability**

No Secured Party, and no receiver or manager appointed by the Agent, shall have any liability to an Obligor:

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- (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.

## 20 ~~49~~ APPLICATION OF SUMS RECEIVED

### 20.1 ~~49.4~~ Receipts

Except as any Finance Document may otherwise provide, all sums received under this Agreement or any other Finance Document by the Agent, on behalf of the Lenders, or by any of the Lenders for any reason whatsoever will be applied:

- (a) in priority, to payments of any kind due or in arrears in the order of their due payment dates and first, to fees, charges and expenses, second, to interest payable pursuant to Clause ~~47-18~~ 18 (*Interest on Late Payments*), third, to interest payable pursuant to Clause 6 (*Interest*), fourth, to the principal of the Loan payable pursuant to Clause 5 (*Repayment*), fifth, to any sums due pursuant to Clause ~~20.2-21.2~~ 21.2 (*Breakage costs and SIMEST arrangements*) and, sixth, to any other sums due under this Agreement or any other Finance Document and, if relevant, *pro rata* to each of the Lenders; or
- (b) if no payments are in arrears or if these payments have been discharged as set out above, then and to sums remaining due under this Agreement or any other Finance Document and, if relevant, *pro rata* to each of the Lenders and in each case in inverse order of maturity, the interest being recalculated accordingly.

## 21 ~~20~~ INDEMNITIES

### 21.1 ~~20.4~~ Indemnities regarding borrowing and repayment of Loan

The Borrower shall fully indemnify the Agent and each relevant Lender or SIMEST (but without double counting to the extent that a Lender is making a claim in respect of amounts owing to SIMEST) on the Agent's demand in respect of all claims, expenses, liabilities and losses which are made or brought against or incurred by that Secured Party, or which that Secured Party reasonably and with due diligence estimates that it will incur, as a result of or in connection with:

- (a) any part of the Loan not being borrowed on the date specified in a Drawdown Notice for any reason other than a default by the Lender claiming the indemnity;
  - (b) the receipt or recovery of all or any part of the Loan or an overdue sum otherwise than on the last day of an Interest Period or other relevant period;
  - (c) any failure (for whatever reason) by the Borrower to make payment of any amount due under a Finance Document on the due date or, if so payable, on demand (after giving credit for any default interest paid by the Borrower on the amount concerned under Clause ~~47-18~~ 18 (*Interest on Late Payments*)); and
  - (d) the occurrence and/or continuance of an Event of Default and/or the acceleration of repayment of the Loan under Clause ~~48-19~~ 19 (*Events of Default*).
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## 21.2 ~~20.2~~ Breakage costs and SIMEST arrangements

Without limiting its generality, Clause ~~20.1~~21.1 (*Indemnities regarding borrowing and repayment of Loan*) covers:

- (a) any claim, expense, liability or loss, including a loss of a prospective profit, incurred by a Lender in liquidating or employing deposits from third parties acquired or arranged to fund or maintain all or any part of its Contributions and/or any overdue amount (or an aggregate amount which includes its Contributions or any overdue amount);
- (b) if the Borrower has selected the Fixed Interest Rate in accordance with Clause ~~6.1~~7.1 (*Fixed or Floating Interest Rate*), all of the amounts that SIMEST is entitled to charge, whether for taxes, costs, expenses, indemnities, penalties, losses or liabilities whatsoever, under and in accordance with the Interest Make-Up Agreement, including without limitation, as a result of any prepayment of all or any part of the Loan under this Agreement (whether voluntary, mandatory, following acceleration of the Loan or otherwise), as a result of an Interest Make-Up Event or as a result of the Borrower deciding to switch from the Fixed Interest Rate to another interest rate after the Drawdown Date and/or an Interest Make-Up Event. Such amounts include, without limitation, (i) breakage costs, (ii) any amount due as a consequence of the close-out of any hedging arrangement entered into by SIMEST in relation to this Agreement, (iii) default interest and penalties (*maggiorazioni*) whenever applicable, and (iv) all amounts (if any) to be returned by the Agent to SIMEST under and pursuant to the Interest Make-Up Agreement; and
- (c) any other costs whatsoever or howsoever arising under or in respect of the Interest Make-Up Agreement which are passed to the Agent,

and any such costs imposed by SIMEST shall be paid by the Borrower to SIMEST through the Agent.

For the purposes of this Clause ~~20.2~~21.2 (*Breakage costs and SIMEST arrangements*) "**Interest Make-Up Event**" means the occurrence of any circumstances which result in the termination, cancellation, revocation, cessation or suspension (in each case, in whole or in part) of the Interest Make-Up Agreement or the Interest Make-Up Agreement otherwise ceases or may cease to be in full force and effect or the Agent notifies the Borrower that the Fixed Interest Rate is not available for any reason, in each case, in accordance with the terms of the Interest Make-Up Agreement.

## 21.3 ~~20.3~~ Miscellaneous indemnities

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

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

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

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Without prejudice to its generality, this Clause ~~20.3~~21.3 (*Miscellaneous indemnities*) covers (i) any claims, expenses, liabilities and losses which arise, or are asserted, under or in connection with any law relating to safety at sea, the ISM Code or any Environmental Laws or any Sanctions and (ii) any claims, expenses, liabilities (including, without limitation, under a reputational standpoint) and losses which arise, or are asserted, against CDP under or in connection with any breach by the Borrower of any of the provisions paragraphs (nn) to (rr) of Clause ~~41.2~~12.2 (*Continuing representations and warranties*) and/or of Clause ~~42.28~~13.28 (*Code of Ethics and Model*).

#### **21.4** ~~20.4~~**Currency indemnity**

If any sum due from an Obligor to a Secured 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 an Obligor, whether in its liquidation, any arrangement involving it or otherwise; or
- (b) obtaining an order or judgment from any court or other tribunal; or
- (c) enforcing any such order or judgment,

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

In this Clause ~~20.4~~21.4 (*Currency indemnity*) the "**available rate of exchange**" means the rate at which the Secured Party concerned is able at the opening of business (Paris time) on the Business Day after it receives the sum concerned to purchase the Contractual Currency with the Payment Currency.

This Clause ~~20.4~~21.4 (*Currency indemnity*) creates a separate liability of the 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.

#### **21.5** ~~20.5~~**Certification of amounts**

A notice which is signed by 2 officers of a Secured Party, which states that a specified amount, or aggregate amount, is due to that Secured Party under this Clause ~~20~~21 (*Indemnities*) and which indicates (without necessarily specifying a detailed breakdown) the matters in respect of which the amount, or aggregate amount, is due shall be prima facie evidence that the amount, or aggregate amount, is due.

#### **21.6** ~~20.6~~**Sums deemed due to a Lender**

For the purposes of this Clause ~~20~~21 (*Indemnities*), a sum payable by the Borrower to the Agent for distribution to a Lender shall be treated as a sum due to that Lender.

#### **21.7** ~~20.7~~**SACE obligations**

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To the extent that this Clause ~~20-21~~ (*Indemnities*) imposes obligations or restrictions on a Secured Party, such obligations or restrictions shall not apply to SACE and SACE shall have no obligations hereunder nor be constrained by such restrictions.

## 22 ~~24~~ILLEGALITY, ETC.

### 22.1 ~~24.1~~Illegality and Sanctions

This Clause ~~24-22~~ (*Illegality, etc.*) applies if:

- (a) a Lender (the "**Notifying Lender**") notifies the Agent that:
  - (i) it becomes unlawful or contrary to any law, regulation or Sanctions – including by way of civil, administrative or criminal liability - in any applicable jurisdiction for the Notifying Lender to perform any of its obligations as contemplated by the Finance Documents or to fund its participation in the Loan; and/or
  - (ii) it becomes unlawful or contrary to any law, regulation or Sanctions – including by way of civil, administrative or criminal liability - in any applicable jurisdiction for the Notifying Lender to maintain its participation in the Loan; or
- (b) an Obligor is or becomes a Prohibited Person,  
(such event, an "**Illegality or Sanctions Event**").

### 22.2 ~~24.2~~Notification of illegality

- (a) The Agent shall promptly notify the Borrower, the Obligors and the other Lenders of the notice under Clause ~~24-22~~ (*Illegality, etc.*) which the Agent receives from the Notifying Lender.
- (b) Upon receipt of the notice under paragraph (a) above and provided that such Illegality or Sanctions Event is not applicable with immediate effect (in which case paragraph (a) of Clause ~~24.3-22.3~~ (*Prepayment; termination of Commitment*) will apply immediately and this paragraph (b) will not apply), the Agent shall, where the Borrower has selected the Fixed Interest Rate pursuant to Clause ~~6.4-7.1~~ (*Fixed or Floating Interest Rate*), inform SIMEST in writing in order to start consultations between themselves (pursuant to clause 6 of the Interest Make-Up Agreement) with a view to exploring any possible solution to mitigate the Illegality or Sanctions Event preventing that Lender from performing any of its obligations under a Finance Document or funding or maintaining its share in the Loan. Any solution agreed between the Agent and SIMEST at the end of the consultation period (which shall last for a period of ten (10) days from the service of such notice on SIMEST) will be binding among themselves and shall be notified by the Agent to each Obligor immediately thereafter (and in any case no later than ten (10) days following such decision).
- (c) If at the end of the consultation procedure set out in paragraph (b) above, no solution is agreed between the Agent and SIMEST, the Agent must immediately notify the Lenders and the Obligors.

### 22.3 ~~24.3~~Prepayment; termination of Commitment

- (a) After notification under paragraph (c) of Clause ~~24.2-22.2~~ (*Notification of illegality*) or (in case the Interest Make-Up Agreement has ceased to be in force and effect or the Fixed Interest Rate has not been selected pursuant to Clause ~~6.4-7.1~~ (*Fixed or Floating Interest Rate*)) after
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notification under paragraph (a) of Clause ~~21.2-22.2~~ (*Notification of illegality*) and subject to Clause ~~21.4-22.4~~ (*Mitigation*) below the Borrower must repay or prepay that Lender's share in the Loan on the date specified in paragraph (c) below together with any breakage costs payable under Clause ~~20.2-21.2~~ (*Breakage costs and SIMEST arrangements*) and any indemnity payable under paragraph (c) of Clause ~~20.2-21.2~~ (*Breakage costs and SIMEST arrangements*) in respect of the Interest Make-Up Agreement;

- (b) On the Agent notifying the Borrower under paragraph (c) of Clause ~~21.2-22.2~~ (*Notification of illegality*), the Notifying Lender's Commitment shall terminate; and thereupon or, if later, on the date specified in the Notifying Lender's notice under Clause ~~21.4-22.1~~ (*Illegality and Sanctions*) as the date on which the notified event would become effective the Borrower shall prepay the Notifying Lender's Contributions and shall pay compensation to the Notifying Lender calculated in accordance with Clause ~~16.2-17.2~~ (*Voluntary prepayment*).
- (c) The date for repayment or prepayment of a Lender's share in the Loan will be:
  - (i) the date specified by the Agent in the notification under paragraph (b) above; or
  - (ii) in case the Interest Make-Up Agreement has ceased to be in full force and effect or the Fixed Interest Rate has not been selected pursuant to Clause ~~6.4-7.1~~ (*Fixed or Floating Interest Rate*), the last day of the current Interest Period for the relevant Advance or Advances under a Tranche or, if earlier, the date specified by the Lender in the notification under paragraph (a) above and which must not be earlier than the last day of any applicable grace period allowed by law.

#### **22.4 ~~21.4~~ Mitigation**

- (a) Each Secured Party shall, in consultation with the Borrower, take all reasonable steps to mitigate any circumstances which arise and which would result in any amount becoming payable under or pursuant to, or cancelled pursuant to Clause ~~21.4-22.1~~ (*Illegality and Sanctions*) including (but not limited to) transferring its rights and obligations under the Finance Documents to another Affiliate or Facility Office.
- (b) Paragraph (a) above does not in any way limit the obligations of any Obligor under the Finance Documents.

#### **23 ~~22~~ SET-OFF**

##### **23.1 ~~22.4~~ 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 the Borrower at any office in any country of that Creditor Party in or towards satisfaction of any sum then due from the Borrower to that Creditor Party under any of the Finance Documents; and
  - (b) for that purpose:
    - (i) break, or alter the maturity of, all or any part of a deposit of the Borrower;
    - (ii) convert or translate all or any part of a deposit or other credit balance into Dollars;
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- (iii) enter into any other transaction or make any entry with regard to the credit balance which the Creditor Party concerned considers appropriate.

### **23.2 ~~22.2~~ Existing rights unaffected**

No Creditor Party shall be obliged to exercise any of its rights under Clause ~~22.4~~ 23.1 (*Application of credit balances*); and those rights shall be without prejudice and in addition to any right of set-off, combination of accounts, charge, lien or other right or remedy to which a Creditor Party is entitled (whether under the general law or any document).

### **23.3 ~~22.3~~ Sums deemed due to a Lender**

For the purposes of this Clause ~~22-23~~ (*Set-Off*), a sum payable by the Borrower to the Agent for distribution to, or for the account of, a Lender shall be treated as a sum due to that Lender; and each Lender's proportion of a sum so payable for distribution to, or for the account of, the Lenders shall be treated as a sum due to such Lender.

### **23.4 ~~22.4~~ No Security Interest**

This Clause ~~22-23~~ (*Set-Off*) gives the Creditor Parties a contractual right of set-off only, and does not create any equitable charge or other Security Interest over any credit balance of the Borrower.

## **24 ~~23~~ 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.

## **25 ~~24~~ CHANGES TO THE LENDERS**

### **25.1 ~~24.1~~ Transfer by a Lender**

Subject to Clause ~~24.5~~ 25.5 (*No transfer without Transfer Certificate*), Clause ~~24.17~~ 25.17 (*Assignment or transfer to SACE*) and Clause ~~24.14~~ 25.14 (*Change of Facility Office*), a Lender (the "**Transferor Lender**") may at any time provided they have obtained the prior written consent of the Italian Authorities cause:

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- (a) its rights in respect of all or part of its Contributions; 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, in whole or in part any of its Affiliates or another bank or financial institution or 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 (a "Transferee Lender") by delivering to the Agent a completed certificate in the form set out in Schedule 4 (*Form of Transfer Certificate*) with any modifications approved or required by the Agent (a "Transfer Certificate") executed by the Transferor Lender and the Transferee Lender.

However any rights and obligations of the Transferor Lender in its capacity as Agent or Security Trustee will have to be dealt with separately in accordance with the provisions of Clauses ~~26-27~~ (*Role of the Agent and the Joint Mandated Lead Arrangers*) and ~~27~~ the SACE Agent and ~~28~~ (*The Security Trustee*) respectively.

#### **25.2 ~~24.2~~ Conditions of assignment or transfer**

- (a) The consent of the Borrower is required at all times (subject to the provisions of Clauses ~~24.5-25.5~~ (*No transfer without Transfer Certificate*) and ~~24.17-25.17~~ (*Assignment or transfer to SACE*)) for an assignment or transfer by a Lender (the "Existing Lender"), unless (i) there is an Event of Default or (ii) the assignment or transfer is to another Lender or an Affiliate of a Lender.
- (b) The consent of the Borrower to an assignment or transfer must not be unreasonably withheld or delayed. The Borrower will be deemed to have given its consent ten (10) Business Days after the Existing Lender has requested it unless consent is expressly refused by that Borrower within that time.
- (c) The assignment or transfer must be with respect to a minimum Commitment of [\*] Dollars (\$[\*]) or, if less, the Existing Lender's full Commitment.

#### **25.3 ~~24.3~~ Transfer Certificate, delivery and notification**

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

- (a) sign the Transfer Certificate on behalf of itself, the Borrower, any other Obligors, the Security Trustee and each of the other Lenders;
- (b) on behalf of the Transferee Lender, send to the Borrower and each Obligor letters or emails notifying them of the Transfer Certificate and attaching a copy of it; and
- (c) send to the Transferee Lender copies of the letters or emails sent under paragraph (b) above,

but the Agent shall only be obliged to execute a Transfer Certificate delivered to it by the Transferor Lender and the Transferee 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 that Transferee Lender.

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#### **25.4 ~~24.4~~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 ~~24.3-25.3~~ (*Transfer Certificate, delivery and notification*) on or before that date.

#### **25.5 ~~24.5~~No transfer without Transfer Certificate**

Except as provided in Clause ~~24.16-25.16~~ (*Security over Lenders' rights*), no assignment or transfer of any right or obligation of a Lender under any Finance Document is binding on, or effective in relation to, the Borrower, any Obligor, the Agent or the Security Trustee unless it is effected, evidenced or perfected by a Transfer Certificate.

#### **25.6 ~~24.6~~Lender re-organisation; waiver of Transfer Certificate**

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

#### **25.7 ~~24.7~~Effect of Transfer Certificate**

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

- (a) to the extent specified in the Transfer Certificate, all rights and interests (present, future or contingent) which the Transferor Lender has under or by virtue of the Finance Documents are assigned to the Transferee Lender absolutely, free of any defects in the Transferor Lender's title and of any rights or equities which the Borrower or any Obligor 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 Contributions 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 the Borrower or any Obligor 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
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Majority Lenders and those under Clause ~~6-8~~7.8 (*Market Disruption*) and Clause ~~9-10~~ (*Fees*), and to the extent that the Transferee Lender becomes entitled to such rights, the Transferor Lender ceases to be entitled to them; and

- (g) in respect of any breach of a warranty, undertaking, condition or other provision of a Finance Document or any misrepresentation made in or in connection with a Finance Document, the Transferee Lender shall be entitled to recover damages by reference to the loss incurred by it as a result of the breach or misrepresentation, irrespective of whether the original Lender would have incurred a loss of that kind or amount.

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

#### **25.8 ~~24.8~~ Maintenance of register of Lenders**

During the Security Period the Agent shall maintain a register in which it shall record the name, Commitment, Contributions and administrative details (including the Facility Office) from time to time of each Lender holding a Transfer Certificate and the effective date (in accordance with Clause ~~24.4~~25.4 (*Effective Date of Transfer Certificate*)) of the Transfer Certificate; and the Agent shall make the register available for inspection by any Lender, the Security Trustee and the Borrower during normal banking hours, subject to receiving at least 3 Business Days' prior notice.

#### **25.9 ~~24.9~~ 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.

#### **25.10 ~~24.10~~ Authorisation of Agent to sign Transfer Certificates**

The Borrower, the Security Trustee and each Lender irrevocably authorise the Agent to sign Transfer Certificates on its behalf.

#### **25.11 ~~24.11~~ Fees and Costs**

In respect of any Transfer Certificate:

- (a) the Agent shall be entitled to recover a registration fee of five thousand Euros (€5,000) from the Transferor Lender or (at the Agent's option) the Transferee Lender;
- (b) the Transferee Lender shall pay to the Agent, upon demand, all reasonable costs and expenses, duties and fees, including but without limitation legal costs and out of pocket expenses, incurred by the Agent or the Lenders in connection with any necessary amendment to or supplementing of the Transaction Documents or any of them or the SACE Insurance Policy as a consequence of the assignment or transfer; and
- (c) the Transferee Lender shall pay to the Agent, upon demand, such amount as is payable to the Italian Authorities to cover its costs of giving its approval under Clause ~~24.1~~25.1 (*Transfer by a Lender*).

#### **25.12 ~~24.12~~ Sub-participation; subrogation assignment**

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A Lender may sub-participate all or any part of its rights and/or obligations under or in connection with the Finance Documents without the consent of, or any notice to, the Borrower, any Obligor, the Agent or the Security Trustee but with the prior written consent of SACE.

**25.13 ~~24.13~~ Disclosure of information**

A Lender may disclose to a potential Transferee Lender or sub participant any information which the Lender has received in relation to the Borrower, any Obligor or their affairs under or in connection with any Finance Document, unless the information is clearly of a confidential nature.

**25.14 ~~24.14~~ Change of Facility Office**

Subject to the prior written consent of SACE, a Lender may change its Facility 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, provided that if (i) a Lender assigns or transfers any of its rights or obligations under the Finance Documents or changes its Facility Office, and (ii) as a result of circumstances existing at the date the assignment, transfer or change occurs, an Obligor would be obliged to make a payment or an increased payment to the new Lender or Lender acting through its new Facility Office under Clause ~~40-11~~ (*Taxes, Increased Costs, Costs and Related Charges*), then the new Lender or Lender acting through its new Facility Office is only entitled to receive payment under that Clause 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.

**25.15 ~~24.15~~ Notification**

On receiving such a notice, the Agent shall notify the Borrower and the Security Trustee; and, until the Agent receives such a notice, it shall be entitled to assume that a Lender is acting through the Facility Office of which the Agent last had notice.

**25.16 ~~24.16~~ Security over Lenders' rights**

In addition to the other rights provided to Lenders under this Clause ~~24-25~~ (*Changes to the Lenders*) each Lender may without consulting with or obtaining consent from the Borrower or any Obligor but subject to the prior written consent of SACE, 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 (i) to the benefit of any Affiliate and/or (ii) within the framework of its, or its Affiliates, direct or indirect funding operations including, without limitation:

- (a) any charge, assignment or other Security Interest to secure obligations to a federal reserve, central bank or a multilateral development bank (including the European Investment Bank and the European Investment Fund); 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;
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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) alter the obligations of the Obligor or require any payments to be made by the Borrower or any Obligor 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.

**25.17 ~~24.17~~ Assignment or transfer to SACE**

- (a) Notwithstanding the above provisions of this Clause ~~24-25~~ 24-25 (*Changes to the Lenders*) each Lender and the Agent shall, if so instructed by SACE in accordance with the provisions of the SACE Insurance Policy and without any requirement for the consent of any Obligor, assign its rights or (as the case may be) transfer its rights and obligations to SACE (but for the avoidance of doubt, SACE will not assume any of the Lenders' obligations pursuant to Clauses ~~40-11~~ 40-11 (*Taxes, Increased Costs, Costs and Related Charges*) or ~~33-34~~ 33-34 (*Confidentiality*) of this Agreement), which assignment or transfer shall take effect upon the date stated in the relevant documentation subject to SACE being satisfied that it has complied with all necessary "know your customer" requirements in relation to such assignment or transfer;
- (b) The Agent shall promptly notify the Obligors of any such assignment or transfer to SACE and, following an Event of Default, the Obligors shall pay to the Agent, upon demand, all reasonable costs and expenses, duties and fees, including but without limitation legal costs and out of pocket expenses, incurred by SACE, the Agent or the Lenders in connection with any such assignment or transfer.

**25.18 ~~24.18~~ No prejudice to SACE rights**

Nothing in the Finance Documents shall prejudice or otherwise limit:

- (a) the rights of any Lender to assign its rights or transfer its rights and obligations, under, or in connection with, any Finance Document to SACE or as directed by SACE; and
- (b) the right of SACE to be subrogated to any Lender's rights under, or in connection with, any Finance Document.

**25.19 ~~24.19~~ SACE's power to direct**

The Creditor Parties agree and the Obligors acknowledge that SACE has the right to direct the decision-making of the Agent and/or the Security Trustee, including (without limitation) following an Event of Default.

**25.20 ~~24.20~~ Definition of Affiliate**

For the purposes of this Clause ~~24-25~~ 24-25 (*Changes to the Lenders*), the definition of "Affiliate" in respect of Crédit Agricole Corporate and Investment Bank shall, for the avoidance of doubt, include any other member of Crédit Agricole Group, and in particular:

- (a) Crédit Agricole S.A.;
  - (b) Caisses Régionales de Crédit Agricole;
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- (c) Crédit Agricole Assurances;
- (d) LCL SA; and/or
- (e) any company or legal entity in which one or more of the companies or entities referred to in paragraphs (a) to (d) above, together or separately, owns a direct majority interest.

## **26 ~~25~~ CHANGES TO THE OBLIGORS**

### **26.1 ~~25.1~~ No change without consent**

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

## **27 ~~26~~ ROLE OF THE AGENT ~~AND~~ THE JOINT MANDATED LEAD ARRANGERS AND THE SACE AGENT**

### **27.1 ~~26.1~~ Appointment of the Agent**

- (a) Each other Secured Party appoints the Agent to act as its agent under and in connection with this Agreement and the other Finance Documents, the SACE Insurance Policy and the Interest Make-Up Agreement.
- (b) Each other Secured Party authorises the Agent to exercise the rights, powers, authorities and discretions specifically given to the Agent under or in connection with the Finance Documents together with any other incidental rights, powers, authorities and discretions.

### **27.2 ~~26.2~~ Duties of the Agent**

- (a) The Agent shall promptly forward to a Party the original or a copy of any document which is delivered to the Agent for that Party by any other Party.
- (b) Except where a Finance Document specifically provides otherwise, the Agent is not obliged to review or check the adequacy, accuracy or completeness of any document it forwards to another Party.
- (c) If the Agent receives notice from a Party referring to this Agreement, describing an Event of Default and stating that the circumstance described is an Event of Default, it shall promptly notify the other Secured Parties.
- (d) If the Agent is aware of the non-payment of any principal, interest, commitment fee or other fee payable to a Secured Party (other than the Agent or a Joint Mandated Lead Arranger) under this Agreement it shall promptly notify the other Secured Parties.
- (e) The Agent's duties under the Finance Documents are solely administrative in nature.

### **27.3 ~~26.3~~ Role of Joint Mandated Lead Arrangers**

None of the Joint Mandated Lead Arrangers has any obligations of any kind to any other Party under or in connection with any Transaction Document, the Interest Make-Up Agreement or the SACE Insurance Policy.

### **27.4 ~~26.4~~ No fiduciary duties**

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- (a) Nothing in this Agreement constitutes the Agent or any of the Joint Mandated Lead Arrangers as a trustee or fiduciary of any other person.
- (b) Neither the Agent nor any of the Joint Mandated Lead Arrangers shall be bound to account to any Lender for any sum or the profit element of any sum received by it for its own account.

**27.5 ~~26-5~~Business with the Guarantor**

The Agent and each of the Joint Mandated Lead Arrangers may accept deposits from, lend money to and generally engage in any kind of banking or other business with any Affiliate or Subsidiary of the Guarantor.

**27.6 ~~26-6~~Rights and discretions of the Agent**

- (a) The Agent may rely on:
  - (i) any representation, notice or document believed by it to be genuine, correct and appropriately authorised; and
  - (ii) any statement made by a director, authorised signatory or employee of any person regarding any matters which may reasonably be assumed to be within his knowledge or within his power to verify.
- (b) The Agent may assume (unless it has received notice to the contrary in its capacity as agent for the Lenders) that:
  - (i) no Event of Default has occurred (unless it has actual knowledge of an Event of Default); and
  - (ii) any right, power, authority or discretion vested in any Party or the Lenders has not been exercised.
- (c) The Agent may engage, pay for and rely on the advice or services of any lawyers, accountants, surveyors or other experts.
- (d) The Agent may act in relation to the Finance Documents through its personnel and agents.
- (e) The Agent may disclose to any other Party any information it reasonably believes it has received as the Agent under this Agreement.
- (f) Notwithstanding any other provision of any Finance Document to the contrary, neither the Agent nor any of the Joint Mandated Lead Arrangers 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.

**27.7 ~~26-7~~Lenders' and SACE's instructions**

- (a) Unless a contrary indication appears in a Finance Document, the Agent shall:
    - (i) exercise any right, power, authority or discretion vested in it as Agent in accordance with any instructions given to it by the Majority Lenders and SACE (or, if so instructed by the Majority Lenders and SACE, refrain from exercising any right, power, authority or discretion vested in it as the Agent); and
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- (ii) not be liable for any act (or omission) if it acts (or refrains from taking any action) in accordance with an instruction of the Majority Lenders and SACE.
- (b) Unless a contrary indication appears in a Finance Document, any instructions given by the Majority Lenders and SACE will be binding on all the Secured Parties.
- (c) The Agent may refrain from acting in accordance with the instructions of the Majority Lenders and SACE until it has received such security as it may require for any cost, loss or liability (together with any associated VAT) which it may incur in complying with the instructions.
- (d) In the absence of instructions from the Majority Lenders and SACE the Agent may act (or refrain from taking action) as it considers to be in the best interest of the Secured Parties.
- (e) The Agent is not authorised to act on behalf of a Lender (without first obtaining that Lender's consent) in any legal or arbitration proceedings relating to any Finance Document.
- (f) Notwithstanding anything to the contrary, the Lenders agree that if the Agent (acting in its sole discretion) is of the opinion that or if any Lender notifies the Agent that it is of the opinion that, the prior approval of the Italian Authorities should be obtained in relation to the exercise or non-exercise by the Agent or the Lenders of any power, authority or discretion specifically given to them under or in connection with the Finance Documents or in relation to any other incidental rights, powers, authorities or discretions, then the Agent shall seek such approval of the Italian Authorities prior to such exercise or non-exercise.

#### **27.8** ~~26.8~~ Responsibility for documentation

The Agent is not responsible for:

- (a) the adequacy, accuracy and/or completeness of any information (whether oral or written) supplied by the Agent, a Joint Mandated Lead Arranger, an Obligor or any other person given in or in connection with any Transaction Document, the SACE Insurance Policy or the Interest Make-Up Agreement; nor for
- (b) the legality, validity, effectiveness, adequacy or enforceability of any Transaction Document, the SACE Insurance Policy or the Interest Make-Up Agreement or any other agreement, arrangement or document entered into, made or executed in anticipation of or in connection with any Transaction Document, the SACE Insurance Policy or the Interest Make-Up Agreement.

#### **27.9** ~~26.9~~ Exclusion of liability

- (a) Without limiting paragraph (b) of Clause ~~26.9~~27.9 (*Exclusion of liability*), the Agent will not be liable for any action taken by it under or in connection with any Finance Document, the SACE Insurance Policy or the Interest Make-Up Agreement, unless directly caused by its Gross Negligence or wilful misconduct.
  - (b) No Party (other than the Agent) may take any proceedings against any officer, employee or agent of the Agent in respect of any claim it might have against the Agent or in respect of any act or omission of any kind by that officer, employee or agent in relation to any Finance Document, the SACE Insurance Policy or the Interest Make-Up Agreement and any officer, employee or agent of the Agent may rely on this Clause subject to Clause ~~36.4~~37.4 (*Third party rights*) and the provisions of the Third Parties Rights Act.
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- (c) The Agent will not be liable for any delay (or any related consequences) in crediting an account with an amount required under the Finance Documents, the SACE Insurance Policy or the Interest Make-Up Agreement to be paid by the Agent if the 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 Agent for that purpose.
- (d) Nothing in this Agreement shall oblige the Agent or a Joint Mandated Lead Arranger to carry out any "know your customer" or other checks in relation to any person on behalf of any Lender and each Lender confirms to the Agent and the Joint Mandated Lead Arrangers that it is solely responsible for any such checks it is required to carry out and that it may not rely on any statement in relation to such checks made by the Agent or a Joint Mandated Lead Arranger.

#### **27.10 ~~26-40~~ Lenders' indemnity to the Agent**

Each Lender shall (in proportion to its share of the Total Commitments or, if the Total Commitments are then zero, to its share of the Total Commitments immediately prior to their reduction to zero) indemnify the Agent, within three (3) Business Days of demand, against any cost, loss or liability incurred by the Agent (otherwise than by reason of the Agent's Gross Negligence or wilful misconduct) in acting as Agent under the Finance Documents (unless the Agent has been reimbursed by an Obligor pursuant to a Finance Document).

#### **27.11 ~~26-44~~ Resignation of the Agent**

- (a) The Agent may resign and appoint one of its Affiliates as successor by giving notice to the other Creditor Parties, the Borrower and SACE and with the consent of SACE.
  - (b) Alternatively the Agent may resign by giving notice to the other Secured Parties and the Borrower, in which case the Lenders (after consultation with the Borrower and the prior consent of SACE) may appoint a successor Agent.
  - (c) If the Lenders have not appointed a successor Agent in accordance with paragraph (b) of Clause ~~26-44~~ 27.11 (*Resignation of the Agent*) within thirty (30) days after notice of resignation was given, the Agent (after consultation with the Borrower and SACE) may appoint a successor Agent.
  - (d) The retiring Agent shall, at its own cost, make available to the successor Agent such documents and records and provide such assistance as the successor Agent may reasonably request for the purposes of performing its functions as Agent under the Finance Documents.
  - (e) The Agent's resignation notice shall only take effect upon the appointment of a successor.
  - (f) Upon the appointment of a successor, the retiring Agent shall be discharged from any further obligation in respect of the Finance Documents but shall remain entitled to the benefit of this Clause ~~26-27~~ (*Role of the Agent ~~and~~ the Joint Mandated Lead Arrangers and the SACE Agent*). Its successor and each of the other Parties shall have the same rights and obligations amongst themselves as they would have had if such successor had been an original Party.
  - (g) After consultation with the Italian Authorities, the Majority Lenders may, subject to the prior consent of the Italian Authorities, by notice to the Agent, require it to resign in accordance with paragraph (b) of Clause ~~26-44~~ 27.11 (*Resignation of the Agent*). In this event, the Agent shall resign in accordance with paragraph (b) of Clause ~~26-44~~ 27.11 (*Resignation of the Agent*) but the cost referred to in paragraph (d) above shall be for the account of the Borrower.
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- (h) The appointment of a successor Agent pursuant to this Clause ~~26.11~~27.11 (*Resignation of the Agent*) shall be subject to compliance with all necessary "know your customer" requirements of the Lenders.

**27.12 ~~26.12~~Confidentiality**

- (a) In acting as agent for the Secured Parties, the 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 another division or department of the Agent, it may be treated as confidential to that division or department and the Agent shall not be deemed to have notice of it.

**27.13 ~~26.13~~Relationship with the Lenders**

The Agent may treat each Lender as a Lender, entitled to payments under this Agreement and acting through its Facility Office unless it has received not less than five (5) Business Days' prior notice from that Lender to the contrary in accordance with the terms of this Agreement.

**27.14 ~~26.14~~Credit appraisal by the Lenders**

Without affecting the responsibility of any Obligor for information supplied by it or on its behalf in connection with any Finance Document, each Lender confirms to the Agent and each of the Joint Mandated Lead Arrangers that it has been, and will continue to be, solely responsible for making its own independent appraisal and investigation of all risks arising under or in connection with any Finance Document including but not limited to:

- (a) the financial condition, status and nature of the Guarantor and each Subsidiary of the Guarantor;
- (b) the legality, validity, effectiveness, adequacy or enforceability of any Finance Document and any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Finance Document;
- (c) whether that Lender has recourse, and the nature and extent of that recourse, against any Party or any of its respective assets under or in connection with any Finance Document, the transactions contemplated by the Finance Documents or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Finance Document;
- (d) the adequacy, accuracy and/or completeness of any information provided by the Agent, any Party or by any other person under or in connection with any Finance Document, the transactions contemplated by the Finance Documents or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Finance Document; and
- (e) the right or title of any person in or to or the value or sufficiency of any part of the Charged Property, the priority of any Security Interests or the existence of any Security Interest affecting the Charged Property.

**27.15 ~~26.15~~Deduction from amounts payable by the Agent**

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If any Party owes an amount to the Agent under the Finance Documents the Agent may, after giving notice to that Party, deduct an amount not exceeding that amount from any payment to that Party which the Agent would otherwise be obliged to make under the Finance Documents and apply the amount deducted in or towards satisfaction of the amount owed. For the purposes of the Finance Documents that Party shall be regarded as having received any amount so deducted.

**27.16 ~~26-16~~ Full freedom to enter into transactions**

Notwithstanding any rule of law or equity to the contrary, the 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 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 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 Obligor or any other person; or
  - (ii) any options or other derivatives in connection with such securities; and
- (c) to provide advice or other services to the Borrower or any person who is a party to, or referred to in, a Finance Document,

and, in particular, the 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.

- (a) Where the context permits, references to the Agent shall include the SACE Agent. The Agent and the SACE Agent shall be the same entity throughout the Security Period.
- (b) With the prior written consent of each of the Lenders, the SACE Agent may amend or modify the SACE Insurance Policy and the Interest Make-Up Agreement provided that such amendments are not inconsistent with the commercial terms of this Agreement, otherwise, the SACE Agent undertakes not to amend or modify the SACE Insurance Policy or the Interest Make-Up Agreement.

The Agent shall resign in accordance with Clause ~~26-11~~ 27.11 (*Resignation of the Agent*) (and, to the extent applicable, shall use reasonable endeavours to appoint a successor Agent pursuant to paragraph (c) of Clause ~~26-11~~ 27.11 (*Resignation of the Agent*)) if on or after the date which is three months before the earliest FATCA Application Date relating to any payment to the Agent under the Finance Documents, either:

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- (a) the Agent fails to respond to a request under Clause ~~40.9-11.9~~ 11.9 (*FATCA Information*) and a Lender reasonably believes that the Agent will not be (or will have ceased to be) a FATCA Exempt Party on or after that FATCA Application Date;
- (b) the information supplied by the Agent pursuant to Clause ~~40.9-11.9~~ 11.9 (*FATCA Information*) indicates that the Agent will not be (or will have ceased to be) a FATCA Exempt Party on or after that FATCA Application Date; or
- (c) the Agent notifies the Borrower and the Lenders that the Agent will not be (or will have ceased to be) a FATCA Exempt Party on or after that FATCA Application Date;

and (in each case) a Lender reasonably believes that a Party will be required to make a FATCA Deduction that would not be required if the Agent were a FATCA Exempt Party, and that Lender, by notice to the Agent, requires it to resign.

## 28 ~~27~~ THE SECURITY TRUSTEE

- (a) The Security Trustee declares that it shall hold the Security Property on trust for the Secured Parties on the terms contained in this Agreement and shall deal with the Security Property in accordance with this Clause ~~27-28~~ 28 (*The Security Trustee*) and the other provisions of the Finance Documents.
  - (b) Each of the parties to this Agreement agrees that the Security Trustee shall have only those duties, obligations and responsibilities expressly specified in this Agreement or in the Finance Documents (and no others shall be implied).
  - (c) The Security Trustee shall not have any liability to any person in respect of its duties, obligations and responsibilities under this Agreement or the other Finance Documents except as expressly set out in paragraph (a) of Clause ~~27.4-28.1~~ 28.1 (*Trust*) and as excluded or limited by this Clause ~~27-28~~ 28 (*The Security Trustee*) including in particular Clause ~~27.8-28.8~~ 28.8 (*Instructions to Security Trustee and exercise of discretion*), Clause ~~27.13-28.13~~ 28.13 (*Responsibility for documentation*), Clause ~~27.14-28.14~~ 28.14 (*Exclusion of liability*), Clause ~~27.16-28.16~~ 28.16 (*Lenders' indemnity to the Security Trustee*), Clause ~~27.23-28.23~~ 28.23 (*Business with the Group*) and Clause ~~27.28-28.28~~ 28.28 (*Full freedom to enter into transactions*).
  - (a) Each Obligor irrevocably and unconditionally undertakes to pay to the Security Trustee 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 purposes of this Clause ~~27.2-28.2~~ 28.2 (*Parallel Debt (Covenant to pay the Security Trustee)*), the Security Trustee:
    - (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 Secured Parties and its claims in respect of each Parallel Debt shall not be held on trust; and
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- (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 Trustee in connection with this Clause ~~27.2-28.2~~ 28.2 (*Parallel Debt (Covenant to pay the Security Trustee)*) to the extent permitted by applicable law, shall be applied in accordance with Clause ~~19-20~~ 20 (*Application of sums received*).
- (f) This Clause ~~27.2-28.2~~ 28.2 (*Parallel Debt (Covenant to pay the Security Trustee)*) shall apply, with any necessary modifications, to each Finance Document.

The Secured Parties shall not have any independent power to enforce, or have recourse to, any Security Interest created by any of the Finance Documents or to exercise any rights or powers arising under the Finance Documents creating the Security Interest except through the ~~28.4~~ 27.4 Application of receipts

- (a) Except as expressly stated to the contrary in any Finance Document, any moneys which the Security Trustee receives or recovers and which are, or are attributable to, Security Property (for the purposes of this Clause ~~27-28~~ 28 (*The Security Trustee*), the "**Recoveries**") shall be transferred to the Agent for application in accordance with Clause ~~19-20~~ 20 (*Application of sums received*).
  - (b) Paragraph (a) above is without prejudice to the rights of the Security Trustee, any receiver:
    - (i) under Clause ~~26-10-27.10~~ 27.10 (*Lenders' indemnity to the Agent*) to be indemnified out of the Charged Property; and
    - (ii) under any Finance Document to credit any moneys received or recovered by it to any suspense account.
  - (c) Any transfer by the Security Trustee to the Agent in accordance with paragraph (a) above shall be a good discharge, to the extent of that payment, by the Security Trustee.
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- (d) The Security Trustee is under no obligation to make the payments to the Agent under paragraph (a) of this Clause ~~27.4~~28.4 (*Application of receipts*) in the same currency as that in which the obligations and liabilities owing to the relevant Secured Party are denominated.

#### **28.5 ~~27.5~~Deductions from receipts**

- (a) Before transferring any moneys to the Agent under Clause ~~27.4~~28.4 (*Application of receipts*), the Security Trustee may, in its discretion:
- (i) deduct any sum then due and payable under this Agreement or any other Finance Documents to the Security Trustee or any receiver and retain that sum for itself or, as the case may require, pay it to another person to whom it is then due and payable;
  - (ii) set aside by way of reserve amounts required to meet, and to make and pay, any deductions and withholdings (on account of Taxes or otherwise) which it is or may be required by any applicable law to make from any distribution or payment made by it under this Agreement; and
  - (iii) pay all Taxes which may be assessed against it in respect of any of the Security Property, or as a consequence of performing its duties, or by virtue of its capacity as Security Trustee under any of the Finance Documents or otherwise (other than in connection with its remuneration for performing its duties under this Agreement).
- (b) For the purposes of paragraph (i) above, if the Security Trustee 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.

#### **28.6 ~~27.6~~Prospective liabilities**

Following acceleration of any Security Interest, the Security Trustee may, in its discretion, or at the request of the Agent, hold any Recoveries in an interest bearing suspense or impersonal account(s) in the name of the Security Trustee with such financial institution (including itself) and for so long as the Security Trustee shall think fit (the interest being credited to the relevant account) for later payment to the Agent for application in accordance with Clause ~~19~~20 (*Application of sums received*) in respect of:

- (a) any sum to the Security Trustee, any receiver; and
- (b) any part of the Secured Liabilities,

that the Security Trustee or, in the case of paragraph (b) only, the Agent, reasonably considers, in each case, might become due or owing at any time in the future.

#### **28.7 ~~27.7~~Investment of proceeds**

Prior to the payment of the proceeds of the Recoveries to the Agent for application in accordance with Clause ~~19~~20 (*Application of sums received*) the Security Trustee 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 Trustee with such financial institution (including itself) and for so long as the Security Trustee shall think fit (the interest being credited to the relevant account) pending the payment from time to time of those moneys in the Security Trustee's discretion in accordance with the provisions of this Clause ~~27.7~~28.7 (*Investment of proceeds*).

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## **28.8 ~~27.8~~Instructions to Security Trustee and exercise of discretion**

- (a) Subject to paragraph (d) below, the Security Trustee shall act in accordance with any instructions given to it by the Agent (acting on the instructions of SACE and the Majority Lenders or all the Lenders (as appropriate)) or, if so instructed by the Agent (acting on the instructions of SACE and the Majority Lenders or all the Lenders (as appropriate)), refrain from exercising any right, power, authority or discretion vested in it as Security Trustee and shall be entitled to assume that:
- (i) any instructions received by it from the Agent (acting on the instructions of SACE and the Majority Lenders or all the Lenders (as appropriate)) are duly given in accordance with the terms of the Finance Documents; and
  - (ii) unless it has received actual notice of revocation, that those instructions or directions have not been revoked.
- (b) The Security Trustee shall be entitled to request instructions, or clarification of any direction, from the Agent (acting on the instructions of SACE and the Majority Lenders or all the Lenders (as appropriate)) as to whether, and in what manner, it should exercise or refrain from exercising any rights, powers, authorities and discretions and the Security Trustee may refrain from acting unless and until those instructions or clarification are received by it.
- (c) Any instructions given to the Security Trustee by the Agent (acting on the instructions of SACE and the Majority Lenders or all the Lenders (as appropriate)) shall override any conflicting instructions given by any other Party.
- (d) Paragraph (a) above shall not apply:
- (i) where a contrary indication appears in this Agreement;
  - (ii) where this Agreement requires the Security Trustee to act in a specified manner or to take a specified action;
  - (iii) in respect of any provision which protects the Security Trustee's own position in its personal capacity as opposed to its role of Security Trustee for the Secured Parties including, without limitation, the provisions set out in Clauses ~~27.10~~ 28.10 (*Security Trustee's discretions*) to Clause ~~27.28~~ 28.28 (*Full freedom to enter into transactions*); and
  - (iv) in respect of the exercise of the Security Trustee's discretion to exercise a right, power or authority under any of Clause ~~27.5~~ 28.5 (*Deductions from receipts*) and Clause ~~27.6~~ 28.6 (*Prospective liabilities*).

## **28.9 ~~27.9~~Security Trustee's Actions**

Without prejudice to the provisions of Clause ~~27.4~~ 28.4 (*Application of receipts*), the Security Trustee may (but shall not be obliged to), in the absence of any instructions to the contrary, take such action in the exercise of any of its powers and duties under the Finance Documents as it considers in its discretion to be appropriate.

## **28.10 ~~27.10~~Security Trustee's discretions**

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- (a) The Security Trustee may:
- (i) assume (unless it has received actual notice to the contrary from the Agent) that (i) no Event of Default has occurred and no Obligor is in breach of or default under its obligations under any of the Finance Documents and (ii) any right, power, authority or discretion vested by any Finance Document in any person has not been exercised;
  - (ii) assume that any notice or request made by the Borrower (other than a Drawdown Notice) is made on behalf of and with the consent and knowledge of all the Obligors;
  - (iii) if it receives any instructions or directions to take any action in relation to a Security Interest under the Finance Documents, assume that all applicable conditions under the Finance Documents for taking that action have been satisfied;
  - (iv) engage, pay for and rely on the advice or services of any legal advisers, accountants, tax advisers, surveyors or other experts (whether obtained by the Security Trustee or by any other Secured Party) whose advice or services may at any time seem necessary, expedient or desirable;
  - (v) act in relation to the Finance Documents through its personnel and agents;
  - (vi) disclose to any other Party any information it reasonably believes it has received as Security Trustee under this Agreement;
  - (vii) rely upon any communication or document believed by it to be genuine and, as to any matters of fact which might reasonably be expected to be within the knowledge of a Secured Party or an Obligor, upon a certificate signed by or on behalf of that person; and
  - (viii) refrain from acting in accordance with the instructions of any Party (including bringing any legal action or proceeding arising out of or in connection with the Finance Documents) until it has received any indemnification and/or security that it may in its discretion require (whether by way of payment in advance or otherwise) for all costs, losses and liabilities which it may incur in so acting.
- (b) Notwithstanding any other provision of any Finance Document to the contrary, the Security Trustee 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.

**28.11 ~~27.14~~ Security Trustee's obligations**

The Security Trustee shall promptly:

- (a) copy to the Agent the contents of any notice or document received by it from any Obligor under any Finance Document;
  - (b) forward to a Party the original or a copy of any document which is delivered to the Security Trustee for that Party by any other Party provided that, except where a Finance Document expressly provides otherwise, the Security Trustee is not obliged to review or check the adequacy, accuracy or completeness of any document it forwards to another Party; and
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- (c) inform the Agent of the occurrence of any Event of Default or any default by an Obligor in the due performance of or compliance with its obligations under any Finance Document of which the Security Trustee has received notice from any other party to this Agreement.

**28.12 ~~27.42~~ Excluded obligations**

Notwithstanding anything to the contrary expressed or implied in the Finance Documents, the Security Trustee shall not:

- (a) be bound to enquire as to (i) whether or not any Event of Default has occurred or (ii) the performance, default or any breach by an Obligor of its obligations under any of the Finance Documents;
- (b) 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;
- (c) be bound to disclose to any other person (including but not limited to any Secured Party) (i) any confidential information or (ii) any other information if disclosure would, or might in its reasonable opinion, constitute a breach of any law or be a breach of fiduciary duty;
- (d) have or be deemed to have any relationship of trust or agency with, any Obligor.

**28.13 ~~27.43~~ Responsibility for documentation**

None of the Security Trustee, any receiver shall accept responsibility or be liable for:

- (a) the adequacy, accuracy or completeness of any information (whether oral or written) supplied by the Security Trustee or any other person in or in connection with any Finance Document or the transactions contemplated in the Finance Documents, or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Finance Document;
- (b) the legality, validity, effectiveness, adequacy or enforceability of any Finance Document, the Security Property or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Finance Document or the Security Property;
- (c) any losses to any person or any liability arising as a result of taking or refraining from taking any action in relation to any of the Finance Documents, the Security Property or otherwise, whether in accordance with an instruction from the Agent or otherwise unless directly caused by its Gross Negligence or wilful misconduct;
- (d) the exercise of, or the failure to exercise, any judgment, discretion or power given to it by or in connection with any of the Finance Documents, the Security Property or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with, the Finance Documents or the Security Property; or
- (e) any shortfall which arises on the enforcement or realisation of the Security Property.

**28.14 ~~27.44~~ Exclusion of liability**

- (a) Without limiting Clause ~~27.45~~ 28.15 (*No proceedings*), none of the Security Trustee or any receiver will be liable for any action taken by it or not taken by it under or in connection with
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any Finance Document or any Security Interest, unless directly caused by its Gross Negligence or wilful misconduct.

- (b) The Security Trustee 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 it if it 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 it for that purpose.
- (c) Nothing in this Agreement shall oblige the Security Trustee to carry out any "know your customer" or other checks in relation to any person on behalf of any Lender and each Lender confirms to the Security Trustee 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 Trustee.

**28.15 ~~27.15~~ No proceedings**

No Party (other than the Security Trustee or that receiver) may take any proceedings against any officer, employee or agent of the Security Trustee or a receiver in respect of any claim it might have against the Security Trustee or a receiver in respect of any act or omission of any kind by that officer, employee or agent in relation to any Finance Document or any Security Property and any officer, employee or agent of the Security Trustee or a receiver may rely on this Clause subject to Clause ~~36.4~~ 37.4 (*Third party rights*) and the provisions of the Third Parties Rights Act.

**28.16 ~~27.16~~ Lenders' indemnity to the Security Trustee**

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 Trustee and every receiver within three Business Days of demand, against any cost, loss or liability incurred by any of them (otherwise than by reason of the relevant Security Trustee's or receiver's Gross Negligence or wilful misconduct) in acting as Security Trustee or receiver under the Finance Documents (unless the relevant Security Trustee or receiver has been reimbursed by an Obligor pursuant to a Finance Document).

**28.17 ~~27.17~~ Own responsibility**

Without affecting the responsibility of any Obligor for information supplied by it or on its behalf in connection with any Finance Document, each Creditor Party confirms to the Security Trustee that it has been, and will continue to be, solely responsible for making its own independent appraisal and investigation of all risks arising under or in connection with any Finance Document including but not limited to:

- (a) the financial condition, status and nature of each member of the Group;
  - (b) the legality, validity, effectiveness, adequacy and enforceability of any Finance Document, the Security Property and any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Finance Document or the Security Property;
  - (c) whether that Creditor Party has recourse, and the nature and extent of that recourse, against any Party or any of its respective assets under or in connection with any Finance Document,
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the Security Property, the transactions contemplated by the Finance Documents or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Finance Document or the Security Property;

- (d) the adequacy, accuracy and/or completeness of any information provided by the Security Trustee or by any other person under or in connection with any Finance Document, the transactions contemplated by any Finance Document or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Finance Document; and
- (e) the right or title of any person in or to, or the value or sufficiency of any part of the Charged Property, the priority of any of the Security Interests created by the Finance Documents or the existence of any Security Interest affecting the Charged Property,

and each Creditor Party warrants to the Security Trustee that it has not relied on and will not at any time rely on the Security Trustee in respect of any of these matters.

**28.18 ~~27.18~~ No responsibility to perfect Security Interests**

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

- (a) require the deposit with it of any deed or document certifying, representing or constituting the title of any Obligor to any of the Charged Property;
- (b) obtain any licence, consent or other authority for the execution, delivery, legality, validity, enforceability or admissibility in evidence of any of the Finance Documents or any Security Interest;
- (c) register, file or record or otherwise protect any Security Interests (or the priority of any of Security Interest) under any applicable laws in any jurisdiction or to give notice to any person of the execution of any of the Finance Documents or of any Security Interest;
- (d) take, or to require any of the Obligors to take, any steps to perfect its title to any of the Charged Property or to render any Security Interest effective or to secure the creation of any ancillary security under the laws of any jurisdiction; or
- (e) require any further assurances in relation to any of the Finance Documents creating the Security Interests.

**28.19 ~~27.19~~ Insurance by Security Trustee**

- (a) The Security Trustee shall not be under any obligation to insure any of the Charged Property, to require any other person to maintain any insurance or to verify any obligation to arrange or maintain insurance contained in the Finance Documents. The Security Trustee shall not be responsible for any loss which may be suffered by any person as a result of the lack of or inadequacy of any such insurance.
  - (b) Where the Security Trustee is named on any insurance policy as an insured party, it shall not be responsible for any loss which may be suffered by reason of, directly or indirectly, 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 Agent shall have requested it to do so in writing and the Security Trustee shall have failed to do so within fourteen (14) days after receipt of that request.
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**28.20 ~~27.20~~ Custodians and nominees**

The Security Trustee may appoint and pay any person to act as a custodian or nominee on any terms in relation to any assets of the trust as the Security Trustee 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 Trustee 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.

**28.21 ~~27.24~~ Acceptance of title**

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

**28.22 ~~27.22~~ Refrain from illegality**

Notwithstanding anything to the contrary expressed or implied in the Finance Documents, the Security Trustee may refrain from doing anything which in its opinion will or may be contrary to any relevant law, directive or regulation of any jurisdiction and the Security Trustee may do anything which is, in its opinion, necessary to comply with any such law, directive or regulation.

**28.23 ~~27.23~~ Business with the Group**

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

**28.24 ~~27.24~~ Winding up of trust**

If the Security Trustee, with the approval of the Agent determines that (a) all of the Secured Liabilities and all other obligations secured by the Finance Documents creating the Security Interests have been fully and finally discharged and (b) none of the Secured Parties is under any commitment, obligation or liability (actual or contingent) to make advances or provide other financial accommodation to any Obligor pursuant to the Finance Documents:

- (a) the trusts set out in this Agreement shall be wound up and the Security Trustee shall release, without recourse or warranty, all of the Security Interests and the rights of the Security Trustee under each of the Finance Documents creating the Security Interests; and
- (b) any Retiring Security Trustee shall release, without recourse or warranty, all of its rights under each of the Finance Documents creating the Security Interests.

**28.25 ~~27.25~~ Powers supplemental**

The rights, powers and discretions conferred upon the Security Trustee by this Agreement 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 Trustee by general law or otherwise.

**28.26 ~~27.26~~ Trustee division separate**

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- (a) In acting as trustee for the Secured Parties, the Security Trustee shall be regarded as acting through its trustee division which shall be treated as a separate entity from any of its other divisions or departments.
- (b) If information is received by another division or department of the Security Trustee, it may be treated as confidential to that division or department and the Security Trustee shall not be deemed to have notice of it nor shall it be obliged to disclose such information to any Party.

**28.27 ~~27-27~~ Disapplication**

In addition to its rights under or by virtue of this Agreement and the other Finance Documents, the Security Trustee shall have all the rights conferred on a trustee by the Trustee Act 1925, the Trustee Delegation Act 1999, the Trustee Act 2000 and by general law or otherwise, provided that:

- (a) section 1 of the Trustee Act 2000 shall not apply to the duties of the Security Trustee in relation to the trusts constituted by this Agreement and the other Finance Documents; and
- (b) 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 allowed by law, prevail and, in the case of any inconsistency with the Trustee Act 2000, such provisions shall constitute a restriction or exclusion for the purposes of the Trustee Act 2000.

**28.28 ~~27-28~~ Full freedom to enter into transactions**

Notwithstanding any rule of law or equity to the contrary, the Security Trustee shall be absolutely entitled:

- (a) to enter into and arrange banking, derivative, investment and/or other transactions of every kind with or affecting any 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 trustee for, and/or participating in, other facilities to such 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 Obligor or any other person; or
  - (ii) any options or other derivatives in connection with such securities; and
- (c) to provide advice or other services to the Borrower or any person who is a party to, or referred to in, a Finance Document,

and, in particular, each Servicing Party 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.

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#### **28.29 ~~27.29~~ Resignation of the Security Trustee**

- (a) The Security Trustee may resign and appoint one of its affiliates as successor by giving notice to the Borrower and each Secured Party.
- (b) Alternatively the Security Trustee may resign by giving notice to the other Parties in which case the Majority Lenders (with the prior consent of SACE) may appoint a successor Security Trustee.
- (c) If the Majority Lenders have not appointed a successor Security Trustee in accordance with paragraph (b) above within 30 days after the notice of resignation was given, the Security Trustee (after consultation with the Agent and SACE) may appoint a successor Security Trustee.
- (d) The retiring Security Trustee (the "**Retiring Security Trustee**") shall, at its own cost, make available to the successor Security Trustee such documents and records and provide such assistance as the successor Security Trustee may reasonably request for the purposes of performing its functions as Security Trustee under the Finance Documents.
- (e) The Security Trustee'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 of the Security Property to that successor.
- (f) Upon the appointment of a successor, the Retiring Security Trustee 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 ~~27.24~~ 28.24 (*Winding up of trust*) and under paragraph (d) above) but shall, in respect of any act or omission by it whilst it was the Security Trustee, remain entitled to the benefit of Clause ~~27-28~~ 28 (*The Security Trustee*), Clause ~~27-5~~ 28.5 (*Deductions from receipts*), Clause ~~27-16~~ 28.16 (*Lenders' indemnity to the Security Trustee*) and any other provisions of a Finance Document which are expressed to limit or exclude its liability in acting as Security Trustee. Its successor and each of the other Parties shall have the same rights and obligations amongst themselves as they would have had if that successor had been an original Party.
- (g) The Majority Lenders may, by notice to the Security Trustee, require it to resign in accordance with paragraph (b) above. In this event, the Security Trustee shall resign in accordance with paragraph (b) above but the cost referred to in paragraph (d) above shall be for the account of the Borrower.
- (h) The consent of the Borrower (or any other Obligor) is not required for an assignment or transfer of rights and/or obligations by the Security Trustee.
- (i) The appointment of a successor Security Trustee pursuant to this Clause ~~27.29~~ 28.29 (*Resignation of the Security Trustee*) shall be subject to compliance with all necessary "know your customer" requirements of the Lenders.

#### **28.30 ~~27.30~~ Delegation**

- (a) Each of the Security Trustee or any receiver may, at any time, delegate by power of attorney or otherwise to any person for any period, all or any of the rights, powers and discretions vested in it by any of the Finance Documents.
  - (b) That delegation may be made upon any terms and conditions and subject to any restrictions that the Security Trustee or that receiver (as the case may be) may, in its discretion, think fit in
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the interests of the Secured Parties and it shall not be bound to supervise, or be in any way responsible for any loss incurred by reason of any misconduct or default on the part of any such delegate.

**28.31 ~~27-31~~ Additional Security Trustee**

- (a) The Security Trustee may at any time appoint (and subsequently remove) any person to act as a separate trustee or as a co-trustee jointly with it:
- (i) if it considers that appointment to be in the interests of the Secured Parties; or
  - (ii) for the purposes of conforming to any legal requirements, restrictions or conditions which the Security Trustee deems to be relevant; or
  - (iii) for obtaining or enforcing any judgment in any jurisdiction,
- and the Security Trustee shall give prior notice to the Borrower and the Agent of that appointment.
- (b) Any person so appointed shall have the rights, powers and discretions (not exceeding those conferred on the Security Trustee by this Agreement) and the duties and obligations that are conferred or imposed by the instrument of appointment.
- (c) The remuneration that the Security Trustee 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 Trustee.

**29 ~~28~~ CONDUCT OF BUSINESS BY THE CREDITOR PARTIES**

**29.1 ~~28-1~~ No provision of this Agreement will:**

- (a) interfere with the right of any Creditor Party to arrange its affairs (Tax or otherwise) in whatever manner it thinks fit;
- (b) oblige any Creditor 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 Creditor Party to disclose any information relating to its affairs (Tax or otherwise) or any computations in respect of Tax.

**30 ~~29~~ SHARING AMONG THE CREDITOR PARTIES**

**30.1 ~~29-1~~ Payments to Creditor Parties**

If a Creditor Party (a "**Recovering Creditor Party**") receives or recovers any amount from an Obligor other than in accordance with this Clause ~~29-30~~ 30 (*Sharing among the Creditor Parties*) and applies that amount to a payment due under the Finance Documents then:

- (a) the Recovering Creditor Party shall, within three (3) Business Days, notify details of the receipt or recovery to the Agent;
  - (b) the Agent shall determine whether the receipt or recovery is in excess of the amount the Recovering Creditor Party would have been paid had the receipt or recovery been received or
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made by the Agent and distributed in accordance with Clause ~~49-20~~ (*Application of sums received*) and Clause ~~30-31~~ (*Payment Mechanics*), without taking account of any Tax which would be imposed on the Agent in relation to the receipt, recovery or distribution; and

- (c) the Recovering Creditor Party shall, within three (3) Business Days of demand by the Agent, pay to the Agent an amount (the "**Sharing Payment**") equal to such receipt or recovery less any amount which the Agent determines may be retained by the Recovering Creditor Party as its share of any payment to be made, in accordance with Clause ~~49-20~~ (*Application of sums received*) and Clause ~~30-31~~ (*Payment Mechanics*).

### **30.2 ~~29-2~~ Redistribution of payments**

The Agent shall treat the Sharing Payment as if it had been paid by the relevant Obligor and distribute it between the Creditor Parties (other than the Recovering Creditor Party) in accordance with Clause ~~49-20~~ (*Application of sums received*) and Clause ~~30-31~~ (*Payment Mechanics*).

### **30.3 ~~29-3~~ Recovering Creditor Party's rights**

- (a) On a distribution by the Agent under Clause ~~29-2-30.2~~ (*Redistribution of payments*), the Recovering Creditor Party will, if possible under the relevant applicable laws, be subrogated to the rights of the Creditor Parties which have shared in the redistribution.
- (b) If and to the extent that the Recovering Creditor Party is not able to rely on its rights under paragraph (a) of Clause ~~29-3-30.3~~ (*Recovering Creditor Party's rights*), the relevant Obligor shall be liable to the Recovering Creditor Party for a debt equal to the Sharing Payment which is immediately due and payable.

### **30.4 ~~29-4~~ Reversal of redistribution**

If any part of the Sharing Payment received or recovered by a Recovering Creditor Party becomes repayable and is repaid by that Recovering Creditor Party, then:

- (a) each Lender which has received a share of the relevant Sharing Payment pursuant to Clause ~~29-2-30.2~~ (*Redistribution of payments*) shall, upon request of the Agent, pay to the Agent for account of that Recovering Creditor 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 Creditor Party for its proportion of any interest on the Sharing Payment which that Recovering Creditor Party is required to pay); and
- (b) that Recovering Creditor Party's rights of subrogation in respect of any reimbursement shall be cancelled and the relevant Obligor will be liable to the reimbursing Creditor Party for the amount so reimbursed.

### **30.5 ~~29-5~~ Exceptions**

- (a) This Clause ~~29-30~~ (*Sharing among the Creditor Parties*) shall not apply to the extent that the Recovering Creditor Party would not, after making any payment pursuant to this Clause, have a valid and enforceable claim against the relevant Obligor.
  - (b) A Recovering Creditor Party is not obliged to share with any other Creditor Party any amount which the Recovering Creditor Party has received or recovered as a result of taking legal or arbitration proceedings, if:
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- (i) it notified that other Creditor Party of the legal or arbitration proceedings; and
  - (ii) that other Creditor 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.
- (c) Following full indemnification by SACE of the SACE Agent (on behalf of the Lenders) under the SACE Insurance Policy, the provisions relating to the sharing of proceeds among the Creditor Parties in this Clause ~~29-30~~ (*Sharing among the Creditor Parties*) shall not apply to any payment made to SACE by a Lender or the Borrower following a payment by SACE to any Lender under the SACE Insurance Policy.

## **31 ~~30~~PAYMENT MECHANICS**

### **31.1 ~~30-1~~Payments to the Agent**

- (a) On each date on which an Obligor or a Lender is required to make a payment under a Finance Document, that Obligor or Lender shall make the same available to the Agent (unless a contrary indication appears in a Finance Document) for value on the due date at the time and in such funds specified by the Agent as being customary at the time for settlement of transactions in the relevant currency in the place of payment.
- (b) Payment shall be made to such account in the principal financial centre of the country of that currency (or, in relation to Euro, in a principal financial centre in a Participating Member State or London) with such bank as the Agent specifies.
- (c) Payment shall be made before 11.00 a.m. New York time or 11.00 a.m. Paris time (in the case of a payment in Euro).
- (d) For each payment by the Borrower, it shall notify the Agent on the third Business Day prior to the due date for payment that it will issue to its bank (which shall be named in such notification) to make the payment.

### **31.2 ~~30-2~~Distributions by the Agent**

Each payment received by the Agent under the Finance Documents for another Party shall, subject to Clause ~~30-3~~ 31.3 (*Distributions to an Obligor*), Clause ~~30-4~~ 31.4 (*Clawback*) be made available by the Agent as soon as practicable after receipt to the Party entitled to receive payment in accordance with this Agreement (in the case of a Lender, for the account of its Facility Office), to such account as that Party may notify to the Agent by not less than five (5) Business Days' notice with a bank 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).

### **31.3 ~~30-3~~Distributions to an Obligor**

The Agent may in accordance with Clause ~~22-23~~ (*Set-Off*) apply any amount received by it for that Obligor in or towards payment (on the date and in the currency and funds of receipt) of any amount due from that Obligor under the Finance Documents or in or towards purchase of any amount of any currency to be so applied.

### **31.4 ~~30-4~~Clawback**

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- (a) Where a sum is to be paid to the Agent under the Finance Documents for another Party, the Agent is not obliged to pay that sum to that other Party (or to enter into or perform any related exchange contract) until it has been able to establish to its satisfaction that it has actually received that sum.
- (b) If the Agent pays an amount to another Party and it proves to be the case that the Agent had not actually received that amount, then the Party to whom that amount (or the proceeds of any related exchange contract) was paid by the Agent shall on demand refund the same to the Agent together with interest on that amount from the date of payment to the date of receipt by the Agent, calculated by the Agent to reflect its cost of funds.

**31.5 ~~30-5~~ No set-off by Obligors**

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

**31.6 ~~30-6~~ Business Days**

- (a) Any payment which is due to be made on a day that is not a Business Day shall be made on the next Business Day in the same calendar month (if there is one) or the preceding Business Day (if there is not).
- (b) During any extension of the due date for payment of any principal or unpaid sum under this Agreement interest is payable on the principal or unpaid sum at the rate payable on the original due date.

**31.7 ~~30-7~~ Currency of account**

- (a) Subject to paragraphs (b) and (c) of Clause ~~30-7~~ 31.7 (*Currency of account*) Dollars is the currency of account and payment for any sum from an Obligor under any Finance Document.
- (b) Each payment in respect of costs, expenses or Taxes shall be made in the currency in which the costs, expenses or taxes are incurred.
- (c) Any amount expressed to be payable in a currency other than Dollars shall be paid in that other currency.

**31.8 ~~30-8~~ Change of currency**

- (a) Unless otherwise prohibited by law, if more than one currency or currency unit are at the same time recognised by the central bank of any country as the lawful currency of that country, then:
    - (i) any reference in the Finance Documents to, and any obligations arising under the Finance Documents in, the currency of that country shall be translated into, or paid in, the currency or currency unit of that country designated by the Agent (after consultation with the Lenders and the Borrower); and
    - (ii) any translation from one currency or currency unit to another shall be at the official rate of exchange recognised by the central bank for the conversion of that currency or currency unit into the other, rounded up or down by the Agent (acting reasonably).
  - (b) If a change in any currency of a country occurs, this Agreement will, to the extent the Agent (acting reasonably and after consultation with the Lenders and the Borrower) specifies to be
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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.

### **31.9 ~~30-9~~Distributions under the Interest Make-Up Agreement**

Each payment received by the Agent under the Interest Make-Up Agreement for a Lender shall be made available by the Agent as soon as practicable after receipt to the Lender entitled to receive such payment in accordance with this Agreement (for the account of its Facility Office), to such account as that Lender may notify to the Agent by not less than five (5) Business Days' notice with a bank 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).

## **32 ~~34~~VARIATIONS AND WAIVERS**

### **32.1 ~~31-4~~Variations, waivers etc. by Majority Lenders**

Subject to Clause ~~31-2~~ 32.2 (*Variations, waivers etc. requiring agreement of all Lenders*), a document shall be effective to vary, waive, amend, 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 email, by the Borrower, by the Agent on behalf of the Majority Lenders, by the Agent and the Security Trustee in their own rights, and, if the document relates to a Finance Document to which an Obligor is party, by an Obligor (provided that no amendment or variation may be made to this Agreement or any other Finance Document without the consent of the Italian Authorities); provided, further, that no amendment or variation may be made before the date falling ten Business Days after the terms of that amendment or variation have been notified by the Agent to the Lenders. The Agent shall notify the Lenders reasonably promptly of any amendments or variations proposed by the Borrower.

### **32.2 ~~31-2~~Variations, waivers etc. requiring agreement of all Lenders**

However, as regards the following, Clause ~~31-1~~ 32.1 (*Variations, waivers etc. by Majority Lenders*) applies as if the words "by the Agent on behalf of the Majority Lenders" were replaced by the words "by or on behalf of every Lender":

- (a) a reduction in the Margin;
  - (b) a postponement to the date for, or a reduction in the amount of, any payment of principal, interest, fees, commission or other sum payable under this Agreement;
  - (c) an increase in or extension of any Lender's Commitment under a Tranche or any requirement that a cancellation of Commitments under any Tranche reduces the Commitments rateably under the Loan;
  - (d) a change to the definition of "**Majority Lenders**";
  - (e) a change to Clause 2 (*Facility*), Clause 6 (*Interest*), Clause ~~24-25~~ (*Changes to the Lenders*) or this Clause ~~31-32~~ (*Variations and Waivers*);
  - (f) any release of, or material variation to, a Security Interest, guarantee, indemnity or subordination arrangement set out in a Finance Document; and
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- (g) any other change or matter as regards which this Agreement or another Finance Document expressly provides that each Lender's consent is required.

### **32.3 ~~31.3~~ Exclusion of other or implied variations**

Except for a document which satisfies the requirements of Clauses ~~31.1~~32.1 (*Variations, waivers etc. by Majority Lenders*) and ~~31.2~~32.2 (*Variations, waivers etc. requiring agreement of all Lenders*), no document, and no act, course of conduct, failure or neglect to act, delay or acquiescence on the part of the Creditor Parties or any of them (or any person acting on behalf of any of them) shall result in the Creditor Parties or any of them (or any person acting on behalf of any of them) being taken to have varied, waived, suspended or limited, or being precluded (permanently or temporarily) from enforcing, relying on or exercising:

- (a) a provision of this Agreement or another Finance Document; or
- (b) an Event of Default; or
- (c) a breach by the Borrower or an Obligor 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.

## **33 ~~32~~ NOTICES**

### **33.1 ~~32.1~~ 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.

### **33.2 ~~32.2~~ Addresses for communications**

A notice shall be sent:

- (a) to the Borrower:

7665 Corporate Center Drive  
Miami FL33126, USA  
Attention: Chief Financial Officer and General Counsel

Email: [\*] / [\*]

- (b) to a Lender:

At the address below its name in Schedule 1 (*Lenders and Commitments*) or (as the case may require) in the relevant Transfer Certificate.

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- (c) to the Agent or the SACE Agent:

12, Place des Etats-Unis  
CS 70052  
92547 Montrouge Cedex, France  
Fax No. (33) 1 41 89 19 34  
Attn: Shipping Middle Office – Ms Clémentine Costil and Romy Roussel

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

**33.3 ~~32.3~~Effective date of notices**

Subject to Clauses ~~32.4~~33.4 (*Service outside business hours*) and ~~32.5~~33.5 (*Electronic communication*), 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.

**33.4 ~~32.4~~Service outside business hours**

However, if under Clause ~~32.3~~33.3 (*Effective date of notices*) a notice would be deemed to be served:

- (a) on a day which is not a business day in the place of receipt; or
- (b) on such a business day, but after 6 p.m. local time;

the notice shall (subject to Clause ~~32.5~~33.5 (*Electronic communication*)) be deemed to be served, and shall take effect, at 9 a.m. on the next day which is such a business day.

**33.5 ~~32.5~~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, 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 and if those two Parties:
  - (i) notify each other in writing of their electronic mail address and/or any other information required to enable the sending and receipt of information by that means; and
  - (ii) notify each other of any change to their address or any other such information supplied by them by not less than five Business Days' notice.
- (b) Any electronic communication made between those two Parties will be effective only when actually received in readable form and in the case of any electronic communication made by a Party to the Agent only if it is addressed in such a manner as the Agent shall specify for this purpose.
- (c) Any electronic communication which becomes effective, in accordance with paragraph (b) above, after 5.00 p.m. in the place of receipt shall be deemed only to become effective on the following day.

**33.6 ~~32.6~~Illegible notices**

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Clauses ~~32.3~~33.3 (*Effective date of notices*) and ~~32.4~~33.4 (*Service outside business hours*) do not apply if the recipient of a notice notifies the sender within 1 hour after the time at which the notice would otherwise be deemed to be served that the notice has been received in a form which is illegible in a material respect.

**33.7 ~~32.7~~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.

**33.8 ~~32.8~~English language**

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

**33.9 ~~32.9~~Meaning of "notice"**

In this Clause ~~32~~33 (*Notices*), "notice" includes any demand, consent, authorisation, approval, instruction, waiver or other communication.

**34 ~~33~~CONFIDENTIALITY**

**34.1 ~~33.1~~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 Clause ~~33.2~~34.2 (*Disclosure of Confidential Information*) 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.

**34.2 ~~33.2~~Disclosure of Confidential Information**

Any Creditor Party may disclose:

- (a) to the Italian Authorities, to any of its Affiliates 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;
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- (b) to any person:
- (i) to (or through) whom it assigns or transfers (or may potentially assign or transfer) all or any of its rights and/or obligations under one or more Finance Documents and to any of that person's Affiliates, Representatives and professional advisers;
  - (ii) with (or through) whom it enters into (or may potentially enter into), whether directly or indirectly, any sub-participation in relation to, or any other transaction under which payments are to be made or may be made by reference to, one or more Finance Documents and/or one or more Obligors and to any of that person's Affiliates, Representatives and professional advisers;
  - (iii) appointed by any Creditor Party or by a person to whom paragraph (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 (i) or (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, arbitrations, administrative or other investigations, proceedings or disputes;
  - (vii) which is a classification society or other entity which a Lender has engaged to make the calculations necessary to enable that Lender to comply with its reporting obligations under the Poseidon Principles;
  - (viii) who is a Party, a member of the Group or any related entity of an 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; or
  - (xi) any employee, officer, director or Representative of any Italian Authorities to whom information is required to be disclosed in the course of such person's employment or duties;
  - (xii) to whom or for whose benefit that Creditor Party charges, assigns or otherwise creates a Security Interest (or may do so) pursuant to Clause ~~24.16~~ 25.16 (*Security over Lenders' rights*).

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

- (A) in relation to paragraphs (i), (ii) and (iii) above, the person to whom the Confidential Information is to be given has entered into a Confidentiality Undertaking except that there shall be no requirement for a Confidentiality Undertaking if the recipient is a professional adviser and is subject to
-



professional obligations to maintain the confidentiality of the Confidential Information;

- (B) in relation to paragraph (iv) above, the person to whom the Confidential Information is to be given has entered into a Confidentiality Undertaking or is otherwise bound by requirements of confidentiality in relation to the Confidential Information they receive and is informed that some or all of such Confidential Information may be price-sensitive information;
  - (C) in relation to paragraphs (v), (vi) and (xii) 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 Borrower and the relevant Creditor Party;
- (d) to any rating agency (including its professional advisers) such Confidential Information as may be required to be disclosed to enable such rating agency to carry out its normal rating activities in relation to the Finance Documents and/or the 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.

#### **34.3 ~~33.3~~Entire agreement**

This Clause ~~33.3~~ 34 (*Confidentiality*) constitutes the entire agreement between the Parties in relation to the obligations of the Creditor Parties under the Finance Documents regarding Confidential Information and supersedes any previous agreement, whether express or implied, regarding Confidential Information.

#### **34.4 ~~33.4~~Disclosure to information services**

- (a) Any Creditor Party may disclose to any national or international information service company such as Dealogic, TF, GTR, TXF, IFR and any other similar information service company appointed by that Creditor Party, the following information:
- (i) names of Parties;
  - (ii) country of domicile of Obligors;
  - (iii) place of incorporation of Obligors;
  - (iv) date of this Agreement;
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- (v) Clause ~~37-38~~ (*Governing Law*);
- (vi) the name of the Agent;
- (vii) amount of Total Commitments;
- (viii) currency of the Facility;
- (ix) type of Facility;
- (x) ranking of Facility; and
- (xi) duration of Facility,

to enable such information service company to provide its usual services.

- (b) Each Obligor represents that none of the information set out in sub-paragraphs (i) to (xi) of paragraph (a) above is, nor will at any time be, unpublished price-sensitive information.

#### **34.5 ~~33-5~~ 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.

#### **34.6 ~~33-6~~ Notification of disclosure**

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

- (a) of the circumstances of any disclosure of Confidential Information made pursuant to paragraph (b)(v) of Clause ~~33-2~~ 34.2 (*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 ~~33-34~~ (*Confidentiality*).

#### **34.7 ~~33-7~~ Continuing obligations**

The obligations in this Clause ~~33-34~~ (*Confidentiality*) 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 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 Creditor Party otherwise ceases to be a Creditor Party.

#### **34.8 ~~33-8~~ Disclosure by SACE**

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Notwithstanding any other provision of this Agreement to the contrary, SACE may disclose any Confidential Information:

- (a) to its ultimate shareholder, holding subsidiary, parent and affiliate companies;
- (b) to the Ministry of Economy and Finance of the Republic of Italy and its departments, other Italian Ministries (including any of their department), Interministerial committees of the Italian Government and any other Italian authority, committee, agency or governmental entity;
- (c) to providers of any reinsurance/counter-guarantee or any form of risk enhancement (including their agents, brokers and consultants) subject to such persons undertaking confidentiality obligations with SACE, unless they are subject to professional duties of confidentiality;
- (d) for the purposes of the State guarantee in favour of SACE pursuant to article 32 of law-decree n. 91/2014 converted into law 116/2014 and for the purposes of article 2 of law decree 23/2020 converted into law 40/2020; or;
- (e) following any payment due under the SACE Insurance Policy; or
- (f) with the consent of the Borrower, such consent not to be unreasonably withheld.

#### **34.9 ~~33.9~~ Press release**

Neither SACE nor the Borrower will issue any press release or make any public announcement in relation to the SACE Insurance Policy without the prior consent of the other party (such consent not to be unreasonably withheld).

### **35 ~~34~~ LEGAL INDEPENDENCE AND UNCONDITIONAL OBLIGATIONS OF THE BORROWER**

#### **35.1 ~~34.1~~ Legal independence and Unconditional Obligations of the Borrower**

This Agreement is legally independent from the Shipbuilding Contract. The obligations of the Borrower to make payments and to observe and perform its obligations under the Transaction Documents are absolute, unconditional, irrevocable and several and such obligations shall not:

- (a) in any way be affected or discharged by reason of any matter affecting any of the Pre-delivery Contracts including their performance, frustration or validity, the insolvency or dissolution of any party to any of the Pre-delivery Contracts or the destruction, non-completion or non-functioning of the goods and equipment supplied under the Shipbuilding Contract;
  - (b) in any way be affected or discharged by reason of any dispute under any of the Pre-delivery Contracts or any claim which it or any other person may have against, or consider that it has against, any person under any of the Pre-delivery Contracts;
  - (c) in any way be affected or discharged by reason of unenforceability, illegality or invalidity of any obligation of the Borrower or any other person under any of the Pre-delivery Contracts or any documents or agreements relating to any of the Pre-delivery Contracts;
  - (d) in any way be affected by the fact that all or any part of the amount requested referred to in a Drawdown Notice is not or was not due or payable to the Builder;
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- (e) be conditional on the performance by the Creditor Parties of any obligations (except as otherwise stated herein) in order to give rise to a relevant obligation of the Borrower hereunder; or
- (f) in any way be affected or discharged by the insolvency or dissolution of the Borrower.

## **36 ~~35~~SACE SUBROGATION AND REIMBURSEMENT**

### **36.1 ~~35.1~~Acknowledgement of Subrogation**

Each Obligor and each Creditor Party acknowledges that, immediately upon any payment being made by SACE of any amount under the SACE Insurance Policy, SACE will be subrogated to the rights of the Lenders in the amount of such payment under the Finance Documents in accordance with the SACE Insurance Policy.

### **36.2 ~~35.2~~Reimbursement**

- (a) Without prejudice to Clause ~~35.1~~ 36.1 (*Acknowledgement of Subrogation*), each Obligor, jointly and severally undertakes to pay to SACE, and keep SACE indemnified from and against, each and every amount paid (whether by direct payment or set-off) by SACE to the Creditor Parties or any person on any of their behalf under the SACE Insurance Policy;
- (b) Each Obligor undertakes to pay SACE an amount in Dollars equal to:
  - (i) for each payment made by SACE to any of the Creditor Parties or any person on any of their behalf under the SACE Insurance Policy, the amount of such payment; and
  - (ii) for each deduction or withholding imposed, levied, collected, withheld or assessed on any payment by SACE to any of the Creditor Parties or any person on any of their behalf under the SACE Insurance Policy, the amount of such deduction or withholding,

in each case together with interest thereon (calculated in accordance with Clause ~~47.4~~ 18.1 (*Default rate of interest*) of this Agreement).

- (c) Each Obligor further agrees that its obligations under this Clause ~~35.2~~ 36.2 (*Reimbursement*) are separate from and in no way conditional upon the Obligor's obligations under this Agreement or any of the other Finance Documents and will not be affected or discharged by any matter relating thereto including, but not limited to, whether or not the Obligor is itself liable to make payment, or is disputing its liability to make payment, under this Agreement or any of the other Finance Documents.
- (d) SACE will promptly inform the Obligors of any amounts to be reimbursed and indemnified under this Clause ~~35.2~~ 36.2 (*Reimbursement*).
- (e) Each amount that is payable by the Obligors pursuant to Clause ~~35.2~~ 36.2 (*Reimbursement*) is due and payable to SACE in Dollars within five (5) Business Days of demand by SACE to the Obligors.

### **36.3 ~~35.3~~Obligations Absolute**

The obligations of the Obligors under this Clause ~~35.2~~ 36.2 (*Reimbursement*), to the extent permitted by applicable law:

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- (a) are absolute and unconditional;
  - (b) are to be discharged and/or performed strictly in accordance with this Agreement under all circumstances;
  - (c) are continuing obligations and will extend to the ultimate balance of sums payable by SACE to any Creditor Party or any person on any of their behalf under the SACE Insurance Policy, regardless of any intermediate payment or discharge in whole or in part;
  - (d) will not be affected by an act, omission, matter or thing which, but for this Clause, would reduce, release or prejudice any of its obligations under Clause ~~35.2~~ 36.2 (*Reimbursement*) (without limitation and whether or not known to it or any Creditor Party) including:
    - (i) any time, waiver or consent granted to, or composition with any Obligor;
    - (ii) any lack of validity or enforceability of, or any amendment or other modifications of, or waiver with respect to, any of the Finance Documents;
    - (iii) any reduction or release of any other obligations under this Agreement;
    - (iv) the release of any Obligor or any other person under the terms of any composition or arrangement;
    - (v) the taking, variation, compromise, exchange, renewal, discharge, substitution or release of, or refusal or neglect to perfect, take up, realise or enforce, any rights against, or security over assets of, any Obligor 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;
    - (vi) any incapacity or lack of power, authority or legal personality of or dissolution or change in the members or status of any Obligor, any Creditor Party or any other person;
    - (vii) any amendment (however fundamental) or replacement of a Finance Document, the SACE Insurance Policy or any other document or security;
    - (viii) any unenforceability, illegality or invalidity of any obligation of any person under any Finance Document, the SACE Insurance Policy or any other document or security;
    - (ix) any insolvency or similar proceedings;
    - (x) the existence of any claim, set-off, defence, reduction, abatement or other right which any Obligor may have at any time against SACE;
    - (xi) any document presented in connection with the SACE Insurance Policy proving to be forged, fraudulent, invalid or insufficient in any respect or any statement therein being untrue or inaccurate in any respect;
    - (xii) any payment by SACE against presentation of a demand for payment substantially, on its face, in the form of a claim under the SACE Insurance Policy where any certificate or other document required to be provided with such claim in accordance with the terms of the SACE Insurance Policy either is not provided or does not comply with the terms of the SACE Insurance Policy; and
-

- (xiii) any other circumstances which might otherwise constitute a defence available to, or discharge of any Obligor.

## **37 ~~36~~ SUPPLEMENTAL**

### **37.1 ~~36.4~~ Rights cumulative, non-exclusive**

The rights and remedies which the Finance Documents give to each Secured 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.

### **37.2 ~~36.2~~ 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.

### **37.3 ~~36.3~~ Counterparts**

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

### **37.4 ~~36.4~~ Third party rights**

- (a) Except for SACE and its successors, transferees and assignees or as otherwise provided 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 Party Act**") to enforce or to enjoy the benefit of any term of this Agreement.
  - (b) Notwithstanding any provision of any Finance Document, the consent of any person (other than SACE or its successors, transferees and assignees) who is not a party to a Finance Document is not required to rescind, vary or terminate any Finance Document at any time.
  - (c) Subject to the provisions of the Third Party Act, and without prejudice to the provisions of paragraphs (a) and (b) above, SACE has the right to enforce and to enjoy the benefit of Clause ~~35-36~~ (SACE Subrogation and Reimbursement), Clause ~~47-18~~ (Interest on Late Payments), Clause ~~8-9~~ (SACE Premium and Italian Authorities), Clause ~~40-2-11.2~~ (Tax gross-up), Clause ~~40-3-11.3~~ (Tax indemnity), Clause ~~40-44-11.11~~ (Transaction Costs), Clause ~~20-4-21.1~~ (Indemnities regarding borrowing and repayment of Loan), Clause ~~20-3-21.3~~ (Miscellaneous indemnities), Clause ~~20-4-21.4~~ (Currency indemnity), Clause ~~22-23~~ (Set-Off), Clause ~~27-28~~ (The Security Trustee), Clause ~~40-6-11.6~~ (VAT), Clause ~~40-43-11.13~~ (SACE obligations), Clauses ~~33-8-34.8~~ (Disclosure by SACE) and ~~33-9-34.9~~ (Press release) and Clause ~~38-39~~ (Enforcement).
  - (d) Any amendment or waiver which relates to the rights of SACE under this Agreement, including under Clause ~~35-36~~ (SACE Subrogation and Reimbursement), Clause ~~47-18~~ (Interest on Late Payments), Clause ~~8-9~~ (SACE Premium and Italian Authorities), Clause ~~40-2-11.2~~ (Tax gross-up), Clause ~~40-3-11.3~~ (Tax indemnity), Clause ~~20-4-21.4~~ (Currency indemnity), Clause ~~22-23~~ (Set-Off), Clause ~~27-28~~ (The Security Trustee), Clause ~~20-3-21.3~~ (Miscellaneous indemnities), Clause ~~40-6-11.6~~ (VAT), Clause ~~40-44-11.11~~ (Transaction Costs), Clause ~~20-4-21.1~~ (Indemnities regarding
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*borrowing and repayment of Loan*), Clauses ~~33-8~~34.8 (*Disclosure by SACE*) and ~~33-9~~34.9 (*Press release*) and Clause ~~38~~39 (*Enforcement*) may not be effected without the consent of SACE.

**37.5 ~~36-5~~No waiver**

No failure or delay on the part of a Secured Party in exercising any right, power or privilege hereunder shall operate as a waiver thereof; nor shall any single or partial exercise thereof preclude any other or further exercise thereof by the Secured Parties or the exercise by the Secured Parties of any other right, power or privilege. The rights and remedies of the Secured Parties herein provided are cumulative and not exclusive of any rights or remedies provided by law.

**37.6 ~~36-6~~Writing required**

This Agreement shall not be capable of being modified otherwise than by an express modification in writing signed by the Borrower, the Agent and the Lenders.

**38 ~~37~~GOVERNING LAW**

**38.1 37.1Law**

This Agreement and any non-contractual obligations arising out of or in connection with it are governed by and construed in accordance with English law.

**39 ~~38~~ENFORCEMENT**

**39.1 ~~38-4~~Jurisdiction of English Courts**

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) (a "**Dispute**"). Each Party agrees that the courts of England are the most appropriate and convenient courts to settle Disputes and accordingly no Party will argue to the contrary.

**39.2 ~~38-2~~Service of process**

Without prejudice to any other mode of service allowed under any relevant law, the Borrower:

- (a) irrevocably appoints Hannaford Turner LLP, currently of 107 Cheapside, London UK, EC2V 6DN, as its agent for service of process in relation to any proceedings before the English courts in connection with any Finance Document; and
- (b) agrees that failure by a process agent to notify the Borrower of the process will not invalidate the proceedings concerned.

If any person appointed as an agent for service of process is unable for any reason to act as agent for service of process, the Borrower (on behalf of all the Obligors) must immediately (and in any event within 15 days of such event taking place) appoint another agent on terms acceptable to the Agent. Failing this, the Agent may appoint another agent for this purpose.

**40 EFFECTIVE DATE**

[This Agreement is effective from the 2023 Effective Date.](#)

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**41 39 CONFIDENTIALITY OF FUNDING RATES AND REFERENCE BANK QUOTATIONS**

**41.1 39.4 Confidentiality and disclosure**

- (a) The Agent and each Obligor agree to keep each Funding Rate (and, in the case of the 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 Agent may disclose:
- (i) any Funding Rate (but not, for the avoidance of doubt, any Reference Bank Quotation) to the Borrower pursuant to Clause ~~6-5-7.5~~ 6-5-7.5 (*Notification of Interest Periods and Floating Interest Rate*);
  - (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 Agent and the relevant Lender or Reference Bank, as the case may be.
- (c) The 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 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 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 Agent's obligations in this Clause ~~39-41~~ 39-41 (*Confidentiality of Funding Rates and Reference Bank Quotations*) relating to ~~the~~ Reference Bank Quotations are without prejudice to its obligations to make notifications under Clause ~~6-5-7.5~~ 6-5-7.5 (*Notification of Interest Periods and Floating Interest Rate*) provided that (other than pursuant to sub-paragraph (i) of paragraph (b) above) the Agent shall not include the details of any ~~individual~~ Reference Bank Quotation as part of any such notification.

#### **41.2 ~~39-2~~ Related obligations**

- (a) The Agent and each Obligor acknowledge that each Funding Rate (and, in the case of the 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 Agent and each Obligor undertake not to use any Funding Rate or, in the case of the Agent, any Reference Bank Quotation ~~for~~ for any unlawful purpose.
- (b) The 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 (c) of Clause ~~39-4~~ 39-4 41.1 (*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 ~~39-40~~ 39-40 (*Confidentiality of Funding Rates and Reference Bank Quotations*).

#### **41.3 ~~39-3~~ No Event of Default**

No Event of Default will occur under Clause ~~18-4~~ 18-4 19.4 (*Breach of other obligations*) by reason only of an Obligor's failure to comply with this Clause ~~39-40~~ 39-40 (*Confidentiality of Funding Rates and Reference Bank Quotations*). ~~Quotations~~. **This Agreement has been entered into and amended and restated on the date stated at the beginning of this Agreement.**

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SIGNED by )  
 )  
for and on behalf of )  
~~CASSA DEPOSITI E PRESTITI S.P.A.~~ )  
HSBC HSBC Bank PLC )  
in the presence of: )

~~SIGNED by~~ )  
~~duly authorised~~ )  
~~for and on behalf of~~ )  
~~BANCO BPM S.P.A.~~ )

**TRANCHE B LENDERS**

SIGNED by )  
 )  
for and on behalf of )  
~~GRÉDIT AGRICOLE CORPORATE~~ )  
~~AND INVESTMENT BANK~~ )  
BANCO BPM S.P.A. )  
in the presence of: )

SIGNED by )  
 )  
for and on behalf of )  
BNP PARIBAS FORTIS S.A./N.V. )  
in the presence of: )

SIGNED by )  
 )  
for and on behalf of )  
~~HSBC CONTINENTAL EUROPE, ITALY~~ )  
~~in the presence of:~~ )

~~SIGNED by~~ )  
~~for and on behalf of~~ )  
~~CASSA DEPOSITI E PRESTITI S.P.A.~~ )  
in the presence of: )

SIGNED by )  
 )  
for and on behalf of )  
CRÉDIT AGRICOLE CORPORATE )  
AND INVESTMENT BANK )  
in the presence of: )

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SIGNED by )  
 )  
for and on behalf of ~~duly authorised~~)  
BANCO BPM S.P.A. )  
 )

HSBC Bank PLC )  
in the presence of: )

**TRANCHE C LENDERS**

**SIGNED by** )  
 )  
for and on behalf of )  
**CRÉDIT AGRICOLE CORPORATE** )  
**BANCO BPM S.P.A.** )  
**AND INVESTMENT BANK** )  
in the presence of: )

**SIGNED by** )  
 )  
for and on behalf of )  
**BNP PARIBAS FORTIS S.A./N.V.** )  
in the presence of: )

**SIGNED by** )  
 )  
for and on behalf of )  
**HSBC CONTINENTAL EUROPE, ITALY** )  
**in the presence of:** )

**SIGNED by** )  
 )  
for and on behalf of )  
**CASSA DEPOSITI E PRESTITI S.P.A.** )  
in the presence of: )

~~**SIGNED by**~~ )  
~~duly authorised~~ )  
~~for and on behalf of~~ )  
~~**BANCO BPM S.P.A.**~~ )

---

**~~JOINT MANDATED LEAD ARRANGERS~~**

SIGNED by )  
 )  
for and on behalf of )  
**CRÉDIT AGRICOLE CORPORATE** )  
**AND INVESTMENT BANK** ) )  
in the presence of: )

SIGNED by )  
 )  
for and on behalf of )  
HSBC Bank PLC )  
in the presence of: )

**JOINT MANDATED LEAD ARRANGERS**

SIGNED by )  
 )  
for and on behalf of )  
**BNP PARIBAS FORTIS S.A./N.V.** )  
in the presence of: )

SIGNED by )  
 )  
for and on behalf of )  
CASSA DEPOSITI E PRESTITI S.P.A. )  
in the presence of: )

SIGNED by )  
 )  
for and on behalf of )  
**CRÉDIT AGRICOLE CORPORATE** )  
**AND INVESTMENT BANK** )  
in the presence of: )

SIGNED by )  
 )  
for and on behalf of )  
**HSBC BANK PLC** )  
~~in the presence of:~~ )

---

**SIGNED** by )  
for and on behalf of )  
**CASSA DEPOSITI E PRESTITI S.P.A.** )  
in the presence of: )

**AGENT**

**SIGNED** by )  
for and on behalf of )  
**CRÉDIT AGRICOLE CORPORATE** )  
**AND INVESTMENT BANK** )  
in the presence of: )

**SACE AGENT**

**SIGNED** by )  
for and on behalf of )  
**CRÉDIT AGRICOLE CORPORATE** )  
**AND INVESTMENT BANK** )  
in the presence of: )

**SECURITY TRUSTEE**

**SIGNED** by )  
for and on behalf of )  
**CRÉDIT AGRICOLE CORPORATE** )  
**AND INVESTMENT BANK** )  
in the presence of: )

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## APPENDIX 2

### FORM OF AMENDED AND RESTATED GUARANTEE (MARKED TO INDICATE AMENDMENTS)

Amendments are indicated as follows:

- 1 additions are indicated by underlined text in blue; and
  - 2 deletions are shown by strike-through text in red.
-

Originally dated 12 April 2017  
(as previously amended from time to time, including by a supplemental agreement dated 4 June 2020 ~~and~~, as further amended and restated pursuant to an amendment and restatement agreement dated ~~\_\_\_\_\_ February 2021~~ 17 February 2021, as further amended by a supplemental agreement dated 23 December 2021, as further amended by a supplemental agreement dated 16 December 2022 and as further amended and restated by an amendment and restatement agreement dated \_\_\_\_\_ 2023)

**NCL CORPORATION LTD.**

as Guarantor

and

**CRÉDIT AGRICOLE CORPORATE AND INVESTMENT BANK**  
as Security Trustee

and

**NORWEGIAN CRUISE LINE HOLDINGS LTD.**  
as the Holding

**AMENDED AND RESTATED GUARANTEE**

relating to a facility agreement originally dated 12 April 2017 (as previously amended from time to time including as amended and restated by an amendment and restatement agreement dated 21 November 2017, as further amended by a supplemental agreement dated 4 June 2020, as further amended and restated by an amendment and restatement agreement dated 17 February 2021, as further amended and restated by an amendment and restatement agreement dated 17 June 2021, as further amended by a supplemental agreement dated 23 December 2021, as further amended by a supplemental agreement dated 16 December 2022 and as further amended and restated by an amendment and restatement agreement dated \_\_\_\_\_ ~~February 2021~~ 2023)

in respect of the part financing of the 3,300 passenger cruise ship newbuilding presently designated as Hull No. [\*] at Fincantieri S.p.A

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**THIS GUARANTEE** is originally made on 12 April 2017 (as amended from time to time, including by a supplemental agreement dated 4 June 2020, as further amended and restated by an amendment and restatement agreement dated 17 February 2021, as further amended by a supplemental agreement dated 23 December 2021, as further amended by a supplemental agreement dated 16 December 2022 and as further amended and restated by an amendment and restatement agreement dated \_\_\_\_ ~~February 2021~~2023)

#### **BETWEEN**

- (1) **NCL CORPORATION LTD.**, an exempted company incorporated under the laws of Bermuda with its registered office at Park Place ~~55, 55~~ Par-la-Ville Road, Hamilton HM 11, Bermuda (the "**Guarantor**")
- (2) **CRÉDIT AGRICOLE CORPORATE AND INVESTMENT BANK** a *société anonyme*, having a share capital of EUR 7,851,636,342.00 and its registered office located at 12, Place des États-Unis, CS70052 92547, Montrouge Cedex, France registered under the no. Siren: ~~304 187 701~~ at the Registre du Commerce et des Sociétés of Nanterre as security trustee on behalf of the Secured Parties (the "**Security Trustee**", which expression includes its successors, transferees and assigns)
- (3) **NORWEGIAN CRUISE LINE HOLDINGS LTD.**, a company incorporated under the laws of Bermuda with its registered office at Park Place ~~55, 55~~ Par-la-Ville Road, Hamilton HM 11, Bermuda (the "**Holding**")

#### **BACKGROUND**

- (A) By a shipbuilding contract dated 21 October 2016 (as amended from time to time including on 14 December 2016, 30 January 2017, 27 February 2017, 30 March 2017, 10 April 2017 and 21 November 2017) (the "**Shipbuilding Contract**") entered into between (i) Fincantieri S.p.A, a company incorporated in Italy with registered office in Trieste, via Genova, 1, and having fiscal code 00397130584 (the "**Builder**") and (ii) Leonardo Two, Ltd. (the "**Borrower**"), the Builder has agreed to design, construct and deliver, and the Borrower has agreed to purchase, a 3,300 passenger cruise ship currently having hull number [\*] as more particularly described in the Shipbuilding Contract to be delivered on ~~31 May~~ [\*] subject to any adjustments of such delivery date in accordance with the Shipbuilding Contract.
- (B) By a loan agreement dated 12 April 2017 (as amended from time to time, the "**Original Loan Agreement**") and made between (i) the Borrower, (ii) the Lenders, (iii) the Joint Mandated Lead Arrangers, (iv) the Agent and SACE Agent and (v) the Security Trustee, it was agreed that the Lenders would make available to the Borrower a loan facility of the Dollar Equivalent of up to six hundred and forty million Euros (€ 640,000,000.00) and the amount of the SACE Premium (but not exceeding eight hundred and sixty eight million, one hundred and eight thousand, one hundred and eight Dollars and eleven cents (\$868,108,108.11)) for the purpose of assisting the Borrower in financing (a) payment or reimbursement under the Shipbuilding Contract of all or part of 80% of the Final Contract Price up to the Eligible Amount and (b) reimbursement to the Borrower of 100% of the First Instalment of the SACE Premium paid by it to SACE and payment to SACE of 100% of the Second Instalment of the SACE Premium (as defined therein).
- (C) The execution and delivery to the Security Trustee of a guarantee by the Guarantor, which was executed on 12 April 2017 (the "**Original Guarantee**"), was one of the conditions precedent to the availability of the facility under the Original Loan Agreement.

- (D) By an amending and restating agreement dated 21 November 2017 (the "**2017 Amending and Restating Agreement**") entered into between the Borrower, the Lenders, the Agent and the Security Trustee, the Secured Parties agreed to amend the Original Loan Agreement and the other Finance Documents, including the Original Guarantee, to reflect the changes to the Shipbuilding Contract pursuant to the terms of the Sixth Addendum, provided that:
- (i) the Acceptable Deposit be held in an account opened by the Borrower with the Account Bank which shall be pledged in favour of the Lenders, the Joint Mandated Lead Arrangers, the Agent, the SACE Agent and the Security Trustee; and
  - (ii) the next instalment under the Shipbuilding Contract is covered by a Refund Guarantee.
- (E) Due to the unprecedented and extraordinary impacts of the Covid-19 pandemic on the cruise sector and cruise operators, SACE informed the cruise operators of its availability to evaluate certain measures (the "**Temporary Measures**") applicable in relation to certain qualifying loan agreements in order to assist companies which are financially sound but dealing with the impact of the temporary but unprecedented Covid-19 pandemic; the possibility to access to such measures was subject, amongst other things, to certain principles dated 15 April 2020 for cruise lines offered by SACE (the "**Original Principles**").
- (F) Pursuant to the consent request letter dated 18 April 2020, the Borrower and the Guarantor notified the Agent and the SACE Agent of their wish to benefit from the Temporary Measures in relation to certain loan agreements listed therein, including the Original Loan Agreement (as amended and restated by the 2017 Amending and Restating Agreement), and requested, amongst other things, the temporary suspension of certain covenants under the Original Guarantee and the addition of certain covenants under the Original Loan Agreement (as amended and restated by the 2017 Amending and Restating Agreement) for a period of one year from 1 April 2020 to 31 March 2021 (the "**First Borrower Request**").
- (G) On 25 May 2020, the Agent (for and on behalf of the Lenders) provided its consent to part of the First Borrower Request in accordance with and subject to certain conditions as set out in an amendment to the Original Loan Agreement (as amended and restated by the 2017 Amending and Restating Agreement) and to the Original Guarantee dated 4 June 2020 between, amongst others, the Borrower, the Agent and the SACE Agent (the "**2020 Amendment Agreement**") ~~(the Original Loan Agreement as amended pursuant to the 2017 Amending and Restating Agreement and the 2020 Amendment Agreement, the "**Amended Loan Agreement**").~~
- (H) Due to the continued impacts of the Covid-19 pandemic on the cruise sector and cruise operators, SACE confirmed on 31 December 2020 its availability to evaluate an extension of the Temporary Measures (the "**Extended Temporary Measures**"), again subject to certain principles dated 26 November 2020 for cruise lines offered by SACE (together with the Original Principles, the "**Principles**").
- (I) Pursuant to the consent request letter dated 3 December 2020, the Borrower and the Guarantor notified the Agent and the SACE Agent of their wish to benefit from the Extended Temporary Measures in relation to certain loan agreements listed therein, including the ~~Amended-Original~~ Loan Agreement (as amended and restated by the 2017 Amending and Restating Agreement and as further amended by the 2020 Amendment Agreement), and requested, amongst other things, the further temporary suspension of certain covenants under the Original Guarantee (as amended by the 2020 Amendment Agreement) and the addition of certain covenants under the ~~Amended-Original~~ Loan Agreement (as amended and

- restated by the 2017 Amending and Restating Agreement and as further amended by the 2020 Amendment Agreement) for a further period from 1 April 2021 to 31 December 2022 (the "**Second Borrower Request**").
- (J) On 25 January 2021, the Agent (for and on behalf of the Lenders) provided its consent to part of the Second Borrower Request in accordance with and subject to certain conditions as set out in an amendment and restatement agreement to the ~~Amended-Original~~ Loan Agreement (as amended and restated by the 2017 Amending and Restating Agreement and as further amended by the 2020 Amendment Agreement) and to the Original Guarantee (as amended pursuant to the 2020 Amendment Agreement, ~~the "Amended Guarantee"~~) dated ~~\_\_\_\_\_~~ 17 February 2021 between, amongst others, the Borrower, the Guarantor, the Agent and the SACE Agent (the "~~2021-February 2021~~ February 2021 Amendment and Restatement Agreement").
- (K) By an amending and restating agreement dated 17 June 2021 and made between, amongst others, the Borrower, the Agent and the SACE Agent (the "June 2021 Amendment and Restatement Agreement"), the Parties agreed to, *inter alia*, provide for an increase of the Facility for the purpose of (i) financing an amount to be applied towards payments relating to the Upsize Allowance, (ii) financing an amount to be applied towards the second instalment of the Additional SACE Premium and (iii) financing an amount to be applied towards the Tranche B Premium.
- (L) By a supplemental agreement dated 23 December 2021 and made between, amongst others, the Borrower, the Agent and the SACE Agent (the "December 2021 Amendment Agreement"), the Parties agreed to, *inter alia*, amend certain financial covenants and certain other provisions under the Original Loan Agreement (as amended and restated by the 2017 Amending and Restating Agreement, as amended by the 2020 Amendment Agreement, as amended and restated by the February 2021 Amendment and Restatement Agreement and as amended and restated by the June 2021 Amendment and Restatement Agreement) and the Original Guarantee (as amended by the 2020 Amendment Agreement and as amended and restated by the February 2021 Amendment and Restatement Agreement).
- (M) By a supplemental agreement dated 16 December 2022 and made between, amongst others, the Borrower, the Agent and the SACE Agent (the "December 2022 Amendment Agreement"), the Parties agreed to, *inter alia*, amend certain financial covenants and certain other provisions under the Original Loan Agreement (as amended and restated by the 2017 Amending and Restating Agreement, as amended by the 2020 Amendment Agreement, as amended and restated by the February 2021 Amendment and Restatement Agreement, as amended and restated by the June 2021 Amendment and Restatement Agreement and as amended by the December 2021 Amendment Agreement) and the Original Guarantee (as amended by the 2020 Amendment Agreement, as amended and restated by the February 2021 Amendment and Restatement Agreement and as amended by the December 2021 Amendment Agreement).
- (N) (+)The Parties have agreed to enter into an amendment and restatement agreement to the Original Loan Agreement (as amended and restated by the 2017 Amending and Restating Agreement, as amended by the 2020 Amendment Agreement, as amended and restated by the February 2021 Amendment and Restatement Agreement, as amended and restated by the June 2021 Amendment and Restatement Agreement, as amended by the December 2021 Amendment Agreement and as amended by the December 2022 ~~Amendment and Restatement Agreement~~ and the Amended Loan Agreement as amended and restated by the ~~2021~~ Amendment and Restatement Agreement, the "~~Loan Agreement~~)-~~Amendment Agreement~~, the "Amended Loan Agreement") and to the Original Guarantee (as amended by the 2020 Amendment Agreement, as amended and restated by the February 2021

Amendment and Restatement Agreement, as amended by the December 2021 Amendment Agreement and as amended by the December 2022 Amendment Agreement, the "Amended Guarantee" dated 2023 to, *inter alia*, incorporate certain amendments including the switch from LIBOR to SOFR (as defined therein) (the "2023 Amendment and Restatement Agreement" and the Amended Loan Agreement as amended and restated by the 2023 Amendment and Restatement Agreement, the "Loan Agreement").

(O) ~~(K)~~ This Guarantee sets out the terms and conditions of the Amended Guarantee as amended and restated by the ~~2021~~2023 Amendment and Restatement Agreement.

## OPERATIVE PROVISIONS

### 1 INTERPRETATION

#### 1.1 Defined expressions

Words and expressions defined in the Loan Agreement shall have the same meanings when used in this Guarantee unless the context otherwise requires.

#### 1.2 Construction of certain terms

In this Guarantee:

**"Bankruptcy"** includes a liquidation, receivership or administration and any form of suspension of payments, arrangement with creditors or reorganisation under any corporate or insolvency law of any country.

**"Capital Stock"** means:

- (a) in the case of a corporation or company, corporate stock or shares;
- (b) in the case of an association or business entity, any and all shares, interests, participations, rights or other equivalents (however designated) of corporate stock;
- (c) in the case of a partnership or limited liability company, partnership or membership interests (whether general or limited); and
- (d) any other interest or participation that confers on a person the right to receive a share of the profits and losses of, or distributions of assets of, the issuing person.

**"First Financial Quarter"** means the financial quarter ending immediately prior to or on the date falling forty five (45) days before the first Drawdown Date.

**"Loan Agreement"** has the meaning given to such term in Recital ~~(K)~~(N).

~~**"Management"** means the employees of the Guarantor and its subsidiaries or their dependants or any trust for which such persons are the intended beneficiary.~~

**"Shareholder"** means NCL International Ltd., a Bermuda company with its registered office at Park Place ~~55~~, 55 Par-la-Ville Road, Hamilton HM 11, Bermuda.

### **1.3 Application of construction and interpretation provisions of Loan Agreement**

Clauses 1.2 (*Construction of certain terms*) to 1.6 (*General Interpretation*) of the Loan Agreement apply, with any necessary modifications, to this Guarantee.

### **1.4 Inconsistency between Loan Agreement and this Guarantee**

This Guarantee shall be read together with the Loan Agreement, but in case of any conflict between the Loan Agreement and this Guarantee, unless expressly provided to the contrary in this Guarantee, the provisions of the Loan Agreement shall prevail.

### **1.5 Non-applicable provisions between the Guarantor and German Lenders**

The Guarantor acknowledges and agrees that to the extent required for compliance with Section 7 of the Foreign Commerce Regulation (*Außenwirtschaftsverordnung*) (the "Foreign Commerce Regulation") and any other anti-boycott legislation, in connection with section 4 paragraph (1)(a)(3) of the Foreign Trade Law (*Außenwirtschaftsgesetz*) by any Lender incorporated or having its registered office or Facility Office in the Federal Republic of Germany (a "**German Lender**"), the Guarantor does not make (a) any representation under Clause 10.12 (*Sanctions*) or (b) any undertakings under any of Clause 11.19 (*Illicit Payments*), Clause 11.23 (*Prohibited Payments*), and Clause 11.24 (*Sanctions*) of this Guarantee, to or in favour of any German Lender.

## **2 GUARANTEE**

### **2.1 Guarantee and indemnity**

The Guarantor unconditionally and irrevocably:

- (a) guarantees to the Security Trustee punctual performance by the Borrower of all the Borrower's obligations under or in connection with the Loan Agreement and every other Finance Document;
- (b) undertakes to the Security Trustee that whenever the Borrower does not pay any amount when due under or in connection with the Loan Agreement and the other Finance Documents, the Guarantor shall immediately on demand pay that amount as if it was the principal obligor;
- (c) agrees that if any obligation guaranteed by it is or becomes unenforceable, invalid or illegal, it will, as an independent and primary obligation, indemnify the Security Trustee and each other Secured Party immediately on demand by the Security Trustee against any cost, loss or liability it incurs as a result of the Borrower not paying any amount which would, but for such unenforceability, invalidity or illegality, have been payable by it under the Loan Agreement or any other Finance Document on the date when it would have been due. Any such demand for indemnification shall be made through the Security Trustee, for itself or on behalf of the Secured Parties. The amount payable by the Guarantor under this indemnity will not exceed the amount it would have had to pay under this Clause 2.1 (*Guarantee and indemnity*) if the amount claimed had been recoverable on the basis of a guarantee.

### **2.2 No limit on number of demands**

The Security Trustee may serve any number of demands under Clause 2.1 (*Guarantee and indemnity*).

### **3 LIABILITY AS PRINCIPAL AND INDEPENDENT DEBTOR**

#### **3.1 Principal and independent debtor**

The Guarantor shall be liable under this Guarantee as a principal and independent debtor and accordingly it shall not have, as regards this Guarantee, any of the rights or defences of a surety.

#### **3.2 Waiver of rights and defences**

Without limiting the generality of Clause 3.1 (*Principal and independent debtor*), the obligations of the Guarantor under this Guarantee will not be affected or discharged by an act, omission, matter or thing which, but for this Clause, would reduce, release or prejudice any of its obligations under this Guarantee (without limitation and whether or not known to it or any Secured Party) including:

- (a) any time, waiver or consent granted to, or composition with, the Borrower or other person;
- (b) the release of the Borrower or any other person under the terms of any composition or arrangement with any creditor of any affiliate of the Borrower;
- (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, the Borrower or other person or any non-presentation or non-observance of any formality or other requirement in respect of any instrument or any failure to realise the full value of any security;
- (d) any incapacity or lack of power, authority or legal personality of or dissolution or change in the members or status of the Borrower or any other person;
- (e) any amendment, novation, supplement, extension, restatement (however fundamental and whether or not more onerous) or replacement of any Finance Document or any other document or security including without limitation any change in the purpose of, any extension of or any increase in any facility or the addition of any new facility under any Finance Document or other document or security;
- (f) any insolvency or similar proceedings;
- (g) any arrangement or concession (including a rescheduling or acceptance of partial payments) relating to, or affecting, the Finance Documents;
- (h) any release or loss whatsoever of any guarantee, right or Security Interest created by the Finance Documents;
- (i) any failure whatsoever promptly or properly to exercise or enforce any such right or Security Interest, including a failure to realise for its full market value an asset covered by such a Security Interest;
- (j) any other Finance Document or any Security Interest now being or later becoming void, unenforceable, illegal or invalid or otherwise defective for any reason, including a neglect to register it; or

- (k) any unenforceability, illegality or invalidity of any obligation of any person under any Finance Document or any other document or security.

#### **4 EXPENSES**

##### **4.1 Costs of preservation of rights, enforcement etc**

The Guarantor shall pay to the Security Trustee on its demand the amount of all expenses incurred by the Security Trustee or any other Secured Party in connection with any matter arising out of this Guarantee or any Security Interest connected with it, including any advice, claim or proceedings relating to this Guarantee or such a Security Interest.

##### **4.2 Fees and expenses payable under Loan Agreement**

Clause 4.1 (*Costs of preservation of rights, enforcement etc*) is without prejudice to the Guarantor's liabilities in respect of the Borrower's obligations under clauses 9 (*Fees*) and 10 (*Taxes, Increased Costs, Costs and Related Charges*) of the Loan Agreement and under similar provisions of other Finance Documents.

#### **5 ADJUSTMENT OF TRANSACTIONS**

##### **5.1 Reinstatement of obligation to pay**

The Guarantor shall pay to the Security Trustee on its demand any amount which any Secured Party is required, or agrees, to pay pursuant to any claim by, or settlement with, a trustee in **bankruptcy** [Bankruptcy](#) of the Borrower or of any other Obligor (or similar person) on the ground that the Loan Agreement or any other Finance Document, or a payment by the Borrower or of such other Obligor, was invalid or on any similar ground.

#### **6 PAYMENTS**

##### **6.1 Method of payments**

Any amount due under this Guarantee shall be paid:

- (a) in immediately available funds;
- (b) to such account as the Security Trustee may from time to time notify to the Guarantor;
- (c) without any form of set-off, cross-claim or condition; and
- (d) free and clear of any tax deduction except a tax deduction which the Guarantor is required by law to make.

##### **6.2 Grossing-up for taxes**

If the Guarantor is required by law to make a tax deduction, the amount due to the Security Trustee shall be increased by the amount necessary to ensure that the Security Trustee and (if the payment is not due to the Security Trustee for its own account) the Secured Party beneficially interested in the payment receives and retains a net amount which, after the tax deduction, is equal to the full amount that it would otherwise have received.



### **6.3 Tax Credits**

If an additional payment is made by the Guarantor under this Clause and any Secured Party determines that it has received or been granted a credit against or relief of or calculated with reference to the deduction giving rise to such additional payment, such Secured Party shall, to the extent that it can do so without prejudice to the retention of the amount of such credit, relief, remission or repayment and provided that it has received the cash benefit of such credit, relief or remission, pay to the Guarantor such amount as such Secured Party shall in its reasonable opinion have concluded to be attributable to the relevant deduction. Any such payment shall be conclusive evidence of the amount due to the Guarantor hereunder and shall be accepted by the Guarantor in full and final settlement of its rights of reimbursement hereunder in respect of such deduction. Nothing herein contained shall interfere with the right of each Secured Party to arrange its tax affairs in whatever manner it thinks fit.

- 6.4** To the extent that this Clause 6 (*Payments*) imposes obligations or restrictions on a Secured Party, such obligations or restrictions shall not apply to SACE and SACE shall have no obligations hereunder nor be constrained by such restrictions.

## **7 INTEREST**

### **7.1 Accrual of interest**

Any amount due under this Guarantee shall carry interest after the date on which the Security Trustee demands payment of it until it is actually paid, unless interest on that same amount also accrues under the Loan Agreement.

### **7.2 Calculation of interest**

Interest on sums payable under this Guarantee shall be calculated and accrue in the same way as interest under clause 6 (*Interest*) of the Loan Agreement.

### **7.3 Guarantee extends to interest payable under Loan Agreement**

For the avoidance of doubt, it is confirmed that this Guarantee covers all interest payable under the Loan Agreement, including that payable under clause 17 (*Interest on Late Payments*) of the Loan Agreement.

## **8 SUBORDINATION**

### **8.1 Subordination of rights of Guarantor**

Until all amounts which may be or become payable by the Obligors under or in connection with the Finance Documents have been irrevocably paid in full and unless the Agent otherwise directs, all rights which the Guarantor at any time has (whether in respect of this Guarantee or any other transaction) against the Borrower, any other Obligor or their respective assets shall be fully subordinated to the rights of the Secured Parties under the Finance Documents; and in particular, the Guarantor shall not:

- (a) claim, or in a ~~bankruptcy~~ Bankruptcy of the Borrower or any other Obligor prove for, any amount payable to the Guarantor by the Borrower or any other Obligor, whether in respect of this Guarantee or any other transaction;
- (b) take or enforce any Security Interest for any such amount;

- (c) exercise any right to be indemnified by an Obligor;
- (d) bring legal or other proceedings for an order requiring the Borrower or any other Obligor to make any payment, or perform any obligation, in respect of which ~~any~~ the Guarantor has given a guarantee, undertaking or indemnity under this Guarantee;
- (e) claim to set-off any such amount against any amount payable by the Guarantor to the Borrower or any other Obligor; or
- (f) claim any subrogation or right of contribution or other right in respect of any Finance Document or any sum received or recovered by any Secured Party under a Finance Document.

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 Secured Parties by the Obligors under or in connection with the Finance Documents to be repaid in full on trust for the Secured Parties and shall promptly pay or transfer the same to the Security Trustee or as the Security Trustee may direct for application in accordance with the Loan Agreement and the Finance Documents.

## **9 ENFORCEMENT**

### **9.1 No requirement to commence proceedings against Borrower**

The Guarantor waives any right it may have of first requiring the Security Trustee or any other Secured Party to proceed against or enforce any other rights or security or claim payment from any person before claiming from ~~that~~ the Guarantor under this Guarantee. Neither the Security Trustee nor any other Secured Party will need to make any demand under, commence any proceedings under, or enforce any guarantee or any Security Interest contained in or created by, the Loan Agreement or any other Finance Document before claiming or commencing proceedings under this Guarantee. This waiver applies irrespective of any law or any provision of a Finance Document to the contrary.

### **9.2 Conclusive evidence of certain matters**

However, as against the Guarantor:

- (a) any judgment or order of a court in England or the jurisdiction of the Approved Flag or Bermuda or the United States of America in connection with the Loan Agreement; and
  - (b) any statement or admission by the Borrower in connection with the Loan Agreement,
- shall be binding and conclusive as to all matters of fact and law to which it relates.

### **9.3 Suspense account**

Until all amounts which may be or become payable by the Obligors under or in connection with the Finance Documents have been irrevocably paid in full, the Security Trustee and any Secured Party may:

- (a) refrain from applying or enforcing any other moneys, security or rights held or received by it (or any trustee or agent on its behalf which, in the case of a Secured Party, shall include the Agent and the Security Trustee) 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 ~~any~~the Guarantor or on account of ~~any~~the Guarantor's liability under this Guarantee.

## **10 REPRESENTATIONS AND WARRANTIES**

### **10.1 General**

The Guarantor represents and warrants to the Security Trustee as follows on the date of this Guarantee, which representations and warranties shall be deemed to be repeated, with reference mutatis mutandis to the facts and circumstances subsisting, as if made on each day from the date of this Guarantee to the end of the Security Period.

### **10.2 Status**

The Guarantor is duly incorporated and validly existing and in good standing under the laws of Bermuda as an exempted company.

### **10.3 Corporate power**

The Guarantor has the corporate capacity, and has taken all corporate action and obtained all consents necessary for it:

- (a) to execute this Guarantee; and
- (b) to make all the payments contemplated by, and to comply with, this Guarantee.

### **10.4 Consents in force**

All the consents referred to in Clause 10.3 (*Corporate power*) remain in force and nothing has occurred which makes any of them liable to revocation.

### **10.5 Legal validity**

This Guarantee constitutes the Guarantor's legal, valid and binding obligations enforceable against the Guarantor in accordance with its terms subject to any relevant insolvency laws affecting creditors' rights generally.

### **10.6 No conflicts**

The execution by the Guarantor of this Guarantee and its compliance with this Guarantee will not involve or lead to a contravention of:

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

**10.7 No withholding taxes**

All payments which the Guarantor is liable to make under this Guarantee may be made without deduction or withholding for or on account of any tax payable under any law of Bermuda or the United States of America.

**10.8 No default**

To the knowledge of the Guarantor, no Event of Default has occurred which is continuing.

**10.9 Information**

All information which has been provided in writing by or on behalf of the Guarantor to the Security Trustee or any other Secured Party in connection with any Finance Document satisfied the requirements of Clause 11.2 (*Information provided to be accurate*); all audited and unaudited accounts which have been so provided satisfied the requirements of Clause 11.4 (*Form of financial statements*); and there has been no material adverse change in the financial position or state of affairs of the Guarantor from that disclosed in the latest of those accounts.

**10.10 No litigation**

No legal or administrative action involving the Guarantor has been commenced or taken or, to the Guarantor's knowledge, is likely to be commenced or taken which, in either case, would be likely to have a material adverse effect on the Guarantor's financial position or profitability.

**10.11 No Security Interests**

None of the assets or rights of the Guarantor is subject to any Security Interest except any Security Interest which (i) qualifies as a Permitted Security Interest with respect to the Guarantor or (ii) is permitted by Clause 11.11 (*Negative pledge*).

**10.12 Sanctions**

- (a) No payments made or to be made by the Guarantor in respect of amounts due under the Loan Agreement or any Finance Document have been or shall be funded out of funds of Illicit Origin and none of the sources of funds to be used by the Guarantor in connection with the construction of the Ship or its business are of Illicit Origin.
- (b) To the best of the Guarantor's knowledge, no Prohibited Payment has been or will be made or provided, directly or indirectly, by (or on behalf of) it, any of its affiliates, its or its officers, directors or any other person acting on its behalf to, or for the benefit of, any authority (or any official, officer, director, agent or key employee of, or other person with management responsibilities in, of any authority) in connection with the Ship, the Loan Agreement and/or the Finance Documents.
- (c) The Guarantor:
  - (i) is not a Prohibited Person;
  - (ii) is not owned or controlled by or acting directly or indirectly on behalf of or for the benefit of, a Prohibited Person; or
  - (iii) does not own or control a Prohibited Person.

## 11 UNDERTAKINGS

### 11.1 General

The Guarantor undertakes with the Security Trustee to comply with the following provisions of this Clause 11 (*Undertakings*) at all times from the date of this Guarantee to the end of the Security Period, except as the Security Trustee may otherwise permit.

### 11.2 Information provided to be accurate

All financial and other information which is provided in writing by or on behalf of the Guarantor under or in connection with this Guarantee will be true and not misleading and will not omit any material fact or consideration.

### 11.3 Provision of financial statements

The Guarantor will send to the Security Trustee:

- (a) as soon as practicable, but in no event later than 120 days after the end of each financial year of the Guarantor beginning with the year ending 31 December 2016, the audited consolidated accounts of the Guarantor and its subsidiaries;
- (b) as soon as practicable (and in any event within forty-five (45) days of the end of the contemplated quarter in respect of the first three quarters of each fiscal year and 90 days in respect of the final quarter) a copy of the unaudited consolidated quarterly management accounts of the Guarantor certified as to their correctness by the chief financial officer of the Guarantor (it being understood that the delivery by the Guarantor of quarterly or annual reports as filed with the Securities and Exchange Commission in respect of the Guarantor and its consolidated subsidiaries shall satisfy all the requirements of this paragraph (b));
- (c) a compliance certificate in the form set out in Schedule 1 (*Form of Compliance Certificate*) to this Guarantee or in such other form as the Security Trustee may reasonably require (each a "**Compliance Certificate**"):
  - (i) for the first time, no later than the First Financial Quarter on the basis of the latest available quarterly financial statements, and
  - (ii) at the same time as there is delivered to the Security Trustee, and together with, each set of unaudited consolidated quarterly management accounts under paragraph (b) and, if applicable, audited consolidated accounts under paragraph (a), duly signed by the chief financial officer of the Guarantor and certifying whether or not the requirements of Clause 11.15 (*Financial Covenants*) are then complied with;
- (d) such additional financial or other relevant information regarding the Guarantor and the Group as the Security Trustee may reasonably request; and
- (e) as soon as practicable (and in any event not later than January 31 of each fiscal year):
  - (i) updated financial projections of the Group for at least the next five years (including an income statement, balance sheet statement and cash flow statement and quarterly break downs for the first of those five years); and

- (ii) an outline of the assumptions supporting such budget and financial projections including but without limitation any scheduled drydockings.
- (f) **Additional financial reporting**

In addition to the information to be provided in accordance with clause 12.2 (*Information*) of the Loan Agreement and this Clause 11.3 (*Provision of financial statements*), the Guarantor undertakes to provide to the Agent a written report (in form and substance satisfactory to SACE) from the 2021 Deferral Effective Date ~~until the end of the Deferral Period~~, covering the information requested in the document entitled "Regular Monitoring Requirements", the form of which is included in Schedule 2 (*Regular Monitoring Requirements*), within the timelines specified therein.
- (g) For the avoidance of doubt, subject to the provisions of the Loan Agreement, paragraph (h) below and Clause 11.21 (*Breach of new covenants or the Principles*), the financial covenants contained in Clause 11.15 (*Financial Covenants*) will continue to be tested and the reporting obligations shall continue to apply in accordance with this Clause 11.3 (*Provision of financial statements*) in respect of the Deferral Period.
- (h) Any breach of any financial covenant contained in paragraphs (b) and (c) of Clause 11.15 (*Financial Covenants*) arising on a testing date during the Deferral Period, by reference to the financial position of the Group (on a consolidated basis), shall not (without prejudice to the rights of the Lenders in respect of any further breach of such financial covenants that may occur following the expiry of the Deferral Period (including, without limitation, the ability to terminate the waiver of the financial covenants granted pursuant to paragraphs (b) and (c) of Clause 11.15 (*Financial Covenants*) having occurred), and subject further to no Event of Default under clauses 18.7 (*Winding-up*) to clause 18.13 (*Cessation of business*) (inclusive) of the Loan Agreement having occurred and being continuing), result in an Event of Default.

#### **11.4 Form of financial statements**

All accounts (audited and unaudited) delivered under Clause 11.3 (*Provision of financial statements*) will:

- (a) be prepared in accordance with GAAP;
- (b) when required to be audited, be audited by the auditors which are the Guarantor's auditors at the date of this Guarantee or other auditors approved by the Security Trustee, provided that, such approval by the Security Trustee shall not be unreasonably withheld or delayed;
- (c) give a true and fair view of the state of affairs of the Guarantor and its subsidiaries at the date of those accounts and of their profit for the period to which those accounts relate; and
- (d) fully disclose or provide for all significant liabilities of the Guarantor and its subsidiaries.

#### **11.5 Shareholder and creditor notices**

The Guarantor will send the Security Trustee, at the same time as they are despatched, copies of all communications which are despatched to the Guarantor's shareholders or creditors generally or any class of them.

## **11.6 Consents**

The Guarantor will maintain in force and promptly obtain or renew, and will promptly send certified copies to the Security Trustee of, all consents required:

- (a) for the Guarantor to perform its obligations under this Guarantee;
  - (b) for the validity or enforceability of this Guarantee,
- and the Guarantor will comply with the terms of all such consents.

## **11.7 Notification of litigation**

The Guarantor will provide the Security Trustee with details of any material legal or administrative action involving the Guarantor as soon as such action is instituted or it becomes apparent to the Guarantor that it is likely to be instituted (and for this purpose proceedings shall be deemed to be material if they involve a claim in an amount exceeding twenty million Dollars (\$20,000,000) or the equivalent in another currency).

## **11.8 Domicile and principal place of business**

The Guarantor:

- (a) will maintain its domicile and registered office at the address stated at the commencement of this Guarantee or at such other address in Bermuda as is notified beforehand to the Security Trustee;
- (b) will maintain its principal place of business and keep its corporate documents and records in the United States of America at 7665 Corporate Center Drive, Miami, 33126, Florida or at such other address in the United States of America as is notified beforehand to the Security Trustee; and
- (c) will not move its domicile out of Bermuda nor its principal place of business out of the United States of America without the prior agreement of the Security Trustee, acting with the authorisation of the Secured Parties, such agreement not to be unreasonably withheld.

## **11.9 Notification of default**

The Guarantor will notify the Security Trustee as soon as the Guarantor becomes aware of the occurrence of an Event of Default and will thereafter keep the Security Trustee fully up-to-date with all developments.

## **11.10 Maintenance of status**

The Guarantor will maintain its separate corporate existence and remain in good standing under the laws of Bermuda.

## **11.11 Negative pledge**

The Guarantor shall not, and shall procure that the Borrower will not, create or permit to arise any Security Interest over any asset present or future except Security Interests created or permitted by the Finance Documents and except for the following:

- (a) Security Interests created with the prior consent of the Security Trustee or otherwise permitted by the Finance Documents;
- (b) in the case of the Guarantor, Security Interests which qualify as Permitted Security Interests with respect to the Guarantor;
- (c) in the case of the Borrower, Security Interests permitted under clause 12.8 (*Negative pledge*) of the Loan Agreement;
- (d) Security Interests provided in favour of lenders under and in connection with any refinancing of the Existing Indebtedness or any financing arrangements entered into by any member of the Group for the acquisition of additional or replacement ship(s) (including any refinancing of any such arrangement) but limited to:
  - (i) pledges of the share capital of the relevant ship owning subsidiary(/ies); and/or
  - (ii) ship mortgages and other securities over the financed ship(s).

**11.12 No disposal of assets, change of business**

The Guarantor will:

- (a) not, and shall procure that its subsidiaries, as a group, shall not, transfer all or substantially all of the cruise vessels owned by them and shall procure that any cruise vessels which are disposed of in compliance with the foregoing shall be disposed on a willing seller willing buyer basis at or about market rate and at arm's length subject always to the provisions of any pertinent loan documentation, and
- (b) continue to be a holding company for a group of companies whose main business is the operation of cruise vessels as well as the marketing of cruises on board such vessels and the Guarantor will not change its main line of business so as to affect any Obligor's ability to perform its obligations under the Finance Documents or to imperil, in the opinion of the Security Trustee, the security created by any of the Finance Documents or the SACE Insurance Policy.

**11.13 No merger etc**

The Guarantor shall not enter into any form of merger, sub-division, amalgamation, restructuring, consolidation, winding-up, dissolution or anything analogous thereto or acquire any entity, share capital or obligations of any corporation or other entity (each of the foregoing being a "**Transaction**") unless:

- (a) the Guarantor has notified the Security Trustee in writing of the agreed terms of the relevant Transaction promptly after such terms have been agreed as heads of terms (or similar) and thereafter notified the Security Trustee in writing of any significant amendments to such terms during the course of the negotiation of the relevant Transaction; and
- (b) the relevant Transaction does not require or involve or result in any dissolution of the Guarantor so that at all times the Guarantor remains in existence; and
- (c) each notice delivered to the Security Trustee pursuant to paragraph (a) above is accompanied by a certificate signed by the chief financial officer of the Guarantor whereby the Guarantor represents and warrants to the Security Trustee that the relevant Transaction will not:



- (i) adversely affect the ability of any Obligor to perform its obligations under the Finance Documents;
  - (ii) imperil the security created by any of the Finance Documents or the SACE Insurance Policy; or
  - (iii) affect the ability of the Guarantor to comply with the financial covenants contained in Clause 11.15 (*Financial Covenants*); and
- (d) if the merger or analogous transaction involves the Guarantor or the Borrower, all the necessary "Know your customer requirements" have been complied with.

**11.14 Maintenance of ownership of Borrower and Shareholder**

- (a) The Guarantor shall remain the direct or indirect beneficial owner of the entire issued and allotted share capital of the Shareholder, free from any Security Interest and the Shareholder shall remain the legal holder and direct beneficial owner of all shares in the Borrower, free from any Security Interest, except that created in favour of the Security Trustee; or
- (b) no person or "group" (within the meaning of Rules 13d-3 and 13d-5 under the Securities Exchange Act of 1934 (15 USC §78a et seq.) (the "**Exchange Act**") as in effect on the date of this Guarantee) shall acquire beneficial ownership of 35% or more on a fully diluted basis of the voting interest in the Guarantor's equity interests.

**11.15 Financial Covenants**

- (a) The Guarantor will not permit the Free Liquidity to be less than fifty million Dollars (\$50,000,000) at any time, save that ~~during the Deferral Period until 30 September 2026~~, this amount shall be increased to two hundred ~~and fifty~~ million Dollars (~~\$200,000,000~~\$250,000,000).
- (b) The Guarantor will not permit the ratio of Total Net Funded Debt to Total Capitalization to be greater than 0.70:1.00 at any time, save that from 1 January 2023 until 30 September 2026, this ratio shall be computed in accordance with the table below.
- (c) The Guarantor will not permit the ratio of Consolidated EBITDA to Consolidated Debt Service for the Group at the end of any fiscal quarter, computed for the period of the four consecutive fiscal quarters ending as at the end of the relevant fiscal quarter, to be less than 1.25:1.00 unless the Free Liquidity of the Group at all times during such period of four consecutive fiscal quarters ending as at the end of such fiscal quarter was equal to or greater than one hundred million Dollars (\$100,000,000), save that from 1 January 2023 until 30 September 2026, this amount shall be increased to three hundred million Dollars (\$300,000,000).

	<u>1Q</u> <u>2023</u>	<u>2Q</u> <u>2023</u>	<u>3Q</u> <u>2023</u>	<u>4Q</u> <u>2023</u>	<u>1Q</u> <u>2024</u>	<u>2Q</u> <u>2024</u>	<u>3Q</u> <u>2024</u>	<u>4Q</u> <u>2024</u>	<u>1Q</u> <u>2025</u>	<u>2Q</u> <u>2025</u>	<u>3Q</u> <u>2025</u>	<u>4Q</u> <u>2025</u>	<u>1Q</u> <u>2026</u>	<u>2Q</u> <u>2026</u>	<u>3Q</u> <u>2026</u>
<u>Total Net Funded Debt to Total Capitalization</u>	<u>0.93</u>	<u>0.92</u>	<u>0.91</u>	<u>0.91</u>	<u>0.91</u>	<u>0.90</u>	<u>0.88</u>	<u>0.87</u>	<u>0.87</u>	<u>0.85</u>	<u>0.82</u>	<u>0.79</u>	<u>0.79</u>	<u>0.76</u>	<u>0.73</u>

## 11.16 Financial definitions

For the purposes of Clause 11.15 (*Financial Covenants*):

- (a) "**Cash Balance**" shall mean, at any date of determination, the unencumbered and otherwise unrestricted cash and Cash Equivalents of the Group;
- (b) "**Cash Equivalents**" shall mean (i) securities issued or directly and fully guaranteed or insured by the United States or any agency or instrumentality thereof (provided that the full faith and credit of the United States is pledged in support thereof) having maturities of not more than one year from the date of acquisition, (ii) time deposits and certificates of deposit of any commercial bank having, or which is the principal banking subsidiary of a bank holding company having capital, surplus and undivided profits aggregating in excess of two hundred million Dollars (\$200,000,000), with maturities of not more than one year from the date of acquisition by any person, (iii) repurchase obligations with a term of not more than 90 days for underlying securities of the types described in clause (i) above entered into with any bank meeting the qualifications specified in clause (ii) above, (iv) commercial paper issued by any person incorporated in the United States rated at least A-1 or the equivalent thereof by S&P or at least B-1 or the equivalent thereof by Moody's and in each case maturing not more than one year after the date of acquisition by any other person, and (v) investments in money market funds substantially all of whose assets are comprised of securities of the types described in clauses (i) through (iv) above;
- (c) "**Consolidated Debt Service**" shall mean, for any relevant period, the sum (without double counting), determined in accordance with GAAP, of:
  - (i) the aggregate principal payable or paid during such period on any Indebtedness for Borrowed Money of any member of the Group, other than:
    - (A) principal of any such Indebtedness for Borrowed Money prepaid at the option of the relevant member of the Group or by virtue of "cash sweep" or "special liquidity" cash sweep provisions (or analogous provisions) in any debt facility of the Group;
    - (B) principal of any such Indebtedness for Borrowed Money prepaid upon a sale or a Total Loss of any ship (as if references in that definition were to all ships and not just the Ship) owned or leased under a capital lease by any member of the Group; and
    - (C) balloon payments of any such Indebtedness for Borrowed Money payable during such period (and for the purpose of this paragraph (c) a "balloon payment" shall not include any scheduled repayment instalment of such Indebtedness for Borrowed Money which forms part of the balloon);
  - (ii) Consolidated Interest Expense for such period;
  - (iii) the aggregate amount of any dividend or distribution of present or future assets, undertakings, rights or revenues to any shareholder of any member of the Group (other than the Guarantor, or one of its wholly owned Subsidiaries) or any dividends or distributions other than tax distributions in each case paid during such period; and

- (iv) all rent under any capital lease obligations by which the Guarantor or any consolidated Subsidiary is bound which are payable or paid during such period and the portion of any debt discount that must be amortized in such period;

as calculated in accordance with GAAP and derived from the then latest accounts delivered under Clause 11.3 (*Provision of financial statements*);

- (d) "**Consolidated EBITDA**" shall mean, for any relevant period, the aggregate of:
  - (i) Consolidated Net Income from the Guarantor's operations for such period; and
  - (ii) the aggregate amounts deducted in determining Consolidated Net Income for such period in respect of gains and losses from the sale of assets or reserves relating thereto, Consolidated Interest Expense, depreciation and amortization, impairment charges and any other non-cash charges and deferred income tax expense for such period.
- (e) "**Consolidated Interest Expense**" shall mean, for any relevant period, the consolidated interest expense (excluding capitalized interest) of the Group for such period;
- (f) "**Consolidated Net Income**" shall mean, for any relevant period, the consolidated net income (or loss) of the Group for such period as determined in accordance with GAAP;
- (g) "**Free Liquidity**" shall mean, at any date of determination, the aggregate of the Cash Balance or any other amounts available for drawing under other revolving or other credit facilities of the Group, which remain undrawn, could be drawn for general working capital purposes or other general corporate purposes and would not, if drawn, be repayable within six months;
- (h) "**Indebtedness**" shall mean any obligation for the payment or repayment of money, whether as principal or as surety and whether present or future, actual or contingent including, without limitation, pursuant to an Interest Rate Protection Agreement or Other Hedging Agreement;
- (i) "**Indebtedness for Borrowed Money**" shall mean Indebtedness (whether present or future, actual or contingent, long-term or short-term, secured or unsecured) in respect of:
  - (i) moneys borrowed or raised;
  - (ii) the advance or extension of credit (including interest and other charges on or in respect of any of the foregoing);
  - (iii) the amount of any liability in respect of leases which, in accordance with GAAP, are capital leases;
  - (iv) the amount of any liability in respect of the purchase price for assets or services payment of which is deferred for a period in excess of 180 days;
  - (v) all reimbursement obligations whether contingent or not in respect of amounts paid under a letter of credit or similar instrument; and
  - (vi) (without double counting) any guarantee of Indebtedness falling within paragraphs (i) to (v) above;

**PROVIDED THAT** the following shall not constitute Indebtedness for Borrowed Money:

- (A) loans and advances made by other members of the Group which are subordinated to the rights of the Secured Parties;
  - (B) loans and advances made by any shareholder of the Guarantor which are subordinated to the rights of the Secured Parties on terms reasonably satisfactory to the Agent; and
  - (C) any liabilities of the Guarantor or any other member of the Group under any Interest Rate Protection Agreement or any Other Hedging Agreement or other derivative transactions of a non-speculative nature;
- (j) **"Interest Rate Protection Agreement"** shall mean any interest rate swap agreement, interest rate cap agreement, interest collar agreement, interest rate hedging agreement, interest rate floor agreement or other similar agreement or arrangement entered into between a Lender or its Affiliate, or a Joint Mandated Lead Arranger or its Affiliate, and the Guarantor and/or the Borrower in relation to the Secured Liabilities of the Borrower under the Loan Agreement;
- (k) **"Other Hedging Agreement"** shall mean any foreign exchange contracts, currency swap agreements, commodity agreements or other similar agreements or arrangements entered into between a Lender or its Affiliate, or a Joint Mandated Lead Arranger or its Affiliates, and the Guarantor and/or the Borrower in relation to the Secured Liabilities of the Borrower under the Loan Agreement and designed to protect against the fluctuations in currency or commodity values;
- (l) **"Total Capitalization"** means, at any date of determination, the Total Net Funded Debt plus the consolidated stockholders' equity of the Group at such date determined in accordance with GAAP and derived from the then latest accounts delivered under Clause 11.3 (*Provision of financial statements*); provided it is understood that the effect of any impairment of intangible assets and, in relation to exchangeable or convertible notes or other debt instruments containing similar equity mechanisms, any non-cash loss, charge or expense shall be added back to stockholders' equity;~~and~~
- (m) **"Total Net Funded Debt"** shall mean, as at any relevant date:
- (i) Indebtedness for Borrowed Money of the Group on a consolidated basis; and
  - (ii) the amount of any Indebtedness for Borrowed Money of any person which is not a member of the Group but which is guaranteed by a member of the Group as at such date;
- less an amount equal to any Cash Balance as at such date; provided that any Commitments and other amounts available for drawing under other revolving or other credit facilities of the Group which remain undrawn shall not be counted as cash or indebtedness for the purposes of this Guarantee.

#### 11.17 Negative Undertakings

- (a) The Guarantor may, subject to the provisions of paragraph (c) below:
- (i) at any time prior to the end of the First Financial Quarter, declare or pay dividends or make other distributions or payment in respect of Financial Indebtedness owed to its shareholders without the prior written consent of the Security Trustee;

- (ii) at any time after the end of the First Financial Quarter, declare or pay dividends or make other distributions or payment in respect of Financial Indebtedness owed to its shareholders without the prior written consent of the Security Trustee, subject to it on each such occasion satisfying the Security Trustee acting on behalf of the Secured Parties that it will continue to meet all the requirements of Clause 11.15 (*Financial Covenants*), if such covenants were to be tested immediately following the payment of any such dividend; and
- (iii) pay dividends (x) to persons responsible for paying the tax liability in respect of consolidated, combined, unitary or affiliated tax returns for each relevant jurisdiction of the Group, or (y) to holders of the Guarantor's Capital Stock with respect to income taxable as a result of a member of the Group being taxed as a pass-through entity for U.S. Federal, state and local income tax purposes or attributable to any member of the Group,

provided that the actions in paragraphs (ii) and (iii) above shall only be permitted if there is no Event of Default which is continuing under the Loan Agreement and no Event of Default would arise from the payment of such dividend.

- (b) ~~Subject to the restrictions set out in~~ Save as permitted by Clause 11.19 (*New capital raises or financing*) the Guarantor shall not, and shall procure that none of its subsidiaries shall:

- (i) make loans to any person that is not the Guarantor or a direct or indirect subsidiary of the Guarantor; or
- (ii) issue or enter into one or more guarantees covering the obligations of any person which is not the Guarantor or a direct or indirect subsidiary of the Guarantor,

except if such loan is granted to a non subsidiary or such guarantee is issued in the ordinary course of business covering the obligations of a non subsidiary and the aggregate amount of all such loans and guarantees made or issued by the Guarantor and its subsidiaries does not exceed [\*] Dollars (\$[\*]) or is otherwise approved by the Security Trustee which approval shall not be unreasonably withheld if such loan or guarantee in respect of a non subsidiary would neither:

- (A) affect the ability of any Obligor to perform its obligations under the Finance Documents; nor
- (B) imperil the security created by any of the Finance Documents or the SACE Insurance Policy; nor
- (C) affect the ability of the Guarantor to comply with the financial covenants contained in Clause 11.15 (*Financial Covenants*) if such covenants were to be tested immediately following the grant of such loan or the issuance of such guarantee, as demonstrated by evidence satisfactory to the Security Trustee.

**(c) Dividend Restriction**

Neither the Guarantor nor the Holding shall, and the Guarantor shall procure that none of its subsidiaries shall:

- (i) declare, make or pay any dividend or other distribution (or interest on any unpaid dividend or other distribution) (whether in cash or in kind) on or in respect of its share capital (or any class of its share capital);
- (ii) repay or distribute any dividend or share premium reserve;
- (iii) make any repayment of any kind under any shareholder loan; or
- (iv) redeem, repurchase (whether by way of share buy-back program or otherwise), defease, retire or repay any of its share capital or resolve to do so,

during the period up to and including 31 December 2022, except that (A) any Obligor other than the Guarantor may pay dividends and other distributions, directly or indirectly, to the Guarantor for the purpose of providing liquidity to the Guarantor to enable the Guarantor to satisfy payment obligations for which the Guarantor is an obligor, (B) any Obligor may pay dividends in respect of the Tax liability to each relevant jurisdiction in respect of consolidated, combined, unitary or affiliated Tax returns for each relevant jurisdiction of the Group or the Holding or holder of the Guarantor's ~~capital stock~~ Capital Stock with respect to income taxable as a result of any member of the Group or the Holding being taxed as a pass-through entity for U.S. Federal, state and local income Tax purposes or attributable to any member of the Group, (C) the Guarantor and the Holding may pay dividends and other distributions (x) in respect of a conversion, exchange, or repurchase of convertible or exchangeable notes and any conversion of preference shares to ordinary shares in connection therewith, provided that the cash portion of a repurchase of convertible or exchangeable notes is limited to the amount of interest that would otherwise be payable through maturity on the amount of such convertible or exchangeable notes being repurchased plus any amount in lieu of fractional shares, and (y) to the extent contractually owed to holders of equity in the Guarantor or the Holding and (D) the Guarantor may pay dividends and other distributions to the Holding for the purposes of providing cash to the Holding for the payment of any Tax payable in connection with the Holding's equity plan,

provided that the actions in paragraph (B) and (C) above shall only be permitted if there is no Event of Default which is continuing under the Loan Agreement and no Event of Default would arise from the payment of such dividend.

- (d) For the avoidance of doubt, the Holding gives no guarantee of any kind nor undertakes any obligations under this Guarantee other than the undertaking as expressly specified in paragraph (c) above.

#### **11.18 Most favoured nations**

- (a) The Guarantor undertakes that if at any time after the date of this Guarantee it enters into any financial contract or financial document relating to any Financial Indebtedness with or which has the support of any export credit agency and which contains *pari passu* provisions or cross default provisions which are more favourable to the lenders than those contained in paragraph (l) of clause 11.2 (*Continuing representations and warranties*) of the Loan Agreement and clause 18.6 (*Cross default*) of the Loan Agreement respectively, the Guarantor shall immediately notify the Borrower and the Agent of such provisions and the relevant provisions contained in the Loan Agreement shall be deemed amended so that such more favourable *pari passu* provisions or cross default provisions are granted to the Creditor Parties pursuant to the Loan Agreement.

- (b) The Guarantor undertakes that if at any time after the date of this Guarantee and until the occurrence of a Reinstatement Event, it or any other member of the Group is required to grant additional security in relation to a financial contract or financial document relating to any existing Financial Indebtedness:
- (i) with the support of any export credit agency (excluding any extensions, increases or changes to the terms and conditions thereof), such security shall be granted on a *pari passu* basis to the Lenders (and the Security Trustee agrees to enter and/or procure the entry by the relevant Secured Parties into such intercreditor documentation to reflect such *pari passu* ranking (in form and substance reasonably satisfactory to the Secured Parties) as may be required in connection with such arrangements), or
  - (ii) without the support of any export credit agency (excluding any extensions, increases or changes to the terms and conditions thereof), such security shall (without prejudice to any of the Obligors' other obligations under the Finance Documents), subject to the provisions of Clause 11.11 (*Negative pledge*) of this Guarantee and clause 12.8 (*Negative pledge*) of the Loan Agreement, be permitted provided that it shall not have an adverse effect on any Security Interests or other rights granted to the Secured Parties under the Finance Documents.
- (c) ~~In~~ Until the occurrence of a Reinstatement Event, in respect of any new Financial Indebtedness (other than Permitted Financial Indebtedness), or any extensions, increases or changes to the terms and conditions of any existing Financial Indebtedness, in each case with or which has the support of any export credit agency, the Guarantor shall enter into good faith negotiations with the Security Trustee to grant additional security for the purpose of further securing the Loan, provided that any failure to reach agreement under this paragraph (c) following such good faith negotiations shall not constitute an Event of Default.

#### 11.19 New capital raises or financing

- (a) Save as provided below:
- (i) no new debt ~~or equity issuance~~ shall be raised and no new Financial Indebtedness shall be incurred by the Group (including, for the avoidance of doubt, inter-company loans);
  - (ii) no non-arm's length disposals of any asset relating to the Group fleet shall be made; and
  - (iii) no additional Security Interests securing existing Financial Indebtedness will be created or permitted to subsist by any Obligor (unless the Lenders benefit from this new security on a *pari passu* basis),
- ~~during the Deferral Period-~~
- until 31 December 2023.
- (b) The restrictions in paragraph (a) above shall not apply in relation to:
- (i) any refinancing of any bond issuance of, or loan entered into by, the Group (A) which matures during such period or (B) where not maturing during such period, which shall be on terms ~~which include any of the following (evidence of which shall be provided to the Agent by the Guarantor)~~ resulting, when taken as a whole, in an improvement of the ability of the Obligors to meet their obligations under the Finance Documents.

which terms include any of the following: an extension of the repayment terms; a decrease in the interest rate; or the conversion of such Financial Indebtedness from secured to unsecured or first to second priority;

- (ii) any debt ~~or equity issuance~~ provided prior to 31 December ~~2022-2023~~ to provide the Group with crisis and/or recovery related funding in respect of the impact of the Covid-19 pandemic;
- (iii) any debt ~~or equity issuance~~ being raised on or after 31 December ~~2022-2023~~ to support the Group with the impact of the Covid-19 pandemic, made with the prior written consent of SACE;
- (iv) any debt ~~or equity issuance~~ being raised to finance any instalment of a cruise vessel already contracted for or contracted for during such period or any refurbishment, maintenance, upgrade or lengthening of a cruise ship during such period (including without limitation any costs incurred by the owner of a cruise ship in connection therewith);
- (v) any debt ~~or equity issuance~~ being raised to finance capital expenditure for projects which are already contracted for but in respect of which committed financing has not yet been obtained, and which, in each case has been (or will be) listed in the Information Package submitted to the Agent prior to the February 2021 ~~Deferral~~ Effective Date;
- (vi) any extension or renewal of revolving credit facilities, and made with the prior written consent of SACE if any additional security is to be granted;
- (vii) any new debt ~~or equity issuance~~ otherwise agreed by SACE;
- (viii) any inter-company loan or operating arrangement which from an accounting perspective has the effect of an intercompany loan (an "intercompany arrangement") which:
  - (A) is existing as at the date of the February 2021 Amendment and Restatement Agreement;  
or
  - (B) is made among any Group members or any Group member with the Holding provided that:
    - (1) any inter-company arrangement is made solely for the purpose of regulatory or Tax purposes carried out in the ordinary course of business and on an arm's length basis; and
    - (2) the aggregate principal amount of any inter-company arrangements pursuant to ~~this paragraph~~ ~~(B sub-paragraph (b)(viii)(B) of this Clause 11.19 (New capital raises or financing))~~ does not exceed [\*] Dollars (\$[\*]) at any time; or
  - (C) has been approved with the prior written consent of SACE;
- (ix) any Permitted Security Interest;
- (x) any Security Interest otherwise approved with the prior written consent of SACE; ~~or~~



- (xi) any Financial Indebtedness incurred in the ordinary course of business which in the aggregate does not exceed USD [\*] during any twelve-month period; it being provided that:
- (A) prior to 31 December 2022, this amount shall be increased to USD [\*] for any Financial Indebtedness incurred to finance capital expenditure for Approved Projects; and
- (B) if any part of such Financial Indebtedness allocated to an Approved Project remains unused throughout the twelve-month period of year 2022, the surplus may be carried over to increase the relevant Financial Indebtedness throughout the twelve-month period of year 2023 for that Approved Project only;
- (xii) without prejudice to clauses 12.11 (*Mergers*) and 12.15 (*Investments*) of the Loan Agreement and Clause 11.13 (*No merger etc.*), the issuance of share capital by any Group member to another Group member; and
- (xiii) any extension, renewal, replacement or upsizing in respect of the Term and Revolving Credit Facilities (including the granting of additional Security Interests);
- and, for the avoidance of doubt, no debt or equity issuance shall be raised in respect of any form of merger, sub-division, amalgamation, restructuring, consolidation, winding-up, dissolution or anything analogous thereto or acquisition of any entity, share capital or obligations of any corporation or other entity.

#### **11.20 Payments under the Shipbuilding Contracts**

Until the end of the Deferral Period:

- (a) the Guarantor shall and the Guarantor shall procure that any member of the Group that has entered into a shipbuilding contract with a shipbuilder or enters into any such shipbuilding contract, in each case which is financed with the support of SACE (the "**Covered Shipbuilding Contracts**") shall continue to perform all of their respective obligations as set out in any Covered Shipbuilding Contract (including without limitation the payment of any instalments due under any Covered Shipbuilding Contract (as the same may have been amended prior to the 2021 Deferral Effective Date), and subject to any amendment agreed pursuant to paragraph (b) below). The Guarantor shall and the Guarantor shall procure that any member of the Group shall promptly notify the Agent and SACE of any failure by it to comply with any due and owing obligations under a Covered Shipbuilding Contract; and
- (b) the Guarantor shall and the Guarantor shall procure that any member of the Group further undertakes to consult with the Agent and SACE in respect of any proposed amendment to a Covered Shipbuilding Contract insofar as any such proposed amendment relates to a payment instalment or (save as expressly permitted by the Loan Agreement) a delivery date or any other substantial amendment which may affect the related financing and to obtain the Agent and SACE's approval prior to executing any such amendment.

#### **11.21 Breach of new covenants or the Principles**

- (a) Failure to comply, until the end of the Deferral Period, with the provisions of paragraph (f) of clause 11.3 (*Additional financial reporting*), paragraph (c) of clause 11.17 (*Dividend Restriction*), 11.19 (*New capital raises or financing*), 11.20 (*Payments under the Shipbuilding*

*Contracts*), or to otherwise duly perform and observe the other requirements and obligations set out in the Principles shall, in each case, not constitute an Event of Default under the Loan Agreement but shall (in the case of any failure that is capable of remedy (in the opinion of the Agent, at its sole discretion), including any failure to comply with Clause 11.20 (*Payments under the Shipbuilding Contracts*) or paragraph (f) of clause 11.3 (*Additional financial reporting*), only if such failure is not remedied within the Relevant Period pursuant to clause 18.4 (*Breach of other obligations*) of the Loan Agreement from the date of such failure to comply) result in the reinstatement by the Agent from the date of such breach of the requirement to comply with the financial covenants set out in paragraphs (b) and (c) of Clause 11.15 (*Financial covenants*) which was otherwise suspended during the Deferral Period.

- (b) Save as permitted by Clause 11.19 (*New capital raises or financing*), if at any time after the February 2021 ~~Deferral~~-Effective Date and until the occurrence of a Reinstatement Event:
- (i) the Guarantor or any other Group member enters into any financial contract or financial document relating to any Financial Indebtedness and which contains any debt deferral or covenant waivers of existing debt, or the raising of any new debt intended to reimburse existing debt that benefits from additional security or more favourable terms than those available to the Lenders (unless they are granted to the Lenders on a *pari passu* basis), the requirement to comply with the financial covenants set out in paragraphs (b) and (c) of Clause 11.15 (*Financial covenants*) which was otherwise suspended during the Deferral Period shall be reinstated (it being provided that such covenants shall not be reinstated in case of such financial contract or financial document relating to the Term and Revolving Credit Facilities); or
  - (ii) the Guarantor or any other Group member makes a prepayment (save for any mandatory prepayment necessary to avoid an event of default (however defined)) of any Financial Indebtedness (unless this is done on a *pari passu* basis with the obligations owed to the Lenders hereunder), the requirement to comply with the financial covenants set out in paragraphs (b) and (c) of Clause 11.15 (*Financial covenants*) which was otherwise suspended during the Deferral Period shall be reinstated (it being provided that such covenants shall not be reinstated in case of a prepayment relating to the revolving tranche of the Term and Revolving Credit Facilities within the ordinary course of business).

#### **11.22 Illicit Payments**

No payments made by the Guarantor in respect of amounts due under the Loan Agreement or any Finance Document shall be funded out of funds of Illicit Origin and none of the sources of funds to be used by the Guarantor in connection with the construction of the Ship or its business shall be of Illicit Origin.

#### **11.23 Prohibited Payments**

No Prohibited Payment shall be made or provided, directly or indirectly, by (or on behalf of) the Guarantor or any of its affiliates, officers, directors or any other person acting on its behalf to, or for the benefit of, any authority (or any official, officer, director, agent or key employee of, or other person with management responsibilities in, of any authority) in connection with the Ship, the Loan Agreement and/or the Finance Documents.

#### **11.24 Sanctions**

The Guarantor shall comply, or procure compliance with all Sanctions.

## **11.25 Additional Undertakings**

The Guarantor shall not and shall procure that no Obligor shall 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 an Obligor to perform any of its obligations under the Transaction Documents;
- (b) cause any obligation of an Obligor under the Finance Documents to cease to be legal, valid, binding or enforceable if that cessation individually or together with any other cessations materially or adversely affects the interests of the Secured Parties under the Transaction Documents;
- (c) cause any Transaction Document to cease to be in full force and effect;
- (d) cause any Security Interest to lose its priority or ranking; and
- (e) imperil or jeopardise any Security Interest.

## **12 JUDGMENTS AND CURRENCY INDEMNITY**

### **12.1 Judgments relating to Loan Agreement**

This Guarantee shall cover any amount payable by the Borrower under or in connection with any judgment relating to the Loan Agreement.

### **12.2 Currency indemnity**

In addition, clause 20.4 (*Currency indemnity*) of the Loan Agreement shall apply, with any necessary adaptations, in relation to this Guarantee.

## **13 SET-OFF**

### **13.1 Application of credit balances**

Each Secured 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 the Guarantor at any office in any country of that Secured Party in or towards satisfaction of any sum then due from the Guarantor to that Secured Party under this Guarantee; and
- (b) for that purpose:
  - (i) break, or alter the maturity of, all or any part of a deposit of the Guarantor;
  - (ii) convert or translate all or any part of a deposit or other credit balance into Dollars;
  - (iii) enter into any other transaction or make any entry with regard to the credit balance which the Secured Party concerned considers appropriate.

### **13.2 Existing rights unaffected**

No Secured Party shall be obliged to exercise any of its rights under Clause 13.1 (*Application of credit balances*); and those rights shall be without prejudice and in addition to any right of set-off, combination of accounts, charge, lien or other right or remedy to which a Secured Party is entitled (whether under the general law or any document).

### **13.3 Sums deemed due to a Lender**

For the purposes of this Clause 13 (*Set-Off*), a sum payable by the Guarantor to 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 that Lender.

## **14 SUPPLEMENTAL**

### **14.1 Continuing guarantee**

This Guarantee shall remain in force as a continuing security at all times during the Security Period, regardless of any intermediate payment or discharge in whole or in part.

### **14.2 Rights cumulative, non-exclusive**

The Security Trustee's rights under and in connection with this Guarantee are cumulative, may be exercised as often as appears expedient and shall not be taken to exclude or limit any right or remedy conferred by law.

### **14.3 No impairment of rights under Guarantee**

If the Security Trustee omits to exercise, delays in exercising or invalidly exercises any of its rights under this Guarantee, that shall not impair that or any other right of the Security Trustee under this Guarantee.

### **14.4 Severability of provisions**

If any provision of this Guarantee is or subsequently becomes void, illegal, unenforceable or otherwise invalid, that shall not affect the validity, legality or enforceability of its other provisions.

### **14.5 Guarantee not affected by other security**

This Guarantee is in addition to and shall not impair, nor be impaired by, any other guarantee, any Security Interest or any right of set-off or netting or to combine accounts which the Security Trustee or any Secured Party may now or later hold in connection with the Loan Agreement.

### **14.6 Guarantor bound by Loan Agreement**

- (a) The Guarantor is fully familiar with, and agrees to all the provisions of the Loan Agreement and the other Finance Documents to which it is not a party.

- (b) The Guarantor agrees with the Security Trustee:
  - (i) to be bound by all provisions of the Loan Agreement which are applicable to the Obligors in the same way as if those provisions had been set out (with any necessary modifications) in this Guarantee; and
  - (ii) that any provision of the Loan Agreement which, by its terms, applies or relates to the Finance Documents generally applies to this Guarantee.
- (c) Clause 23 (*Bail-In*) of the Loan Agreement shall apply to this Guarantee as if it was expressly incorporated in this Guarantee with any necessary modifications.

#### **14.7 Applicability of provisions of Guarantee to other Security Interests**

Any Security Interest which the Guarantor creates (whether at the time at which it signs this Guarantee or at any later time) to secure any liability under this Guarantee shall be a principal and independent security, and Clauses 3 (*Liability as Principal and Independent Debtor*) and 17 (*Invalidity of Loan Agreement*) shall, with any necessary modifications, apply to it, notwithstanding that the document creating the Security Interest neither describes it as a principal or independent security nor includes provisions similar to Clauses 3 (*Liability as Principal and Independent Debtor*) and Clause 17 (*Invalidity of Loan Agreement*).

#### **14.8 Applicability of provisions of Guarantee to other rights**

Clauses 3 (*Liability as Principal and Independent Debtor*) and 17 (*Invalidity of Loan Agreement*) shall also apply to any right of set-off or netting or to combine accounts which the Guarantor creates by an agreement entered into at the time of this Guarantee or at any later time (notwithstanding that the agreement does not include provisions similar to Clauses 3 (*Liability as Principal and Independent Debtor*) and 17 (*Invalidity of Loan Agreement*)), being an agreement referring to this Guarantee.

#### **14.9 Third party rights**

Other than a Secured Party or the Italian Authorities, no person who is not a party to this Guarantee has any right under the Contracts (Rights of Third Parties) Act 1999 to enforce or to enjoy the benefit of any term of this Guarantee.

#### **14.10 Waiver of rights against SACE**

Nothing in this Guarantee or any of the Finance Documents is intended to grant to the Guarantor or any other person any right of contribution from or any other right or claim against SACE and the Guarantor hereby waives irrevocably any right of contribution or other right or claim as between itself and SACE.

#### **14.11 Reinstatement**

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

#### **14.12 Guarantor intent**

Without prejudice to the generality of Clause 1.3 (*Application of construction and interpretation provisions of Loan Agreement*) and Clause 3.2 (*Waiver of rights and defences*), the Guarantor expressly confirms that it intends that this Guarantee and any Security Interest created by it under 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.

#### **14.13 Certification or determination**

Any certification or determination by the Security Trustee of a rate or amount under any Finance Document or this Guarantee is, in the absence of manifest error, conclusive evidence of the matters to which it relates.

#### **14.14 SACE subrogation**

The Guarantor acknowledges that immediately upon any payment by SACE of any amount due under the SACE Insurance Policy, SACE shall be automatically subrogated to the extent of such payment to the rights of the Security Trustee under this Guarantee in accordance with the SACE Insurance Policy.

### **15 ASSIGNMENT AND TRANSFER**

#### **15.1 Assignment and transfer by Security Trustee**

- (a) The Security Trustee may assign or transfer its rights under and in connection with this Guarantee to the same extent as it may assign or transfer its rights under the Loan Agreement.
- (b) The Guarantor may not assign or transfer its rights under and in connection with this Guarantee.

### **16 NOTICES**

#### **16.1 Notices to Guarantor**

Any notice or demand to the Guarantor under or in connection with this Guarantee shall be given by letter or email at:

NCL Corporation Ltd.  
7665 Corporate Center Drive  
Miami  
Florida, 33126  
Attention: Chief Financial Officer and General Counsel

Email: [\*] / [\*]

or to such other address which the Guarantor may notify to the Security Trustee.

## **16.2 Application of certain provisions of Loan Agreement**

Clauses 32.3 (*Effective date of notices*) to 32.9 (*Meaning of "notice"*) of the Loan Agreement apply to any notice or demand under or in connection with this Guarantee.

## **16.3 Validity of demands**

A demand under this Guarantee shall be valid notwithstanding that it is served:

- (a) on the date on which the amount to which it relates is payable by the Borrower under the Loan Agreement;
- (b) at the same time as the service of a notice under clause 18.21 (*Actions following an Event of Default*) of the Loan Agreement;

and a demand under this Guarantee may refer to all amounts payable under or in connection with the Loan Agreement without specifying a particular sum or aggregate sum.

## **16.4 Notices to Security Trustee**

Any notice to the Security Trustee under or in connection with this Guarantee shall be sent to the same address and in the same manner as notices to the Security Trustee under the Loan Agreement.

## **17 INVALIDITY OF LOAN AGREEMENT**

### **17.1 Invalidity of Loan Agreement**

In the event of:

- (a) the Loan Agreement or any provision thereof now being or later becoming, with immediate or retrospective effect, void, illegal, unenforceable or otherwise invalid for any reason whatsoever; or
- (b) without limiting the scope of paragraph (a), a ~~bankruptcy~~ Bankruptcy of the Borrower, the introduction of any law or any other matter resulting in the Borrower being discharged from liability under the Loan Agreement, or the Loan Agreement ceasing to operate (for example, by interest ceasing to accrue);

this Guarantee shall cover any amount which would have been or become payable under or in connection with the Loan Agreement if the Loan Agreement had been and remained entirely valid, legal and enforceable, or the Borrower had not suffered ~~bankruptcy~~ Bankruptcy, or any combination of such events or circumstances, as the case may be, and the Borrower had remained fully liable under it for liabilities whether invalidly incurred or validly incurred but subsequently retrospectively invalidated; and references in this Guarantee to amounts payable by the Borrower under or in connection with the Loan Agreement shall include references to any amount which would have so been or become payable as aforesaid.

## 17.2 Invalidation of Finance Documents

Clause 17.1 (*Invalidation of Loan Agreement*) also applies to each of the other Finance Documents to which the Borrower is a party.

## 18 GOVERNING LAW AND JURISDICTION

### 18.1 English law

This Guarantee and any non-contractual obligations arising out of or in connection with it shall be governed by, and construed in accordance with, English law.

### 18.2 Exclusive English jurisdiction

The courts of England shall have exclusive jurisdiction to settle any Dispute.

### 18.3 Process agent

The Guarantor irrevocably appoints Hannaford Turner LLP, currently of ~~9 Cleak Lane~~ [107 Cheapside](#), London ~~EC4R 2RU~~, [EC2V 6DN](#), United Kingdom, 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.

### 18.4 Secured Parties' rights unaffected

Nothing in this Clause 18 (*Governing Law and Jurisdiction*) shall exclude or limit any right which any Secured 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.

### 18.5 Meaning of "proceedings"

In this Clause 18 (*Governing Law and Jurisdiction*), "**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 Guarantee (including a dispute relating to the existence, validity or termination of this Guarantee) or any non-contractual obligation arising out of or in connection with this Guarantee.

**This Amended and Restated Guarantee has been entered into on the date stated at the beginning of this Guarantee.**



**EXECUTION PAGE**

**GUARANTOR**

**SIGNED** by )  
duly authorised )  
for and on behalf of )  
**NCL CORPORATION LTD.** )  
as its duly appointed attorney-in-fact )  
in the presence of: )

**SECURITY TRUSTEE**

**SIGNED** by )  
for and on behalf of )  
**CRÉDIT AGRICOLE CORPORATE** )  
**AND INVESTMENT BANK** )  
as its duly appointed attorney-in-fact )  
in the presence of: )

**HOLDING**

**SIGNED** by )  
for and on behalf of )  
**NORWEGIAN CRUISE LINE** )  
**HOLDINGS LTD.** )  
as its duly appointed attorney-in-fact )  
in the presence of: )

[\*]: THE IDENTIFIED INFORMATION HAS BEEN OMITTED FROM THE AGREEMENT BECAUSE IT IS BOTH (i) NOT MATERIAL AND (ii) WOULD BE COMPETITIVELY HARMFUL IF PUBLICLY DISCLOSED

Dated 19 May 2023

**MARINA NEW BUILD, LLC**  
as Borrower

and

**NCL CORPORATION LTD.**  
as Guarantor

and

**OCEANIA CRUISES S. DE R.L.**  
as Charterer and Shareholder  
and

**NORWEGIAN CRUISE LINE HOLDINGS LTD.**  
as the Holding

and

**THE BANKS AND FINANCIAL INSTITUTIONS LISTED IN SCHEDULE 1**  
as Lenders

and

**CRÉDIT AGRICOLE CORPORATE AND INVESTMENT BANK**  
**SOCIÉTÉ GÉNÉRALE**  
as Mandated Lead Arrangers

and

**CRÉDIT AGRICOLE CORPORATE AND INVESTMENT BANK**  
as Agent and SACE Agent

#### **AMENDMENT AND RESTATEMENT AGREEMENT**

relating to  
a facility agreement originally dated 18 July 2008 (as amended from time to time, including as amended by a supplemental agreement dated 25 October 2010 and as amended and restated by an amendment and restatement agreement dated 31 October 2014, as further amended by a supplemental agreement dated 4 June 2020, as further amended and restated by an amendment and

WATSON FARLEY  
&  
WILLIAMS

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restatement agreement dated 17 February 2021, as further amended by a supplemental agreement dated 23 December 2021 and as further amended by a supplemental agreement dated 16 December 2022) in respect of the part financing of the passenger cruise ship m.v. "MARINA"

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### Appendices

Form of Amended and Restated Facility Agreement (marked to indicate amendments)
Form of Amended and Restated Guarantee (marked to indicate amendments)

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THIS AGREEMENT is made on 19 May 2023

#### PARTIES

- (1) **MARINA NEW BUILD, LLC**, a limited liability company formed in the Marshall Islands whose registered address is at c/o The Trust Company of the Marshall Islands Inc., Trust Company Complex, Ajeltake Island, Majuro MH 96960, Republic of the Marshall Islands as borrower (the "**Borrower**")
- (2) **NCL CORPORATION LTD.**, an exempted company incorporated under the laws of Bermuda with its registered office at Park Place, 55 Par-la-Ville Road, Hamilton HM 11, Bermuda (the "**Guarantor**")
- (3) **NORWEGIAN CRUISE LINE HOLDINGS LTD.**, a company incorporated under the laws of Bermuda with its registered office at Park Place, 55 Par-la-Ville Road, Hamilton HM 11, Bermuda (the " **Holding**")
- (4) **OCEANIA CRUISES S. DE R.L.**, a Panamanian limited liability company ("*sociedad de responsabilidad limitada*") domiciled in Panama whose resident agent is at Arifa Building, West Boulevard, Santa Maria Business District, Panama, Republic of Panama and registered at the Mercantile Section of the Panama Public Registry at Microjacket No. 423671, Document 396130 since 3 October 2002 (the "**Charterer**" and "**Shareholder**")
- (5) **THE FINANCIAL INSTITUTIONS** listed in Schedule 1 (*The Lenders*) as lenders (the "**Lenders**")
- (6) **CRÉDIT AGRICOLE CORPORATE AND INVESTMENT BANK**, a French société anonyme having its registered office located at 12, Place des États-Unis, CS 70052, 92547 Montrouge Cedex, France registered under number Siren 304 187 701 at the Registre du Commerce et des Sociétés of Nanterre, France and **SOCIÉTÉ GÉNÉRALE** a French société anonyme having its registered office located at 29 Boulevard Haussmann, 75009 Paris under number Siren 552 120 222 at the Registre du Commerce et des Sociétés of Paris, France as mandated lead arrangers (the "**Mandated Lead Arrangers**")
- (7) **CRÉDIT AGRICOLE CORPORATE AND INVESTMENT BANK**, a French société anonyme having its registered office located at 12, Place des États-Unis, CS 70052, 92547 Montrouge Cedex, France registered under number Siren 304 187 701 at the Registre du Commerce et des Sociétés of Nanterre, France as agent and SACE agent (the "**Agent**" and the "**SACE Agent**")

#### BACKGROUND

- (A) By the Original Facility Agreement, the Lenders agreed to make available to the Borrower a facility of originally the Dollar Equivalent of up to EUR 349,520,718 for the purpose of assisting the Borrower in financing (i) payment under the Shipbuilding Contract of all or part of 80% of the Final Contract Price up to the Eligible Amount and (ii) payment to SACE of the Dollar Equivalent of 100% of the second instalment of the SACE Premium payable on the original Drawdown Date.
  - (B) Due to the unprecedented and extraordinary impacts of the Covid-19 pandemic on the cruise sector and cruise operators, the Original Facility Agreement was amended pursuant to an amendment agreement dated 4 June 2020 (the "**2020 Amendment Agreement**"), amended and restated pursuant to an amendment and restatement agreement dated 17 February 2021 (the "**February 2021 Amendment and Restatement Agreement**"), further amended pursuant to a supplemental agreement dated 23 December 2021 (the "**December 2021 Amendment**")
-

**Agreement**") and further amended pursuant to a supplemental agreement dated 16 December 2022 (the "**December 2022 Amendment Agreement**") pursuant to which, *inter alia*, the parties agreed to the temporary amendment of certain covenants under the Guarantee and addition of certain covenants under the Original Facility Agreement.

- (C) The Parties have agreed to amend and restate the Facility Agreement as set out in this Agreement for the purposes of, *inter alia*, documenting the transition from LIBOR to SOFR (as defined below).

## OPERATIVE PROVISIONS

### 1 DEFINITIONS AND INTERPRETATION

#### 1.1 Definitions

In this Agreement:

**"2023 Finance Documents"** means this Agreement and the New Mortgage Addendum.

**"Amended and Restated Facility Agreement"** means the Facility Agreement as amended and restated by this Agreement in the form set out in Appendix 1.

**"Amended and Restated Guarantee"** means the Guarantee as amended and restated by this Agreement in the form set out in Appendix 2.

**"Effective Date"** means the date on which the Agent notifies the Borrower, the other Creditor Parties and SACE as to the satisfaction of the conditions precedent as provided in paragraph (a) of Clause 2.1 (*Conditions Precedent*).

**"Facility Agreement"** means the Original Facility Agreement, as amended by the 2020 Amendment Agreement, as amended and restated by the February 2021 Amendment and Restatement Agreement, as further amended by the December 2021 Amendment Agreement and as further amended by the December 2022 Amendment Agreement.

**"New Mortgage Addendum"** means the addendum to the Mortgage in the agreed form.

**"Obligors"** means the Borrower, the Guarantor, the Holding, the Charterer and the Shareholder.

**"Original Facility Agreement"** means the facility agreement dated 18 July 2008 (as amended pursuant to a supplemental agreement dated 25 October 2010, as further amended and restated by an amendment and restatement agreement dated 31 October 2014) and made between, amongst others, (i) the Borrower, (ii) the Lenders, (iii) the Mandated Lead Arrangers and (iv) the Agent and the SACE Agent.

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

**"SOFR"** means the secured overnight financing rate (SOFR) administered by the Federal Reserve Bank of New York (or any other person which takes over the administration of that rate) published (before any correction, recalculation or republication by the administrator) by the Federal Reserve Bank of New York (or for any other person which takes over the publication of that rate).

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## 1.2 Defined expressions

Defined expressions in the Facility Agreement and, with effect from the Effective Date, the Amended and Restated Facility Agreement, shall have the same meanings when used in this Agreement unless the context otherwise requires or unless otherwise defined in this Agreement.

## 1.3 Application of construction and interpretation provisions of Facility Agreement

Clause 1.2 (*construction of certain terms*) of the Facility Agreement applies to this Agreement as if it were expressly incorporated in it with any necessary modifications.

## 1.4 Agreed forms of new, and supplements to, Finance Documents

References in Clause 1.1 (*Definitions*) to any new or supplement to a Finance Document being in "agreed form" are to that Finance Document:

- (a) in a form attached to a certificate dated the same date as this Agreement (and signed by the Borrower and the Agent); or
- (b) in any other form agreed in writing between the Borrower and the Agent acting with the authorisation of the Majority Lenders or, where applicable, all the Lenders.

## 1.5 Designation as a Finance Document

The Borrower and the Agent designate this Agreement as a Finance Document.

## 1.6 Third party rights

- (a) Unless 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 other than SACE, who may enforce or to enjoy the benefit of and rely on the provisions of this Agreement and the Amended and Restated Facility Agreement subject to the provisions of the Third Parties Act.
- (b) Notwithstanding any term of any Finance Document, the consent of any person who is not a Party (other than SACE) is not required to rescind or vary this Agreement at any time.
- (c) For the avoidance of doubt and in accordance with clause 33.4 (*Third party rights*) of the Facility Agreement, nothing in this Clause 1.6 (*Third party rights*) shall limit or prejudice the exercise by SACE of its rights under this Agreement or the Finance Documents in the event that such rights are subrogated or assigned to it pursuant to the terms of the SACE Insurance Policy.

## 2 CONDITIONS PRECEDENT

2.1 The Effective Date cannot occur unless:

- (a) the Agent has received (or on the instructions of all the Lenders, waived receipt of) all of the documents and other evidence listed in Schedule 2 (*Conditions Precedent*) in form and substance satisfactory to the Agent;
  - (b) save as disclosed in writing to the Agent and SACE prior to the date of this Agreement, the representations and warranties contained in Clause 3 (*Representations*) are true and correct
-

on, and as of, each such time as if each was made with respect to the facts and circumstances existing at such time;

- (c) save as disclosed in writing to the Agent and SACE prior to the date of this Agreement, no Event of Default, event or circumstance specified in clause 18 (*Events of Default*) of the Facility Agreement 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, event resulting in mandatory prepayment of the Loan pursuant to clause 16.3 (*Mandatory prepayment*) of the Facility Agreement or Deferral Prepayment Event shall have occurred and be continuing or would result from the amendment and restatement of the Facility Agreement pursuant to this Agreement; and
  - (d) the Agent is satisfied that the Effective Date can occur and have not provided any instructions to the contrary informing the Parties that the Effective Date cannot occur.
- 2.2 Upon fulfilment or waiver of the conditions set out in Clause 2.1 above, the Agent shall provide the Borrower and the Creditor Parties and SACE with a copy of the executed certificate in the form set out in Schedule 3 (*Form of Effective Date Certificate*) confirming that the Effective Date has occurred and such certificate shall be binding on all Parties.
- 2.3 Other than to the extent that the Majority Lenders notify the Agent in writing to the contrary before the Agent provides the certificate described in Clause 2.2 above, the Creditor Parties authorise (but do not require) the Agent to execute and provide such certificate. The Agent shall not be liable for any damages, costs or losses whatsoever as a result of giving any such certificate.

### **3 REPRESENTATIONS**

#### **3.1 Facility Agreement representations**

On the date of this Agreement and on the Effective Date, each Obligor that is a party to the Facility Agreement makes each of the representations and warranties as set out in clause 12 (*Representations and warranties*) of the Facility Agreement, as amended and restated by this Agreement and updated with appropriate modifications to refer to this Agreement and (where relevant) the Amended and Restated Facility Agreement, the Amended and Restated Guarantee and the New Mortgage Addendum, by reference to the circumstances then existing.

#### **3.2 Finance Document representations**

On the date of this Agreement and on the Effective Date, each Obligor (save for the Holding) makes the representations and warranties set out in the Finance Documents (other than the Facility Agreement) to which it is a party, as amended and restated and/or supplemented by this Agreement and updated with appropriate modifications to refer to this Agreement, and, where appropriate, the Amended and Restated Guarantee and the New Mortgage Addendum, by reference to the circumstances then existing.

### **4 AMENDMENT AND RESTATEMENT OF FACILITY AGREEMENT AND OTHER FINANCE DOCUMENTS**

#### **4.1 Specific amendments to the Facility Agreement**

With effect on and from the Effective Date, the Facility Agreement shall be amended and restated in the form of the Amended and Restated Facility Agreement and, as so amended and

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restated, the Facility Agreement shall continue to be binding on each of the parties to it in accordance with its terms as so amended and restated.

#### **4.2 Specific amendments to the Guarantee**

With effect on and from the Effective Date, the Guarantee shall be amended and restated in the form of the Amended and Restated Guarantee and, as so amended and restated, the Guarantor confirms that:

- (a) its Guarantee extends to the obligations of the Borrower under the Finance Documents as amended, restated and/or supplemented by this Agreement;
- (b) the obligations of the relevant Obligors under the Finance Documents as amended, restated and/or supplemented by this Agreement are included in the Secured Liabilities (as defined in the Facility Agreement); and
- (c) the Guarantee shall continue to be binding on each of the parties to it and have full force and effect in accordance with its terms as so amended and restated.

#### **4.3 Holding confirmation**

On the Effective Date, the Holding confirms that, notwithstanding the amendments made to the Finance Documents pursuant to this Agreement, the undertakings given by the Holding under the Guarantee, as amended and restated by this Agreement and updated with appropriate modifications to refer to this Agreement shall remain in full force and effect in accordance with its original terms and the amendments to the Finance Documents as amended, restated and/or supplemented by this Agreement.

#### **4.4 Security Confirmation**

Without prejudice to the provisions of the New Mortgage Addendum, on the Effective Date, each Obligor confirms that:

- (a) any Security Interest created by it under the Finance Documents extends to the obligations of the relevant Obligors under the Finance Documents as amended, restated and/or supplemented by this Agreement;
- (b) the obligations of the relevant Obligors under the Finance Documents as amended, restated and/or supplemented by this Agreement are included in the Secured Liabilities (as defined in the Finance Documents to which it is a party);
- (c) the Security Interests created under the Finance Documents continue in full force and effect on the terms of the respective Finance Documents; and
- (d) to the extent that this confirmation creates a new Security Interest, such Security Interest shall be on the terms of the Finance Documents in respect of which this confirmation is given.

#### **4.5 Finance Documents to remain in full force and effect**

The Finance Documents shall remain in full force and effect and, from the Effective Date:

- (a) in the case of the Facility Agreement as amended and restated pursuant to Clause 4.1 (*Specific amendments to the Facility Agreement*);
-

- (b) in the case of the Guarantee, as amended and restated pursuant to Clause 4.2 (*Specific amendments to the Guarantee*);
- (c) the Facility Agreement and the applicable provisions of this Agreement will be read and construed as one document;
- (d) the Guarantee and the applicable provisions of this Agreement will be read and construed as one document; and
- (e) except to the extent expressly waived by the amendments effected by this Agreement, no waiver is given by this Agreement and the Lenders expressly reserve all their rights and remedies in respect of any breach of or other default under the Finance Documents.

**5 FURTHER ASSURANCE**

Clause 13.19 (*further assurance*) of the Facility Agreement, as amended and restated by this Agreement, applies to this Agreement as if it were expressly incorporated in it with any necessary modifications.

**6 COSTS, EXPENSES AND FEES**

Clause 11.6 (*Transaction Costs*) of the Facility Agreement, as amended and restated by this Agreement, applies to this Agreement as if it were expressly incorporated in it with any necessary modifications.

**7 NOTICES**

Clause 32 (*Notices*) of the Facility Agreement, as amended and restated by this Agreement, applies to this Agreement as if it were expressly incorporated in it with any necessary modifications.

**8 COUNTERPARTS**

This Agreement may be executed in any number of counterparts, and this has the same effect as if the signatures on the counterparts were on a single copy of this Agreement.

**9 SIGNING ELECTRONICALLY**

The Parties acknowledge and agree that they may execute this Agreement and any variation or amendment to the same, by electronic instrument. The Parties agree that the electronic signatures appearing on the documents shall have the same effect as handwritten signatures and the use of an electronic signature on this Agreement shall have the same validity and legal effect as the use of a signature affixed by hand and is made with the intention of authenticating this Agreement, and evidencing the Parties' intention to be bound by the terms and conditions contained herein. For the purposes of using an electronic signature, the Parties authorise each other to conduct the lawful processing of personal data of the signers for contract performance and their legitimate interests including contract management.

**10 GOVERNING LAW**

This Agreement and any non-contractual obligations arising out of or in connection with it are governed by English law.

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## 11 ENFORCEMENT

### 11.1 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.

### 11.2 Service of process

- (a) Without prejudice to any other mode of service allowed under any relevant law, each Obligor (other than an Obligor incorporated in England and Wales):
  - (i) irrevocably appoints Hannaford Turner LLP, currently of 107 Cheapside, London, EC2V 6DN, UK as its agent for service of process in relation to any proceedings before the English courts in connection with any Finance Document; and
  - (ii) agrees that failure by a process agent to notify the relevant Obligor of the process will not invalidate the proceedings concerned.
- (b) If any person appointed as an agent for service of process is unable for any reason to act as agent for service of process, the Borrower (on behalf of all the Obligors) must immediately (and in any event within 10 days of such event taking place) appoint another agent on terms acceptable to the Agent. Failing this, the Agent may appoint another agent for this purpose.

**This Agreement has been entered into on the date stated at the beginning of this Agreement.**

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**EXECUTION PAGES**

**BORROWER**

**SIGNED** by )  
Its ) /s/ Daniel S. Farkas  
duly authorised )  
for and on behalf of )  
**MARINA NEW BUILD, LLC** )

**GUARANTOR**

**SIGNED** by )  
duly authorised ) /s/ Daniel S. Farkas  
for and on behalf of )  
**NCL CORPORATION LTD.** )

**HOLDING**

**SIGNED** by )  
for and on behalf of ) /s/ Daniel S. Farkas  
**NORWEGIAN CRUISE LINE** )  
**HOLDINGS LTD.** )  
as its duly appointed attorney-in-fact )  
in the presence of: )

**CHARTERER**

**SIGNED** by )  
duly authorised ) /s/ Daniel S. Farkas  
for and on behalf of )  
**OCEANIA CRUISES S. DE R.L.** )

**SHAREHOLDER**

**SIGNED** by )  
duly authorised ) /s/ Daniel S. Farkas  
for and on behalf of )  
**OCEANIA CRUISES S. DE R.L.** )

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**LENDERS**

SIGNED by ) /s/ Anne-Laure Orange  
duly authorised )  
for and on behalf of )  
CRÉDIT AGRICOLE CORPORATE )  
AND INVESTMENT BANK ) /s/ Jérôme Leblond

SIGNED by ) /s/ Isabelle Seneca  
duly authorised )  
for and on behalf of )  
SOCIÉTÉ GÉNÉRALE )

**MANDATED LEAD ARRANGERS**

SIGNED by ) /s/ Anne-Laure Orange  
duly authorised )  
for and on behalf of )  
CRÉDIT AGRICOLE CORPORATE )  
AND INVESTMENT BANK ) /s/ Jérôme Leblond

SIGNED by ) /s/ Isabelle Seneca  
duly authorised )  
for and on behalf of )  
SOCIÉTÉ GÉNÉRALE )

**AGENT**

SIGNED by ) /s/ Anne-Laure Orange  
duly authorised )  
for and on behalf of )  
CRÉDIT AGRICOLE CORPORATE AND )  
INVESTMENT BANK ) /s/ Jérôme Leblond

**SACE AGENT**

SIGNED by ) /s/ Anne-Laure Orange  
duly authorised )  
for and on behalf of )  
CRÉDIT AGRICOLE CORPORATE AND )  
INVESTMENT BANK ) /s/ Jérôme Leblond

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## APPENDIX 1

### FORM OF AMENDED AND RESTATED FACILITY AGREEMENT (MARKED TO INDICATE AMENDMENTS)

Amendments are indicated as follows:

- 1 additions are indicated by underlined text in blue; and
  - 2 deletions are shown by strike-through text in red.
-

Dated ~~February 2021~~ February 2021 2023

Originally dated 18 July 2008  
(as amended from time to time, including by a supplemental agreement dated 25 October 2010, as further amended and restated by an amendment and restatement agreement dated 31 October 2014, as amended by a supplemental agreement dated 4 June 2020 ~~and~~, as further amended and restated by an amendment and restatement agreement dated ~~February 2021~~ 17 February 2021, as further amended by a supplemental agreement dated 23 December 2021, as further amended by a supplemental agreement dated 16 December 2022 and as further amended and restated by an amendment and restatement agreement dated 2023)

**MARINA NEW BUILD, LLC**  
as Borrower

and

**THE BANKS AND FINANCIAL INSTITUTIONS  
LISTED IN SCHEDULE 1**  
as Lenders

and

**CRÉDIT AGRICOLE CORPORATE AND INVESTMENT BANK**

**SOCIÉTÉ GÉNÉRALE**  
as Mandated Lead Arrangers

and

**CRÉDIT AGRICOLE CORPORATE AND INVESTMENT BANK**  
as Agent and SACE Agent

with the support of

**SACE S.p.A.**

**AMENDED AND RESTATED FACILITY AGREEMENT**  
relating to  
the part financing of the passenger cruise ship m.v. "MARINA"

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**THIS AGREEMENT** is originally made on 18 July 2008 (as previously amended by a supplemental agreement dated 25 October 2010, as further amended and restated by an amendment and restatement agreement dated 31 October 2014, as further amended by a supplemental agreement dated 4 June 2020 ~~and~~, as further amended and restated by an amendment and restatement agreement dated ~~February 2021~~17 February 2021, as further amended by a supplemental agreement dated 23 December 2021, as further amended by a supplemental agreement dated 16 December 2022 and as further amended and restated by an amendment and restatement agreement dated 2023)

## **PARTIES**

- (1) **MARINA NEW BUILD, LLC**, a limited liability company formed in the Marshall Islands whose registered office is at c/o The Trust Company of the Marshall Islands Inc., Trust Company Complex, Ajeltake Island, Ajeltake Road, Majuro MH 96960, Republic of the Marshall Islands (the "**Borrower**")
- (2) **THE BANKS AND FINANCIAL INSTITUTIONS** listed in Schedule 1 (*Lenders and Commitments*), as lenders (the "**Lenders**")
- (3) **CRÉDIT AGRICOLE CORPORATE AND INVESTMENT BANK** and **SOCIÉTÉ GÉNÉRALE** as mandated lead arrangers (the "**Mandated Lead Arrangers**")
- (4) **CRÉDIT AGRICOLE CORPORATE AND INVESTMENT BANK**, acting through its office at 12 Place des États-Unis, CS 70052, 92547, Montrouge Cedex, France, as agent (the "**Agent**") and SACE Agent (the "**SACE Agent**")

## **BACKGROUND**

- (A) By a Master (Shipbuilding Contracts and Options) Agreement dated 14 May 2008 (the "**Master Agreement**") entered into between (inter alia) Fincantieri - Cantieri Navali Italiani SpA, a company incorporated in Italy with registered office in Trieste, via Genova, 1, and having fiscal code 00397130584 (the "**Builder**"), Prestige Cruise Holdings Inc., Oceania Cruises, Inc. and, by way of endorsement, the Borrower providing for an original shipbuilding contract dated 13 June 2007 (the "**Original Shipbuilding Contract**") between the Borrower and the Builder to be novated and modified in the form and on the terms set out in the Master Agreement (the Original Shipbuilding Contract as novated and modified by the Master Agreement being hereinafter referred to as the "**Shipbuilding Contract**"), the Builder agreed to design, construct and deliver, and the Borrower agreed to purchase, a passenger cruise ship "Marina" (ex. Hull number [\*]), which was delivered to the Borrower on 19 January 2011.
  - (B) The total price payable by the Borrower to the Builder under the Original Shipbuilding Contract is EUR 409,095,000.00 (the "**Initial Contract Price**") which has been paid on the following terms:
    - (i) as to [\*]%, by an initial payment which was made on the date when the Original Shipbuilding Contract entered into full effect pursuant to Article 33 of the Original Shipbuilding Contract and, as to the balance, upon signature of the Master Agreement;
    - (ii) as to [\*]% on the later of the start of steel cutting and 30 October 2008;
    - (iii) as to [\*]% on the later of keel laying and 1 April 2009;
-

- (iv) as to [\*]% on the later of float out and 26 February 2010; and
  - (v) as to [\*]% on delivery of the Ship.
- (C) The agreement was that the Initial Contract Price may be (i) increased or decreased from time to time under Article 24 of the Original Shipbuilding Contract in the event that the Borrower requests, and the Builder agrees, modifications to the specification or plans constituting a part of the Shipbuilding Contract or in the event that, subsequent to the date of the Shipbuilding Contract, variations are made to its provisions compliance with which is compulsory, the net cost of all such variations being payable on the Delivery Date (the "**Change Orders**"); and (ii) decreased at delivery of the Ship under Articles 13, 14, 16 and 17 of the Shipbuilding Contract (in aggregate the "**Liquidated Damages**") or by mutual agreement between the parties (the Initial Contract Price adjusted as aforesaid being the "**Final Contract Price**").
- (D) By a facility agreement dated 18 July 2008 (as amended by a supplemental agreement dated 25 October 2010 and as further amended and restated by an amendment and restatement agreement dated 31 October 2014) (the "**Original Facility Agreement**") entered into between (i) the Borrower, (ii) the Lenders, (iii) the Mandated Lead Arrangers and (iv) the Agent and the SACE Agent, the Lenders agreed to make available to the Borrower a facility of originally the Dollar Equivalent of up to EUR 349,520,718.00 for the purpose of the purpose of assisting the Borrower in financing, subject to exchange rate fluctuations, up to 80% of the Final Contract Price and 100% of the instalment of the relevant SACE Premium which was paid on the Drawdown Date.
- (E) By the amendment and restatement agreement dated 31 October 2014 (the "**2014 Amending and Restating Agreement**"), the parties thereto agreed to, among other things, (1) the Guarantor replacing the Prior Guarantors as a guarantor of the obligations of the Borrower under the Original Facility Agreement and (2) the amending and restating of the Original Facility Agreement pursuant to the terms set forth in the 2014 Amending and Restating Agreement.
- (F) Due to the unprecedented and extraordinary impacts of the Covid-19 pandemic on the cruise sector and cruise operators, SACE informed the cruise operators of its availability to evaluate certain measures (the "**Temporary Measures**") applicable in relation to certain qualifying loan agreements in order to assist companies which are financially sound but dealing with the impact of the temporary but unprecedented Covid-19 pandemic; the possibility to access to such measures was subject, amongst other things, to certain principles dated 15 April 2020 for cruise lines offered by SACE (the "**Original Principles**").
- (G) Pursuant to the consent request letter dated 18 April 2020, the Borrower and the Guarantor notified the Agent and the SACE Agent of the wish to benefit from the Temporary Measures in relation to certain loan agreements listed therein, including the Original Facility Agreement, and requested, amongst other things, the deferral of repayments of principal under the Original Facility Agreement for a period of one year from 1 April 2020 to 31 March 2021 (the "**Borrower Request**").
- (H) On 25 May 2020, the Agent (for and on behalf of the Lenders) provided its consent to part of the Borrower Request in accordance with and subject to certain conditions as set out in an amendment to the Original Facility Agreement and to the Original Guarantee dated 4 June 2020 between, amongst others, the Borrower, the Agent and the SACE Agent (the "**2020 Amendment Agreement**") ~~(the Original Facility Agreement as amended pursuant to the 2020 Amendment Agreement, the "**Facility Agreement**").~~
-

- (I) Due to the continued impacts of the Covid-19 pandemic on the cruise sector and cruise operators, SACE confirmed on 31 December 2020 its availability to evaluate an extension of the Temporary Measures (the "**Extended Temporary Measures**"), again subject to certain principles set out in a document titled "Debt Deferral Extension Framework for ECA-backed Export Financings" dated 26 November 2020 for cruise lines offered by SACE (together with the Original Principles, the "**Principles**").
- (J) Pursuant to the consent request letter dated 3 December 2020, the Borrower and the Guarantor notified the Agent and the SACE Agent of the wish to benefit from the Extended Temporary Measures in relation to certain loan agreements listed therein, including the Facility Agreement, and requested, amongst other things, the deferral of repayments of principal under the Facility Agreement for a further period of one year from 1 April 2021 to 31 March 2022 (the "**Second Borrower Request**").
- (K) On 25 January 2021, the Agent (for and on behalf of the Lenders) provided its consent to part of the Second Borrower Request in accordance with and subject to certain conditions as set out in an amendment and restatement agreement to the Original Facility Agreement (as amended by the 2020 Amendment Agreement), dated ~~\_\_\_\_\_~~17 February 2021 between, amongst others, the Borrower, the Agent and the SACE Agent (the "**2021 Amendment and Restatement Agreement**").
- (L) By a supplemental agreement dated 23 December 2021 and made between, amongst others, the Borrower, the Guarantor, the Holding, the Agent and the SACE Agent (the "**December 2021 Amendment Agreement**"), the Parties agreed to, *inter alia*, amend certain financial covenants and certain other provisions under the Original Facility Agreement (as amended by the 2020 Amendment Agreement and as amended and restated by the 2021 Amendment and Restatement Agreement).
- (M) By a supplemental agreement dated 16 December 2022 and made between, amongst others, the Borrower, the Guarantor, the Holding, the Agent and the SACE Agent (the "**December 2022 Amendment Agreement**"), the Parties agreed to, *inter alia*, amend certain financial covenants and certain other provisions under the Original Facility Agreement (as amended by the 2020 Amendment Agreement, as amended and restated by the 2021 Amendment and Restatement Agreement and as amended by the December 2021 Amendment Agreement).
- (N) The Parties have agreed to enter into an amendment and restatement agreement (the "**2023 Amendment and Restatement Agreement**") to amend and restate the Original Facility Agreement (as amended by the 2020 Amendment Agreement, as amended and restated by the 2021 Amendment and Restatement Agreement, as amended by the December 2021 Amendment Agreement and as amended by the December 2022 Amendment Agreement) in order to, *inter alia*, document the transition from LIBOR to SOFR (as defined below) (the Original Facility Agreement as amended by the 2020 Amendment Agreement, as amended and restated by the 2021 Amendment and Restatement Agreement, as amended by the December 2021 Amendment Agreement and as amended by the December 2022 Amendment Agreement, the "**Facility Agreement**").
- (O) ~~(L)~~ This Agreement sets out the terms and conditions of the Facility Agreement as amended and restated by the ~~2024-~~2023 Amendment and Restatement Agreement.
-

## OPERATIVE PROVISIONS

### 1 INTERPRETATION

#### 1.1 Definitions

Subject to Clause 1.5 (*General Interpretation*), in this Agreement:

**"2014 Amending and Restating Agreement"** has the meaning given to the term in Recital (E).

**"2020 Amendment Agreement"** has the meaning given to the term in Recital (H).

**"2020 Deferral Commitment"** means in relation to any Lender as listed in Schedule 1 (*Lenders and Commitments*) to the 2020 Amendment Agreement, the amount in Dollars expressed as a percentage set opposite its name under the heading "Commitment" and the amount of any other commitment attributable to it (including the related 2020 Deferral Tranche Premium payable to SACE) under this Agreement in respect of the 2020 Deferral Tranche.

**"2020 Deferral Effective Date"** has the meaning given to the term Effective Date in the 2020 Amendment Agreement.

**"2020 Deferral Fee Letters"** means any letter between the Agent and any Obligor which sets out the fees payable in connection with the arrangements contemplated by the 2020 Amendment Agreement.

**"2020 Deferral Final Repayment Date"** means the Repayment Date falling 3 years and six months after the 2020 Deferral Repayment Starting Point, or, if earlier, the date on which the 2020 Deferral Tranche has been repaid or prepaid in full, as further set out in Schedule 4 (*Deferred Repayment Schedule*).

**"2020 Deferral Period"** means the period from 1 April 2020 to 31 March 2021.

**"2020 Deferral Repayment Starting Point"** means the date of the first Repayment Date falling after 31 March 2021, namely 19 July 2021.

**"2020 Deferral Tranche"** means the part of the Loan made available to the Borrower to finance the aggregate of the 2020 Deferred Repayment Instalments and the related 2020 Deferral Tranche Premium payable to SACE (amounting to [\*] per cent. ([\*]%) of the Total Commitments as of 1 April 2020) in a principal amount not exceeding forty-five million, five hundred and forty-seven thousand, nine hundred and fifty-six Dollars and sixty-eight Cents (\$45,547,956.68).

**"2020 Deferral Tranche Premium"** has the meaning given to such term in paragraph (a) of Clause [9-5 10.5](#) (*Deferral Tranches – additional premium*).

**"2020 Deferred Repayment Instalments"** means the repayment instalments due during the 2020 Deferral Period.

**"2021 Amendment and Restatement Agreement"** has the meaning given to such term in Recital (K).

**"2021 Deferral Commitment"** means in relation to any Lender as listed in Schedule 1 (*Lenders and Commitments*) to the 2021 Amendment and Restatement Agreement, the amount in

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Dollars expressed as a percentage set opposite its name under the heading "Commitment" and the amount of any other commitment attributable to it under this Agreement in respect of the 2021 Deferral Tranche.

~~"2021 Deferral Effective Date" has the meaning given to the term Effective Date in the 2021 Amendment and Restatement Agreement.~~

"**2021 Deferral Fee Letters**" means any letter between the Agent or the SACE Agent and any Obligor which sets out the fees payable in connection with the arrangements contemplated by the 2021 Amendment and Restatement Agreement.

"**2021 Deferral Final Repayment Date**" means the Repayment Date falling 4 years and six months after the 2021 Deferral Repayment Starting Point, or, if earlier, the date on which the 2021 Deferral Tranche has been repaid or prepaid in full, as further set out in Schedule 4 (*Deferred Repayment Schedule*).

"**2021 Deferral Period**" means the period from 1 April 2021 to 31 March 2022.

"**2021 Deferred Repayment Instalments**" means the repayment instalments due during the 2021 Deferral Period.

"**2021 Deferral Repayment Starting Point**" means the date of the first Repayment Date falling after 31 March 2022, namely 19 July 2022.

"**2021 Deferral Tranche**" means the part of the Loan made or to be made available to the Borrower to repay the aggregate of the 2021 Deferred Repayment Instalments, including, for the avoidance of doubt, the repayment instalments due pursuant to paragraph (a) of Clause 5.5 (*Repayment of Deferral Tranches*).

"**2021 Deferral Tranche Premium**" has the meaning given to such term in paragraph (b) of Clause ~~9-5~~ 10.5 (*Deferral Tranches – additional premium*).

~~"2021 Amendment and Restatement Agreement" has the meaning given to such term in Recital (M).~~

~~"2023 Amendment and Restatement Agreement" has the meaning given to such term in Recital (N).~~

~~"2023 Effective Date" has the meaning give to the term Effective Date in the 2023 Amendment and Restatement Agreement.~~

"**Affiliate**" means, with respect to any person, any other person controlling, controlled by or under common control with, such person and for purposes of this definition, "**control**" (including, with correlative meanings, the terms "**controlling**", "**controlled by**" and "**under common control with**"), as applied to any person, means the possession, directly or indirectly, of the power to vote ten per cent. (10%) or more of the securities having voting power for the election of directors of such person, or otherwise to direct or cause the direction of the management and policies of that person, whether through the ownership of voting securities or by contract or otherwise.

"**Agent**" means Crédit Agricole Corporate and Investment Bank, a French "société anonyme", having a share capital of EUR 7,851,636,342.00 and its registered office located at 12 Place des États-Unis, CS 70052 92547, Montrouge Cedex, France, registered under the n° Siren

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304 187 701 at the Registre du Commerce et des Sociétés of Nanterre or any successor of it appointed under Clause ~~25~~26 (*Role of the Agent and the Mandated Lead Arrangers*).

"**Annex VI**" means Annex VI (Regulations for the Prevention of Air Pollution from Ships) to the International Convention for the Prevention of Pollution from Ships 1973 (as modified in 1978 and 1997).

"**Approved Flag**" means the Marshall Islands flag or such other flag as the Agent may, with the authorisation of the Majority Lenders, approve from time to time.

"**Approved Manager**" means the Borrower or any other company (whether or not a member of the Group) which the Agent may, with the authorisation of the Majority Lenders, approve from time to time as the manager of the Ship.

"**Approved Manager's Undertaking**" means, in the event that the Approved Manager is a company other than the Borrower, a letter of undertaking executed by the Approved Manager in favour of the Agent, which will include, without limitation, an agreement by the Approved Manager to subordinate its rights against the Ship and the Borrower to the rights of the Creditor Parties under the Finance Documents, in the agreed form.

"Approved Project" means any of the projects identified in the Approved Projects List.

"Approved Projects List" means the approved projects list provided by the Guarantor and accepted by the Agent prior to the December 2021 Effective Date.

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

"**Availability Period**" means the period commencing on 18 July 2008 and ending on:

- (a) the earlier to occur of (i) the Delivery Date and (ii) the date falling 360 days (being the period stipulated in Article 8.6 of the Shipbuilding Contract) after 30 September 2010 (or such later date as the Agent may, with the authorisation of the Lenders, agree with the Borrower); or
- (b) if earlier, the date on which the Total Commitments are fully borrowed, cancelled or terminated.

"Backstop Rate Switch Date" means 30 June 2023 or any other date agreed between the Agent, the Majority Lenders and the Borrower.

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

"**Bail-In Legislation**" means:

- (a) in relation to an EEA Member Country which has implemented, or which at any time implements, Article 55 BRRD, the relevant implementing law or regulation as described in the EU Bail-In Legislation Schedule from time to time; and
  - (b) in relation to any state other than such an EEA Member Country or (to the extent that the United Kingdom is not such an EEA Member Country) the United Kingdom, any analogous law or regulation from time to time which requires contractual recognition of any Write-down and Conversion Powers contained in that law or regulation.
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"**Base Rate**" means one Euro for 1.5816 Dollars.

"**Builder**" has the meaning given in Recital (A).

"**Builder Letter of Credit**" means a letter of credit relating solely to the Shipbuilding Contract issued in favour of the Builder by the Letter of Credit Issuer in the form of Exhibit B or another agreed form.

"**Business Day**" means ~~a day~~:

- (a) a day (other than a Saturday or Sunday) on which banks are open in London and Paris and, in relation to any payment to be made to the Builder, Milan and, in respect of a day on which a payment is required to be made under a Finance Document, also in New York City; and
- (b) (in relation to the fixing of an interest rate for a Term SOFR Loan) which is a US Government Securities Business Day.

"Central Bank Rate" means:

- (a) the short-term interest rate target set by the US Federal Open Market Committee as published by the Federal Reserve Bank of New York from time to time; or
- (b) if that target is not a single figure, the arithmetic mean of:
  - (i) the upper bound of the short-term interest rate target range set by the US Federal Open Market Committee and published by the Federal Reserve Bank of New York; and
  - (ii) the lower bound of that target range.

"Central Bank Rate Adjustment" means in relation to the Central Bank Rate prevailing at close of business on any US Government Securities Business Day, the 20 per cent trimmed arithmetic mean calculated by the Agent (or by any other Creditor Party which agrees to determine that mean in place of the Agent), of the Central Bank Rate Spreads for the five most immediately preceding US Government Securities Business Days for which SOFR is available.

"Central Bank Rate Spread" means in relation to any US Government Securities Business Day, the difference (expressed as a percentage rate per annum) calculated by the Agent (or by any other Creditor Party which agrees to calculate that rate in place of the Agent) of:

- (a) SOFR for that US Government Securities Business Day; and
- (b) the Central Bank Rate prevailing at close of business on that US Government Securities Business Day.

"**Certified Copy**" means in relation to any document delivered or issued by or on behalf of any company, a copy of such document certified as a true, complete and up-to-date copy of the original by any of the directors or the secretary or assistant secretary or any attorney-in-fact for the time being of that company.

"**CIRR**" (Commercial Interest Reference Rate) means 5.62% per annum or any other lower CIRR rate being the fixed rate for medium and long term export credits in Dollars applicable to the

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financing of the Ship according to the Organisation for Economic Co-operation and Development rules as determined by the competent Italian Authorities.

"**CISADA**" means the United States Comprehensive Iran Sanctions, Accountability and Divestment Act of 2010 as it applies to non-US persons.

"**Code**" means the United States Internal Revenue Code of 1986.

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

"**Compliance Certificate**" has the meaning given to "Compliance Certificate" in the Guarantee.

"**Contribution**" means, in relation to a Lender, the part of the Loan which is owing to that Lender.

"**Conversion Rate**" means the rate determined by the Agent on the Conversion Rate Fixing Date and notified to the Borrower as being:

- (a) the Base Rate; or
- (b) in the event that the FOREX Contracts Weighted Average Rate is lower than the Base Rate (i.e. such that a lower amount in Dollars is necessary to purchase Euro than is reflected by the Base Rate), the FOREX Contracts Weighted Average Rate; or
- (c) in the event that the FOREX Contracts Weighted Average Rate is higher than the Base Rate (i.e. such that a greater amount in Dollars is necessary to purchase Euro than is reflected by the Base Rate), the lower of:
  - (i) the FOREX Contracts Weighted Average Rate; and
  - (ii) the Base Rate increased by 10% (ten per cent.);

"**Conversion Rate Fixing Date**" means the date falling [\*] ([\*]) days before the Intended Delivery Date.

"**Credit Adjustment Spread**" means 0.42826% per annum.

"**Creditor Party**" means the Agent, the SACE Agent, the Mandated Lead Arrangers or any Lender, whether as at the date of the Original Facility Agreement or at any later time.

"**Daily Rate**" means for any US Government Securities Business Day:

- (a) SOFR for that US Government Securities Business Day; or
- (b) if SOFR is not available for that US Government Securities Business Day, the percentage rate per annum which is the aggregate of:
  - (i) the Central Bank Rate for that US Government Securities Business Day; and





(ii) the applicable Central Bank Rate Adjustment; or  
(c) if paragraph (b) above applies but the Central Bank Rate for that US Government Securities Business Day is not available, the percentage rate per annum which is the aggregate of:

(i) the most recent Central Bank Rate for a day which is no more than five US Government Securities Business Days before that US Government Securities Business Day; and

(ii) the applicable Central Bank Rate Adjustment.

rounded, in either case, to five decimal places and if, in either case, the aggregate of that rate and the applicable Credit Adjustment Spread is less than zero, the Daily Rate shall be deemed to be such a rate that the aggregate of the Daily Rate and the applicable Credit Adjustment Spread is zero.

**"Daily Simple SOFR"** means, for any day, a rate per annum equal to the Daily Rate for the day that is:

(a) for as long as the Interest Make-Up Agreement is in full force and effect, ten (10) US Government Securities Business Days; or

(b) if the Interest Make-Up Agreement ceases to be in full force and effect, five (5) US Government Securities Business Days,

prior to (i) if such day is a US Government Securities Business Day, that day or (ii) if such day is not a US Government Securities Business Day, the US Government Securities Business Day immediately preceding such day.

**"December 2021 Amendment Agreement"** has the meaning given to such term in Recital (L).

**"December 2021 Effective Date"** has the meaning given to the term Effective Date in the December 2021 Amendment Agreement.

**"December 2021 Fee Letters"** means any letter between the Agent (or the SACE Agent, as applicable) and any Obligor which sets out the fees payable in connection with the arrangements contemplated by the December 2021 Amendment Agreement.

**"December 2022 Amendment Agreement"** has the meaning given to such term in Recital (M).

**"December 2022 Fee Letters"** means any letter between the Agent (or the SACE Agent, as applicable) and any Obligor which sets out the fees payable in connection with the arrangements contemplated by the December 2022 Amendment Agreement.

**"Deferral Commitment"** means the 2020 Deferral Commitment or the 2021 Deferral Commitment and, together, **"Deferral Commitments"**.

**"Deferral Fee Letters"** means any of the 2020 Deferral Fee Letters and/or the 2021 Deferral Fee Letters.

**"Deferral Final Repayment Date"** means any of the 2020 Deferral Final Repayment Date and/or the 2021 Deferral Final Repayment Date.

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"**Deferral Period**" means the period from 1 April 2020 to 31 March 2022.

"**Deferral Prepayment Event**" means the occurrence of any event entitling the Agent to exercise any rights granted to it pursuant to Clause ~~46.4~~ 17.4 (*Breach of new covenants or the Principles*), including, without limitation, the ability to cancel any part, or demand the immediate repayment of, any Deferral Tranche and to terminate the waiver of the covenant granted pursuant to Clause ~~44~~ 15 (*Security Value Maintenance*) or the waiver of the financial covenants granted pursuant to paragraphs (b) and (c) of clause 11.15 (*Financial Covenants*) of the Guarantee.

"**Deferral Tranche**" means the 2020 Deferral Tranche or the 2021 Deferral Tranche.

"**Deferral Tranche Premia**" has the meaning given to such term in paragraph (b) of Clause ~~9.5~~ 10.5 (*Deferral Tranches – additional premium*).

"**Deferred Costs Percentage**" means:

- (a) in relation to the 2020 Deferral Tranche, [\*]% p.a.; and
- (b) in relation to the 2021 Deferral Tranche, [\*]% p.a..

"**Delivered Vessel Facilities**" means, together, Riviera Facility Agreement, Seven Seas Explorer Facility Agreement, Seven Seas Splendor Facility Agreement and this Agreement (as further amended, restated and supplemented from time to time).

"**Delivery Date**" means the date and time of delivery of the Ship by the Builder to the Borrower as stated in the Protocol of Delivery and Acceptance.

"**Dollar Equivalent**" means such amount in Dollars as is calculated by the Agent on the Conversion Rate Fixing Date to be the equivalent of an amount in Euro at the Conversion Rate.

"**Dollars**" and "\$" means the lawful currency for the time being of the United States of America.

"**Drawdown Date**" means the date on which the Loan is drawn down and applied in accordance with Clause 2 (*Facility*).

"**Drawdown Notice**" means a notice in the form set out in Schedule 2 (*Form of Drawdown Notice*) (or in any other form which the Agent approves or reasonably requires).

"**Earnings**" means all moneys whatsoever which are now, or later become, payable (actually or contingently) to the Borrower and which arise out of the use or operation of the Ship, including (but not limited to):

- (a) all freight, hire, fare and passage moneys, compensation payable to the Borrower or the Agent in the event of requisition of the Ship for hire, remuneration for salvage and towage services, demurrage and detention moneys and damages for breach (or payments for variation or termination) of any charterparty or other contract for the employment of the Ship;
  - (b) all moneys which are at any time payable under Insurances in respect of loss of earnings; and
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- (c) if and whenever the 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 the Ship.

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

**"Effective Date"** means the Effective Date defined in the Original Facility Agreement.

**"Eligible Amount"** means eighty per cent. (80%) of the lesser of:

- (a) the Dollar Equivalent of EUR 418,237,911; and  
(b) the Dollar Equivalent of the Final Contract Price

in each case less any Letter of Credit Reduction;

**"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.

**"EU Blocking Regulation"** means EU Regulation (EC) 2271/96 of 22 November 1996.

**"Euro"** and **"EUR"** means the single currency of the Participating Member States.

**"Event of Default"** means any of the events or circumstances described in Clause ~~18.4~~19.1 (*Events of Default*).

**"Existing Indebtedness"** means (a) Loan Agreement, dated as of July 31, 2013, by and among Explorer New Build, LLC, as Borrower, the banks and financial institutions party thereto, Crédit Agricole Corporate and Investment Bank, Société Générale, KfW IPEX-Bank GmbH and HSBC Bank plc as Joint Mandated Lead Arrangers, Crédit Agricole Corporate and Investment Bank, as Agent and as SACE Agent and Crédit Agricole Corporate and Investment Bank, as Agent and as Security Trustee (as amended from time to time); (b) Loan Agreement, dated as of July 18, 2008, by and among Riviera New Build, LLC, as Borrower, the banks and financial institutions party thereto, Crédit Agricole Corporate and Investment Bank (formerly Calyon) and Société Générale, as Mandated Lead Arrangers, and Crédit Agricole Corporate and Investment Bank, as Agent and as SACE Agent (as amended from time to time); (c) Credit Agreement, dated as of July 2, 2013, among Oceania Cruises, Inc., OCl Finance Corp., as Borrowers, the banks and financial institutions party thereto, Deutsche Bank AG, New York Branch, as administrative agent, as collateral agent and as mortgage trustee, Deutsche Bank Securities Inc., Barclays Bank Plc and UBS Securities LLC as co-syndication agents, HSBC Securities (USA) Inc. and Credit Agricole Corporate and Investment Bank as co-documentation agents, Barclays Bank Plc, UBS Securities LLC, HSBC Securities (USA) INC. and Credit Agricole Corporate and Investment Bank, as joint bookrunners, Deutsche Bank Securities Inc., Barclays Bank Plc and Ubs Securities LLC, as joint lead arrangers; (d) Credit Agreement, dated as of August 21, 2012 and amended on February 1, 2013, among Classic Cruises, LLC, Classic Cruises II, LLC, Seven Seas Cruises S. De R.L., a Panamanian sociedad de responsabilidad limitada, SSC Finance Corp., as Borrowers, Deutsche Bank Ag, New York Branch, as Administrative Agent and as Collateral Agent, and each lender from time to time party thereto; (e) \$225,000,000 of 9.125% Senior Secured Notes due 2019 and issued under that certain indenture dated as of May 19, 2011, by and among Seven Seas Cruises S. de R.L., as issuer; Celtic Pacific (UK) Two Limited; Supplystill Limited; Prestige Cruise Services (Europe) Limited (f/k/a Regent Seven Seas Cruises UK Limited); Celtic Pacific

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(UK) Limited; SSC (France) LLC; Mariner, LLC, each of the foregoing (other than the Issuer) as subsidiary guarantors; Wilmington Trust, National Association (successor by merger to Wilmington Trust FSB), as Trustee and Collateral Agent and any secured hedges in connection with the foregoing; (f) Financial Indebtedness referred to in the financial statements of the Guarantor delivered to the Agent prior to the Effective Date; (g) Credit Agreement, dated as of 14 July 2014, by and among Seahawk Two, Ltd., as borrower, NCL Corporation Ltd., as guarantor, the lenders party thereto, KFW IPEX-Bank GmbH as Hermes agent and KFW IPEX-Bank GmbH as facility agent, as collateral agent and as CIRR agent (as amended from time to time); and (h) Credit Agreement, dated as of 14 July 2014, by and among Seahawk One, Ltd., as borrower, NCL Corporation Ltd., as guarantor, the lenders party thereto, KFW IPEX-Bank GmbH as Hermes agent and KFW IPEX-Bank GmbH as facility agent, as collateral agent and as CIRR agent (as amended from time to time).

**"External Management Agreement"** means, in the event that the Approved Manager is not a member of the Group, the management agreement entered or to be entered into between the Borrower and the Approved Manager with respect to the Ship.

**"External Management Agreement Assignment"** means an assignment of the rights of the Borrower under the External Management Agreement (if any) executed or to be executed by the Borrower in favour of the Agent, the SACE Agent and the Lenders in the agreed form.

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

**"Fallback Interest Payment"** means the aggregate amount of interest that is, or is scheduled to become, payable under paragraph (d) of Clause 7.10 (Unavailability of Term SOFR) and relates to a Term SOFR Loan.

**"FATCA"** means:

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

**"FATCA 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 2017; or
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- (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 2017,

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 the Original Facility 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.

**"February 2021 Effective Date"** has the meaning given to the term Effective Date in the 2021 Amendment and Restatement Agreement.

**"Final Contract Price"** has the meaning given in Recital (C).

**"Finance Documents"** means:

- (a) ~~the 2020 Amendment~~ this Agreement;
  - (b) the 2021-2020 Amendment ~~and Restatement~~ Agreement;
  - ~~(c)~~ ~~the Deferral Fee Letters;~~
  - ~~(c)~~ ~~(d)~~ this the 2021 Amendment and Restatement Agreement;
  - ~~(d)~~ the December 2021 Amendment Agreement;
  - ~~(e)~~ the December 2022 Amendment Agreement;
  - ~~(f)~~ the 2023 Amendment and Restatement Agreement;
  - ~~(g)~~ the December 2021 Fee Letters;
  - ~~(h)~~ the Deferral Fee Letters;
  - ~~(i)~~ the December 2022 Fee Letters;
  - ~~(j)~~ ~~(e)~~ the Approved Manager's Undertaking;
  - ~~(k)~~ ~~(f)~~ any External Management Agreement Assignment;
  - ~~(l)~~ ~~(g)~~ the Guarantee;
  - ~~(m)~~ ~~(h)~~ the Letter of Credit;
  - ~~(n)~~ ~~(i)~~ the Mortgage;
  - ~~(o)~~ ~~(j)~~ the Mortgage Addenda;
  - ~~(p)~~ ~~(k)~~ the Limited Liability Company Interests Security Deed;
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- (g) ~~(h)~~ the Post-Delivery Assignment;
- (r) ~~(m)~~ the SACE Reimbursement Agreement;
- (s) ~~(n)~~ the Supplemental Security Documents;
- (t) ~~(o)~~ any Time Charter Assignment;
- (u) ~~(p)~~ any Transfer Certificate;
- (v) ~~(q)~~ the Tripartite General Assignment; and
- (w) ~~(r)~~ any other document (whether creating a Security Interest or not) which is designated as a Finance Document by agreement between the Borrower and the Agent or which is executed at any time by the Borrower or any other person as security for, or to establish any form of subordination or priorities arrangement in relation to, any amount payable to the 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 made available to the debtor;
- (d) under a financial lease, a deferred purchase consideration arrangement or any other agreement having the commercial effect of a borrowing or raising of money by the debtor;
- (e) under any foreign exchange transaction, any interest or currency swap or any other kind of derivative transaction entered into by the debtor or, if the agreement under which any such transaction is entered into requires netting of mutual liabilities, the liability of the debtor for the net amount; or
- (f) under a guarantee, indemnity or similar obligation entered into by the debtor in respect of a liability of another person which would fall within paragraphs (a) to (e) if the references to the debtor referred to the other person;

**"Fixed Interest Rate"** means CIRR.

**"Floating Interest Rate"** means, in respect of any Interest Period, the rate per annum determined by the Agent to be ~~the aggregate of:~~

- (a) in relation to each LIBOR Loan, the percentage rate per annum which is the aggregate of:
    - (i) ~~(a)~~ the Margin; and
    - ~~(b)~~ ~~LIBOR for the relevant period.~~
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(ii) LIBOR.

(b) In relation to each Term SOFR Loan, the percentage rate per annum which is the aggregate of:

(i) the Margin;

(ii) Term SOFR Reference Rate; and

(iii) Credit Adjustment Spread.

**"FOREX Contracts"** means each actual purchase contract, spot or forward contract and any other contract, such as an option or collar arrangement, which is entered into in the foreign exchange markets for the acquisition of Euro intended to pay the delivery instalment under the Shipbuilding Contract, which:-

- (a) matures not later than the Intended Delivery Date, provided that option arrangements may mature up to one month after such date if at the time they are entered into there exists a reasonable uncertainty as to the date on which the Ship will be delivered;
- (b) is entered into by the Borrower or either Prior Guarantor (or, prior to the Effective Date, the Prior Guarantors) or a combination of the foregoing not later than two (2) days before the Conversion Rate Fixing Date so that the Borrower, directly or through a Prior Guarantor, purchases or may purchase Euro with Dollars at a pre-agreed rate; and
- (c) is notified to the Agent within ten (10) days of its execution but in any event no later than the day preceding the Conversion Rate Fixing Date, with a Certified Copy of each such contract being delivered to the Agent at such time;

**"FOREX Contracts Weighted Average Rate"** means the rate determined by the Agent at around 12 noon (Paris time) on the Conversion Rate Fixing Date in accordance with the following principles which (inter alia) are intended to take into account any maturity mismatch between the maturity of the FOREX Contracts and the Intended Delivery Date as well as FOREX Contracts that are unwound as part of the hedging strategy of the Borrower:

- (a) FOREX Contracts that are spot or forward foreign exchange contracts, if any, shall be valued at the contract value (taking into account any rescheduling);
  - (b) the difference between the Euro amount available under (a) above and the Euro amount balance payable to the Builder on the Delivery Date is assumed to be purchased at the official daily fixing rate of the European Central Bank for the purchase of Euro with Dollars as displayed on "Reuters Page ECB 37" at or around 2 p.m. (Paris time) on the Conversion Rate Fixing Date;
  - (c) any FOREX Contract which is an option or collar arrangement and is not unwound at the Conversion Rate Fixing Date will be marked to market and the resulting profit or loss shall reduce or increase the Dollar countervalue of the purchased Euro;
  - (d) any FOREX Contract which is an option or collar arrangement and is sold or purchased back at the time FOREX Contract(s) are entered into for an identical Euro amount shall be accounted for the net premium cost or profit, as the case may be.
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Any marked to market valuation, as required in (iii), shall be performed by Crédit Agricole Corporate and Investment Bank's dedicated desk in accordance with market practices. The Borrower shall have the right to request indicative valuations from time to time prior to the Conversion Rate Fixing Date.

"**Funding Rate**" means any individual rate notified by a Lender to the Agent pursuant to sub-paragraph (i) of paragraph (e) of Clause ~~6.10~~ 7.12 (*Cost of funds*).

"**GAAP**" means generally accepted accounting principles in the United States of America consistently applied (or, if not consistently applied, accompanied by details of the inconsistencies) including, without limitation, those set forth in the opinion and pronouncements of the Accounting Principles Board of the American Institute of Certified Public Accountants and statements and pronouncements of the Financial Accounting Standards Board.

"**German Blocking Provisions**" means section 7 of the German Foreign Trade Regulation (AWV) (*Außenwirtschaftsverordnung*) (in connection with section 4 paragraph 1 a no. 3 German Foreign Trade Law (AWG) (*Außenwirtschaftsgesetz*)).

"**Group**" means the Guarantor and its subsidiaries.

"**Guarantee**" means the Original Guarantee, as amended pursuant to the 2020 Amendment Agreement ~~and~~ as amended and restated pursuant to the 2021 [Amendment and Restatement Agreement, as amended pursuant to the December 2021 Amendment Agreement, as further amended pursuant to the December 2022 Amendment Agreement and as further amended and restated by the 2023 Amendment and Restatement Agreement and as may be further amended and/or supplemented from time to time.](#)

"**Guarantor**" means NCL Corporation Ltd., a Bermuda company with its registered office at Park Place ~~55~~, 55 Par-la-Ville Road, Hamilton HM 11, Bermuda.

"**Historic Term SOFR**" means, in relation to any Term SOFR Loan, [the most recent applicable Term SOFR for a period equal in length to the Interest Period of that Term SOFR Loan and which is as of a day which is no more than five US Government Securities Business Days before the Quotation Day.](#)

"**Holding**" means Norwegian Cruise Line Holdings Ltd., a company incorporated under the laws of Bermuda with its registered office at Park Place ~~55~~, 55 Par-la-Ville Road, Hamilton HM 11, Bermuda.

"**IAPPC**" means a valid international air pollution prevention certificate for the Ship issued under Annex VI.

"**Illicit Origin**" means any origin which is illicit, fraudulent or in breach of Sanctions including, without limitation, drug trafficking, corruption, organised criminal activities, terrorism, money laundering or fraud.

"**Information Package**" means:

- (a) the information package in connection with the "Debt Holiday" application in the form set out in Schedule 4 (*Information Package*) of the 2020 Amendment Agreement, submitted by the Borrower (or the Guarantor on its behalf) in order to obtain the benefit of the measures provided for in the Original Principles; and



- (b) the information package in connection with the "Debt Holiday" application in the form set out in Schedule 4 (*Information Package*) of the 2021 Amendment and Restatement Agreement, submitted by the Borrower (or the Guarantor on its behalf) in order to obtain the benefit of the measures provided for in the Principles for the purpose of this Agreement and certain of the Borrower's and the Guarantor's obligations under this Agreement.

"Initial Contract Price" has the meaning given in Recital (B).

"Insurances" means:

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

"Intended Delivery Date" means 30 September 2010 (the date on which the Ship will be ready for delivery pursuant to the Shipbuilding Contract as at the date of the Original Facility Agreement) or any other date notified by the Borrower to the Agent in accordance with paragraph (a) of Clauses 3.5 (*No later than sixty (60) days before the Intended Delivery Date*) or paragraph (c) of Clause 3.7 (*No later than five (5) Business Days before the Intended Delivery Date*) as being the date on which the Builder and the Borrower have agreed that the Ship will be ready for delivery pursuant to the Shipbuilding Contract.

"Interest ~~Make-up~~ Make-Up Agreement" means an agreement to be entered into between SIMEST and the Agent on behalf of the Lenders, in form and substance acceptable to the Mandated Lead Arrangers, whereby, inter alia, the return to the Lenders on the Loan made hereunder will be supplemented by SIMEST so that it equals that which the Lenders would have received if interest were payable on the Loan at LIBOR plus the Margin.

"Interest Period" means a period determined in accordance with Clause ~~7~~8 (*Interest Periods*).

"Interpolated ~~Screen-Rate~~Historic Term SOFR" means, in relation to ~~the Loan or any part of the Term SOFR~~ Loan, the rate (rounded to the same number of decimal places as Term SOFR), which results from interpolating on a linear basis between:

(a) either:

- (i) ~~(a) the most recent applicable Screen-Rate-Term SOFR (as of a day which is not more than five US Government Securities Business Days before the Quotation Day) for the longest period (for which that Screen-Rate-Term SOFR is available) which is less than the Interest Period of the Loan or that part of the Term SOFR Loan; and/or~~
- (ii) if no such Term SOFR is available for a period which is less than the Interest Period of that Term SOFR Loan, the most recent SOFR for a day which is no more than five US Government Securities Business Days (and no less than two US Government Securities Business Days) before the Quotation Day; and

(b) the most recent applicable Term SOFR (as of a day which is not more than five US Government Securities Business Days before the Quotation Day) for the shortest

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period (for which Term SOFR is available) which exceeds the Interest Period of that Term SOFR Loan.

"Interpolated Screen Rate" means, in relation to any LIBOR 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 that LIBOR 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~~ LIBOR Loan,

each as of the Specified Time ~~for Dollars.~~

"Interpolated Term SOFR" means, in relation to any Term SOFR Loan, the rate (rounded to the same number of decimal places as Term SOFR) which results from interpolating on a linear basis between:

- (a) either
  - (i) the applicable Term SOFR (as of the Quotation Day) for the longest period (for which Term SOFR is available) which is less than the Interest Period of that Term SOFR Loan;
  - or
  - (ii) if no such Term SOFR is available for a period which is less than the Interest Period of that Term SOFR Loan, SOFR for the day which is five (5) US Government Securities Business Days before the Quotation Day; and
- (b) the applicable Term SOFR (as of the Quotation Day) for the shortest period (for which Term SOFR is available) which exceeds the Interest Period of that Term SOFR Loan.

"**ISM Code**" means the International Safety Management Code (including the guidelines on its implementation), adopted by the International Maritime Organisation Assembly as Resolutions A.741 (18) and A.788 (19), as the same may be amended or supplemented from time to time (and the terms "**safety management system**", "**Safety Management Certificate**" and "**Document of Compliance**" have the same meanings as are given to them in the ISM Code).

"**ISPS Code**" means the International Ship and Port Facility Security Code adopted by the International Maritime Organisation.

"**Italian Authorities**" means SACE and/or SIMEST and any other relevant Italian authorities involved in the implementation of the Loan.

"**Lender**" means a bank or financial institution listed in Schedule 1 (*Lenders and Commitments*) and acting through its Facility Office or its transferee, successor or assign.

"**Letter of Credit**" means a letter of credit issued by the Letter of Credit Issuer in favour of the Agent and released on 16 May 2014.

"**Letter of Credit Amount**" means the face amount of the Letter of Credit.

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**"Letter of Credit Issue Date"** means the date falling fifteen (15) Business Days prior to the Intended Delivery Date.

**"Letter of Credit Issuer"** means Lehman Brothers Bank, Federal Savings Bank, a company incorporated in Delaware or any other financial institution acceptable to the Agent.

**"Letter of Credit Reduction"** means USD50,000,000 less the aggregate of:

- (a) the Letter of Credit Amount; and
- (b) the cumulative amount of all drawings in respect of the Builder Letter of Credit on or prior to the earlier of:
  - (i) the date of issue of the Letter of Credit; and
  - (ii) the Letter of Credit Issue Date;

**"Limited Liability Company Interests Security Deed"** means a security pledge in relation to the limited liability company interests of the Borrower executed or to be executed by Oceania Cruises in favour of the Agent, the SACE Agent and the Lenders in the agreed form.

**"LIBOR"** means, in relation to ~~the Loan or any part of the~~ LIBOR Loan:

- (a) the applicable Screen Rate as of the Specified Time for ~~Dollars~~ dollars and for a period equal in length to the Interest Period of ~~the Loan or that part of the~~ LIBOR Loan; or
- (b) as otherwise determined pursuant to Clause ~~6.7-7.8~~ (Unavailability of Screen Rate [before Rate Switch Date](#)),

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

**"LIBOR Loan"** means the Loan, any Deferral Tranche, any other part of the Loan or, if applicable, Unpaid Sum to which the Floating Interest Rate applies and which is not a Term SOFR Loan.

**"Loan"** means the loan made or to be made available under this Agreement (including under the Deferral Tranches) or the principal amount outstanding for the time being of that loan.

**"Majority Lenders"** means:

- (a) before the Loan has been made, Lenders whose Commitments total [\*] per cent. of the Total Commitments; and
- (b) after the Loan has been made, Lenders whose Contributions total [\*] per cent. of the Loan.

**"Margin"** means zero point fifty ~~five~~ five per cent. per annum (0.55% p.a.), save for the 2021 Deferral Tranche in respect of which it shall mean zero point seventy ~~five~~ five per cent. per annum (0.75% p.a.).

**"Maritime Registry"** means the maritime registry which the Borrower will specify to the Lenders no later than three (3) months before the Intended Delivery Date, being that of the Marshall Islands or such other registry as the Agent may, with the authorisation of the Majority Lenders, approve.

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"Market Disruption Rate" means the percentage rate per annum which is the aggregate of the Term SOFR Reference Rate and the applicable Credit Adjustment Spread.

"Maximum Loan Amount" means the aggregate of:

- (a) the Dollar Equivalent of Euro 334,590,328.80;
- (b) 100% of the Second Instalment of the SACE Premium payable on the original Drawdown Date, with (X) the Loan currently outstanding (including the drawn part of the 2020 Deferral Tranche and the 2021 Deferral Tranche) on the February 2021 ~~Deferral~~-Effective Date being equal to \$134,837,053.59 and (Y) an amount equal to \$56,031,537.60 under the 2021 Deferral Tranche being available for utilisation, to be made (or deemed to be made) available as provided for in this Agreement.

"Mortgage" means the Original Mortgage, as amended pursuant to both Mortgage Addenda and as may be further amended and/or supplemented from time to time.

"Mortgage Addenda" means:

- (a) the addendum to the Original Mortgage executed pursuant to the 2020 Amendment Agreement on 4 June 2020; ~~and~~
- (b) the addendum to the Original Mortgage (as amended pursuant to the addendum described in paragraph (a) above) executed pursuant to the 2021 Amendment and Restatement Agreement ~~on or about the date hereof;~~ and
- (c) the addendum to the Original Mortgage (as amended pursuant to the addendum described in paragraph (a) and paragraph (b) above) executed pursuant to the 2023 Amendment and Restatement Agreement, on or about the date hereof.

"Obligors" means the Borrower, the Guarantor, Oceania Cruises and (in the event that the Approved Manager is a member of the Group) the Approved Manager.

"OFAC" means the Office of Foreign Assets Control of the United States Department of the Treasury.

"Oceania Cruises" means Oceania Cruises S. de R.L., a Panamanian *sociedad de responsabilidad limitada* domiciled in Panama whose resident agent is at Arifa Building, West Boulevard, Santa Maria Business District, Panama, Republic of Panama.

"Oceania Cruises Guarantee" means a guarantee issued as provided in Clause 3.2 (*No later than the date of the Original Facility Agreement*) by Oceania Cruises in favour of the Agent, the SACE Agent and the Lenders and terminated on the Effective Date.

"Original Facility Agreement" has the meaning given to such term in Recital (D).

"Original Guarantee" means the guarantee originally dated 31 October 2014 granted by the Guarantor in favour of, among others, the Agent.

"Original Mortgage" means the first preferred Marshall Islands mortgage on the Ship executed by the Borrower in favour of, among others, the Agent dated 19 January 2011.

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"**Original Principles**" has the meaning given in Recital (F).

"**Other Loan Agreement**" means the loan agreement between Riviera New Build, LLC and the parties to this Agreement (other than the Borrower) (as previously amended by a supplemental agreement dated 25 October 2010, as previously supplemented by a side letter dated 29 March 2012, as amended and restated by an amendment and restatement agreement dated 31 October 2014, as further amended by a framework agreement dated 31 January 2018, as further amended by a supplemental agreement dated 4 June 2020 ~~and~~, as further amended and restated by an amendment and restatement agreement dated on or about the date of the 2021 Amendment and Restatement Agreement, as further amended by a supplemental agreement dated 23 December 2021 and as further amended by a supplemental agreement dated 16 December 2022).

"**Other Ship**" means the passenger cruise ship defined as the "Ship" in the Other Loan Agreement.

"**Overnight LIBOR**" means, in relation to ~~the Loan or any part of the~~ LIBOR Loan:

- (a) on any date, the applicable day to day Screen Rate as of the Specified Time for Dollars; or
- (b) as otherwise determined pursuant to Clause ~~6.7-7.8~~ 6.7-7.8 (*Unavailability of Screen Rate before Rate Switch Date*),

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

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

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

"**Permitted Financial Indebtedness**" means any Financial Indebtedness:

- (a) incurred under the Finance Documents; or
- (b) permitted pursuant to Clause ~~13.13-14.13~~ 14.13 (*Financial Indebtedness and subordination of indebtedness*).

"**Permitted Security Interests**" means:

- (a) in the case of the Borrower:
    - (i) any of the Security Interests referred to in paragraph (A) below, and
    - (ii) any of the Security Interests referred to in paragraphs (B), (C), (E), (H) and (b)(ii)(I) below if, by reason of any chartering or management arrangements for the Ship approved by the Agent pursuant to the provisions of this Agreement, such Security Interests are created by the Borrower in the case of paragraphs (B), (C) or (E) or incurred by the Borrower in the case of paragraphs (H) or (I); and
  - (b) in the case of the Guarantor:
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- (i) any of the Security Interests referred to in paragraphs (A), (D), (F) and (G) below, and
  - (ii) any of the Security Interests referred to in paragraphs (C), (E), (H) and (I) below if, by reason of any chartering or management arrangements for the Ship approved by the Agent pursuant to the provisions of this Agreement, such Security Interests are created by the Guarantor in the case of paragraphs (C) or (E) or incurred by the Guarantor in the case of paragraphs (H) or (I);
    - (A) any Security Interest created by or pursuant to the Finance Documents and any deposits or other Security Interests placed or incurred in connection with any bond or other surety from time to time provided to the US Federal Maritime Commission in order to comply with laws, regulations and rules applicable to the operators of passenger vessels operating to or from ports in the United States of America;
    - (B) liens on the Ship up to an aggregate amount at any time not exceeding [\*] Dollars (\$[\*]) for current crew's wages and salvage and liens incurred in the ordinary course of trading the Ship;
    - (C) any deposits or pledges up to an aggregate amount at any time not exceeding [\*] Dollars (\$[\*]) to secure the performance of bids, tenders, bonds or contracts required in the ordinary course of business;
    - (D) any other Security Interest including in relation to the Existing Indebtedness over the assets of any Obligor other than the Borrower notified by the Borrower or any of the Obligors to the Agent prior to the date of this Agreement;
    - (E) (without prejudice to the provisions of Clause ~~13.13~~ 14.13 (*Financial indebtedness and subordination of indebtedness*)) liens on assets leased, acquired or upgraded after the date of the Original Facility Agreement or assets newly constructed or converted after the date of the Original Facility Agreement provided that (i) such liens secure Financial Indebtedness otherwise permitted under this Agreement, (ii) such liens are incurred at the time of such lease, acquisition, upgrade, construction or conversion and (iii) the Financial Indebtedness secured by such liens does not exceed the cost of such upgrade or the cost of such assets acquired or leased;
    - (F) other liens arising in the ordinary course of business of the Group unrelated to Financial Indebtedness and securing obligations not yet delinquent or which are being contested in good faith by appropriate proceedings and for which adequate reserves have been established provided that (i) the aggregate amount of all cash and the fair market value of all other property subject to such liens as are described in this paragraph (F) does not exceed [\*] Dollars (\$[\*]) and (ii) such cash and/or other property is not an asset of the Borrower;
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- (G) subject to the other provisions of this Agreement and the Guarantee, any Security Interest in respect of existing Financial Indebtedness of a person which becomes a subsidiary of the Guarantor or is merged with or into the Guarantor or any of its subsidiaries;
- (H) liens in favour of credit card companies on unearned customer deposits pursuant to agreements therewith; and
- (I) liens in favour of customers on unearned customer deposits.

**"Pertinent Document"** means:

- (a) any Finance Document;
- (b) any policy or contract of insurance contemplated by or referred to in Clause ~~13~~14 (*Undertakings*) or any other provision of this Agreement or another Finance Document;
- (c) any other document contemplated by or referred to in any Finance Document; and
- (d) any document which has been or is at any time sent by or to the Agent in contemplation of or in connection with any Finance Document or any policy, contract or document falling within paragraphs (b) or (c).

**"Pertinent Matter"** means:

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

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

**"Poseidon Principles"** means the financial industry framework for assessing and disclosing the climate alignment of ship finance portfolios published in June 2019 as the same may be amended or replaced to reflect changes in applicable law or regulation or the introduction of or changes to mandatory requirements of the International Maritime Organisation from time to time.

**"Post-Delivery Assignment"** means an assignment of the rights of the Borrower in respect of the post-delivery guarantee liability of the Builder under Article 25 of the Shipbuilding Contract executed or to be executed by the Borrower in favour of the Agent, the SACE Agent and the Lenders in the agreed form.

**"Prestige Holdings"** means Prestige Cruise Holdings Inc. a Panamanian *sociedad anonima* domiciled in Panama whose resident agent is Arias, Fabrega & Fabrega at Plaza 2000 Building, 16th Floor, 50th Street, Panama, Republic of Panama.

**"Prestige Holdings Guarantee"** means a guarantee issued as provided in Clause 3.2 (*No later than the date of the Original Facility Agreement*) by Prestige Holdings in favour of the Agent, the SACE Agent and the Lenders and terminated on the Effective Date.

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"Principles" has the meaning given in Recital (I).

"Prior Guarantees" means the Oceania Cruises Guarantee and the Prestige Holdings Guarantee.

"Prior Guarantors" means Oceania Cruises and Prestige Holdings.

"Prohibited Payment" means:

- (a) any offer, gift, payment, promise to pay, commission, fee, loan or other consideration which would constitute bribery or an improper gift or payment under, or a breach of Sanctions or any laws of the Republic of Italy, England and Wales, Panama, the United States of America or any other applicable jurisdiction; or
- (b) any offer, gift, payment, promise to pay, commission, fee, loan or other consideration which would or might constitute bribery within the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions of 17 December 1997.

"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.

"Protocol of Delivery and Acceptance" means the protocol of delivery and acceptance of the Ship to be signed by the Borrower and the Builder in accordance with Article 8 of the Shipbuilding Contract.

"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 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);~~

- (a) in relation to a LIBOR Loan, two Business Days in London (other than Saturdays and Sundays on which banks are open in London) before the first day of that period unless market practice differs in the Relevant Market in which case the Quotation Day will be determined by the Agent in accordance with that market practice (and if quotations would normally be given on more than one day, the Quotation Day will be the last of those days); and
- (b) in relation to a Term SOFR Loan, two US Government Securities Business Days before the first day of that period unless market practice differs in the relevant syndicated loan market in which case the Quotation Day will be determined by the Agent in accordance with that market practice (and if quotations would normally be given on more than one day, the Quotation Day will be the last of those days).

"Quoted Tenor" means any period for which:

- (a) in relation to a LIBOR Loan, the Screen Rate is customarily displayed on the relevant page or screen of an information service (other than for one week and two months); and
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- (b) in relation to a Term SOFR Loan, Term SOFR is customarily displayed on the relevant page or screen of an information service.

"Rate Switch Date" means the earlier of:

- (a) the Backstop Rate Switch Date; and  
(b) any Rate Switch Trigger Event Date.

"Rate Switch Trigger Event" means:

(1) \_\_\_\_\_

(1) -

(1) the administrator of the Screen Rate or its supervisor publicly announces that such administrator is insolvent; or

(2) information is published in any order, decree, notice, petition or filing, however described, of or filed with a court, tribunal, exchange, regulatory authority or similar administrative, regulatory or judicial body which reasonably confirms that the administrator of the Screen Rate is insolvent.

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

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

(3) the supervisor of the administrator of the Screen Rate publicly announces that the Screen Rate has been or will be permanently or indefinitely discontinued for any Quoted Tenor; or

(4) the administrator of the Screen Rate or its supervisor publicly announces that the Screen Rate for any Quoted Tenor may no longer be used; or

(2) the supervisor of the administrator of the Screen Rate publicly announces or publishes information:

(1) stating that the Screen Rate for any Quoted Tenor is no longer, or as of a specified future date will no longer be, representative of the underlying market and the economic reality that it is intended to measure and that such representativeness will not be restored (as determined by such supervisor); and

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- (2) with awareness that any such announcement or publication will engage certain triggers for fallback provisions in contracts which may be activated by any such pre-cessation announcement or publication.

**"Rate Switch Trigger Event Date" means:**

- (1) in the case of an occurrence of a Rate Switch Trigger Event described in sub-paragraph (1) of paragraph (1) of the definition of Rate Switch Trigger Event, the date on which the Screen Rate ceases to be published or otherwise becomes unavailable;
- (2) in the case of an occurrence of a Rate Switch Trigger Event described in sub-paragraph (2), (3) or (4) of paragraph (1) of the definition of Rate Switch Trigger Event, the date on which the Screen Rate for the relevant Quoted Tenor ceases to be published or otherwise becomes unavailable; and
- (3) in the case of an occurrence of a Rate Switch Trigger Event described in paragraph (2) of the definition of Rate Switch Trigger Event, the date on which the Screen Rate for the relevant Quoted Tenor ceases to be representative of the underlying market and the economic reality that it is intended to measure (as determined by the supervisor of the administrator of such Screen Rate).

**"Reference Bank Quotation"** means any quotation supplied to the 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 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 such entities as may be appointed by the Agent in consultation with the Borrower.

**"Reinstatement Date" means:**

- (a) in relation to this Agreement (as further amended, restated and supplemented from time to time), 19 January 2027;
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- (b) [in relation to the Riviera Facility Agreement, 27 October 2026;](#)
- (c) [in relation to the Seven Seas Explorer Facility Agreement, 31 December 2026; and](#)
- (d) [in relation to the Seven Seas Splendor Facility Agreement, 29 January 2027.](#)

"Reinstatement Event" means the final Reinstatement Date or any date when all Deferral Tranches under the Delivered Vessel Facilities (as defined therein) are repaid or prepaid in full.

"Relevant ~~Interbank~~ Market" means ~~the London interbank market;~~

- (a) [subject to paragraph \(b\) below, the London interbank market; and](#)
- (b) [on or after the Rate Switch Date, the market for overnight cash borrowing collateralised by US Government securities.](#)

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

"Repayment Date" means a date on which a repayment is required to be made under Clause 5 (*Repayment*).

~~"Replacement Benchmark" means a benchmark rate which is:~~

- (a) ~~formally designated, nominated or recommended as the replacement for a Screen Rate by:~~
  - (i) ~~the administrator of that Screen Rate (provided that the market or economic reality that such benchmark rate measures is the same as that measured by that Screen Rate); or~~
  - (ii) ~~any Relevant Nominating Body,~~

~~and if replacements have, at the relevant time, been formally designated, nominated or recommended under both paragraphs, the "Replacement Benchmark" will be the replacement under paragraph (ii) above;~~
- (b) ~~in the opinion of the Majority Lenders and the Borrower, generally accepted in the international or any relevant domestic syndicated loan markets as the appropriate successor to a Screen Rate; or~~
- (c) ~~in the opinion of the Majority Lenders and the Borrower, an appropriate successor to a Screen Rate.~~

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

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

"Restricted Creditor Party" means a Creditor Party which serves a notice pursuant to paragraph (a) of Clause 1.5 (*Non-applicable provisions between the Obligors, German Lenders and any Creditor Party subject to the EU Blocking Regulation*).

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**"Riviera Facility Agreement"** means, in respect of m.v. RIVIERA, a facility agreement originally dated 18 July 2008 (as amended by a supplemental agreement dated 25 October 2010, as amended by a side letter dated 29 March 2012, as amended and restated by an amendment and restatement agreement dated 31 October 2014, as amended by a framework agreement dated 31 January 2018, as amended by a supplemental agreement dated 4 June 2020, as further amended and restated by an amendment and restatement agreement dated 17 February 2021, as further amended by a supplemental agreement dated 23 December 2021 and as further amended by a supplemental agreement dated 16 December 2022), as further amended, restated and supplemented from time to time.

**"SACE"** means SACE S.p.A., an Italian joint stock company (*società per azioni*) with a sole shareholder, whose registered office is located at Piazza Poli 37/42, 00187 Rome, Italy and registered with the Companies Registry of Rome under number 05804521002.

**"SACE Agent"** means Crédit Agricole Corporate and Investment Bank, a French "société anonyme", having a share capital of EUR 7,851,636,342.00 and its registered office located at 12 Place des États-Unis, CS 70052 92547, Montrouge Cedex, France, registered under the n° Siren 304 187 701 at the Registre du Commerce et des Sociétés of Nanterre or any successor of it appointed under Clause ~~25~~ 26 (*Role of the Agent and the Mandated Lead Arrangers*).

**"SACE Insurance Policy"** means the insurance policy (as amended and supplemented from time to time) in respect of this Agreement issued by SACE for the benefit of the Lenders, in form and substance satisfactory to the Agent.

**"SACE Premium"** means the amount payable by the Borrower to SACE through the Agent in several instalments in respect of the SACE Insurance Policy as set out in Clause ~~9-10~~ (*SACE Premium and Italian Authorities*) including the Deferral Tranche Premia (provided, for the avoidance of doubt, that the 2021 Deferral Tranche Premium shall not be financed).

**"SACE Reimbursement Agreement"** means the reimbursement agreement entered into on or before the Effective Date, as the context may require, between the Borrower, the Guarantor, the Lenders, the Agent, the SACE Agent and SACE.

**"Safety Management Certificate"** 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 imposed by any member state of the European Union or Switzerland;
- (b) imposed by CISADA or OFAC; or
- (c) otherwise imposed by any law or regulation,

by which any Obligor is bound or to which it is subject or, as regards a regulation, compliance with which is reasonable in the ordinary course of business of any Obligor.

**"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 (before any correction, recalculation or

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republishing by the administrator) on page LIBOR01 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 Agent may specify another page or service displaying the relevant rate after consultation with the Borrower.

~~"Screen Rate Contingency Period" means fifteen (15) Business Days.~~

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

- ~~(a) the methodology, formula or other means of determining that Screen Rate has, in the opinion of the Majority Lenders and the Borrower materially changed;~~
  - ~~(b)~~
    - ~~(i)~~
      - ~~(A) the administrator of that Screen Rate or its supervisor publicly announces that such administrator is insolvent; or~~
      - ~~(B) information is published in any order, decree, notice, petition or filing, however described, or filed with a court, tribunal, exchange, regulatory authority or similar administrative, regulatory or judicial body which reasonably confirms that the administrator of that Screen Rate is insolvent,~~
    - ~~(ii) provided that, in each case, at that time, there is no successor administrator to continue to provide that Screen Rate;~~
    - ~~(iii) the administrator of that Screen Rate publicly announces that it has ceased or will cease, to provide that Screen Rate permanently or indefinitely and, at that time, there is no successor administrator to continue to provide that Screen Rate;~~
    - ~~(iv) the supervisor of the administrator of that Screen Rate publicly announces that such Screen Rate has been or will be permanently or indefinitely discontinued; or~~
    - ~~(v) the administrator of that Screen Rate or its supervisor announces that that Screen Rate may no longer be used; or~~
  - ~~(c) the administrator of that Screen Rate determines that that Screen Rate should be calculated in accordance with its reduced submissions or other contingency or fallback policies or arrangements and either:
    - ~~(i) the circumstance(s) or event(s) leading to such determination are not (in the opinion of the Majority Lenders and the Borrower) temporary; or~~
    - ~~(ii) that Screen Rate is calculated in accordance with any such policy or arrangement for a period no less than the Screen Rate Contingency Period; or~~~~
  - ~~(d) in the opinion of the Majority Lenders and the Borrower, that Screen Rate is otherwise no longer appropriate for the purposes of calculating interest under this Agreement.~~
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**"Second Supplemental Tripartite General Assignment"** means second priority assignment, supplemental to the Tripartite General Assignment, as previously supplemented by the Supplemental Tripartite General Assignment, dated on or about the date of the 2021 Amendment and Restatement Agreement and made between the parties to the Tripartite General Assignment.

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

**"Security Interest"** means:

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

**"Security Period"** means the period commencing on the date of the Original Facility Agreement and ending on the date on which:

- (a) all amounts which have become due for payment by the Borrower or any Obligor under the Finance Documents have been paid;
- (b) no amount is owing or has accrued (without yet having become due for payment) under any Finance Document;
- (c) neither the Borrower nor any other Obligor has any future or contingent liability under Clause ~~49~~ 20 (*Application of Sums Received*) below or any other provision of this Agreement or another Finance Document; and
- (d) the Agent and the Majority 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 the Borrower or an Obligor 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 Requirement"** means the amount in Dollars (as certified by the Agent whose certificate shall, in the absence of manifest error, be conclusive and binding on the Borrower and the Agent) which is at any relevant time one hundred per cent (100%) of the Loan.

**"Security Value"** means the amount in Dollars (as certified by the Agent whose certificate shall, in the absence of manifest error, be conclusive and binding on the Borrower and the Agent) which, at any relevant time, is the aggregate of (i) the market value of the Ship as most recently

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determined in accordance with Clause ~~43-48~~ 14.18 (*Trading with the United States of America*); and (ii) the market value of any additional security for the time being actually provided to the Agent pursuant to Clause ~~44-45~~ 15 (*Security Value Maintenance*).

**"Seven Seas Explorer Facility Agreement"** means, in respect of m.v. SEVEN SEAS EXPLORER, a facility agreement originally dated 31 July 2013 (as amended and restated by an amendment and restatement agreement dated 31 October 2014, as amended by a supplemental agreement dated 4 June 2020, as further amended and restated pursuant to an amendment and restatement agreement dated 17 February 2021, as further amended by a supplemental agreement dated 23 December 2021 and as further amended by a supplemental agreement dated 16 December 2022), as further amended, restated and supplemented from time to time.

**"Seven Seas Splendor Facility Agreement"** means, in respect of m.v. SEVEN SEAS SPLENDOR, a facility agreement originally dated 30 March 2016 (as amended by a supplemental agreement dated 4 June 2020, as further amended and restated pursuant to an amendment and restatement agreement dated 17 February 2021, as further amended by a supplemental agreement dated 23 December 2021 and as further amended by a supplemental agreement dated 16 December 2022), as further amended, restated and supplemented from time to time.

**"Ship"** means the passenger cruise ship "Marina" (ex. Hull number [\*]) in the registered ownership of the Borrower under the Marshall Islands maritime registry (official no. 3668).

**"Shipbuilding Contract"** has the meaning given in Recital (A).

**"SIMEST"** means Società Italiana per Le Imprese all'Estero - SIMEST Spa, which grants export subsidies in Italy under and according to the Italian Legislative Decree n. 143/98 and its amendments.

**"SOFR"** means the secured overnight financing rate (SOFR) administered by the Federal Reserve Bank of New York (or any other person which takes over the administration of that rate) published (before any correction, recalculation or republication by the administrator) by the Federal Reserve Bank of New York (or any other person which takes over the publication of that rate).

**"Specified Time"** means a day or time determined in accordance with the following:

- (a) if LIBOR is fixed, the Quotation Day as of 11:00 am London time; and
- (b) in relation to a Reference Bank Rate calculated by reference to the available quotations in accordance with Clause ~~6-8~~ 7.9 (*Calculation of Reference Bank Rate*), noon on the Quotation Day.

**"Supplemental Security Document"** means each of:

- (a) the Supplemental Tripartite General Assignment;
- (b) the Second Supplemental Tripartite General Assignment; and
- (c) the Mortgage Addenda.

**"Supplemental Tripartite General Assignment"** means a second priority assignment, supplemental to the Tripartite General Assignment, dated 4 June 2020 and made between the parties to the Tripartite General Assignment.

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"**Taxes**" means all present and future income and other taxes, levies, imposts, deductions, compulsory liens and withholdings whatsoever together with interest thereon and penalties with respect thereto, if any, and any payments made on or in respect thereof and "**Taxation**" shall be construed accordingly.

"**Term and Revolving Credit Facilities**" means the facilities granted pursuant to the credit agreement originally dated 24 May 2013 (as amended and restated from time to time) between, inter alios, the Guarantor and Voyager Vessel Company, LLC as borrowers, the lenders party thereto and JPMorgan Chase Bank, N.A., as administrative agent and collateral agent.

"**Term SOFR**" means the term SOFR reference rate administered by CME Group Benchmark Administration Limited (or any other person which takes over the administration of that rate) for the relevant period published (before any correction, recalculation or republication by the administrator) by CME Group Benchmark Administration Limited (or any other person which takes over the publication of that rate).

"**Term SOFR Loan**" means the Loan, any Deferral Tranche, any other part of the Loan or, if applicable, Unpaid Sum to which the Floating Interest Rate applies and which is, or becomes, a "Term SOFR Loan" pursuant to Clause 6 (Rate Switch).

"**Term SOFR Reference Rate**" means, in relation to any Term SOFR Loan:

(a) the applicable Term SOFR as of the Quotation Day and for a period equal in length to the Interest Period of that Term SOFR Loan; or

(b) as otherwise determined pursuant to Clause 7.10 (Unavailability of Term SOFR),

and if, in either case, the aggregate of that rate and the applicable Credit Adjustment Spread is less than zero, the Term SOFR Reference Rate shall be deemed to be such a rate that the aggregate of the Term SOFR Reference Rate and the Credit Adjustment Spread is zero.

"**Time Charter Assignment**" means a deed creating security in respect of a time or consecutive voyage charter in respect of the Ship (including any guarantee in respect of the obligations of the charterer under the charter) executed by the Borrower in favour of the Agent, the SACE Agent and the Lenders pursuant to Clause ~~13.14~~ 14.14 (*Pooling of earnings and charters*).

"**Total Loss**" means:

- (a) actual, constructive, compromised, agreed or arranged total loss of the Ship;
- (b) any expropriation, confiscation, requisition or acquisition of the 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 1 year without any right to an extension) unless it is within 1 month redelivered to the Borrower's full control;
- (c) any arrest, capture, seizure or detention of the Ship (including any hijacking or theft) unless it is within 1 month redelivered to the Borrower's full control.

"**Total Loss Date**" means:

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

**"Transaction Documents"** means the Finance Documents and the Underlying Documents.

**"Tripartite General Assignment"** means the tripartite general assignment dated 19 January 2011 and entered into between the Borrower, Oceania Cruises, the Lenders and the Agent, as supplemented (where the context requires) by the Supplemental General Assignment and the Second Supplemental General Assignment.

**"Underlying Documents"** means the Shipbuilding Contract, any External Management Agreement and any charter and associated guarantee in respect of which a Time Charter Assignment is, or by the terms of this Agreement is required to be, executed.

**"UK Bail-In Legislation"** means (to the extent that the United Kingdom is not an EEA Member Country which has implemented, or implements, Article 55 BRRD) Part 1 of the United Kingdom Banking Act 2009 and any other law or regulation applicable in the United Kingdom relating to the resolution of unsound or failing banks, investment firms or other financial institutes or their affiliates (otherwise than through liquidation, administration or other insolvency proceedings).

**"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 Government Securities Business Day" means any day other than:**

- (a) a Saturday or a Sunday; and
- (b) a day on which the Securities Industry and Financial Markets Association (or any successor organisation) recommends that the fixed income departments of its members be closed for the entire day for purposes of trading in US Government securities.

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

## 1.2 Construction of certain terms

In this Agreement:

"**approved**" means, for the purposes of Clause ~~13.20~~ 14.20 (*Valuation of the Ship*), 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;

"**date of this Agreement**" means ~~February 2021~~ the 2023 Effective Date;

"**document**" includes a deed; also a letter or electronic mail;

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**"excess risks"** means the proportion of claims for general average, salvage and salvage charges not recoverable under the hull and machinery policies in respect of the 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;

a Lender's "cost of funds" in relation to its participation in the Loan or any part of the Loan is a reference to the average cost (determined either on an actual or a notional basis) which that Lender would incur if it were to fund, from whatever source(s) it may reasonably select, an amount equal to the amount of that participation in the Loan or that part of the Loan for a period equal in length to the Interest Period of the Loan or that part of the Loan;

**"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 of its Security Council;

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

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

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

**"obligatory insurances"** means all insurances effected, or which the Borrower is obliged to effect, under Clause ~~13.20 (Valuation of Ship)~~ 14.22 (Insurances) or any other provision of this Agreement or another Finance Document;

**"parent company"** has the meaning given in Clause 1.4 (*Meaning of "subsidiary"*);

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

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

**"protection and indemnity risks"** means the usual risks covered by a protection and indemnity association managed in London, including pollution risks and the proportion (if any) of any sums payable to any other person or persons in case of collision which are not recoverable under the hull and machinery policies by reason of the incorporation in them of Clause 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 whether or not having the force of law of any governmental, intergovernmental or supranational body, agency, department or regulatory, self-regulatory or other authority or organisation;

**"subsidiary"** has the meaning given in Clause 1.4 (*Meaning of "subsidiary"*);

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

"**war risks**" includes the risk of mines and all risks excluded by Clause 23 of the Institute Time Clauses (Hulls)(1/10/83) or Clause 24 of the Institute Time Clauses (Hulls) (1/11/1995).

### 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 attaching to the issued shares of S; or
- (c) P has the direct or indirect power to appoint or remove a majority of the directors of S; or
- (d) P otherwise has the direct or indirect power to ensure that the affairs of S are conducted in accordance with the wishes of P;

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

### 1.5 Non-applicable provisions between the Obligors, German Lenders and any Creditor Party subject to the EU Blocking Regulation.

- (a) A Creditor Party that is incorporated in the Federal Republic of Germany or is otherwise subject to the EU Blocking Regulation may notify the Agent in writing that it elects that any provisions with respect to Sanctions, including, without limitation, the undertakings and covenants given under paragraph (d) of Clause ~~13.2-14.2~~ 14.2 (*Information*), Clause ~~13.3-14.3~~ 14.3 (*Illicit Payments*), Clause ~~13.4-14.4~~ 14.4 (*Prohibited Payments*), Clause ~~13.28-14.28~~ 14.28 (*Compliance with laws etc.*) or provisions contained in Clause ~~20.3~~ 21.3 (*Miscellaneous indemnities*) or Clause ~~24.1-22.1~~ 22.1 (*Illegality*) and the representations and warranties given under paragraphs (p), (q), (r) and (s) of Clause ~~12.2-13.2~~ 13.2 (*Continuing representations and warranties*) respectively (the "**Sanctions**")
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**Provisions**") shall only enure to the benefit of, and be applicable to, that Creditor Party to the extent that such provisions would not result in: (i) any violation of, conflict with or liability under the EU Blocking Regulation; or (ii) in the case of a Creditor Party that is incorporated in the Federal Republic of Germany only, a violation or conflict with the German Blocking Provisions.

- (b) If a Creditor Party elects to be a Restricted Creditor Party, in respect of any proposed requirement to comply, enforcement, waiver, non-waiver, consent, variation or amendment of or in relation to a Finance Document relating to any Sanctions Provision (a "**Relevant Action**"), the Restricted Creditor Party shall notify the Agent in writing whether or not it shall be deemed to be a Lender for the purposes of ascertaining whether the agreement of any specified group of Lenders has been obtained to approve the Relevant Action and upon receipt by the Agent of such notice such Restricted Creditor Party shall be so deemed for such purposes.

## 1.6 General Interpretation

In this Agreement:

- (a) references in Clause 1.1 (*Definitions*) to a Finance Document or any other document being an "**agreed form**" are to the form agreed between the Agent (acting with the authorisation of each of the Creditor Parties) and the Borrower with any modifications to that form which the Agent (with the authorisation of the Majority Lenders in the case of substantial modifications) approves or reasonably requires;
- (b) references to, or to a provision of, a Finance Document or any other document are references to it as amended, amended and restated, or supplemented, whether before the date of this Agreement or otherwise;
- (c) references to, or to a provision of, any law or regulation include any amendment, extension, re-enactment or replacement, whether made before the date of this Agreement or otherwise;
- (d) words denoting the singular number shall include the plural and vice versa; and
- (e) Clauses 1.1 (*Definitions*) to 1.5 (*General Interpretation*) apply unless the contrary intention appears.

## 1.7 Headings

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

## 1.8 Effective Date

This Agreement is effective from the ~~2021-Deferral~~2023 Effective Date.

## 2 FACILITY

### 2.1 Amount of facility

Subject to the other provisions of this Agreement, the Lenders agree to make available to the Borrower a loan not exceeding the Maximum Loan Amount intended to be applied as follows:

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- (a) in payment to the Builder of all or part of 80% of the Final Contract Price up to the Eligible Amount; and
- (b) in reimbursement to the Agent on behalf of the Lenders of the amount of the second instalment of the SACE Premium payable by it to SACE on the Drawdown Date.

## **2.2 Lenders' participations in Loan**

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

## **2.3 Purpose of Loan**

The Borrower undertakes with each Creditor Party to use the Loan only to pay for:

- (a) goods and services of Italian origin incorporated in the design, construction or delivery of the Ship;
- (b) subject to the limits and conditions fixed by the Italian Authorities, goods and services incorporated in the design, construction or delivery of the Ship and originating from countries other than Italy where the provision of such goods or services has been sub-contracted by the Builder and therefore remains the Builder's responsibility under the Shipbuilding Contract;
- (c) the second instalment of the SACE Premium payable on the Drawdown Date; and
- (d) such purposes, relating to the 2020 Deferral Tranche and the 2021 Deferral Tranche, as specified in accordance with the 2020 Amendment Agreement and the 2021 Amendment and Restatement Agreement respectively.

## **2.4 Proceedings by individual Lender requiring Majority Lender consent**

Except for the SACE Agent, no Lender may commence proceedings against the Borrower or any other Obligor in connection with a Finance Document without the prior consent of all the Lenders.

## **2.5 Obligations of Lenders several**

The obligations of the Lenders under this Agreement are several; and a failure of a Lender to perform its obligations under this Agreement shall not result in:

- (a) the obligations of the other Lenders being increased; nor
- (b) any Obligor or any other Lender being discharged (in whole or in part) from its obligations under any Finance Document;

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

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### **3 CONDITIONS PRECEDENT**

#### **3.1 General**

The Borrower may only draw under the Loan when the following conditions have been fulfilled to the satisfaction of the Agent and provided no Event of Default shall have occurred and remains unremedied or is likely to occur as a consequence of the drawing of the Loan. This Clause 3 (*Conditions Precedent*) shall not apply to the 2020 Deferral Tranche or the 2021 Deferral Tranche, save for Clause 3.10 (*Deferral Tranches*).

#### **3.2 No later than the date of the Original Facility Agreement**

The Agent shall have received no later than the date of the Original Facility Agreement:

- (a) an opinion from legal counsel to the Agent as to Marshall Islands law, together with the limited liability company documentation of the Borrower supporting the opinion, including but without limitation the Certificate of Formation and Limited Liability Company Agreement as filed with the competent authorities and a certificate of a competent officer or manager of the Borrower containing specimen signatures of the persons authorised to sign the documents on behalf of the Borrower, to the effect that:
    - (i) the Borrower has been duly formed and is validly existing as a limited liability company under the laws of the Republic of the Marshall Islands;
    - (ii) the Original Facility Agreement falls within the scope of the Borrower's limited liability company purpose as defined by its Certificate of Formation and Limited Liability Company Agreement;
    - (iii) the Borrower's representatives were at the date of the Original Facility Agreement fully empowered to sign the Original Facility Agreement;
    - (iv) either all administrative requirements applicable to the Borrower (whether in the Republic of the Marshall Islands), concerning the transfer of funds abroad and acquisitions of Dollars to meet its obligations hereunder have been complied with, or that there are no such requirements; and
    - (v) the Original Facility Agreement constitutes the legal, valid and binding obligations of the Borrower enforceable in accordance with its terms,and containing such exceptions as are standard for opinions of this type;
  - (b) an opinion from legal counsel to the Agent as to English law confirming that the obligations of the Borrower under the Original Facility Agreement are legally valid and binding obligations enforceable by the relevant Creditor Parties in the English courts;
  - (c) a Certified Copy of the executed Shipbuilding Contract;
  - (d) a confirmation from EC3 Services Limited that it will act for the Borrower as agent for service of process in England in respect of the Original Facility Agreement and any other Finance Document;
  - (e) an opinion from legal counsel to the Agent as to Panamanian law, together with the corporate documentation of each Prior Guarantor supporting the opinion, including but without
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limitation the Articles of Incorporation and By-laws as filed with the competent authorities and a certificate of a competent officer of each Prior Guarantor containing specimen signatures of the persons authorised to sign the documents on behalf of the Prior Guarantor, to the effect that:

- (i) each Prior Guarantor has been duly organised and is validly existing and in good standing as a Panamanian *sociedad anonima* with its domicile in the Republic of Panama and its Resident Agent being (in the case of Prestige Holdings) Arias Fabrega & Fabrega with address at Plaza 2000 Building, 16th Floor, 50th Street, Panama and (in the case of Oceania Cruises) Marcela Rojas de Perez with address at 10 Elvira Mendez Street, Top Floor, Panama;
- (ii) each Prior Guarantee falls within the scope of the relevant Prior Guarantor's corporate purpose as defined by its Articles of Incorporation and By-laws;
- (iii) each Prior Guarantor's representative was at the date of the Prior Guarantee issued by it fully empowered to sign that Prior Guarantee;
- (iv) either all administrative requirements applicable to each Prior Guarantor (whether in the Republic of Panama) concerning the transfer of funds abroad and acquisitions of Dollars to meet its obligations under the Prior Guarantee issued by it have been complied with, or that there are no such requirements;
- (v) each Prior Guarantee is the legal, valid and binding obligations of the Prior Guarantor which issued it enforceable in accordance with its terms; and
- (vi) none of the undertakings of either Prior Guarantor contained in either Prior Guarantee are contrary to public policy in the Republic of Panama,

and containing such exceptions as are standard for opinions of this type;

- (f) duly executed originals of the Prior Guarantees;
- (g) an opinion from legal counsel to the Agent as to English law confirming that the obligations of each Prior Guarantor under the Prior Guarantee issued by it are legally valid and binding obligations enforceable by the relevant Creditor Parties in the English courts; and
- (h) confirmation from EC3 Services Limited that it will act for each Prior Guarantor as agent for service of process in England in respect of the Prior Guarantee issued by that Prior Guarantor and any other Finance Document.

### **3.3 No later than ninety (90) days before the Intended Delivery Date**

The Agent shall have received no later than ninety (90) days before the Intended Delivery Date:

- (a) notification from the Borrower of its preferred Maritime Registry;
  - (b) the SACE Insurance Policy documentation relating to the transaction contemplated by the Original Facility Agreement issued on terms whereby the SACE Insurance Policy will enter into full force and effect upon fulfilment of the conditions specified therein to be fulfilled on or before the Drawdown Date; and
  - (c) notification of the Approved Manager.
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**3.4 No later than the date falling ninety (90) days before the Intended Delivery Date and on each subsequent date on which a Compliance Certificate is to be received by the Agent pursuant to clause 11.3(e) of the Prestige Holdings Guarantee and clause 11.3(e) of the Oceania Cruises Guarantee**

The Agent shall have received on the date falling ninety (90) days before the Intended Delivery Date and also on each subsequent date on which a Compliance Certificate (as defined in and is to be received by the Agent pursuant to) clause 11.3(e) of the Prestige Holdings Guarantee and clause 11.3(e) of the Oceania Cruises Guarantee a duly completed Compliance Certificate (as defined in each Prior Guarantee) from each Prior Guarantor;

**3.5 No later than sixty (60) days before the Intended Delivery Date**

The Agent shall have received from the Borrower no later than sixty (60) days before the Intended Delivery Date:

- (a) notification of the Intended Delivery Date;
- (b) notification, signed by a duly authorised signatory of the Borrower, specifying which of the Fixed Interest Rate or the Floating Interest Rate shall be applicable to the Loan until the date of payment of the final repayment instalment of the Loan; and in absence of any such notification, the Borrower shall be deemed to have opted for the Floating Interest Rate.

**3.6 No later than fifteen (15) Business Days before the Intended Delivery Date**

The Agent shall have received no later than fifteen (15) Business Days before the Intended Delivery Date insurance documents in form and substance satisfactory to the Lenders confirming that the Insurances have been effected and will be in full force and effect on the Delivery Date.

**3.7 No later than five (5) Business Days before the Intended Delivery Date**

The Agent shall have received no later than five (5) Business Days before the Intended Delivery Date:

- (a) the Drawdown Notice from the Borrower, signed by a duly authorised signatory of the Borrower, specifying the amount of the Loan to be drawn down;
- (b) a Certified Copy of each of the Change Orders, of any amendments to the Shipbuilding Contract and of the power of attorney pursuant to which the authorised signatory of the Borrower signed the Drawdown Notice and a specimen of his signature; and
- (c) a final confirmation of the Intended Delivery Date signed by a duly authorised signatory of the Borrower, and counter-signed by a duly authorised signatory of the Builder.

**3.8 No later than the Delivery Date**

The Agent shall have received no later than the Delivery Date:

- (a) an opinion from legal counsel to the Agent as to Marshall Islands law together with the limited liability company documentation of the Borrower and a certificate of a competent officer or manager of the Borrower containing specimen signatures of the persons authorised to sign the documents on behalf of the Borrower, confirming that:
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- (i) the Lenders may continue to rely on the legal opinion given pursuant to paragraph (a) of Clause 3.2 (*No later than the date of the Original Facility Agreement*);
  - (ii) the Original Mortgage, the Tripartite General Assignment, the External Management Agreement Assignment (if any), the Post-Delivery Assignment and the Time Charter Assignment (if any) fall within the scope of the Borrower's limited liability company purpose as defined by its Certificate of Formation and Limited Liability Company Agreement and are binding on it; and
  - (iii) the Borrower's representatives are fully empowered to sign the Protocol of Delivery and Acceptance, the Original Mortgage, the Tripartite General Assignment, the External Management Agreement Assignment (if any), the Post-Delivery Assignment and the Time Charter Assignment (if any)
- (b) in the event that the Approved Manager is not a member of the Group, an opinion from legal counsel to the Agent as to the law of the place of incorporation of the Approved Manager, together with the corporate documentation of the Approved Manager supporting the opinion, that the Tripartite General Assignment (if applicable) and the acknowledgement of the notice of assignment of the External Management Agreement fall within the scope of the Approved Manager's corporate purpose as defined by its constitutional documents and are binding on it and the Approved Manager's representatives are fully empowered to sign the Tripartite General Assignment (if applicable) and the acknowledgement of the notice of assignment of the External Management Agreement;
- (c) evidence of payment to the Builder of:
- (i) the [\*] (["\*"]) pre-delivery instalments of the Final Contract Price; and
  - (ii) any other part of the Final Contract Price as at the Delivery Date not being financed hereunder;
- (d) evidence of payment of all amounts which are due and payable hereunder by the Borrower on or prior to the Delivery Date;
- (e) a certificate from the Borrower, signed by an authorised representative of the Borrower, confirming that the representations and warranties contained in Clause ~~42-13~~ 13 (*Representations and Warranties*) are true and correct as of the Delivery Date in consideration of the facts and circumstances existing as of the Delivery Date;
- (f) the Interest Make-up Agreement relative to the Loan and in full force and effect;

provided always that the obligations of the Lenders to make the Loan available on the Delivery Date are subject to the Agent remaining satisfied that each of the SACE Insurance Policy and the Interest Make-up Agreement will cover the Loan following the advance of the Loan, payment of the second instalment of the SACE Premium and delivery to SACE of the documents listed in Schedule 3 (*Documents to be produced by the Builder to the Agent on Delivery*).

### **3.9 At Delivery**

Immediately prior to the delivery of the Ship by the Builder to the Borrower, the Agent shall have received:

- (a) evidence that immediately following delivery:
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- (i) the Ship will be registered in the name of the Borrower in the Maritime Registry;
  - (ii) title to the Ship will be held by the Borrower free of all Security Interests other than any maritime lien in respect of crew's wages and trade debts arising out of equipment, consumable and other stores placed on board the Ship prior to or concurrently with delivery, none of which is overdue;
  - (iii) the Original Mortgage will be duly registered in the Maritime Registry and constitutes a first priority security interest over the Ship and that all taxes and fees payable to the Maritime Registry in respect of the Ship have been paid in full; and
  - (iv) the opinions mentioned in paragraphs (j), (k) and (l) of Clause 3.9 (*At Delivery*) and the documents mentioned in paragraph (m) of Clause 3.9 will be received by the Agent;
- (b) a Certified Copy of a classification certificate (or interim classification certificate) showing the Ship to be classed in accordance with paragraph (c) of Clause ~~42.4~~ 13.4 (*Representations on the Delivery Date*).
  - (c) duly executed originals of the Tripartite General Assignment, any External Management Agreement Assignment, any Approved Manager's Undertaking, the Post-Delivery Assignment and any Time Charter Assignment together with relevant notices of assignment and the acknowledgement of the notice of assignment to be issued pursuant to any External Management Agreement Assignment and the Post-Delivery Assignment and the Time Charter Assignment (if any);
  - (d) a duly executed original of the Limited Liability Company Interests Security Deed (and of each document required to be delivered under the Limited Liability Company Interests Security Deed);
  - (e) a Certified Copy of any executed External Management Agreement and any time charterparty in respect of the Ship;
  - (f) a Certified Copy of any current certificate of financial responsibility in respect of the Ship issued under OPA, a valid Safety Management Certificate (or interim Safety Management Certificate) issued to the Ship in respect of its management by the Approved Manager pursuant to the ISM Code, a valid Document of Compliance (or interim Document of Compliance) issued to the Approved Manager in respect of ships of the same type as the Ship pursuant to the ISM Code, a valid International Ship Security Certificate issued to the Ship in accordance with the ISPS Code and a valid IAPPC issued to the Ship in accordance with Annex VI and, if entered into, any carrier initiative agreement with the United States' Customs and Border Protection under the Customs-Trade Partnership Against Terrorism (C-TPAT) programme;
  - (g) a Certified Copy of the power of attorney pursuant to which the authorised signatory(ies) of the Borrower signed the documents referred to in this Clause 3.9 (*At Delivery*) and to which the Borrower is a party and a specimen of his or their signature(s);
  - (h) a confirmation from EC3 Services Limited that it will act for each of the relevant Obligors as agent for service of process in England in respect of the deed of covenants constituting part of the Original Mortgage (if applicable), the Tripartite General Assignment, the External Management Agreement Assignment (if any), the Post-Delivery Assignment and the Time Charter Assignment (if any).
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Immediately following the delivery of the Ship by the Builder to the Borrower, the Agent shall receive:

- (i) a duly executed original of the Original Mortgage;
- (j) an opinion from legal counsel to the Agent as to Panamanian law, together with the corporate documentation of Oceania Cruises supporting the opinion and a certificate of a competent officer of Oceania Cruises containing specimen signatures of the persons authorised to sign the Limited Liability Company Interests Security Deed on behalf of Oceania Cruises confirming that:
  - (i) the Lenders may continue to rely on the legal opinion given pursuant to paragraph (e) of Clause 3.2 (*No later than the date of the Original Facility Agreement*) in so far as it relates to Oceania Cruises;
  - (ii) the Limited Liability Company Interests Security Deed falls within the scope of Oceania Cruises' corporate purpose as defined by its Articles of Incorporation and By-laws; and
  - (iii) the representative of Oceania Cruises was at the date of the Limited Liability Company Interests Security Deed fully empowered to sign the Limited Liability Company Interests Security Deed.
- (k) an opinion from legal counsel to the Agent as to the law of the Maritime Registry confirming:
  - (i) the valid registration of the Ship in the Maritime Registry; and
  - (ii) the Original Mortgage over the Ship has been validly registered in the Maritime Registry;
- (l) an opinion from legal counsel to the Agent as to English law confirming that the obligations of the Borrower under the deed of covenants constituting part of the Original Mortgage (if applicable), the Tripartite General Assignment, any External Management Agreement Assignment, the Post-Delivery Assignment and any Time Charter Assignment are legally valid and binding obligations enforceable by the relevant Creditor Parties in the English courts;
- (m) the documents listed in Schedule 3 (*Documents to be produced by the Builder to the Agent on Delivery*).

### **3.10 Deferral Tranches**

The relevant part of a Deferral Tranche shall only be advanced if the Agent shall have received (a) no later than five (5) Business Days before the date of the relevant advance (and only if required under Clause 4.9 (*Deferral Tranches*) hereunder), a Drawdown Notice from the Borrower, signed by a duly authorised signatory of the Borrower, specifying the amount of the Deferral Tranche to be drawn down, and (b) on the relevant date of the relevant advance or deemed advance (as applicable), confirmation that:

- (a) save as disclosed in writing to the Agent and SACE prior to the date of the 2020 Amendment Agreement, no Event of Default is continuing or would result from such advance or deemed advance (as applicable) and no Deferral Prepayment Event or event or circumstance specified in Clause ~~48~~ 19 (*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 has occurred; and
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- (b) save as disclosed in writing to the Agent and SACE prior to the date of the 2020 Amendment Agreement, each of the repeating representations set out in Clause ~~12~~-13 (*Representations and Warranties*) are true as at such date by reference to the facts and circumstances existing at such date,

it being provided that two (2) advances under the 2020 Deferral Tranche have been made to the Borrower in respect of the 2020 Deferred Repayment Instalments.

#### **4 DRAWDOWN**

##### **4.1 Borrower's irrevocable payment instructions**

The Lenders shall not be obliged to fulfil their obligation to make the Loan available other than by paying the Builder all or part of 80% of the Final Contract Price up to the Eligible Amount on behalf of and in the name of the Borrower and by reimbursing the Agent for the instalment of the SACE Premium payable on the Delivery Date.

The Borrower hereby instructs the Lenders in accordance with this Clause 4.1 (*Borrower's irrevocable payment instructions*):

- (a) to pay to the Builder all or part of 80% of the Final Contract Price up to the Eligible Amount.
- (b) to pay to the Agent on behalf of the Lenders for onward payment to SACE (such payment to SACE to be made for value on the Drawdown Date), by drawing under the Loan, the amount of the second instalment of the related SACE Premium.

Payment to the Builder of the Dollar amount drawn under paragraph (a) of Clause 4.1 (*Borrower's irrevocable payment instructions*) above shall be made on the Delivery Date of the Ship during usual banking hours in Italy to the Builder's account as specified by the Builder in accordance with the Shipbuilding Contract after receipt and verification by the Agent of the documents provided under Schedule 3 (*Documents to be produced by the Builder to the Agent on delivery*).

Verification of the documents provided under Schedule 3 (*Documents to be produced by the Builder to the Agent on delivery*) shall be limited to checking their apparent compliance as defined in the Uniform Customs and Practices for Documentary Credits - ICC Publication 600 (UCP 600 latest revision).

Save as contemplated in Clause 4.3 (*Modification of payment terms*) below, the payment instruction contained in this Clause 4.1 (*Borrower's irrevocable payment instructions*) is irrevocable.

##### **4.2 Conversion Rate for Loan**

The Dollar amount to be drawn down under paragraph (a) of Clause 4.1 (*Borrower's irrevocable payment instructions*) shall be calculated by the Agent on the Conversion Rate Fixing Date in accordance with the definitions of "Eligible Amount" and "Conversion Rate" in Clause 1.1 (*Definitions*).

##### **4.3 Modification of payment terms**

The Borrower expressly acknowledges that the payment terms set out in this Clause may only be modified with the agreement of the Builder, the Agent, the Lenders and the Borrower in

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the case of paragraph (a) of Clause 4.1 (*Borrower's irrevocable payment instructions*) and with the agreement of the Agent, the Lenders and the Borrower in the case of paragraph (b) of Clause 4.1 (*Borrower's irrevocable payment instructions*); **provided that** it is the intention of the Borrower, the Lenders and the Agent that prior to the Delivery Date agreement shall be reached with those financial institutions with whom the Borrower has entered into the FOREX Contracts (the "**Counterparties**") in order that the Euro payments due from the Counterparties under the FOREX Contracts shall be paid to the Agent for holding in escrow and to be released by the Agent simultaneously with (i) the payment in full to the Builder of the balance of the Final Contract Price denominated in Euro at the time of delivery of the Ship and (ii) the payment to the Counterparties of the Dollars due to them under the relevant FOREX Contracts out of the Dollar amount available under paragraph (a) of Clause 4.1 (*Borrower's irrevocable payment instructions*), subject only to delivery of the Ship by the Builder to the Borrower taking place as evidenced by the execution and delivery of the Protocol of Delivery and Acceptance and to the Borrower having deposited with the Agent before delivery, if and to the extent required, any Dollar and/or Euro amounts as may be needed to ensure the payment in full of both the balance of the Final Contract Price in Euro and the Dollars owed to the Counterparties under all the relevant FOREX Contracts.

#### **4.4 Availability**

Except as permitted by the provisions of the 2020 Amendment Agreement in respect of the 2020 Deferral Tranche and the 2021 Amendment and Restatement Agreement in respect of the 2021 Deferral Tranche, drawing may not be made under this Agreement (and the Loan shall not be available) after the earlier of the Delivery Date and the expiry of the Availability Period.

#### **4.5 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 Loan and the Drawdown Date;
- (b) the amount of that Lender's participation in the Loan; and
- (c) the duration of the first Interest Period.

#### **4.6 Lenders to make available Contributions**

Subject to the provisions of this Agreement, each Lender shall, on and with value on the Drawdown Date, make available to the Agent the amount due from that Lender under Clause 2.2 (*Lenders' participations in Loan*).

#### **4.7 Disbursement of Loan**

Subject to the provisions of this Agreement, the Agent shall on the Drawdown Date pay the amounts which the Agent receives from the Lenders under Clause 4.6 (*Lenders to make available Contributions*):

- (a) in the case of the amount referred to in paragraph (a) of Clause 4.1 (*Borrower's irrevocable payment instructions*), to the account which the Borrower specifies in the Drawdown Notice;
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- (b) in the case of the amount referred to in paragraph (b) of Clause 4.1 (*Borrower's irrevocable payment instructions*) to the account of SACE which the SACE Agent shall specify; and
- (c) in the like funds as the Agent received the payments from the Lenders.

#### **4.8 Disbursement of Loan to third party**

The payment by the Agent under Clause 4.7 (*Disbursement of Loan*) shall constitute the making of the Loan and the Borrower shall at that time become indebted, as principal and direct obligor, to each Lender in an amount equal to that Lender's Contribution.

#### **4.9 Deferral Tranches**

The Lenders have agreed, pursuant to the 2020 Amendment Agreement and the 2021 Amendment and Restatement Agreement, as set out in this Agreement (but without increasing the Maximum Loan Amount and the Total Commitments of each Lender save for the related 2020 Deferral Tranche Premium to be advanced in accordance with paragraph (c) below) to make available to the Borrower the Deferral Tranches as follows, as set out in further detail in Schedule 4 (*Deferred Repayment Schedule*):

- (a) on each Repayment Date during the 2020 Deferral Period, a portion of the 2020 Deferral Tranche in an amount equal to the relevant 2020 Deferred Repayment Instalment due on such Repayment Date shall be automatically drawn by the Borrower and applied towards repayment of the relevant 2020 Deferred Repayment Instalment due on such date. Each such advance under the 2020 Deferral Tranche shall be automatic and notional only, and effected by means of a book entry to finance the 2020 Deferred Repayment Instalments then due;
- (b) on each Repayment Date during the 2021 Deferral Period, a portion of the 2021 Deferral Tranche in an amount equal to the relevant 2021 Deferred Repayment Instalment due on such Repayment Date shall be automatically drawn by the Borrower and applied towards repayment of the relevant 2021 Deferred Repayment Instalment due on such date. Each such advance under the 2021 Deferral Tranche shall be automatic and notional only, and effected by means of a book entry to finance the 2021 Deferred Repayment Instalments then due; and
- (c) together with the first advance of the 2020 Deferral Tranche under this Clause 4.9 (*Deferral Tranches*), a portion of the 2020 Deferral Tranche in an amount equal to the amount to be paid to SACE in respect of the 2020 Deferral Tranche Premium payable to SACE due on the first advance under the 2020 Deferral Tranche shall be drawn by the Borrower and paid to SACE as specified in the relevant Drawdown Notice, it being provided that such amount was advanced to the Borrower on 20 July 2020 together with the first advance under the 2020 Deferral Tranche in respect of the 2020 Deferred Repayment Instalments.

Accordingly, the other provisions of this Clause 4 (*Drawdown*) shall not apply to the advances under the Deferral Tranches and each advance of any Deferral Tranches under this Clause 4.9 (*Deferral Tranches*) shall be deemed to satisfy the Borrower's obligations under Clause 5 (*Repayment*) in respect of the corresponding Deferred Repayment Instalment.

## **5 REPAYMENT**

### **5.1 Number of repayment instalments**

Subject to Clause 5.5 (*Repayment of Deferral Tranches*), the Borrower shall repay the Loan by twenty-four (24) consecutive six-monthly instalments.

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## 5.2 Repayment Dates

Subject to Clause 5.5 (*Repayment of Deferral Tranches*), the first instalment shall be repaid on the date falling six (6) months after the Drawdown Date and the last instalment on the date falling one hundred and forty four (144) months after the Drawdown Date, each date of payment of an instalment being a "Repayment Date".

## 5.3 Amount of repayment instalments

Subject to Clause 5.5 (*Repayment of Deferral Tranches*), each of the twenty-four (24) consecutive six-monthly repayment instalments of the Loan shall be of an equal amount.

## 5.4 Final Repayment Date

Subject to Clause 5.5 (*Repayment of Deferral Tranches*), on the final Repayment Date, the Borrower shall additionally pay to the Agent for the account of the Creditor Parties all other sums then accrued or owing under any Finance Document.

## 5.5 Repayment of Deferral Tranches

Subject to Clause 4.9 (*Deferral Tranches*):

- (a) the 2020 Deferral Tranche shall be repaid in eight semi-annual instalments beginning on the 2020 Deferral Repayment Starting Point and until the 2020 Deferral Final Repayment Date, as set out in further detail in Schedule 4 (*Deferred Repayment Schedule*); and
- (b) the 2021 Deferral Tranche shall be repaid in ten semi-annual instalments beginning on the 2021 Deferral Repayment Starting Point and until the 2021 Deferral Final Repayment Date, as set out in further detail in Schedule 4 (*Deferred Repayment Schedule*).

## 6 RATE SWITCH

### 6.1 Switch to Term SOFR Reference Rate

Subject to Clause 6.2 (*Delayed switch for existing LIBOR Loans*), on and from the Rate Switch Date, where the Floating Interest Rate applies:

- (a) use of the Term SOFR Reference Rate will replace the use of LIBOR for the calculation of interest for the Loan or any part of the Loan; and
- (b) the Loan or any part of the Loan or Unpaid Sum shall be a "Term SOFR Loan" and paragraph (b) of the definition of Floating Interest Rate shall apply to the Loan, any such part of the Loan or Unpaid Sum.

### 6.2 Delayed Switch for Existing LIBOR Loans

If the Rate Switch Date falls before the last day of an Interest Period for a LIBOR Loan:

- (a) the Loan, relevant part of the Loan or Unpaid Sum (as applicable) shall continue to be a LIBOR Loan for that Interest Period and paragraph (a) of the definition of Floating Interest Rate shall continue to apply to the Loan, relevant part of the Loan or Unpaid Sum (as applicable) for that Interest Period;
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- (b) any provision of this Agreement which is expressed to relate solely to a Term SOFR Loan shall not apply in relation to the Loan, relevant part of the Loan or Unpaid Sum (as applicable) for that Interest Period; and
- (c) on and from the first day of the next Interest Period (if any) for the Loan, relevant part of the Loan or Unpaid Sum (as applicable);
  - (i) the Loan, relevant part of the Loan or Unpaid Sum (as applicable) shall be a "Term SOFR Loan"; and
  - (ii) paragraph (b) of the definition of Floating Interest Rate shall apply to it.

### **6.3 Notifications by Agent**

- (1) Subject to paragraph (3) below, following the occurrence of a Rate Switch Trigger Event, the Agent shall:
  - (a) promptly upon becoming aware of the occurrence of that Rate Switch Trigger Event, notify the Borrower and the Lenders of that occurrence; and
  - (b) promptly upon becoming aware of the date of the Rate Switch Trigger Event Date applicable to that Rate Switch Trigger Event, notify the Borrower and the Lenders of that date.
- (2) The Agent shall, promptly upon becoming aware of the occurrence of the Rate Switch Date, notify the Borrower and the Lenders of that occurrence.
- (3) The Parties agree that the FCA Cessation Announcement constitutes a Rate Switch Trigger Event, that the Rate Switch Trigger Event Date applicable to such Rate Switch Trigger Event will be 1 July 2023 and that the Agent is not under any obligation under paragraph (1) above to notify any Party of such Rate Switch Trigger Event or Rate Switch Trigger Event Date resulting from the FCA Cessation Announcement.
- (4) For the purposes of paragraph (3) above, the "FCA Cessation Announcement" means the announcement on 5 March 2021 by the UK's Financial Conduct Authority that all LIBOR settings will, as of certain specified future dates, either cease to be provided by any administrator or no longer be representative of the market and economic reality that they are intended to measure and that such representativeness will not be restored.

## **7 ~~6~~INTEREST**

### **7.1 ~~6.4~~Fixed Interest Rate**

If the Borrower has specified a Fixed Interest Rate pursuant to paragraph (b) of Clause 3.5 (*No later than Sixty (60) days before the Intended Delivery Date*), the Loan shall bear interest at the CIRR. Such interest shall accrue on the actual number of days elapsed based upon a 360 day year and shall be paid on each Repayment Date.

### **7.2 ~~6.2~~Floating Interest Rate**

If:

- (a) the Borrower has specified a Floating Interest Rate pursuant to paragraph (b) of Clause 3.5 (*No later than Sixty (60) days before the Intended Delivery Date*); or
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- (b) the Borrower has specified a Fixed Interest Rate pursuant to paragraph (b) of Clause 3.5 (*No later than Sixty (60) days before the Intended Delivery Date*) but thereafter for any reason whatsoever the Interest Make-up Agreement shall cease to be in effect,

the rate of interest on the Loan in respect of any Interest Period shall be the Floating Interest Rate applicable for that Interest Period and the following provisions of this Clause ~~6-7~~ (*Interest*) shall apply (in the case of the circumstances referred to in paragraph (b) above, with effect from the date on which the Interest Make-up Agreement ceases to be in effect, with such consequential amendments as shall be necessary to give effect to the switch from a Fixed Interest Rate to a Floating Interest Rate).

**7.3 6-3 Interest in respect of Deferral Tranches**

The rate of interest for each Interest Period in respect of each Deferral Tranche shall be the relevant Floating Interest Rate.

**7.4 6-4 Deferred Costs**

Independently to any other obligation to pay costs, expenses or interest under or in connection with this Agreement, the Borrower shall, as a separate obligation, also pay to the Agent (for distribution to each Lender) deferred costs in respect of any drawn portion of a Deferral Tranche at the relevant Deferred Costs Percentage for each Interest Period during which any part of that Deferral Tranche remains outstanding. Whilst not an interest liability, such deferred costs shall be charged from and including the first day of the applicable Interest Period in which an amount of the relevant Deferral Tranche is outstanding to (but not including) the last day of such Interest Period, and will be payable semi-annually in arrears on each interest payment date. Any deferred costs payable in accordance with this Clause ~~6-4~~ 7.4 (*Deferred Costs*) shall be calculated on the basis of the actual number of days elapsed over a year comprised of 360 days. Any non-payment of such deferred costs shall be an Event of Default in accordance with Clause ~~48-2~~ 19.2 (*Non-payment*).

**7.5 6-5 Payment of Floating Interest Rate**

Subject to the provisions of this Agreement, interest on the Loan in respect of each Interest Period shall accrue on the actual number of days elapsed based upon a 360 day year and shall be paid by the Borrower on the last day of that Interest Period.

**7.6 6-6 Notification of Interest Periods and Floating Interest Rate**

- (a) ~~The~~ Save where paragraph (d) of Clause 7.10 (*Unavailability of Term SOFR*) applies, the Agent shall notify the Borrower and each Lender of each Floating Interest Rate and the duration of each Interest Period as soon as reasonably practicable after each is determined and no later than the Quotation Day.

(b) In respect of any Fallback Interest Payment, the Agent shall promptly upon a Fallback Interest Payment being determinable notify:

- (i) the Borrower of that Fallback Interest Payment;
- (ii) each relevant Lender of the proportion of that Fallback Interest Payment which relates to that Lender's participation in the Loan or the relevant part of the Loan; and
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- (iii) the relevant Lenders and the Borrower of each applicable Daily Simple SOFR relating to the determination of that Fallback Interest Payment.
- (c) The Agent shall promptly notify the Borrower of each Funding Rate relating to the Loan or any part of the Loan.
- (d) This Clause 7.6 (Notification of Interest Periods and Floating Interest Rate) shall not require the Agent to make any notification to any Party on a day which is not a Business Day.

**7.7** **6.7 Unavailability of Screen Rate before Rate Switch Date**

- (a) *Interpolated Screen Rate*: If no Screen Rate is available for ~~LIBOR for~~ the Interest Period of ~~the Loan~~ or any ~~part of the~~ LIBOR 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~~ LIBOR Loan.
- (b) *Reference Bank Rate*: If no Screen Rate is available for LIBOR for:
  - (i) Dollars;
  - (ii) the Interest Period of ~~the Loan or any part of the~~ LIBOR Loan and it is not possible to calculate the Interpolated Screen Rate,
  - (iii) 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~~ LIBOR 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 that LIBOR Loan or that part of the Loan (as applicable)~~ and Clause ~~6.10-7.11~~ 7.11 (*Cost of funds*) shall apply to the Loan or that part of the Loan for that Interest Period.

**7.8** **6.8 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.

**7.9** **Unavailability of Term SOFR**

- (a) *Interpolated Term SOFR*: If no Term SOFR is available for the Interest Period of any Term SOFR Loan, the applicable Term SOFR Reference Rate shall be the Interpolated Term SOFR for a period equal in length to the Interest Period of that Term SOFR Loan.
  - (b) *Historic Term SOFR*: If no Term SOFR is available for the Interest Period of any Term SOFR Loan and it is not possible to calculate the Interpolated Term SOFR, the applicable Term SOFR Reference Rate shall be the Historic Term SOFR for that Term SOFR Loan.
  - (c) *Interpolated Historic Term SOFR*: If paragraph (b) above applies but no Historic Term SOFR is available for the Interest Period of any Term SOFR Loan, the applicable Term SOFR Reference
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Rate shall be the Interpolated Historic Term SOFR for a period equal in length to the Interest Period of that Term SOFR Loan.

- (d) Daily Simple SOFR: If, after giving effect to paragraph (c) above, no Term SOFR is available for the Interest Period of a Term SOFR Loan and it is not possible to calculate the Interpolated Historic Term SOFR, that Term SOFR Loan shall bear interest for any day of the relevant Interest Period at a rate per annum equal to the aggregate of the applicable (i) Daily Simple SOFR; (ii) Margin; and (iii) Credit Adjustment Spread.
- (e) Cost of funds: If paragraph (d) above applies but it is not possible to calculate the Daily Simple SOFR, there shall be no Term SOFR Reference Rate for that Term SOFR Loan and Clause 7.11 (Cost of funds) shall apply to that Term SOFR Loan for that Interest Period.

#### **7.10 6-9Market Disruption**

- (a) ~~If In the case of a LIBOR Loan, if~~ before close of business in London on the Quotation Day for the relevant Interest Period the Agent receives notification from a Lender or Lenders (whose participations in the Loan or the relevant part of the Loan in aggregate exceed [\*] per cent. of the Loan or the relevant part of the Loan as appropriate) that the cost to it or each of them 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 ~~6-10 (Cost of funds) shall apply to the Loan or that part of the Loan (as applicable) for the relevant Interest Period.~~ 7.11 (Cost of funds) shall apply to the Loan or that part of the Loan (as applicable) for the relevant Interest Period.
- (b) In the case of a Term SOFR Loan, if before close of business in London on the Quotation Day for the relevant Interest Period, the Agent receives notification from a Lender or Lenders (whose participations in the Loan or the relevant part of the Loan exceed 50 per cent. of the Loan or the relevant part of the Loan as appropriate) that its cost of funds relating to its participation in the Loan or that part of the Loan would be in excess of the Market Disruption Rate then Clause 7.11(Cost of funds) shall apply to the Loan or that part of the Loan (as applicable) for the relevant Interest Period.

#### **7.11 6-10Cost of funds**

- (a) If this Clause ~~6-10~~ 7.11 (Cost of funds) applies, the rate of interest on the Loan or the relevant part of the Loan for the relevant Interest Period shall be the percentage rate per annum which is the sum of:
- (i) the Margin; and
  - (ii) the weighted average of the rates notified to the Agent by each 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 cost of funds relating to~~ its participation in the Loan or that part of the Loan from whatever source it may reasonably select.
- (b) If this Clause ~~6-10~~ 7.11 (Cost of funds) applies and the Agent or the Borrower so requires, the Agent and the Borrower shall enter into negotiations (for a period of not more than 30 days) with a view to agreeing a substitute basis for determining the rate of interest or (as the case may be) an alternative basis for funding.
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- (c) Subject to Clause ~~6.11-7.12~~ (~~Replacement of Screen Rate~~), Changes to the reference rates, 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 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 ~~6.10-7.11~~ (~~Cost of funds~~) applies pursuant to Clause ~~6.9-7.10~~ (~~Market disruption~~) and:
- (i) in relation to a LIBOR Loan, a Lender's Funding Rate is less than LIBOR; or, that Lender's cost of funds relating to its participation in the Loan or the relevant part of the Loan for that Interest Period shall be deemed, for the purposes of sub-paragraph (ii) of paragraph (a) above, to be LIBOR.
  - (ii) in relation to a Term SOFR Loan, a Lender's Funding Rate is less than the Market Disruption Rate, that Lender's cost of funds relating to its participation in the Loan or the relevant part of the Loan for that Interest Period shall be deemed, for the purposes of sub-paragraph (ii) of paragraph (a) above, to be the Market Disruption Rate for that Term SOFR Loan.
  - ~~(iii) 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 ~~6.10-7.11~~ (~~Cost of funds~~) applies but any Lender does not ~~supply a quotation~~ notify a rate to the Agent by the time specified in sub-paragraph (ii) of paragraph (a) above, the rate of interest shall be calculated on the basis of the ~~quotations of rates notified by~~ the remaining Lenders.

**6.11 Replacement of Screen Rate**

**7.12 Changes to the reference rates**

- (a) ~~If a Screen-If a Published~~ Rate Replacement Event has occurred in relation to the ~~Screen-Published~~ Rate ~~for Dollars~~, any amendment or waiver which relates to:
- (i) ~~(a)~~ providing for the use of a Replacement ~~Benchmark~~ Reference Rate; and
  - (ii) ~~(b)~~
    - (A) ~~(i)~~ aligning any provision of any Finance Document to the use of that Replacement ~~Benchmark~~ Reference Rate;
    - (B) ~~(ii)~~ enabling that Replacement ~~Benchmark~~ Reference Rate to be used for the calculation of interest under this Agreement (including, without limitation, any consequential changes required to enable that Replacement ~~Benchmark~~ Reference Rate to be used for the purposes of this Agreement);
    - (C) ~~(iii)~~ implementing market conventions applicable to that Replacement ~~Benchmark~~ Reference Rate;
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(D) ~~(iv)~~ providing for appropriate fallback (and market disruption) provisions for that Replacement ~~Benchmark~~ Reference Rate; or

(E) ~~(v)~~ adjusting the pricing to reduce or eliminate, to the extent reasonably practicable, any transfer of economic value from one Party to another as a result of the application of that Replacement ~~Benchmark~~ Reference Rate (and if any adjustment or method for calculating any adjustment has been formally designated, nominated or recommended by the Relevant Nominating Body, the adjustment shall be determined on the basis of that designation, nomination or recommendation),

may be made with the consent of the Agent (acting on the instructions of the Majority Lenders), SACE and SIMEST (if applicable) and the Borrower.

~~(e) If, as at 30 September 2021, this Agreement provides that the rate of interest for the Loan in Dollars is to be determined by reference to the Screen Rate for LIBOR:~~

~~(i) a Screen Rate Replacement Event shall be deemed to have occurred on that date in relation to the Screen Rate for Dollars; and~~

~~(ii) the Agent (acting on the instructions of the Majority Lenders) and the Obligors shall enter into negotiations in good faith with a view to agreeing the use of a Replacement Benchmark in relation to Dollars in place of that Screen Rate from and including a date no later than 30 November 2021, unless the Borrower and the Agent (acting on the instructions of the Majority Lenders) agree to defer the date of the negotiations required under this sub-paragraph (ii) together with the date for the use of such a Replacement Benchmark, in which case such dates shall be those so agreed.~~

~~(b) (d) If an amendment is required as contemplated in this Clause ~~6.11~~ 7.12 (~~Replacement of Screen Rate~~ Changes to reference rates), the Obligors shall reimburse ~~each of~~ the Agent ~~and the Security Trustee~~ for the amount of all costs and expenses (including legal fees and other professional expenses) incurred by each Creditor Party in relation to such amendment.~~

In this Clause 7.12:

"Published Rate" means:

(a) SOFR; or

(b) Term SOFR for any Quoted Tenor.

"Published Rate Contingency Period" means, in relation to:

(a) Term SOFR (all Quoted Tenors), ten US Government Securities Business Days;

(b) SOFR, ten US Government Securities Business Days.

"Published Rate Replacement Event" means, in relation to a Published Rate:

(a) the methodology, formula or other means of determining that Published Rate has, in the opinion of the Majority Lenders, and the Borrower materially changed;

(b) \_\_\_\_\_

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(i)

(A) the administrator of that Published Rate or its supervisor publicly announces that such administrator is insolvent; or

(B) information is published in any order, decree, notice, petition or filing, however described, of or filed with a court, tribunal, exchange, regulatory authority or similar administrative, regulatory or judicial body which reasonably confirms that the administrator of that Published Rate is insolvent,

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

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

(iii) the supervisor of the administrator of that Published Rate publicly announces that such Published Rate has been or will be permanently or indefinitely discontinued; or

(iv) the administrator of that Published Rate or its supervisor announces that that Published Rate may no longer be used; or

(c) the administrator of that Published Rate (or the administrator of an interest rate which is a constituent element of that Published Rate) determines that that Published Rate should be calculated in accordance with its reduced submissions or other contingency or fallback policies or arrangements and either:

(A) the circumstance(s) or event(s) leading to such determination are not (in the opinion of the Majority Lenders and the Borrower) temporary; or

(B) that Published Rate is calculated in accordance with any such policy or arrangement for a period no less than the applicable Published Rate Contingency Period; or

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

"Replacement Reference Rate" means a reference rate which is:

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

(i) the administrator of that Published Rate (provided that the market or economic reality that such reference rate measures is the same as that measured by that Published Rate); or

(ii) any Relevant Nominating Body,

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and if replacements have, at the relevant time, been formally designated, nominated or recommended under both paragraphs, the "Replacement Reference Rate" will be the replacement under sub-paragraph (i) above;

(b) in the opinion of the Majority Lenders and the Borrower, generally accepted in the international or any relevant domestic syndicated loan markets as the appropriate successor or alternative to a Published Rate; or

(c) in the opinion of the Majority Lenders and the Borrower, an appropriate successor or alternative to a Published Rate.

#### **7.13 6-42 Notice of prepayment**

If no agreement is reached with the Borrower under Clause ~~6-11-7.12~~ (~~Replacement of Screen Rate~~ Changes to the reference rates), the Borrower may give the Agent not less than 15 Business Days', or, if the Fixed Interest Rate has been selected pursuant to paragraph (a) of Clause 3.5 (*No later than Sixty (60) days before the Intended Delivery Date*), the Borrower may give the Agent not less than 60 days' notice of its intention to prepay at the end of the interest period set by the Agent.

#### **7.14 6-43 Prepayment; termination of Commitments**

A notice under Clause ~~6-42-7.13~~ (*Notice of prepayment*) shall be irrevocable; the Agent shall promptly notify the Lenders of the Borrower's notice of intended prepayment; and:

- (a) on the date on which the Agent serves that notice, the Total Commitments shall be cancelled; and
- (b) on the last Business Day of the Interest Period set by the Agent, the Borrower shall prepay (without premium or penalty) the Loan, together with accrued interest thereon at the applicable rate plus the Margin.

#### **7.15 6-44 Application of prepayment**

The provisions of Clause ~~46-17~~ (*Cancellation and Prepayment*) shall apply in relation to the prepayment.

### **8 7 INTEREST PERIODS**

#### **8.1 7-4 Floating Interest Rate**

This Clause ~~7-8~~ (*Interest Periods*) applies where the Borrower has specified a Floating Interest Rate pursuant to paragraph (b) of Clause 3.5 (*No later than sixty (60) days before the Intended Delivery Date*) or in the case of each Deferral Tranche.

#### **8.2 7-2 Commencement of Interest Periods**

The first Interest Period shall commence on the Drawdown Date and each subsequent Interest Period shall commence on the expiry of the preceding Interest Period.

#### **8.3 7-3 Duration of Interest Periods**

Each Interest Period shall be 6 months and shall end on the next succeeding Repayment Date.

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8.4 ~~7.4~~ The first Interest Period in relation to each advance or deemed advance (as applicable) under each Deferral Tranche shall start on the date of such advance or deemed advance (as applicable) and end on the last day of the current Interest Period in respect of the Loan, following which all Interest Periods will be consolidated.

9 ~~8~~ **CLAIMS OR DEFENCES MAY NOT BE OPPOSED TO THE LENDERS**

9.1 ~~8.4~~ **Liability Preserved**

The Borrower may not escape liability under the terms of this Agreement by opposing to the Lenders claims or defences of any kind whatsoever arising under the Shipbuilding Contract, and in particular from its performance, or from any other relationship between the Borrower and the Builder.

10 ~~9~~ **SACE PREMIUM AND ITALIAN AUTHORITIES**

10.1 ~~9.4~~ **SACE Premium**

The estimated SACE Premium is due and payable in two instalments as follows:

- (a) the first instalment of the SACE Premium shall be paid to SACE within 30 days of the issue of the SACE Insurance Policy documentation in the form required by paragraph (b) of Clause 3.3 (*No later than ninety (90) days before the Intended Delivery Date*) of this Agreement and shall be in such amount in Dollars as is calculated by the Agent to be the equivalent of EUR [\*] converted at the Base Rate (the "**First Instalment**"); and
- (b) the second instalment of the SACE Premium shall be such amount in Dollars as is calculated by the Agent to be the product of (i) [\*]% of the Loan actually advanced on the Drawdown Date LESS (ii) the amount of the First Instalment (the "**Second Instalment**") and shall be payable on the Drawdown Date.

10.2 ~~9.2~~ **Reimbursement by the Borrower of the SACE Premium**

The Borrower irrevocably agrees to pay the First Instalment, and to instruct the Lenders to pay the Second Instalment on behalf of the Borrower, as follows:

- (a) The First Instalment shall be paid to SACE by the Borrower through the Agent upon notification by the Agent to the Borrower (i) of the issue of the SACE Insurance Policy documentation in the form required by paragraph (b) of Clause 3.3 (*No later than ninety (90) days before the Intended Delivery Date*) of this Agreement, and (ii) of the amount of the First Instalment.
- (b) The Borrower has requested and the Lenders have agreed to finance the payment of one hundred per cent. (100%) of the Second Instalment on the Drawdown Date in accordance with paragraph (b) of Clause 2.1 (*Amount of facility*) of this Agreement.

Consequently, the Borrower hereby irrevocably instructs the Agent on behalf of the Lenders to pay the Second Instalment to SACE on the Drawdown Date and to reimburse themselves by drawing under the Loan the amount of the Second Instalment in accordance with paragraph (b) of Clause 2.1 (*Amount of facility*) of this Agreement.

The Second Instalment financed by the Loan will be repayable in any event by the Borrower to the Lenders in the manner specified in Clause 5 (*Repayment*) and under any and all

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circumstances including but without limitation in the event of prepayment or acceleration of the Loan.

**10.3 9-3Italian Authorities**

- (a) The Borrower acknowledges and agrees that the Agent and the Lenders are entitled to provide the Italian Authorities with any information they may have relative to the Loan and the business of the Group, to allow the Italian Authorities to inspect all their records relating to this Agreement and the other Transaction Documents and to furnish them with copies thereof. Any such information relative to the Loan may also be given by any Italian Authorities to international institutions charged with collecting statistical data.
- (b) The Borrower acknowledges that, in the making of any decision or determination or the exercise of any discretion or the taking or refraining to take any action under this Agreement or any of the other Finance Documents, the Agent and the Lenders shall be deemed to have acted reasonably if they have acted on the instructions of either of the Italian Authorities.
- (c) Each Party further undertakes not to act in a manner which is inconsistent with the terms of the SACE Insurance Policy.

**10.4 9-4Refund**

In accordance with the SACE Insurance Policy, the Borrower has the right to receive a refund of the first instalment of the SACE Premium referred to in paragraph (a) of Clause ~~9-4~~10.1 (*SACE Premium*), provided that no Event of Default has occurred, in the event that no drawings have been made under this Agreement and the parties have mutually decided to cancel the SACE Insurance Policy following cancellation of the Total Commitments in accordance with Clause ~~16-1~~17.1 (*Cancellation*). In these circumstances, the Borrower may request in writing through the SACE Agent, and shall be entitled to receive from SACE through the SACE Agent, a refund of the first instalment of the SACE Premium subject to a deduction for SACE's administrative charges as calculated by SACE in an amount of not less than 15% of the refund or EUR 3,000 (calculated at the exchange rate valid at the date of the refund request) whichever is the higher.

In no event shall the SACE Agent be liable for any refund of the SACE Premium to be made by SACE.

**10.5 9-5Deferral Tranches – additional premium**

A premium is payable by the Borrower to SACE in respect of:

- (a) the 2020 Deferral Tranche (the "**2020 Deferral Tranche Premium**"), it being provided that an amount of \$[\*] was advanced to the Borrower and paid to SACE on 20 July 2020 with the first Advance under the 2020 Deferral Tranche in respect of the 2020 Deferred Repayment Instalments; and
  - (b) the 2021 Deferral Tranche (the "**2021 Deferral Tranche Premium**" and together with the 2020 Deferral Tranche Premium, the "**Deferral Tranche Premia**"), payable in an amount of \$[\*] no later than the earlier of (i) 30 days from the date of issuance of the relevant addendum to the SACE Insurance Policy in form and substance acceptable to the Lenders and (ii) the first Advance under the 2021 Deferral Tranche.
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Each of the Deferral Tranche Premia paid or to be paid to SACE is non-refundable, and the 2021 Deferral Tranche Premium will not be financed.

11 ~~40~~**FEES**

11.1 ~~40.4~~**Fees**

The following fees shall be paid to the Agent by the Borrower as required hereunder:

- (a) for the Mandated Lead Arrangers and the SACE Agent, an arrangement fee in an amount and payable at the time separately agreed in writing between the Mandated Lead Arrangers, the SACE Agent and the Borrower;
- (b) for the Lenders, a commitment fee in Dollars for the period from the date of the Original Facility Agreement to the Delivery Date of the Ship, or the date of receipt by the Agent of the written cancellation notice sent by the Borrower as described in Clause ~~46.4~~17.1 (*Cancellation*), whichever is the earliest, computed at the rate of [\*] per cent. ([\*]%) per annum and calculated on the undrawn amount of the Maximum Loan Amount and payable in arrears on the date falling six (6) months after the date of this Agreement and on each date falling at the end of each following consecutive six (6) month period, with the exception of the commitment fee due in respect of the last period, which shall be paid on the Drawdown Date, or the date of receipt by the Agent of the written cancellation notice sent by the Borrower as described in Clause ~~46.4~~17.1 (*Cancellation*), whichever is the earliest, such commitment fee to be calculated on the actual number of days elapsed divided by three hundred and sixty (360);

For the purpose of the computation of the periodical commitment fee payable to the Lenders, the Maximum Loan Amount is assumed to be USD 608,082,164;

In the event the actual amount drawn under the Loan on the Delivery Date is higher, the Borrower shall on the Delivery Date pay the difference between the aggregate commitment fee amounts paid up to that date and the aggregate commitment fee computed on the actual amount to be drawn on the Delivery Date;

- (c) With effect from the date of the 2020 Amendment Agreement, the Borrower shall pay to the Agent (for the account of the Lenders for application pro rata to their Commitments) a commitment fee in the amount of [\*] per cent. ([\*]%) per annum on the daily undrawn 2020 Deferral Commitment. The commitment fee shall be payable in arrears on the date of each advance or deemed advance, as applicable, of the 2020 Deferral Tranche in accordance with Clause 4.9 (*Deferral Tranches*) or, if cancelled, on the date of cancellation of the 2020 Deferral Tranche;
  - (d) With effect from the date of the 2021 Amendment and Restatement Agreement, the Borrower shall pay to the Agent (for the account of the Lenders for application pro rata to their Commitments) a commitment fee in the amount of [\*] per cent. ([\*]%) per annum on the daily undrawn 2021 Deferral Commitment. The commitment fee shall be payable in arrears on the date of each advance or deemed advance, as applicable, of the 2021 Deferral Tranche in accordance with Clause 4.9 (*Deferral Tranches*) or, if cancelled, on the date of cancellation of the 2021 Deferral Tranche;
  - (e) for the Agent, an agency fee of \$[\*] payable within ten (10) Business Days of the date of the Original Facility Agreement and on or before each anniversary date thereof until total
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repayment of the Loan unless the Total Commitments are terminated pursuant to Clause ~~16.1~~ 17.1 (*Cancellation*).

## 12 ~~44~~ **TAXES, INCREASED COSTS, COSTS AND RELATED CHARGES**

### 12.1 ~~44.4~~ **Warranty**

The Creditor Parties each warrant to the Borrower that as at the ~~effective date~~ Effective Date of this Agreement there are no Taxes payable in France as a consequence of the signature or performance of this Agreement (other than Taxes payable by each of the Lenders on its overall net income). Each of the Lenders specified in Schedule 1 (*Lenders and Commitments*) undertakes that: (i) its Facility Office is located in France at the ~~effective date~~ Effective Date of this Agreement; and (ii) it will not relocate its Facility Office to another jurisdiction if such relocation could result in the imposition of Taxes in connection with signature or performance of this Agreement (other than Taxes payable by a Lender on its overall net income), it being agreed, for the avoidance of doubt, that each Lender shall be entitled at any time to relocate its Facility Office to another jurisdiction provided that such relocation does not affect the tax status of the transaction for the Borrower by reference to the tax status that would apply were its Facility Office to be located in France.

### 12.2 ~~44.2~~ **Taxes**

All Taxes legally payable (other than Taxes payable by each of the Lenders on its overall net income) as a consequence of the signature or performance of this Agreement shall be paid by the Borrower. In consequence, all payments of principal and interest, interest on late payments, compensation, costs, fees and related charges, due in connection with this Agreement shall be made without any deduction or withholding in respect of Taxes. The Borrower therefore hereby agrees expressly that if for any reason full payment of the above amounts is not made, it will immediately pay the Lenders the sums necessary to compensate exactly the effect of the deductions or withholdings made in respect of Taxes. If the Borrower fails to perform this obligation, the Lenders shall be entitled, in accordance with Clause ~~18-19~~ (Events of Default), either not to make available the Loan or, as the case may require, to require immediate repayment of the Loan.

If an additional payment is made under this Clause and any Lender or the Agent on its behalf determines that it has received or been granted a credit against or relief of or calculated with reference to the deduction or withholding giving rise to such additional payment, such Lender or the Agent (as the case may be) shall, to the extent that it can do so without prejudice to the retention of the amount of such credit, relief, remission or repayment and provided that it has received the cash benefit of such credit, relief or remission, pay to the Borrower such amount as such Lender or the Agent shall in its reasonable opinion have concluded to be attributable to the relevant deduction or withholding. Any such payment shall be conclusive evidence of the amount due to the Borrower hereunder and shall be accepted by the Borrower in full and final settlement of its rights of reimbursement hereunder in respect of such deduction or withholding. Nothing herein contained shall interfere with the right of any Lender and the Agent to arrange their respective tax affairs in whatever manner they think fit.

Nothing in this Clause ~~44.2-12.2~~ (Taxes) shall require the Borrower to compensate the Lenders in respect of any tax imposed under or in connection with FATCA.

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### 12.3 ~~11.3~~ FATCA Deduction

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

### 12.4 ~~11.4~~ FATCA Information

- (a) Subject to paragraph (c) below, each Party shall, within ten Business Days of a reasonable request by another Party:
  - (i) confirm to that other Party whether it is:
    - (A) a FATCA Exempt Party; or
    - (B) not a FATCA Exempt Party; and
  - (ii) supply to that other Party such forms (including any applicable W8 BEN-E or W9 or other equivalent form), 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 or 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)(i) of Clause ~~11.4~~ 12.4 (*FATCA Information*) 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 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.

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 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.

### 12.5 ~~11.5~~ Increased Costs

If after the date of the Original Facility Agreement by reason of:

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- (a) any change in law or in its interpretation or administration; and/or
- (b) compliance with any request from or requirement of any central bank or other fiscal, monetary or other authority including but without limitation the Basel Committee on Banking Regulations and Supervisory Practices whether or not having the force of law:
  - (i) any of the Lenders incurs a cost as a result of its performing its obligations under this Agreement and/or its making available its Commitment hereunder; or
  - (ii) there is any increase in the cost to any of the Lenders of funding or maintaining all or any of the advances comprised in a class of advances formed by or including its Commitment advanced or to be advanced by it hereunder; or
  - (iii) any of the Lenders incurs a cost as a result of its having entered into and/or its assuming or maintaining its commitment under this Agreement; or
  - (iv) any of the Lenders becomes liable to make any payment on account of Tax or otherwise (other than Tax on its overall net income) on or calculated by reference to the amount of its Commitment advanced or to be advanced hereunder and/or any sum received or receivable by it hereunder; or
  - (v) any of the Lenders suffers any decrease in its rate of return as a result of any changes in the requirements relating to capital ratios, monetary control ratios, the payment of special deposits, liquidity costs or other similar requirements affecting that Lender,

then the Borrower shall from time to time on demand pay to the Agent for the account of the relevant Lender or Lenders amounts sufficient to indemnify the relevant Lender or Lenders against, as the case may be, such cost, such increased cost (or such proportion of such increased cost as is in the reasonable opinion of the relevant Lender or Lenders attributable to the funding or maintaining of its or their Commitment(s) hereunder) or such liability.

A Lender affected by any provision of this Clause ~~41.3~~ 12.3 (*FATCA Deduction*) shall promptly inform the Agent after becoming aware of the relevant change and its possible results (which notice shall be conclusive evidence of the relevant change and its possible results) and the Agent shall, as soon as reasonably practicable thereafter, notify the Borrower of the change and its possible results. Without affecting the Borrower's obligations under this Clause ~~41.3~~ 12.3 (*FATCA Deduction*) and in consultation with the Agent, the affected Lender will then take all such reasonable steps as may be open to it to mitigate the effect of the change (for example (if then possible) by changing its Facility Office or transferring some or all of its rights and obligations under this Agreement to another financial institution reasonably acceptable to the Borrower and the Agent). The reasonable costs of mitigating the effect of any such change shall be borne by the Borrower save where such costs are of an internal administrative nature and are not incurred in dealings by any Lender with third parties.

Nothing in this Clause ~~41.5~~ 12.5 (*Increased Costs*) shall require the Borrower to compensate the Lenders in respect of any tax imposed under or in connection with FATCA.

## 12.6 ~~41.6~~ Transaction Costs

The Borrower undertakes to pay to the Agent, upon demand, all costs and expenses, duties and fees, including but without limitation agreed legal costs, out of pocket expenses and travel costs, incurred by the Mandated Lead Arrangers and the Lenders (but not including any bank which becomes a Lender after the date of the Original Facility Agreement) in connection with

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the negotiation, preparation and execution of all agreements, guarantees, security agreements and related documents entered into, or to be entered into, for the purpose of the transaction contemplated hereby as well as all costs and expenses, duties and fees incurred by the Agent or the Lenders in connection with the registration, filing, enforcement or discharge of the said guarantees or security agreements, including without limitation the fees and expenses of legal advisers and insurance experts and the fees and expenses of SACE (including the fees and expenses of its legal advisers) payable by the Mandated Lead Arrangers to SACE, the cost of registration and discharge of security interests and the related travel and out of pocket expenses; the Borrower further undertakes to pay to the Agent all costs, expenses, duties and fees incurred by the Lenders and SACE in connection with any variation of this Agreement and the related documents, guarantees and security agreements, any supplements thereto and waiver given in relation thereto, in connection with the enforcement or preservation of any rights under this Agreement and/or the related guarantees and security agreements, including in each case the fees and expenses of legal advisers, and in connection with the consultations or proceedings made necessary or in the opinion of the Agent desirable by the acts of, or failure to act on the part of, the Borrower.

**12.7 44.7 Costs of delayed Delivery Date**

The Borrower undertakes to pay to the Agent, upon demand, any costs incurred by the Lenders in funding the Loan in the event that the Delivery Date is later than the Intended Delivery Date unless the Borrower has given the Agent at least three (3) Business Days' notification of such delay in the Delivery Date.

**13 42 REPRESENTATIONS AND WARRANTIES**

**13.1 42.4 Timing and repetition**

The following applies in relation to the time at which representations and warranties are made and repeated:

- (a) the representations and warranties in Clause ~~42.2~~ 13.2 (*Continuing representations and warranties*) are made on the date of the Original Facility Agreement and shall be deemed to be repeated, with reference mutatis mutandis to the facts and circumstances subsisting, as if made on each day until the Borrower has no remaining obligations, actual or contingent, under or pursuant to this Agreement or any of the other Finance Documents;
- (b) the representations and warranties in Clause ~~42.3~~ 13.3 (*Semi-continuing representations and warranties*) are made on the date of the Original Facility Agreement and shall be deemed to be repeated, with reference mutatis mutandis to the facts and circumstances subsisting, as if made on the date falling sixty (60) days before the Intended Delivery Date and thereafter on each day until the Borrower has no remaining obligations, actual or contingent, under or pursuant to this Agreement or any of the other Finance Documents; and
- (c) the representations and warranties in Clause ~~42.4~~ 13.4 (~~On Representations on~~ *the Delivery Date*) are made on the Delivery Date and shall be deemed to be repeated, with reference mutatis mutandis to the facts and circumstances subsisting, as if made thereafter on each day until the Borrower has no remaining obligations, actual or contingent, under or pursuant to this Agreement or any of the other Finance Documents.

**13.2 42.2 Continuing representations and warranties**

The Borrower represents and warrants to each of the Lenders that:

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- (a) each Obligor is a limited liability company or body corporate duly organised, constituted and validly existing under the laws of the country of its formation or (as the case may be) incorporation, possessing perpetual existence, the capacity to sue and be sued in its own name and the power to own and charge its assets and carry on its business as it is now being conducted;
- (b) each Obligor has the power to enter into and perform this Agreement and those of the other Transaction Documents to which it is a party and the transactions contemplated hereby and thereby and has taken all necessary action to authorise the entry into and performance of this Agreement and such other Transaction Documents and such transactions;
- (c) this Agreement and each other Transaction Document constitutes (or will constitute when executed) legal, valid and binding obligations of each Obligor expressed to be a party thereto enforceable in accordance with their respective terms and in entering into this Agreement and borrowing the Loan, the Borrower is acting on its own account;
- (d) the entry into and performance of this Agreement and the other Transaction Documents and the transactions contemplated hereby and thereby do not and will not conflict with:
  - (i) any law or regulation or any official or judicial order; or
  - (ii) the constitutional documents of any Obligor; or
  - (iii) any agreement or document to which any Obligor is a party or which is binding upon such Obligor or any of its assets,

nor result in the creation or imposition of any Security Interest on the Borrower or its assets pursuant to the provisions of any such agreement or document, except for Security Interests which qualify as Permitted Security Interests with respect to the Borrower;

- (e) except for:
  - (i) the filing of UCC-1 Financing Statements against the Borrower in respect of those Financing Documents to which it is a party and which create Security Interests;
  - (ii) the recording of the Original Mortgage in the office of the Maritime Administrator of the Republic of the Marshall Islands; and
  - (iii) the registration of the Ship under an Approved Flag,

all authorisations, approvals, consents, licences, exemptions, filings, registrations, notarisations and other matters, official or otherwise, required in connection with the entry into, performance, validity and enforceability of this Agreement and each of the other Transaction Documents to which any Obligor is a party and the transactions contemplated thereby have been obtained or effected and are in full force and effect except authorisations, approvals, consents, licences, exemptions, filings and registrations required in the normal day to day course of the operation of the Ship and not already obtained by the Borrower;

- (f) all information furnished by any Obligor relating to the business and affairs of any Obligor in connection with this Agreement and the other Transaction Documents was and remains true and correct in all material respects and there are no other material facts or considerations the omission of which would render any such information misleading;
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- (g) each Obligor has fully disclosed to the Agent all facts relating to each Obligor which it knows or should reasonably know and which might reasonably be expected to influence the Lenders in deciding whether or not to enter into this Agreement;
  - (h) the claims of the Creditor Parties against the Borrower under this Agreement will rank at least pari passu with the claims of all unsecured creditors of the Borrower (other than claims of such creditors to the extent that they are statutorily preferred) and in priority to the claims of any creditor of the Borrower who is also an Obligor;
  - (i) the Borrower is and shall remain, after the advance to it of the Loan, solvent in accordance with the laws of the Marshall Islands and the United Kingdom and in particular with the provisions of the Insolvency Act 1986 (as from time to time amended) and the requirements thereof;
  - (j) neither the Borrower nor any other Obligor has taken any corporate action nor have any other steps been taken or legal proceedings been started or (to the best of its knowledge and belief) threatened against any of them for the reorganisation, winding-up, dissolution or for the appointment of a liquidator, administrator, receiver, administrative receiver, trustee or similar officer of any of them or any or all of their assets or revenues nor has it sought any other relief under any applicable insolvency or bankruptcy law;
  - (k) the consolidated audited accounts of both Prior Guarantors for the period ending on 31 December 2013 (which accounts have been prepared in accordance with GAAP) fairly represent the financial condition of each Prior Guarantor as shown in such audited accounts and (B) (in relation to any date on which this representation and warranty is deemed to be repeated pursuant to paragraph (a) of Clause ~~12.4~~ 13.1 (*Timing and repetition*)) the latest available annual consolidated audited accounts of the Guarantor at the date of repetition (which accounts have been prepared in accordance with GAAP) fairly represent the financial condition of the Guarantor as shown in such audited accounts;
  - (l) none of the Obligors nor any of their respective assets enjoys any right of immunity (sovereign or otherwise) from set-off, suit or execution in respect of their obligations under this Agreement or any of the other Transaction Documents or by any relevant or applicable law;
  - (m) all the membership interest in the Borrower and all shares or membership interest in any Approved Manager which is a member of the Group shall be legally and beneficially owned directly or indirectly by (in the case of the Borrower) Oceania Cruises and (in the case of such Approved Manager) the Guarantor and such structure shall remain so throughout the Security Period;
  - (n) the copies of the Shipbuilding Contract, any External Management Agreement, any charter and any charter guarantee being the subject of a Time Charter Assignment (if any) and any other relevant third party agreements including but without limitation the copies of any documents in respect of the Insurances delivered to the Agent are true and complete copies of each such document constituting valid and binding obligations of the parties thereto enforceable in accordance with their respective terms and, subject to Clauses ~~13.14~~ 14.14 (*Pooling of earnings and charters*) and ~~13.24~~ 14.24 (*Irrevocable payment instructions*), no amendments thereto or variations thereof have been agreed nor has any action been taken by the parties thereto which would in any way render such document inoperative or unenforceable; and
  - (o) any borrowing by the Borrower under this Agreement, and the performance of its obligations under this Agreement and the other Transaction Documents, will be for its own account and
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will not involve any breach by it of any law or regulatory measure relating to "money laundering" as defined in Article 1 of the Directive (91/308/EEC) of the Council of the European Communities (as amended by Directive 2001/97/EC of the European Parliament and of the Council of 4 December 2001).

- (p) no Obligor is:
  - (i) 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;
- (q) 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;
- (r) to the best of the Borrower's, Oceania Cruises and the Guarantor's knowledge, no Prohibited Payment has been or will be made or provided, directly or indirectly, by (or on behalf of) it, any of its affiliates, its or its officers, directors or any other person acting on its behalf to, or for the benefit of, any authority (or any official, officer, director, agent or key employee of, or other person with management responsibilities in, of any authority) in connection with the Ship, this Agreement and/or the Finance Documents;
- (s) no payments made or to be made by the Borrower, Oceania Cruises or the Guarantor in respect of amounts due under this Agreement or any Finance Document have been or shall be funded out of funds of Illicit Origin and none of the sources of funds to be used by the Borrower, Oceania Cruises or the Guarantor in connection with the construction of the Ship or its business are of Illicit Origin.

### **13.3 ~~12.3~~ Semi-continuing representations and warranties**

The Borrower represents and warrants to each of the Lenders that:

- (a) no event has occurred which constitutes a default under or in respect of any Transaction Document to which any Obligor or the Builder is a party or by which any Obligor or the Builder may be bound (including (inter alia) this Agreement) and no event has occurred which constitutes a default under or in respect of any agreement or document to which any Obligor is a party or by which any Obligor may be bound to an extent or in a manner which might have a material adverse effect on the ability of that Obligor to perform its obligations under the Transaction Documents to which it is a party;
  - (b) none of the assets or rights of the Borrower is subject to any Security Interest except any Security Interest which (i) qualifies as a Permitted Security Interest with respect to the Borrower or (ii) is permitted by Clause ~~13.5~~ 14.5 (*Notification of default*) of this Agreement;
  - (c) no litigation, arbitration or administrative proceedings are current or pending or, to its knowledge, threatened, which might, if adversely determined, have a material adverse effect on the ability of an Obligor to perform its obligations under the Transaction Documents to which it is a party;
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- (d) to the best of its knowledge, each of the Obligors has complied with all taxation laws in all jurisdictions in which it is subject to taxation and has paid all Taxes due and payable by it;
  - (e) each member of the Group has good and marketable title to all its assets which are reflected in the audited accounts referred to in paragraph (k) of Clause ~~42-2-13.2~~ 13.2 (*Continuing representations and warranties*);
  - (f) none of the Obligors has a place of business in any jurisdiction (except as already disclosed) which requires any of the Finance Documents to be filed or registered in that jurisdiction to ensure the validity of the Finance Documents to which it is a party;
  - (g) each of the Obligors and each member of the Group:
    - (i) is in compliance with all applicable federal, state, local, foreign and international laws, regulations, conventions and agreements relating to pollution prevention or protection of human health or the environment (including, without limitation, ambient air, surface water, ground water, navigable waters, water of the contiguous zone, ocean waters and international waters), including without limitation, laws, regulations, conventions and agreements relating to:
      - (A) emissions, discharges, releases or threatened releases of chemicals, pollutants, contaminants, wastes, toxic substances, hazardous materials, oil, hazard substances, petroleum and petroleum products and by-products ("**Materials of Environmental Concern**"); or
      - (B) the manufacture, processing, distribution, use, treatment, storage, disposal, transport or handling of Materials of Environmental Concern (such laws, regulations, conventions and agreements the "**Environmental Laws**");
    - (ii) has all permits, licences, approvals, rulings, variances, exemptions, clearances, consents or other authorisations required under applicable Environmental Laws ("**Environmental Approvals**") and is in compliance with all Environmental Approvals required to operate its business as presently conducted or as reasonably anticipated to be conducted;
    - (iii) has not received any notice, claim, action, cause of action, investigation or demand by any other person, alleging potential liability for, or a requirement to incur, investigatory costs, clean-up costs, response and/or remedial costs (whether incurred by a governmental entity or otherwise), natural resources damages, property damages, personal injuries, attorney's fees and expenses or fines or penalties, in each case arising out of, based on or resulting from:
      - (A) the presence or release or threat of release into the environment of any Material of Environmental Concern at any location, whether or not owned by such person; or
      - (B) circumstances forming the basis of any violation, or alleged violation, of any Environmental Law or Environmental Approval ("**Environmental Claim**"); andthere are no circumstances that may prevent or interfere with such full compliance in the future.
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There is no material Environmental Claim pending or threatened against any of the Obligors or any member of the Group.

There are no past or present actions, activities, circumstances, conditions, events or incidents, including, without limitation, the release, emission, discharge or disposal of any Material of Environmental Concern, that could form the basis of any Environmental Claim against any of the Obligors or any member of the Group.

#### 13.4 ~~42.4~~ **Representations on the Delivery Date**

The Borrower further represents and warrants to each of the Lenders that on the Delivery Date the Ship was:

- (a) in its absolute and unencumbered ownership save as contemplated by the Finance Documents;
- (b) registered in its name under the laws and flag of the Maritime Registry;
- (c) classed with the highest classification available for a Ship of its type free of all recommendations and qualifications with Lloyd's Register, RINA or Bureau Veritas;
- (d) operationally seaworthy and in compliance with all relevant provisions, regulations and requirements (statutory or otherwise) applicable to ships registered under the laws and flag of the Maritime Registry;
- (e) in compliance with the ISM Code, the ISPS Code and Annex VI;
- (f) insured in accordance with the provisions of Clause ~~13.20 (Valuation of the Ship)~~ 14.22 (Insurances) and in compliance with the requirements therein in respect of such insurances; and
- (g) managed by the Approved Manager and, in the event that the Approved Manager is not a member of the Group, on and subject to the terms set out in the External Management Agreement.

#### 14 ~~43~~ **UNDERTAKINGS**

##### 14.1 ~~43.1~~ **General**

The Borrower undertakes with each Creditor Party to comply with the following undertakings during the Security Period.

##### 14.2 ~~43.2~~ **Information**

The Borrower will provide to the Agent for the benefit of the Lenders (or will procure the provision of):

- (a) as soon as practicable (and in any event within one hundred and twenty (120) days after the close of its financial year) a Certified Copy of the audited consolidated accounts of the Guarantor and its subsidiaries for that year (commencing with accounts made up to 31 December 2014 in the case of the consolidated accounts of the Guarantor);
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- (b) as soon as practicable (and in any event within forty-five (45) days of the end of the contemplated quarter for the first three quarters in any fiscal year and within 90 days for the final quarter) a copy of the unaudited consolidated quarterly management accounts of the Guarantor (it being understood that the delivery by the Guarantor of quarterly or annual reports as filed with the Securities and Exchange Commission in respect of the Guarantor and its consolidated subsidiaries shall satisfy all the requirements of this paragraph (b));
- (c) promptly, such further information in its possession or control regarding the condition or operations of the Ship and its financial condition and operations of the Borrower and those of any company in the Group as the Agent may reasonably request for the benefit of the Creditor Parties; and
- (d) details of any material litigation, arbitration or administrative proceedings (including proceedings relating to any alleged or actual breach of Sanctions, the ISM Code of the ISPS Code) which affect any company in the Group as soon as the same are instituted and served, or, to the knowledge of the Borrower, threatened (and for this purpose proceedings shall be deemed to be material if they involve a claim in an amount exceeding Twenty million Dollars or the equivalent in another currency provided that this threshold shall not apply to any proceedings relating to Sanctions).

All accounts required under this Clause ~~13.2-14.2~~ (*Information*) shall be prepared in accordance with GAAP and shall fairly represent the financial condition of the relevant company.

#### 14.3 ~~13.3~~ **Illicit Payments**

No payments made by the Borrower, Oceania Cruises or the Guarantor in respect of amounts due under this Agreement or any Finance Document shall be funded out of funds of Illicit Origin and none of the sources of funds to be used by the Borrower, Oceania Cruises or the Guarantor in connection with the construction of the Ship or its business shall be of Illicit Origin

#### 14.4 ~~13.4~~ **Prohibited Payments**

No Prohibited Payment shall be made or provided, directly or indirectly, by (or on behalf of) the Borrower, Oceania Cruises and the Guarantor or any of their affiliates, officers, directors or any other person acting on its behalf to, or for the benefit of, any authority (or any official, officer, director, agent or key employee of, or other person with management responsibilities in, of any authority) in connection with the Ship, this Agreement and/or the Finance Documents.

#### 14.5 ~~13.5~~ **Notification of default**

The Borrower will notify the Agent of any Event of Default forthwith upon becoming aware of the occurrence thereof. Upon the Agent's request from time to time the Borrower will issue a certificate stating whether any Obligor is aware of the occurrence of any Event of Default.

#### 14.6 ~~13.6~~ **Consents and registrations**

The Borrower will procure that (and will promptly furnish Certified Copies to the Agent on the request of the Agent of) all such authorisations, approvals, consents, licences and exemptions as may be required under any applicable law or regulation to enable it or any Obligor to perform its obligations under, and ensure the validity or enforceability of, each of the Transaction Documents are obtained and promptly renewed from time to time and will procure that the terms of the same are complied with at all times. Insofar as such filings or

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registrations have not been completed on or before the Drawdown Date the Borrower will procure the filing or registration within applicable time limits of each Finance Document which requires filing or registration together with all ancillary documents required to preserve the priority and enforceability of the Finance Documents.

#### 14.7 ~~43.7~~ Negative pledge

The Borrower will not create or permit to subsist any Security Interest on the whole or any part of its present or future assets, except for the following:

- (a) Security Interests created with the prior consent of the Agent; or
- (b) Security Interests qualifying as Permitted Security Interests with respect to the Borrower and described in paragraphs (a) and (b) of the definition of "Permitted Security Interests" in Clause 1.1 (*Definitions*); or
- (c) Security Interests qualifying as Permitted Security Interests with respect to the Borrower and described in paragraphs (C), (E), (H) or (I) of such definition, provided that insofar as they are enforceable against the Ship they do not prevail over the Mortgage.

#### 14.8 ~~43.8~~ Disposals

Except in the case of a sale of the Ship if the completion of the sale is contemporaneous with prepayment of the Loan in accordance with the provisions of Clause ~~46.3-17.3~~ 17.3 (*Mandatory prepayment*) and except for charters and other arrangements complying with Clause ~~43.12-14.12~~ 14.12 (*Financial Records*), the Borrower shall not without the consent of the Majority Lenders, either in a single transaction or in a series of transactions whether related or not and whether voluntarily or involuntarily, sell, transfer, lease or otherwise dispose of the Ship or any of the Ship's equipment except in the case of items being replaced or renewed provided that the net impact is not a reduction in the value of the Ship.

#### 14.9 ~~43.9~~ Change of business

Except with the prior consent of the Agent, the Borrower shall not make or threaten to make any substantial change in its business as presently conducted, namely that of a single ship owning company for the Ship, or carry on any other business which is substantial in relation to its business as presently conducted so as to affect, in the opinion of the Agent, the Borrower's ability to perform its obligations hereunder.

#### 14.10 ~~43.10~~ Mergers

Except with the prior consent of the Lenders, the Borrower will not enter into any amalgamation, restructure, substantial reorganisation, merger, de-merger or consolidation or anything analogous to the foregoing nor will it acquire any equity, share capital or obligations of any corporation or other entity.

#### 14.11 ~~43.11~~ Maintenance of status and franchises

The Borrower will do all such things as are necessary to maintain its limited liability company existence in good standing and will ensure that it has the right and is duly qualified to conduct its business as it is conducted in all applicable jurisdictions and will obtain and maintain all franchises and rights necessary for the conduct of its business.

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#### 14.12 ~~13.12~~ Financial records

The Borrower will keep proper books of record and account, in which proper and correct entries shall be made of all financial transactions and the assets, liabilities and business of the Borrower in accordance with GAAP.

#### 14.13 ~~13.13~~ Financial indebtedness and subordination of indebtedness

The following restrictions shall apply:

- (a) otherwise than in the ordinary course of business as owner of the Ship, except as contemplated by this Agreement and except any loan, advance or credit extended by the Guarantor or any member of the Group which is a wholly owned subsidiary of the Guarantor, the Borrower will not create, incur, assume or allow to exist any financial indebtedness, enter into any finance lease or undertake any material capital commitment (including but not limited to the purchase of any capital asset); and
- (b) the Borrower shall procure that any and all indebtedness (and in particular with any other Obligor) is at all times fully subordinated to the Finance Documents and the obligations of the Borrower hereunder. Upon the occurrence of an Event of Default, the Borrower shall not make any repayments of principal, payments of interest or of any other costs, fees, expenses or liabilities arising from or representing such indebtedness. In this paragraph (b) of Clause ~~13.13~~ 14.13 (*Financial indebtedness and subordination of indebtedness*) "fully subordinated" shall mean that any claim of the lender against the Borrower in relation to such indebtedness shall rank after and be in all respects subordinate to all of the rights and claims of the Creditor Parties under this Agreement and the other Finance Documents and that the lender shall not take any steps to enforce its rights to recover any monies owing to it by the Borrower and in particular but without limitation the lender will not institute any legal or quasi-legal proceedings under any jurisdiction at any time against the Ship, her Earnings or Insurances or the Borrower and it will not compete with the Creditor Parties or any of them in a liquidation or other winding-up or bankruptcy of the Borrower or in any proceedings in connection with the Ship, her Earnings or Insurances.

#### 14.14 ~~13.14~~ Pooling of earnings and charters

The Borrower will not without the prior written consent of the Agent enter into in respect of the Ship, nor permit to exist at any time following the Delivery Date:

- (a) any pooling agreement or other arrangement for the sharing of any of the Earnings or the expenses of the Ship except with a member of the Group and provided that it does not adversely affect the rights of the Creditor Parties under the Finance Documents in the reasonable opinion of the Agent; or
  - (b) any demise or bareboat charter, provided however that such consent shall not be unreasonably withheld in the event that the Borrower wishes to enter into a bareboat charter in a form approved by the Agent with any company which is a member of the Group on condition that if so requested by the Agent and without limitation:
    - (i) any such bareboat charterer shall enter into such deeds (including but not limited to a full subordination and assignment deed in respect of its rights under the bareboat charter and its interest in the Insurances and earnings payable to it arising out of its use of the Ship), agreements and indemnities as the Agent shall in its sole discretion require prior to entering into the bareboat charter with the Borrower; and
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- (ii) the Borrower shall assign the benefit of any such bareboat charter and its interest in the Insurances to the Creditor Parties by way of further security for the Borrower's obligations under the Finance Documents.; or
- (c) any charter whereunder two (2) months' charterhire (or the equivalent thereof) is payable in advance in respect of the Ship; or
- (d) any charter of the Ship or employment which, with the exercise of options for extension, could be for a period longer than [\*] (["\*"]) months; or
- (e) any time charter of the Ship with a company outside the Group, provided however that such consent shall not be unreasonably withheld in the event that:
  - (i) the Borrower agrees to execute in favour of the Creditor Parties an assignment of such time charter, the Earnings therefrom and any guarantee of the charterer's obligations thereunder substantially in the form of the relevant provisions of the Time Charter Assignment and as required by the Agent; and
  - (ii) the Agent is satisfied that the income from such time charter will be sufficient to cover the expenses of the Ship and to service repayment of the Loan and all other amounts from time to time outstanding under this Agreement.

#### **14.15 ~~13-15~~ Loans and guarantees by the Borrower**

Otherwise than in the ordinary course of business in its ownership and operation of the Ship following the Delivery Date, the Borrower will not make any loan or advance or extend credit to any person, firm or corporation or issue or enter into any guarantee or indemnity or otherwise become directly or contingently liable for the obligations of any other person, firm or corporation.

#### **14.16 ~~13-16~~ Management and employment**

The Borrower will not as from the Delivery Date:

- (a) permit any person other than the Approved Manager to be the manager of, including providing crewing services to, the Ship, acting upon terms approved in writing by the Agent and having entered into:-
    - (i) (in the case of the Approved Manager) an Approved Manager's Undertaking; and
    - (ii) (in the case of the Borrower if the Approved Manager is not a member of the Group) an External Management Agreement Assignment;
  - (b) permit any amendment to be made to the terms of any External Management Agreement unless the amendment is advised by the Borrower's tax counsel or is deemed necessary by the parties thereto to reflect the prevailing circumstances but provided that the amendment does not imperil the security to be provided pursuant to the Finance Documents or adversely affect the ability of any Obligor to perform its obligations under the Transaction Documents; or
  - (c) permit the Ship to be employed other than within the Oceania brand.
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**14.17 ~~43.47~~ Acquisition of shares**

The Borrower will not acquire any equity, share capital, assets or obligations of any corporation or other entity or permit its membership interest to be held other than directly or indirectly by Oceania Cruises.

**14.18 ~~43.48~~ Trading with the United States of America**

The Borrower shall in respect of the Ship take all reasonable precautions as from the Delivery Date to prevent any infringements of the Anti-Drug Abuse Act of 1986 of the United States of America (as the same may be amended and/or re-enacted from time to time hereafter) or any similar legislation applicable to the Ship in any other jurisdiction in which the Ship shall trade (a "**Relevant Jurisdiction**") where the Ship trades in the territorial waters of the United States of America or a Relevant Jurisdiction.

**14.19 ~~43.49~~ Further assurance**

The Borrower will, from time to time on being required to do so by the Agent, do or procure the doing of all such acts and/or execute or procure the execution of all such documents in a form satisfactory to the Agent as the Agent may reasonably consider necessary for giving full effect to any of the Transaction Documents or the SACE Insurance Policy or securing to the Creditor Parties the full benefit of the rights, powers and remedies conferred upon the Creditor Parties or any of them in any such Transaction Document.

**14.20 ~~43.20~~ Valuation of the Ship**

The following shall apply in relation to the valuation of the Ship:

- (a) the Borrower will on or before 31 May of each year that commences (but at intervals no more frequently than annually at the Borrower's expense unless an Event of Default has occurred and remains unremedied) following the Delivery Date and within thirty (30) days of receiving any request to that effect from the Agent, procure that the Ship is valued by an independent reputable shipbroker or shipvaluer experienced in valuing cruise ships appointed by the Borrower and approved by the Agent (which approval shall not be unreasonably withheld or delayed and such valuation to be made with or without taking into account the benefit or otherwise of any fixed employment relating to the Ship as the Agent may require);
- (b) the Borrower shall procure that forthwith upon the issuance of any valuation obtained pursuant to this Clause ~~43.18-14.20~~ (~~Trading with the United States of America~~ Valuation of the Ship) a copy thereof is sent directly to the Agent for review; and
- (c) in the event that the Borrower fails to procure a valuation in accordance with this Clause ~~43.18-14.20~~ (~~Trading with the United States of America~~ Valuation of the Ship), the Agent shall be entitled to procure a valuation of the Ship on the same basis.

**14.21 ~~43.24~~ Earnings**

The Borrower will procure that the Earnings (if any) are paid in full without set off and free and clear of and without deduction for any taxes, levies, duties, imposts, charges, fees, restrictions or conditions of any nature whatsoever.

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## 14.22 ~~13.22~~ Insurances

The Borrower covenants with the Creditor Parties and undertakes with effect from the Delivery Date until the end of the Security Period:

- (a) to insure the Ship in its name and keep the Ship insured on an agreed value basis for an amount in the currency in which the Loan is denominated approved by the Agent but not being less than the greater of (x) [\*] per cent. ([\*]%) of the amount of the Loan; and (y) the full market and commercial value of the Ship determined in accordance with Clause ~~13.18~~ 14.20 (~~Trading with the United States of America~~ Valuation of the Ship) from time to time through internationally recognised independent first class insurance companies, underwriters, war risks and protection and indemnity associations acceptable to the Agent in each instance on terms and conditions approved by the Agent including as to deductibles but at least in respect of:
- (i) fire and marine risks including but without limitation hull and machinery and all other risks customarily and usually covered by first-class and prudent shipowners in the London insurance markets under English marine policies or Agent-approved policies containing the ordinary conditions applicable to similar Ships;
  - (ii) war risks and war risks (protection and indemnity) up to the insured amount;
  - (iii) excess risks that is to say the proportion of claims for general average and salvage charges and under the running down clause not recoverable in consequence of the value at which the Ship is assessed for the purpose of such claims exceeding the insured value;
  - (iv) protection and indemnity risks with full standard coverage as offered by first-class protection and indemnity associations and up to the highest limit of liability available (for oil pollution risk the highest limit currently available is one billion Dollars (USD1,000,000,000) and this to be increased if reasonably requested by the Agent and the increase is possible in accordance with the standard protection and indemnity cover for Ships of its type and is compatible with prudent insurance practice for first class cruise shipowners or operators in waters where the Ship trades from time to time from the Delivery Date until the end of the Security Period);
  - (v) when and while the Ship is laid-up, in lieu of hull insurance, normal port risks; and
  - (vi) such other risks as the Agent may from time to time reasonably require;
- and in any event in respect of those risks and at those levels covered by first class and prudent owners and/or financiers in the international market in respect of similar tonnage provided that if any of such insurances are also effected in the name of any other person (other than the Borrower and/or a Creditor Party) such person shall if so required by the Agent execute a first priority assignment of its interest in such insurances in favour of the Creditor Parties in similar terms mutatis mutandis to the relevant provisions of the Tripartite General Assignment;
- (b) that the Agent shall take out mortgagee interest insurance on such conditions as the Agent may reasonably require and mortgagee interest insurance for pollution risks as from time to time agreed each for an amount in the currency in which the Loan is denominated of [\*] per cent. ([\*]%) of the amount of the Loan, the Borrower having no interest or entitlement in respect of such policies; the Borrower shall upon demand of the Agent reimburse the Agent for the costs of effecting and/or maintaining any such insurance(s);
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- (c) if the Ship shall trade in the United States of America and/or the Exclusive Economic Zone of the United States of America (the "**EEZ**") as such term is defined in the US Oil Pollution Act 1990 ("**OPA**"), to comply strictly with the requirements of OPA and any similar legislation which may from time to time be enacted in any jurisdiction in which the Ship presently trades or may or will trade at any time during the existence of this Agreement and in particular before such trade is commenced and during the entire period during which such trade is carried on:
- (i) to pay any additional premiums required to maintain protection and indemnity cover for oil pollution up to the limit available to it for the Ship in the market;
  - (ii) to make all such quarterly or other voyage declarations as may from time to time be required by the Ship's protection and indemnity association and to comply with all obligations in order to maintain such cover, and promptly to deliver to the Agent copies of such declarations;
  - (iii) to submit the Ship to such additional periodic, classification, structural or other surveys which may be required by the Ship's protection and indemnity insurers to maintain cover for such trade and promptly to deliver to the Agent copies of reports made in respect of such surveys;
  - (iv) to implement any recommendations contained in the reports issued following the surveys referred to in sub-paragraph (iii) of paragraph (c) of Clause ~~13.22~~ 14.22 (*Insurances*) within the time limit specified therein and to provide evidence satisfactory to the Agent that the protection and indemnity insurers are satisfied that this has been done;
  - (v) in particular strictly to comply with the requirements of any applicable law, convention, regulation, proclamation or order with regard to financial responsibility for liabilities imposed on the Borrower or the Ship with respect to pollution by any state or nation or political subdivision thereof, including but not limited to OPA, and to provide the Agent on demand with such information or evidence as it may reasonably require of such compliance;
  - (vi) to procure that the protection and indemnity insurances do not contain a clause excluding the Ship from trading in waters of the United States of America and the EEZ or any other provision analogous thereto and to provide the Agent with evidence that this is so; and
  - (vii) strictly to comply with any operational or structural regulations issued from time to time by any relevant authorities under OPA so that at all times the Ship falls within the provisions which limit strict liability under OPA for oil pollution;
- (d) to give notice forthwith of any assignment of its interest in the Insurances to the relevant brokers, insurance companies, underwriters and/or associations in the form approved by the Agent;
- (e) to execute and deliver all such documents and do all such things as may be necessary to confer upon the Creditor Parties legal title to the Insurances in respect of the Ship and to procure that the interest of the Creditor Parties is at all times filed with all slips, cover notes, policies and certificates of entry and to procure (a) that a loss payable clause in the form approved by the Agent shall be filed with all the hull, machinery and equipment and war risks policies in respect of the Ship and (b) that a loss payable clause in the form approved by the Agent shall be endorsed upon the protection and indemnity certificates of entry in respect of the Ship;
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- (f) to procure that each of the relevant brokers and associations furnishes the Agent with a letter of undertaking in such form as may be required by the Agent and waives any lien for premiums or calls except in relation to premiums or calls solely attributable to the Ship;
  - (g) punctually to pay all premiums, calls, contributions or other sums payable in respect of the Insurances on the Ship and to produce all relevant receipts when so required by the Agent;
  - (h) to renew each of the Insurances on the Ship at least five (5) days before the expiry thereof and to give immediate notice to the Agent of such renewal and to procure that the relevant brokers or associations shall promptly confirm in writing to the Agent that such renewal is effected it being understood by the Borrower that any failure to renew the Insurances on the Ship at least ten (10) days before the expiry thereof or to give or procure the relevant notices of such renewal shall constitute an Event of Default;
  - (i) to arrange for the execution of such guarantees as may from time to time be required by any protection and indemnity and/or war risks association;
  - (j) to furnish the Agent from time to time on request with full information about all Insurances maintained on the Ship and the names of the offices, companies, underwriters, associations or clubs with which such Insurances are placed;
  - (k) not to agree to any variation in the terms of any of the Insurances on the Ship without the prior approval of the Agent nor to do any act or voluntarily suffer or permit any act to be done whereby any Insurances shall or may be rendered invalid, void, voidable, suspended, defeated or unenforceable and not to suffer or permit the Ship to engage in any voyage nor to carry any cargo not permitted under any of the Insurances without first obtaining the consent of the insurers or reinsurers concerned and complying with such requirements as to payment of extra premiums or otherwise as the insurers or reinsurers may impose;
  - (l) not to settle, compromise or abandon any claim in respect of any of the Insurances on the Ship other than a claim of less than [\*] Dollars (\$[\*]) or the equivalent in any other currency and not being a claim arising out of a Total Loss;
  - (m) to apply or ensure the appliance of all such sums receivable in respect of the Insurances on the Ship for the purpose of making good the loss and fully repairing all damage in respect whereof the insurance monies shall have been received;
  - (n) that in the event of it making default in insuring and keeping insured the Ship as hereinbefore provided then the Agent may (but shall not be bound to) insure the Ship or enter the Ship in such manner and to such extent as the Agent in its discretion thinks fit and in such case all the cost of effecting and maintaining such insurance together with interest thereon at the Interest Rate shall be paid on demand by the Borrower to the Agent; and
  - (o) that the Agent shall be entitled, immediately prior to the Delivery Date and thereafter no more frequently than annually on renewals but also additionally at any time when there is a proposed change of underwriters or the terms of any Insurances, to instruct independent reputable insurance advisers for the purpose of obtaining any advice or information regarding any matter concerning the Insurances which the Agent shall at its sole discretion deem necessary, it being hereby specifically agreed that the Borrower shall reimburse the Agent on demand for the costs and expenses incurred by the Agent in connection with the instruction of such advisers subject to a limit of Twenty five thousand Euro at the time of delivery of the Ship or in the event of a change of underwriters or of terms of any Insurances and otherwise Ten thousand Euro annually thereafter.
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**14.23 ~~13.23~~ Operation and maintenance of the Ship**

From the Delivery Date until the end of the Security Period at its own expense the Borrower will:

- (a) keep the Ship in a good and efficient state of repair so as to maintain it to the highest classification notation available for the Ship of its age and type free of all recommendations and qualifications with Lloyd's Register, RINA ~~or~~ Bureau Veritas or DNV. On the Delivery Date and annually thereafter, it will furnish to the Agent a statement by such classification society that such classification notation is maintained. It will comply with all recommendations, regulations and requirements (statutory or otherwise) from time to time applicable to the Ship and shall have on board as and when required thereby valid certificates showing compliance therewith and shall procure that all repairs to or replacements of any damaged, worn or lost parts or equipment are carried out (both as regards workmanship and quality of materials) so as not to diminish the value or class of the Ship. It will not make any substantial modifications or alterations to the Ship or any part thereof which would reduce the market and commercial value of the Ship determined in accordance with Clause ~~13.18~~ 14.20 (~~Trading with the United States of America~~ Valuation of the Ship);
  - (b) submit the Ship to continuous survey in respect of its machinery and hull and such other surveys as may be required for classification purposes and, if so required by the Agent, supply to the Agent copies in English of the survey reports;
  - (c) permit surveyors or agents appointed by the Agent to board the Ship at all reasonable times to inspect its condition or satisfy themselves as to repairs proposed or already carried out and afford all proper facilities for such inspections;
  - (d) comply, or procure that the Approved Manager will comply, with the ISM Code (as the same may be amended from time to time) or any replacement of the ISM Code (as the same may be amended from time to time) and in particular, without prejudice to the generality of the foregoing, as and when required to do so by the ISM Code and at all times thereafter:
    - (i) hold, or procure that the Approved Manager holds, a valid Document of Compliance duly issued to the Borrower or the Approved Manager (as the case may be) pursuant to the ISM Code and a valid Safety Management Certificate duly issued to the Ship pursuant to the ISM Code;
    - (ii) provide the Agent with copies of any such Document of Compliance and Safety Management Certificate as soon as the same are issued; and
    - (iii) keep, or procure that there is kept, on board the Ship a copy of any such Document of Compliance and the original of any such Safety Management Certificate;
  - (e) comply, or procure that the Approved Manager will comply, with the ISPS Code (as the same may be amended from time to time) or any replacement of the ISPS Code (as the same may be amended from time to time) and in particular, without prejudice to the generality of the foregoing, as and when required to do so by the ISPS Code and at all times thereafter:
    - (i) keep, or procure that there is kept, on board the Ship the original of the International Ship Security Certificate required by the ISPS Code; and
    - (ii) keep, or procure that there is kept, on board the Ship a copy of the ship security plan prepared pursuant to the ISPS Code;
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- (f) comply with Annex VI (as the same may be amended from time to time) or any replacement of Annex VI (as the same may be amended from time to time) and in particular, without limitation, to:
    - (i) procure that the Ship's master and crew are familiar with, and that the Ship complies with, Annex VI; and
    - (ii) maintain for the Ship throughout the Security Period a valid and current IAPPC and provide a copy to the Agent; and
    - (iii) notify the Agent immediately in writing of any actual or threatened withdrawal, suspension, cancellation or modification of the IAPPC;
  - (g) not employ the Ship or permit its employment in any trade or business which is forbidden by any applicable law or is otherwise illicit or in carrying illicit or prohibited goods or in any manner whatsoever which may render it liable to condemnation in a prize court or to destruction, seizure or confiscation or that may expose the Ship to penalties. In the event of hostilities in any part of the world (whether war be declared or not) it will not employ the Ship or permit its employment in carrying any contraband goods;
  - (h) promptly provide the Agent with (i) all information which the Agent may reasonably require regarding the Ship, its employment, earnings, position and engagements (ii) particulars of all towages and salvages and (iii) copies of all charters and other contracts for its employment and otherwise concerning it;
  - (i) give notice to the Agent promptly and in reasonable detail upon the Borrower or any other Obligor becoming aware of:
    - (i) accidents to the Ship involving repairs the cost of which will or is likely to exceed [\*] Dollars (\$[\*]);
    - (ii) the Ship becoming or being likely to become a Total Loss;
    - (iii) any recommendation or requirement made by any insurer or classification society or by any competent authority which is not complied with, or cannot be complied with, within any time limit relating thereto and that might reasonably affect the maintenance of either the Insurances or the classification of the Ship;
    - (iv) any writ or claim served against or any arrest of the Ship or the exercise of any lien or purported lien on the Ship, her Earnings or Insurances;
    - (v) the Ship ceasing to be registered under the flag of the Maritime Registry or anything which is done or not done whereby such registration may be imperilled;
    - (vi) it becoming impossible or unlawful for it to fulfil any of its obligations under the Finance Documents; and
    - (vii) anything done or permitted or not done in respect of the Ship by any person which is likely to imperil the security created by the Finance Documents;
  - (j) promptly pay and discharge all debts, damages and liabilities, taxes, assessments, charges, fines, penalties, tolls, dues and other outgoings in respect of the Ship and keep proper books of account in respect thereof provided always that the Borrower shall not be obliged to
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compromise any debts, damages and liabilities as aforesaid which are being contested in good faith subject always that full details of any such contested debt, damage or liability which, either individually or in aggregate exceeds [\*] Dollars (\$[\*]) shall forthwith be provided to the Agent. As and when the Agent may so require the Borrower will make such books available for inspection on behalf of the Agent and provide evidence satisfactory to the Agent that the wages and allotments and the insurance and pension contributions of the master and crew are being regularly paid, that all deductions of crew's wages in respect of any tax liability are being properly accounted for and that the master has no claim for disbursements other than those incurred in the ordinary course of trading on the voyage then in progress or completed prior to such inspection;

- (k) maintain the type of the Ship as at the Delivery Date and not put the Ship into the possession of any person for the purpose of work being done on it in an amount exceeding or likely to exceed [\*] Dollars (\$[\*]) unless such person shall first have given to the Agent a written undertaking addressed to the Agent in terms satisfactory to the Agent agreeing not to exercise a lien on the Ship or her Earnings for the cost of such work or for any other reason;
  - (l) promptly pay and discharge all liabilities which have given rise, or may give rise, to liens or claims enforceable against the Ship under the laws of all countries to whose jurisdiction the Ship may from time to time be subject and in particular the Borrower hereby agrees to indemnify and hold the Creditor Parties, their successors, assigns, directors, officers, shareholders, employees and agents harmless from and against any and all claims, losses, liabilities, damages, expenses (including attorneys, fees and expenses and consultant fees) and injuries of any kind whatsoever asserted against the Creditor Parties, with respect to or as a result of the presence, escape, seepage, spillage, release, leaking, discharge or migration from the Ship or other properties owned or operated by the Borrower of any hazardous substance, including without limitation, any claims asserted or arising under any applicable environmental, health and safety laws, codes and ordinances, and all rules and regulations promulgated thereunder of all governmental agencies, regardless of whether or not caused by or within the control of the Borrower subject to the following:
    - (i) it is the parties' understanding that the Creditor Parties do not now, have never and do not intend in the future to exercise any operational control or maintenance over the Ship or any other properties and operations owned or operated by the Borrower, nor in the past, presently, or intend in the future to, maintain an ownership interest in the Ship or any other properties owned or operated by the Borrower except as may arise upon enforcement of the Lenders' rights under the Mortgage;
    - (ii) unless and until an Event of Default shall have occurred and without prejudice to the right of each Lender to be indemnified pursuant to this paragraph (l) of Clause ~~13.23~~ 14.23 (*Operation and maintenance of the Ship*):
      - (A) each Lender will, if it is reasonably practicable to do so, notify the Borrower upon receiving a claim in respect of which the relevant Lender is or may become entitled to an indemnity under this paragraph (l) of Clause ~~13.23~~ 14.23 (*Operation and maintenance of the Ship*); and
      - (B) subject to the prior written approval of the relevant Lender which the Lender shall have the right to withhold, the Borrower will be entitled to take, in the name of the relevant Lender, such action as the Borrower may see fit to avoid, dispute, resist, appeal, compromise or defend any such claims, losses, liabilities, damages, expenses and injuries as are referred to above in this
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paragraph (l) of Clause ~~43-23~~-14.23 (*Operation and maintenance of the Ship*) or to recover the same from any third party, subject to the Borrower first ensuring that the relevant Lender is secured to its reasonable satisfaction against all expenses thereby incurred or to be incurred;

provided always that the Borrower shall not be obliged to compromise any liabilities as aforesaid which are being contested in good faith subject always that full details of any such contested liabilities which, either individually or in aggregate, exceed [\*] Dollars (\$[\*]) shall be forthwith provided to the Agent. If the Ship is arrested or detained for any reason it will procure its immediate release by providing bail or taking such other steps as the circumstances may require;

- (m) give to the Agent at such times as it may from time to time reasonably require a certificate, duly signed on its behalf, as to the total amount of any debts, damages and liabilities relating to the Ship and details of such of those debts, damages and liabilities as are over a certain amount to be specified by the Agent at the relevant time and, if so required by the Agent, forthwith discharge such of those debts, damages and liabilities as the Agent shall require other than those being contested in good faith; and
- (n) maintain the registration of the Ship under and fly the flag of the Maritime Registry and not do or permit anything to be done whereby such registration may be forfeited or imperilled.

#### 14.24 ~~43-24~~ Irrevocable payment instructions

The Borrower shall not modify, revoke or withhold the payment instructions set out in Clause 4.1 (*Borrower's irrevocable payment instructions*) without the agreement of the Builder (in the case of paragraph (a) of Clause 4.1 (*Borrower's irrevocable payment instructions*) only), the Agent and the Lenders.

#### 14.25 ~~43-25~~ "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 a Borrower after the date of the Original Facility Agreement; or
- (c) a proposed assignment or transfer by a Lender of any of its rights and obligations under the Original Facility 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) of Clause ~~43-23~~-14.23 (*Operation and maintenance of the Ship*), any prospective new Lender) to comply with "know your customer" or similar identification procedures in circumstances where the necessary information is not already available to it, the Borrower shall promptly upon the request of the Agent or any Lender supply, or procure the supply of, such documentation and other evidence as is reasonably requested by the Agent (for itself or on behalf of any Lender) or any Lender (for itself or, in the case of the event described in paragraph (c) of Clause ~~43-23~~-14.23 (*Operation and maintenance of the Ship*), on behalf of any prospective new Lender) in order for the Agent and, such Lender or to carry out and be satisfied it has complied with all necessary "know your customer" or other similar checks under all applicable laws and regulations pursuant to the transactions contemplated in the Finance Documents.

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**14.26 43-26 Shipbuilding Contract**

The Borrower shall not modify the Shipbuilding Contract, directly or indirectly, if, by reason of regulations which apply to a Lender, such modification would make such Lender's Commitment impossible to fulfil or would change the substance or form of its Commitment. The Borrower will, therefore, submit to the Agent any proposals for modification which, in its opinion, might have such a consequence, and the Agent on behalf of the Lenders will indicate in a timely manner whether the modification proposed will allow the Loan to be maintained. On or about the last day of each successive period of three (3) months commencing on the date of the Original Facility Agreement and on the date of the Drawdown Notice, the Borrower undertakes to provide the Agent with a copy of any Change Order entered into during that three (3) month or other period. The Borrower also undertakes to notify the Agent of any change in the Intended Delivery Date as soon as practicable after each change has occurred.

**14.27 43-27 FOREX Contracts**

The Borrower shall

- (a) provide the Agent with a copy of all FOREX Contracts together with all relevant details with ten (10) days of their execution; and
- (b) inform the Agent, when requested by the Agent, of its intended hedging policy for purchasing Euro with Dollars.

**14.28 43-28 Compliance with laws etc**

The Borrower shall:

- (a) comply, or procure compliance with:
  - (i) in all material respects, all laws and regulations relating to its business generally; and
  - (ii) in all material respects (except in the case of compliance with Sanctions which must be complied with in all respects), all laws or regulations relating to the Ship, its ownership, employment, operation, management and registration,  
including 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 Environment Approvals which are applicable to it; and
- (c) without limiting paragraph (a) above, not employ the Ship 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.

**14.29 43-29 Dividends and dividend restriction**

- (a) Subject to paragraph (b) below, the Borrower shall not make or pay any dividend or other distribution (in cash or in kind) in respect of its share capital other than dividends and distributions that are transferred to Oceania Cruises or the Guarantor provided that no Event of Default has occurred or is continuing or would result from the payment of any dividend.
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(b) During the period from the 2020 Deferral Effective Date up to and including the 2021 Deferral Final Repayment Date, the Borrower shall not, and shall procure that the Guarantor, Oceania Cruises and the Holding shall not:

- (i) declare, make or pay any dividend or other distribution (or interest on any unpaid dividend or other distribution) (whether in cash or in kind) on or in respect of its share capital (or any class of its share capital);
- (ii) repay or distribute any dividend or share premium reserve;
- (iii) make any repayment of any kind under any shareholder loan; or
- (iv) redeem, repurchase (whether by way of share buy-back program or otherwise), defease, retire or repay any of its share capital or resolve to do so,

except that:

- (A) any Obligor other than the Guarantor may pay dividends and other distributions, directly or indirectly, to the Guarantor for the purpose of providing liquidity to the Guarantor to enable the Guarantor to satisfy payment obligations for which the Guarantor is an obligor;
- (B) any Obligor may pay dividends in respect of the Tax liability to each relevant jurisdiction in respect of consolidated, combined, unitary or affiliated Tax returns for each relevant jurisdiction of the Group or the Holding or holder of the Guarantor's capital stock with respect to income taxable as a result of any member of the Group or the Holding being taxed as a pass-through entity for U.S. Federal, state and local income tax purposes or attributable to any member of the Group;
- (C) the Guarantor and the Holding may pay dividends and other distributions (x) in respect of a conversion, exchange, or repurchase of convertible or exchangeable notes and any conversion of preference shares to ordinary shares in connection therewith, provided that the cash portion of a repurchase of convertible or exchangeable notes is limited to the amount of interest that would otherwise be payable through maturity on the amount of such convertible or exchangeable notes being repurchased plus any amount in lieu of fractional shares, and (y) to the extent contractually owed to holders of equity in the Guarantor or the Holding; and
- (D) the Guarantor may pay dividends and other distributions to the Holding for the purposes of providing cash to the Holding for the payment of any Tax payable in connection with the Holding's equity plan,

provided that the actions in paragraph (B) and (C) above shall only be permitted if there is no Event of Default which is continuing under this Agreement and no Event of Default would arise from the payment of such dividend.

**14.30 ~~13.30~~ New capital raises or financing**

(a) Save as provided below:

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- (i) no new debt ~~or equity issuance~~ shall be raised and no new Financial Indebtedness shall be incurred by the Group (including, for the avoidance of doubt, inter-company loans);
- (ii) no non-arm's length disposals of any asset relating to the Group fleet shall be made; and
- (iii) no additional Security Interests securing existing Financial Indebtedness will be created or permitted to subsist by any Obligor (unless the Lenders benefit from this new security on a *pari passu* basis),

during the period up to and including the 2021 Deferral Final Repayment Date.

(b) The restrictions in paragraph (a) of this Clause ~~13.30-14.30~~ 14.30 (*New capital raises or financing*) above shall not apply in relation to:

- (i) any refinancing of any bond issuance of, or loan entered into by, the Group (A) which matures during such period or (B) where not maturing during such period, shall be on terms ~~which include any of the following (evidence of which shall be provided to the Agent by the Guarantor)~~ resulting, when taken as a whole, in an improvement of the ability of the Obligors to meet their obligations under the Finance Documents, which terms include any of the following: an extension of the repayment terms; or a decrease in the interest rate; or the conversion of such Financial Indebtedness from secured to unsecured or first to second priority;
  - (ii) any debt ~~or equity issuance~~ provided prior to 31 December ~~2022-2023~~ to provide the Group with crisis and/or recovery related funding in respect of the impact of the Covid-19 pandemic;
  - (iii) any debt ~~or equity issuance~~ being raised on or after 31 December ~~2022-2023~~ to support the Group with the impact of the Covid-19 pandemic, made with the prior written consent of SACE;
  - (iv) any debt ~~or equity issuance~~ being raised to finance any instalment of a cruise vessel already contracted for or contracted for during such period or any refurbishment, maintenance, upgrade or lengthening of a cruise ship during such period (including without limitation any costs incurred by the owner of a cruise ship in connection therewith);
  - (v) any debt ~~or equity issuance~~ being raised to finance capital expenditure for projects which are already contracted for but in respect of which committed financing has not yet been obtained, and which, in each case has been (or will be) listed in the Information Package submitted to the Agent prior to the February 2021 ~~Deferral~~ Effective Date;
  - (vi) any extension or renewal of revolving credit facilities, and made with the prior written consent of SACE if any additional security is to be granted;
  - (vii) any new debt or ~~equity issuance~~ otherwise agreed by SACE; ~~or~~
  - (viii) any inter-company loan or operating arrangement which from an accounting perspective has the effect of an intercompany loan (an "**intercompany arrangement**") which:
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- (A) is existing as at the date of the 2021 Amendment and Restatement Agreement;
- (B) is made among any Group members or any Group member with the Holding provided that:
  - (1) any inter-company arrangement is made solely for the purpose of regulatory or Tax purposes carried out in the ordinary course of business and on an arm's length basis; and
  - (2) the aggregate principal amount of any inter-company arrangements outstanding pursuant to ~~this sub-paragraph (B) b)(viii)(B of paragraph (viii) of paragraph (b) of Clause 13.30-14.30~~ (New capital raises or financing) does not exceed [\*] Dollars (\$[\*]) at any time; or
- (C) has been approved with the prior written consent of SACE;
- (ix) any Permitted Security Interest;
- (x) any Security Interest otherwise approved with the prior written consent of SACE;
- (xi) any Financial Indebtedness incurred in the ordinary course of business which in the aggregate does not exceed USD [\*] during any twelve-month period; ~~and, it being provided that:~~
  - (A) prior to 31 December 2022, this amount shall be increased to USD [\*] for any Financial Indebtedness incurred to finance capital expenditure for Approved Projects; and
  - (B) if any part of such Financial Indebtedness allocated prior to 31 December 2022 to an Approved Project remains unused throughout the twelve-month period of year 2022, the surplus may be carried over to increase the relevant Financial Indebtedness throughout the twelve-month period of year 2023 for that Approved Project only;
- (xii) without prejudice to Clause ~~13.10-14.10~~ (Mergers) and clause 11.13 (No merger etc.) of the Guarantee, the issuance of ~~share capital shares or limited liability company interests, as applicable,~~ by any Group member to another Group member; and
- (xiii) any extension, renewal, replacement or upsizing in respect of the Term and Revolving Credit Facilities (including the granting of additional Security Interests),
- (xiv) and, for the avoidance of doubt, no debt or equity issuance shall be raised in respect of any form of merger, sub-division, amalgamation, restructuring, consolidation, winding-up, dissolution or anything analogous thereto or acquisition of any entity, shares or limited liability company interests or obligations of any corporation or other entity.

**14.31 ~~13.34~~ Most favoured nations**

- (a) The Borrower shall procure that if at any time after the date of the Original Facility Agreement the Guarantor enters into any financial contract or financial document relating to any Financial Indebtedness with or which has the support of any export credit agency and which contains *pari passu* provisions or cross default provisions which are more favourable to the lenders than
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those contained in paragraph (l) of Clause ~~42.2-13.2~~ (*Continuing representations and warranties*) and Clause ~~48.6-19.6~~ (*Cross default*) respectively, the Borrower or the Guarantor shall immediately notify the Agent of such provisions and the relevant provisions contained in this Agreement shall be deemed amended so that such more favourable *pari passu* provisions or cross default provisions are granted to the Creditor Parties pursuant to this Agreement.

- (b) The Borrower undertakes that if at any time after the date of this Agreement and until the occurrence of a Reinstatement Event, it or any other member of the Group is required to grant additional security in relation to a financial contract or financial document relating to any existing Financial Indebtedness:
- (i) with the support of any export credit agency (excluding any extensions, increases or changes to the terms and conditions thereof), such security shall be granted on a *pari passu* basis to the Lenders (and the ~~Security Trustee Agent~~ agrees to enter and/or procure the entry by the relevant Creditor Parties into such intercreditor documentation to reflect such *pari passu* ranking (in form and substance reasonably satisfactory to the Creditor Parties) as may be required in connection with such arrangements); or
  - (ii) without the support of any export credit agency (excluding any extensions, increases or changes to the terms and conditions thereof), such security shall (without prejudice to any of the Obligors' other obligations under the Finance Documents), subject to the provisions of clause 11.11 (*Negative pledge*) of the Guarantee and Clause ~~43.7-14.7~~ (*Negative pledge*), be permitted provided that it shall not have an adverse effect on any Security Interests or other rights granted to the ~~Secured-Creditor~~ Parties under the Finance Documents.
- (c) ~~In~~ Until the occurrence of a Reinstatement Event, in respect of any new Financial Indebtedness (other than Permitted Financial Indebtedness), or any extensions, increases or changes to the terms and conditions of any existing Financial Indebtedness, in each case with or which has the support of any export credit agency, the Borrower shall enter into good faith negotiations with the ~~Security Trustee Agent~~ to grant additional security for the purpose of further securing the Loan, provided that any failure to reach agreement under this paragraph (c) following such good faith negotiations shall not constitute an Event of Default.

#### 14.32 ~~43.32~~ Poseidon Principles

The Borrower shall, upon the request of the Agent and at the cost of the Borrower, on or before 31 July in each calendar year, supply to the Agent all information necessary in order for the Lenders to comply with their obligations under the Poseidon Principles in respect of the preceding year, including, without limitation, all ship fuel oil consumption data required to be collected and reported in accordance with Regulation 22A of Annex VI and any Statement of Compliance, in each case relating to the Ship for the preceding calendar year provided always that, for the avoidance of doubt, such information shall be confidential information but the Borrower acknowledges that, in accordance with the Poseidon Principles, such information will form part of the information published regarding the Lenders' portfolio climate alignment.

#### 15 ~~44~~ SECURITY VALUE MAINTENANCE

##### 15.1 ~~44.1~~ Security Shortfall

If, upon receipt of a valuation of the Ship in accordance with Clause ~~43.18-14.18~~ (*Trading with the United States of America*), the Security Value shall be less than the Security Requirement,

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the Agent may give notice to the Borrower requiring that such deficiency be remedied and then the Borrower shall (unless the Ship has become a Total Loss) either:

- (a) prepay within a period of 30 days of the date of receipt by the Borrower of the Agent's said notice such sum in Dollars as will result in the Security Requirement after such repayment (taking into account any other repayment of the Loan made between the date of the notice and the date of such prepayment) being equal to the Security Value; or
- (b) within 30 days of the date of receipt by the Borrower of the Agent's said notice constitute to the reasonable satisfaction of the Agent such further security for the Loan as shall be reasonably acceptable to the Agent having a value for security purposes (as determined by the Agent in its absolute discretion) at the date upon which such further security shall be constituted which, when added to the Security Value, shall not be less than the Security Requirement as at such date. Clauses ~~14.2-15.2~~ (*Costs*) and ~~14.4-15.4~~ (*Documents and evidence*) shall apply to prepayments under paragraph (a) of Clause ~~14.4-15.1~~ (*Security Shortfall*).

#### **15.2 ~~14.2~~Costs**

All costs in connection with the Agent obtaining any valuation of the Ship referred to in Clause ~~13.18~~ 14.18 (*Trading with the United States of America*), and obtaining any valuation either of any additional security for the purposes of ascertaining the Security Value at any time or necessitated by the Borrower electing to constitute additional security pursuant to paragraph (b) of Clause ~~14.4-15.1~~ (*Security Shortfall*) shall be borne by the Borrower.

#### **15.3 ~~14.3~~Valuation of additional security**

For the purpose of this Clause ~~14-15~~ (*Security Value Maintenance*), the market value of any additional security provided or to be provided to the Agent shall be determined by the Agent in its absolute discretion without any necessity for the Agent assigning any reason thereto.

#### **15.4 ~~14.4~~Documents and evidence**

In connection with any additional security provided in accordance with this Clause ~~14-15~~ (*Security Value Maintenance*), the Agent shall be entitled to receive such evidence and documents of the kind referred to in Clause 3 (*Conditions Precedent*) in respect of other Finance Documents as may in the Agent's opinion be appropriate.

#### **15.5 ~~14.5~~Cash or a letter of credit as additional security**

For all purposes under this Clause ~~14-15~~ (*Security Value Maintenance*), it is agreed and understood that:

- (a) cash or a letter of credit shall be an acceptable form of security provided that in the case of a letter of credit it is issued on such terms and by such first class bank as shall have been approved in writing by the Agent (acting in its reasonable discretion); and
  - (b) the value of such cash for security purposes shall be equal to the amount of such cash and the value of such letter of credit for security purposes shall be equal to its stated amount.
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## 15.6 ~~14.6~~ Suspension of Event of Default

- (a) Notwithstanding the provisions of Clause ~~18-19~~ (*Events of Default*), any breach of the provisions of this Clause ~~14-15~~ (*Security Value Maintenance*) arising between the February 2021 ~~Deferral~~ Effective Date and 31 December 2022 shall not (subject further to no (a) Event of Default under clauses ~~18-7-19.7~~ (*Winding-up*) to ~~18-13-19.13~~ (*Cessation of business*) (inclusive) having occurred and being continuing or (b) Deferral Prepayment Event having occurred) result in an Event of Default.
- (b) For the avoidance of doubt, the Security Value will continue to be calculated in accordance with this Clause ~~14-15~~ (*Security Value Maintenance*) between the February 2021 ~~Deferral~~ Effective Date and 31 December 2022.

## 16 ~~15~~ [RESERVED]

## 17 ~~16~~ CANCELLATION AND PREPAYMENT

### 17.1 ~~16.1~~ Cancellation

At any time prior to the delivery of a Drawdown Notice and not less than ninety (90) Business Days prior to the Intended Delivery Date, the Borrower may give notice to the Agent in writing that it wishes to cancel the Total Commitments in their entirety whereupon (without penalty to the Borrower but without prejudice to any liabilities of the Borrower including, without limitation, in respect of fees payable or accrued under this Agreement, arising prior to the date of such cancellation) the Total Commitments shall terminate upon the date specified in such notice.

### 17.2 ~~16.2~~ Voluntary prepayment

- (a) The Borrower may prepay all or part of the Loan (but if in part being an amount that reduces the Loan by a minimum amount of one (1) repayment instalment of principal of the Loan) together with interest thereon without penalty provided the prepayment is made on the last day of an Interest Period and three (3) month's prior written notice indicating the intended date of prepayment is given to the Agent and the SACE Agent, but the following amounts shall be payable to the Agent for the account of the Lenders or the Italian Authorities in the sum of:
- (i) ~~(a)~~ if the Borrower has specified a Floating Interest Rate pursuant to paragraph (b) of Clause 3.5 (*No later than sixty (60) days before the Intended Delivery Date*), the difference (if positive), calculated by the Lenders and notified by them to the Agent, between the actual cost for the Lenders of the funding for the Loan and the rate of interest for the monies to be invested by the Lenders, applied to the amounts so prepaid for the period from the said prepayment until the last day of the Interest Period during which the prepayment occurs (if prepayment does not occur on the last day of that Interest Period), details of any such calculation being supplied to the Borrower by the Agent on behalf of the Lenders; or
- (ii) ~~(b)~~ if the Borrower has selected the Fixed Interest Rate pursuant to paragraph (b) of Clause 3.5 (*No later than sixty (60) days before the Intended Delivery Date*), the charges (if any) imposed on the Lenders by the Italian Authorities representing funding or breakage costs of the Italian Authorities.
- (b) ~~(c)~~ Any voluntary prepayment shall be made in accordance with the provisions of this Clause ~~16.2-17.2~~ (Voluntary prepayment) and applied against the outstanding repayment instalments
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in the inverse order of their maturity, save that where there is an amount of a Deferral Tranche outstanding, any such prepayment shall first be applied against such Deferral Tranche in the inverse order of maturity, starting with the 2021 Deferral Tranche.

- (c) There may be no more than two voluntary prepayments in part of the Loan made in each 12-month period beginning on the Delivery Date unless the relevant prepayment is made at the end of an Interest Period relating to the Loan or the relevant part of the Loan (as applicable).

### **17.3 ~~46.3~~ Mandatory prepayment**

The Borrower shall be obliged to prepay the whole of the Loan if:

- (a) the Ship is sold or becomes a Total Loss:
- (i) in the case of a sale, on or before the date on which the sale is completed by delivery of the Ship to the buyer; or
  - (ii) in the case of a Total Loss, on the earlier of the date falling 120 days after the Total Loss Date and the date of receipt by the Agent of the proceeds of insurance relating to such Total Loss; or
- (b) the SACE Insurance Policy is modified, suspended, terminated or rescinded unless caused by the wilful misconduct or gross negligence of a Creditor Party.

### **17.4 ~~46.4~~ Breach of new covenants or the Principles**

- (a) Failure to comply, until the 2021 Deferral Final Repayment Date, with the provisions of Clause ~~43.29~~ 14.29 (*Dividends and dividend restriction*) and Clause ~~43.30-14.30~~ (*New capital raises or financing*) or the provisions of clause 11.3(h) (*Additional financial reporting*), clause 11.17(c) (*Dividend restriction*), clause 11.19 (*New capital raises or financing*) and clause 11.20 (*Payments under the Shipbuilding contacts*) of the Guarantee, or to otherwise duly perform and observe the other requirements and obligations set out in the Principles shall, in each case, not constitute an Event of Default under this Agreement but (in the case of any failure that is capable of remedy (in the opinion of the Agent, at its sole discretion)) shall have the following consequences:
- (i) the Agent shall reinstate from the date of such breach the requirement to comply with the covenant granted pursuant to Clause ~~44-15~~ (*Security Value Maintenance*) and the financial covenants set out in paragraphs (b) and (c) of clause 11.15 (*Financial covenants*) of the Guarantee which was otherwise suspended until 31 December 2022;
  - (ii) in respect of, specifically, Clause ~~43.29-14.29~~ (*Dividends and dividend restriction*) and Clause ~~43.30-14.30~~ (*New capital raises or financing*), and clause 11.17(c) (*Dividend restriction*) and clause 11.19 (*New capital raises or financing*) of the Guarantee, as well as a failure to perform and observe the other requirements and obligations set out in the Principles (including but not limited to any Obligor (a) commencing, or having commenced against it, any case, proceeding or other action seeking (i) to adjudicate it as bankrupt or insolvent, (ii) reorganization, arrangement, winding-up, liquidation, dissolution, or other relief with respect to it or its debts, (iii) the appointment of a receiver, trustee, or custodian or other similar official for it or for all or a substantial part of its assets, (b) making a general assignment for the benefit of its creditors, (c) being unable to, or admitting in writing its inability to, pay its debts as they become
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due, or (d) taking any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the acts set forth in (a), (b) or (c) hereof):

- (A) the Deferral Commitments and the availability of the Deferral Tranches will be immediately cancelled; and
  - (B) all or part of the Deferral Tranches, together with accrued interest, deferred costs pursuant to Clause ~~6.4-7.4~~ (*Deferred Costs*) and all other amounts accrued or outstanding under this Agreement in connection with the Deferral Tranches will be immediately due and payable, (including, for the avoidance of doubt, any breakage costs pursuant to Clause ~~20.2-21.2~~ (*Breakage costs*)); and
- (iii) in respect of clause 11.3(h) (*Additional financial reporting*) and clause 11.20 (*Payments under the Shipbuilding contracts*) of the Guarantee, shall entitle the Agent, (acting on the instructions of the Lenders), by notice to the Borrower to:
- (A) cancel the Deferral Commitments and the availability of the Deferral Tranches whereupon they shall immediately be cancelled; and
  - (B) declare that all or part of the Deferral Tranches, together with accrued interest, deferred costs pursuant to Clause ~~6.4-7.4~~ (*Deferred Costs*) of this Agreement and all other amounts accrued or outstanding under this Agreement in connection with the Deferral Tranches be immediately due and payable, whereupon they shall become immediately due and payable (including, for the avoidance of doubt, any breakage costs pursuant to Clause ~~20.2-21.2~~ (*Breakage costs*)); and
- (b) Save as permitted by Clause ~~13.30-14.30~~ (*New capital raises or financing*), if at any time after the February 2021 Deferral-Effective Date and until the occurrence of a Reinstatement Event:
- (i) the Guarantor or any other Group member enters into any financial contract or financial document relating to any Financial Indebtedness and which contains any debt deferral or covenant waivers of existing debt, or the raising of any new debt intended to reimburse existing debt that benefits from additional security or more favourable terms than those available to the Lenders (unless they are granted to the Lenders on a *pari passu* basis):
    - (A) the requirement to comply with the covenant granted pursuant to Clause ~~14-15~~ (*Security Value Maintenance*) and the financial covenants set out in paragraphs (b) and (c) of clause 11.15 (*Financial covenants*) of the Guarantee which was otherwise suspended until 31 December 2022 shall be reinstated;
    - (B) the Deferral Commitments and the availability of the Deferral Tranches will be immediately cancelled; and
    - (C) all or part of the Deferral Tranches, together with accrued interest, deferred costs pursuant to Clause ~~6.4-7.4~~ (*Deferred Costs*) and all other amounts accrued or outstanding under this Agreement in connection with the Deferral Tranches will be immediately due and payable, (including, for the avoidance of doubt, any breakage costs pursuant to Clause ~~20.2-21.2~~ (*Breakage costs*)-~~of this Agreement~~);
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(ii) ~~(G)~~ it being provided that such covenants in sub-paragraph (A) above shall not be reinstated and such provisions in sub-paragraphs (B) and (C) above shall not be triggered in case of such financial contract or financial document relating to the Term and Revolving Credit Facilities; the Guarantor or any other Group member makes a prepayment (save for any mandatory prepayment necessary to avoid an event of default (however defined)) of any Financial Indebtedness (unless this is done on a *pari passu* basis with the obligations owed to the Lenders hereunder):

(A) the requirement to comply with the covenant granted pursuant to Clause ~~14-15~~ (Security Value Maintenance) and the financial covenants set out in paragraphs (b) and (c) of clause 11.15 (*Financial Covenants*) of the Guarantee which was otherwise suspended until 31 December 2022 shall be reinstated; and

(B) the Agent shall be entitled (acting on the instructions of the Lenders) to:

(1) cancel the Deferral Commitments and the availability of the Deferral Tranches whereupon they shall immediately be cancelled; and

(2) declare that all or part of the Deferral Tranches, together with accrued interest, deferred costs pursuant to Clause ~~6-4-7.4~~ (Deferred Costs) ~~of this Agreement~~ and all other amounts accrued or outstanding under ~~the Facility~~ this Agreement in connection with the Deferral Tranches will be immediately due and payable (including, for the avoidance of doubt, any breakage costs pursuant to ~~clause 20-2~~ Clause 21.2 (Breakage costs));

it being provided that such covenants in sub-paragraph (A) above shall not be reinstated and such provision in sub-paragraph (B) above shall not be triggered in case of a prepayment relating to the revolving tranche of the Term and Revolving Credit Facilities within the ordinary course of business.

#### 17.5 ~~16-5~~ **Other amounts**

Any prepayment of the whole of the Loan shall be made together with all other sums due under this Agreement (including, without limitation, the compensation calculated in accordance with Clause ~~16-2~~ 17.2 (Voluntary prepayment)).

#### 17.6 ~~16-6~~ **Application of partial prepayment**

Amounts prepaid shall be applied in accordance with paragraph (b) of Clause ~~19-1~~ 20.1 (Receipts).

#### 17.7 ~~16-7~~ **No reborrowing**

Amounts prepaid may not be reborrowed.

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## 18 ~~47~~ INTEREST ON LATE PAYMENTS

### 18.1 ~~47.4~~ Default rate of interest

Without prejudice to the provisions of Clause ~~48-19~~ (*Events of Default*) and without this Clause in any way constituting a waiver of terms of payment, all sums due by the Borrower under this Agreement will automatically bear interest on a day to day basis from the date when they are payable until the date of actual payment at a rate per annum equal to ~~the higher of:~~

(a) before the Rate Switch Date, where the Floating Interest Rate is applicable, the aggregate of:

- (i) Overnight LIBOR;
- (ii) the Margin; and
- (iii) [\*] per cent. ([\*]%) per annum; or

(b) after the Rate Switch Date, where the Floating Interest Rate is applicable, the aggregate of:

- (i) Daily Simple SOFR;
- (ii) the Credit Adjustment Spread;
- (iii) the Margin; and
- (iv) [\*] per cent. ([\*]%) per annum; or

(c) ~~(b)~~ before the Rate Switch Date, where the Fixed Interest Rate is applicable, the higher of:

- (i) the CIRRR plus [\*] per cent. ([\*]%) per annum; and
- (ii) Overnight LIBOR; or

(d) after the Rate Switch Date, where the Fixed Interest Rate is applicable, the higher of:

- (i) the CIRRR plus [\*] per cent. ([\*]%) per annum; and
- (ii) Daily Simple SOFR plus the Credit Adjustment Spread plus the Margin plus [\*] per cent. ([\*]%) per annum.

### 18.2 ~~47.2~~ Compounding of default interest

Any such interest will itself bear interest at the above rate if it is due for at least three (3) months and thereafter at three monthly intervals.

## 19 ~~48~~ EVENTS OF DEFAULT

### 19.1 ~~48.4~~ Events of Default

An Event of Default occurs if any of the events or circumstances described in Clause ~~48.2-19.2~~ (*Non-payment*) to Clause ~~48.24-19.21~~ (*Other Loan Agreement*) occur provided that if, at any time during the period commencing on the day after the date of this Facility Agreement and ending on the date falling ninety (90) days before the Intended Delivery Date (the "**Restriction Period**"), an event should occur that would constitute an Event of Default, the Agent shall not

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be entitled to serve any notice under paragraph (a) of Clause ~~18.22-19.22~~ (*Actions following an Event of Default*) during the Restriction Period unless the relevant event consists of:

- (a) a failure by the Borrower to comply with the provisions of Clauses ~~13.5-14.5~~ (*Notification of default*), ~~13.6-14.6~~ (*Consents and registrations*), ~~13.8-14.8~~ (*Disposals*) or ~~13.13-14.13~~ (*Financial indebtedness and subordination of indebtedness*);
- (b) the happening of any of the events specified in Clauses ~~18.2-19.2~~ (*Non-payment*), ~~18.7-19.7~~ (*Winding-up*), ~~18.8-19.8~~ (*Moratorium or arrangement with creditors*), ~~18.9-19.9~~ (*Appointment of liquidators etc.*), ~~18.10-19.10~~ (*Insolvency*), ~~18.11-19.11~~ (*Legal process*), ~~18.12-19.12~~ (*Analogous events*) or ~~18.13-19.13~~ (*Cessation of business*);
- (c) the repudiation or termination of the Shipbuilding Contract.

However, this provision shall not be interpreted as a waiver of:

- (i) the Agent's right to serve any notice under paragraph (a) of Clause ~~18.22-19.22~~ (*Actions following an Event of Default*) in respect of any Event of Default that has occurred and that remains unremedied on the last day of the Restriction Period; or
- (ii) the obligation of any Obligor under any Finance Document prior to the last day of the Restriction Period including (without limitation) the punctual delivery to the Agent of any information which the Agent is entitled to receive under the provisions of any Finance Document and the prompt notification to the Agent of the occurrence of any Event of Default whether or not the Agent is entitled to serve any notice under paragraph (a) of Clause ~~18.22-19.22~~ (*Actions following an Event of Default*).

#### 19.2 ~~18.2~~ Non-payment

Any Obligor 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 and such failure is not remedied within three (3) Business Days of the due date or (if payable on demand) within three (3) Business Days of receiving the demand.

#### 19.3 ~~18.3~~ Non-remediable breaches

The Borrower fails to comply with the provisions of Clauses ~~13.5-14.5~~ (*Notification of default*), ~~13.6-14.6~~ (*Consents and registrations*), ~~13.8-14.8~~ (*Disposals*) or ~~13.13-14.13~~ (*Financial indebtedness and subordination of indebtedness*).

#### 19.4 ~~18.4~~ Breach of other obligations

- (a) Any Obligor fails to comply with any provision of any Finance Document (other than a failure to comply covered by any of the other provisions of Clauses ~~18.2-19.2~~ (*Non-payment*) to ~~18.21-19.21~~ (*Other Loan Agreement*)) and in particular but without limitation the Guarantor fails to comply with the provisions of clause 11 (*Undertakings*) of its Guarantee or there is any breach in the sole opinion of the Agent of any of the Underlying Documents provided that no Event of Default shall be deemed to have occurred if, in the opinion of the Agent in its sole discretion, such failure or breach is capable of remedy and is remedied within the Relevant Period (as defined below) from the date of its occurrence, if the failure was known to that Obligor, or from the date the relevant Obligor is notified by the Agent of the failure, if the failure was not known to that Obligor, unless in any such case as aforesaid the Agent in its sole discretion considers that the failure or breach is or could reasonably be expected to become materially
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prejudicial to the interests, rights or position of the Lenders, "**Relevant Period**" meaning for the purposes of this Clause thirty (30) days in respect of a remedy period commencing under this Clause not later than 30 September 2009 and fifteen (15) days in respect of a remedy period commencing after 30 September 2009; or

- (b) If there is a repudiation or termination of any Transaction Document or if any of the parties thereto becomes entitled to terminate or repudiate any of them and evidences an intention so to do. For the avoidance of doubt, the termination of the Prior Guarantees shall not be deemed to be a termination of a Transaction Document.

#### 19.5 ~~48-5~~ Misrepresentation

Any representation, warranty or statement made or repeated in, or in connection with, any Transaction Document or the SACE Insurance Policy or in any accounts, certificate, statement or opinion delivered by or on behalf of any Obligor thereunder or in connection therewith is materially incorrect or misleading when made or would, if repeated at any time hereafter by reference to the facts subsisting at such time, no longer be materially correct.

#### 19.6 ~~48-6~~ Cross default

- (a) Any event of default occurs under any financial contract or financial document relating to any Financial Indebtedness of the Borrower; or
  - (b) any such Financial Indebtedness or any sum payable in respect thereof is not paid when due (after the expiry of any applicable grace period(s)) whether by acceleration or otherwise; or
  - (c) any other Financial Indebtedness of any member of the Group is not paid when due or is or becomes capable of being declared due prematurely by reason of default or any Security Interest securing the same becomes enforceable by reason of default provided that no Event of Default will arise if the aggregate amount of the relevant Financial Indebtedness and liabilities secured by the relevant Security Interests is less than \$[\*] or its equivalent in other currencies; or
  - (d) any other Security Interest over any assets of any member of the Group securing any alleged liability that does not qualify as Financial Indebtedness becomes enforceable where the alleged liability is in respect of a sum of, or sum aggregating, \$[\*] or its equivalent in other currencies, unless the alleged liability is being contested in good faith by appropriate means by the relevant Group member and the Agent is reasonably satisfied that the relevant member of the Group has reasonable grounds for succeeding in its action.
  - (e) No Event of Default will occur, or be deemed to have occurred, under this Clause ~~48-6-19.6~~ 19.6 (*Cross default*) if such Event of Default occurs before 31 December 2022 (but without prejudice to the rights of the Lenders in respect of any further breach that may occur after 31 December 2022 ) and is caused solely as a result of a breach of the covenant granted pursuant to Clause ~~44-15~~ 15 (*Security Value Maintenance*) or of the financial covenants in respect of the Group equivalent to those set out in paragraphs (b) and (c) of clause 11.15 (*Financial Covenants*) of the Guarantee, under, or in relation to, any other SACE-backed facility agreement to which a Guarantor is a Party or has executed a guarantee and to which the Principles apply, unless at the time of such Event of Default, an event resulting in mandatory prepayment of the Loan pursuant to paragraph (a) or (b) of Clause ~~46-3-17.3~~ 17.3 (*Mandatory prepayment*) or a Deferral Prepayment Event has occurred.
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**19.7 ~~48-7~~Winding-up**

Any order is made or an effective resolution passed or other action taken for the suspension of payments or reorganisation, dissolution, termination of existence, liquidation, winding-up or bankruptcy of any Obligor.

**19.8 ~~48-8~~Moratorium or arrangement with creditors**

A moratorium in respect of all or any debts of any Obligor or a composition or an arrangement with creditors of any Obligor or any similar proceeding or arrangement by which the assets of any Obligor are submitted to the control of its creditors is applied for, ordered or declared or any Obligor commences negotiations with any one or more of its creditors with a view to the general readjustment or rescheduling of all or a significant part of its Financial Indebtedness.

**19.9 ~~48-9~~Appointment of liquidators etc**

A liquidator, trustee, administrator, receiver, administrative receiver, manager or similar officer is appointed in respect of any Obligor or in respect of all or any substantial part of the assets of any Obligor.

**19.10 ~~48-10~~Insolvency**

Any Obligor becomes or is declared insolvent or is unable, or admits in writing its inability, to pay its debts as they fall due or becomes insolvent within the terms of any applicable law.

**19.11 ~~48-11~~Legal process**

Any distress, execution, attachment or other process affects the whole or any substantial part of the assets of any Obligor and remains undischarged for a period of thirty (30) days or any uninsured judgment in excess of [\*] Dollars (\$[\*]) following final appeal remains unsatisfied for a period of ten (10) days.

**19.12 ~~48-12~~Analogous events**

Anything analogous to or having a substantially similar effect to any of the events specified in Clauses ~~48-7~~ 19.7 (*Winding-up*) to ~~48-11~~ 19.11 (*Legal process*) shall occur under the laws of any applicable jurisdiction.

**19.13 ~~48-13~~Cessation of business**

Any Obligor ceases to carry on all or a substantial part of its business.

**19.14 ~~48-14~~Revocation of consents**

Any authorisation, approval, consent, licence, exemption, filing, registration or notarisation or other requirement necessary to enable any Obligor to comply with any of its obligations under any of the Transaction Documents is materially adversely modified, revoked or withheld or does not remain in full force and effect and within ninety (90) days of the date of its occurrence such event is not remedied to the satisfaction of the Agent and the Agent considers in its sole discretion that such failure is or might be expected to become materially prejudicial to the interests, rights or position of the Lenders provided that the Borrower shall not be entitled to the aforesaid ninety (90) day period if the modification, revocation or withholding of the authorisation, approval or consent is due to an act or omission of any Obligor and the Agent is

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satisfied in its sole discretion that the Lenders' interests might reasonably be expected to be materially adversely affected.

**19.15 ~~48.45~~ Unlawfulness**

At any time it is unlawful or impossible for any Obligor to perform any of its material (to the Creditor Parties or any of them) obligations under any Transaction Document to which it is a party or it is unlawful or impossible for the Creditor Parties or any Lender to exercise any of their or its rights under any of the Transaction Documents provided that no Event of Default shall be deemed to have occurred where the unlawfulness or impossibility does not relate to the payment obligation of any Obligor under any Transaction Document and is cured within the period of twenty one (21) days of the date of occurrence of the event giving rise to the unlawfulness or impossibility and the affected Obligor performs its obligation within such period.

**19.16 ~~48.46~~ Insurances**

The Borrower fails to insure the Ship in the manner specified in Clause ~~13.20~~ 14.20 (*Valuation of the Ship*) or fails to renew the Insurances at least five (5) days prior to the date of expiry thereof and produce prompt confirmation of such renewal to the Agent provided that if the insurers withdraw their cover an Event of Default shall be deemed to have occurred upon issue of the insurer's notice of withdrawal.

**19.17 ~~48.47~~ Disposals**

If the Borrower or any other Obligor shall have concealed, removed, or permitted to be concealed or removed, any part of its property, with intent to hinder, delay or defraud its creditors or any of them, or made or suffered a transfer of any of its property which may be fraudulent under any bankruptcy, fraudulent conveyance or similar law; or shall have made any transfer of its property to or for the benefit of a creditor with the intention of preferring such creditor over any other creditor.

**19.18 ~~48.48~~ Prejudice to security**

Anything is done or suffered or omitted to be done by any Obligor which in the reasonable opinion of the Agent would or might be expected to imperil the security created by any of the Finance Documents.

**19.19 ~~48.49~~ Governmental intervention**

The authority of any Obligor in the conduct of its business is wholly or substantially curtailed by any seizure or intervention by or on behalf of any authority and within ninety (90) days of the date of its occurrence any such seizure or intervention is not relinquished or withdrawn and the Agent reasonably considers that the relevant occurrence is or might be expected to become materially prejudicial to the interests, rights or position of the Lenders provided that the Borrower shall not be entitled to the aforesaid ninety (90) day period if the seizure or intervention executed by any authority is due to an act or omission of any Obligor and the Agent is satisfied, in its sole discretion, that the Lenders' interest might reasonably be expected to be materially adversely affected.

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**19.20** ~~48-20~~[Reserved].

**19.21** ~~48-24~~Other Loan Agreement

There shall occur an Event of Default (under and as defined in the Other Loan Agreement).

**19.22** ~~48-22~~Actions following an Event of Default

On, or at any time after, the occurrence of an Event of Default the Agent may, and if so instructed by the Majority Lenders, the Agent shall:

- (a) serve on the Borrower a notice stating that the Commitments and all other obligations of each Lender to the Borrower under this Agreement are terminated; and/or
- (b) serve on the Borrower a notice stating that the Loan (including but without limitation the amount representing the financed second instalment of the SACE Premium), 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
- (c) take any other action which, as a result of the Event of Default or any notice served under paragraph (a) or (b), the Agent and/or the Lenders are entitled to take under any Finance Document or any applicable law.

**19.23** ~~48-23~~Termination of Commitments

On the service of a notice under paragraph (a) of Clause ~~48-22-19.22~~ 19.22 (*Actions following an Event of Default*), the Commitments and all other obligations of each Lender to the Borrower under this Agreement shall terminate.

**19.24** ~~48-24~~Acceleration of Loan

On the service of a notice under paragraph (b) of Clause ~~48-22-19.22~~ 19.22 (*Actions following an Event of Default*), the Loan, all accrued interest and all other amounts accrued or owing from the Borrower or any Obligor under this Agreement and every other Finance Document shall become immediately due and payable or, as the case may be, payable on demand.

**19.25** ~~48-25~~Further amounts payable

Upon an acceleration of repayment of the Loan following an Event of Default the Borrower shall be liable to pay compensation calculated in accordance with Clause ~~46-2-17.2~~ 17.2 (*Voluntary prepayment*).

**19.26** ~~48-26~~Multiple notices; action without notice

The Agent may serve notices under paragraphs (a) and (b) of Clause ~~48-22-19.22~~ 19.22 (*Actions following an Event of Default*) simultaneously or on different dates and it may take any action referred to in paragraph (c) of Clause ~~48-22-19.22~~ 19.22 (*Actions following an Event of Default*) if no such notice is served or simultaneously with or at any time after the service of both or either of such notices.

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#### 19.27 ~~48.27~~ Notification of Creditor Parties and Obligors

The Agent shall send to each Lender and each Obligor a copy or the text of any notice which the Agent serves on the Borrower under Clause ~~48.22~~ 19.22 (*Actions following an Event of Default*); but the notice shall become effective when it is served on the Borrower, and no failure or delay by the Agent to send a copy or the text of the notice to any other person shall invalidate the notice or provide any Obligor with any form of claim or defence.

#### 19.28 ~~48.28~~ Lender's rights unimpaired

Nothing in this Clause ~~48.19~~ (*Events of Default*) 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 Clauses 2.4 (*Proceedings by individual Lender requiring Majority Lender consent*) and 2.5 (*Obligations of Lenders several*).

#### 19.29 ~~48.29~~ Exclusion of Creditor Party liability

No Creditor Party, and no receiver or manager appointed by the Agent, shall have any liability to an Obligor:

- (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.

### 20 ~~49~~ APPLICATION OF SUMS RECEIVED

#### 20.1 ~~49.1~~ Receipts

Except as any Finance Document may otherwise provide, all sums received under this Agreement or any other Finance Document by the Agent, on behalf of the Lenders, or by any of the Lenders for any reason whatsoever will be applied:

- (a) in priority, to payments of any kind due or in arrears in the order of their due payment dates and first, to fees, charges and expenses, second, to interest payable pursuant to Clause ~~47.18~~ 18 (*Interest on Late Payments*), third, to interest payable pursuant to Clause 6 (*Interest*) and to any deferred costs payable pursuant to Clause ~~6.4~~ 7.4 (*Deferred Costs*), fourth, to the principal of the Loan payable pursuant to Clause 5 (*Repayment*) and, fifth, to any other sums due under this Agreement or any other Finance Document and, if relevant, *pro rata* to each of the Lenders and sixth, to any sums due pursuant to Clause ~~20.2~~ 21.2 (*Breakage costs*); or
  - (b) if no payments are in arrears or if these payments have been discharged as set out above, then and to sums remaining due under this Agreement or any other Finance Document and, if relevant, *pro rata* to each of the Lenders and in each case in inverse order of maturity, the interest being recalculated accordingly.
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## 21 ~~20~~ INDEMNITIES

### 21.1 ~~20.4~~ Indemnities regarding borrowing and repayment of Loan

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

- (a) the Loan not being borrowed on the date specified in the Drawdown Notice for any reason other than a default by the Lender claiming the indemnity;
- (b) the receipt or recovery of all or any part of the Loan or an overdue sum otherwise than on the last day of an Interest Period or other relevant period;
- (c) any failure (for whatever reason) by the Borrower to make payment of any amount due under a Finance Document on the due date or, if so payable, on demand (after giving credit for any default interest paid by the Borrower on the amount concerned under Clause ~~47-18~~ 18 (*Interest on Late Payments*));
- (d) the occurrence and/or continuance of an Event of Default and/or the acceleration of repayment of the Loan under Clause ~~48-19~~ 19 (*Events of Default*); and
- (e) in respect of any Tax (other than Tax on its overall net income) for which a Creditor Party is liable in connection with any amount paid or payable to that Creditor Party (whether for its own account or otherwise) under any Finance Document.

### 21.2 ~~20.2~~ Breakage costs

Without limiting its generality, Clause ~~20.4-21.1~~ 21.1 (*Indemnities regarding borrowing and repayment of Loan*) covers (i) any claim, expense, liability or loss, including a loss of a prospective profit, incurred by a Lender 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 (ii) if the Borrower has selected the Fixed Interest Rate in accordance with paragraph (b) of Clause 3.5 (*No later than sixty (60) days before the Intended Delivery Date*), any funding or breakage costs imposed by SIMEST as a consequence of (x) any total or partial prepayment of the Loan and/or (y) the Borrower deciding to switch from the Fixed Interest Rate to another interest rate after the Drawdown Date and/or (z) the Interest Make-up Agreement ceasing for any reason to be in effect; any such costs imposed by SIMEST shall be paid by the ~~Borrowers~~ Borrower to SIMEST through the Agent.

### 21.3 ~~20.3~~ Miscellaneous indemnities

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

- (a) any action taken, or omitted or neglected to be taken, under or in connection with any Finance Document by the Agent or any other Creditor Party or by any receiver appointed under a Finance Document;
  - (b) any other Pertinent Matter,
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other than claims, expenses, liabilities and losses which are shown to have been directly and mainly caused by the dishonesty or wilful misconduct of the officers or employees of the Creditor Party concerned.

Without prejudice to its generality, this Clause ~~20-3~~21.3 (*Miscellaneous indemnities*) covers any claims, expenses, liabilities and losses which arise, or are asserted, under or in connection with any law relating to safety at sea, the ISM Code or any Environmental Laws or any Sanctions.

#### 21.4 ~~20-4~~**Currency indemnity**

If any sum due from an Obligor 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 an Obligor, whether in its liquidation, any arrangement involving it or otherwise; or
- (b) obtaining an order or judgment from any court or other tribunal; or
- (c) enforcing any such order or judgment,

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

In this Clause ~~20-4~~21.4 (*Currency indemnity*) the "available rate of exchange" means the rate at which the Creditor Party concerned is able at the opening of business (Paris time) on the Business Day after it receives the sum concerned to purchase the Contractual Currency with the Payment Currency.

This Clause ~~20-4~~21.4 (*Currency indemnity*) creates a separate liability of the 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.

#### 21.5 ~~20-5~~**Certification of amounts**

A notice which is signed by 2 officers of a Creditor Party, which states that a specified amount, or aggregate amount, is due to that Creditor Party under this Clause ~~20-21~~ (*Indemnities*) and which indicates (without necessarily specifying a detailed breakdown) the matters in respect of which the amount, or aggregate amount, is due shall be prima facie evidence that the amount, or aggregate amount, is due.

#### 21.6 ~~20-6~~**Sums deemed due to a Lender**

For the purposes of this Clause ~~20-21~~ (*Indemnities*), a sum payable by the Borrower to the Agent for distribution to a Lender shall be treated as a sum due to that Lender.

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## 22 ~~24~~ILLEGALITY, ETC

### 22.1 ~~24.4~~Illegality

This Clause ~~24~~22 (*Illegality, etc.*) applies if:

- (a) a Lender (the "**Notifying Lender**") notifies the Agent that it has become, or will with effect from a specified date, become:
  - (i) 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 including for the avoidance of doubt in relation to Sanctions; or
  - (ii) 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; or

- (b) an Obligor is or becomes a Prohibited Person.

### 22.2 ~~24.2~~Notification of illegality

The Agent shall promptly notify the Borrower, the Obligors and the other Lenders of the notice under Clause ~~24.4~~22.1 (*Illegality*) which the Agent receives from the Notifying Lender.

### 22.3 ~~24.3~~Prepayment; termination of Commitment

On the Agent notifying the Borrower under Clause ~~24.2~~22.2 (*Notification of illegality*), the Notifying Lender's Commitment shall terminate; and thereupon or, if later, on the date specified in the Notifying Lender's notice under Clause ~~24.4~~22.1 (*Illegality*) as the date on which the notified event would become effective the Borrower shall prepay the Notifying Lender's Contribution and shall pay compensation to the Notifying Lender calculated in accordance with Clause ~~46.2~~17.2 (*Voluntary prepayment*).

## 23 ~~22~~SET-OFF

### 23.1 ~~22.4~~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 the Borrower at any office in any country of that Creditor Party in or towards satisfaction of any sum then due from the Borrower to that Creditor Party under any of the Finance Documents; and
  - (b) for that purpose:
    - (i) break, or alter the maturity of, all or any part of a deposit of the Borrower;
    - (ii) convert or translate all or any part of a deposit or other credit balance into Dollars;
    - (iii) enter into any other transaction or make any entry with regard to the credit balance which the Creditor Party concerned considers appropriate.
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**23.2 ~~22-2~~ Existing rights unaffected**

No Creditor Party shall be obliged to exercise any of its rights under Clause ~~22-4~~ 23.1 (*Application of credit balances*); and those rights shall be without prejudice and in addition to any right of set-off, combination of accounts, charge, lien or other right or remedy to which a Creditor Party is entitled (whether under the general law or any document).

**23.3 ~~22-3~~ Sums deemed due to a Lender**

For the purposes of this Clause ~~22-23~~ (*Set-Off*), a sum payable by the Borrower to the Agent for distribution to, or for the account of, a Lender shall be treated as a sum due to that Lender; and each Lender's proportion of a sum so payable for distribution to, or for the account of, the Lenders shall be treated as a sum due to such Lender.

**23.4 ~~22-4~~ No Security Interest**

This Clause ~~22-23~~ (*Set-Off*) gives the Creditor Parties a contractual right of set-off only, and does not create any equitable charge or other Security Interest over any credit balance of the Borrower.

**24 ~~23~~ CHANGES TO THE LENDERS**

**24.1 ~~23-1~~ Assignments and transfers by the Lenders**

Subject to this Clause ~~23-24~~ (*Changes to the Lenders*) and the prior written consent of the Italian Authorities having been obtained, a Lender (the "**Existing Lender**") may:

- (a) assign its rights; or
- (b) transfer by novation its rights and obligations,  
to another bank or financial institution (the "**New Lender**").

**24.2 ~~23-2~~ Conditions of assignment or transfer**

- (a) The consent of the Borrower is required for an assignment or transfer by a Lender (the "**Existing Lender**"), unless the assignment or transfer is to another Lender or an Affiliate of a Lender.
  - (b) The consent of the Borrower to an assignment or transfer must not be unreasonably withheld or delayed.
  - (c) The assignment or transfer must be with respect to a minimum Commitment of [\*] Dollars (\$[\*]) or, if less, the Existing Lender's full Commitment.
  - (d) An assignment will only be effective on:
    - (i) receipt by the Agent of written confirmation from the New Lender (in form and substance satisfactory to the Agent) that the New Lender will assume the same obligations to the other Creditor Parties as it would have been under if it was an original Lender; and
    - (ii) performance by the Agent of all necessary "know your customer" or other similar checks under all applicable laws and regulations in relation to such assignment to a
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New Lender, the completion of which the Agent shall promptly notify to the Existing Lender and the New Lender.

**24.3 ~~23.3~~ Assignment or transfer fee**

The New Lender shall:

- (a) on the date upon which an assignment or transfer takes effect, pay to the Agent (for its own account) a fee of [\*] Euro (EUR [\*]);
- (b) pay to the Agent, upon demand, all reasonable costs and expenses, duties and fees, including but without limitation legal costs and out of pocket expenses, incurred by the Agent or the Lenders in connection with any necessary amendment to or supplementing of the Transaction Documents or any of them or the SACE Insurance Policy as a consequence of the assignment or transfer; and
- (c) pay to the Agent, upon demand, such amount as is payable to the Italian Authorities to cover its costs of giving its approval under Clause ~~23.4~~24.1 (*Assignments and transfers by the Lenders*).

**24.4 ~~23.4~~ Limitation of responsibility of Existing Lenders**

- (a) Unless expressly agreed to the contrary, an Existing Lender makes no representation or warranty and assumes no responsibility to a New Lender for:
    - (i) the legality, validity, effectiveness, adequacy or enforceability of the Finance Documents or any other documents;
    - (ii) the financial condition of any Obligor;
    - (iii) the performance and observance by any Obligor of its obligations under the Finance Documents or any other documents; or
    - (iv) the accuracy of any statements (whether written or oral) made in or in connection with any Finance Document or any other document,and any representations or warranties implied by law are excluded.
  - (b) Each New Lender confirms to the Existing Lender and the other 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 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 in connection with any Finance Document; and
    - (ii) will continue to make its own independent appraisal of the creditworthiness of each Obligor and its related entities whilst any amount is or may be outstanding under the Finance Documents or any Commitment is in force.
  - (c) Nothing in any Finance Document obliges an Existing Lender to:
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- (i) accept a re-transfer from a New Lender of any of the rights and obligations assigned or transferred under this Clause ~~23-24~~ (*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 Obligor of its obligations under the Finance Documents or otherwise.

**24.5 ~~23-5~~ Permitted disclosure**

Any Creditor Party may disclose to any of its Affiliates and to the following other persons:

- (a) any person to (or through) whom that Lender assigns or transfers (or may potentially assign or transfer) all or any of its rights and obligations under this Agreement;
- (b) any person with (or through) whom that Lender enters into (or may potentially enter into) any sub-participation in relation to, or any other transaction under which payments are to be made by reference to, this Agreement or any Obligor;
- (c) any person to whom, and to the extent that, information is required to be disclosed by any applicable law or regulation;
- (d) any other Creditor Party, or any employee, officer, director or representative of such entity which needs to know such information or receive such document in the course of such person's employ or duties;
- (e) or any employee, officer, director or representative of any Italian Authorities which needs to know such information or receive such document in the course of such person's employ or duties;
- (f) the Guarantor or any other member of the Group, or any employee, officer, director or representative of such entity which needs to know such information or receive such document in the course of such person's employ or duties; or
- (g) auditors, insurance and reinsurance brokers, insurers and reinsurers and professional advisers, including legal advisers, which need to know such information,

any information about any Obligor, this Agreement and the other Finance Documents as that Creditor Party shall consider appropriate. Each of the Creditor Parties may also disclose to the Builder, or any employee, officer, director or representative of the Builder which needs to know such information or receive such document in the course of such person's employ or duties, such information about any Obligor, this Agreement and the other Finance Documents as that Creditor Party reasonably considers normal practice for an export credit.

**24.6 ~~23-6~~ Assignment or transfer to SACE**

Notwithstanding the above provisions of this Clause ~~23-24~~ (*Changes to the Lenders*):

- (a) each Lender and the Agent shall, if so instructed by SACE in accordance with the provisions of the SACE Insurance Policy and without any requirement for the consent of the Borrower, assign its rights or (as the case may be) transfer its rights and obligations to SACE, which assignment or transfer shall take effect upon the date stated in the relevant documentation; and
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- (b) the Agent shall promptly notify the Borrower of any such assignment or transfer to SACE and the Borrower shall pay to the Agent, upon demand, all reasonable costs and expenses, duties and fees, including but without limitation legal costs and out of pocket expenses, incurred by the Agent or the Lenders in connection with any such assignment or transfer.

#### **24.7 ~~23.7~~ Security over Lenders' rights**

In addition to the other rights provided to Lenders under this Clause ~~23~~-24 (*Changes to the Lenders*), each Lender may without consulting with or obtaining consent from the Borrower or any Obligor but subject to the prior written consent of SACE, 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 (i) to the benefit of any Affiliate and/or (ii) within the framework of its, or its Affiliates, direct or indirect funding operations 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) alter the obligations of the Obligor or require any payments to be made by the Borrower or any Obligor 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.

#### **25 ~~24~~ CHANGES TO THE OBLIGORS**

##### **25.1 ~~24.1~~ No change without consent**

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

#### **26 ~~25~~ ROLE OF THE AGENT AND THE MANDATED LEAD ARRANGERS**

##### **26.1 ~~25.1~~ Appointment of the Agent**

- (a) Each other Creditor Party appoints the Agent to act as its agent under and in connection with this Agreement and the other Finance Documents and the SACE Insurance Policy.
  - (b) Each other Creditor Party authorises the Agent to exercise the rights, powers, authorities and discretions specifically given to the Agent under or in connection with the Finance Documents together with any other incidental rights, powers, authorities and discretions.
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## **26.2 25.2 Duties of the Agent**

- (a) The Agent shall promptly forward to a Party the original or a copy of any document which is delivered to the Agent for that Party by any other Party.
- (b) Except where a Finance Document specifically provides otherwise, the Agent is not obliged to review or check the adequacy, accuracy or completeness of any document it forwards to another Party.
- (c) If the Agent receives notice from a Party referring to this Agreement, describing an Event of Default and stating that the circumstance described is an Event of Default, it shall promptly notify the other Creditor Parties.
- (d) If the Agent is aware of the non-payment of any principal, interest, commitment fee or other fee payable to a Creditor Party (other than the Agent or a Mandated Lead Arranger) under this Agreement it shall promptly notify the other Creditor Parties.
- (e) The Agent's duties under the Finance Documents are solely administrative in nature.

## **26.3 25.3 Role of the Mandated Lead Arrangers**

None of the Mandated Lead Arrangers has any obligations of any kind to any other Party under or in connection with any Transaction Document or the SACE Insurance Policy.

## **26.4 25.4 No fiduciary duties**

- (a) Nothing in this Agreement constitutes the Agent or any of the Mandated Lead Arrangers as a trustee or fiduciary of any other person.
- (b) Neither the Agent nor any of the Mandated Lead Arrangers shall be bound to account to any Lender for any sum or the profit element of any sum received by it for its own account.

## **26.5 25.5 Business with the Guarantor**

The Agent and each of the Mandated Lead Arrangers may accept deposits from, lend money to and generally engage in any kind of banking or other business with any Affiliate or subsidiary of the Guarantor.

## **26.6 25.6 Rights and discretions of the Agent**

- (a) The Agent may rely on:
    - (i) any representation, notice or document believed by it to be genuine, correct and appropriately authorised; and
    - (ii) any statement made by a director, authorised signatory or employee of any person regarding any matters which may reasonably be assumed to be within his knowledge or within his power to verify.
  - (b) The Agent may assume (unless it has received notice to the contrary in its capacity as agent for the Lenders) that:
    - (i) no Event of Default has occurred (unless it has actual knowledge of an Event of Default); and
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- (ii) any right, power, authority or discretion vested in any Party or the Lenders has not been exercised.
- (c) The Agent may engage, pay for and rely on the advice or services of any lawyers, accountants, surveyors or other experts.
- (d) The Agent may act in relation to the Finance Documents through its personnel and agents.
- (e) The Agent may disclose to any other Party any information it reasonably believes it has received as the Agent under this Agreement.
- (f) Notwithstanding any other provision of any Finance Document to the contrary, neither the Agent nor any of the Mandated Lead Arrangers 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.

**26.7 ~~25.7~~ Lenders' instructions**

- (a) Unless a contrary indication appears in a Finance Document, the Agent shall:
  - (i) exercise any right, power, authority or discretion vested in it as Agent in accordance with any instructions given to it by the Majority Lenders (or, if so instructed by the Majority Lenders, refrain from exercising any right, power, authority or discretion vested in it as the Agent); and
  - (ii) not be liable for any act (or omission) if it acts (or refrains from taking any action) in accordance with an instruction of the Majority Lenders.
- (b) Unless a contrary indication appears in a Finance Document, any instructions given by the Majority Lenders will be binding on all the Creditor Parties.
- (c) The Agent may refrain from acting in accordance with the instructions of the Majority Lenders until it has received such security as it may require for any cost, loss or liability (together with any associated value added tax) which it may incur in complying with the instructions.
- (d) In the absence of instructions from the Majority Lenders the Agent may act (or refrain from taking action) as it considers to be in the best interest of the Lenders.
- (e) The Agent is not authorised to act on behalf of a Lender (without first obtaining that Lender's consent) in any legal or arbitration proceedings relating to any Finance Document.
- (f) Notwithstanding anything to the contrary, the Lenders agree that if the Agent (acting in its sole discretion) is of the opinion that, or if any Lender notifies the Agent that it is of the opinion that, the prior approval of SACE should be obtained in relation to the exercise or non-exercise by the Agent or the Lenders of any power, authority or discretion specifically given to them under or in connection with the Finance Documents or in relation to any other incidental rights, powers, authorities or discretions, then the Agent shall seek such approval of SACE prior to such exercise or non-exercise.

**26.8 ~~25.8~~ Responsibility for documentation**

The Agent is not responsible for:

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- (a) the adequacy, accuracy and/or completeness of any information (whether oral or written) supplied by the Agent, a Mandated Lead Arranger, an Obligor or any other person given in or in connection with any Transaction Document or the SACE Insurance Policy; nor for
- (b) the legality, validity, effectiveness, adequacy or enforceability of any Transaction Document or the SACE Insurance Policy or any other agreement, arrangement or document entered into, made or executed in anticipation of or in connection with any Transaction Document or the SACE Insurance Policy.

**26.9 ~~25-9~~ Exclusion of liability**

- (a) Without limiting paragraph (b) of Clause ~~25-9~~26.9 (*Exclusion of liability*), the Agent will not be liable for any action taken by it under or in connection with any Finance Document, unless directly caused by its gross negligence or wilful misconduct.
- (b) No Party (other than the Agent) may take any proceedings against any officer, employee or agent of the Agent in respect of any claim it might have against the Agent or in respect of any act or omission of any kind by that officer, employee or agent in relation to any Finance Document or the SACE Insurance Policy and any officer, employee or agent of the Agent may rely on this Clause.
- (c) The Agent will not be liable for any delay (or any related consequences) in crediting an account with an amount required under the Finance Documents or the SACE Insurance Policy to be paid by the Agent if the 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 Agent for that purpose.
- (d) Nothing in this Agreement shall oblige the Agent or a Mandated Lead Arranger to carry out any "know your customer" or other checks in relation to any person on behalf of any Lender and each Lender confirms to the Agent and the Mandated Lead Arrangers that it is solely responsible for any such checks it is required to carry out and that it may not rely on any statement in relation to such checks made by the Agent or a Mandated Lead Arranger.

**26.10 ~~25-10~~ Lenders' indemnity to the Agent**

Each Lender shall (in proportion to its share of the Total Commitments or, if the Total Commitments are then zero, to its share of the Total Commitments immediately prior to their reduction to zero) indemnify the Agent, within three (3) Business Days of demand, against any cost, loss or liability incurred by the Agent (otherwise than by reason of the Agent's gross negligence or wilful misconduct) in acting as Agent under the Finance Documents (unless the Agent has been reimbursed by an Obligor pursuant to a Finance Document).

**26.11 ~~25-11~~ Resignation of the Agent**

- (a) The Agent may resign and appoint one of its Affiliates as successor by giving notice to the other Creditor Parties and the Borrower.
  - (b) Alternatively the Agent may resign by giving notice to the other Creditor Parties and the Borrower, in which case the Lenders (after consultation with the Borrower) may appoint a successor Agent.
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- (c) If the Lenders have not appointed a successor Agent in accordance with paragraph (b) of Clause ~~25.11~~ 26.11 (*Resignation of the Agent*) within thirty (30) days after notice of resignation was given, the Agent (after consultation with the Borrower) may appoint a successor Agent.
- (d) The retiring Agent shall, at its own cost, make available to the successor Agent such documents and records and provide such assistance as the successor Agent may reasonably request for the purposes of performing its functions as Agent under the Finance Documents.
- (e) The Agent's resignation notice shall only take effect upon the appointment of a successor.
- (f) Upon the appointment of a successor, the retiring Agent shall be discharged from any further obligation in respect of the Finance Documents but shall remain entitled to the benefit of this Clause ~~25.26~~ (*Role of the Agent and the Mandated Lead Arrangers*). Its successor and each of the other Parties shall have the same rights and obligations amongst themselves as they would have had if such successor had been an original Party.
- (g) After consultation with SACE, the Lenders may, by notice to the Agent, require it to resign in accordance with paragraph (b) of Clause ~~25.11~~ 26.11 (*Resignation of the Agent*). In this event, the Agent shall resign in accordance with paragraph (b) of Clause ~~25.11~~ 26.11 (*Resignation of the Agent*).

**26.12 ~~25.12~~ Resignation of the Agent in relation to FATCA**

The Agent shall resign in accordance with Clause ~~25.11~~ 26.11 (*Resignation of the Agent*) (and, to the extent applicable, shall use reasonable endeavours to appoint a successor Agent pursuant to paragraph (c) of Clause ~~25.11~~ 26.11 (*Resignation of the Agent*)) if on or after the date which is three months before the earliest FATCA Application Date relating to any payment to the Agent under the Finance Documents, either:

- (a) the Agent fails to respond to a request under Clause ~~11.4~~ 12.4 (*FATCA Information*) and a Lender reasonably believes that the Agent will not be (or will have ceased to be) a FATCA Exempt Party on or after that FATCA Application Date;
- (b) the information supplied by the Agent pursuant to Clause ~~11.4~~ 12.4 (*FATCA Information*) indicates that the Agent will not be (or will have ceased to be) a FATCA Exempt Party on or after that FATCA Application Date; or
- (c) the Agent notifies the Borrower and the Lenders that the Agent will not be (or will have ceased to be) a FATCA Exempt Party on or after that FATCA Application Date;

and (in each case) a Lender reasonably believes that a Party will be required to make a FATCA Deduction that would not be required if the Agent were a FATCA Exempt Party, and that Lender, by notice to the Agent, requires it to resign.

**26.13 ~~25.13~~ Confidentiality**

- (a) In acting as agent for the Creditor Parties, the 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 another division or department of the Agent, it may be treated as confidential to that division or department and the Agent shall not be deemed to have notice of it.
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- (c) Notwithstanding any other provision of this Agreement to the contrary, SACE may disclose any confidential information:
- (i) to its ultimate shareholder, holding, subsidiary, parent and affiliate companies;
  - (ii) to the Ministry of Economy and Finance of the Republic of Italy and its departments, other Italian Ministries (including any of their department), Interministerial committees of the Italian Government and any other Italian authority, committee, agency or governmental entity;
  - (iii) to providers of reinsurance/counter guarantee or any form of risk enhancement (including their agents, brokers and consultants) subject to such persons undertaking confidentiality obligations with SACE, unless they are subject to professional duties of confidentiality;
  - (iv) for the purposes of the State guarantee in favour of SACE pursuant to article 32 of law decree n. 91/2014 converted into law 116/2014 and for the purposes of article 2 of law decree 23/2020 converted into law 40/2020; or
  - (v) following any payment due under the SACE Insurance Policy.

**26.14 ~~25.14~~ Relationship with the Lenders**

The Agent may treat each Lender as a Lender, entitled to payments under this Agreement and acting through its Facility Office unless it has received not less than five (5) Business Days' prior notice from that Lender to the contrary in accordance with the terms of this Agreement.

**26.15 ~~25.15~~ Credit appraisal by the Lenders**

Without affecting the responsibility of any Obligor for information supplied by it or on its behalf in connection with any Finance Document, each Lender confirms to the Agent and each of the Mandated Lead Arrangers that it has been, and will continue to be, solely responsible for making its own independent appraisal and investigation of all risks arising under or in connection with any Finance Document including but not limited to:

- (a) the financial condition, status and nature of the Guarantor and each subsidiary of the Guarantor;
  - (b) the legality, validity, effectiveness, adequacy or enforceability of any Finance Document and any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Finance Document;
  - (c) whether that Lender has recourse, and the nature and extent of that recourse, against any Party or any of its respective assets under or in connection with any Finance Document, the transactions contemplated by the Finance Documents or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Finance Document; and
  - (d) the adequacy, accuracy and/or completeness of any information provided by the Agent, any Party or by any other person under or in connection with any Finance Document, the transactions contemplated by the Finance Documents or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Finance Document.
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**26.16 ~~25.46~~ Deduction from amounts payable by the Agent**

If any Party owes an amount to the Agent under the Finance Documents the Agent may, after giving notice to that Party, deduct an amount not exceeding that amount from any payment to that Party which the Agent would otherwise be obliged to make under the Finance Documents and apply the amount deducted in or towards satisfaction of the amount owed. For the purposes of the Finance Documents that Party shall be regarded as having received any amount so deducted.

**26.17 ~~25.47~~ SACE Agent**

Where the context permits, references to the Agent shall include the SACE Agent. The Agent and the SACE Agent shall be the same entity throughout the Security Period.

**27 ~~26~~ CONDUCT OF BUSINESS BY THE CREDITOR PARTIES**

**27.1 ~~26.4~~ No provision of this Agreement will:**

- (a) interfere with the right of any Creditor Party to arrange its affairs (Tax or otherwise) in whatever manner it thinks fit;
- (b) oblige any Creditor 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 Creditor Party to disclose any information relating to its affairs (Tax or otherwise) or any computations in respect of Tax.

**28 ~~27~~ SHARING AMONG THE CREDITOR PARTIES**

**28.1 ~~27.4~~ Payments to Creditor Parties**

If a Creditor Party (a "**Recovering Creditor Party**") receives or recovers any amount from an Obligor other than in accordance with this Clause ~~27-28~~ (*Sharing among the creditor parties*) and applies that amount to a payment due under the Finance Documents then:

- (a) the Recovering Creditor Party shall, within three (3) Business Days, notify details of the receipt or recovery to the Agent;
  - (b) the Agent shall determine whether the receipt or recovery is in excess of the amount the Recovering Creditor Party would have been paid had the receipt or recovery been received or made by the Agent and distributed in accordance with Clause ~~19-20~~ (*Application of Sums Received*) and Clause ~~28-29~~ (*Payment Mechanics*), without taking account of any Tax which would be imposed on the Agent in relation to the receipt, recovery or distribution; and
  - (c) the Recovering Creditor Party shall, within three (3) Business Days of demand by the Agent, pay to the Agent an amount (the "**Sharing Payment**") equal to such receipt or recovery less any amount which the Agent determines may be retained by the Recovering Creditor Party as its share of any payment to be made, in accordance with Clause ~~19-20~~ (*Application of Sums Received*) and Clause ~~28-29~~ (*Payment Mechanics*).
-

## **28.2 ~~27.2~~ Redistribution of payments**

The Agent shall treat the Sharing Payment as if it had been paid by the relevant Obligor and distribute it between the Creditor Parties (other than the Recovering Creditor Party) in accordance with Clause ~~19-20~~ (*Application of Sums Received*) and Clause ~~28-29~~ (*Payment Mechanics*).

## **28.3 ~~27.3~~ Recovering Creditor Party's rights**

- (a) On a distribution by the Agent under Clause ~~27.2-28.2~~ (*Redistribution of payments*), the Recovering Creditor Party will, if possible under the relevant applicable laws, be subrogated to the rights of the Creditor Parties which have shared in the redistribution.
- (b) If and to the extent that the Recovering Creditor Party is not able to rely on its rights under paragraph (a) of Clause ~~27.3-28.3~~ (*Recovering Creditor Party's rights*), the relevant Obligor shall be liable to the Recovering Creditor Party for a debt equal to the Sharing Payment which is immediately due and payable.

## **28.4 ~~27.4~~ Reversal of redistribution**

If any part of the Sharing Payment received or recovered by a Recovering Creditor Party becomes repayable and is repaid by that Recovering Creditor Party, then:

- (a) each Lender which has received a share of the relevant Sharing Payment pursuant to Clause ~~27.2-28.2~~ (*Redistribution of payments*) shall, upon request of the Agent, pay to the Agent for account of that Recovering Creditor 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 Creditor Party for its proportion of any interest on the Sharing Payment which that Recovering Creditor Party is required to pay); and
- (b) that Recovering Creditor Party's rights of subrogation in respect of any reimbursement shall be cancelled and the relevant Obligor will be liable to the reimbursing Creditor Party for the amount so reimbursed.

## **28.5 ~~27.5~~ Exceptions**

- (a) This Clause ~~27-28~~ (*Sharing among the Creditor Parties*) shall not apply to the extent that the Recovering Creditor Party would not, after making any payment pursuant to this Clause, have a valid and enforceable claim against the relevant Obligor.
  - (b) A Recovering Creditor Party is not obliged to share with any other Creditor Party any amount which the Recovering Creditor Party has received or recovered as a result of taking legal or arbitration proceedings, if:
    - (i) it notified that other Creditor Party of the legal or arbitration proceedings; and
    - (ii) that other Creditor 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.
-

## 29 ~~28~~PAYMENT MECHANICS

### 29.1 ~~28-1~~Payments to the Agent

- (a) On each date on which an Obligor or a Lender is required to make a payment under a Finance Document, that Obligor or Lender shall make the same available to the Agent (unless a contrary indication appears in a Finance Document) for value on the due date at the time and in such funds specified by the Agent as being customary at the time for settlement of transactions in the relevant currency in the place of payment.
- (b) Payment shall be made to such account in the principal financial centre of the country of that currency (or, in relation to Euro, in a principal financial centre in a Participating Member State or London) with such bank as the Agent specifies.
- (c) Payment shall be made before 11.00 a.m. New York time or 11.00 a.m. Paris time (in the case of a payment in Euro).
- (d) For each payment by the Borrower, it shall notify the Agent on the third Business Day prior to the due date for payment that it will issue to its bank (which shall be named in such notification) to make the payment.

### 29.2 ~~28-2~~Distributions by the Agent

Each payment received by the Agent under the Finance Documents for another Party shall, subject to Clause ~~28-3~~29.3 (*Distributions to an Obligor*), Clause ~~28-4~~29.4 (*Clawback*) and Clause ~~28-5~~29.5 (*No set-off by Obligors*) be made available by the Agent as soon as practicable after receipt to the Party entitled to receive payment in accordance with this Agreement (in the case of a Lender, for the account of its Facility Office), to such account as that Party may notify to the Agent by not less than five (5) Business Days' notice with a bank 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).

### 29.3 ~~28-3~~Distributions to an Obligor

The Agent may in accordance with Clause ~~22-23~~ (*Set-Off*) apply any amount received by it for that Obligor in or towards payment (on the date and in the currency and funds of receipt) of any amount due from that Obligor under the Finance Documents or in or towards purchase of any amount of any currency to be so applied.

### 29.4 ~~28-4~~Clawback

- (a) Where a sum is to be paid to the Agent under the Finance Documents for another Party, the Agent is not obliged to pay that sum to that other Party (or to enter into or perform any related exchange contract) until it has been able to establish to its satisfaction that it has actually received that sum.
  - (b) If the Agent pays an amount to another Party and it proves to be the case that the Agent had not actually received that amount, then the Party to whom that amount (or the proceeds of any related exchange contract) was paid by the Agent shall on demand refund the same to the Agent together with interest on that amount from the date of payment to the date of receipt by the Agent, calculated by the Agent to reflect its cost of funds.
-



**29.5 28-5 No set-off by Obligors**

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

**29.6 28-6 Business Days**

- (a) Any payment which is due to be made on a day that is not a Business Day shall be made on the next Business Day in the same calendar month (if there is one) or the preceding Business Day (if there is not).
- (b) During any extension of the due date for payment of any principal or unpaid sum under this Agreement interest is payable on the principal or unpaid sum at the rate payable on the original due date.

**29.7 28-7 Currency of account**

- (a) Subject to paragraphs (b) and (c) of Clause ~~28-7~~29.7 (*Currency of account*) Dollars is the currency of account and payment for any sum from an Obligor under any Finance Document.
- (b) Each payment in respect of costs, expenses or Taxes shall be made in the currency in which the costs, expenses or taxes are incurred.
- (c) Any amount expressed to be payable in a currency other than Dollars shall be paid in that other currency.

**29.8 28-8 Change of currency**

- (a) Unless otherwise prohibited by law, if more than one currency or currency unit are at the same time recognised by the central bank of any country as the lawful currency of that country, then:
  - (i) any reference in the Finance Documents to, and any obligations arising under the Finance Documents in, the currency of that country shall be translated into, or paid in, the currency or currency unit of that country designated by the Agent (after consultation with the Lenders and the Borrower); and
  - (ii) any translation from one currency or currency unit to another shall be at the official rate of exchange recognised by the central bank for the conversion of that currency or currency unit into the other, rounded up or down by the Agent (acting reasonably).
- (b) If a change in any currency of a country occurs, this Agreement will, to the extent the Agent (acting reasonably and after consultation with the Lenders and the Borrower) specifies to be necessary, be amended to comply with any generally accepted conventions and market practice in the ~~relevant interbank market~~ Relevant Market and otherwise to reflect the change in currency.

**30 29 GOVERNING LAW**

**30.1 29-1 Law**

This Agreement is governed by English law.

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## 31 ~~30~~ ENFORCEMENT

### 31.1 ~~30.4~~ Jurisdiction of English courts

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) (a "**Dispute**"). Each Party agrees that the courts of England are the most appropriate and convenient courts to settle Disputes and accordingly no Party will argue to the contrary.

### 31.2 ~~30.2~~ Service of process

Without prejudice to any other mode of service allowed under any relevant law, the Borrower:

- (a) irrevocably appoints Hannaford Turner LLP, currently of ~~9 Cleak Lane~~ 107 Cheapside, London ~~EC4R 2RU~~ UK, ~~UK EC2V 6DN~~, as its agent for service of process in relation to any proceedings before the English courts in connection with any Finance Document; and
- (b) agrees that failure by a process agent to notify the Borrower of the process will not invalidate the proceedings concerned.

## 32 ~~31~~ SCHEDULES

### 32.1 ~~31.1~~ Integral Part

The schedules form an integral part of this Agreement.

## 33 ~~32~~ NOTICES

### 33.1 ~~32.1~~ General

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

### 33.2 ~~32.2~~ Addresses for communications

A notice shall be sent:

- (a) to the Borrower:

7665 Corporate Center Drive  
Miami FL33126, USA

Attention: Chief Financial Officer and General Counsel

Email: [\*] / [\*]

- (b) to a Lender:

At the address below its name in Schedule 1 (*Lenders and Commitments*) or (as the case may require) in the relevant Transfer Certificate.

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- (c) to the Agent or the SACE Agent

12 Place des États-Unis  
CS 70052  
92547 Montrouge Cedex, France

Attn: Shipping Middle Office  
Ms Clémentine Costil and Romy Roussel

Fax No. (33) 1 41 89 19 34

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

**33.3 ~~32.3~~ Effective date of notices**

Subject to Clauses ~~32.4~~-33.4 (*Service outside business hours*) and ~~32.5~~-33.5 (*Illegible notices*), 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;

**33.4 ~~32.4~~ Service outside business hours**

However, if under Clause ~~32.3~~-33.3 (*Effective date of notices*) a notice would be deemed to be served:

- (a) on a day which is not a business day in the place of receipt; or
- (b) on such a business day, but after 6 p.m. local time;

the notice shall (subject to Clause ~~32.5~~-33.5 (*Illegible notices*)) be deemed to be served, and shall take effect, at 9 a.m. on the next day which is such a business day.

**33.5 ~~32.5~~ Illegible notices**

Clauses ~~32.3~~-33.3 (*Effective date of notices*) and ~~32.4~~-33.4 (*Service outside business hours*) do not apply if the recipient of a notice notifies the sender within 1 hour after the time at which the notice would otherwise be deemed to be served that the notice has been received in a form which is illegible in a material respect.

**33.6 ~~32.6~~ 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.
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**33.7 ~~32.7~~ English language**

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

**33.8 ~~32.8~~ Meaning of "notice"**

In this Clause ~~32-33~~ (Notices), "notice" includes any demand, consent, authorisation, approval, instruction, waiver or other communication.

**34 ~~33~~ SUPPLEMENTAL**

**34.1 ~~33.1~~ 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.

**34.2 ~~33.2~~ 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.

**34.3 ~~33.3~~ Counterparts**

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

**34.4 ~~33.4~~ Third party rights**

A person who is not a party to this Agreement has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce or to enjoy the benefit of any term of this Agreement provided that nothing in this Clause shall limit or prejudice the exercise by SACE of its rights under this Agreement or the Finance Documents in the event that such rights are subrogated or assigned to it pursuant to the terms of the SACE Insurance Policy.

**34.5 ~~33.5~~ No waiver**

No failure or delay on the part of a Creditor Party in exercising any right, power or privilege hereunder shall operate as a waiver thereof; nor shall any single or partial exercise thereof preclude any other or further exercise thereof by the Creditor Parties or the exercise by the Creditor Parties of any other right, power or privilege. The rights and remedies of the Creditor Parties herein provided are cumulative and not exclusive of any rights or remedies provided by law.

**34.6 ~~33.6~~ Writing required**

This Agreement shall not be capable of being modified otherwise than by an express modification in writing signed by the Borrower, the Agent and the Lenders.

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**34.7 ~~33.7~~ Bail-In**

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

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

**35 ~~34~~ CONFIDENTIALITY OF FUNDING RATES AND REFERENCE BANK QUOTATIONS**

**35.1 ~~34.1~~ Confidentiality and disclosure**

- (a) The Agent and each Obligor agree to keep each Funding Rate (and, in the case of the 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 Agent may disclose:
    - (i) any Funding Rate (but not, for the avoidance of doubt, any Reference Bank Quotation) to the Borrower pursuant to Clause ~~6-6~~ 7.6 (*Notification of Interest Periods and Floating Interest Rate*);
    - (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 Agent and the relevant Lender or Reference Bank, as the case may be.
  - (c) The 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 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 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 Agent's obligations in this Clause ~~34-35~~ (*Confidentiality of Funding Rates and Reference Bank Quotations*) relating to Reference Bank Quotations are without prejudice to its obligations to make notifications under Clause ~~6-6-7.6~~ (*Notification of Interest Periods and Floating Interest Rate*) **provided that** (other than pursuant to sub-paragraph (i) of paragraph (b) above) the Agent shall not include the details of any individual Reference Bank Quotation as part of any such notification.

### 35.2 ~~34.2~~ Related obligations

- (a) The Agent and each Obligor acknowledge that each Funding Rate (and, in the case of the 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 Agent and each Obligor undertake not to use any Funding Rate or, in the case of the Agent, any Reference Bank Quotation for any unlawful purpose.
  - (b) The 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 (c) of Clause ~~34.1-35.1~~ (*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 ~~34-35~~ (*Confidentiality of Funding Rates and Reference Bank Quotations*).
-

**35.3 ~~34.3~~ No Event of Default**

No Event of Default will occur under Clause ~~18.4~~19.4 (*Breach of other obligations*) by reason only of an Obligor's failure to comply with this Clause ~~34~~35 (*Confidentiality of Funding Rates and Reference Bank Quotations*).

**This Agreement has been entered into and amended and restated on the date stated at the beginning of this Agreement.**

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**EXECUTION PAGES**

**BORROWER**

**SIGNED** by )  
 )  
for and on behalf of )  
**MARINA NEW BUILD, LLC** )  
in the presence of: )

**LENDERS**

**SIGNED** by )  
 )  
for and on behalf of )  
**CRÉDIT AGRICOLE CORPORATE AND** )  
**INVESTMENT BANK** )  
in the presence of: )

**SIGNED** by )  
 )  
for and on behalf of )  
**SOCIÉTÉ GÉNÉRALE** )  
in the presence of: )

**MANDATED LEAD ARRANGERS**

**SIGNED** by )  
 )  
for and on behalf of )  
**CRÉDIT AGRICOLE CORPORATE AND** )  
**INVESTMENT BANK** )  
in the presence of: )

**SIGNED** by )  
**SOCIÉTÉ GÉNÉRALE** )  
for and on behalf of )  
 )  
in the presence of: )

**AGENT AND SACE AGENT**

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SIGNED by )  
 )  
for and on behalf of )  
**CRÉDIT AGRICOLE CORPORATE AND** )  
**INVESTMENT BANK** )  
in the presence of: )



**APPENDIX 2**

**FORM OF AMENDED AND RESTATED GUARANTEE (MARKED TO INDICATE AMENDMENTS)**

Amendments are indicated as follows:

- 1 additions are indicated by underlined text in blue; and
- 2 deletions are shown by strike-through text in red.



Originally dated 31 October 2014 (as amended from time to time, including by a supplemental agreement dated 4 June 2020 ~~and~~, as further amended and restated by an amendment and restatement agreement dated ~~February 2021~~ 17 February 2021, as further amended by a supplemental agreement dated 23 December 2021, as further amended by a supplemental agreement dated 16 December 2022 and as further amended and restated by an amendment and restatement agreement dated 2023)

**NCL CORPORATION LTD.**  
as Guarantor

and

**NORWEGIAN CRUISE LINE HOLDINGS LTD.**  
as the Holding

and

**THE BANKS AND FINANCIAL INSTITUTIONS**  
listed in Schedule 1  
as Lenders

and

**CRÉDIT AGRICOLE CORPORATE AND INVESTMENT BANK**  
**SOCIÉTÉ GÉNÉRALE**  
as Mandated Lead Arrangers

and

**CRÉDIT AGRICOLE CORPORATE AND INVESTMENT BANK**  
as Agent and SACE Agent

#### **AMENDED AND RESTATED GUARANTEE**

relating to a loan agreement originally dated 18 July 2008 (as previously amended from time to time, including by a supplemental agreement dated 25 October 2010, as further amended and restated by an amendment and restatement agreement dated 31 October 2014, as further amended by a supplemental agreement dated 4 June 2020 ~~and~~, as further amended and restated by an amendment and restatement agreement dated ~~February 2021~~ 17 February 2021, as further amended by a supplemental agreement dated 23 December 2021, as further amended by a supplemental agreement dated 16 December 2022 and as further amended and restated by an amendment and restatement agreement dated 2023) in respect of the passenger cruise ship m.v. "MARINA"

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**THIS GUARANTEE** is originally made on 31 October 2014 (as amended from time to time, including by a supplemental agreement dated 4 June 2020 ~~and~~, as further amended and restated by an amendment and restatement agreement dated ~~February 2021~~ February 2021, as further amended by a supplemental agreement dated 23 December 2021, as further amended by a supplemental agreement dated 16 December 2022 and as further amended and restated by an amendment and restatement agreement dated 2023)

#### **BETWEEN**

- (1) **NCL CORPORATION LTD.**, a company incorporated under the laws of Bermuda with its registered office at Park Place ~~55~~, 55 Par-la-Ville Road, Hamilton HM 11, Bermuda (the "**Guarantor**")
- (2) **NORWEGIAN CRUISE LINE HOLDINGS LTD.**, a company incorporated under the laws of Bermuda with its registered office at Park Place ~~55~~, 55 Par-la-Ville Road, Hamilton HM 11, Bermuda (the "**Holding**")
- (3) **THE BANKS AND FINANCIAL INSTITUTIONS listed in Schedule 1** of the Loan Agreement (the "**Lenders**")
- (4) **CRÉDIT AGRICOLE CORPORATE AND INVESTMENT BANK**, a French *société anonyme* having its registered office located at 12, Place des États-Unis, CS 70052, 92547 Montrouge Cedex, France registered under number Siren 304 187 701 at the Registre du Commerce et des Sociétés of Nanterre, France and **SOCIÉTÉ GÉNÉRALE** a French *société anonyme* having its registered office located at 29 Boulevard Haussmann, 75009 Paris under number Siren 552 120 222 at the Registre du Commerce et des Sociétés of Paris, France as mandated lead arrangers (the "**Mandated Lead Arrangers**")
- (5) **CRÉDIT AGRICOLE CORPORATE AND INVESTMENT BANK**, a French *société anonyme* having its registered office located at 12, Place des États-Unis, CS 70052, 92547 Montrouge Cedex, France registered under number Siren 304 187 701 at the Registre du Commerce et des Sociétés of Nanterre, France as agent (the "**Agent**", which expression includes its successors and assigns) and as the SACE agent (the "SACE Agent")

#### **BACKGROUND**

- (A) By a Master Shipbuilding (Contracts and Options) Agreement dated 14 May 2008 (the "**Master Agreement**") entered into between (inter alia) Fincantieri - Cantieri Navali Italiani SpA (the "**Builder**"), Prestige Cruise Holdings, Inc., Oceania Cruises, Inc. and, by way of endorsement, Marina New Build, LLC (the "**Borrower**") providing for an original shipbuilding contract dated 13 June 2007 (the "**Original Shipbuilding Contract**") between the Borrower and the Builder to be novated and modified in the form and on the terms set out in the Master Agreement (the Original Shipbuilding Contract as novated and modified by the Master Agreement being hereinafter referred to as the "**Shipbuilding Contract**"), the Builder agreed to design, construct and deliver, and the Borrower agreed to purchase, a passenger cruise ship having hull number [\*].
- (B) By a loan agreement dated 18 July 2008 (as amended by a supplemental agreement dated 25 October 2010, as further amended and restated by an amendment and restatement agreement dated 31 October 2014) (the "**Original Loan Agreement**") and made between (i) the Borrower, (ii) the Lenders, (iii) the Mandated Lead Arrangers and (iv) the Agent and SACE Agent, it was agreed that the Lenders would make available to the Borrower a loan facility of the Dollar Equivalent of up to EUR 349,520,718.00 for the purpose of assisting the Borrower in

- financing (i) payment under the Shipbuilding Contract of all or part of 80% of the Final Contract Price up to the Eligible Amount and (ii) payment to SACE of the Dollar Equivalent of 100% of the second instalment of the SACE Premium.
- (C) By a guarantee dated 18 July 2008 (as amended by a side letter dated 14 December 2011, as further amended by a letter agreement dated 24 June 2013 and as otherwise amended from time to time) (the "**Prestige Guarantee**") and made between (i) Prestige Cruise Holdings, Inc. as guarantor (the "**Prestige Guarantor**"), (ii) the Lenders, (iii) the Mandated Lead Arrangers and (iv) the Agent, the Prestige Guarantor agreed to guarantee the obligations of the Borrower under the Original Loan Agreement.
- (D) By a guarantee dated 18 July 2008 (as amended by a side letter dated 14 December 2011, as further amended by a letter agreement dated 24 June 2013 and as otherwise amended from time to time) (the "**Oceania Guarantee**" and together with the Prestige Guarantee, the "**Prior Guarantees**") and made between (i) Oceania Cruises, Inc. as guarantor (the "**Oceania Guarantor**" and together with the Prestige Guarantor, the "**Prior Guarantors**"), (ii) the Lenders, (iii) the Mandated Lead Arrangers and (iv) the Agent, the Oceania Guarantor agreed to guarantee the obligations of the Borrower under the Original Loan Agreement.
- (E) By an amendment and restatement agreement dated 31 October 2014 and made between (i) the Borrower, (ii) the Lenders, (iii) the Mandated Lead Arrangers, and (iv) the Agent and SACE Agent, the parties thereto agreed to, among other things, the Guarantor replacing the Prior Guarantors as a guarantor of the obligations of the Borrower under the Original Loan Agreement with the corresponding termination of the Prior Guarantees and the execution and delivery of a replacement guarantee.
- (F) The execution and delivery to the Agent of the replacement guarantee referred to above by the Guarantor and dated 31 October 2014 (the "**Original Guarantee**") was one of the conditions precedent of the continuing availability of the facility under the Original Loan Agreement.
- (G) Due to the unprecedented and extraordinary impacts of the Covid-19 pandemic on the cruise sector and cruise operators, SACE informed the cruise operators of its availability to evaluate certain measures (the "**Temporary Measures**") applicable in relation to certain qualifying loan agreements in order to assist companies which are financially sound but dealing with the impact of the temporary but unprecedented Covid-19 pandemic; the possibility to access to such measures was subject, amongst other things, to certain principles dated 15 April 2020 for cruise lines offered by SACE (the "**Original Principles**").
- (H) Pursuant to the consent request letter dated 18 April 2020, the Borrower and the Guarantor notified the Agent and the SACE Agent of their wish to benefit from the Temporary Measures in relation to certain loan agreements listed therein, including the Original Loan Agreement, and requested, amongst other things, the deferral of repayments of principal under the Original Loan Agreement for a period of one year from 1 April 2020 to 31 March 2021 (the "**First Borrower Request**").
- (I) On 25 May 2020, the Agent (for and on behalf of the Lenders) provided its consent to part of the First Borrower Request in accordance with and subject to certain conditions as set out in an amendment to the Original Loan Agreement dated 4 June 2020 between, amongst others, the Borrower and the Agent (the "**2020 Amendment Agreement**") ~~(the Original Loan Agreement as amended pursuant to the 2020 Amendment Agreement, the "~~**Amended Loan Agreement**~~").~~

- (J) Due to the continued impacts of the Covid-19 pandemic on the cruise sector and cruise operators, SACE confirmed on 31 December 2020 its availability to evaluate an extension of the Temporary Measures (the "**Extended Temporary Measures**"), again subject to certain principles dated 26 November 2020 for cruise lines offered by SACE (together with the Original Principles, the "**Principles**").
- (K) Pursuant to the consent request letter dated 3 December 2020, the Borrower and the Guarantor notified the Agent and the SACE Agent of their wish to benefit from the Extended Temporary Measures in relation to certain loan agreements listed therein, including the ~~Amended-Original~~ Loan Agreement (as amended by the 2020 Amendment Agreement), and requested, amongst other things, the deferral of repayments of principal under the ~~Amended-Original~~ Loan Agreement (as amended by the 2020 Amendment Agreement) for a further period of one year from 1 April 2021 to 31 March 2022 (the "**Second Borrower Request**").
- (L) On 25 January 2021, the Agent (for and on behalf of the Lenders) provided its consent to part of the Second Borrower Request in accordance with and subject to certain conditions as set out in an amendment and restatement agreement to the ~~Amended-Original~~ Loan Agreement (as amended by the 2020 Amendment Agreement) and to the Original Guarantee (as amended pursuant to the 2020 Amendment Agreement, ~~the "Amended Guarantee"~~) dated ~~\_\_\_\_\_~~ 17 February 2021 between, amongst others, the Borrower, the Guarantor, the Holding, the Agent and the SACE Agent (the "~~2021 Amendment and Restatement Agreement~~", ~~and the Amended Loan Agreement as amended and restated by the February 2021 Amendment and Restatement Agreement, the "Loan Agreement"~~ Amendment and Restatement Agreement).
- (M) By a supplemental agreement dated 23 December 2021 and made between, amongst others, the Borrower, the Agent and the SACE Agent (the "December 2021 Amendment Agreement"), the Parties agreed to, *inter alia*, amend certain financial covenants and certain other provisions under the Original Loan Agreement (as amended by the 2020 Amendment Agreement and as amended and restated by the February 2021 Amendment and Restatement Agreement) and the Original Guarantee (as amended by the 2020 Amendment Agreement and as amended and restated by the February 2021 Amendment and Restatement Agreement).
- (N) By a supplemental agreement dated 16 December 2022 and made between, amongst others, the Borrower, the Agent and the SACE Agent (the "December 2022 Amendment Agreement"), the Parties agreed to, *inter alia*, amend certain financial covenants and certain other provisions under the Original Loan Agreement (as amended by the 2020 Amendment Agreement, as amended and restated by the February 2021 Amendment and Restatement Agreement and as amended by the December 2021 Amendment Agreement) and the Original Guarantee (as amended by the 2020 Amendment Agreement, as amended and restated by the February 2021 Amendment and Restatement Agreement and as amended by the December 2021 Amendment Agreement).
- (O) The Parties have agreed to enter into an amendment and restatement agreement to the Original Loan Agreement (as amended by the 2020 Amendment Agreement, as amended and restated by the February 2021 Amendment and Restatement Agreement, as amended by the December 2021 Amendment Agreement and as amended by the December 2022 Amendment Agreement, the "Amended Loan Agreement") and to the Original Guarantee (as amended by the 2020 Amendment Agreement, as amended and restated by the February 2021 Amendment and Restatement Agreement, as amended by the December 2021 Amendment Agreement and as amended by the December 2022 Amendment Agreement, the "Amended Guarantee") dated \_\_\_\_\_ 2023 to, *inter alia*, incorporate certain amendments including

the switch from LIBOR to SOFR (as defined therein) (the "2023 Amendment and Restatement Agreement" and the Amended Loan Agreement as amended and restated by the 2023 Amendment and Restatement Agreement, the "Loan Agreement").

(P) ~~(M)~~This Guarantee sets out the terms and conditions of the Amended Guarantee as amended and restated by the ~~2021-2023~~ 2023 Amendment and Restatement Agreement.

**IT IS AGREED** as follows:

## **1 INTERPRETATION**

### **1.1 Defined expressions**

Words and expressions defined in the Loan Agreement shall have the same meanings when used in this Guarantee unless the context otherwise requires.

### **1.2 Construction of certain terms**

In this Guarantee:

**"Bankruptcy"** includes a liquidation, receivership or administration and any form of suspension of payments, arrangement with creditors or reorganisation under any corporate or insolvency law of any country.

**"Capital Stock"** means:

- (a) in the case of a corporation or company, corporate stock or shares;
- (b) in the case of an association or business entity, any and all shares, interests, participations, rights or other equivalents (however designated) of corporate stock;
- (c) in the case of a partnership or limited liability company, partnership or membership interests (whether general or limited); and
- (d) any other interest or participation that confers on a person the right to receive a share of the profits and losses of, or distributions of assets of, the issuing person.

**"First Financial Quarter"** means the financial quarter ending immediately prior to or on the date falling 90 days before the Intended Delivery Date.

**"Loan Agreement"** has the meaning given to it in recital ~~(L)~~ (O).

~~**"Management"** means the employees of the Guarantor and its subsidiaries or their dependants or any trust for which such persons are the intended beneficiary.~~

### **1.3 Application of construction and interpretation provisions of Loan Agreement**

Clauses 1.2 (*Construction of certain terms*) to ~~4.5-1.6~~ 1.6 (*General Interpretation*) of the Loan Agreement apply, with any necessary modifications, to this Guarantee.



#### **1.4 Inconsistency between Loan Agreement provisions and this Guarantee**

This Guarantee shall be read together with the Loan Agreement, but in case of any conflict between the Loan Agreement and this Guarantee, unless expressly provided to the contrary in this Guarantee, the provisions of the Loan Agreement shall prevail.

## **2 GUARANTEE**

### **2.1 Guarantee and indemnity**

The Guarantor unconditionally and irrevocably:

- (a) guarantees to the Agent punctual performance by the Borrower of all the Borrower's obligations under or in connection with the Loan Agreement and every other Finance Document;
- (b) undertakes to the Agent that whenever the Borrower does not pay any amount when due under or in connection with the Loan Agreement and the other Finance Documents, the Guarantor shall immediately on demand pay that amount as if it was the principal obligor;
- (c) agrees that if any obligation guaranteed by it is or becomes unenforceable, invalid or illegal, it will, as an independent and primary obligation, indemnify the Agent and each other Creditor Party immediately on demand by the Agent against any cost, loss or liability it incurs as a result of the Borrower not paying any amount which would, but for such unenforceability, invalidity or illegality, have been payable by it under the Loan Agreement or any other Finance Document on the date when it would have been due. Any such demand for indemnification shall be made through the Agent, for itself or on behalf of the Creditor Parties. The amount payable by the Guarantor under this indemnity will not exceed the amount it would have had to pay under this Clause 2.1 (*Guarantee and indemnity*) if the amount claimed had been recoverable on the basis of a guarantee.

### **2.2 No limit on number of demands**

The Agent acting on behalf of the Creditor Parties may serve any number of demands under Clause 2.1 (*Guarantee and indemnity*).

## **3 LIABILITY AS PRINCIPAL AND INDEPENDENT DEBTOR**

### **3.1 Principal and independent debtor**

The Guarantor shall be liable under this Guarantee as a principal and independent debtor and accordingly it shall not have, as regards this Guarantee, any of the rights or defences of a surety.

### **3.2 Waiver of rights and defences**

Without limiting the generality of Clause 3.1 (*Principal and independent debtor*), the obligations of the Guarantor under this Guarantee will not be affected or discharged by an act, omission, matter or thing which, but for this Clause, would reduce, release or prejudice any of its obligations under this Guarantee (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, the Borrower or other person;

- (b) the release of the Borrower or any other person under the terms of any composition or arrangement with any creditor of any affiliate of the Borrower;
- (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, the Borrower or other person or any non-presentation or non-observance of any formality or other requirement in respect of any instrument or any failure to realise the full value of any security;
- (d) any incapacity or lack of power, authority or legal personality of or dissolution or change in the members or status of the Borrower or any other person;
- (e) any amendment, novation, supplement, extension, restatement (however fundamental and whether or not more onerous) or replacement of any Finance Document or any other document or security including without limitation any change in the purpose of, any extension of or any increase in any facility or the addition of any new facility under any Finance Document or other document or security;
- (f) any insolvency or similar proceedings;
- (g) any arrangement or concession (including a rescheduling or acceptance of partial payments) relating to, or affecting, the Finance Documents;
- (h) any release or loss whatsoever of any guarantee, right or Security Interest created by the Finance Documents;
- (i) any failure whatsoever promptly or properly to exercise or enforce any such right or Security Interest, including a failure to realise for its full market value an asset covered by such a Security Interest;
- (j) any other Finance Document or any Security Interest now being or later becoming void, unenforceable, illegal or invalid or otherwise defective for any reason, including a neglect to register it; or
- (k) any unenforceability, illegality or invalidity of any obligation of any person under any Finance Document or any other document or security.

#### **4 EXPENSES**

##### **4.1 Costs of preservation of rights, enforcement etc**

The Guarantor shall pay to the Agent on its demand the amount of all expenses incurred by the Agent or any other Creditor Party in connection with any matter arising out of this Guarantee or any Security Interest connected with it, including any advice, claim or proceedings relating to this Guarantee or such a Security Interest.

##### **4.2 Fees and expenses payable under Loan Agreement**

Clause 4.1 (*Costs of preservation of rights, enforcement etc*) is without prejudice to the Guarantor's liabilities in respect of the Borrower's obligations under clauses 10 (*Fees*) and 11 (*Taxes, Increased Costs, Costs and Related Charges*) of the Loan Agreement and under similar provisions of other Finance Documents.

## **5 ADJUSTMENT OF TRANSACTIONS**

### **5.1 Reinstatement of obligation to pay**

The Guarantor shall pay to the Agent on its demand any amount which any Creditor Party is required, or agrees, to pay pursuant to any claim by, or settlement with, a trustee in ~~bankruptcy~~ Bankruptcy of the Borrower or of any other Obligor (or similar person) on the ground that the Loan Agreement or any other Finance Document, or a payment by the Borrower or of such other Obligor, was invalid or on any similar ground.

## **6 PAYMENTS**

### **6.1 Method of payments**

Any amount due under this Guarantee shall be paid:

- (a) in immediately available funds;
- (b) to such account as the Agent acting on behalf of the other Creditor Parties may from time to time notify to the Guarantor;
- (c) without any form of set-off, cross-claim or condition; and
- (d) free and clear of any tax deduction except a tax deduction which the Guarantor is required by law to make.

### **6.2 Grossing-up for taxes**

If the Guarantor is required by law to make a tax deduction, the amount due to the Agent acting on behalf of the other Creditor Parties shall be increased by the amount necessary to ensure that the Agent and (if the payment is not due to the Agent for its own account) the Creditor Party beneficially interested in the payment receives and retains a net amount which, after the tax deduction, is equal to the full amount that it would otherwise have received.

### **6.3 Tax Credits**

If an additional payment is made by the Guarantor under this Clause and any Creditor Party determines that it has received or been granted a credit against or relief of or calculated with reference to the deduction giving rise to such additional payment, such Creditor Party shall, to the extent that it can do so without prejudice to the retention of the amount of such credit, relief, remission or repayment and provided that it has received the cash benefit of such credit, relief or remission, pay to the Guarantor such amount as such Creditor Party shall in its reasonable opinion have concluded to be attributable to the relevant deduction. Any such payment shall be conclusive evidence of the amount due to the Guarantor hereunder and shall be accepted by the Guarantor in full and final settlement of its rights of reimbursement hereunder in respect of such deduction. Nothing herein contained shall interfere with the right of each Creditor Party to arrange its tax affairs in whatever manner it thinks fit. Notwithstanding the foregoing, to the extent that this Clause imposes obligations or restrictions on a party, such obligations or restrictions shall not apply to SACE and SACE shall have no obligations hereunder nor be constrained by such restrictions.

- 6.4 To the extent that this Clause 6 (*Payments*) imposes obligations or restrictions on a Creditor Party, such obligations or restrictions shall not apply to SACE and SACE shall have no obligations hereunder nor be constrained by such restrictions.

## **7 INTEREST**

### **7.1 Accrual of interest**

Any amount due under this Guarantee shall carry interest after the date on which the Agent demands payment of it until it is actually paid, unless interest on that same amount also accrues under the Loan Agreement.

### **7.2 Calculation of interest**

Interest on sums payable under this Guarantee shall be calculated and accrue in the same way as interest under clause 6 (*Interest*) of the Loan Agreement.

### **7.3 Guarantee extends to interest payable under Loan Agreement**

For the avoidance of doubt, it is confirmed that this Guarantee covers all interest payable under the Loan Agreement, including that payable under clause 17 (*Interest on Late Payments*) of the Loan Agreement.

## **8 SUBORDINATION**

### **8.1 Subordination of rights of Guarantor**

Until all amounts which may be or become payable by the Obligors under or in connection with the Finance Documents have been irrevocably paid in full and unless the Agent otherwise directs, all rights which the Guarantor at any time has (whether in respect of this Guarantee or any other transaction) against the Borrower, any other Obligor or their respective assets shall be fully subordinated to the rights of the Creditor Parties under the Finance Documents; and in particular, the Guarantor shall not:

- (a) claim, or in a ~~bankruptcy~~ Bankruptcy of the Borrower or any other Obligor prove for, any amount payable to the Guarantor by the Borrower or any other Obligor, whether in respect of this Guarantee or any other transaction;
- (b) take or enforce any Security Interest for any such amount;
- (c) exercise any right to be indemnified by an Obligor;
- (d) bring legal or other proceedings for an order requiring the Borrower or any other Obligor to make any payment, or perform any obligation, in respect of which any Guarantor has given a guarantee, undertaking or indemnity under this Guarantee;
- (e) claim to set-off any such amount against any amount payable by the Guarantor to the Borrower or any other Obligor; or
- (f) claim any subrogation or right of contribution or other right in respect of any Finance Document or any sum received or recovered by any Creditor Party under a Finance Document.

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 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 Agent or as the Agent may direct for application in accordance with the Loan Agreement and the Finance Documents.

## **9 ENFORCEMENT**

### **9.1 No requirement to commence proceedings against Borrower**

The Guarantor waives any right it may have of first requiring the Agent or any other Creditor Party to proceed against or enforce any other rights or security or claim payment from any person before claiming from ~~that the~~ Guarantor under this Guarantee. Neither the Agent nor any other Creditor Party will need to make any demand under, commence any proceedings under, or enforce any guarantee or any Security Interest contained in or created by, the Loan Agreement or any other Finance Document before claiming or commencing proceedings under this Guarantee. This waiver applies irrespective of any law or any provision of a Finance Document to the contrary.

### **9.2 Conclusive evidence of certain matters**

However, as against the Guarantor:

- (a) any judgment or order of a court in England or the Marshall Islands or Bermuda or the United States of America in connection with the Loan Agreement; and
  - (b) any statement or admission by the Borrower in connection with the Loan Agreement,
- shall be binding and conclusive as to all matters of fact and law to which it relates.

### **9.3 Suspense account**

Until all amounts which may be or become payable by the Obligors under or in connection with the Finance Documents have been irrevocably paid in full, the Agent and any Creditor Party may:

- (a) refrain from applying or enforcing any other moneys, security or rights held or received by it (or any trustee or agent on its behalf which, in the case of a Creditor Party, shall include the Agent) 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 any Guarantor or on account of any Guarantor's liability under this Guarantee.

## **10 REPRESENTATIONS AND WARRANTIES**

### **10.1 General**

The Guarantor represents and warrants to each of the Creditor Parties as follows on the date of this Guarantee, which representations and warranties shall be deemed to be repeated, with

reference mutatis mutandis to the facts and circumstances subsisting, as if made on each day from the date of this Guarantee to the end of the Security Period.

**10.2 Status**

The Guarantor is duly incorporated and validly existing and in good standing under the laws of Bermuda as an exempted company.

**10.3 Corporate power**

The Guarantor has the corporate capacity, and has taken all corporate action and obtained all consents necessary for it:

- (a) to execute this Guarantee; and
- (b) to make all the payments contemplated by, and to comply with, this Guarantee.

**10.4 Consents in force**

All the consents referred to in Clause 10.3 (*Corporate power*) remain in force and nothing has occurred which makes any of them liable to revocation.

**10.5 Legal validity**

This Guarantee constitutes the Guarantor's legal, valid and binding obligations enforceable against the Guarantor in accordance with its terms subject to any relevant insolvency laws affecting creditors' rights generally.

**10.6 No conflicts**

The execution by the Guarantor of this Guarantee and its compliance with this Guarantee will not involve or lead to a contravention of:

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

**10.7 No withholding taxes**

All payments which the Guarantor is liable to make under this Guarantee may be made without deduction or withholding for or on account of any tax payable under any law of Bermuda or the United States of America.

**10.8 No default**

To the knowledge of the Guarantor, no Event of Default has occurred which is continuing.

**10.9 Information**

All information which has been provided in writing by or on behalf of the Guarantor to the Agent or any other Creditor Party in connection with any Finance Document satisfied the

requirements of Clause 11.2 (*Information provided to be accurate*); all audited and unaudited accounts which have been so provided satisfied the requirements of Clause 11.4 (*Form of financial statements*); and there has been no material adverse change in the financial position or state of affairs of the Guarantor from that disclosed in the latest of those accounts.

#### **10.10 No litigation**

No legal or administrative action involving the Guarantor has been commenced or taken or, to the Guarantor's knowledge, is likely to be commenced or taken which, in either case, would be likely to have a material adverse effect on the Guarantor's financial position or profitability.

#### **10.11 No Security Interests**

None of the assets or rights of the Guarantor is subject to any Security Interest except any Security Interest which (i) qualifies as a Permitted Security Interest with respect to the Guarantor or (ii) is permitted by Clause 11.11 (*Negative pledge*).

### **11 UNDERTAKINGS**

#### **11.1 General**

The Guarantor undertakes with the Agent acting on behalf of the Creditor Parties to comply with the following provisions of this Clause 11 (*Undertakings*) at all times from the date of this Guarantee to the end of the Security Period, except as the Agent may otherwise permit.

#### **11.2 Information provided to be accurate**

All financial and other information which is provided in writing by or on behalf of the Guarantor under or in connection with this Guarantee will be true and not misleading and will not omit any material fact or consideration.

#### **11.3 Provision of financial statements**

The Guarantor will send to the Agent:

- (a) as soon as practicable, but in no event later than 120 days after the end of each financial year of the Guarantor beginning with the year ending 31 December 2014, the audited consolidated accounts of the Guarantor and its subsidiaries;
- (b) [reserved];
- (c) [reserved];
- (d) as soon as practicable (and in any event within forty-five (45) days of the end of the contemplated quarter in respect of the first three quarters of each fiscal year and 90 days in respect of the final quarter) a copy of the unaudited consolidated quarterly management accounts of the Guarantor certified as to their correctness by the chief financial officer of the Guarantor (it being understood that the delivery by the Guarantor of quarterly or annual reports as filed with the Securities and Exchange Commission in respect of the Guarantor and its consolidated subsidiaries shall satisfy all the requirements of this paragraph (d));
- (e) a compliance certificate in the form set out in Schedule 1 (*Form of Compliance Certificate*) to this Guarantee or in such other form as the Agent may reasonably require (each a "**Compliance**

**Certificate**") at the same time as there is delivered to the Agent, and together with, each set of unaudited consolidated quarterly management accounts under paragraph (d) and, if applicable, audited consolidated accounts under paragraph (a), duly signed by the chief financial officer of the Guarantor and certifying whether or not the requirements of Clause 11.15 (*Financial Covenants*) are then complied with;

- (f) such additional financial or other relevant information regarding the Guarantor and the Group as the Agent may reasonably request; and
- (g) as soon as practicable (and in any event not later than 31 January of each fiscal year):
  - (i) updated financial projections of the Group for at least the next five years (including an income statement, balance sheet statement and cash flow statement and quarterly break downs for the first of those five years); and
  - (ii) an outline of the assumptions supporting such budget and financial projections including but without limitation any scheduled drydockings.

**(h) Additional financial reporting**

In addition to the information to be provided in accordance with clause 13.2 (*Information*) of the Loan Agreement and this Clause 11.3 (*Provision of financial statements*), the Guarantor undertakes to provide to the Agent a written report (in form and substance satisfactory to SACE) from the 2021 Deferral Effective Date until the 2021 Deferral Final Repayment Date, covering the information requested in the document entitled "Debt Deferral Extension - Regular Monitoring Requirements", the form of which is included in Schedule 2 (*Debt Deferral Extension – Regular Monitoring Requirements*), within the timelines specified therein.

- (i) For the avoidance of doubt, subject to the provisions of the Loan Agreement, paragraph (j) below and Clause 11.21 (*Breach of new covenants or the Principles*), the financial covenants contained in Clause 11.15 (*Financial Covenants*) will continue to be tested and the reporting obligations shall continue to apply in accordance with this Clause 11.3 (*Provision of financial statements*) until 31 December 2022.
- (j) Any breach of the financial covenants contained in paragraphs (b) and (c) of Clause 11.15 (*Financial Covenants*) arising on a testing date between the 2021 Deferral Effective Date and 31 December 2022, by reference to the financial position of the Group (on a consolidated basis), shall not (without prejudice to the rights of the Lenders in respect of any further breach of such financial covenants that may occur after 31 December 2022, and subject further to no (a) Event of Default under clauses 18.7 (*Winding-up*) to clause 18.13 (*Cessation of business*) (inclusive) of the Loan Agreement having occurred and being continuing or (b) Deferral Prepayment Event having occurred) result in an Event of Default.

**11.4 Form of financial statements**

All accounts (audited and unaudited) delivered under Clause 11.3 (*Provision of financial statements*) will:

- (a) be prepared in accordance with GAAP;
- (b) when required to be audited, be audited by the auditors which are the Guarantor's auditors at the date of this Guarantee or other auditors approved by the Agent; **provided** that, such approval by the Agent shall not be unreasonably withheld or delayed;



- (c) give a true and fair view of the state of affairs of the Guarantor and its subsidiaries at the date of those accounts and of their profit for the period to which those accounts relate; and
- (d) fully disclose or provide for all significant liabilities of the Guarantor and its subsidiaries.

#### **11.5 Shareholder and creditor notices**

The Guarantor will send the Agent, at the same time as they are despatched, copies of all communications which are despatched to the Guarantor's shareholders or creditors generally or any class of them.

#### **11.6 Consents**

The Guarantor will maintain in force and promptly obtain or renew, and will promptly send certified copies to the Agent of, all consents required:

- (a) for the Guarantor to perform its obligations under this Guarantee;
  - (b) for the validity or enforceability of this Guarantee;
- and the Guarantor will comply with the terms of all such consents.

#### **11.7 Notification of litigation**

The Guarantor will provide the Agent with details of any material legal or administrative action involving the Guarantor as soon as such action is instituted or it becomes apparent to the Guarantor that it is likely to be instituted (and for this purpose proceedings shall be deemed to be material if they involve a claim in an amount exceeding ~~ten~~ twenty million Dollars (\$20,000,000) or the equivalent in another currency).

#### **11.8 Domicile and principal place of business**

The Guarantor:

- (a) will maintain its domicile and registered office at the address stated at the commencement of this Guarantee or at such other address in Bermuda as is notified beforehand to the Agent;
- (b) will maintain its principal place of business and keep its corporate documents and records in the United States of America at 7665 Corporate Center Drive, Miami, 33126 Florida or at such other address in the United States of America as is notified beforehand to the Agent; and
- (c) will not move its domicile out of Bermuda nor its principal place of business out of the United States of America without the prior agreement of the Agent, acting with the authorisation of the Creditor Parties, such agreement not to be unreasonably withheld.

#### **11.9 Notification of default**

The Guarantor will notify the Agent as soon as the Guarantor becomes aware of the occurrence of an Event of Default and will thereafter keep the Agent fully up-to-date with all developments.

#### **11.10 Maintenance of status**

The Guarantor will maintain its separate corporate existence and remain in good standing under the laws of Bermuda.

#### **11.11 Negative pledge**

The Guarantor shall not, and shall procure that the Borrower will not, create or permit to arise any Security Interest over any asset present or future except Security Interests created or permitted by the Finance Documents and except for the following:

- (a) Security Interests created with the prior consent of the Agent or otherwise permitted by the Finance Documents;
- (b) in the case of the Guarantor, Security Interests which qualify as Permitted Security Interests with respect to the Guarantor;
- (c) in the case of the Borrower, Security Interests permitted under clause 13.7 (*Negative pledge*) of the Loan Agreement;
- (d) Security Interests provided in favour of lenders under and in connection with any refinancing of the Existing Indebtedness or any financing arrangements entered into by any member of the Group for the acquisition of additional or replacement ship(s) (including any refinancing of any such arrangement) but limited to:
  - (i) pledges of the share capital of the relevant ship owning subsidiary(/ies); and/or
  - (ii) ship mortgages and other securities over the financed ship(s).

#### **11.12 No disposal of assets, change of business**

The Guarantor will:

- (a) not, and shall procure that its subsidiaries, as a group, shall not transfer all or substantially all of the cruise vessels owned by them and shall procure that any cruise vessels which are disposed of in compliance with the foregoing shall be disposed on a willing seller willing buyer basis at or about market rate and at arm's length subject always to the provisions of any pertinent loan documentation, and
- (b) continue to be a holding company for a group of companies whose main business is the operation of cruise vessels as well as the marketing of cruises on board such vessels and the Guarantor will not change its main line of business so as to affect any Obligor's ability to perform its obligations under the Finance Documents or to imperil, in the opinion of the Agent, the security created by any of the Finance Documents or the SACE Insurance Policy.

#### **11.13 No merger etc.**

The Guarantor shall not enter into any form of merger, sub-division, amalgamation, restructuring, consolidation, winding-up, dissolution or anything analogous thereto or acquire any entity, share capital or obligations of any corporation or other entity (each of the foregoing being a "**Transaction**") unless:

- (a) the Guarantor has notified the Agent in writing of the agreed terms of the relevant Transaction promptly after such terms have been agreed as heads of terms (or similar) and thereafter notified the Agent in writing of any significant amendments to such terms during the course of the negotiation of the relevant Transaction; and
- (b) the relevant Transaction does not require or involve or result in any dissolution of the Guarantor so that at all times the Guarantor remains in existence; and
- (c) each notice delivered to the Agent pursuant to paragraph (a) above is accompanied by a certificate signed by the chief financial officer of the Guarantor whereby the Guarantor represents and warrants to the Agent that the relevant Transaction will not:
  - (i) adversely affect the ability of any Obligor to perform its obligations under the Finance Documents;
  - (ii) imperil the security created by any of the Finance Documents or the SACE Insurance Policy; or
  - (iii) affect the ability of the Guarantor to comply with the financial covenants contained in Clause 11.15 (*Financial Covenants*).

**11.14 Maintenance of ownership of Oceania Cruises and Borrower**

- (a) The Guarantor shall remain the direct or indirect beneficial owner of the entire issued and allotted share capital of Oceania Cruises, free from any Security Interest and Oceania Cruises shall remain the legal holder and direct beneficial owner of all membership interest in the Borrower, free from any Security Interest, except that created in favour of the Agent acting on behalf of the other Creditor Parties; or
- (b) no person or "group" (within the meaning of Rules 13d-3 and 13d-5 under the Securities Exchange Act of 1934 (15 USC §78a et seq.) (the "**Exchange Act**") as in effect on the Delivery Date) shall acquire beneficial ownership of 35% or more on a fully diluted basis of the voting interest in the Guarantor's equity interests.

**11.15 Financial Covenants**

- (a) The Guarantor will not permit the Free Liquidity to be less than fifty million Dollars (\$50,000,000-) at any time, save that until ~~31 December 2022~~30 September 2026, this amount shall be increased to ~~\$200,000,000~~two hundred and fifty million Dollars (\$250,000,000).
- (b) The Guarantor will not permit the ratio of Total Net Funded Debt to Total Capitalization to be greater than 0.70:1.00 at any time, save that from 1 January 2023 until 30 September 2026, this ratio shall be computed in accordance with the table below.
- (c) The Guarantor will not permit the ratio of Consolidated EBITDA to Consolidated Debt Service for the Group at the end of any fiscal quarter, computed for the period of the four consecutive fiscal quarters ending as at the end of the relevant fiscal quarter, to be less than 1.25:1.00 unless the Free Liquidity of the Group at all times during such period of four consecutive fiscal quarters ending as at the end of such fiscal quarter was equal to or greater than one hundred million Dollars (\$100,000,000-), save that from 1 January 2023 until 30 September 2026, this amount shall be increased to three hundred million Dollars (\$300,000,000).

	<u>1Q 2023</u>	<u>2Q 2023</u>	<u>3Q 2023</u>	<u>4Q 2023</u>	<u>1Q 2024</u>	<u>2Q 2024</u>	<u>3Q 2024</u>	<u>4Q 2024</u>	<u>1Q 2025</u>	<u>2Q 2025</u>	<u>3Q 2025</u>	<u>4Q 2025</u>	<u>1Q 2026</u>	<u>2Q 2026</u>	<u>3Q 2026</u>
<u>Total Net Funded Debt to Total Capitalization</u>	<u>0.93</u>	<u>0.92</u>	<u>0.91</u>	<u>0.91</u>	<u>0.91</u>	<u>0.90</u>	<u>0.88</u>	<u>0.87</u>	<u>0.87</u>	<u>0.85</u>	<u>0.82</u>	<u>0.79</u>	<u>0.79</u>	<u>0.76</u>	<u>0.73</u>

**11.16 Financial definitions**

For the purposes of Clause 11.15 (*Financial Covenants*):

- (a) "**Cash Balance**" shall mean, at any date of determination, the unencumbered and otherwise unrestricted cash and Cash Equivalents of the Group;
- (b) "**Cash Equivalents**" shall mean
  - (i) ~~"Cash Equivalents" shall mean (i) securities issued or directly and fully guaranteed or insured by the United States or any agency or instrumentality thereof (provided that the full faith and credit of the United States is pledged in support thereof) having maturities of not more than one year from the date of acquisition, (ii) time deposits and certificates of deposit of any commercial bank having, or which is the principal banking subsidiary of a bank holding company having capital, surplus and undivided profits aggregating in excess of \$200,000,000, with maturities of not more than one year from the date of acquisition by any person, (iii) repurchase obligations~~

~~with a term of not more than 90 days for underlying securities of the types described in paragraph (i) above entered into with any bank meeting the qualifications specified in paragraph (ii) above, (iv) commercial paper issued by any person incorporated in the United States rated at least A-1 or the equivalent thereof by S&P or at least B-1 or the equivalent thereof by Moody's and in each case maturing not more than one year after the date of acquisition by any other person, and (v)~~

- (ii) time deposits and certificates of deposit of any commercial bank having, or which is the principal banking subsidiary of a bank holding company having capital, surplus and undivided profits aggregating in excess of \$200,000,000, with maturities of not more than one year from the date of acquisition by any person,
  - (iii) repurchase obligations with a term of not more than 90 days for underlying securities of the types described in paragraph (i) above entered into with any bank meeting the qualifications specified in paragraph (ii) above,
  - (iv) ~~(iv)~~ commercial paper issued by any person incorporated in the United States rated at least A-1 or the equivalent thereof by S&P or at least B-1 or the equivalent thereof by Moody's and in each case maturing not more than one year after the date of acquisition by any other person, and
  - (v) investments in money market funds substantially all of whose assets are comprised of securities of the types described in paragraphs (i) through (iv) above;
- (c) **"Consolidated Debt Service"** shall mean, for any relevant period, the sum (without double counting), determined in accordance with GAAP, of:

- (i) the aggregate principal payable or paid during such period on any Indebtedness for Borrowed Money of any member of the Group, other than:
  - (A) principal of any such Indebtedness for Borrowed Money prepaid at the option of the relevant member of the Group or by virtue of "cash sweep" or "special liquidity" cash sweep provisions (or analogous provisions) in any debt facility of the Group;
  - (B) principal of any such Indebtedness for Borrowed Money prepaid upon a sale or a Total Loss of any ship (as if references in that definition were to all ships and not just the Ship) owned or leased under a capital lease by any member of the Group; and
  - (C) balloon payments of any such Indebtedness for Borrowed Money payable during such period (and for the purpose of this paragraph (c) a "balloon payment" shall not include any scheduled repayment instalment of such Indebtedness for Borrowed Money which forms part of the balloon);
- (ii) Consolidated Interest Expense for such period;
- (iii) the aggregate amount of any dividend or distribution of present or future assets, undertakings, rights or revenues to any shareholder of any member of the Group (other than the Guarantor, or one of its wholly owned subsidiaries) or any dividends or distributions other than tax distributions in each case paid during such period; and
- (iv) all rent under any capital lease obligations by which the Guarantor or any consolidated subsidiary is bound which are payable or paid during such period and the portion of any debt discount that must be amortized in such period;

as calculated in accordance with GAAP and derived from the then latest accounts delivered under Clause 11.3 (*Provision of financial statements*);

- (d) **"Consolidated EBITDA"** shall mean, for any relevant period, the aggregate of:
  - (i) Consolidated Net Income from the Guarantor's operations for such period; and
  - (ii) the aggregate amounts deducted in determining Consolidated Net Income for such period in respect of gains and losses from the sale of assets or reserves relating thereto, Consolidated Interest Expense, depreciation and amortization, impairment charges and any other non-cash charges and deferred income tax expense for such period;
- (e) **"Consolidated Interest Expense"** shall mean, for any relevant period, the consolidated interest expense (excluding capitalized interest) of the Group for such period;
- (f) **"Consolidated Net Income"** shall mean, for any relevant period, the consolidated net income (or loss) of the Group for such period as determined in accordance with GAAP;
- (g) **"Free Liquidity"** shall mean, at any date of determination, the aggregate of the Cash Balance or any other amounts available for drawing under other revolving or other credit facilities of the Group, which remain undrawn, could be drawn for general working capital purposes or other general corporate purposes and would not, if drawn, be repayable within six months;

- (h) **"Indebtedness"** shall mean any obligation for the payment or repayment of money, whether as principal or as surety and whether present or future, actual or contingent including, without limitation, pursuant to an Interest Rate Protection Agreement or Other Hedging Agreement;
- (i) **"Indebtedness for Borrowed Money"** shall mean Indebtedness (whether present or future, actual or contingent, long-term or short-term, secured or unsecured) in respect of:
- (i) moneys borrowed or raised;
  - (ii) the advance or extension of credit (including interest and other charges on or in respect of any of the foregoing);
  - (iii) the amount of any liability in respect of leases which, in accordance with GAAP, are capital leases;
  - (iv) the amount of any liability in respect of the purchase price for assets or services payment of which is deferred for a period in excess of 180 days;
  - (v) all reimbursement obligations whether contingent or not in respect of amounts paid under a letter of credit or similar instrument; and
  - (vi) (without double counting) any guarantee of Indebtedness falling within paragraphs (i) to (v) above;
- Provided that** the following shall not constitute Indebtedness for Borrowed Money:
- (A) loans and advances made by other members of the Group which are subordinated to the rights of the Creditor Parties;
  - (B) loans and advances made by any shareholder of the Guarantor which are subordinated to the rights of the Creditor Parties on terms reasonably satisfactory to the Agent; and
  - (C) any liabilities of the Guarantor or any other member of the Group under any Interest Rate Protection Agreement or any Other Hedging Agreement or other derivative transactions of a non-speculative nature;
- (j) **"Interest Rate Protection Agreement"** shall mean any interest rate swap agreement, interest rate cap agreement, interest collar agreement, interest rate hedging agreement, interest rate floor agreement or other similar agreement or arrangement entered into between a Lender or its Affiliate, or a Mandated Lead Arranger or its Affiliate, and the Guarantor and/or the Borrower in relation to the Secured Liabilities of the Borrower under the Loan Agreement;
- (k) **"Other Hedging Agreement"** shall mean any foreign exchange contracts, currency swap agreements, commodity agreements or other similar agreements or arrangements entered into between a Lender or its Affiliate, or a Mandated Lead Arranger or its Affiliates, and the Guarantor and/or the Borrower in relation to the Secured Liabilities of the Borrower under the Loan Agreement and designed to protect against the fluctuations in currency or commodity values;
- (l) **"Total Capitalization"** means, at any date of determination, the Total Net Funded Debt plus the consolidated stockholders' equity of the Group at such date determined in accordance with GAAP and derived from the then latest accounts delivered under Clause 11.3 (*Provision of*

*financial statements*); provided it is understood that the effect of any impairment of intangible assets and, in relation to exchangeable or convertible notes or other debt instruments containing similar equity mechanisms, any non-cash loss, charge or expense shall be added back to stockholders' equity;

(m) "**Total Net Funded Debt**" shall mean, as at any relevant date:

- (i) Indebtedness for Borrowed Money of the Group on a consolidated basis; and
- (ii) the amount of any Indebtedness for Borrowed Money of any person which is not a member of the Group but which is guaranteed by a member of the Group as at such date;

less an amount equal to any Cash Balance as at such date; provided that any Commitments and other amounts available for drawing under other revolving or other credit facilities of the Group which remain undrawn shall not be counted as cash or indebtedness for the purposes of this Guarantee.

#### **11.17 Negative Undertakings**

(a) The Guarantor may, subject to the provisions of paragraph (c) below:

- (i) at any time prior to the end of the First Financial Quarter, declare or pay dividends or make other distributions or payment in respect of Financial Indebtedness owed to its shareholders without the prior written consent of the Agent;
- (ii) at any time after the end of the First Financial Quarter, declare or pay dividends or make other distributions or payment in respect of Financial Indebtedness owed to its shareholders without the prior written consent of the Agent, subject to it on each such occasion satisfying the Agent acting on behalf of the Creditor Parties that it will continue to meet all the requirements of Clause 11.15 (*Financial Covenants*), if such covenants were to be tested immediately following the payment of any such dividend; and
- (iii) pay dividends (x) to persons responsible for paying the tax liability in respect of consolidated, combined, unitary or affiliated tax returns for each relevant jurisdiction of the Group, or (y) to holders of the Guarantor's Capital Stock with respect to income taxable as a result of a member of the Group being taxed as a pass-through entity for U.S. Federal, state and local income tax purposes or attributable to any member of the Group,

provided that the actions in paragraphs (ii) and (iii) above shall only be permitted if there is no Event of Default which is continuing under the Loan Agreement and no Event of Default would arise from the payment of such dividend.

(b) ~~Subject to the restrictions set out in~~ Save as permitted by paragraph (b) of Clause 11.19 (*New capital raises or financing*), the Guarantor shall not, and shall procure that none of its subsidiaries shall:

- (i) make loans to any person that is not the Guarantor or a direct or indirect subsidiary of the Guarantor; or

- (ii) issue or enter into one or more guarantees covering the obligations of any person which is not the Guarantor or a direct or indirect subsidiary of the Guarantor

except if such loan is granted to a non subsidiary or such guarantee is issued in the ordinary course of business covering the obligations of a non subsidiary and the aggregate amount of all such loans and guarantees made or issued by the Guarantor and its subsidiaries does not exceed ~~USD25,000,000~~ [\*] Dollars (\$[\*]), or is otherwise approved by the Agent which approval shall not be unreasonably withheld if such loan or guarantee in respect of a non subsidiary would neither:

- (A) affect the ability of any Obligor to perform its obligations under the Finance Documents; nor
- (B) imperil the security created by any of the Finance Documents or the SACE Insurance Policy; nor
- (C) affect the ability of the Guarantor to comply with the financial covenants contained in Clause 11.15 (*Financial covenants*) if such covenants were to be tested immediately following the grant of such loan or the issuance of such guarantee, as demonstrated by evidence satisfactory to the Agent.

**(c) Dividend restriction**

During the period up to and including the 2021 Deferral Final Repayment Date, neither the Guarantor nor the Holding shall, and the Guarantor shall procure that none of its subsidiaries shall:

- (i) declare, make or pay any dividend or other distribution (or interest on any unpaid dividend or other distribution) (whether in cash or in kind) on or in respect of its share capital (or any class of its share capital);
- (ii) repay or distribute any dividend or share premium reserve;
- (iii) make any repayment of any kind under any shareholder loan; or
- (iv) redeem, repurchase (whether by way of share buy-back program or otherwise), defease, retire or repay any of its share capital or resolve to do so,

except that:

- (A) any Obligor other than the Guarantor may pay dividends and other distributions, directly or indirectly, to the Guarantor for the purpose of providing liquidity to the Guarantor to enable the Guarantor to satisfy payment obligations for which the Guarantor is an obligor;
- (B) any Obligor may pay dividends in respect of the Tax liability to each relevant jurisdiction in respect of consolidated, combined, unitary or affiliated Tax returns for each relevant jurisdiction of the Group or the Holding or holder of the Guarantor's ~~capital stock~~ Capital Stock with respect to income taxable as a result of any member of the Group or the Holding being taxed as a pass-through entity for U.S. Federal, state and local income Tax purposes or attributable to any member of the Group;



- (C) the Guarantor and the Holding may pay dividends and other distributions (x) in respect of a conversion, exchange, or repurchase of convertible or exchangeable notes and any conversion of preference shares to ordinary shares in connection therewith, provided that the cash portion of a repurchase of convertible or exchangeable notes is limited to the amount of interest that would otherwise be payable through maturity on the amount of such convertible or exchangeable notes being repurchased plus any amount in lieu of fractional shares and (y) to the extent contractually owed to holders of equity in the Guarantor or the Holding; and
- (D) the Guarantor may pay dividends and other distributions to the Holding for the purposes of providing cash to the Holding for the payment of any Tax payable in connection with the Holding's equity plan,

provided that the actions in paragraphs (B) and (C) above shall only be permitted if there is no Event of Default which is continuing under the Loan Agreement and no Event of Default would arise from the payment of such dividend.

- (d) For the avoidance of doubt, the Holding gives no guarantee of any kind nor undertakes any obligations under this Guarantee other than the undertaking as expressly specified in paragraph (c) above.

#### **11.18 Most favoured nations**

- (a) The Guarantor undertakes that if at any time after the date of this Guarantee it enters into any financial contract or financial document relating to any Financial Indebtedness with or which has the support of any export credit agency and which contains *pari passu* provisions or cross default provisions which are more favourable to the lenders than those contained in paragraph (l) of clause 12.2 (*Continuing representations and warranties*) of the Loan Agreement and clause 18.6 (*Cross default*) of the Loan Agreement respectively, the Guarantor shall immediately notify the Borrower and the Agent of such provisions and the relevant provisions contained in the Loan Agreement shall be deemed amended so that such more favourable *pari passu* provisions or cross default provisions are granted to the Creditor Parties pursuant to the Loan Agreement.
- (b) The Guarantor undertakes that if at any time after the date of this Guarantee and until the occurrence of a Reinstatement Event, it or any other member of the Group is required to grant additional security in relation to a financial contract or financial document relating to any existing Financial Indebtedness:
  - (i) with the support of any export credit agency (excluding any extensions, increases or changes to the terms and conditions thereof), such security shall be granted on a *pari passu* basis to the Lenders (and the Agent agrees to enter and/or procure the entry by the relevant Creditor Parties into such intercreditor documentation to reflect such *pari passu* ranking (in form and substance reasonably satisfactory to the Creditor Parties) as may be required in connection with such arrangements); or
  - (ii) without the support of any export credit agency (excluding any extensions, increases or changes to the terms and conditions thereof), such security shall (without prejudice to any of the Obligors' other obligations under the Finance Documents), subject to the provisions of Clause 11.11 (*Negative pledge*) of this Guarantee and clause 13.7 (*Negative pledge*) of the Loan Agreement, be permitted provided that it shall not have

an adverse effect on any Security Interests or other rights granted to the ~~Secured~~-Creditor Parties under the Finance Documents.

- (c) ~~In~~ Until the occurrence of a Reinstatement Event, in respect of any new Financial Indebtedness (other than Permitted Financial Indebtedness), or any extensions, increases or changes to the terms and conditions of any existing Financial Indebtedness, in each case with or which has the support of any export credit agency, the Guarantor shall enter into good faith negotiations with the Agent to grant additional security for the purpose of further securing the Loan, provided that any failure to reach agreement under this paragraph (c) following such good faith negotiations shall not constitute an Event of Default.

#### 11.19 New capital raises or financing

- (a) Save as provided below, during the period up to and including the 2021 Deferral Final Repayment Date:
- (i) no new debt ~~or equity issuance~~ shall be raised and no new Financial Indebtedness shall be incurred by the Group (including, for the avoidance of doubt, inter-company loans);
  - (ii) no non-arm's length disposals of any asset relating to the Group fleet shall be made; and
  - (iii) no additional Security Interests securing existing Financial Indebtedness will be created or permitted to subsist by any Obligor (unless the Lenders benefit from this new security on a *pari passu* basis).
- (b) The restrictions in paragraph (a) above shall not apply in relation to:
- (i) any refinancing of any bond issuance of, or loan entered into by, the Group (A) which matures during such period or (B) where not maturing during such period, which shall be on terms ~~which include any of the following (evidence of which shall be provided to the Agent by the Guarantor)~~ resulting, when taken as a whole, in an improvement of the ability of the Obligors to meet their obligations under the Finance Documents, which terms include any of the following: an extension of the repayment terms; a decrease in the interest rate; or the conversion of such Financial Indebtedness from secured to unsecured or first to second priority;
  - (ii) any debt ~~or equity issuance~~ provided prior to 31 December ~~2022~~-2023 to provide the Group with crisis and/or recovery related funding in respect of the impact of the Covid-19 pandemic;
  - (iii) any debt ~~or equity issuance~~ being raised on or after 31 December ~~2022~~-2023 to support the Group with the impact of the Covid-19 pandemic, made with the prior written consent of SACE;
  - (iv) any debt ~~or equity issuance~~ being raised to finance any instalment of a cruise vessel already contracted for or contracted for during such period or any refurbishment, maintenance, upgrade or lengthening of a cruise ship during such period (including without limitation any costs incurred by the owner of a cruise ship in connection therewith);
  - (v) any debt ~~or equity issuance~~ being raised to finance capital expenditure for projects which are already contracted for but in respect of which committed financing has not

yet been obtained, and which, in each case has been (or will be) listed in the Information Package submitted to the Agent prior to the February 2021 Deferral Effective Date;

- (vi) any extension or renewal of revolving credit facilities, and made with the prior written consent of SACE if any additional security is to be granted;
- (vii) any new debt ~~or equity issuance~~ otherwise agreed by SACE;
- (viii) any inter-company loan or operating arrangement which from an accounting perspective has the effect of an intercompany loan (an "intercompany arrangement") which:
  - (A) is existing as at the date of the 2021 Amendment and Restatement Agreement; or
  - (B) is made among any Group members or any Group member with the Holding provided that:
    - (1) any inter-company arrangement is made solely for the purpose of regulatory or Tax purposes carried out in the ordinary course of business and on an arm's length basis; and
    - (2) the aggregate principal amount of any inter-company arrangements pursuant to ~~this paragraph (B sub-paragraph (b)(viii)(B) of this Clause 11.19 (New capital raises or financing)~~ does not exceed [\*] Dollars (\$[\*]) at any time; or
  - (C) has been approved with the prior written consent of SACE;
- (ix) any Permitted Security Interest;
- (x) any Security Interest otherwise approved with the prior written consent of SACE;
- (xi) any Financial Indebtedness incurred in the ordinary course of business which in the aggregate does not exceed USD [\*] during any twelve-month period; ~~or it being provided that:~~
  - (A) prior to 31 December 2022, this amount shall be increased to USD [\*] for any Financial Indebtedness incurred to finance capital expenditure for Approved Projects; and
  - (B) if any part of such Financial Indebtedness allocated to an Approved Project remains unused throughout the twelve-month period of year 2022, the surplus may be carried over to increase the relevant Financial Indebtedness throughout the twelve-month period of year 2023 for that Approved Project only;
- (xii) without prejudice to clause 13.10 (*Mergers*) of the Loan Agreement and Clause 11.13 (*No merger etc.*), the issuance of ~~share capital shares or limited liability company interests, as applicable,~~ by any Group member to another Group member; and

(xiii) any extension, renewal, replacement or upsizing in respect of the Term and Revolving Credit Facilities (including the granting of additional Security Interests),

and, for the avoidance of doubt, no debt or equity issuance shall be raised in respect of any form of merger, sub-division, amalgamation, restructuring, consolidation, winding-up, dissolution or anything analogous thereto or acquisition of any entity, shares or limited liability company interests or obligations of any corporation or other entity.

#### **11.20 Payments under the Shipbuilding Contracts**

Until the 2021 Deferral Final Repayment Date:

- (a) the Guarantor shall and the Guarantor shall procure that any member of the Group that has entered into a shipbuilding contract with a shipbuilder or enters into any such shipbuilding contract, in each case which is financed with the support of SACE (the "**Covered Shipbuilding Contracts**") shall continue to perform all of their respective obligations as set out in any Covered Shipbuilding Contract (including without limitation the payment of any instalments due under any Covered Shipbuilding Contract (as the same may have been amended prior to the 2021 Deferral Effective Date), and subject to any amendment agreed pursuant to paragraph (b) below). The Guarantor shall and the Guarantor shall procure that any member of the Group shall promptly notify the Agent and SACE of any failure by it to comply with any due and owing obligations under a Covered Shipbuilding Contract; and
- (b) the Guarantor shall and the Guarantor shall procure that any member of the Group further undertakes to consult with the Agent and SACE in respect of any proposed amendment to a Covered Shipbuilding Contract insofar as any such proposed amendment relates to a payment instalment or (save as expressly permitted by the Loan Agreement) a delivery date or any other substantial amendment which may affect the related financing and to obtain the Agent and SACE's approval prior to executing any such amendment.

#### **11.21 Breach of new covenants or the Principles**

- (a) Failure to comply, until the 2021 Deferral Final Repayment Date, with the provisions of paragraph (h) of Clause 11.3 (*Provision of financial statements*), paragraph (c) of Clause 11.17 (*Negative Undertakings*), Clause 11.19 (*New capital raises or financing*), Clause 11.20 (*Payments under the Shipbuilding Contracts*), or to otherwise duly perform and observe the other requirements and obligations set out in the Principles shall, in each case, not constitute an Event of Default under the Loan Agreement but (in the case of any failure that is capable of remedy (in the opinion of the Agent, at its sole discretion), including any failure to comply with Clause 11.20 (*Payments under the Shipbuilding Contracts*) or paragraph (h) of Clause 11.3 (*Provision of financial statements*), only if such failure is not remedied within the Relevant Period pursuant to clause 18.4 (*Breach of other obligations*) of the Loan Agreement from the date of such failure to comply) shall have the following consequences:
  - (i) the Agent shall reinstate from the date of such breach the requirement to comply with the covenant granted pursuant to clause 14 (*Security Value Maintenance*) of the Loan Agreement and the financial covenants set out in paragraphs (b) and (c) of Clause 11.15 (*Financial covenants*) which was otherwise suspended by operation of the Loan Agreement and this Guarantee;
  - (ii) in respect of paragraph (c) (*Dividend restriction*) of Clause 11.17 (*Negative Undertakings*) and paragraph (b) of Clause 11.19 (*New capital raises or financing*), as

well as a failure to perform and observe the other requirements and obligations set out in the Principles (including but not limited to any Obligor (a) commencing, or having commenced against it, any case, proceeding or other action seeking (i) to adjudicate it as bankrupt or insolvent, (ii) reorganization, arrangement, winding-up, liquidation, dissolution, or other relief with respect to it or its debts, (iii) the appointment of a receiver, trustee, or custodian or other similar official for it or for all or a substantial part of its assets, (b) making a general assignment for the benefit of its creditors, (c) being unable to, or admitting in writing its inability to, pay its debts as they become due, or (d) taking any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the acts set forth in (a), (b) or (c) hereof):

- (A) the Deferral Commitments and the availability of the Deferral Tranches will be immediately cancelled;
  - (B) all or part of the Deferral Tranches, together with accrued interest, deferred costs pursuant to clause 6.4 (*Deferred Costs*) of the Loan Agreement and all other amounts accrued or outstanding under the Loan Agreement in connection with the Deferral Tranches will be immediately due and payable, (including, for the avoidance of doubt, any breakage costs pursuant to clause 20.2 (*Breakage costs*) of the Loan Agreement); and
- (iii) in respect of Clause 11.20 (*Payments under the Shipbuilding Contracts*) and paragraph (h) (~~Additional financial reporting~~) of Clause 11.3 (*Provision of financial statements*), shall entitle the Agent, (acting on the instructions of the Lenders), by notice to the Guarantor and the Borrower to:
- (A) cancel the Deferral Commitments and the availability of the Deferral Tranches whereupon they shall immediately be cancelled; and
  - (B) declare that all or part of the Deferral Tranches, together with accrued interest, deferred costs pursuant to clause 6.4 (*Deferred Costs*) of the Loan Agreement and all other amounts accrued or outstanding under the Loan Agreement in connection with the Deferral Tranches be immediately due and payable, whereupon they shall become immediately due and payable (including, for the avoidance of doubt, any breakage costs pursuant to clause 20.2 (*Breakage costs*) of the Loan Agreement); and
- (b) Save as permitted by Clause 11.19 (*New capital raises or financing*), if at any time after the February 2021 ~~Deferral~~ Effective Date and until the occurrence of a Reinstatement Event:
- (i) the Guarantor or any other Group member enters into any financial contract or financial document relating to any Financial Indebtedness and which contains any debt deferral or covenant waivers of existing debt, or the raising of any new debt intended to reimburse existing debt that benefits from additional security or more favourable terms than those available to the Lenders (unless they are granted to the Lenders on a *pari passu* basis);
    - (A) the requirement to comply with the covenant granted pursuant to clause 14 (*Security Value Maintenance*) of the Loan Agreement and the financial covenants set out in paragraphs (b) and (c) of Clause 11.15 (*Financial Covenants*) which was otherwise suspended until 31 December 2022 shall be reinstated;

- (B) the Deferral Commitments and the availability of the Deferral Tranches will be immediately cancelled; and
- (C) all or part of the Deferral Tranches, together with accrued interest, deferred costs pursuant to clause 6.4 (*Deferred Costs*) of the Loan Agreement and all other amounts accrued or outstanding under the Loan Agreement in connection with the Deferral Tranches will be immediately due and payable, (including, for the avoidance of doubt, any breakage costs pursuant to clause 20.2 (*Breakage costs*) of the Loan Agreement);

it being provided that such covenants in sub-paragraphs (A) above shall not be reinstated and such provisions in sub-paragraph (B) and (C) above shall not be triggered in case of such financial contract or financial document relating to the Term and Revolving Credit Facilities;

- (ii) the Guarantor or any other Group member makes a prepayment (save for any mandatory prepayment necessary to avoid an event of default (however defined)) of any Financial Indebtedness (unless this is done on a *pari passu* basis with the obligations owed to the Lenders hereunder):

- (A) the requirement to comply with the covenant granted pursuant to clause 14 (*Security Value Maintenance*) of the Loan Agreement and the financial covenants set out in paragraphs (b) and (c) of Clause 11.15 (*Financial Covenants*) which was otherwise suspended until 31 December 2022 shall be reinstated; and

- (B) the Agent shall be entitled (acting on the instructions of the Lenders) to:

- (1) cancel the Deferral Commitments and the availability of the Deferral Tranches whereupon they shall immediately be cancelled; and
- (2) declare that all or part of the Deferral Tranches, together with accrued interest, deferred costs pursuant to clause 6.4 (*Deferred Costs*) of the Loan Agreement and all other amounts accrued or outstanding under the Loan Agreement in connection with the Deferral Tranches will be immediately due and payable (including, for the avoidance of doubt, any breakage costs pursuant to clause 20.2 (*Breakage costs*) of the Loan Agreement);

it being provided that such covenants in sub-paragraph (A) above shall not be reinstated and such provision in sub-paragraph (B) above shall not be triggered in case of a prepayment relating to the revolving tranche of the Term and Revolving Credit Facilities within the ordinary course of business.

## 12 JUDGMENTS AND CURRENCY INDEMNITY

### 12.1 Judgments relating to Loan Agreement

This Guarantee shall cover any amount payable by the Borrower under or in connection with any judgment relating to the Loan Agreement.

## **12.2 Currency indemnity**

In addition, clause 20.4 (*Currency indemnity*) of the Loan Agreement shall apply, with any necessary adaptations, in relation to this Guarantee.

## **13 SET-OFF**

### **13.1 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 the Guarantor at any office in any country of that Creditor Party in or towards satisfaction of any sum then due from the Guarantor to that Creditor Party under this Guarantee; and
- (b) for that purpose:
  - (i) break, or alter the maturity of, all or any part of a deposit of the Guarantor;
  - (ii) convert or translate all or any part of a deposit or other credit balance into Dollars;
  - (iii) enter into any other transaction or make any entry with regard to the credit balance which the Creditor Party concerned considers appropriate.

### **13.2 Existing rights unaffected**

No Creditor Party shall be obliged to exercise any of its rights under Clause 13.1 (*Application of credit balances*); and those rights shall be without prejudice and in addition to any right of set-off, combination of accounts, charge, lien or other right or remedy to which a Creditor Party is entitled (whether under the general law or any document).

### **13.3 Sums deemed due to a Lender**

For the purposes of this Clause 13 (*Set-Off*), a sum payable by the Guarantor to the Agent acting on behalf of the Creditor Parties 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 that Lender.

## **14 SUPPLEMENTAL**

### **14.1 Continuing guarantee**

This Guarantee shall remain in force as a continuing security at all times during the Security Period, regardless of any intermediate payment or discharge in whole or in part.

### **14.2 Rights cumulative, non-exclusive**

The Agent's and any other Creditor Party's rights under and in connection with this Guarantee are cumulative, may be exercised as often as appears expedient and shall not be taken to exclude or limit any right or remedy conferred by law.

#### **14.3 No impairment of rights under Guarantee**

If the Agent or any other Creditor Party omits to exercise, delays in exercising or invalidly exercises any of its rights under this Guarantee, that shall not impair that or any other right of the Agent or any other Creditor Party under this Guarantee.

#### **14.4 Severability of provisions**

If any provision of this Guarantee is or subsequently becomes void, illegal, unenforceable or otherwise invalid, that shall not affect the validity, legality or enforceability of its other provisions.

#### **14.5 Guarantee not affected by other security**

This Guarantee is in addition to and shall not impair, nor be impaired by, any other guarantee, any Security Interest or any right of set-off or netting or to combine accounts which the Agent or any other Creditor Party may now or later hold in connection with the Loan Agreement.

#### **14.6 Guarantor bound by Loan Agreement**

- (a) The Guarantor is fully familiar with, and agrees to all the provisions of, the Loan Agreement and the other Finance Documents to which it is not a party.
- (b) The Guarantor agrees with the Agent and any other Creditor Party:
  - (i) to be bound by all provisions of the Loan Agreement which are applicable to the Obligors in the same way as if those provisions had been set out (with any necessary modifications) in this Guarantee; and
  - (ii) that any provision of the Loan Agreement which, by its terms, applies or relates to the Finance Documents generally applies to this Guarantee.
- (c) Clause 33.7 (*Bail-In*) of the Loan Agreement shall apply to this Guarantee as if it was expressly incorporated in this Guarantee with any necessary modifications.

#### **14.7 Applicability of provisions of Guarantee to other Security Interests**

Any Security Interest which the Guarantor creates (whether at the time at which it signs this Guarantee or at any later time) to secure any liability under this Guarantee shall be a principal and independent security, and Clauses 3 (*Liability as Principal and Independent Debtor*) and 17 (*Invalidity of Loan Agreement*) shall, with any necessary modifications, apply to it, notwithstanding that the document creating the Security Interest neither describes it as a principal or independent security nor includes provisions similar to Clauses 3 (*Liability as Principal and Independent Debtor*) and 17 (*Invalidity of Loan Agreement*).

#### **14.8 Applicability of provisions of Guarantee to other rights**

Clauses 3 (*Liability as Principal and Independent Debtor*) and 17 (*Invalidity of Loan Agreement*) shall also apply to any right of set-off or netting or to combine accounts which the Guarantor creates by an agreement entered into at the time of this Guarantee or at any later time (notwithstanding that the agreement does not include provisions similar to Clauses 3 (*Liability as Principal and Independent Debtor*) and 17 (*Invalidity of Loan Agreement*)), being an agreement referring to this Guarantee.



#### **14.9 Third party rights**

Other than a Creditor Party or the Italian Authorities, no person who is not a party to this Guarantee has any right under the Contracts (Rights of Third Parties) Act 1999 to enforce or to enjoy the benefit of any term of this Guarantee.

#### **14.10 Waiver of rights against SACE**

Nothing in this Guarantee or any of the Finance Documents is intended to grant to the Guarantor or any other person any right of contribution from or any other right or claim against SACE and the Guarantor hereby waives irrevocably any right of contribution or other right or claim as between itself and SACE.

#### **14.11 Reinstatement**

If any discharge, release or arrangement (whether in respect of the obligations of the Borrower 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 Guarantee will continue or be reinstated as if the discharge, release or arrangement had not occurred.

#### **14.12 Guarantor intent**

Without prejudice to the generality of Clause 1.3 (*Application of construction and interpretation provisions of the Loan Agreement*) and Clause 3.2 (*Waiver of rights and defences*), the Guarantor expressly confirms that it intends that this Guarantee and any Security Interest created by it under 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.

### **15 ASSIGNMENT AND TRANSFER**

#### **15.1 Assignment and transfer by Creditor Parties**

- (a) The Agent and Creditor Parties may assign or transfer their rights under and in connection with this Guarantee to the same extent as they may assign or transfer their rights under the Loan Agreement.
- (b) The Guarantor may not assign or transfer its rights under and in connection with this Guarantee.

## 16 NOTICES

### 16.1 Notices to Guarantor

Any notice or demand to the Guarantor under or in connection with this Guarantee shall be given by letter or email at:

NCL Corporation Ltd.  
7665 Corporate Center Drive  
Miami Florida 33126  
Attention: Chief Financial Officer and General Counsel

Email: [\*] / [\*]

or to such other address which the Guarantor may notify to the Agent.

### 16.2 Application of certain provisions of Loan Agreement

Clauses 32.3 (*Effective date of notices*) to 32.8 (*Meaning of "notice"*) of the Loan Agreement apply to any notice or demand under or in connection with this Guarantee.

### 16.3 Validity of demands

A demand under this Guarantee shall be valid notwithstanding that it is served:

- (a) on the date on which the amount to which it relates is payable by the Borrower under the Loan Agreement;
- (b) at the same time as the service of a notice under clause 18.22 (*Actions following an Event of Default*) of the Loan Agreement;

and a demand under this Guarantee may refer to all amounts payable under or in connection with the Loan Agreement without specifying a particular sum or aggregate sum.

### 16.4 Notices to Agent

Any notice to the Agent acting on behalf of the Creditor Parties under or in connection with this Guarantee shall be sent to the same address and in the same manner as notices to the Agent under the Loan Agreement.

## 17 INVALIDITY OF LOAN AGREEMENT

### 17.1 Invalidity of Loan Agreement

In the event of:

- (a) the Loan Agreement or any provision thereof now being or later becoming, with immediate or retrospective effect, void, illegal, unenforceable or otherwise invalid for any reason whatsoever; or
- (b) without limiting the scope of paragraph (a), a ~~bankruptcy~~ Bankruptcy of the Borrower, the introduction of any law or any other matter resulting in the Borrower being discharged from liability under the Loan Agreement, or the Loan Agreement ceasing to operate (for example, by interest ceasing to accrue);

this Guarantee shall cover any amount which would have been or become payable under or in connection with the Loan Agreement if the Loan Agreement had been and remained entirely valid, legal and enforceable, or the Borrower had not suffered ~~bankruptcy~~[Bankruptcy](#), or any combination of such events or circumstances, as the case may be, and the Borrower had remained fully liable under it for liabilities whether invalidly incurred or validly incurred but subsequently retrospectively invalidated; and references in this Guarantee to amounts payable by the Borrower under or in connection with the Loan Agreement shall include references to any amount which would have so been or become payable as aforesaid.

## **17.2 Invalidity of Finance Documents**

Clause 17.1 (*Invalidity of Loan Agreement*) also applies to each of the other Finance Documents to which the Borrower is a party.

## **18 GOVERNING LAW AND JURISDICTION**

### **18.1 English law**

This Guarantee and any non-contractual obligations arising out of or in connection with it shall be governed by, and construed in accordance with, English law.

### **18.2 Exclusive English jurisdiction**

The courts of England shall have exclusive jurisdiction to settle Dispute.

### **18.3 Process agent**

The Guarantor irrevocably appoints Hannaford Turner LLP, currently of ~~9 Cloak Lane~~[107 Cheapside](#), London ~~EC4R 2RU~~, [EC2V 6DN](#), United Kingdom, 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.

### **18.4 Creditor Parties' rights unaffected**

Nothing in this Clause 18 (*Governing Law and Jurisdiction*) shall exclude or limit any right which any Creditor Party may have (whether under the law of any country, an international convention or otherwise) with regard to the bringing of proceedings, the service of process, the recognition or enforcement of a judgment or any similar or related matter in any jurisdiction.

### **18.5 Meaning of "proceedings"**

In this Clause 18 (*Governing Law and Jurisdiction*), "**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 Guarantee (including a dispute relating to the existence, validity or termination of this Guarantee) or any non-contractual obligation arising out of or in connection with this Guarantee.

**This Amended and Restated Guarantee has been entered into on the date stated at the beginning of this Guarantee.**



**EXECUTION PAGE**

**GUARANTOR**

**SIGNED** by )  
duly authorised for and on behalf of )  
**NCL CORPORATION LTD.** )  
as its duly appointed attorney-in-fact )  
in the presence of: )

**HOLDING**

**SIGNED** by )  
for and on behalf of )  
**NORWEGIAN CRUISE LINE HOLDINGS LTD.** )  
as its duly appointed attorney-in-fact )  
in the presence of: )

**LENDERS**

**SIGNED** by )  
for and on behalf of )  
**SOCIÉTÉ GÉNÉRALE** )  
as its duly appointed attorney-in-fact )  
in the presence of: )

**SIGNED** by )  
for and on behalf of )  
**CRÉDIT AGRICOLE CORPORATE** )  
**AND INVESTMENT BANK** )  
as its duly appointed attorney-in-fact )  
in the presence of: )

**MANDATED LEAD ARRANGERS**

**SIGNED** by )  
for and on behalf of )  
**SOCIÉTÉ GÉNÉRALE** ) )  
as its duly appointed attorney-in-fact )  
in the presence of: )

**SIGNED** by )  
for and on behalf of )  
**CRÉDIT AGRICOLE CORPORATE** ) )  
**AND INVESTMENT BANK** ) )  
as its duly appointed attorney-in-fact )  
in the presence of: )

**AGENT**

**SIGNED** by )  
for and on behalf of )  
**CRÉDIT AGRICOLE CORPORATE** ) )  
**AND INVESTMENT BANK** ) )  
as its duly appointed attorney-in-fact )  
in the presence of: )

**SACE AGENT**

**SIGNED** by )  
for and on behalf of )  
**CRÉDIT AGRICOLE CORPORATE AND** )  
**INVESTMENT BANK** ) )  
as its duly appointed attorney-in-fact )  
in the presence of: )

[\*]: THE IDENTIFIED INFORMATION HAS BEEN OMITTED FROM THE AGREEMENT BECAUSE IT IS BOTH (i) NOT MATERIAL AND (ii) WOULD BE COMPETITIVELY HARMFUL IF PUBLICLY DISCLOSED

Dated 19 May 2023

**O CLASS PLUS ONE, LLC**  
as Borrower

and

**NCL CORPORATION LTD.**  
as Guarantor

and

**OCEANIA CRUISES S. DE R.L.**  
as Shareholder

and

**NORWEGIAN CRUISE LINE HOLDINGS LTD.**  
as the Holding

and

**THE BANKS AND FINANCIAL INSTITUTIONS LISTED IN SCHEDULE 1**  
as Lenders

and

**CRÉDIT AGRICOLE CORPORATE AND INVESTMENT BANK**  
**BNP PARIBAS FORTIS S.A./N.V.**

**HSBC BANK PLC**

**KFW IPEX-BANK GMBH**

**CASSA DEPOSITI E PRESTITI S.P.A.**

**BANCO SANTANDER, S.A.**

**SOCIÉTÉ GÉNÉRALE**

as Joint Mandated Lead Arrangers

and

**BNP PARIBAS**  
as Facility Agent

and

**CRÉDIT AGRICOLE CORPORATE AND INVESTMENT BANK**  
as SACE Agent

and

**HSBC CORPORATE TRUSTEE COMPANY (UK) LIMITED**  
as Security Trustee

**AMENDMENT AND RESTATEMENT AGREEMENT**

relating to a facility agreement originally dated 19 December 2018 (as amended from time to time, including as amended and restated by an amendment and restatement agreement dated 17 February 2021, as further amended and restated by an amendment and restatement agreement

WATSON FARLEY  
&  
WILLIAMS

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dated 17 June 2021, as further amended by a supplemental agreement dated 23 December 2021 and as further amended by a supplemental agreement dated 16 December 2022)  
in respect of the part financing of the 1,258 passenger cruise ship newbuilding  
at Fincantieri S.p.A, m.v. "Vista"

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**Appendices**

Form of Amended and Restated Facility Agreement (marked to indicate amendments)  
Form of Amended and Restated Guarantee (marked to indicate amendments)

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THIS AGREEMENT is made on 19 May 2023

#### PARTIES

- (1) **O CLASS PLUS ONE, LLC**, a limited liability company formed in the state of Delaware, United States of America whose registered office is at c/o Corporate Creations Network Inc., 3411 Silverside Road, Tatnall Building 104, Wilmington, DE 19810 as borrower (the "**Borrower**")
- (2) **NCL CORPORATION LTD.**, an exempted company incorporated under the laws of Bermuda with its registered office at Park Place, 55 Par-la-Ville Road, Hamilton HM11, Bermuda (the "**Guarantor**")
- (3) **OCEANIA CRUISES S. DE R.L.**, a Panamanian *sociedad de responsabilidad limitada* domiciled in Panama whose resident agent is at Arifa Building, West Boulevard, Santa Maria Business District, Panama, Republic of Panama (the "**Shareholder**")
- (4) **NORWEGIAN CRUISE LINE HOLDINGS LTD.**, a company incorporated under the laws of Bermuda with its registered office at Park Place, 55 Par-la-Ville Road, Hamilton HM11, Bermuda (the "**Holding**")
- (5) **THE FINANCIAL INSTITUTIONS** listed in Schedule 1 (*The Lenders*) as lenders (the "**Lenders**")
- (6) **CRÉDIT AGRICOLE CORPORATE AND INVESTMENT BANK, BNP PARIBAS FORTIS S.A./N.V., HSBC BANK PLC, KFW IPEX-BANK GMBH, CASSA DEPOSITI E PRESTITI S.P.A., BANCO SANTANDER S.A.** and **SOCIÉTÉ GÉNÉRALE** as joint mandated lead arrangers (the "**Mandated Lead Arrangers**")
- (7) **CRÉDIT AGRICOLE CORPORATE AND INVESTMENT BANK**, as SACE agent (the "**SACE Agent**")
- (8) **BNP PARIBAS**, as facility agent (the "**Facility Agent**")
- (9) **HSBC CORPORATE TRUSTEE COMPANY (UK) LIMITED**, as security trustee (the "**Security Trustee**")

#### BACKGROUND

- (A) By the Original Facility Agreement, the Lenders agreed to make available to the Borrower a facility of (originally) the Dollar Equivalent of up to €462,960,000 and the amount of the SACE Premium (but not exceeding \$690,718,070.54) for the purpose of assisting the Borrower in financing (a) the payment or reimbursement under the Shipbuilding Contract of all or part of 80% of the Final Contract Price up to the Eligible Amount and (b) reimbursement to the Borrower of 100% of the First Instalment of the SACE Premium paid by it to SACE and payment to SACE of 100% of the Second Instalment of the SACE Premium (as defined therein).
  - (B) Due to the unprecedented and extraordinary impacts of the Covid-19 pandemic on the cruise sector and cruise operators the Original Facility Agreement was amended and restated pursuant to an amendment and restatement agreement dated 17 February 2021 (the "**February 2021 Amendment and Restatement Agreement**"), further amended and restated pursuant to an amendment and restatement agreement dated 17 June 2021 (the "**June 2021 Amendment and Restatement Agreement**"), further amended pursuant to a supplemental agreement dated 23 December 2021 (the "**December 2021 Amendment Agreement**") and further amended pursuant to a supplemental agreement dated 16 December 2022 (the "**December 2022 Amendment Agreement**") pursuant to which the parties agreed, *inter alia*,
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to the temporary suspension and amendment of certain covenants under the Guarantee and addition of certain covenants under the Original Facility Agreement.

- (C) The Parties have agreed to amend and restate the Facility Agreement as set out in this Agreement for the purposes of, *inter alia* documenting the transition from LIBOR to SOFR (as defined below).

## OPERATIVE PROVISIONS

### 1 DEFINITIONS AND INTERPRETATION

#### 1.1 Definitions

In this Agreement:

**"2023 Finance Documents"** means this Agreement and the Mortgage Addendum.

**"Amended and Restated Facility Agreement"** means the Facility Agreement as amended and restated by this Agreement in the form set out in Appendix 1.

**"Amended and Restated Guarantee"** means the Guarantee as amended and restated by this Agreement in the form set out in Appendix 2.

**"Effective Date"** means the date on which the Facility Agent notifies the Borrower, the other Creditor Parties and SACE as to the satisfaction of the conditions precedent as provided in paragraph (a) of Clause 2.1 (*Conditions Precedent*).

**"Facility Agreement"** means the Original Facility Agreement, as amended and restated by the February 2021 Amendment and Restatement Agreement, as further amended and restated by the June 2021 Amendment and Restatement Agreement, as further amended by the December 2021 Amendment Agreement and as further amended by the December 2022 Amendment Agreement.

**"Mortgage Addendum"** means the addendum to the Mortgage in the agreed form.

**"Obligors"** means the Borrower, the Guarantor, the Holding and the Shareholder.

**"Original Facility Agreement"** means the facility agreement dated 19 December 2018 and made between, amongst others, (i) the Borrower, (ii) the Lenders, (iii) the Mandated Lead Arrangers, (iv) the Facility Agent and the SACE Agent and (v) the Security Trustee.

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

**"SOFR"** means the secured overnight financing rate (SOFR) administered by the Federal Reserve Bank of New York (or any other person which takes over the administration of that rate) published by the Federal Reserve Bank of New York (or for any other person which takes over the publication of that rate).

#### 1.2 Defined expressions

Defined expressions in the Facility Agreement and, with effect from the Effective Date, the Amended and Restated Facility Agreement, shall have the same meanings when used in this

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Agreement unless the context otherwise requires or unless otherwise defined in this Agreement.

**1.3 Application of construction and interpretation provisions of Facility Agreement**

Clause 1.2 (*Construction of certain terms*) of the Facility Agreement applies to this Agreement as if it were expressly incorporated in it with any necessary modifications.

**1.4 Designation as a Finance Document**

The Borrower and the Facility Agent designate this Agreement as a Finance Document.

**1.5 Third party rights**

- (a) Unless 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 other than SACE and SIMEST, who may enforce or enjoy the benefit of and rely on the provisions of this Agreement and the Amended and Restated Facility Agreement subject to the provisions of the Third Parties Act.
- (b) Notwithstanding any term of any Finance Document, the consent of any person who is not a Party (other than SACE and SIMEST) is not required to rescind or vary this Agreement at any time.
- (c) For the avoidance of doubt and in accordance with clause 36.4 (*Third party rights*) of the Facility Agreement, nothing in this Clause 1.5 (*Third party rights*) shall limit or prejudice the exercise by SACE of its rights under this Agreement or the Finance Documents in the event that such rights are subrogated or assigned to it pursuant to the terms of the SACE Insurance Policy.

**2 CONDITIONS PRECEDENT**

**2.1** The Effective Date cannot occur unless:

- (a) the Facility Agent has received (or on the instructions of all the Lenders, waived receipt of) all of the documents and other evidence listed in Schedule 2 (*Conditions Precedent*) in form and substance satisfactory to the Facility Agent;
  - (b) save as disclosed in writing to the Facility Agent and SACE prior to the date of this Agreement, the representations and warranties contained in Clause 3 (*Representations*) are true and correct on, and as of, each such time as if each was made with respect to the facts and circumstances existing at such time;
  - (c) save as disclosed in writing to the Facility Agent and SACE prior to the date of this Agreement, no Event of Default, event or circumstance specified in clause 18 (*Events of Default*) of the Facility Agreement 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, event resulting in mandatory prepayment of the Loan pursuant to clause 16.3 (*Mandatory prepayment – Sale and Total Loss*) and clause 16.4 (*Mandatory prepayment – SACE Insurance Policy*) of the Facility Agreement shall have occurred and be continuing or would result from the amendment and restatement of the Facility Agreement pursuant to this Agreement; and
-

- (d) the Facility Agent is satisfied that the Effective Date can occur and has not provided any instructions to the contrary informing the Parties that the Effective Date cannot occur.
- 2.2 Upon fulfilment or waiver of the conditions set out in Clause 2.1 above, the Facility Agent shall provide the Borrower, the Creditor Parties and SACE with a copy of the executed certificate in the form set out in Schedule 3 (*Form of Effective Date Certificate*) confirming that the Effective Date has occurred and such certificate shall be binding on all Parties.
- 2.3 Other than to the extent that the Majority Lenders notify the Facility Agent in writing to the contrary before the Facility Agent provides the certificate described in Clause 2.2 above, the Creditor Parties authorise (but do not require) the Facility Agent to execute and provide such certificate. The Facility Agent shall not be liable for any damages, costs or losses whatsoever as a result of giving any such certificate.

### **3 REPRESENTATIONS**

#### **3.1 Facility Agreement representations**

On the date of this Agreement and on the Effective Date, each Obligor that is a party to the Facility Agreement makes each of the representations and warranties as set out in clause 11 (*Representations and warranties*) of the Facility Agreement, as amended and restated by this Agreement and updated with appropriate modifications to refer to this Agreement and (where relevant) the Amended and Restated Facility Agreement, the Amended and Restated Guarantee and the Mortgage Addendum, by reference to the circumstances then existing.

#### **3.2 Finance Document representations**

On the date of this Agreement and on the Effective Date, each Obligor (save for the Holding) makes the representations and warranties set out in the Finance Documents (other than the Facility Agreement) to which it is a party, as amended and restated and/or supplemented by this Agreement and updated with appropriate modifications to refer to this Agreement and, where appropriate, the Amended and Restated Guarantee and the Mortgage Addendum, by reference to the circumstances then existing.

### **4 AMENDMENT AND RESTATEMENT OF FACILITY AGREEMENT AND OTHER FINANCE DOCUMENTS**

#### **4.1 Specific amendments to the Facility Agreement**

With effect on and from the Effective Date, the Facility Agreement shall be amended and restated in the form of the Amended and Restated Facility Agreement and, as so amended and restated, the Facility Agreement shall continue to be binding on each of the parties to it in accordance with its terms as so amended and restated.

#### **4.2 Specific amendments to the Guarantee**

With effect on and from the Effective Date, the Guarantee shall be amended and restated in the form of the Amended and Restated Guarantee and, as so amended and restated, the Guarantor confirms that:

- (a) the Guarantee extends to the obligations of the Borrower under the Finance Documents as amended, restated and/or supplemented by this Agreement;
-

- (b) the obligations of the relevant Obligors under the Finance Documents as amended, restated and/or supplemented by this Agreement are included in the Secured Liabilities (as defined in the Facility Agreement); and
- (c) the Guarantee shall continue to be binding on each of the parties to it and have full force and effect in accordance with its terms as so amended and restated.

**4.3 Holding confirmation**

On the Effective Date, the Holding confirms that, notwithstanding the amendments made to the Finance Documents pursuant to this Agreement, the undertakings given by the Holding under the Guarantee, as amended and restated by this Agreement and updated with appropriate modifications to refer to this Agreement shall remain in full force and effect in accordance with its original terms and the amendments to the Finance Documents as amended, restated and/or supplemented by this Agreement.

**4.4 Security Confirmation**

Without prejudice to the provisions of the Mortgage Addendum, on the Effective Date, each Obligor confirms that:

- (a) any Security Interest created by it under the Finance Documents extends to the obligations of the relevant Obligors under the Finance Documents as amended, restated and/or supplemented by this Agreement;
- (b) the obligations of the relevant Obligors under the Finance Documents as amended, restated and/or supplemented by this Agreement are included in the Secured Liabilities (as defined in the Finance Documents to which it is a party);
- (c) the Security Interests created under the Finance Documents continue in full force and effect on the terms of the respective Finance Documents; and
- (d) to the extent that this confirmation creates a new Security Interest, such Security Interest shall be on the terms of the Finance Documents in respect of which this confirmation is given.

**4.5 Finance Documents to remain in full force and effect**

The Finance Documents shall remain in full force and effect and, from the Effective Date:

- (a) in the case of the Facility Agreement as amended and restated pursuant to Clause 4.1 (*Specific amendments to the Facility Agreement*);
  - (b) in the case of the Guarantee, as amended and restated pursuant to Clause 4.2 (*Specific amendments to the Guarantee*);
  - (c) the Facility Agreement and the applicable provisions of this Agreement will be read and construed as one document;
  - (d) the Guarantee and the applicable provisions of this Agreement will be read and construed as one document; and
-

- (e) except to the extent expressly waived by the amendments effected by this Agreement, no waiver is given by this Agreement and the Lenders expressly reserve all their rights and remedies in respect of any breach of or other default under the Finance Documents.

## 5 FURTHER ASSURANCE

Clause 12.20 (*Further assurance*) of the Facility Agreement, as amended and restated by this Agreement, applies to this Agreement as if it were expressly incorporated in it with any necessary modifications.

## 6 COSTS, EXPENSES AND FEES

Clause 10.11 (*Transaction Costs*) of the Facility Agreement, as amended and restated by this Agreement, applies to this Agreement as if it were expressly incorporated in it with any necessary modifications.

## 7 NOTICES

Clause 32 (*Notices*) of the Facility Agreement, as amended and restated by this Agreement, applies to this Agreement as if it were expressly incorporated in it with any necessary modifications.

## 8 COUNTERPARTS

This Agreement may be executed in any number of counterparts, and this has the same effect as if the signatures on the counterparts were on a single copy of this Agreement.

## 9 SIGNING ELECTRONICALLY

The Parties acknowledge and agree that they may execute this Agreement and any variation or amendment to the same, by electronic instrument. The Parties agree that the electronic signatures appearing on the documents shall have the same effect as handwritten signatures and the use of an electronic signature on this Agreement shall have the same validity and legal effect as the use of a signature affixed by hand and is made with the intention of authenticating this Agreement, and evidencing the Parties' intention to be bound by the terms and conditions contained herein. For the purposes of using an electronic signature, the Parties authorise each other to conduct the lawful processing of personal data of the signers for contract performance and their legitimate interests including contract management.

## 10 GOVERNING LAW

This Agreement and any non-contractual obligations arising out of or in connection with it are governed by English law.

## 11 ENFORCEMENT

### 11.1 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.

**11.2 Service of process**

- (a) Without prejudice to any other mode of service allowed under any relevant law, each Obligor (other than an Obligor incorporated in England and Wales):
  - (i) irrevocably appoints Hannaford Turner LLP, currently of 107 Cheapside, London, EC2V 6DN, United Kingdom, as its agent for service of process in relation to any proceedings before the English courts in connection with any Finance Document; and
  - (ii) agrees that failure by a process agent to notify the relevant Obligor of the process will not invalidate the proceedings concerned.
- (b) If any person appointed as an agent for service of process is unable for any reason to act as agent for service of process, the Borrower (on behalf of all the Obligors) must immediately (and in any event within 10 days of such event taking place) appoint another agent on terms acceptable to the Facility Agent. Failing this, the Facility Agent may appoint another agent for this purpose.

**This Agreement has been entered into on the date stated at the beginning of this Agreement.**

---



EXECUTION PAGES

**BORROWER**

SIGNED by )  
duly authorised ) /s/ Daniel S. Farkas  
for and on behalf of )  
O CLASS PLUS ONE, LLC )

**GUARANTOR**

SIGNED by )  
duly authorised ) /s/ Daniel S. Farkas  
for and on behalf of )  
NCL CORPORATION LTD. )

**SHAREHOLDER**

SIGNED by )  
for and on behalf of ) /s/ Daniel S. Farkas  
OCEANIA CRUISES S. DE R.L. )  
as its duly appointed attorney-in-fact )  
in the presence of: )

**HOLDING**

SIGNED by )  
for and on behalf of ) /s/ Daniel S. Farkas  
NORWEGIAN CRUISE LINE )  
HOLDINGS LTD. )  
as its duly appointed attorney-in-fact )  
in the presence of: )

---

**LENDERS**

**SIGNED** by ) /s/ José Luis Vincent Rodríguez  
duly authorised )  
for and on behalf of )  
**BANCO SANTANDER S.A.** ) /s/ Remedios Cantalapiedra Villafranca

**SIGNED** by ) /s/ Isabella Roberts  
duly authorised )  
for and on behalf of )  
**BNP PARIBAS FORTIS S.A./N.V.** )

**SIGNED** by ) /s/ Daniela Rotellini  
duly authorised )  
for and on behalf of )  
**CASSA DEPOSITI E PRESTITI S.P.A.** )

**SIGNED** by ) /s/ Anne-Laure Orange  
duly authorised )  
for and on behalf of )  
**CRÉDIT AGRICOLE CORPORATE** )  
**AND INVESTMENT BANK** ) /s/ Jérôme Leblond

**SIGNED** by ) /s/ Varsha Sharan  
duly authorised )  
for and on behalf of )  
**HSBC BANK** )  
**PLC** )

**SIGNED** by ) /s/ André Tiele  
duly authorised )  
for and on behalf of )  
**KFW IPEX-BANK GMBH** ) /s/ Claudia Coenenberg

**SIGNED** by ) /s/ Isabelle Seneca  
duly authorised )  
for and on behalf of )  
**SOCIETE GENERALE** )

---

**MANDATED LEAD ARRANGERS**

**SIGNED** by ) /s/ José Luis Vincent Rodríguez  
duly authorised )  
for and on behalf of )  
**BANCO SANTANDER S.A.** ) /s/ Remedios Cantalapiedra Villafranca

**SIGNED** by ) /s/ Isabella Roberts  
duly authorised )  
for and on behalf of )  
**BNP PARIBAS FORTIS S.A./N.V.** )

**SIGNED** by ) /s/ Daniela Rotellini  
duly authorised )  
for and on behalf of )  
**CASSA DEPOSITI E PRESTITI S.P.A.** )

**SIGNED** by ) /s/ Anne-Laure Orange  
duly authorised )  
for and on behalf of )  
**CRÉDIT AGRICOLE CORPORATE** )  
**AND INVESTMENT BANK** ) /s/ Jérôme Leblond

**SIGNED** by ) /s/ Varsha Sharan  
duly authorised )  
for and on behalf of )  
**HSBC BANK** )  
**PLC** )

**SIGNED** by ) /s/ André Tiele  
duly authorised )  
for and on behalf of )  
**KFW IPEX-BANK GMBH** ) /s/ Claudia Coenenberg

**SIGNED** by ) /s/ Isabelle Seneca  
duly authorised )  
for and on behalf of )  
**SOCIETE GENERALE** )

---

**FACILITY AGENT**

**SIGNED** by ) /s/ Isabella Roberts  
duly authorised )  
for and on behalf of )  
**BNP** )  
**PARIBAS** )

**SACE AGENT**

**SIGNED** by ) /s/ Anne-Laure Orange  
duly authorised )  
for and on behalf of )  
**CRÉDIT AGRICOLE CORPORATE** )  
**AND INVESTMENT BANK** ) /s/ Jérôme Leblond

**SECURITY TRUSTEE**

**SIGNED** by ) /s/ Daisuke Takekawa  
duly authorised )  
for and on behalf of )  
**HSBC CORPORATE TRUSTEE** )  
**COMPANY (UK) LIMITED** )

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**APPENDIX 1**

**FORM OF AMENDED AND RESTATED FACILITY AGREEMENT (MARKED TO INDICATE AMENDMENTS)**

Amendments are indicated as follows:

- 1 additions are indicated by underlined text in blue; and
  - 2 deletions are shown by strike-through text in red.
-

Originally dated 19 December 2018  
(as amended from time to time, including as amended and restated by an amendment and restatement agreement dated 17 February 2021 ~~and~~, as further amended and restated by an amendment and restatement agreement dated ~~2021~~ 17 June 2021, as further amended by a supplemental agreement dated 23 December 2021, as further amended by a supplemental agreement dated 16 December 2022, and as further amended and restated by an amendment and restatement agreement dated 2023)

**O CLASS PLUS ONE, LLC**  
as Borrower

and

**THE BANKS AND FINANCIAL INSTITUTIONS  
LISTED IN SCHEDULE 1**  
as Lenders

and

**CRÉDIT AGRICOLE CORPORATE AND INVESTMENT BANK  
BNP PARIBAS FORTIS S.A./N.V.  
HSBC BANK PLC  
KFW IPEX-BANK GMBH  
CASSA DEPOSITI E PRESTITI S.P.A.  
BANCO SANTANDER, S.A.  
SOCIÉTÉ GÉNÉRALE**  
as Joint Mandated Lead Arrangers

and

**BNP PARIBAS**  
as Facility Agent

and

**CRÉDIT AGRICOLE CORPORATE AND INVESTMENT BANK**  
as SACE Agent

and

**HSBC CORPORATE TRUSTEE COMPANY (UK) LIMITED**  
as Security Trustee

with the support of

**SACE S.P.A.**

**AMENDED AND RESTATED FACILITY AGREEMENT**

relating to

the part financing of the 1,258 passenger cruise ship  
newbuilding ~~presently designated as Hull No. 6308~~ at Fincantieri S.p.A., m.v. "Vista"

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**THIS AGREEMENT** is originally made on 19 December 2018 (as amended ~~and restated by an amendment and restatement agreement dated 17 February 2021 and as further~~ from time to time, including as amended and restated by an amendment and restatement agreement dated ~~2021~~ 17 February 2021, as further amended and restated by an amendment and restatement agreement dated 17 June 2021, as further amended by a supplemental agreement dated 23 December 2021, as further amended by a supplemental agreement dated 16 December 2022 and as further amended and restated by an amendment and restatement agreement dated 2023)

## **PARTIES**

- (1) **O CLASS PLUS ONE, LLC**, a limited liability company formed in the state of Delaware, United States of America whose registered office is at c/o Corporate Creations Network Inc., 3411 Silverside Road, Tatnall Building 104, Wilmington, DE 19810 as borrower (the "**Borrower**")
- (2) **THE BANKS AND FINANCIAL INSTITUTIONS** listed in Schedule 1 (*Lenders and Commitments*) as lenders (the "**Lenders**")
- (3) **CRÉDIT AGRICOLE CORPORATE AND INVESTMENT BANK, BNP PARIBAS FORTIS S.A./N.V., KFW IPEX-BANK GMBH, HSBC BANK PLC, CASSA DEPOSITI E PRESTITI S.P.A., SOCIÉTÉ GÉNÉRALE and BANCO SANTANDER S.A.** as joint mandated lead arrangers (the "**Joint Mandated Lead Arrangers**")
- (4) **CRÉDIT AGRICOLE CORPORATE AND INVESTMENT BANK**, as SACE agent (the "**SACE Agent**")
- (5) **BNP PARIBAS**, as facility agent (the "**Facility Agent**")
- (6) **HSBC CORPORATE TRUSTEE COMPANY (UK) LIMITED**, as security trustee (the "**Security Trustee**")

## **BACKGROUND**

- (A) By a shipbuilding contract originally dated as of 31 October 2018 (as amended or supplemented from time to time, the "**Original Shipbuilding Contract**") entered into between (i) Fincantieri S.p.A., a company incorporated in Italy with registered office in Trieste, via Genova, 1, and having fiscal code 00397130584 (the "**Builder**") and (ii) the Borrower, the Builder agreed to design, construct and deliver, and the Borrower agreed to purchase, a 1,258 passenger cruise ship ~~currently~~ having hull number [\*] as more particularly described in the Original Shipbuilding Contract ~~to be~~ delivered on or about ~~31 March~~ [\*] subject to any adjustments of such delivery date in accordance with the Original Shipbuilding Contract.
  - (B) The total price payable by the Borrower to the Builder under the Original Shipbuilding Contract is five hundred and seventy-eight million and seven hundred thousand Euros (€578,700,000) (the "**Initial Contract Price**"). The Initial Contract Price is payable on the following terms and:
    - (i) as to [\*] per cent. ([\*]%), being [\*] Euros (€[\*]), by an initial payment which is to be within 5 Business Days after the effective date of the Original Shipbuilding Contract in accordance with Article 10.1(A) of the Original Shipbuilding Contract (~~"First Shipbuilding Contract Instalment"~~);
    - (ii) as to [\*] per cent. ([\*]%), being [\*] Euros (€[\*]), on the later of the date of commencement of steel cutting and the date falling 36 months prior to the Intended Delivery Date;
-

- (iii) as to [\*] per cent. ([\*]%), being [\*] Euros (€[\*]), on the later of keel laying in dry-dock and the date falling 24 months prior to the Intended Delivery Date;
  - (iv) as to [\*] per cent. ([\*]), being [\*] Euros (€[\*]), on the later of launching and the date falling 12 months prior to the Intended Delivery Date; and
  - (v) as to [\*] per cent. ([\*]%), being [\*] Euros (€[\*]), on delivery of the Ship on the Delivery Date,
- as each such event is described in the Original Shipbuilding Contract.
- (C) The Initial Contract Price may be decreased at delivery of the Ship under Articles 13, 14, 16, 17, 19 and 20 of the Original Shipbuilding Contract (~~in aggregate the "Liquidated Damages"~~) or by mutual agreement between the parties (the Initial Contract Price adjusted as aforesaid being the "**Final Contract Price**"). For the avoidance of doubt, under the Original Shipbuilding Contract the price of the Ship may be increased or decreased pursuant to Article 24 thereof but, for the purposes of this Agreement, the Final Contract Price will not include any increase in the price under Article 24.
  - (D) ~~By a facility agreement dated 19 December 2018 (the "By the Original Facility Agreement"), entered into between the Borrower, the Lenders, the Joint Mandated Lead Arrangers, the Facility Agent, the SACE Agent and the Security Trustee~~ (as defined ~~therein~~below), the Lenders agreed to make available to the Borrower a Dollar loan facility for the purpose of assisting the Borrower in financing, subject to exchange rate fluctuations, up to eighty per cent. (80%) of the Final Contract Price (and subject to an aggregate amount no greater than the Eligible Amount) and one hundred per cent. (100%) of the SACE Premium.
  - (E) Due to the unprecedented and extraordinary impacts of the Covid-19 pandemic on the cruise sector and cruise operators, SACE informed the cruise operators of its availability to evaluate certain measures (the "**Temporary Measures**") applicable in relation to certain qualifying loan agreements in order to assist companies which are financially sound but dealing with the impact of the temporary but unprecedented Covid-19 pandemic; the possibility to access to such measures was subject, amongst other things, to certain principles titled "Cruise Debt Holiday Principles" offered by SACE dated 15 April 2020 for cruise lines (the "**Original Principles**").
  - (F) On 21 January 2021, SACE confirmed its availability to evaluate an extension of the Temporary Measures (the "**Extended Temporary Measures**"), again subject to certain principles set out in a document titled "Debt Deferral Extension Framework for ECA-backed Export Financings" dated 26 November 2020 for cruise lines offered by SACE (together with the Original Principles, the "**Principles**").
  - (G) Pursuant to the consent request letter dated 3 December 2020, the Borrower and the Guarantor notified the Facility Agent and the SACE Agent of the wish to benefit from the Temporary Measures and the Extended Temporary Measures in relation to certain loan agreements listed therein, including the Original Facility Agreement, and requested, amongst other things, the temporary suspension of certain covenants under the Original Guarantee and the addition of certain covenants under the Original Facility Agreement for a period until 31 December 2022 (the "**Borrower Request**").
  - (H) On 25 January 2021, the Facility Agent (for and on behalf of the Lenders (as defined in the Original Facility Agreement)) provided its consent to part of the Borrower Request in accordance with and subject to certain conditions as set out in an amendment and
-

restatement agreement to the Original Facility Agreement dated 17 February 2021 between, amongst others, the Borrower, the Facility Agent and the SACE Agent (the "**February 2021 Amendment and Restatement Agreement**")~~(the Original Facility Agreement as amended and restated by the February 2021 Amendment and Restatement Agreement, the "**Facility Agreement**")~~;

- (I) An addendum to the Original Shipbuilding Contract (the "**Addendum**") ~~has been~~ was entered into in order to include the option of a new allowance of sixty-six million Euros (€66,000,000) for owner supplies and change orders in the Original Shipbuilding Contract (the Original Shipbuilding Contract as amended pursuant to the Addendum and as may be further amended from time to time, the "**Shipbuilding Contract**").
  - (J) ~~The Parties have agreed to amend and restate the Facility Agreement as set out in~~ By an amendment and restatement agreement dated ~~\_\_\_\_\_~~ 17 June 2021 and made between, amongst others, the Borrower, the Facility Agent, the SACE Agent and the Security Trustee in order to, inter alia, provide for an increase of the Facility for the purpose of ~~(i) financing an amount to be applied towards payments relating to the Upsize Allowance (as defined below), (ii) financing an amount to be applied towards the second instalment of the Additional SACE Premium (as defined below) and (iii) financing an amount to be applied towards the Tranche B Premium (as defined below)~~ (the "**June 2021 Amendment and Restatement Agreement**").
  - (K) By a supplemental agreement dated 23 December 2021 and made between, amongst others, the Borrower, the Facility Agent, the SACE Agent and the Security Trustee (the "**December 2021 Amendment Agreement**"), the Parties agreed to, inter alia, amend certain financial covenants and certain other provisions under the Original Facility Agreement (as amended and restated by the February 2021 Amendment and Restatement Agreement and as amended and restated by the June 2021 Amendment and Restatement Agreement).
  - (L) ~~(K) This Agreement sets out the terms and conditions of the~~ By a supplemental agreement dated 16 December 2022 and made between, amongst others, the Borrower, the Facility Agent, the SACE Agent and the Security Trustee (the "**December 2022 Amendment Agreement**"), the Parties agreed to, inter alia, amend certain financial covenants and certain other provisions under the Original Facility Agreement (as amended and restated by the February 2021 Amendment and Restatement Agreement, as amended and restated by the June 2021 Amendment and Restatement Agreement, and as amended by the December 2021 Amendment Agreement).
  - (M) The Parties have agreed to enter into an amendment and restatement agreement (the "**2023 Amendment and Restatement Agreement**") to amend and restate the Original Facility Agreement (as amended and restated by the February 2021 Amendment and Restatement Agreement, as amended and restated by the June 2021 Amendment and Restatement Agreement, as amended by the December 2021 Amendment Agreement and as amended by the December 2022 Amendment Agreement) in order to, inter alia, document the transition from LIBOR to SOFR (as defined below) (the Original Facility Agreement as amended and restated by the February 2021 Amendment and Restatement Agreement, as amended and restated by the June 2021 Amendment and Restatement Agreement, as amended by the December 2021 Amendment Agreement and as amended by the December 2022 Amendment Agreement, the "**Facility Agreement**").
  - (N) This Agreement sets out the terms and conditions of the Facility Agreement as amended and restated by the 2023 Amendment and Restatement Agreement.
-

## OPERATIVE PROVISIONS

### 1 INTERPRETATION

#### 1.1 Definitions

Subject to Clause 1.5 (*General Interpretation*), in this Agreement:

~~"2021 Deferral Effective Date" has the meaning given to the term Effective Date in the February 2021 Amendment and Restatement Agreement.~~

"2021 Deferral Fee Letters" means any letter between the Facility Agent (or, as the case may be, the SACE Agent) and any Obligor which sets out the fees payable in connection with the arrangements contemplated by the February 2021 Amendment and Restatement Agreement.

"2021 Deferral Final Repayment Date" means:

- (a) in relation to the Marina Facility Agreement, 19 January 2027;
- (b) in relation to the Riviera Facility Agreement, 27 October 2026;
- (c) in relation to the Seven Seas Explorer Facility Agreement, 31 December 2026; and
- (d) in relation to the Seven Seas Splendor Facility Agreement, 29 January 2027.

"2023 Amendment and Restatement Agreement" has the meaning given to such term in Recital (M).

"2023 Effective Date" has the meaning given to the term Effective Date in the 2023 Amendment and Restatement Agreement.

"Addendum" has the meaning given to such term in Recital (I).

"Additional SACE Premium" has the meaning given to such term in Clause ~~8.5~~9.5 (*Additional SACE Premium*).

"Advance" means the principal amount of each borrowing of all or part of a Tranche by the Borrower 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.

"Aggregate SACE Premium" means, together, the SACE Premium, the Additional SACE Premium and the Tranche B Premium.

"Amended Maximum Loan Amount" means the aggregate of:

- (a) the Original Maximum Loan Amount, financed or to be financed pursuant to Tranche A, provided that such amount shall not, at any time, exceed the Total Tranche A Commitments;
  - (b)
-

- (i) the Dollar Equivalent of fifty-two million, eight hundred thousand Euros (€52,800,000), corresponding to the amount to be financed in relation to the Upsize Allowance, financed or to be financed pursuant to Tranche B;
- (ii) 100% of the Tranche B Premium to be paid in accordance with paragraph (a) of Clause ~~8-6-9.6~~ (*Tranche B Premium*),

provided that such amount shall not, at any time, exceed the Total Tranche B Commitments; and

- (c) the second instalment of the Additional SACE Premium, calculated in accordance with paragraph (a)(ii) of Clause ~~8-5-9.5~~ (*Additional SACE Premium*), financed or to be financed pursuant to Tranche C, provided that such amount shall not, at any time, exceed the Total Tranche C Commitments,

provided that such aggregate amount shall not, at any time, exceed the Total Commitments.

"**Annex VI**" means Annex VI (Regulations for the Prevention of Air Pollution from Ships, entered into on 19 May 2005) to the International Convention for the Prevention of Pollution from Ships 1973, as modified by the Protocol of 1978 relating thereto and by the Protocol of 1997 (MARPOL) and as further revised in October 2008 with such revised version having entered into force on 1 July 2010.

"**Approved Broker**" means Clarkson Platou, Barry Rogliano Salles, Fearnleys AS, Rocca & Partners, Brax Shipbrokers AS (or any Affiliate of such person through which valuations are commonly issued) or such other shipbroker or ship valuer experienced in valuing cruise ships nominated by the Borrower and approved by the Facility Agent.

"**Approved Flag**" means the Bermudian flag, the Marshall Islands flag, the Bahamas flag or such other flag as the Facility Agent may, with the approval of the Italian Authorities and at least four Lenders representing as a minimum the Majority Lenders, approve from time to time.

"**Approved Manager**" means any of the Borrower, NCL Corporation Ltd., NCL (Bahamas) Ltd., the Member as bareboat charterer or other member of the Group, or any company which is not a member of the Group which the Facility Agent may, with the authorisation of the Majority Lenders, approve from time to time as the manager of the Ship.

"**Approved Manager's Undertaking**" means, in the event that the Approved Manager is a company other than the Borrower or the Member as bareboat charterer, a letter of undertaking executed or to be executed by the Approved Manager in favour of the Facility Agent, which will include, without limitation, an agreement by the Approved Manager to subordinate its rights against the Ship and the Borrower to the rights of the Secured Parties under the Finance Documents, in the agreed form.

"**Approved Project**" means any of the projects identified in the Approved Projects List.

"**Approved Projects List**" means the approved projects list provided by the Guarantor and accepted by the Facility Agent prior to the December 2021 Effective Date.

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

---

**"Availability Period"** means, in relation to Tranche A, the period commencing on the Effective Date and, in relation to Tranche B and Tranche C, the period commencing on the ~~date of this Agreement~~ June 2021 Effective Date, and ending on:

- (a) the earlier to occur of (i) the Delivery Date and (ii) 28 July 2023 (or such later date as the Facility Agent may, with the authorisation of the Lenders, agree with the Borrower); or
- (b) if earlier, the date on which the Total Commitments are fully borrowed, cancelled or terminated.

**"Backstop Rate Switch Date"** means 30 June 2023 or any other date agreed between the Facility Agent, the Majority Lenders and the Borrower.

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

**"Bail-In Legislation"** means:

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

**"Bareboat Charter"** means the bareboat charter of the Ship by the Borrower as owner to the Member as bareboat charterer which shall be entered into no later than the Delivery Date in a form of draft approved by the Facility Agent before the date of the Original Facility Agreement with such reasonable changes thereto as the Facility Agent may approve from time to time.

**"Base Rate"** means one Euro for 1.43825 Dollars.

**"Builder"** has the meaning given in Recital (A).

**"Business Day"** means a day (other than a Saturday or a Sunday) on which banks are open in-;

- (a) New York, Milan, Frankfurt, Brussels, Madrid, Paris, Rome and London; and
- (b) (in relation to the fixing of an interest rate for a Term SOFR Loan) which is a US Government Securities Business Day.

**"Central Bank Rate"** means:

- (a) the short-term interest rate target set by the US Federal Open Market Committee as published by the Federal Reserve Bank of New York from time to time; or
  - (b) if that target is not a single figure, the arithmetic mean of:
-

- (i) the upper bound of the short-term interest rate target range set by the US Federal Open Market Committee and published by the Federal Reserve Bank of New York; and
- (ii) the lower bound of that target range.

**"Central Bank Rate Adjustment"** means in relation to the Central Bank Rate prevailing at close of business on any US Government Securities Business Day, the 20 per cent trimmed arithmetic mean calculated by the Facility Agent (or by any other Creditor Party which agrees to determine that mean in place of the Facility Agent), of the Central Bank Rate Spreads for the five most immediately preceding US Government Securities Business Days for which SOFR is available.

**"Central Bank Rate Spread"** means in relation to any US Government Securities Business Day, the difference (expressed as a percentage rate per annum) calculated by the Facility Agent (or by any other Creditor Party which agrees to calculate that rate in place of the Facility Agent) of:

- (a) SOFR for that US Government Securities Business Day; and
- (b) the Central Bank Rate prevailing at close of business on that US Government Securities Business Day.

**"CDP"** means Cassa Depositi e Prestiti S.p.A.

**"Certified Copy"** means in relation to any document delivered or issued by or on behalf of any company, a copy of such document certified as a true, complete and up-to-date copy of the original by any of the directors or the secretary or assistant secretary or any attorney-in-fact for the time being of that company or, in the case of the Borrower, the sole manager of the Borrower.

**"Charged Property"** means all of the assets which from time to time are, or are expressed to be, the subject of Security Interests pursuant to the Finance Documents.

**"CIRR"** means, in relation to the Loan, the applicable Commercial Interest Reference Rate determined in accordance with the OECD Arrangement on Guidelines for Officially Supported Export Credits, to be notified by SIMEST to the Facility Agent (through the SACE Agent) and expected to be three point thirty-two per cent. (3.32% p.a.) per annum.

**"CIRR Break Costs"** means, in respect of the Loan, all the amounts that SIMEST is entitled to charge, whether for taxes, costs, expenses, indemnities, penalties, losses or liabilities whatsoever, under and in accordance with the relevant Interest Make-Up Agreement, including without limitation, as a result of any prepayment of all or any part of the Loan under this Agreement (whether voluntary, following acceleration of the Loan or otherwise), as a result of an Interest Make-Up Event and/or as a result of the Borrower deciding to switch from the Fixed Interest Rate to another interest rate after the Drawdown Date. Such amounts include, without limitation, (i) breakage costs calculated on the basis of the net present value referred to in the relevant Interest Make-Up Agreement, (ii) any amount due as a consequence of the entering into and/or close-out of any hedging arrangement entered into by SIMEST in relation to this Agreement, (iii) default interest and penalties (*maggiorazioni*) whenever applicable, and (iv) all amounts (if any) to be returned by the SACE Agent or the Facility Agent (as applicable) to SIMEST under and pursuant to the Interest Make-Up Agreement.

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"Code" means the United States Internal Revenue Code of 1986.

"Code of Ethics" means the code of ethics adopted by CDP, available on CDP's website ([http://www.cdp.it/static/upload/cdp/cdp\\_code\\_ethics.pdf](http://www.cdp.it/static/upload/cdp/cdp_code_ethics.pdf)).

"Commitment" means a Tranche A Commitment, a Tranche B Commitment or a Tranche C Commitment.

"Common Units" means all membership interests held at any time during the term of the limited liability company agreement of the Borrower by the Member, including, without limitation, the Member's (i) right to a distributive share of the income, gain, losses and deductions of the Borrower in accordance with the limited liability company agreement, (ii) the right to a distributive share of the Borrower's assets, and (iii) any securities issued in respect of or in exchange for common units, whether by way of dividend or other distribution, split reverse split, recapitalization, merger, rolup transaction, consolidation conversion or reorganization.

"Compliance Certificate" has the meaning given to the term "Compliance Certificate" in the Guarantee.

"Confidential Information" means all information relating to any Obligor, 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 from either:

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

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

- (i) ~~(e)~~ is or becomes public information other than as a direct or indirect result of any breach by that Creditor Party of Clause ~~33~~ 34 (*Confidentiality*); or
- (ii) ~~(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
- (iii) ~~(e)~~ 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; or
- (iv) ~~(e)~~ any Reference Bank Quotation.

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

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"**Contribution**" means, in relation to a Lender, the amount of the Loan which is owing to that Lender.

"**Conversion Rate**" means the rate determined by the Facility Agent on the Conversion Rate Fixing Date and notified to the Borrower as being the lower of:

- (a) the Base Rate; or
- (b) the FOREX Contracts Weighted Average Rate.

"**Conversion Rate Fixing Date**" means the date falling [\*] ([\*]) days before the Intended Delivery Date.

"**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.

"Credit Adjustment Spread" means 0.42826% per annum.

"**Creditor Party**" means the Facility Agent, the Security Trustee, the SACE Agent, the Joint Mandated Lead Arrangers or any Lender, whether as at the date of this Agreement or at any later time.

"Daily Rate" means for any US Government Securities Business Day:

- (a) SOFR for that US Government Securities Business Day; or
- (b) if SOFR is not available for that US Government Securities Business Day, the percentage rate per annum which is the aggregate of:
  - (i) the Central Bank Rate for that US Government Securities Business Day; and
  - (ii) the applicable Central Bank Rate Adjustment; or
- (c) if paragraph (b) above applies but the Central Bank Rate for that US Government Securities Business Day is not available, the percentage rate per annum which is the aggregate of:
  - (i) the most recent Central Bank Rate for a day (which is no more than five US Government Securities Business Days before that US Government Securities Business Day); and
  - (ii) the applicable Central Bank Rate Adjustment.

rounded, in either case, to five decimal places and if, in either case, the aggregate of that rate and the applicable Credit Adjustment Spread is less than zero, the Daily Rate shall be deemed to be such a rate that the aggregate of the Daily Rate and the applicable Credit Adjustment Spread is zero.

"Daily Simple SOFR" means, for any day, a rate per annum equal to the Daily Rate for the day that is:

- (a) for as long as the Interest Make-Up Agreement is in full force and effect, ten (10) US Government Securities Business Days; or



(b) if the Interest Make-Up Agreement ceases to be in full force and effect, five (5) US Government Securities Business Days,

prior to (i) if such day is a US Government Securities Business Day, that day or (ii) if such day is not a US Government Securities Business Day, the US Government Securities Business Day immediately preceding such day.

"December 2021 Amendment Agreement" has the meaning given to such term in Recital (K).

"December 2021 Effective Date" has the meaning given to the term Effective Date in the December 2021 Amendment Agreement.

"December 2021 Fee Letters" means any letter between the Facility Agent (or the SACE Agent, as applicable) and any Obligor which sets out the fees payable in connection with the arrangements contemplated by the December 2021 Amendment Agreement.

"December 2022 Amendment Agreement" has the meaning given to such term in Recital (L).

"December 2022 Fee Letters" means any letter between the Facility Agent (or the SACE Agent, as applicable) and any Obligor which sets out the fees payable in connection with the arrangements contemplated by the December 2022 Amendment Agreement.

"Deferral Period" means the period from 1 April 2020 to 31 December 2022.

"Delegate" means any delegate, agent, attorney or co-trustee appointed by the Security Trustee

"Delivered Vessel Facilities" means, together, Marina Facility Agreement, Riviera Facility Agreement, Seven Seas Explorer Facility Agreement and Seven Seas Splendor Facility Agreement.

"Delivery Date" means the date and time of delivery of the Ship by the Builder to the Borrower as stated in the Protocol of Delivery and Acceptance.

"Document of Compliance" has the meaning given to it in the ISM Code.

"Dollar Equivalent" means such amount in Dollars as is calculated by the Facility Agent on the Conversion Rate Fixing Date to be the equivalent of an amount in Euro at the Conversion Rate.

"Dollars", "\$" and "USD" means the lawful currency for the time being of the United States of America.

"Drawdown Date" means, in relation to an Advance under a Tranche, the date on which that Advance is drawn down and applied in accordance with Clause 2 (*Facility*).

"Drawdown Notice" means a notice in the form set out in Schedule 2 (*Form of Drawdown Notice*) (or in any other form which the Facility Agent approves or reasonably requires).

"Earnings" means all moneys whatsoever which are now, or later become, payable (actually or contingently) to the Borrower, by the Member as bareboat charterer and which arise out of the use or operation of the Ship, including (but not limited to):

- (a) all freight, hire, fare and passage moneys, compensation payable to the Borrower, the Facility Agent or the Security Trustee (as the case may be) in the event of requisition
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of the Ship for hire, remuneration for salvage and towage services, demurrage and detention moneys and damages for breach (or payments for variation or termination) of any charterparty or other contract for the employment of the Ship;

- (b) all moneys which are at any time payable under Insurances in respect of loss of earnings;
- (c) all moneys which are at any time payable to the Borrower in respect of the general average contribution; and
- (d) if and whenever the 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 the Ship.

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

**"Effective Date"** means the earlier of:

- (a) the Guarantor providing the Facility Agent with written notice stating that the Original Facility Agreement and the other Finance Documents signed on or about the date of the Original Facility Agreement have become effective; and
- (b) 16.00 Central European time on 31 January 2019.

**"Eligible Amount"** means eighty per cent. (80%) of the lesser of:

- (a) the Dollar Equivalent of five hundred and seventy-eight million and seven hundred thousand Euros (€578,700,000); and
- (b) the Dollar Equivalent of the Final Contract Price.

**"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 the Ship or into or upon the air, sea, land or soils (including the seabed) or surface water of Environmentally Sensitive Material within or from the Ship; 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
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water from a vessel other than the Ship and which involves a collision between the Ship and such other vessel or some other incident of navigation or operation, in either case, in connection with which the Ship is actually or potentially liable to be arrested, attached, detained or injuncted and/or the Ship and/or any Obligor and/or any operator or manager of the Ship is at fault or allegedly at fault or otherwise liable to any legal or administrative action; or

- (c) any other incident in which Environmentally Sensitive Material is released, emitted, spilled or discharged into or upon the air, sea, land or soils (including the seabed) or surface water otherwise than from the Ship and in connection with which the Ship is actually or potentially liable to be arrested and/or where any Obligor and/or any operator or manager of the Ship 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.

**"Equator Principles"** means the standards entitled "A financial industry benchmark for determining, assessing and managing environmental and social risk in projects" dated June 2013 and adopted by certain financial institutions, as the same may be amended or supplemented from time to time.

**"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.

**"EU Blocking Regulation"** means EU Regulation (EC) 2271/96 of 22 November 1996.

**"Euro", "Euros" and "EUR"** means the single currency of the Participating Member States.

**"Event of Default"** means any of the events or circumstances described in Clause ~~18.1~~19.1 (*Events of Default*).

**"Existing Indebtedness"** means Financial Indebtedness referred to in the financial statements of the Guarantor delivered to the Facility Agent prior to the date of this Agreement.

**"Exporter Declaration"** means a declaration to be issued for an Advance under Tranche A and Tranche B, in the form required by SIMEST at the relevant time duly signed by an authorised signatory of the Builder.

**"Facility"** means the term loan facility under Tranche A, Tranche B and Tranche C ~~-,~~ made or to be made available under this Agreement as described in Clause 2.1 (*Amount of facility*).

**"Facility Agent"** means BNP Paribas, a French "*société anonyme*", having a share capital of two billion four hundred ninety-nine million five hundred ninety-seven thousand one hundred and twenty-two Euros (€2,499,597,122) and its registered office located at 16 Boulevard des Italiens, 75009, Paris, France, registered under the n° Siren 662.042.449 at the *Registre du*

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Commerce et des Sociétés of Paris or any successor of it appointed under Clause ~~26-27~~ (Role of the Facility Agent ~~and~~ the Joint Mandated Lead Arrangers, ~~and~~ the SACE Agent ~~and the Reference Banks~~).

"Facility Agreement" has the meaning given to ~~this such~~ term in Recital (M)H.

"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 five (5) Business Days' written notice) as the office or offices through which it will perform its obligations under this Agreement.

"Fallback Interest Payment" means the aggregate amount of interest that is, or is scheduled to become, payable under paragraph (d) of Clause 7.6 (Unavailability of Term SOFR) and relates to a Term SOFR Loan.

"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 the Original Facility 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.

"February 2021 Amendment and Restatement Agreement" has the meaning given to such term in Recital (H).

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"February 2021 Effective Date" has the meaning given to the term Effective Date in the February 2021 Amendment and Restatement Agreement.

"Fee Letter" means any letter dated on or about the date of the Original Facility Agreement between:

- (a) the Facility Agent and the Borrower setting out the fees referred to in paragraph (a) of Clause ~~9-10~~ (Fees);
- (b) the Facility Agent and the Borrower setting out the fees referred to in paragraph ~~(c)~~ of Clause ~~9-10~~ (Fees);
- (c) the SACE Agent and the Borrower setting out the fees referred to in paragraph (d) of Clause ~~9-10~~ (Fees);
- (d) the Security Trustee and the Borrower setting out the fees referred to in paragraph (e) of Clause ~~9-10~~ (Fees); or
- (e) the Borrower and a Creditor Party setting out the fees payable to such Creditor Party pursuant to the terms of the Original Facility Agreement.

"Finance Documents" means:

- ~~(a)~~ this Agreement;
  - ~~(b)~~ ~~(a)~~the 2021 Deferral Fee Letters;
  - ~~(c)~~ ~~(b)~~the February 2021 Amendment and Restatement Agreement;
  - ~~(d)~~ ~~(e)~~the June 2021 Amendment and Restatement Agreement;
  - ~~(e)~~ the December 2021 Amendment Agreement;
  - ~~(f)~~ the December 2022 Amendment Agreement;
  - ~~(g)~~ the 2023 Amendment and Restatement Agreement;
  - ~~(h)~~ ~~(d)~~the June 2021 Fee Letters;
  - ~~(e)~~ ~~(e)~~ this Agreement;
  - ~~(i)~~ the December 2021 Fee Letters;
  - ~~(j)~~ the December 2022 Fee Letters;
  - ~~(k)~~ ~~(f)~~any Fee Letter;
  - ~~(l)~~ ~~(g)~~the Guarantee;
  - ~~(m)~~ ~~(h)~~the General Assignment;
  - ~~(n)~~ ~~(i)~~the Mortgage;
  - ~~(o)~~ the Mortgage Addendum;
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- (p) ~~(f)~~ the Pledge Agreement;
- (q) ~~(k)~~ the Post-Delivery Assignment;
- (r) ~~(h)~~ any Subordinated Debt Security;
- (s) ~~(m)~~ the Approved Manager's Undertaking;
- (t) ~~(n)~~ any Transfer Certificate;
- (u) ~~(e)~~ any Compliance Certificate;
- (v) ~~(p)~~ any Drawdown Notice;
- (w) ~~(g)~~ any other document (whether creating a Security Interest or not) which is executed as security for, or for the purpose of establishing any priority or subordination arrangement in relation to, the Secured Liabilities; and
- (x) ~~(r)~~ any other document (whether creating a Security Interest or not) which is designated as a Finance Document by agreement between the Borrower, SACE and the Facility Agent.

**"Final Contract Price"** has the meaning given in Recital (C).

**"Financial Indebtedness"** means, in relation to a person (the "**debtor**"), an indebtedness of the debtor:

- (a) for principal, interest or any other sum payable in respect of any moneys borrowed or raised by the debtor;
- (b) under any loan stock, bond, note or other security issued by the debtor;
- (c) under any acceptance credit, guarantee or letter of credit facility made available to the debtor;
- (d) under a financial lease, a deferred purchase consideration arrangement or any other agreement having the commercial effect of a borrowing or raising of money by the debtor;
- (e) under any 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;
- (f) under a guarantee, indemnity or similar obligation entered into by the debtor in respect of a liability of another person which would fall within paragraphs (a) to (e) if the references to the debtor referred to the other person; or
- (g) arising from receivables sold or discounted (other than receivables to the extent they are sold on a non-recourse basis).

**"First Instalment"** means the first instalment of the SACE Premium as more particularly described in paragraph (a) of Clause ~~8.4~~9.1 (*SACE Premium*).

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**"Fixed Interest Rate"** means, in respect of any Interest Period, the rate per annum determined by the Facility Agent to be the aggregate of:

- (a) the applicable Margin; and
- (b) ~~the~~ CIRR.

**"Fixed Rate Margin"** means the difference between the Floating Rate Margin and the SIMEST Margin Contribution.

**"Floating Interest Rate"** means, in respect of any Interest Period, the rate per annum determined by the Facility Agent to be ~~the aggregate of:~~

(a) in relation to each LIBOR Loan, the percentage rate per annum which is the aggregate of:

(i) ~~(a)~~ the applicable Margin; and

~~(b) LIBOR for the relevant period.~~

(ii) LIBOR.

(b) In relation to each Term SOFR Loan, the percentage rate per annum which is the aggregate of:

(i) the applicable Margin;

(ii) Term SOFR Reference Rate; and

(iii) Credit Adjustment Spread.

**"Floating Rate Margin"** means one point forty-five per cent. (1.45%).

**"FOREX Contracts"** means each actual purchase contract, spot or forward contract and any other contract, such as an option or collar arrangement, which is entered into in the foreign exchange markets for the acquisition of Euro intended to pay the delivery instalment under the Shipbuilding Contract, which:

- (a) matures not later than the Intended Delivery Date, provided that option arrangements may mature up to one month after such date if at the time they are entered into there exists a reasonable uncertainty as to the date on which the Ship will be delivered;
- (b) is entered into by the Borrower or the Guarantor or a combination of the foregoing not later than two (2) days before the Conversion Rate Fixing Date so that the Borrower, directly or through the Guarantor, purchases or may purchase Euro with Dollars at a pre-agreed rate; and
- (c) is notified to the Facility Agent within ten (10) days of its execution but in any event no later than the day preceding the Conversion Rate Fixing Date, with a Certified Copy of each such contract being delivered to the Facility Agent at such time.

**"FOREX Contracts Weighted Average Rate"** means the rate determined by the Facility Agent on the Conversion Rate Fixing Date in accordance with the following principles which (inter alia) are intended to take into account any maturity mismatch between the maturity of the

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FOREX Contracts and the Intended Delivery Date as well as FOREX Contracts that are unwound as part of the hedging strategy of the Borrower:

- (a) FOREX Contracts that are spot or forward foreign exchange contracts, if any, shall be valued at the contract value (taking into account any rescheduling);
- (b) the difference between the Euro amount available under (a) above and the Euro amount balance payable to the Builder on the Delivery Date is assumed to be purchased at the official daily fixing rate of the Bloomberg Fx Fixings for the purchase of Euro with Dollars as displayed on World Markets Reuters (or such other pages as may replace that page on that service or a successor service) at or around 1 p.m. (London time) on the Conversion Rate Fixing Date;
- (c) any FOREX Contract which is an option or collar arrangement and is not unwound at the Conversion Rate Fixing Date will be marked to market and the resulting profit or loss shall reduce or increase the Dollar countervalue of the purchased Euro;
- (d) any FOREX Contract which is an option or collar arrangement and is sold or purchased back at the time FOREX Contract(s) are entered into for an identical Euro amount shall be accounted for the net premium cost or profit, as the case may be.

Any marked to market valuation, as required in paragraph (c) above, shall be performed by BNP Paribas's dedicated desk in accordance with market practices. The Borrower shall have the right to request indicative valuations from time to time prior to the Conversion Rate Fixing Date.

**"Funding Rate"** means any individual rate notified by a Lender to the Facility Agent pursuant to sub-paragraph (i) of paragraph (e) of Clause ~~6.9~~7.10 (*Cost of funds*).

**"GAAP"** means generally accepted accounting principles in the United States of America consistently applied (or, if not consistently applied, accompanied by details of the inconsistencies) including, without limitation, those set forth in the opinion and pronouncements of the Accounting Principles Board of the American Institute of Certified Public Accountants and statements and pronouncements of the Financial Accounting Standards Board.

**"General Assignment"** means an assignment of, *inter alia*, any Management Agreement, the Earnings, the Insurances, any charter and any Requisition Compensation, executed or to be executed by the Borrower, the Member as charterer and, in the event that the Approved Manager is not a member of the Group and is named as a co-assured in the Insurances, the Approved Manager in favour of the Security Trustee in the agreed form.

**"German Blocking Provisions"** means section 7 of the German Foreign Trade Regulation (AWV) (*Außenwirtschaftsverordnung*) (in connection with section 4 paragraph 1 a no. 3 German Foreign Trade Law (AWG) (*Außenwirtschaftsgesetz*)).

**"Gross Negligence"** means any act or omission, whether deliberate or not, which in the circumstances (including both the probability and seriousness of the consequences likely to result) would reasonably be regarded by those familiar with the nature of the activity in question and with the surrounding circumstances, as amounting to the reckless disregard of, or serious indifference to, the consequences, being in any case more than a negligent failure to exercise proper skill and care.

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**"Group"** means the Guarantor and its Subsidiaries.

**"Guarantee"** means the Original Guarantee as amended and restated pursuant to the February 2021 Amendment and Restatement Agreement ~~-,~~ as amended by the December 2021 Amendment Agreement, as further amended by the December 2022 Amendment Agreement and as further amended and restated by the 2023 Amendment and Restatement Agreement, and as may be further amended and/or supplemented from time to time.

**"Guarantor"** means NCL Corporation Ltd., a Bermuda company with its registered office at Park Place, 55 Par-la-Ville Road, Hamilton ~~HM44~~ HM 11, Bermuda.

**"Historic Term SOFR"** means, in relation to any Term SOFR Loan, the most recent applicable Term SOFR for a period equal in length to the Interest Period of that Term SOFR Loan and which is as of a day which is no more than five US Government Securities Business Days before the Quotation Day.

**"Holding"** means Norwegian Cruise Line Holdings Ltd., a company incorporated under the laws of Bermuda with its registered office at Park Place ~~55,~~ 55 Par-la-Ville Road, Hamilton HM 11, Bermuda.

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

**"IAPPC"** means a valid international air pollution prevention certificate for the Ship issued under Annex VI.

**"Illicit Origin"** means any origin which is illicit, fraudulent or in breach of Sanctions including, without limitation, drug trafficking, corruption, organised criminal activities, terrorism, money laundering or fraud.

**"Information Package"** means the information package in connection with the "Debt Holiday" application in the form set out in schedule 4 (*Information Package*) of the February 2021 Amendment and Restatement Agreement, submitted by the Borrower (or the Guarantor on its behalf) in order to obtain the benefit of the measures provided for in the Principles for the purpose of this Agreement and certain of the Borrower's and the Guarantor's obligations under this Agreement.

**"Initial Contract Price"** has the meaning given in Recital (B).

**"Insurances"** means:

- (a) all policies and contracts of insurance, including entries of the Ship in any protection and indemnity or war risks association, which are effected in respect of the Ship, its Earnings or otherwise in relation to it; 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 a premium.

**"Intended Delivery Date"** means ~~31 March~~ [\*] (the date on which the Ship will be ready for delivery pursuant to the Shipbuilding Contract as at the date of the Original Facility Agreement) or any other date notified by the Borrower to the Facility Agent in accordance with paragraph (a) of Clause 3.5 (*No later than sixty (60) days before the Intended Delivery Date*) or paragraph (c) of Clause 3.9 (*No later than five (5) Business Days before the Intended Delivery Date*) as

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being the date on which the Builder and the Borrower have agreed that the Ship will be ready for delivery pursuant to the Shipbuilding Contract.

"**Interest Make-Up Agreement**" means an agreement on interest stabilisation (*Capitolato per il Contributo Interessi*) entered into between SIMEST and the SACE Agent on behalf of the Lenders and in form and substance acceptable to the SACE Agent, the Facility Agent and the Lenders, which provides, *inter alia*, for the ~~applicable~~ CIRR to be subsidised in relation to the Loan made available under this Agreement and to which the CIRR applies.

"**Interest ~~Make-up~~ Make-Up Event**" means the occurrence of any circumstances which result in the termination, cancellation, revocation, cessation or suspension (in each case, in whole or in part) of the Interest ~~Make-up~~ Make-Up Agreement or the Interest ~~Make-up~~ Make-Up Agreement otherwise ceases or may cease to be in full force and effect or the SACE Agent notifies the Borrower that the Fixed Interest Rate is not available for any reason, in each case, in accordance with the terms of the Interest ~~Make-up~~ Make-Up Agreement.

"**Interest Period**" means a period determined in accordance with Clause ~~7.8~~ (Interest Periods).

"**Interpolated ~~Screen Rate~~ Historic Term SOFR**" means, in relation to ~~the Loan or any part of the~~ Term SOFR Loan, the rate (rounded to the same number of decimal places as Term SOFR), which results from interpolating on a linear basis between:

(a) either

(i) ~~(a)~~ the most recent applicable ~~Screen Rate~~ Term SOFR (as of a day which is not more than five US Government Securities Business Days before the Quotation Day) for the longest period (for which that ~~Screen Rate~~ Term SOFR is available) which is less than the Interest Period of ~~the Loan or that part of the~~ Term SOFR Loan; and ~~or~~

(ii) if no such Term SOFR is available for a period which is less than the Interest Period of that Term SOFR Loan, the most recent SOFR for a day which is no more than five US Government Securities Business Days (and no less than two US Government Securities Business Days) before the Quotation Day; and

(b) the most recent applicable ~~Screen Rate~~ Term SOFR (as of a day which is not more than five US Government Securities Business Days before the Quotation Day) for the shortest period (for which ~~that~~ ~~Screen Rate~~ Term SOFR is available) which exceeds the Interest Period of ~~the Loan or that part of the~~ Loan; ~~that~~ Term SOFR Loan.

"**Interpolated Screen Rate**" means, in relation to any LIBOR 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 that LIBOR Loan; and

(b) the applicable Screen Rate for the shortest period (for which that Screen Rate is available) which exceeds the Interest Period of that LIBOR Loan.

each as of the Specified Time ~~for Dollars~~.

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"Interpolated Term SOFR" means, in relation to any Term SOFR Loan, the rate (rounded to the same number of decimal places as Term SOFR) which results from interpolating on a linear basis between:

- (a) either
  - (i) the applicable Term SOFR (as of the Quotation Day) for the longest period (for which Term SOFR is available) which is less than the Interest Period of that Term SOFR Loan; or
  - (ii) if no such Term SOFR is available for a period which is less than the Interest Period of that Term SOFR Loan, SOFR for the day which is five (5) US Government Securities Business Days before the Quotation Day; and
- (b) the applicable Term SOFR (as of the Quotation Day) for the shortest period (for which Term SOFR is available) which exceeds the Interest Period of that Term SOFR Loan.

"ISM Code" means the International Safety Management Code for the safe operation of ships and for pollution prevention (including the guidelines on its implementation), adopted by the International Maritime Organisation as the same may be amended or supplemented from time to time.

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

"Italian Authorities" means SACE and/or SIMEST and any other relevant Italian authorities involved in the implementation of the Loan.

"June 2021 Amendment and Restatement Agreement" has the meaning given to ~~this~~ such term in Recital (J).

"June 2021 Effective Date" has the meaning given to the term Effective Date in the June 2021 Amendment and Restatement Agreement.

"June 2021 Fee Letters" means any letter between the Facility Agent or the SACE Agent and any Obligor which sets out the fees payable in connection with the arrangements contemplated by the June 2021 Amendment and Restatement Agreement.

"Legislative Decree 231/01" means the Italian legislative decree of 8 June 2001, no. 231 (*Disciplina della responsabilità amministrativa delle persone giuridiche, delle società e delle associazioni anche prive di personalità giuridica, a norma dell'articolo 11 della legge 29 settembre 2000, n.300*) as amended from time to time, on administrative vicarious liability of corporate entities.

"Lender" means a Tranche A Lender, a Tranche B Lender or a Tranche C Lender.

"LIBOR" means, in relation to ~~the Loan or any~~ part of the LIBOR Loan:

- (a) the applicable Screen Rate as of the Specified Time for ~~Dollars~~ dollars and for a period equal in length to the Interest Period of ~~the Loan or that~~ part of the LIBOR Loan; or



- (b) as otherwise determined pursuant to Clause ~~6-6-7.6 (Unavailability of Screen Rate)~~ before Rate Switch Date.

and if, in either case, that rate is less than zero, LIBOR shall be deemed to be zero ~~(except with respect to the Interest Make-Up Agreement)~~.

"LIBOR Loan" means the Loan, any part of the Loan or, if applicable, Unpaid Sum to which the Floating Interest Rate applies and which is not a Term SOFR Loan.

"Loan" means 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 ~~a~~ part of a Tranche.

"Majority Lenders" means:

- (a) before an Advance under any Tranche has been made, Lenders whose Commitments total [\*] per cent. of the Total Commitments; and
- (b) after an Advance under any Tranche has been made, Lenders whose Contributions total [\*] per cent. of the Loan.

"Management Agreement" means the management agreement (if any) entered or to be entered into between the Borrower and an Approved Manager which is not a member of the Group with respect to the Ship on terms reasonably acceptable to the Majority Lenders and SACE.

"Margin" means:

- (a) in relation to the Fixed Interest Rate, the Fixed Rate Margin; and
- (b) in relation to the Floating Interest Rate, the Floating Rate Margin.

"Marina Facility Agreement" means, in respect of m.v. MARINA, a facility agreement originally dated 18 July 2008 (as amended by a supplemental agreement dated 25 October 2010, as further amended and restated by an amendment and restatement agreement dated 31 October 2014, as amended by a supplemental agreement dated 4 June 2020, as further amended and restated by an amendment and restatement agreement dated 17 February 2021, as further amended by a supplemental agreement dated 23 December 2021 and as further amended by a supplemental agreement dated 16 December 2022), as further amended, restated and supplemented from time to time.

"Maritime Registry" means the maritime registry which the Borrower will specify to the Lenders no later than 90 days before the Intended Delivery Date, being that of Bermuda, the Marshall Islands, Bahamas or such other registry as the Facility Agent may, with the approval of the Italian Authorities and at least three Lenders representing as a minimum the Majority Lenders, approve.

"Market Disruption Rate" means the percentage rate per annum which is the aggregate of the Term SOFR Reference Rate and the applicable Credit Adjustment Spread.

"Material Adverse Effect" means the occurrence of any event or circumstance which reasonably would be expected to have a material adverse effect on:

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

"**Member**" means Oceania Cruises S. de R.L., a Panamanian *sociedad de responsabilidad limitada* domiciled in Panama whose resident agent is at Arifa Building, West Boulevard, Santa Maria Business District, Panama, Republic of Panama as the sole member of the Borrower.

"**Minor Modification**" means a modification of the plans or the specification or the construction of the Ship under Article 24 of the Shipbuilding Contract, resulting in a contract price increase or decrease of less than [\*] Euros (€[\*]).

"**Model**" means the principles of the compliance system adopted by CDP pursuant to Legislative Decree 231/01, available on CDP's website ([https://en.cdp.it/kdocs/1896656/Organization\\_Management\\_and\\_Control\\_Model\\_pursuant\\_to\\_Italian\\_Legislative\\_Decree\\_No.\\_231\\_01\\_EN.pdf](https://en.cdp.it/kdocs/1896656/Organization_Management_and_Control_Model_pursuant_to_Italian_Legislative_Decree_No._231_01_EN.pdf)).

"**Mortgage**" means the first priority mortgage on the Ship acceptable for registration on the Approved Flag and, if applicable, deed of covenant, executed or to be executed by the Borrower in favour of the Security Trustee in the agreed form.

"**Mortgage Addendum**" means the addendum to the Mortgage executed pursuant to the 2023 Amendment and Restatement Agreement on or about the date hereof.

"**Obligors**" means the Borrower, the Guarantor, the Member and (in the event that the Approved Manager is a member of the Group) the Approved Manager.

"**Original Facility Agreement**" ~~has the meaning given to such term in Recital (E)~~ means the facility agreement dated 19 December 2018 and made between, amongst others, (i) the Borrower, (ii) the Lenders, (iii) the Joint Mandated Lead Arrangers, (iv) the Facility Agent, (v) the SACE Agent and (vi) the Security Trustee (as defined therein).

"**Original Guarantee**" means the guarantee issued by the Guarantor in favour of the Security Trustee on 19 December 2018.

"**Original Jurisdiction**" means, in relation to an Obligor, the jurisdiction under whose laws that Obligor is incorporated or formed, as the case may be, as at the date of this Agreement.

"**Original Maximum Loan Amount**" means the aggregate of:

- (a) the Dollar Equivalent of four hundred and sixty-two million nine hundred and sixty thousand Euros (€462,960,000); and
- (b) one hundred per cent. (100%) of the SACE Premium to be paid in accordance with Clause ~~8.1~~ 9.1 (*SACE Premium*),

provided that such amount shall not, at any time, exceed six hundred and ninety million seven hundred and eighteen thousand and seventy Dollars and fifty-four cents (\$690,718,070.54).

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"Original Principles" has the meaning given in Recital (F).

"Original Shipbuilding Contract" has the meaning given in Recital (A).

"Overnight LIBOR" means, in relation to ~~the Loan or any part of the~~ LIBOR Loan:

- (a) on any date, the applicable day to day Screen Rate as of the Specified Time for Dollars; or
- (b) as otherwise determined pursuant to Clause ~~6-6~~ 7.6 (*Unavailability of Screen Rate before Rate Switch Date*),

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

"Parallel Debt" means any amount which an Obligor owes to the Security Trustee under Clause ~~27-2~~ 28.2 (*Parallel Debt (Covenant to pay the Security Trustee)*).

"Participating Member State" means any member state of the European Union that adopts or has adopted the ~~euro~~ 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 from time to time.

"Permitted Financial Indebtedness" means any Financial Indebtedness:

- (a) incurred under the Finance Documents; or
- (b) permitted pursuant to Clause ~~12-14~~ 13.14 (*Financial Indebtedness and subordination of indebtedness*).

"Permitted Security Interests" means:

- (a) in the case of the Borrower:
    - (i) any of the Security Interests referred to in ~~sub-paragraph (A) of sub-paragraph (ii) of~~ paragraph (b)(ii)(A) below; and
    - (ii) any of the Security Interests referred to in sub-paragraphs (b)(B), (C), (E), (H) and (I) of sub-paragraph (ii) of paragraph (b)(ii)(B), (b)(ii)(C), (b)(ii)(E), (b)(ii)(H) and (b)(ii)(I) below if, by reason of any chartering or management arrangements for the Ship approved by the Facility Agent pursuant to the provisions of this Agreement, such Security Interests are created by the Borrower in the case of paragraphs (b)(ii)(C) or (b)(E) of sub-paragraph (ii) of paragraph (b)(ii)(E) or incurred by the Borrower in the case of sub-paragraphs (b)(ii)(B), (b)(ii)(H) or (b)(I) of sub-paragraph (ii) of paragraph (b)(ii)(I) below; and
  - (b) in the case of the Guarantor:
    - (i) any of the Security Interests referred to in ~~paragraphs sub-paragraphs (ii)(A), (D), (ii)(F) and (ii)(G) of sub-paragraph (ii) of paragraph (b)(G)~~ below; and
    - (ii) any of the Security Interests referred to in paragraphs (C), (E), (H) and (I) below if, by reason of any chartering or management arrangements for the Ship approved by the Facility Agent pursuant to the provisions of this Agreement,
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such Security Interests are created by the Guarantor in the case of paragraph (C) or (E) or incurred by the Guarantor in the case of paragraph (H) or (I);

- (A) any Security Interest created by or pursuant to the Finance Documents and any deposits or other Security Interests placed or incurred in connection with any bond or other surety from time to time provided to the US Federal Maritime Commission in order to comply with laws, regulations and rules applicable to the operators of passenger vessels operating to or from ports in the United States of America;
  - (B) liens on the Ship up to an aggregate amount at any time not exceeding [\*] Dollars (\$[\*]) for current crew's wages and salvage and liens incurred in the ordinary course of trading the Ship;
  - (C) any deposits or pledges up to an aggregate amount at any time not exceeding [\*] Dollars (\$[\*]) to secure the performance of bids, tenders, bonds or contracts required in the ordinary course of business;
  - (D) any other Security Interest including in relation to the Existing Indebtedness over the assets of any Obligor other than the Borrower notified by the Borrower or any of the Obligors to the Facility Agent and accepted by it prior to the date of this Agreement;
  - (E) (without prejudice to the provisions of Clause ~~42.14~~ 13.14 (*Financial Indebtedness and subordination of indebtedness*)) liens on assets leased, acquired or upgraded after the date of the Original Facility Agreement or assets newly constructed or converted after the date of the Original Facility Agreement provided that (i) such liens secure Financial Indebtedness otherwise permitted under this Agreement, (ii) such liens are incurred at the time of such lease, acquisition, upgrade, construction or conversion and (iii) the Financial Indebtedness secured by such liens does not exceed the cost of such upgrade or the cost of such assets acquired or leased;
  - (F) other liens arising in the ordinary course of business of the Group unrelated to Financial Indebtedness and securing obligations not yet delinquent or which are being contested in good faith by appropriate proceedings and for which adequate reserves have been established provided that (i) the aggregate amount of all cash and the fair market value of all other property subject to such liens as are described in this paragraph (F) does not exceed [\*] Dollars (\$[\*]) and (ii) such cash and/or other property is not an asset of the Borrower;
  - (G) subject to the other provisions of this Agreement and the Guarantee, any Security Interest in respect of existing Financial Indebtedness of a person which becomes a Subsidiary of the Guarantor or is merged with or into the Guarantor or any of its subsidiaries;
  - (H) liens in favour of credit card companies on unearned customer deposits pursuant to agreements therewith; and
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(l) liens in favour of customers on unearned customer deposits.

**"Pertinent Document"** means:

- (a) any Finance Document;
- (b) any policy or contract of insurance contemplated by or referred to in Clause ~~42-13~~ 13 (*General Undertakings*) or any other provision of this Agreement or another Finance Document;
- (c) any other document contemplated by or referred to in any Finance Document; and
- (d) any document which has been or is at any time sent by or to the Facility Agent in contemplation of or in connection with any Finance Document or any policy, contract or document falling within ~~paragraph~~ paragraphs (b) or (c).

**"Pertinent Matter"** means:

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

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

**"Pledge Agreement"** means a document creating security over the limited liability company interests in the Borrower in the agreed form.

**"Poseidon Principles"** means the financial industry framework for assessing and disclosing the climate alignment of ship finance portfolios published in June 2019 as the same may be amended or replaced to reflect changes in applicable law or regulation or the introduction of or changes to mandatory requirements of the International Maritime Organisation from time to time.

**"Post-Delivery Assignment"** means an assignment of the rights of the Borrower in respect of the post-delivery guarantee liability of the Builder under Article 25 of the Shipbuilding Contract executed or to be executed by the Borrower in favour of the Security Trustee in the agreed form.

**"Principles"** has the meaning given to such term in Recital (F).

**"Prohibited Jurisdiction"** means any country or territory which is, or whose government is, the target of country-wide or territory-wide Sanctions.

**"Prohibited Payment"** means:

- (a) any offer, gift, payment, promise to pay, commission, fee, loan or other consideration which would constitute bribery or an improper gift or payment under, or a breach of Sanctions, any laws of the Republic of Italy, England and Wales, Panama, the Council of the European Union, Germany, the United States of America or any other applicable jurisdiction; or
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- (b) any offer, gift, payment, promise to pay, commission, fee, loan or other consideration which would or might constitute bribery within the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions of 17 December 1997.

**"Prohibited Person"** means any person that (i) appears on any Sanctions list of prohibited persons, (ii) is directly or indirectly owned 50 percent or more by, or directly or indirectly controlled by, one or more persons covered by sub-section (i) above, or (iii) is located, is resident in or is incorporated or formed, as the case may be, under the laws of a Prohibited Jurisdiction.

**"Protocol of Delivery and Acceptance"** means the protocol of delivery and acceptance of the Ship to be signed by the Borrower and the Builder in accordance with Article 8 of the Shipbuilding Contract.

**"Qualifying Certificate"** means the certificate to be issued by the Builder on the Delivery Date and issued to the Facility Agent and copied to the Borrower substantially in the form set out in Schedule 5 (*Qualifying Certificate*).

**"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).~~

- (a) in relation to a LIBOR Loan, two Business Days in London (other than Saturdays and Sundays on which banks are open in London) before the first day of that period unless market practice differs in the Relevant Market in which case the Quotation Day will be determined by the Facility Agent in accordance with that market practice (and if quotations would normally be given on more than one day, the Quotation Day will be the last of those days); and
- (b) in relation to a Term SOFR Loan, two US Government Securities Business Days before the first day of that period unless market practice differs in the relevant syndicated loan market in which case the Quotation Day will be determined by the Facility Agent in accordance with that market practice (and if quotations would normally be given on more than one day, the Quotation Day will be the last of those days).

**"Quoted Tenor"** means any period for which:

- (a) in relation to a LIBOR Loan, the Screen Rate is customarily displayed on the relevant page or screen of an information service (other than for one week and two months); and
- (b) in relation to a Term SOFR Loan, Term SOFR is customarily displayed on the relevant page or screen of an information service.

**"Rate Switch Date"** means the earlier of:

- (a) the Backstop Rate Switch Date; and
- (b) any Rate Switch Trigger Event Date.
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**"Rate Switch Trigger Event" means:**

(1)

(1) =

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

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

- (2) the administrator of the Screen Rate publicly announces that it has ceased or will cease, to provide the Screen Rate for any Quoted Tenor permanently or indefinitely and, at that time, there is no successor administrator to continue to provide the Screen Rate for that Quoted Tenor;
- (3) the supervisor of the administrator of the Screen Rate publicly announces that the Screen Rate has been or will be permanently or indefinitely discontinued for any Quoted Tenor; or
- (4) the administrator of the Screen Rate or its supervisor publicly announces that the Screen Rate for any Quoted Tenor may no longer be used; or
- (2) the supervisor of the administrator of the Screen Rate publicly announces or publishes information:
  - (1) stating that the Screen Rate for any Quoted Tenor is no longer, or as of a specified future date will no longer be, representative of the underlying market and the economic reality that it is intended to measure and that such representativeness will not be restored (as determined by such supervisor); and
  - (2) with awareness that any such announcement or publication will engage certain triggers for fallback provisions in contracts which may be activated by any such pre-cessation announcement or publication.

**"Rate Switch Trigger Event Date" means:**

- (1) in the case of an occurrence of a Rate Switch Trigger Event described in subparagraph (1) of paragraph (1) of the definition of Rate Switch Trigger Event, the date on which the
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Screen Rate ceases to be published or otherwise becomes unavailable;

(2) in the case of an occurrence of a Rate Switch Trigger Event described in sub-paragraph (2), (3) or (4) of paragraph (1) of the definition of Rate Switch Trigger Event, the date on which the Screen Rate for the relevant Quoted Tenor ceases to be published or otherwise becomes unavailable; and

(3) in the case of an occurrence of a Rate Switch Trigger Event described in paragraph (2) of the definition of Rate Switch Trigger Event, the date on which the Screen Rate for the relevant Quoted Tenor ceases to be representative of the underlying market and the economic reality that it is intended to measure (as determined by the supervisor of the administrator of such Screen Rate).

"**Receiver**" means a receiver or receiver and manager or administrative receiver of the whole or any part of the Charged Property

"**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 ~~as either:~~

(a) if:

(i) the Reference Bank is a contributor to the ~~applicable~~ 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 ~~the relevant currency~~ Dollars for the relevant period with reference to the unsecured wholesale funding market.

"**Reference Banks**" means such entities as may be appointed by the Facility Agent in consultation with the Borrower.

~~"**Relevant Interbank Market**" means the London Interbank Market.~~

"**Reinstatement Event**" means the final 2021 Deferral Final Repayment Date or any date when all Deferral Tranches under the Delivered Vessel Facilities (as defined therein) are repaid or prepaid in full.

"**Relevant Jurisdiction**" means, in relation to an Obligor:

(a) its jurisdiction of incorporation, or formation, as the case may be;

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- (b) any jurisdiction where any asset subject to, or intended to be subject to, any of the Security Interests created, or intended to be created, under the Finance Documents to which it is a party is situated;
- (c) any jurisdiction where it conducts its business; and
- (d) the jurisdiction whose laws govern the perfection of any of the Security Interests created, or intended to be created, under the Finance Documents to which it is a party.

**"Relevant Market" means:**

- (a) subject to paragraph (b) below, the London interbank market; and
- (b) on or after the Rate Switch Date, the market for overnight cash borrowing collateralised by US Government securities.

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

**"Repayment Date"** means a date on which a repayment is required to be made under Clause 5 (*Repayment*).

**~~"Replacement Benchmark" means a benchmark rate which is:~~**

- (a) ~~formally designated, nominated or recommended as the replacement for a Screen Rate by:~~
  - (i) ~~the administrator of that Screen Rate (provided that the market or economic reality that such benchmark rate measures is the same as that measured by that Screen Rate); or~~
  - (ii) ~~any Relevant Nominating Body;~~

~~and if replacements have, at the relevant time, been formally designated, nominated or recommended under both paragraphs, the "Replacement Benchmark" will be the replacement under paragraph (ii) above;~~

- (b) ~~in the opinion of the Majority Lenders and the Borrower, generally accepted in the international or any relevant domestic syndicated loan markets as the appropriate successor to a Screen Rate; or~~

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

**"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"**.

**"Restricted Creditor Party"** means a Creditor Party which serves a notice pursuant to paragraph (a) of Clause ~~36.7~~ 37.7 (*Non-applicable provisions between the Obligors, German Lenders and any Creditor Party subject to the EU Blocking Regulation*).

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

**"Riviera Facility Agreement"** means, in respect of m.v. RIVIERA, a facility agreement originally dated 18 July 2008 (as amended by a supplemental agreement dated 25 October 2010, as amended by a side letter dated 29 March 2012, as amended and restated by an amendment and restatement agreement dated 31 October 2014, as amended by a framework agreement dated 31 January 2018, as amended by a supplemental agreement dated 4 June 2020, as further amended and restated by an amendment and restatement agreement dated 17 February 2021, as further amended by a supplemental agreement dated 23 December 2021 and as further amended by a supplemental agreement dated 16 December 2022), as further amended, restated and supplemented from time to time.

**"SACE"** means SACE S.p.A., an Italian joint stock company (*società per azioni*) with a sole shareholder, whose registered office is located at Piazza Poli 37/42, 00187 Rome, Italy and registered with the Companies Registry of Rome under number 05804521002.

**"SACE Agent"** means Crédit Agricole Corporate and Investment Bank, a French "*société anonyme*", having a share capital of seven billion eight hundred and fifty one million six hundred and thirty six thousand three hundred and forty two Euros (€7,851,636,342) and its registered office located at 12, place des Etats-Unis, CS 70052, 92547 Montrouge cedex, France, registered under the n° Siren 304 187 701 at the Registre du Commerce et des Sociétés of Nanterre or any successor of it appointed under Clause ~~26-27~~ (*Role of the Facility Agent ~~and~~ the Joint Mandated Lead Arrangers ~~and~~ the SACE Agent ~~and the Reference Banks~~*).

**"SACE Insurance Policy"** means the insurance policy (as amended and supplemented from time to time) in respect of this Agreement (which, in all material respects, is not inconsistent with the commercial terms of this Agreement) issued or to be issued by SACE for the benefit of the Lenders in respect of one hundred per cent. (100%) of the Loan together with interest thereon in form and substance satisfactory to the Facility Agent, the SACE Agent and all the Lenders.

**"SACE Premium"** means the amount payable by the Borrower to SACE directly or through the SACE Agent in two instalments, being the SACE Premium Instalments, in respect of the SACE Insurance Policy as set out in Clause ~~8.4~~ 9.1 (*SACE Premium*).

**"SACE Premium Instalments"** means each of the First Instalment and Second Instalment.

**"SACE Required Documents"** means in relation to the Drawdown Notice under Tranche A and under Tranche B:

- (a) a duly completed and executed Qualifying Certificate; and
- (b) each of the other documents, information and other evidence specified in or required to be enclosed with such Qualifying Certificate.

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

**"Sanctions"** means any financial, economic or trade sanctions, embargoes or other restrictions relating to trading, doing business, investment, exporting, importing, travelling, financing or making assets available (or other activities similar to or connected with any of the foregoing):

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- (a) imposed by law or regulation of the United Kingdom, the Hong Kong Monetary Authority, the European Union or the Council of the European Union, the United Nations or its Security Council or imposed by any member state of the European Union or Switzerland;
- (b) imposed by the US, including the U.S. Department of the Treasury's Office of Foreign Assets Control (OFAC); or
- (c) otherwise imposed by any law or regulation.

"**SBC Effective Date**" means the effective date under the Shipbuilding Contract.

"**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 (before any correction, recalculation or republication by the administrator) on page LIBOR01 of the Thomson Reuters screen (or any replacement Thomson Reuters page which displays that rate) or on the appropriate page of such other information service which publishes that rate from time to time in place of Thomson Reuters. If such page or service ceases to be available, the Facility Agent may specify another page or service displaying the relevant rate after consultation with the Borrower.

~~"Screen Rate Contingency Period" means fifteen (15) Business Days.~~

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

~~(a) the methodology, formula or other means of determining that Screen Rate has, in the opinion of the Majority Lenders and the Borrower materially changed;~~

~~(b)~~

~~(i)~~

~~(A) the administrator of that Screen Rate or its supervisor publicly announces that such administrator is insolvent;~~

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

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

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

~~(iii) the supervisor of the administrator of that Screen Rate publicly announces that such Screen Rate has been or will be permanently or indefinitely discontinued; or~~

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- ~~(iv) the administrator of that Screen Rate or its supervisor announces that that Screen Rate may no longer be used;~~
- ~~(v) in the case of a Screen Rate for LIBOR, the supervisor of the administrator of that Screen Rate makes a public announcement or publishes information:~~
- ~~(A) stating that that Screen Rate is no longer or, as of a specified future date will no longer be, representative of the underlying market or economic reality that it is intended to measure and that representativeness will not be restored (as determined by such supervisor); and~~
- ~~(B) with awareness that any such announcement or publication will engage certain triggers for fallback provisions in contracts which may be activated by any such pre-cessation announcement or publication; or~~
- ~~(e) the administrator of that Screen Rate determines that that Screen Rate should be calculated in accordance with its reduced submissions or other contingency or fallback policies or arrangements and either:~~
- ~~(i) the circumstance(s) or event(s) leading to such determination are not (in the opinion of the Majority Lenders and the Borrower) temporary; or~~
- ~~(ii) that Screen Rate is calculated in accordance with any such policy or arrangement for a period no less than the Screen Rate Contingency Period; or~~
- ~~(d) in the opinion of the Majority Lenders and the Borrower, that Screen Rate is otherwise no longer appropriate for the purposes of calculating interest under this Agreement.~~

"**Second Instalment**" means the second instalment of the SACE Premium as more particularly described in paragraph (b) of Clause ~~8.4~~9.1 (*SACE Premium*).

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

"**Secured Party**" means SACE, the Facility Agent, the Security Trustee, the SACE Agent, the Joint Mandated Lead Arrangers or any Lender whether at the date of the Original Facility Agreement or any later time, a Receiver or any Delegate.

"**Security Interest**" means:

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

**"Security Period"** means the period commencing on the Effective Date and ending on the date on which:

- (a) all amounts which have become due for payment by the Borrower or any Obligor under the Finance Documents have been fully and irrevocably paid;
- (b) no amount is owing or has accrued (without yet having become due for payment) under any Finance Document;
- (c) neither the Borrower nor any other Obligor has any future or contingent liability under Clause ~~49-20~~ 49-20 (*Application of sums received*) below or any other provision of this Agreement or another Finance Document; and
- (d) the Facility Agent does 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 the Borrower or an Obligor 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 Property"** means:

- (a) the Security Interests expressed to be granted in favour of the Security Trustee as trustee for the Secured Parties and all proceeds received or recovered by or on behalf of the Security Trustee under or by virtue of any Security Interest including any money or other assets which are received or recovered by it as a result of the enforcement or exercise by it of such a Security Interest or right;
- (b) all obligations expressed to be undertaken by an Obligor to pay amounts in respect of the Secured Liabilities to the Security Trustee as trustee for the Secured Parties and secured by the Security Interests together with all representations and warranties expressed to be given by an Obligor in favour of the Security Trustee as trustee for the Secured Parties;
- (c) the Security Trustee'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 Trustee is required by the terms of the Finance Documents to hold as trustee on trust for the Secured Parties,

except:

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

**"Security Requirement"** means the amount in Dollars (as certified by the Facility Agent whose certificate shall, in the absence of manifest error, be conclusive and binding on the Borrower and the Facility Agent) which is at any relevant time one hundred and twenty-five per cent. (125%) of the Loan.

**"Security Trustee"** means HSBC Corporate Trustee Company (UK) Limited, a company incorporated in England and Wales (with registered number 6447555) whose registered office is located at 8 Canada Square, London, E14 5HQ or any successor of it appointed under Clause ~~27-28~~ (*The Security Trustee*).

**"Security Value"** means the amount in Dollars (as certified by the Facility Agent whose certificate shall, in the absence of manifest error, be conclusive and binding on the Borrower and the Facility Agent) which, at any relevant time, is the aggregate of (i) the charter free market value of the Ship as most recently determined in accordance with Clause ~~13-4~~ 14.4 (*Valuation of the Ship*); and (ii) the market value of any additional security for the time being actually provided to the Facility Agent pursuant to Clause ~~45-16~~ (*Security Value Maintenance*).

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

**"Seven Seas Explorer Facility Agreement"** means, in respect of m.v. SEVEN SEAS EXPLORER, a facility agreement originally dated 31 July 2013 (as amended and restated by an amendment and restatement agreement dated 31 October 2014, as amended by a supplemental agreement dated 4 June 2020, as further amended and restated pursuant to an amendment and restatement agreement dated 17 February 2021, as further amended by a supplemental agreement dated 23 December 2021 and as further amended by a supplemental agreement dated 16 December 2022), as further amended, restated and supplemented from time to time.

**"Seven Seas Splendor Facility Agreement"** means, in respect of m.v. SEVEN SEAS SPLENDOR, a facility agreement originally dated 30 March 2016 (as amended by a supplemental agreement dated 4 June 2020, as further amended and restated pursuant to an amendment and restatement agreement dated 17 February 2021, as further amended by a supplemental agreement dated 23 December 2021 and as further amended by a supplemental agreement dated 16 December 2022), as further amended, restated and supplemented from time to time.

**"Shareholder"** means Oceania Cruises S. de R.L., a Panamanian *sociedad de responsabilidad limitada* domiciled in Panama whose resident agent is at Arifa Building, West Boulevard, Santa Maria Business District, Panama, Republic of Panama as the sole member of the Borrower.

**"Ship"** means the passenger cruise ship ~~currently designated with Hull No-[\*]~~ m.v. "Vista" (as more particularly described in the Shipbuilding Contract) ~~to be~~ constructed under the Shipbuilding Contract and ~~to be~~ delivered to, and purchased by, the Borrower and registered in its name under an Approved Flag.

**"Shipbuilding Contract"** has the meaning given in Recital ~~(I)~~ A.

**"SIMEST"** means Società Italiana per Le Imprese all'Estero - SIMEST S.p.A., which grants export subsidies in Italy under and according to the Italian Legislative Decree n. 143/98 and its amendments.

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"**SIMEST Margin Contribution**" means the margin contribution approved and granted by SIMEST to the Lenders under the Interest ~~Make-up~~ Make-Up Agreement as communicated by the SACE Agent to the Creditor Parties and the Borrower following the date of ~~the Original Facility~~ this Agreement as soon as the SACE Agent is made aware of it.

"SOFR" means the secured overnight financing rate (SOFR) administered by the Federal Reserve Bank of New York (or any other person which takes over the administration of that rate) published (before any correction, recalculation or republication by the administrator) by the Federal Reserve Bank of New York (or any other person which takes over the publication of that rate).

"**Specified Time**" means a day or time determined in accordance with the following:

(a) if LIBOR is fixed, the Quotation Day as of 11:00 am ~~Brussels~~ London time; and

~~(b)~~ in relation to a Reference Bank Rate calculated by reference to the available quotations in accordance with Clause ~~6.7-7.7~~ (Calculation of Reference Bank Rate), ~~11.30 am Brussels time~~ noon on the Quotation Day.

"**Structuring Fee**" has the meaning given in paragraph (a) of Clause ~~9-10~~ (Fees).

"**Subordinated Debt Security**" has the meaning given in sub-paragraph (b)(ii) of Clause ~~12.14-13.14~~ (Financial Indebtedness and subordination of indebtedness).

"**Subsidiary**" has the following meaning:

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

- (a) a majority of the issued equity interests in S (or a majority of the issued equity interests 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 attaching to the issued equity interests of S; or
- (c) P has the direct or indirect power to appoint or remove a majority of the directors (or equivalent) of S; or
- (d) P otherwise has the direct or indirect power to ensure that the affairs of S are conducted in accordance with the wishes of P;

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

"**Tax**" means any tax, levy, impost, duty, assessment, fee, deduction or other charge or withholding of a similar nature imposed by any governmental authority (including any penalty or interest payable in connection with any failure to pay or any delay in paying any of the same).

"Term and Revolving Credit Facilities" means the facilities granted pursuant to the credit agreement originally dated 24 May 2013 (as amended and restated from time to time) between, inter alios, the Guarantor and Voyager Vessel Company, LLC as borrowers, the lenders party thereto and JPMorgan Chase Bank, N.A., as administrative agent and collateral agent.

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"Term SOFR" means a term SOFR reference rate administered by CME Group Benchmark Administration Limited (or any other person which takes over the administration of that rate) for the relevant period published (before any correction, recalculation or republication by the administrator) by CME Group Benchmark Administration Limited (or any other person which takes over the publication of that rate).

"Term SOFR Loan" means the Loan, any part of the Loan or, if applicable, Unpaid Sum to which the Floating Interest Rate applies and which is, or becomes, a "Term SOFR Loan" pursuant to Clause 6 (Rate Switch).

"Term SOFR Reference Rate" means, in relation to any Term SOFR Loan:

- (a) the applicable Term SOFR as of the Quotation Day and for a period equal in length to the Interest Period of that Term SOFR Loan; or
- (b) as otherwise determined pursuant to Clause 7.8 (Unavailability of Term SOFR),

and if, in either case, the aggregate of that rate and the applicable Credit Adjustment Spread is less than zero, the Term SOFR Reference Rate shall be deemed to be such a rate that the aggregate of the Term SOFR Reference Rate and the Credit Adjustment Spread is zero.

"Third Party Act" means the Contracts (Rights of Third Parties) Act 1999.

"Total Commitments" means the aggregate of the Total Tranche A Commitments, the Total Tranche B Commitments and the Total Tranche C Commitments, being ~~seven-six~~ hundred and ~~ninety-forty-six~~ million, eight hundred fifty eight thousand, four hundred ~~forty-six and forty-seven~~ United States Dollars and ~~ninety-eight Cents (\$790,858,446.08)~~ one cent (\$646,858,447.01) as at the date of this Agreement.

~~"Third Party Act" means the Contracts (Rights of Third Parties) Act 1999.~~

"Total Loss" means:

- (a) actual, constructive, compromised, agreed or arranged total loss of the Ship;
- (b) any expropriation, confiscation, requisition or acquisition of the 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 1 year without any right to an extension) unless it is within 1 month redelivered to the Borrower's full control;
- (c) any arrest, capture, seizure or detention of the Ship (including any hijacking or theft) unless it is within 1 month redelivered to the Borrower's full control.

"Total Loss Date" means:

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

**"Total Tranche A Commitments"** means the aggregate of the Tranche A Commitments, being ~~six-five~~ ninety-sixty-three hundred and ~~ninety-sixty-three~~ seventy million seven hundred and eighteen thousand and seventy Dollars and ~~fifty-four-fifty-seven~~ seventy cents (~~\$690,718,070.54~~\$563,718,070.57) as at the date of this Agreement.

**"Total Tranche B Commitments"** means the aggregate of the Tranche B Commitments, being ~~eighty-one~~ sixty-seven million, one hundred and thirty-two thousand and fifty-one United States Dollars and twenty eight ~~Cents~~ cents (~~(\$81,132,051.28~~cents (\$67,132,051.28)) as at the date of this Agreement.

**"Total Tranche C Commitments"** means the aggregate of the Tranche C Commitments, being ~~nineteen~~ sixteen million, eight thousand three hundred and twenty-five United States Dollars and sixteen ~~Cents~~ cents (~~\$19,008,325.16~~\$16,008,325.16) as at the date of this Agreement.

**"Tranche"** means Tranche A, Tranche B or Tranche C.

**"Tranche A"** means the part of the Facility made or to be made available by the Tranche A Lenders to the Borrower to finance (i) up to the Eligible Amount, the Dollar Equivalent of four hundred and sixty-two million nine hundred and sixty thousand Euros (€462,960,000), corresponding to all or part of eighty per cent. (80%) of the Final Contract Price, (ii) the First Instalment of the SACE Premium and (iii) the Second Instalment of the SACE Premium.

**"Tranche A Commitments"** means, in relation to a Tranche A Lender, the amount set opposite its name under the heading "Tranche A Lenders" in Part A of Schedule 1 (*Lenders and Commitments*) and the amount of any ~~other~~ Tranche A Commitment transferred to it under this Agreement, to the extent not cancelled, reduced, terminated or transferred by it under this Agreement.

**"Tranche A Lender"** means a bank, financial institution, trust, fund or other entity listed in Part A of Schedule 1 (*Lenders and Commitments*) and acting through its Facility Office or its transferee, successor or ~~assign~~ assignee.

**"Tranche B"** means the part of the Facility to be made available by the Tranche B Lenders to the Borrower to finance:

- (i) up to the Upsize Allowance Eligible Amount, the Dollar Equivalent of fifty-two million eight hundred thousand Euros (€52,800,000), corresponding to all or part of eighty per cent. (80%) of the Upsize Allowance Price; and
  - (ii) 100% of the Tranche B Premium to be paid in accordance with Clause ~~8-6-9.6~~ 9.6 (*Tranche B Premium*).
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**"Tranche B Commitments"** means, in relation to a Tranche B Lender, the amount set opposite its name under the heading "Tranche B Lenders" in Part B of Schedule 1 (*Lenders and Commitments*) and the amount of any other Tranche B Commitment transferred to it under this Agreement, to the extent not cancelled, reduced, terminated or transferred by it under this Agreement.

**"Tranche B Lender"** means a bank, financial institution, trust, fund or other entity listed in Part B of Schedule 1 (*Lenders and Commitments*) and acting through its Facility Office or its transferee, successor or assign~~ee~~assignee.

**"Tranche B Premium"** has the meaning given to this term in paragraph (a) of Clause ~~8-6-9.6~~9.6 (*Tranche B Premium*).

**"Tranche C"** means the part of the Facility to be made available by the Tranche C Lenders to the Borrower to finance, if applicable, the second instalment of the Additional SACE Premium, calculated in accordance with paragraph (a)(ii) of Clause ~~8-5-9.5~~9.5 (*Additional SACE Premium*).

**"Tranche C Commitments"** means, in relation to a Tranche C Lender, the amount set opposite its name under the heading "Tranche C Lenders" in Part C of Schedule 1 (*Lenders and Commitments*) and the amount of any other Tranche C Commitment transferred to it under this Agreement, to the extent not cancelled, reduced, terminated or transferred by it under this Agreement.

**"Tranche C Lender"** means a bank, financial institution, trust, fund or other entity listed in Part C of Schedule 1 (*Lenders and Commitments*) and acting through its Facility Office or its transferee, successor or assign~~ee~~assignee.

**"Transaction Documents"** means the Finance Documents and the Underlying Documents.

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

**"UK Bail-In Legislation"** means (to the extent that the United Kingdom is not an EEA Member Country which has implemented, or implements, Article 55 BRRD) Part 1 of the United Kingdom Banking Act 2009 and any other law or regulation applicable in the United Kingdom relating to the resolution of unsound or failing banks, investment firms or other financial institutes or their affiliates (otherwise than through liquidation, administration or other insolvency proceedings).

**"Underlying Documents"** means the Shipbuilding Contract, any Management Agreement, any bareboat charter and any charter and associated guarantee in respect of which a notice of assignment is required to be served under the terms of the General Assignment.

**"Unpaid Sum"** means (i) any sum due and payable but unpaid by an Obligor under the Finance Documents and (ii) any part of the Aggregate SACE Premium unpaid by the Borrower.

**"Upsize Allowance"** means an allowance in relation to:

- (a) supplies such as loose furniture, spare parts, artworks and other services linked to the construction, decoration and operation of the Ship, pursuant to Article 9.2(ii)(a) of the Shipbuilding Contract; and
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- (b) the improvements to the Ship identified in the appendices and collateral arrangements to the Shipbuilding Contract and other changes agreed between the Borrower (as Owner under the Shipbuilding Contract) and the Builder, pursuant to article 9.2(ii)(b) of the Shipbuilding Contract.

**"Upsize Allowance Eligible Amount"** means eighty per cent. (80%) of the Dollar Equivalent of the Upsize Allowance Price.

**"Upsize Allowance Price"** means the price for the Upsize Allowance, in an amount of sixty-six million Euros (€66,000,000).

**"US"** means the United States of America.

**"US Government Securities Business Day"** means any day other than:

(a) a Saturday or a Sunday; and

(b) a day on which the Securities Industry and Financial Markets Association (or any successor organisation) recommends that the fixed income departments of its members be closed for the entire day for purposes of trading in US Government securities.

**"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.

**"Write-down and Conversion Powers"** means:

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

## 1.2 Construction of certain terms

In this Agreement:

**"Facility Agent"**, the **"SACE Agent"**, the **"Joint Mandated Lead Arranger"**, the **"Security Trustee"**, **"SACE"**, any **"Creditor Party"**, any **"Secured Party"**, any **"Lender"**, any **"Tranche A Lender"**, any **"Tranche B Lender"**, any **"Tranche C Lender"**, any **"Obligor"** or any other **"person"**, shall be construed so as to include its successors in title, permitted assigns and permitted transferees.

**"approved by the Lenders"** (or any similar determination or instruction by the Lenders) means approved in writing by the Facility Agent acting on the instructions of all the Lenders and approved in writing by the SACE Agent acting on the instructions of SACE (or the Lenders only to the extent the SACE Insurance Policy does not cover the event for which such instruction or approval is required) (on such conditions as they may respectively impose) and any requirement for approval by all the Lenders shall mean prior approval.

**"approved by the Majority Lenders"** (or any similar determination or instruction by the Majority Lenders) means approved in writing by the Facility Agent acting on the instructions of the Majority Lenders and approved in writing by the SACE Agent acting on the instructions of SACE (or the Majority Lenders only to the extent the SACE Insurance Policy does not cover the event for which such instruction or approval is required) (on such conditions as they may respectively impose) and otherwise "approved" means approved in writing by the Facility Agent (on such conditions as the Facility Agent may impose) and "approval" and "approve" shall be construed accordingly and any requirement for approval by the Facility Agent, the SACE Agent or the Majority Lenders shall mean prior approval.

**"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.

**"date of this Agreement"** means ~~\_\_\_\_\_~~ ~~2024~~ the 2023 Effective Date.

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"document" includes a deed; also a letter-u or electronic mail.

"expense" means any kind of cost, charge or expense (including all legal costs, charges and expenses) and any applicable Taxes including VAT.

a Lender's "cost of funds" in relation to its participation in the Loan or any part of the Loan is a reference to the average cost (determined either on an actual or a notional basis) which that Lender would incur if it were to fund, from whatever source(s) it may reasonably select, an amount equal to the amount of that participation in the Loan or that part of the Loan for a period equal in length to the Interest Period of the Loan or that part of the Loan.

"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.

"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<sub>u</sub>.

"law" includes any order or decree, any form of delegated legislation, any treaty or international convention and any regulation or resolution of the Council of the European Union, the European Commission, the United Nations or its Security Council.

"legal or administrative action" means any legal proceeding or arbitration and any administrative or regulatory action or investigation.

"liability" includes every kind of debt or liability (present or future, certain or contingent), whether incurred as principal or surety or otherwise.

"months" shall be construed in accordance with Clause 1.4 (*Meaning of "month"*).

"parent company" has the meaning given in the definition of "Subsidiary".

"person" includes any individual, firm, company, corporation, government, any state, political sub-division of a state and local or municipal authority, agency of a state or any association, trust, joint venture, consortium or partnership; and any international organisation (whether or not having a separate legal personality).

"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.

"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.

### 1.3 Construction of Insurance Terms

"approved" means, for the purposes of Clause ~~14~~15 (*Insurance Undertakings*), approved in writing by the Facility Agent.

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

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**"obligatory insurances"** means all insurances effected, or which the Borrower is obliged to effect, under Clause ~~44-15~~ (*Insurance Undertakings*) or any other provision of this Agreement or another Finance Document.

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

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

**"war risks"** includes the risk of mines and all risks excluded by 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 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.

#### 1.5 General Interpretation

In this Agreement:

- (a) references in Clause 1.1 (*Definitions*) to a Finance Document or any other document being an **"agreed form"** are to the form agreed between the Facility Agent (acting with the authorisation of each of the Creditor Parties and SACE) and the Borrower with any modifications to that form which the Facility Agent (with the authorisation of the Majority Lenders and SACE in the case of substantial modifications) approves or reasonably requires;
  - (b) references to, or to a provision of, a Finance Document or any other document are references to it as amended, amended and restated or supplemented, whether before the date of this Agreement or otherwise;
  - (c) references to Sanctions, for the purposes of Clause ~~44-12~~ (*Representations and Warranties*), Clause ~~42-13~~ (*General Undertakings*), Clause ~~20-21~~ (*Indemnities*), Clause ~~24-22~~ (*Illegality, etc.*) and the Finance Documents shall mean "Sanctions" as defined in Clause 1.1 (*Definitions*), by which any Obligor, any Creditor Party or any party involved in the transactions contemplated
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in the Finance Documents is bound or to which it is subject or, as regards a regulation, compliance with which is reasonable in the ordinary course of business of any Obligor or any Creditor Party;

- (d) references to, or to a provision of, any law or regulation include any amendment, extension, re-enactment or replacement, whether made before the date of this Agreement or otherwise;
- (e) 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;
- (f) words denoting the singular number shall include the plural and vice versa; and
- (g) Clauses 1.1 (*Definitions*) to 1.5 (*General Interpretation*) apply unless the contrary intention appears.

## 1.6 Headings

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

## 1.7 Schedules

The schedules form an integral part of this Agreement.

## 2 FACILITY

### 2.1 Amount of facility

Subject to the other provisions of this Agreement:

- (a) the Tranche A Lenders agree to make available to the Borrower a loan in relation to Tranche A in one (1) Advance not exceeding, in aggregate, the Total Tranche A Commitments intended to be applied as follows:
    - (i) in payment to the Builder, up to the Eligible Amount, of all or part of eighty per cent. (80%) of the Final Contract Price;
    - (ii) in reimbursement to the Borrower of the amount of the First Instalment of the SACE Premium paid by it to SACE in accordance with paragraph (a) of Clause ~~8.4~~9.1 (*SACE Premium*); and
    - (iii) in payment to SACE of the amount of the Second Instalment of the SACE Premium payable by the Borrower to SACE in accordance with paragraph (b) of Clause ~~8.4~~9.1 (*SACE Premium*);
  - (b) the Tranche B Lenders agree to make available to the Borrower a loan in relation to Tranche B in one (1) Advance not exceeding, in aggregate, the Total Tranche B Commitments intended to be applied as follows:
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- (i) in reimbursement to the Borrower or in payment to the Builder, up to the Upsize Allowance Eligible Amount, of all or part of eighty per cent. (80%) of the Upsize Allowance Price; and
- (ii) in reimbursement to the Borrower and in payment to SACE, as applicable, 100% of the amount of the Tranche B Premium payable by the Borrower to SACE in accordance with paragraph (a) of Clause ~~8-6~~ 9.6 (*Tranche B Premium*); and
- (c) the Tranche C Lenders agree to make available to the Borrower a loan in relation to Tranche C in one (1) Advance not exceeding the Total Tranche C Commitments intended to be applied in payment to SACE of the amount of the second instalment of the Additional SACE Premium which may be payable by the Borrower to SACE in accordance with paragraph (b) to (d) of Clause ~~8-5~~ 9.5 (*Additional SACE Premium*).

## **2.2 Lenders' participations in Loan**

Subject to the other provisions of this Agreement:

- (a) each Tranche A Lender shall participate in an Advance under Tranche A in the proportion which, as at the Drawdown Date, its Tranche A Commitment bears to the Total Tranche A Commitments;
- (b) each Tranche B Lender shall participate in an Advance under Tranche B in the proportion which, as at the Drawdown Date, its Tranche B Commitment bears to the Total Tranche B Commitments; and
- (c) each Tranche C Lender shall participate in an Advance under Tranche C in the proportion which, as at the Drawdown Date, its Tranche C Commitment bears to the Total Tranche C Commitments.

## **2.3 Purpose of Loan**

The Borrower undertakes with each Secured Party to use:

- (a) an Advance under Tranche A only to pay for:
    - (i) goods and services of Italian origin incorporated in the design, construction or delivery of the Ship;
    - (ii) subject to the limits and conditions fixed by the Italian Authorities, goods and services incorporated in the design, construction or delivery of the Ship and originating from countries other than Italy where the provision of such goods or services has been sub-contracted by the Builder and therefore remains the Builder's responsibility under the Shipbuilding Contract;
    - (iii) all or part of eighty per cent. (80%) of the Final Contract Price;
    - (iv) reimbursement to the Borrower of the First Instalment of the SACE Premium paid by the Borrower direct to SACE in accordance with paragraph (a) of Clause ~~8-4~~ 9.1 (*SACE Premium*); and
    - (v) the Second Instalment of the SACE Premium payable in accordance with paragraph (b) of Clause ~~8-4~~ 9.1 (*SACE Premium*);
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- (b) an Advance under Tranche B only to pay:
  - (i) for goods and services in relation to the Upsize Allowance;
  - (ii) subject to the limits and conditions fixed by the Italian Authorities, goods and services incorporated in the design, construction or delivery of the Ship and originating from countries other than Italy where the provision of such goods or services has been sub-contracted by the Builder and therefore remains the Builder's responsibility under the Shipbuilding Contract;
  - (iii) all or part of eighty per cent. (80%) of the Upsize Allowance Price; and
  - (iv) one hundred per cent. (100%) of the Tranche B Premium, payable in accordance with the provisions of paragraph (a) of Clause ~~8-6-9.6~~ (*Tranche B Premium*); and
- (c) an Advance under Tranche C only to pay for the second instalment of the Additional SACE Premium which may be payable in accordance with ~~paragraph~~ paragraph (a)(ii) of Clause ~~8-5-9.5~~ (*Additional SACE Premium*).

#### **2.4 Creditor Parties' rights and obligations**

- (a) The obligations of each Creditor Party under the Finance Documents are several. Failure by a Creditor Party to perform its obligations under the Finance Documents does not affect the obligations of any other Party under the Finance Documents. No Creditor Party is responsible for the obligations of any other Creditor Party under the Finance Documents.
- (b) The rights of each Creditor Party and SACE under or in connection with the Finance Documents are separate and independent rights and any debt arising under the Finance Documents to a Creditor Party and SACE from an Obligor shall be a separate and independent debt.
- (c) A Creditor Party and SACE may not, except as otherwise stated in the Finance Documents, separately enforce its rights under the Finance Documents.
- (d) Notwithstanding any other provision of the Finance Documents and subject to the prior written consent of SACE, a Creditor Party may separately sue for any Unpaid Sum due to it without the consent of any other Creditor Party or joining any other Creditor Party to the relevant proceedings (it being understood that a Creditor Party may file a claim noting the amounts due to it in the event insolvency proceedings are commenced against the Borrower by a third party).

#### **2.5 Monitoring**

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

#### **2.6 Obligations of Lenders several**

The obligations of the Lenders under this Agreement are several; and a failure of a Lender to perform its obligations under this Agreement shall not result in:

- (a) the obligations of the other Lenders being increased; nor
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- (b) any Obligor or any other Lender being discharged (in whole or in part) from its obligations under any Finance Document,

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

### **3 CONDITIONS PRECEDENT**

#### **3.1 General**

The Borrower may only draw an Advance under a Tranche when the following conditions have been fulfilled to the satisfaction of the Facility Agent and provided no Event of Default shall have occurred and remains unremedied or is likely to occur as a consequence of the drawing of the Loan:

#### **3.2 No later than the Effective Date**

The Facility Agent shall have received no later than the Effective Date:

- (a) an opinion from legal counsel to the Secured Parties as to the laws of the state of Delaware in form and substance satisfactory to the Facility Agent and the Secured Parties in respect of the Borrower's execution of any Finance Documents to which they are party on the Effective Date;
  - (b) an opinion from legal counsel to the Secured Parties as to English law in form and substance satisfactory to the Facility Agent and the Secured Parties in respect of the validity and enforceability of the Original Facility Agreement and the Original Guarantee;
  - (c) an opinion from legal counsel to the Secured Parties as to Bermuda law in form and substance satisfactory to the Facility Agent and the Secured Parties in respect of the Guarantor's execution of the Original Guarantee;
  - (d) an opinion from legal counsel to the Secured Parties as to the laws of the state of New York in form and substance satisfactory to the Facility Agent and the Secured Parties in respect of the validity and enforceability of the Pledge Agreement;
  - (e) an opinion from legal counsel to the Secured Parties as to Panamanian law in form and substance satisfactory to the Facility Agent and the Secured Parties in respect of the Member's execution of the Pledge Agreement;
  - (f) a Certified Copy of the executed Shipbuilding Contract;
  - (g) such documentary evidence as the Facility Agent and its legal advisers may require in relation to the due authorisation and execution by the Borrower and the Builder of the Shipbuilding Contract and of all documents to be executed by the Borrower and the Builder;
  - (h) a confirmation from Hannaford Turner LLP currently of 107 Cheapside, London UK, EC2V 6DN that it will act for the Borrower and the Guarantor as agent for service of process in England in respect of the Original Facility Agreement and any other Finance Document;
  - (i) duly executed originals of the Original Guarantee and the Pledge Agreement and of each document to be submitted pursuant to it;
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- (j) such documentation and other evidence as is reasonably requested by the Facility Agent (for itself or on behalf of any Lender or SACE) or any Lender or SACE (for itself) in order for the Facility Agent and such Lender or SACE 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;
- (k) payment of the initial portion of the Structuring Fee as set out in and payable in accordance with the relevant Fee Letter; and
- (l) payment of the initial portion of the Facility Agent Fee (as defined in the relevant Fee Letter), the initial portion of the SACE Agency Fee (as defined in the relevant Fee Letter), the initial portion of Security Trustee Fee (as defined in the relevant Fee Letter) and any other such fees which may be payable by the Borrower to a Creditor Party, payable in accordance with terms of the relevant Fee Letter.

### **3.3 No later than two (2) years before the Intended Delivery Date**

The Facility Agent shall have received no later than two (2) years before the Intended Delivery Date, payment of the remaining portion of the Structuring Fee as set out in and payable in accordance with the relevant Fee Letter.

### **3.4 No later than ninety (90) days before the Intended Delivery Date**

The Facility Agent (or the SACE Agent in respect of paragraphs (c), (e) and (f) below) shall have received no later than ninety (90) days before the Intended Delivery Date:

- (a) notification from the Borrower of its chosen Maritime Registry;
- (b) notification of the Approved Manager;
- (c) the SACE Insurance Policy documentation relating to the transaction contemplated by this Agreement issued on terms whereby the SACE Insurance Policy will enter into full force and effect upon fulfilment of the conditions specified therein to be fulfilled on or before the Drawdown Date;
- (d) evidence that the First Instalment has been paid;
- (e) an original of the Interest ~~Make-up~~ Make-Up Agreement relative to the Loan and in full force and effect;
- (f) an original of the SACE Insurance Policy; and
- (g) an opinion from legal counsel to the Creditor Parties as to Italian law in form and substance satisfactory to the Facility Agent and the ~~Secured~~ Creditor Parties in respect of SACE's issuance of the SACE Insurance Policy and compliance with the principles governing the eligibility of credit risk mitigation techniques as per Article 194, paragraph 1, of the Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013.

### **3.5 No later than sixty (60) days before the Intended Delivery Date**

The Facility Agent shall have received from the Borrower no later than sixty (60) days before the Intended Delivery Date:

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- (a) notification of the Intended Delivery Date;
- (b) a notice from the Borrower as described in paragraph (a) of Clause ~~8-4-9.4~~ (Refund) and in paragraph (h) of Clause ~~8-6-9.6~~ (Tranche B Premium); and
- (c) a U.S. tax opinion from legal counsel to the Secured Parties in respect of the tax treatment of the entry by the U.S. incorporated Borrower into this Agreement and the other Finance Documents substantially in the form notified to the Borrower on or around the Effective Date and updated to reflect any changes in law.

**3.6 No later than forty-five (45) days before the Intended Delivery Date**

The Facility Agent shall have received from the Borrower no later than forty-five (45) days before the Intended Delivery Date (and on each subsequent date on which a Compliance Certificate is to be received by the Security Trustee pursuant to paragraph (c) of clause 11.3 (*Provision of financial statements*) of the Guarantee) a duly completed Compliance Certificate from the Guarantor.

**3.7 No later than [\*] ([\*]) days before the Intended Delivery Date**

The SACE Agent (with a copy to the Facility Agent) shall have received from the Borrower no later than [\*] ([\*]) days before the Intended Delivery Date notification, signed by a duly authorised signatory of the Borrower, specifying which of the Fixed Interest Rate or the Floating Interest Rate shall be applicable to the Loan until the date of payment of the final repayment instalment of the Loan.

**3.8 No later than fifteen (15) Business Days before the Intended Delivery Date**

The Facility Agent shall have received no later than fifteen (15) Business Days before the Intended Delivery Date insurance documents in form and substance satisfactory to the Lenders confirming that the Insurances have been effected and will be in full force and effect on the Delivery Date.

**3.9 No later than five (5) Business Days before the Intended Delivery Date**

The Facility Agent shall have received no later than five (5) Business Days before the Intended Delivery Date:

- (a) the Drawdown Notice from the Borrower in relation to each Tranche, signed by a duly authorised signatory of the Borrower, specifying the amount of the Loan to be drawn down;
- (b) a Certified Copy of any amendments to the Shipbuilding Contract which are not Minor Modifications and of the power of attorney pursuant to which the authorised signatory of the Borrower signed each Drawdown Notice and a specimen of his signature; and
- (c) a final confirmation of the Intended Delivery Date signed by a duly authorised signatory of the Borrower, and counter-signed by a duly authorised signatory of the Builder.

**3.10 No later than the Delivery Date**

- (a) In respect of the Advance to be made available by the Tranche A Lenders, the Facility Agent shall have received no later than the Delivery Date:
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- (i) if applicable, a duly executed original of the Subordinated Debt Security;
  - (ii) any opinions from legal counsel to the Secured Parties relating to the due execution, validity and enforceability of the Subordinated Debt Security, in form and substance satisfactory to the Facility Agent and the Secured Parties;
  - (iii) evidence of payment to and receipt by the Builder of:
    - (A) the four (4) pre-delivery instalments of the Final Contract Price; and
    - (B) any other part of the Final Contract Price as at the Delivery Date not being financed hereunder;
  - (iv) payment of the relevant portion of the Facility Agent Fee (as defined in the relevant Fee Letter), the relevant portion of the SACE Agency Fee (as defined in the relevant Fee Letter), the relevant portion of Security Trustee Fee (as defined in the relevant Fee Letter) and any other such fees which may be payable by the Borrower to a Creditor Party, payable in accordance with terms of the relevant Fee Letter;
  - (v) evidence of payment of all amounts which are due and payable hereunder by the Borrower on or prior to the Delivery Date;
  - (vi) a certificate from the Borrower, signed by an authorised representative of the Borrower, confirming that:
    - (A) the representations and warranties contained in Clause ~~44-12~~ 12 (*Representations and Warranties*) are true and correct as of the Delivery Date in consideration of the facts and circumstances existing as of the Delivery Date; and
    - (B) no mandatory prepayment event pursuant to Clause ~~46-17~~ 17 (*Cancellation, Prepayment and Mandatory Prepayment*) is continuing or would result from the ~~Loan~~ Advance;
  - (vii) an original or a certified copy of each of the SACE Required Documents and the Facility Agent and the SACE Agent shall be satisfied that the SACE Required Documents on their face appear properly completed and comply with the requirements of this Agreement and the requirements of the SACE Insurance Policy;
- (b) In respect of the Advance to be made available by the Tranche B Lenders, the Facility Agent shall have received no later than the Delivery Date the documents, evidence or confirmations, as relevant, set out in paragraphs (a)(i), (a)(ii), (a)(v) and (a)(vi) of this Clause 3.10 (*No later than the Delivery Date*), as well as:
- (i) a copy of the Addendum and any other relevant addendum to the Shipbuilding Contract; and
  - (ii) save for the case where the Builder shall have received from the Borrower an amount equal to one hundred per cent (100%) of the Upsize Allowance Price and the Facility Agent shall have received a certified true copy bank statement evidencing receipt by the Builder of such full amount and of which all or part of 80% shall be reimbursed to the Borrower pursuant to such Advance, confirmation in writing from the Builder that
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it has received from the Borrower an amount equal to at least twenty per cent. (20%) of the Upsize Allowance Price; and

- (c) In respect of the Advance to be made available by the Tranche C Lenders, the Facility Agent shall have received no later than the Delivery Date the documents, evidence or confirmations, as relevant, set out in paragraphs (a)(i), (a)(ii), (a)(v) and (a)(vi) of this Clause 3.10 (*No later than the Delivery Date*),

provided always that, pursuant in relation to paragraphs (a), (b) and (c) above, the obligations of the relevant Lenders to make such Advance under each of Tranche A, Tranche B and Tranche C, as applicable, available on the Delivery Date are subject to the Lenders remaining satisfied that each of the SACE Insurance Policy and the Interest ~~Make-up~~ Make-Up Agreement will cover the Loan following the advance of such Advances, payment of the Second Instalment and delivery to the Facility Agent of the documents listed in Schedule 3 (*Documents to be produced by the Builder to the Facility Agent on Delivery*).

### 3.11 At Delivery

Immediately prior to the delivery of the Ship by the Builder to the Borrower, the Facility Agent shall have received:

- (a) evidence that immediately following delivery:
- (i) the Ship will be registered in the name of the Borrower in the Maritime Registry;
  - (ii) title to the Ship will be held by the Borrower free of all Security Interests other than any maritime lien in respect of crew's wages and trade debts arising out of equipment, consumable and other stores placed on board the Ship prior to or concurrently with delivery, none of which is overdue;
  - (iii) the Mortgage will be duly registered in the Maritime Registry and constitutes a first priority security interest over the Ship and that all taxes and fees payable to the Maritime Registry in respect of the Ship have been paid in full; and
  - (iv) the opinions mentioned in paragraphs (b), (c) and (d) of Clause 3.12 (*Immediately following Delivery*), in draft form immediately prior to the delivery of the Ship, and the documents mentioned in paragraph (e) of Clause 3.12 (*Immediately following Delivery*) will be issued to and received by the Facility Agent;
- (b) a Certified Copy of a classification certificate (or interim classification certificate) showing the Ship to be classed in accordance with paragraph (c) of Clause ~~4.3-12.3~~ 12.3 (*Representations on the Delivery Date*).
- (c) duly executed originals of the General Assignment, any Approved Manager's Undertaking and the Post-Delivery Assignment together with relevant notices of assignment and the acknowledgement of the notice of assignment to be issued pursuant to the General Assignment and the Post-Delivery Assignment;
- (d) a Certified Copy of any executed Management Agreement, any bareboat charter and any related security pursuant to paragraph (b) of Clause ~~4.3-14.1~~ 14.1 (*Pooling of earnings and charters*) (if applicable) and any time charterparty in respect of the Ship;
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- (e) a Certified Copy of any current certificate of financial responsibility in respect of the Ship issued under OPA, a valid Safety Management Certificate (or interim Safety Management Certificate) issued to the Ship in respect of its management by the Approved Manager pursuant to the ISM Code, a valid Document of Compliance (or interim Document of Compliance) issued to the Approved Manager in respect of ships of the same type as the Ship pursuant to the ISM Code, a valid International Ship Security Certificate issued to the Ship in accordance with the ISPS Code and a valid IAPPC issued to the Ship in accordance with Annex VI and, if entered into, any carrier initiative agreement with the United States' Customs and Border Protection under the Customs-Trade Partnership Against Terrorism (C-TPAT) programme along with any other documents required under the ISM Code and the ISPS Code;
- (f) a Certified Copy of the power of attorney pursuant to which the authorised signatory(ies) of the Borrower signed the documents referred to in this Clause 3.11 (*At Delivery*) and to which the Borrower is a party and a specimen of his or their signature(s); and
- (g) a confirmation from Hannaford Turner LLP, currently of 107 Cheapside, London UK, EC2V 6DN ~~(or~~ or any replacement process agent satisfactory to the Facility Agent acting reasonably) that it will act for each of the relevant Obligors as agent for service of process in England in respect of the deed of covenants constituting part of the Mortgage (if applicable), the General Assignment and the Post-Delivery Assignment.

### **3.12 Immediately following Delivery**

Immediately following the delivery of the Ship by the Builder to the Borrower, the Facility Agent (with copy to the Security Trustee), or, in the case of paragraph (a) below, the Security Trustee (with copy to the Facility Agent), shall receive:

- (a) a duly executed original of the Mortgage;
  - (b) an opinion from legal counsel acceptable to the Secured Parties as to the law of the Maritime Registry in form and substance satisfactory to the Facility Agent and the Secured Parties confirming:
    - (i) the valid registration of the Ship in the Maritime Registry; and
    - (ii) the Mortgage over the Ship is a first priority security and has been validly registered in the Maritime Registry;
  - (c) an opinion from legal counsel to the Secured Parties as to English law in form and substance satisfactory to the Facility Agent and the Secured Parties in respect of the validity and enforceability of the deed of covenants constituting part of the Mortgage (if applicable), the General Assignment, the Post-Delivery Assignment and any other relevant security document entered into at delivery;
  - (d) an opinion from legal counsel acceptable to the Secured Parties as to the laws of the state of Delaware in form and substance satisfactory to the Facility Agent and the Secured Parties together with the company documentation of the Borrower and a certificate of a competent officer or manager of the Borrower containing specimen signatures of the persons authorised to sign the documents on behalf of the Borrower, confirming that, without limitation:
    - (i) the Mortgage, the deed of covenants constituting part of the Mortgage (if applicable), the General Assignment, the Post-Delivery Assignment and the bareboat charter (if
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applicable) fall within the scope of the Borrower's company purpose as defined by its Memorandum of Association and By-laws and are binding on it; and

- (ii) the Borrower's representatives are fully empowered to sign the Protocol of Delivery and Acceptance, the Mortgage, the deed of covenants constituting part of the Mortgage (if applicable), the General Assignment, the Post-Delivery Assignment and the bareboat charter (if applicable) and any related security pursuant to paragraph (b) of Clause ~~13.1~~14.1 (*Pooling of earnings and charters*); and
- (e) an opinion from legal counsel to acceptable to the Secured Parties as to Panamanian law in form and substance satisfactory to the Facility Agent and the Secured Parties together with the corporate documentation of the Member as bareboat charterer and a certificate of a competent officer of the Shareholder containing specimen signatures of the persons authorised to sign the documents on behalf of the Member, confirming that, without limitation:
  - (i) the General Assignment falls within the scope of the Member's corporate purpose as defined by its Articles of Incorporation and By-laws; and
  - (ii) the representative of the Member is fully empowered to sign the General Assignment;
- (f) the documents listed in Schedule 3 (*Documents to be produced by the Builder to the Facility Agent on Delivery*).

### **3.13 Notification of satisfaction of conditions precedent**

The Facility Agent shall notify the Tranche A Lenders, the Tranche B Lenders, the Tranche C Lenders, SACE and SIMEST, as applicable, promptly upon being satisfied as to the satisfaction of the conditions precedent referred to in this Clause 3 (*Conditions Precedent*).

### **3.14 Waiver of conditions precedent**

If the Majority Lenders, at their discretion, subject to the prior written consent of SACE, permit ~~the~~ an Advance under a Tranche to be borrowed before any of the conditions precedent referred to in Clause 3 (*Conditions Precedent*) has been satisfied, the Borrower shall ensure that that condition is satisfied within five (5) Business Days after the date (as specified in the relevant part of Clause 3 (*Conditions Precedent*)) or such later date as the Facility Agent may agree in writing with the Borrower.

### **3.15 Changes to SACE's or SIMEST's requirements**

- (a) If SACE or SIMEST notifies the SACE Agent in writing of a change of the SACE Insurance Policy or the Interest ~~Make-up~~ Make-Up Agreement (as applicable), or gives instructions to the SACE Agent with the effect that, in the opinion of the SACE Agent, this Agreement or certain documents which the Borrower is or may be required to provide for the purpose of drawing the Loan under this Agreement shall be amended to comply with such change or instructions, then the SACE Agent shall promptly notify the Borrower of such a change in SACE's or SIMEST's requirements (as applicable) and of the relevant amendments to be made to this Agreement or any such documents as the SACE Agent considers appropriate.
  - (b) If the SACE Agent notifies the Borrower of any proposed changes to this Agreement under paragraph (a) above, and provided that:
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- (i) all the Lenders and the Borrower agree with such changes; and
- (ii) the Borrower indemnifies and holds harmless the SACE Agent, the Facility Agent and the Lenders for any reasonable costs that it may incur arising from or in connection with any such amendments (including legal fees),

then such changes will be made to this Agreement in accordance with the terms hereof.

- (c) If, in the opinion of the Lenders, there are any provisions of this Agreement that contradict or conflict with any provision of the SACE Insurance Policy or the Interest ~~Make-up~~ Make-Up Agreement (as applicable), such that compliance by any Creditor Party with the terms of the SACE Insurance Policy or the Interest ~~Make-up~~ Make-Up Agreement (as applicable) may result in a breach by such Creditor Party of ~~the~~ any of the terms of this Agreement or to an extent that the same may have the effect of rendering all or any part of the SACE Insurance Policy or the Interest ~~Make-up~~ Make-Up Agreement (as applicable) void, voidable or otherwise not in full force and effect, the Borrower agrees that any relevant terms of this Agreement will be amended to the extent agreed in writing between the Borrower, the Facility Agent and the SACE Agent to ensure compliance with the terms of the SACE Insurance Policy or the Interest ~~Make-up~~ Make-Up Agreement (as applicable).

### **3.16 No claim against the Creditor Parties**

The Borrower agrees that the Creditor Parties may act on the instructions of the Italian Authorities in relation to this Agreement.

### **3.17 Examination and reliance on documents by the Facility Agent**

- (a) The SACE Agent shall ensure that an officer or employee or other person designated by it as its authorised representative is present at the Builder on the Delivery Date for the purpose of examining originals (or certified copies) of the SACE Required Documents duly signed by the parties thereto and collecting copies thereof (which copies shall be certified as true copies by an authorised signatory of the Builder and/or the Borrower, as applicable).
  - (b) The Facility Agent shall be entitled (but not obliged) to rely and act upon any documentation or information provided under this Clause 3 (*Conditions Precedent*), which appears on its face to have been duly completed.
  - (c) The Facility Agent's responsibility to the Borrower and the Lenders for the examination of the Drawdown Notice, and, when applicable, the documents provided by any person other than the Borrower in connection with the Drawdown Notice, shall be limited to the examination of their apparent compliance with the terms and conditions thereof in accordance with Articles 14 (Standard of examination of documents) and 34 (Disclaimer on effectiveness of documents) of the "Uniform Customs and Practice for Documentary Credits" (currently publication number 600 of the International Chamber of Commerce, latest edition) (except that no time limit for examination of documents shall apply).
  - (d) The Facility Agent and the Lenders shall not be obliged to enquire as to, or be responsible for, the validity, truthfulness and genuineness and (where the relevant document is a conformed copy) conformity to the original of the Drawdown Notice or any other document which appears on its face to be in order, or of any signatures thereon or any of the statements set out therein and shall be entitled to rely on the accuracy of any such statements.
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- (e) In case of any discrepancy in any such documents, the Facility Agent shall notify the Borrower in writing thereof and shall request its approval of such discrepancy in writing.
- (f) The Facility Agent and the Lenders shall not be responsible for any delay in making available the Loan resulting from any requirement for the delivery of further information or documents reasonably required by the Facility Agent for the relevant conditions precedent in this Agreement to be satisfied.

#### **4 DRAWDOWN**

##### **4.1 Borrower's irrevocable payment instructions**

- (a) The Tranche A Lenders shall not be obliged to fulfil their obligation to make an Advance available under Tranche A other than (i) by paying the Builder all or part of eighty per cent. (80%) of the Final Contract Price on behalf of and in the name of the Borrower, (ii) by reimbursing the Borrower for the First Instalment of the SACE Premium which was paid by the Borrower to SACE on the earlier of (A) the date falling 30 days after the issuance of the SACE Insurance Policy and (B) the date falling 6 months after the date of SACE's board approval and (iii) by payment to SACE of the Second Instalment of the SACE Premium payable on the Drawdown Date.
  - (b) The Tranche B Lenders shall not be obliged to fulfil their obligation to make an Advance available under Tranche B other than:
    - (i) by reimbursing the Borrower or by paying the Builder all or part of eighty per cent. (80%) of the Upsize Allowance Price on behalf of and in the name of the Borrower; and
    - (ii)
      - (A) by reimbursing to the Borrower the amount of the Tranche B Premium referred to in paragraph (a)(i) of Clause ~~8-6-9.6~~ (*Tranche B Premium*); and
      - (B) by paying SACE the amount of the Tranche B Premium referred to in paragraph (a)(ii) of Clause ~~8-6-9.6~~ (*Tranche B Premium*),such amounts of the Tranche B Premium to be paid by the Borrower to SACE in accordance with paragraph (a) of Clause ~~8-6-9.6~~ (*Tranche B Premium*).
  - (c) The Tranche C Lenders shall not be obliged to fulfil their obligation to make an Advance available under Tranche C other than by payment to SACE of the second instalment of the Additional SACE Premium which is to be paid by the Borrower to SACE in accordance with paragraph (a)(ii) of Clause ~~8-5-9.5~~ (*Additional SACE Premium*).
  - (d) The Borrower hereby instructs the Tranche A Lenders in accordance with this Clause 4.1 (*Borrower's irrevocable payment instructions*):
    - (i) to pay to the Builder, up to the Eligible Amount, all or part of eighty per cent. (80%) of the Final Contract Price;
    - (ii) to reimburse the Borrower the amount of the First Instalment of the SACE Premium already paid by the Borrower to SACE on the date specified in paragraph (a) of Clause ~~8-4-9.1~~ (*SACE Premium*); and
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- (iii) to pay to the Facility Agent on behalf of the [Tranche A](#) Lenders for onward payment to SACE (such payment to SACE to be made for value on the Drawdown Date), by drawing under this Agreement, the amount of the Second Instalment of the SACE Premium.
  - (e) The Borrower hereby instructs the Tranche B Lenders in accordance with this Clause 4.1 (*Borrower's irrevocable payment instructions*) to:
    - (i) reimburse to the Borrower or pay to the Builder, up to the Upsize Allowance Eligible Amount, all or part of eighty per cent. (80%) of the Upsize Allowance Price; and
    - (ii) pay to the Facility Agent on behalf of the Tranche B Lenders:
      - (A) for reimbursement to the Borrower, by drawing under this Agreement, the amount of the Tranche B Premium referred to in paragraph (a)(i) of Clause ~~8.6~~[9.6](#) (*Tranche B Premium*) (such reimbursement to be made for value on the Delivery Date); and
      - (B) for onward payment to SACE, by drawing under this Agreement, the amount of the Tranche B Premium referred to in paragraph (a)(ii) of Clause ~~8.6~~[9.6](#) (*Tranche B Premium*) (such payment to be made for value on the Delivery Date),  
  
such amounts of the Tranche B Premium to be paid by the Borrower to SACE pursuant to paragraph (a) of Clause ~~8.6~~[9.6](#) (*Tranche B Premium*).
  - (f) If applicable, the Borrower hereby instructs the Tranche C Lenders in accordance with this Clause 4.1 (*Borrower's irrevocable payment instructions*) to pay to the Facility Agent on behalf of the Tranche C Lenders for onward payment to SACE (such payment to SACE to be made for value on the Delivery Date), by drawing under this Agreement, the amount of the second instalment of the Additional SACE Premium to be paid by the Borrower to SACE in accordance with paragraph (a)(ii) of Clause ~~8.5~~[9.5](#) (*Additional SACE Premium*).
  - (g) Payment to the Builder of the ~~amounts~~[amount](#) drawn under paragraph (d)(i) of ~~this~~ Clause 4.1 (*Borrower's irrevocable payment instructions*) above shall be made on the Drawdown Date during usual banking hours in Italy to the Builder's account as specified by the Builder in accordance with the Shipbuilding Contract after receipt and verification by the Facility Agent of the documents provided under Schedule 3 (*Documents to be produced by the Builder to the Facility Agent on Delivery*).
  - (h) Reimbursement to the Borrower or payment to the Builder of the amounts drawn under paragraph ~~(b)~~~~e~~~~(i)~~ of this Clause 4.1 (*Borrower's irrevocable payment instructions*) above shall be made on the Drawdown Date during usual banking hours in Italy to the Builder's account as specified by the Builder in accordance with the Shipbuilding Contract or to the Borrower's account to be specified by the Borrower after receipt and verification by the ~~Facility~~[Facility](#) Agent of the documents provided under Schedule 3 (*Documents to be produced by the Builder to the Facility Agent on Delivery*).
  - (i) Save as contemplated in Clause 4.3 (*Modification of payment terms*) below, the payment instruction contained in this Clause 4.1 (*Borrower's irrevocable payment instructions*) is irrevocable.
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#### 4.2 Conversion Rate for Loan

The Dollar amount to be drawn down under paragraphs ~~(d)(a)~~, ~~(b)(i)~~ and ~~(e)(i)~~ of Clause 4.1 (*Borrower's irrevocable payment instructions*) shall be calculated by the Facility Agent on the Conversion Rate Fixing Date in accordance with the definitions of "Eligible Amount", "Upsize Allowance Eligible Amount" and "Conversion Rate" in Clause 1.1 (*Definitions*).

#### 4.3 Modification of payment terms

The Borrower expressly acknowledges that the payment terms set out in this Clause may only be modified with the agreement of the Italian Authorities, the Facility Agent, the Security Trustee, the Lenders and the Borrower in the case of paragraphs ~~(b)(i)~~ and (e)(i) of Clause 4.1 (*Borrower's irrevocable payment instructions*) and with the agreement of the Italian Authorities, the Facility Agent, the Lenders and the Borrower in the case of paragraphs (d)(ii), (d)(iii), (e)(ii) and (f) of Clause 4.1 (*Borrower's irrevocable payment instructions*) **provided that** it is the intention of the Borrower, the Lenders, the Security Trustee and the Facility Agent that prior to the Conversion Rate Fixing Date agreement shall be reached with those financial institutions with whom the Borrower has entered into the FOREX Contracts (the "**Counterparties**") in order that the Euro payments due from the Counterparties under the FOREX Contracts shall be paid to the Facility Agent for holding in escrow and to be released by the Facility Agent simultaneously with (i) the payment in full to the Builder of the balance of the Final Contract Price denominated in Euro at the time of delivery of the Ship and (ii) the payment to the Counterparties of the Dollars due to them under the relevant FOREX Contracts out of the Dollar amount available under paragraph (d)(i) and (e)(i) of Clause 4.1 (*Borrower's irrevocable payment instructions*), subject only to delivery of the Ship by the Builder to the Borrower taking place as evidenced by the execution and delivery of the Protocol of Delivery and Acceptance and to the Borrower having deposited with the Facility Agent before the Drawdown Date, if and to the extent required, any Dollar and/or Euro amounts as may be needed to ensure the payment in full of both the balance of the Final Contract Price in Euro and the Dollars owed to the Counterparties under all the relevant FOREX Contracts.

#### 4.4 Availability and conditions

- (a) Drawing may not be made under this Agreement (and ~~an~~ no Advance shall ~~not~~ be available) after the expiry of the Availability Period.
  - (b) Under this Agreement, there will be no more than:
    - (i) one (1) Advance under Tranche A;
    - (ii) one (1) Advance under Tranche B; and
    - (iii) one (1) Advance under Tranche C,it being provided that the Advances in relation to Tranche A, Tranche B and Tranche C shall occur on the same date.
  - (c) The amount of the Advance under Tranche C shall not exceed the lower of (i) the amount calculated pursuant to the provisions of paragraph (a)(ii) of Clause ~~8-5~~ 9.5 (*Additional SACE Premium*) and (ii) the Total Tranche C Commitments.
  - (d) The aggregate amount of:
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- (i) the Tranche A Advance cannot exceed the Total Tranche A Commitments;
- (ii) the Tranche B Advance cannot exceed the Total Tranche B Commitments;
- (iii) the Tranche C Advance cannot exceed the Total Tranche C Commitments; and
- (iv) the Advances under all Tranches cannot exceed the Total Commitments.

#### **4.5 Notification to Lenders of receipt of a Drawdown Notice**

The Facility Agent shall promptly and, in any case, by no later than three (3) Business Days before the Drawdown Date, notify the Tranche A Lenders, the Tranche B Lenders and the Tranche C Lenders, as applicable, that it has received a Drawdown Notice in relation to a Tranche and shall inform each relevant 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.

#### **4.6 Lenders to make available Contributions**

Subject to the provisions of this Agreement, each Lender shall, on and with value on the Drawdown Date under a Tranche, make available to the Facility Agent the amount due from that Lender under Clause 2.2 (*Lenders' participations in Loan*).

#### **4.7 Disbursement of Advance**

Subject to the provisions of this Agreement, the Facility Agent shall on the Drawdown Date pay the amounts which the Facility Agent receives from the Lenders under Clause 4.6 (*Lenders to make available Contributions*) in the like funds as the Facility Agent received the payments from the Lenders:

- (a) in the case of the amount referred to in paragraph (d)(i) of Clause 4.1 (*Borrower's irrevocable payment instructions*), to the account of the Builder which the Borrower specifies in the Drawdown Notice; ~~and~~
  - (b) in the case of an amount referred to in paragraph (d)(ii) of Clause 4.1 (*Borrower's irrevocable payment instructions*) to the account of the Borrower which the Borrower shall specify; ~~and~~
  - (c) in the case of an amount referred to in paragraph (d)(iii) of Clause 4.1 (*Borrower's irrevocable payment instructions*) to the account of SACE which the SACE Agent shall specify;
  - (d) in the case of an amount referred to in paragraph (e)(i) of Clause 4.1 (*Borrower's irrevocable payment instructions*) to the account of the Builder or the Borrower which the Borrower specifies in the Drawdown Notice;
  - (e) in the case of an amount referred to in paragraph (e)(ii)(A) of Clause 4.1 (*Borrower's irrevocable payment instructions*) to the account of the Borrower which the Borrower specifies in the Drawdown Notice;
  - (f) in the case of an amount referred to in paragraph (e)(ii)(B) of Clause 4.1 (*Borrower's irrevocable payment instructions*) to the account of SACE which the SACE Agent shall specify; and
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- (g) in the case of an amount referred to in paragraph (f) of Clause 4.1 (*Borrower's irrevocable payment instructions*) to the account of SACE which the SACE Agent shall specify.

#### **4.8 Disbursement of Advance to third party**

The payment by the Facility Agent under Clause 4.7 (*Disbursement of Advance*) shall constitute the making of the Advance and the Borrower shall at that time become indebted, as principal and direct obligor, to each relevant Lender in an amount equal to that Lender's Contributions.

### **5 REPAYMENT**

#### **5.1 Number of repayment instalments**

The Borrower shall repay the Loan by twenty-four (24) consecutive six-monthly instalments from the earlier of (i) the Delivery Date and (ii) the date of actual disbursement of the Loan (the "**Starting Point of Repayment**").

#### **5.2 Repayment Dates**

The first repayment instalment shall be repaid on the date falling six (6) months after the Starting Point of Repayment and the last repayment instalment on the date falling one hundred and forty-four (144) months after the Starting Point of Repayment, each date of payment of an instalment being a "**Repayment Date**".

#### **5.3 Amount of repayment instalments**

Each repayment instalment of the Loan shall be of an equal amount.

#### **5.4 Final Repayment Date**

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

### **6 RATE SWITCH**

#### **6.1 Switch to Term SOFR Reference Rate**

Subject to Clause 6.2 (*Delayed switch for existing LIBOR Loans*), on and from the Rate Switch Date, where the Floating Interest Rate applies:

- (a) use of the Term SOFR Reference Rate will replace the use of LIBOR for the calculation of interest for the Loan or any part of the Loan; and

- (b) the Loan or any part of the Loan or Unpaid Sum shall be a "Term SOFR Loan" and paragraph (b) of the definition of Floating Interest Rate shall apply to the Loan, any such part of the Loan or Unpaid Sum.

#### **6.2 Delayed Switch for Existing LIBOR Loans**

If the Rate Switch Date falls before the last day of an Interest Period for a LIBOR Loan:

- (a) the Loan, relevant part of the Loan or Unpaid Sum (as applicable) shall continue to be a LIBOR Loan for that Interest Period and paragraph (a) of the definition of Floating Interest Rate shall
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continue to apply to the Loan, relevant part of the Loan or Unpaid Sum (as applicable) for that Interest Period;

- (b) any provision of this Agreement which is expressed to relate solely to a Term SOFR Loan shall not apply in relation to the Loan, relevant part of the Loan or Unpaid Sum (as applicable) for that Interest Period; and
- (c) on and from the first day of the next Interest Period (if any) for the Loan, relevant part of the Loan or Unpaid Sum (as applicable);
  - (i) the Loan, relevant part of the Loan or Unpaid Sum (as applicable) shall be a "Term SOFR Loan"; and
  - (ii) paragraph (b) of the definition of Floating Interest Rate shall apply to it.

### **6.3 Notifications by Facility Agent**

- (1) Subject to paragraph (3) below, following the occurrence of a Rate Switch Trigger Event, the Facility Agent shall:
  - (a) promptly upon becoming aware of the occurrence of that Rate Switch Trigger Event, notify the Borrower and the Lenders of that occurrence; and
  - (b) promptly upon becoming aware of the date of the Rate Switch Trigger Event Date applicable to that Rate Switch Trigger Event, notify the Borrower and the Lenders of that date.
- (2) The Facility Agent shall, promptly upon becoming aware of the occurrence of the Rate Switch Date, notify the Borrower and the Lenders of that occurrence.
- (3) The Parties agree that the FCA Cessation Announcement constitutes a Rate Switch Trigger Event, that the Rate Switch Trigger Event Date applicable to such Rate Switch Trigger Event will be 1 July 2023 and that the Facility Agent is not under any obligation under paragraph (1) above to notify any Party of such Rate Switch Trigger Event or Rate Switch Trigger Event Date resulting from the FCA Cessation Announcement.
- (4) For the purposes of paragraph (3) above, the "FCA Cessation Announcement" means the announcement on 5 March 2021 by the UK's Financial Conduct Authority that all LIBOR settings will, as of certain specified future dates, either cease to be provided by any administrator or no longer be representative of the market and economic reality that they are intended to measure and that such representativeness will not be restored.

## **7 ~~6~~ INTEREST**

### **7.1 ~~6.4~~ Fixed or Floating Interest Rate**

The Borrower shall provide notification, signed by a duly authorised signatory of the Borrower, to the SACE Agent (with a copy to the Facility Agent) at least [\*] ([\*]) days before the Drawdown Date specifying which of the Fixed Interest Rate or the Floating Interest Rate shall be applicable until the date of payment of the final repayment instalment of the Loan.

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## 7.2 ~~6.2~~ Fixed Interest Rate

If the Borrower has specified a Fixed Interest Rate pursuant to Clause ~~6.4~~7.1 (*Fixed or Floating Interest Rate*), the Loan shall bear interest in respect of each Interest Period at the Fixed Interest Rate. Such interest shall accrue on the actual number of days elapsed based upon a 360 day year and shall be paid on the last day of each Interest Period.

## 7.3 ~~6.3~~ Floating Interest Rate

If:

- (a) the Borrower has specified a Floating Interest Rate pursuant to Clause ~~6.4~~7.1 (*Fixed or Floating Interest Rate*); or
- (b) the Borrower has specified a Fixed Interest Rate pursuant to Clause ~~6.4~~7.1 (*Fixed or Floating Interest Rate*) but thereafter for any reason whatsoever the Interest ~~Make-up~~Make-Up Agreement is suspended or otherwise ceases to be in effect; or
- (c) SIMEST has requested a change of currency pursuant to the Interest ~~Make-up~~Make-Up Agreement and such change of currency is not agreed by the Borrower or Lenders in accordance with Clause ~~6.45~~7.16 (*Change of currency*); or
- (d) SIMEST has failed to make a net payment of interest to the Lenders pursuant to the Interest ~~Make-up~~Make-Up Agreement,

the rate of interest on the Loan in respect of any Interest Period shall be the Floating Interest Rate applicable for that Interest Period and the following provisions of this Clause 6 (*Interest*) shall apply (in the case of the circumstances referred to in paragraph (b) above, with effect from the date on which the Interest ~~Make-up~~Make-Up Agreement ceases to be in effect, with such consequential amendments as shall be necessary to give effect to the switch from a Fixed Interest Rate to a Floating Interest Rate).

## 7.4 ~~6.4~~ Payment of Floating Interest Rate

Subject to the provisions of this Agreement, interest on the Loan in respect of each Interest Period shall accrue on the actual number of days elapsed based upon a 360 day year and shall be paid by the Borrower on the last day of that Interest Period.

## 7.5 ~~6.5~~ Notification of Interest Periods and Floating Interest Rate

- (a) ~~The Save where paragraph (d) of Clause 7.8 (Unavailability of Term SOFR) applies, the~~ Facility Agent shall notify the Borrower and each relevant Lender of each Floating Interest Rate and the duration of each Interest Period as soon as reasonably practicable after each is determined and no later than the Quotation Day.
  - (b) In respect of any Fallback Interest Payment, the Facility Agent shall promptly upon a Fallback Interest Payment being determinable notify:
    - (i) the Borrower of that Fallback Interest Payment;
    - (ii) each relevant Lender of the proportion of that Fallback Interest Payment which relates to that Lender's participation in the Loan or the relevant part of the Loan; and
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(iii) the relevant Lenders and the Borrower of each applicable Daily Simple SOFR relating to the determination of that Fallback Interest Payment.

(c) The Facility Agent shall promptly notify the Borrower of each Funding Rate relating to the Loan or any part of the Loan.

(d) This Clause 7.5 shall not require the Facility Agent to make any notification to any Party on a day which is not a Business Day.

#### **7.6 6.6 Unavailability of Screen Rate before Rate Switch Date**

(a) *Interpolated Screen Rate:* If no Screen Rate is available for ~~LIBOR for~~ the Interest Period of ~~the Loan or any part of the LIBOR~~ 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 LIBOR~~ Loan.

(b) *Reference Bank Rate:* If no Screen Rate is available for LIBOR for:

(i) Dollars;

(ii) the Interest Period of ~~the Loan or any part of the LIBOR~~ Loan and it is not possible to calculate the Interpolated Screen Rate,

(iii) 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 LIBOR~~ 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 LIBOR~~ Loan (as applicable) and Clause ~~6.9~~ 7.10 (*Cost of funds*) shall apply to the Loan or that part of the Loan for that Interest Period.

#### **7.7 6.7 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.

#### **7.8 Unavailability of Term SOFR**

(a) Interpolated Term SOFR: If no Term SOFR is available for the Interest Period of any Term SOFR Loan, the applicable Term SOFR Reference Rate shall be the Interpolated Term SOFR for a period equal in length to the Interest Period of that Term SOFR Loan.

(b) Historic Term SOFR: If no Term SOFR is available for the Interest Period of any Term SOFR Loan and it is not possible to calculate the Interpolated Term SOFR, the applicable Term SOFR Reference Rate shall be the Historic Term SOFR for that Term SOFR Loan.

(c) Interpolated Historic Term SOFR: If paragraph (b) above applies but no Historic Term SOFR is available for the Interest Period of any Term SOFR Loan, the applicable Term SOFR Reference

Rate shall be the Interpolated Historic Term SOFR for a period equal in length to the Interest Period of that Term SOFR Loan.

- (d) Daily Simple SOFR: If, after giving effect to paragraph (c) above, no Term SOFR is available for the Interest Period of a Term SOFR Loan and it is not possible to calculate the Interpolated Historic Term SOFR, that Term SOFR Loan shall bear interest for any day of the relevant Interest Period at a rate per annum equal to the aggregate of the applicable (i) Daily Simple SOFR; (ii) Margin; and (iii) Credit Adjustment Spread.
- (e) Cost of funds: If paragraph (d) above applies but it is not possible to calculate the Daily Simple SOFR there shall be no Term SOFR Reference Rate for that Term SOFR Loan and Clause 7.9(a) (Cost of funds) shall apply to that Term SOFR Loan for that Interest Period.

#### **7.9 6.8 Market disruption**

- (a) ~~If In the case of a LIBOR Loan, 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 in aggregate exceed [\*] per cent. of the Loan or the relevant part of the Loan as appropriate) that the cost to it or each of them 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 ~~6.9 (Cost of funds) shall apply to the Loan or that part of the Loan (as applicable) for the relevant Interest Period.~~
- (b) In the case of a Term SOFR Loan, 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 50 per cent. of the Loan or the relevant part of the Loan as appropriate) that its cost of funds relating to its participation in the Loan or that part of the Loan would be in excess of the Market Disruption Rate then Clause 7.10 (Cost of funds) shall apply to the Loan or that part of the Loan (as applicable) for the relevant Interest Period.

#### **7.10 6.9 Costs of funds**

- (a) If this ~~Clause 6.9~~ 7.10 (Cost of funds) applies, the rate of interest on the Loan or the relevant part of the Loan for the relevant Interest Period shall be the percentage rate per annum which is the sum of:
- (i) the applicable Margin; and
  - (ii) the weighted average of the rates notified to the Facility Agent by each 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 cost of funds relating to~~ its participation in the Loan or that part of the Loan from whatever source it may reasonably select.
- (b) If this Clause ~~6.9~~ 7.10 (Cost of funds) applies and the Facility Agent or the Borrower so ~~require~~ requires, the Facility Agent and the Borrower shall enter into negotiations (for a period of not more than 30 days) with a view to agreeing a substitute basis for determining the rate of interest or (as the case may be) an alternative basis for funding.
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- (c) Subject to Clause ~~6.10-7.11~~ (~~Replacement of Screen Rate~~Changes to reference rates), any substitute or alternative basis agreed pursuant to paragraph (b) above shall, with the prior consent of all the Lenders and the 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 ~~6.9-7.10~~ (~~Cost of funds~~) applies pursuant to Clause ~~6.8-7.9~~ (~~Market disruption~~) and:
- (i) ~~in relation to a LIBOR Loan, a Lender's Funding Rate is less than LIBOR; or, that Lender's cost of funds relating to its participation in the Loan or the relevant part of the Loan for that Interest Period shall be deemed, for the purposes of sub-paragraph (i) of paragraph (a) above, to be LIBOR.~~
  - (ii) ~~in relation to a Term SOFR Loan, a Lender's Funding Rate is less than the Market Disruption Rate, that Lender's cost of funds relating to its participation in the Loan or the relevant part of the Loan for that Interest Period shall be deemed, for the purposes of sub-paragraph (i) of paragraph (a) above, to be the Market Disruption Rate for that Term SOFR Loan.~~
  - (iii) ~~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 ~~6.9-7.10~~ (~~Cost of funds~~) applies but any Lender does not ~~supply a quotation~~ notify a rate to the Facility Agent by the time specified in sub-paragraph (ii) of paragraph (a) above, the rate of interest shall be calculated on the basis of the ~~quotations of~~ rates notified by the remaining Lenders.

**~~6.10~~ Replacement of Screen Rate**

**7.11 Changes to reference rates**

- (a) ~~If a Screen~~ If a Published Rate Replacement Event has occurred in relation to ~~the Screen~~ any Published Rate ~~for Dollars~~, any amendment or waiver which relates to:
- (i) providing for the use of a Replacement ~~Benchmark~~ Reference Rate; and
  - (ii)
    - (A) aligning any provision of any Finance Document to the use of that Replacement ~~Benchmark~~ Reference Rate;
    - (B) enabling that Replacement ~~Benchmark~~ Reference Rate to be used for the calculation of interest under this Agreement (including, without limitation, any consequential changes required to enable that Replacement ~~Benchmark~~ Reference Rate to be used for the purposes of this Agreement);
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- (C) implementing market conventions applicable to that Replacement ~~Benchmark~~Reference Rate;
- (D) providing for appropriate fallback (and market disruption) provisions for that Replacement ~~Benchmark~~Reference Rate; or
- (E) adjusting the pricing to reduce or eliminate, to the extent reasonably practicable, any transfer of economic value from one Party to another as a result of the application of that Replacement ~~Benchmark~~Reference Rate (and if any adjustment or method for calculating any adjustment has been formally designated, nominated or recommended by the Relevant Nominating Body, the adjustment shall be determined on the basis of that designation, nomination or recommendation),

may be made with the consent of the Facility Agent (acting on the instructions of ~~all~~the Majority Lenders), SACE and SIMEST (if applicable) and the Borrower.

~~(b) If, as at 30 September 2022 this Agreement provides that the rate of interest for the Loan in Dollars is to be determined by reference to the Screen Rate for LIBOR:~~

~~(i) a Screen Rate Replacement Event shall be deemed to have occurred on that date in relation to the Screen Rate for Dollars; and~~

~~(ii) the Facility Agent, (acting on the instructions of all Lenders) and the Obligors shall enter into negotiations in good faith with a view to agreeing the use of a Replacement Benchmark in relation to Dollars in place of that Screen Rate from and including a date no later than 30 November 2022, unless the Borrower and the Facility Agent (acting on the instructions of all Lenders) agree to defer the date of the negotiations required under this sub-paragraph (ii) together with the date for the use of such a Replacement Benchmark, in which case such dates shall be those so agreed.~~

~~(b) (e) If an amendment is required as contemplated in this Clause ~~6.10~~7.11 (~~Replacement of Screen Rate~~Changes to reference rates), the Obligors shall reimburse each of the Facility Agent and the Security Trustee for the amount of all costs and expenses (including legal fees and other professional expenses) incurred by each Secured Party in relation to such amendment.~~

~~(c) In this Clause 7.11:~~

~~"Published Rate" means:~~

~~(a) SOFR; or~~

~~(b) Term SOFR for any Quoted Tenor.~~

~~"Published Rate Contingency Period" means, in relation to:~~

~~(a) Term SOFR (all Quoted Tenors), ten US Government Securities Business Days; and~~

~~(b) SOFR, ten US Government Securities Business Days.~~

~~"Published Rate Replacement Event" means, in relation to a Published Rate:~~

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- (a) the methodology, formula or other means of determining that Published Rate has, in the opinion of the Majority Lenders and the Borrower, materially changed;
- (b)
  - (i)
    - (A) the administrator of the Published Rate or its supervisor publicly announces that such administrator is insolvent; or
    - (B) information is published in any order, decree, notice, petition or filing, however described, or filed with a court, tribunal, exchange, regulatory authority or similar administrative, regulatory or judicial body which reasonably confirms that the administrator of that Published Rate is insolvent,  
provided that, in each case, at that time, there is no successor administrator to continue to provide that Published Rate;
  - (ii) the administrator of that Published Rate publicly announces that it has ceased or will cease to provide that Published Rate permanently or indefinitely and, at that time, there is no successor administrator to continue to provide that Published Rate;
  - (iii) the supervisor of the administrator of that Published Rate publicly announces that such Published Rate has been or will be permanently or indefinitely discontinued; or
  - (iv) the administrator of that Published Rate or its supervisor announces that that Published Rate may no longer be used; or
- (c) the administrator of that Published Rate (or the administrator of an interest rate which is a constituent element of that Published Rate) determines that that Published Rate should be calculated in accordance with its reduced submissions or other contingency or fallback policies or arrangements and either:
  - (i) the circumstance(s) or event(s) leading to such determination are not (in the opinion of the Majority Lenders and the Borrower) temporary; or
  - (ii) that Published Rate is calculated in accordance with any such policy or arrangement for a period no less than the applicable Published Rate Contingency Period; or
- (d) in the opinion of the Majority Lenders and the Borrower, that Published Rate is otherwise no longer appropriate for the purposes of calculating interest under this Agreement.

**"Replacement Reference Rate"** means a reference rate which is:

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

**7.12 ~~6.41~~ Notice of prepayment**

If no agreement is reached with the Borrower under Clause ~~6.40~~-7.11 (~~Replacement of Screen Rate~~Changes to reference rates), the Borrower may give the Facility Agent not less than 15 Business Days', or, if the Fixed Interest Rate has been selected pursuant to Clause ~~6.4~~-7.1 (~~Fixed or Floating Interest Rate~~), the Borrower may give the Facility Agent not less than 30 days' notice of its intention to prepay at the end of the interest period set by the Facility Agent.

**7.13 ~~6.42~~ Prepayment; termination of Commitments**

A notice under Clause ~~6.41~~-7.12 (~~Notice of prepayment~~) shall be irrevocable; the Facility Agent shall promptly notify the Lenders and, if the Fixed Interest Rate has been selected by the Borrower, SIMEST of the Borrower's notice of intended prepayment; ~~and~~:

- (a) on the date on which the Facility Agent serves that notice, the Total Commitments shall be cancelled; and
- (b) on the last Business Day of the Interest Period set by the Facility Agent, the Borrower shall prepay (without premium or penalty subject to the provisions of Clause ~~20.2~~-21.2 (~~Breakage costs and SIMEST arrangements~~)) the Loan, together with accrued interest thereon at the applicable rate (being either the Floating Interest Rate or the Fixed Interest Rate as specified by the Borrower pursuant to Clause ~~6.4~~-7.1 (~~Fixed or Floating Interest Rate~~)).

**7.14 ~~6.43~~ Application of prepayment**

The provisions of Clause ~~46~~-17 (~~Cancellation, Prepayment and Mandatory Prepayment~~) shall apply in relation to the prepayment.

**7.15 ~~6.44~~ Certain Circumstances**

Notwithstanding anything to the contrary in this Agreement:

- (a) in the event of any circumstances falling within Clause ~~6.8~~-7.9 (~~Market Disruption~~) which might affect the advance of an Advance under any Tranche on the Drawdown Date (the "**Relevant Circumstances**");

- (i) occurring and being continuing on the date falling ninety (90) days before the Intended Delivery Date (the "**Relevant Date**"), each Lender will notify the Borrower (through the Facility Agent) of the Relevant Circumstances on the Relevant Date or, if the Relevant Date is not a Business Day, on the next following Business Day; and
  - (ii) occurring after the Relevant Date, each Lender will notify the Borrower (through the Facility Agent) immediately upon such Lender becoming aware of the Relevant Circumstances;
- (b) in the event of any Relevant Circumstances falling within Clause ~~6-8-7.9~~ (*Market disruption*) (the "**Pricing-Related Relevant Circumstances**") occurring before an Advance is made available, each Lender will fund its respective Contributions by reference to the agreed alternative rate of interest in accordance with Clauses ~~6-6 7.6~~ (*Unavailability of Screen Rate*) ~~6-7~~ *before Rate Switch Date*, ~~7.7~~ (*Calculation* ~~Calculation~~ of Reference Bank Rate), ~~6-8-7.9~~ (*Market Disruption*), ~~6-9-7.10~~ (*Cost of funds*) and ~~6-10-7.11~~ (*Replacement of Screen Rate* ~~Changes to reference rates~~) (as if the provisions of such Clauses applied not only in the event that the Pricing-Related Relevant Circumstances have been notified by the Facility Agent to the Borrower after the making of the Advance but also before the making of the Advance); ~~and~~
- (c) in the event of any Relevant Circumstances falling within Clause ~~6-8-7.9~~ (*Market disruption*) (the "**Availability-Related Relevant Circumstances**") occurring before the Loan is made ~~and notwithstanding the provisions of Clause 7.6~~ (*Unavailability of Screen Rate before Rate Switch Date*), each Lender will enter into good faith discussions with the Borrower for a period not exceeding 10 Business Days in order to discuss a basis on which the Lenders could be able to fund their respective Contributions in Dollars (or, if unavailable in Dollars, then in any available currency). Such discussions shall be without obligation on the Lenders provided that during such discussion period, such circumstances continue.

#### 7.16 ~~6.15~~ **Change of currency**

- (a) In the event that the SACE Agent notifies the Borrower that SIMEST has requested a change in the currency of the Loan in accordance with clause 6.3 of the Interest ~~Make-up~~ Make-Up Agreement, the Borrower and the Lenders shall, without obligation, consider such request for a change of currency acting reasonably for a period of not exceeding 10 Business Days. Following such discussions the SACE Agent shall report the decision of the Facility Agent, the Borrower and the Lenders to SIMEST, providing their reason for any negative decision.
- (b) In the event that a change of currency is agreed the Parties agree to negotiate in good faith the necessary changes to this Agreement, the Finance Documents, the SACE Insurance Policy and the Interest ~~Make-up~~ Make-Up Agreement in order to document the change in currency.
- (c) In the event that a change in currency is not acceptable to the Lenders or the Borrower, the provision of paragraph (c) of Clause ~~6-3~~ 7.3 (*Floating Interest Rate*) shall apply.

### 8 ~~7~~ **INTEREST PERIODS**

#### 8.1 ~~7.4~~ **Commencement of Interest Periods**

The first Interest Period applicable to an Advance shall commence on the Drawdown Date and each subsequent Interest Period shall commence on the expiry of the preceding Interest Period.

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## 8.2 ~~7.2~~ Duration of Interest Periods

Subject to Clause ~~7.3~~ 8.3 (*Duration of Interest Periods for Repayment Instalments*), each Interest Period shall be 6 months.

## 8.3 ~~7.3~~ Duration of Interest Periods for Repayment Instalments

Any Interest Period that includes a Repayment Date shall expire on such Repayment Date.

## 9 ~~8~~ SACE PREMIUM AND ITALIAN AUTHORITIES

### 9.1 ~~8.1~~ SACE Premium

The estimated SACE Premium for an amount equal to [\*] Dollars and [\*] cents (\$[\*]), (being [\*] per cent. ([\*]%) of the Original Maximum Loan Amount) is due and payable in two instalments as follows:

- (a) the first instalment of the SACE Premium being an amount of [\*] Dollars and [\*] cents (\$[\*]) (calculated as being [\*] per cent. ([\*]%) of the SACE Premium) (the "**First Instalment**") shall be paid by the Borrower to SACE (provided that the Borrower and the Lenders have been notified by the SACE Agent that the SACE Insurance Policy has been issued) on the earlier of (i) the date falling 30 days after the issuance of the SACE Insurance Policy and (ii) 5 April 2019, being the date falling 6 months after the date of SACE's board approval or any other later date as communicated by SACE; and
- (b) the second instalment of the SACE Premium being an amount of [\*] Dollars and [\*] cents (\$[\*]) (calculated as being [\*] per cent. ([\*]%) of the SACE Premium) (the "**Second Instalment**") and shall be payable on or prior to the Drawdown Date. For the sake of clarity, no set-off with the First Instalment shall be permitted.

### 9.2 ~~8.2~~ Reimbursement by the Borrower of the SACE Premium

The Borrower irrevocably agrees to pay the First Instalment, and to instruct the Tranche A Lenders to pay the Second Instalment on behalf of the Borrower as follows:

- (a) the Borrower has requested and the Tranche A Lenders have agreed to reimburse the payment of one hundred per cent. (100%) of the First Instalment to the Borrower on the Drawdown Date, it being agreed that such First Instalment shall be paid to SACE by the Borrower in accordance with paragraph (a) of Clause ~~8.1~~ 9.1 (*SACE Premium*) and upon notification by the Facility Agent to the Borrower (i) of the issuance of the SACE Insurance Policy documentation in the form required by paragraph (g) of Clause 3.4 (*No later than ninety (90) days before the Intended Delivery Date*), and (ii) of the amount of the First Instalment; and
- (b) the Borrower has requested and the Tranche A Lenders have agreed to finance the payment of one hundred per cent. (100%) of the Second Instalment on the Drawdown Date in accordance with paragraph (iii) of Clause 2.1 (*Amount of facility*) of this Agreement.

Consequently, the Borrower hereby irrevocably instructs the Facility Agent on behalf of the Tranche A Lenders to pay the Second Instalment to SACE on the Drawdown Date in accordance with paragraph (iii) of Clause 2.1 (*Amount of facility*) of this Agreement and to reimburse the Borrower by the Borrower drawing under the Loan the amount of the First Instalment in accordance with paragraph (ii) of Clause 2.1 (*Amount of facility*) of this Agreement.

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The First Instalment and Second Instalment each financed by the Loan will be repayable in any event by the Borrower to the Tranche A Lenders in the manner specified in Clause 5 (*Repayment*) and under any and all circumstances including but without limitation in the event of prepayment or acceleration of the Loan.

**9.3 ~~8.3~~ Italian Authorities**

- (a) The Borrower acknowledges and agrees that the Facility Agent, the SACE Agent and the Lenders are entitled to provide the Italian Authorities with any information they may have relative to the Loan and the business of the Group, to allow the Italian Authorities to inspect all their records relating to this Agreement and the other Transaction Documents and to furnish them with copies thereof. Any such information relative to the Loan may also be given by any Italian Authorities to international institutions charged with collecting statistical data.
- (b) The Borrower acknowledges that, in the making of any decision or determination or the exercise of any discretion or the taking or refraining to take any action under this Agreement or any of the other Finance Documents, the Facility Agent, the SACE Agent and the Lenders shall be deemed to have acted reasonably if they have acted on the instructions of either of the Italian Authorities.
- (c) Each Party further undertakes not to act in a manner which is inconsistent with the terms of the SACE Insurance Policy and the Interest ~~Make-up~~ Make-Up Agreement.

**9.4 ~~8.4~~ Refund**

- (a) The Borrower shall, at the latest on the date falling sixty (60) days before the Intended Delivery Date, provide a notice in writing to the SACE Agent (who will promptly forward it to other Lenders and SACE), signed by an authorised signatory of the Borrower, indicating the amount of the Advance to be drawn on the Delivery Date under Tranche A less (i) any amount cancelled based on the Conversion Rate and (ii) the Refund (as defined below) to be refunded in accordance with paragraph (b), such amount of the Refund to be confirmed by SACE at least six (6) Business Days prior to the Delivery Date. The Borrower hereby agrees and shall confirm in such notice that the remaining Tranche A Commitments shall be deemed to be cancelled. The Borrower acknowledges, for the avoidance of doubt, that the shortfall (if any) to be paid to the Builder at the Delivery Date shall be funded and paid directly by the Borrower to the Builder.
  - (b) If the Advance under Tranche A is less than the Original Maximum Loan Amount, and provided that no Event of Default has occurred and is then continuing and no loss has occurred under the SACE Insurance Policy, the Borrower shall be entitled to a refund of the Second Instalment of the SACE Premium in an amount calculated by SACE on the undrawn amount (the "**Refund**"). For the avoidance of doubt, the First Instalment of the SACE Premium is non-refundable, irrespective of whether any disbursements have been made under this Agreement and irrespective of whether the SACE Insurance Policy has been terminated.
  - (c) Any refund of the Second Instalment of the SACE Premium, whether in whole or in part, must be expressly requested by the SACE Agent to SACE in writing following receipt by the SACE Agent of the Borrower's notice referred to in paragraph (a) above.
  - (d) To the extent the Borrower is entitled to the Refund, SACE shall transfer the Refund as soon as practicably possible to the SACE Agent who shall as soon as practicably possible following receipt thereof transfer such amount to the Borrower. The Borrower hereby acknowledges that SACE shall not be liable to pay interest to the Borrower on the amount of the Refund.
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- (e) Under the terms of the SACE Insurance Policy, the Parties acknowledge that SACE will withhold an amount of [\*] per cent. ([\*]%) from the amount of the SACE Premium to be refunded. Such withholding, charged as a lump sum to cover administration and management costs for the SACE Insurance Policy, may not, in any event, amount to less than the dollar equivalent of [\*] Euros (€[\*]) or more than the dollar equivalent of [\*] Euros (€[\*]), calculated by SACE at the European Central Bank EUR/USD exchange rate as at the date of the refund request.
- (f) Except as set out in paragraphs (a) to (c) above, no part of the SACE Premium is refundable to any Obligor.
- (g) In no event shall the SACE Agent be liable for any refund of the SACE Premium to be made by SACE or for the calculation of any Refund and/or withholding thereof.

**9.5 ~~8-5~~ Additional SACE Premium**

- (a) The Borrower shall pay ~~to SACE~~ (through the SACE Agent) to SACE an additional SACE premium in relation to the changes made to the Original Facility Agreement following the February 2021 ~~Deferral~~-Effective Date (the "**Additional SACE Premium**"). The Additional SACE Premium is payable, in accordance with the SACE Insurance Policy, in two instalments as follows:
  - (i) no later than 30 days from the date of issuance of the relevant addendum to the SACE Insurance Policy in form and substance acceptable to the Lenders, an amount of \$[\*], corresponding to the first instalment of the Additional SACE Premium; and
  - (ii) no later than the Delivery Date, and unless the Guarantor's highest unsecured corporate credit rating is, 60 days before the Intended Delivery Date, BB+ or above at Standard & Poor's or Ba1 or above at Moody's, an amount of \$[\*], corresponding to the second instalment of the Additional SACE Premium; it being understood that if 60 days before the Intended Delivery Date, the Guarantor's highest unsecured corporate credit rating is between B+ at Standard & Poor's or B1 at Moody's and BB at Standard & Poor's or Ba2 at Moody's, this second instalment of the Additional SACE Premium shall correspond to a) [\*]% of (x) \$690,718,070.54 being the undrawn amount under the Loan as at 31 December 2020 times (y) the percentage applicable to the Guarantor's highest unsecured corporate credit rating between Standard & Poor's and Moody's in the table set out below (the "**Revised SACE Premium Rate**") divided by (z) one minus the Revised SACE Premium Rate less b) the Second Instalment of the original SACE Premium to be paid ~~no later than~~ on the Delivery Date. The amount of the second instalment of the Additional SACE Premium shall be recalculated by the SACE Agent in accordance with the SACE Insurance Policy and communicated by the SACE Agent to SACE no later than 60 days prior to the ~~Intended~~-Delivery Date for verification and then forwarded to the Borrower as soon as practically possible following approval by SACE.

Rating S&P and Moody's	pricing
BB / Ba2	[*]%
BB- / Ba3	[*]%

- (b) The Borrower has requested, and the Tranche C Lenders have agreed to finance the payment of one hundred per cent. (100%) of the second instalment of the Additional SACE Premium to the Borrower on the Delivery Date, it being agreed that such second instalment shall be paid to SACE in accordance with paragraph (a)(ii) of this Clause ~~8-5-9.5~~ (Additional SACE Premium)

and upon notification by SACE to the SACE Agent and the Borrower of the amount of the second instalment of the Additional SACE Premium.

- (c) Consequently, the Borrower hereby irrevocably instructs the Facility Agent on behalf of the Tranche C Lenders to pay the amount of the second instalment of the Additional SACE Premium to SACE on the Delivery Date in accordance with paragraph (c) of Clause 2.1 (*Amount of facility*) of this Agreement.
- (d) The second instalment of the Additional SACE Premium financed by Tranche C will be repayable in any event by the Borrower to the Tranche C Lenders in the manner specified in Clause 5 (*Repayment*) and under any and all circumstances including but without limitation in the event of prepayment or acceleration of the Loan.
- (e) If (i) the Guarantor's highest unsecured corporate credit rating is equal to or higher than BB+ at Standard & Poor's and Ba1 at Moody's at the time of the Intended Delivery Date (as such term is defined in the facility agreement originally dated 19 December 2018 (as amended from time to time) and entered into between, amongst others, (i) Leonardo Six, Ltd. as borrower, (ii) the lenders and mandated lead arrangers as stated therein, (iii) BNP Paribas as facility agent, (iv) Credit Agricole Corporate and Investment Bank as SACE agent and (v) HSBC Corporate Trustee Company (UK) Limited as security trustee in relation to the ship currently under construction and to be delivered to Leonardo Six, Ltd., such date, currently estimated to be 30 June 2027, the "**Leonardo Six Intended Delivery Date**"), and (ii) no event of default (howsoever defined) is continuing and no Loss has been incurred by SACE in respect of any Financial Indebtedness granted to any company within the Group and supported by SACE, the Borrower may request in writing through the SACE Agent a one-off refund of a portion of the second instalment of the Additional SACE Premium, calculated in accordance with the SACE Insurance Policy and the following formula.

SACE Premium refund = Loan amount outstanding at the time of the Leonardo Six Intended Delivery Date x [\*]% x ((TTMi + 0.5)/2)/6.25 x (Revised SACE Premium Rate – p%),

where:

- (i) TTMi means Time To Maturity at the date of the Leonardo Six Intended Delivery Date being the number of years, with two decimals, between the Leonardo Six Intended Delivery Date and the final Repayment Date.
- (ii) p% equals to [\*]%.

For avoidance of doubt, in case of discrepancy between this Clause ~~8.5-9.5~~ (*Additional SACE Premium*) and the relevant provision of the SACE Insurance Policy, the SACE Insurance Policy shall prevail.

- (f) The refund pursuant to paragraph (e) above will be paid by SACE to the SACE Agent within 30 days in accordance with the terms and conditions of the SACE Insurance Policy and subsequently paid by the SACE Agent to the Borrower, upon which such amount shall be applied to mandatorily prepay part of the Loan in accordance with the provisions of Clause ~~16.6-17.6~~ (*Mandatory Prepayment in case of refund by SACE to the Borrower of the second instalment of the Additional SACE Premium*).
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**9.6** ~~8.6~~ **Tranche B Premium**

- (a) The Borrower shall pay (through the SACE Agent) to SACE an additional SACE premium in relation to Tranche B (the "**Tranche B Premium**"). The Tranche B Premium is payable, in accordance with the SACE Insurance Policy, as follows:
- (i) no later than the earlier of (x) 30 days from the date of issuance of the relevant addendum to the SACE Insurance Policy and (y) the Drawdown Date under Tranche B, an amount equal to \$778,867.69, corresponding to fifteen per cent (15%) of the Tranche B Premium; and
  - (ii) no later than the Drawdown Date under Tranche B, an amount equal to \$4,413,583.59, corresponding to eighty-five per cent (85%) of the Tranche B Premium.
- (b) The Borrower has requested, and the Tranche B Lenders have agreed to finance the payment of one hundred per cent. (100%) of the Tranche B Premium to the Borrower on the Drawdown Date under Tranche B, it being agreed that:
- (i) the amount referred to in paragraph (a)(i) above shall be reimbursed to the Borrower; and
  - (ii) the amount referred to in paragraph (a)(ii) above shall be paid to SACE,
- and upon notification by SACE to the SACE Agent and the Borrower of the amount of the Tranche B Premium.
- (c) Consequently, the Borrower hereby irrevocably instructs the Facility Agent on behalf of the Tranche B Lenders to:
- (i) reimburse to the Borrower the amount of the Tranche B Premium referred to in paragraph (a)(i) above; and
  - (ii) pay to SACE the amount of the Tranche B Premium referred to in paragraph (a)(ii) above,
- no later than the Drawdown Date in accordance with paragraph (b)(ii) of Clause 2.1 (*Amount of facility*) of this Agreement.
- (d) The Tranche B Premium financed by part of Tranche B will be repayable in any event by the Borrower to the Tranche B Lenders in the manner specified in Clause 5 (*Repayment*) and under any and all circumstances including but without limitation in the event of prepayment or acceleration of the Loan.
- (e) The Borrower shall, at the latest on the date falling sixty (60) days before the Intended Delivery Date, provide a notice in writing to the SACE Agent (who will promptly forward it to other Lenders and SACE), signed by an authorised signatory of the Borrower, indicating the amount of the Advance to be drawn on the Delivery Date under Tranche B less (i) any amount cancelled based on the Conversion Rate and (ii) the Tranche B Refund (as defined below) to be refunded in accordance with paragraph (h) f, such amount of the Tranche B Refund to be confirmed by SACE at least six (6) Business Days prior to the Delivery Date. The Borrower hereby agrees and shall confirm in such notice that the remaining Tranche B Commitments shall be deemed to be cancelled. The Borrower acknowledges, for the avoidance of doubt, that the shortfall (if any)
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to be paid to the Builder at the Delivery Date shall be funded and paid directly by the Borrower to the Builder.

- (f) If the Advance under Tranche B is less than the Total Tranche B Commitments, and provided that no Event of Default has occurred and is then continuing and no loss has occurred under the SACE Insurance Policy, the Borrower shall be entitled to a refund of the Tranche B Premium in an amount calculated by SACE on the undrawn amount (the "**Tranche B Refund**"). For the avoidance of doubt, the amount of the SACE Premium referred to in paragraph (a)(i) of this Clause ~~8.6-9.6~~ (*Tranche B Premium*) is non-refundable, irrespective of whether any disbursements have been made under this Agreement and irrespective of whether the SACE Insurance Policy has been terminated.
- (g) Any refund of the amount of the Tranche B Premium referred to in paragraph (a)(ii) of this Clause ~~8.6-9.6~~ (*Tranche B Premium*), whether in whole or in part, must be expressly requested by the SACE Agent to SACE in writing following receipt by the SACE Agent of the Borrower's notice referred to in paragraph (e) above.
- (h) To the extent the Borrower is entitled to the Tranche B Refund, SACE shall transfer the Tranche B Refund as soon as practicably possible to the SACE Agent who shall as soon as practicably possible following receipt thereof transfer such amount to the Borrower. The Borrower hereby acknowledges that SACE shall not be liable to pay interest to the Borrower on the amount of the Tranche B Refund.
- (i) Under the terms of the SACE Insurance Policy, the Parties acknowledge that SACE will withhold an amount of five per cent. (5%) from the amount of the Tranche B Premium to be refunded. Such withholding, charged as a lump sum to cover administration and management costs for the SACE Insurance Policy, may not, in any event, amount to less than the equivalent of three thousand Euros (€3,000) or more than the equivalent of twenty-five thousand Euros (€25,000), calculated by SACE at the European Central Bank EUR/USD exchange rate as at the date of the refund request.
- (j) Except as set out in ~~paragraphs~~ (e) and (g) above, no part of the Tranche B Premium is refundable to any Obligor.
- (k) In no event shall the SACE Agent be liable for any refund of the Tranche B Premium to be made by SACE or for the calculation of any Refund and/or withholding thereof.

#### 10 **9FEES**

The following fees shall be due by the Borrower and payable as required hereunder:

- (a) to the Facility Agent, for the benefit of the Joint Mandated Lead Arrangers, a Joint Mandated Lead Arranger structuring fee (the "**Structuring Fee**") in the amount and payable at the time separately agreed in writing between the Facility Agent and the Borrower;
  - (b) to the Facility Agent, for the benefit of the Lenders, a commitment fee in Dollars for the period from the Effective Date to the Delivery Date of the Ship, or the date of receipt by the Facility Agent of the written cancellation notice (as described in sub-paragraph (a) of Clause ~~16.1-17.1~~ (*Cancellation*)) or written termination notice (as described in sub-paragraph (b) of Clause ~~16.1-17.1~~ (*Cancellation*)) (as applicable) sent by the Borrower, whichever is the earliest, computed at the rate of:
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- (i) from the Effective Date to and including 31 December 2019, [\*] per cent. ([\*]% p.a.) per annum;
- (ii) from 1 January 2020 to and including 31 December 2020, [\*] per cent. ([\*]% p.a.) per annum;
- (iii) from 1 January 2021 to and including the Delivery Date, [\*] per cent. ([\*]% p.a.) per annum;

and calculated on the undrawn amount of the Original Maximum Loan Amount prior to the date of this Agreement and thereafter ~~on~~of the Amended Maximum Loan Amount and payable in arrears on the date falling six (6) months after the Effective Date and on each date falling at the end of each following consecutive six (6) month period, with the exception of the commitment fee due in respect of the last period, which shall be paid on the Delivery Date, or the date of receipt by the Facility Agent of the written cancellation notice (as described in paragraph (a) of Clause ~~46.4~~17.1 (*Cancellation*)) or written termination notice (as described in paragraph (b) of Clause ~~46.4~~17.1 (*Cancellation*)) (as applicable) sent by the Borrower, whichever is the earliest, such commitment fee to be calculated on the actual number of days elapsed divided by three hundred and sixty (360). For the purpose of the computation of the periodical commitment fee payable to the Lenders, the Original Maximum Loan Amount is assumed to be six hundred and ninety million seven hundred and eighteen thousand and seventy Dollars and fifty-four cents (\$690,718,070.54) and the Amended Maximum Loan Amount is assumed to be ~~seven-six~~seven-six hundred and ~~ninety-forty-six~~ninety-forty-six million, eight hundred fifty eight thousand, four hundred ~~forty-six-and forty-seven~~forty-six-and forty-seven United States Dollars and ~~ninety-eight-Cents~~one cent (~~\$790,858,446.98~~\$646,858,447.01);

- (c) to the Facility Agent, for its own account, an agency fee in the amount and payable at the time separately agreed in writing between the Facility Agent and the Borrower;
- (d) to the SACE Agent, a SACE agency fee in the amount and payable at the time separately agreed in writing between the SACE Agent and the Borrower; and
- (e) to the Security Trustee, a security trustee fee in the amount and payable at the time separately agreed in writing between the Security Trustee and the Borrower.

## 11 ~~40~~TAXES, INCREASED COSTS, COSTS AND RELATED CHARGES

### 11.1 ~~40.4~~Definitions

- (a) In this Agreement:

"**Protected Party**" means a Secured 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 Secured Party under Clause ~~40.2~~11.2 (*Tax gross-up*) or a payment under Clause ~~40.3~~11.3 (*Tax indemnity*).

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- (b) Unless a contrary indication appears, in this Clause ~~40-11~~ (*Taxes, Increased Costs, Costs and related Charges*) reference to "**determines**" or "**determined**" means a determination made in the absolute discretion of the person making the determination.

**11.2 ~~40-2~~ Tax gross-up**

- (a) Each Obligor shall make all payments to be made by it under the Finance Documents without any Tax Deduction, unless a Tax Deduction is required by law.
- (b) The Borrower shall promptly upon becoming aware that an Obligor must make a Tax Deduction (or that there is any change in the rate or the basis of a Tax Deduction) notify the Facility Agent accordingly. Similarly, a Lender shall notify the Facility Agent on becoming so aware in respect of a payment payable to that Lender. If the Facility Agent receives such notification from a Lender it shall notify the Borrower and that Obligor.
- (c) If a Tax Deduction is required by law to be made by an Obligor, the amount of the payment due from that Obligor shall be increased to an amount which (after making any Tax Deduction) leaves an amount equal to the payment which would have been due if no Tax Deduction had been required.
- (d) A payment shall not be increased under paragraph (c) above if on the date on which the payment falls due the Obligor making the payment is able to demonstrate that the payment could have been made to the Lender without the Tax Deduction had that Lender (having been given notice of the documentation requested under Clause ~~40-7-11.7~~ (*Lender Status*) at least 30 Business Days prior to such payment date) complied with its obligations under Clause ~~40-7-11.7~~ (*Lender Status*).
- (e) 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.
- (f) Within thirty 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 Secured Party entitled to the payment evidence reasonably satisfactory to that Secured Party that the Tax Deduction has been made or (as applicable) any appropriate payment paid to the relevant taxing authority.

**11.3 ~~40-3~~ Tax indemnity**

- (a) The Borrower 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 Secured Party:
- (A) under the law of the jurisdiction in which that Secured Party is incorporated or, if different, the jurisdiction (or jurisdictions) in which that Secured Party is treated as resident for tax purposes;  
or
-

(B) under the law of the jurisdiction in which that Lender'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 Secured Party; or

- (ii) to the extent a loss, liability or cost is compensated for by an increased payment under Clause ~~40-2-11.2~~ 11.2 (*Tax gross-up*) or would have been compensated for by an increased payment under Clause ~~40-2-11.2~~ 11.2 (*Tax gross-up*) but was not so compensated solely because an exclusion in paragraph (d) of Clause ~~40-2-11.2~~ 11.2 (*Tax gross-up*) applied, or relates to a FATCA Deduction required to be made by a Party; or
  - (iii) with respect to the Taxes in the nature of a branch profits tax imposed by Section 884(a) of the Code that is imposed by any jurisdiction described in sub-paragraph (B) of sub-paragraph (i) of paragraph (b) above.
- (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 Borrower.
- (d) A Protected Party shall, on receiving a payment from an Obligor under this Clause ~~40-3-11.3~~ 11.3 (*Tax indemnity*), notify the Facility Agent.

#### 11.4 ~~40-4~~ Tax Credit

If an Obligor makes a Tax Payment and the relevant Creditor Party determines that:

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

the Creditor Party shall pay an amount to the Obligor which that Creditor 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.

#### 11.5 ~~40-5~~ Stamp taxes

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

#### 11.6 ~~40-6~~ VAT

- (a) All amounts expressed to be payable under a Finance Document by any Party to a Secured 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 Secured Party to any Party under a Finance Document and such Secured Party is required to account to the relevant tax authority for the VAT, that Party must pay to such Secured Party (in addition to and at the same time as paying any other consideration for such supply) an
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amount equal to the amount of the VAT (and such Secured Party must promptly provide an appropriate VAT invoice to that Party).

- (b) If VAT is or becomes chargeable on any supply made by any Secured Party (the "**Supplier**") to any other Secured 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 Secured Party for any cost or expense, that Party shall reimburse or indemnify (as the case may be) such Secured Party for the full amount of such cost or expense, including such part of it as represents VAT, save to the extent that such Secured 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 ~~40.6~~ [11.6](#) (VAT) to any Party being required to account to a tax authority for VAT shall, at any time when such Party is treated as a member of a group for VAT purposes, include a reference to another member of that group being required to so account to the relevant tax authority.
- (e) In relation to any supply made by a Secured Party to any Party under a Finance Document, if reasonably requested by such Secured Party, that Party must promptly provide such Secured Party with details of that Party's VAT registration and such other information as is reasonably requested in connection with such Secured Party's VAT reporting requirements in relation to such supply.

#### [11.7](#) ~~40.7~~ Lender Status

- (a) Any Lender that is entitled to an exemption from or reduction of withholding Tax with respect to payments made under a Finance Document shall deliver to the Facility Agent and the Borrower, at the time or times reasonably requested by the Facility Agent or the Borrower, such properly completed and executed documentation reasonably requested by the Facility Agent or the Borrower (and which it is reasonable for the Lender to complete and execute) as will permit such payments to be made without withholding or at a reduced rate of withholding. In addition, any Lender, if reasonably requested by the Facility Agent or the Borrower, shall deliver such other documentation as prescribed by applicable law and reasonably requested by the Facility Agent or the Borrower as will enable the Facility Agent or the Borrower to
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determine whether or not such Lender is subject to backup withholding or information reporting requirements.

- (b) Any Lender shall, to the extent it is legally entitled to do so, and where it is entitled to an exemption from, or reduction of, U.S. federal withholding tax, deliver to the Facility Agent and the Borrower on or prior to the date on which such Lender becomes a Lender under this Agreement or promptly thereafter (and from time to time thereafter as prescribed by applicable law or upon the request of the Facility Agent or the Borrower), duly executed and properly completed copies of Internal Revenue Service Form W-9 or W-8, as applicable, certifying that it is not subject to U.S. federal backup withholding and, in the case of a non-U.S. Lender that is eligible for an exemption from, or reduction of, U.S. federal withholding Tax establishing an exemption from, or reduction of, U.S. federal withholding Tax.

#### 11.8 ~~10.8~~ **FATCA Deduction**

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

#### 11.9 ~~10.9~~ **FATCA Information**

- (a) Subject to paragraph (c) below, each Party shall, within ten Business Days of a reasonable request by another Party:
    - (i) confirm to that other Party whether it is:
      - (A) a FATCA Exempt Party; or
      - (B) not a FATCA Exempt Party;
    - (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 Creditor 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;
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- (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-paragraph (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) Each Lender shall, within ten (10) Business Days of (i) where the relevant Lender is a Lender at the date of the Original Facility Agreement, the date of the Original Facility Agreement, (ii) where the relevant Lender becomes a Lender at the date of this Agreement, the date of this Agreement and (iii) where the relevant Lender is a Transferee Lender, the effective date of a Transfer Certificate under Clause ~~24.4~~ 25.4 (*Effective Date of Transfer Certificate*), supply to the Facility Agent:
- (i) a withholding certificate on Form W-8, Form W-9 or any other relevant form; or
  - (ii) any withholding statement or other document, authorisation or waiver as the Facility Agent may require to certify or establish the status of such Lender under FATCA or that other law or regulation.
- (f) The Facility Agent shall provide any withholding certificate, withholding statement, document, authorisation or waiver it receives from a Lender pursuant to paragraph (e) above to the Borrower.
- (g) If any withholding certificate, withholding statement, document, authorisation or waiver provided to the Facility Agent by a Lender pursuant to paragraph (e) above is or becomes materially inaccurate or incomplete, that Lender shall promptly update it and provide such updated withholding certificate, withholding statement, document, authorisation or waiver to the Facility Agent unless it is unlawful for the Lender to do so (in which case the Lender shall promptly notify the Facility Agent). The Facility Agent shall provide any such updated withholding certificate, withholding statement, document, authorisation or waiver to the Borrower.
- (h) The Facility Agent may rely on any withholding certificate, withholding statement, document, authorisation or waiver it receives from a Lender pursuant to paragraph (e) or (g) above without further verification. The Facility Agent shall not be liable for any action taken by it under or in connection with paragraphs (e), (f) or (g) above.
- (i) Each Party acknowledges that CDP is a FATCA Exempt Party pursuant to article 1, paragraph 11.1(e) of the Italian Mef Decree dated 6 August 2015 enacting Italian law of 18 June 2015 no. 95, which ratified the agreement between the Government of the US and the Government of the Republic of Italy to improve international tax compliance and to implement FATCA, signed in Rome in 10 January 2014.

#### **11.10 ~~10.10~~ Increased Costs**

- (a) If after the date of the Original Facility Agreement by reason of (x) any change in law or in its interpretation or administration and/or (y) compliance with any request from or requirement of any central bank or other fiscal, monetary or other authority including but without limitation
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the Basel Committee on Banking Regulations and Supervisory Practices whether or not having the force of law:

- (i) any of the Lenders incurs a cost as a result of its performing its obligations under this Agreement and/or its making available its Commitment hereunder; or
- (ii) there is any increase in the cost to any of the Lenders of funding or maintaining all or any of the advances comprised in a class of advances formed by or including its Commitment advanced or to be advanced by it hereunder; or
- (iii) any of the Lenders incurs a cost as a result of its having entered into and/or its assuming or maintaining its commitment under this Agreement; or
- (iv) any of the Lenders becomes liable to make any payment on account of Tax or otherwise (other than Tax on its overall net income) on or calculated by reference to the amount of its Commitment advanced or to be advanced hereunder and/or any sum received or receivable by it hereunder; or
- (v) any of the Lenders suffers any decrease in its rate of return as a result of any changes in the requirements relating to capital ratios, monetary control ratios, the payment of special deposits, liquidity costs or other similar requirements affecting that Lender,

then the Borrower shall on demand pay to the Facility Agent for the account of the relevant Lender or Lenders amounts sufficient to indemnify the relevant Lender or Lenders against, as the case may be, such cost, such increased cost (or such proportion of such increased cost as is in the reasonable opinion of the relevant Lender or Lenders attributable to the funding or maintaining of its or their Commitment(s) hereunder) or such liability.

- (b) This Clause ~~40-40-11.10~~ 11.10 (*Increased Costs*) does not apply to the extent any increased cost is:
  - (i) attributable to a Tax Deduction required by law to be made by an Obligor;
  - (ii) attributable to a FATCA Deduction required to be made by a Party;
  - (iii) compensated for by Clause ~~40-3-11.3~~ 11.3 (*Tax indemnity*) (or would have been compensated for under Clause ~~40-3-11.3~~ 11.3 (*Tax indemnity*) but was not compensated solely because any of the exclusions in paragraph (b) of Clause ~~40-3-11.3~~ 11.3 (*Tax indemnity*) applied); or
  - (iv) attributable to the wilful breach by the relevant Creditor Party or its Affiliates of any law of regulation.

In this Clause ~~40-40-11.10~~ 11.10 (*Increased Costs*), a reference to a "Tax Deduction" has the same meaning given to the term in Clause ~~40-4-11.1~~ 11.1 (*Definitions*).

- (c) A Lender affected by any provision of this Clause ~~40-40-11.10~~ 11.10 (*Increased Costs*) shall promptly inform the Facility Agent after becoming aware of the relevant change and its possible results (which notice shall be conclusive evidence of the relevant change and its possible results) and the Facility Agent shall, as soon as reasonably practicable thereafter, notify the Borrower of the change and its possible results. Without affecting the Borrower's obligations under this Clause ~~40-40-11.10~~ 11.10 (*Increased Costs*) and in consultation with the Facility Agent and the Italian Authorities, the affected Lender will then take all such reasonable steps as may be open to it to mitigate the effect of the change (for example (if then possible) by changing its Facility Office
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or transferring some or all of its rights and obligations under this Agreement to another financial institution reasonably acceptable to the Borrower, the Facility Agent and the Italian Authorities). The reasonable costs of mitigating the effect of any such change shall be borne by the Borrower save where such costs are of an internal administrative nature and are not incurred in dealings by any Lender with third parties.

#### **11.11 ~~10.14~~ Transaction Costs**

- (a) The Borrower undertakes to pay to the Facility Agent, the SACE Agent and the Security Trustee as applicable:
- (i) upon demand, all costs and expenses, duties and fees, including, but without limitation, pre-agreed legal costs (which, for avoidance of doubt are exclusive of VAT and disbursements) out of pocket expenses and travel costs, reasonably incurred by the Italian Authorities, the Joint Mandated Lead Arrangers, the Security Trustee, the Facility Agent, the SACE Agent and the Lenders (but not including any bank which becomes a Lender after the date of the Original Facility Agreement) in connection with the negotiation, preparation, execution and perfection of all agreements, guarantees, security agreements and related documents entered into, or to be entered into, for the purpose of the transaction contemplated hereby; and
  - (ii) all costs and expenses (including legal fees) (together with any applicable VAT), duties and fees incurred by the Facility Agent, the Security Trustee, the Joint Mandated Lead Arrangers, the SACE Agent, the Lenders or the Italian Authorities in connection with the registration, filing, enforcement or discharge of the said guarantees or security interests, including, without limitation, the fees and expenses of legal advisers and insurance experts (provided that such insurance costs are not to exceed ten thousand Dollars (\$10,000)) and the related travel and out of pocket expenses.
- (b) the Borrower further undertakes to pay:
- (i) to the Facility Agent, all costs, expenses, duties and fees incurred by the Facility Agent, the SACE Agent, the Security Trustee, the Lenders and the Italian Authorities in connection with any amendment or variation of this Agreement and the related documents, guarantees and security agreements, any supplements thereto and waiver given in relation thereto and in connection with the investigation of any potential Event of Default;
  - (ii) to the Security Trustee the amount of all costs and expenses (together with any applicable VAT) incurred in connection with the enforcement or preservation of any rights under this Agreement and/or the related guarantees and security agreements, (including in each case the fees and expenses of legal advisers) and any proceedings instituted by or against the Security Trustee as a consequence of taking or holding the Security Interest and/or the Security Property or enforcing these rights.

#### **11.12 ~~10.12~~ Costs of delayed Delivery Date**

The Borrower undertakes to pay to the Facility Agent, upon demand, any costs incurred by the Lenders and/or the Italian Authorities in funding the Loan in the event that the Delivery Date is later than the Intended Delivery Date unless the Borrower has given the Facility Agent at least three (3) Business Days' notification of such delay in the Delivery Date.

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### 11.13 ~~10-13~~ SACE obligations

To the extent that this Clause ~~10-11~~ (*Taxes, Increased Costs, Costs and related Charges*) imposes obligations or restrictions on a Secured Party, such obligations or restrictions shall not apply to SACE and SACE shall have no obligations hereunder nor be constrained by such restrictions.

## 12 ~~11~~ REPRESENTATIONS AND WARRANTIES

### 12.1 ~~11.1~~ Timing and repetition

The following applies in relation to the time at which representations and warranties are made and repeated:

- (a) the representations and warranties in Clause ~~11-2~~-12.2 (*Continuing representations and warranties*) are made on the date of the Original Facility Agreement (apart from the representation at paragraphs (ee) and (ff) of Clause ~~11-2~~-12.2 (*Continuing representations and warranties*) which shall only be made on the date of the Original Facility Agreement and the Effective Date and shall not be further repeated) and shall be deemed to be repeated, with reference *mutatis mutandis* to the facts and circumstances subsisting, as if made on each day until the Borrower has no remaining obligations, actual or contingent, under or pursuant to this Agreement or any of the other Finance Documents; and
- (b) the representations and warranties in Clause ~~11-3~~-12.3 (*Representations on the Delivery Date*) are made on the Delivery Date and shall be deemed to be repeated, with reference *mutatis mutandis* to the facts and circumstances subsisting, as if made thereafter on each day until the Borrower has no remaining obligations, actual or contingent, under or pursuant to this Agreement or any of the other Finance Documents.

### 12.2 ~~11.2~~ Continuing representations and warranties

The Borrower represents and warrants to each of the Secured Parties that:

- (a) each Obligor is a limited liability company or body corporate duly organised, formed or (as the case may be) incorporated, constituted and validly existing under the laws of the country of its formation or (as the case may be) incorporation, possessing perpetual existence, the capacity to sue and be sued in its own name and the power to own and charge its assets and carry on its business as it is now being conducted;
  - (b) the membership interests of the Member in the Borrower are represented by Common Units. 1,000 Common Units are authorised for issuance, all of which are held by the Member;
  - (c) the legal title to and beneficial interest in the equity in the Borrower is held free of any Security Interest (other than pursuant to the Pledge Agreement) or any other claim by the Member;
  - (d) none of the equity in the Borrower is subject to any option to purchase, pre-emption rights or similar rights;
  - (e) each Obligor has the power to enter into and perform this Agreement and those of the other Transaction Documents to which it is a party and the transactions contemplated hereby and thereby and has taken all necessary action to authorise the entry into and performance of this Agreement and such other Transaction Documents and such transactions;
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- (f) this Agreement and each other Transaction Document constitutes (or will constitute when executed) legal, valid and binding obligations of each Obligor expressed to be a party thereto enforceable in accordance with their respective terms and in entering into this Agreement and borrowing the Loan, the Borrower is acting on its own account;
- (g) the entry into and performance of this Agreement and the other Transaction Documents and the transactions contemplated hereby and thereby do not and will not conflict with:
  - (i) any law or regulation or any official or judicial order; or
  - (ii) the constitutional documents of any Obligor; or
  - (iii) any agreement or document to which any Obligor is a party or which is binding upon such Obligor or any of its assets,

nor result in the creation or imposition of any Security Interest on the Borrower or its assets pursuant to the provisions of any such agreement or document, except for Security Interests which qualify as Permitted Security Interests with respect to the Borrower;

- (h) ~~(h)~~ except for:
  - (i) the filing of UCC-1 financing statements against the Borrower in respect of those Finance Documents to which it is a party and which create Security Interests;
  - (ii) the recording of the Mortgage in the office of the Marshall Islands Registry; and
  - (iii) the registration of the Ship under an Approved Flag,

all authorisations, approvals, consents, licences, exemptions, filings, registrations, notarisations and other matters, official or otherwise, required in connection with the entry into, performance, validity and enforceability of this Agreement and each of the other Transaction Documents to which any Obligor is a party and the transactions contemplated thereby have been obtained or effected and are in full force and effect except authorisations, approvals, consents, licences, exemptions, filings and registrations required in the normal day to day course of the operation of the Ship and not already obtained by the Borrower;

- (i) ~~(i)~~ it is disregarded as an entity separate from its owner for U.S. federal Tax purposes;
  - (j) ~~(j)~~ all written information furnished by any Obligor relating to the business and affairs of any Obligor in connection with this Agreement and the other Transaction Documents (but excluding any forward looking statements and projections) was and remains true and correct in all material respects and there are no other material facts or considerations the omission of which would render any such information misleading;
  - (k) ~~(k)~~ each Obligor has fully disclosed to the Facility Agent all facts relating to each Obligor which it knows or should reasonably know and which might reasonably be expected to influence the Lenders in deciding whether or not to enter into this Agreement;
  - (l) ~~(l)~~ the obligations of the Borrower, the Member and the Guarantor under the Finance Documents rank at least *pari passu* with all its other present unsecured and unsubordinated indebtedness with the exception of any obligations which are mandatorily preferred by law;
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- (m) ~~(m)~~ the Borrower is and shall remain, after the advance to it of the Loan, solvent in accordance with the laws of the state of Delaware and the United Kingdom and in particular with the provisions of the Insolvency Act 1986 (as from time to time amended) and the requirements thereof;
- (n) ~~(n)~~ neither the Borrower nor any other Obligor has taken any corporate action nor have any other steps been taken or legal proceedings been started or (to the best of its knowledge and belief) threatened against any of them for the reorganisation, winding-up, dissolution or for the appointment of a liquidator, administrator, receiver, administrative receiver, trustee or similar officer of any of them or any or all of their assets or revenues nor has it sought any other relief under any applicable insolvency or bankruptcy law;
- (o) ~~(o)~~ (in relation to any date on which this representation and warranty is deemed to be repeated pursuant to paragraph (a) of Clause ~~44.4~~ 12.1 (*Timing and repetition*)) the latest available annual consolidated audited accounts of the Guarantor at the date of repetition (which accounts have been prepared in accordance with GAAP) fairly represent the financial condition of the Guarantor as shown in such audited accounts;
- (p) ~~(p)~~ none of the Obligors nor any of their respective assets enjoys any right of immunity (sovereign or otherwise) from set-off, any legal action or proceeding including, without limitation, suit, attachment prior to judgment, execution or other enforcement in respect of their obligations under this Agreement or any of the other Transaction Documents or by any relevant or applicable law;
- (q) ~~(q)~~ all of the limited liability company interest in the Borrower and all shares or limited liability company interest in any Approved Manager which is a member of the Group shall be legally and beneficially owned directly or indirectly by (in the case of the Borrower), the Member and (in the case of such Approved Manager) the Guarantor and such structure shall remain so throughout the Security Period;
- (r) ~~(r)~~ the copy of the Shipbuilding Contract is a true and complete copy of such document constituting valid and binding obligations of the parties thereto enforceable in accordance with its terms and, subject to Clause ~~42.23~~ 13.23 (*Shipbuilding Contract*), no amendments thereto or variations thereof have been agreed nor has any action been taken by the parties thereto which would in any way render such document inoperative or unenforceable;
- (s) ~~(s)~~ the Borrower is the sole legal and beneficial owner of all rights and interests which the Shipbuilding Contract creates in favour of the Borrower;
- (t) ~~(t)~~ any borrowing by the Borrower under this Agreement, and the performance of its obligations under this Agreement and the other Transaction Documents, will be for its own account and will not involve any breach by it of any law or regulatory measure relating to "money laundering" as defined in Article 1 of the Directive (91/308/EEC) of the Council of the European Communities (as amended by Directive 2001/97/EC of the European Parliament and of the Council of 4 December 2001); and
- (u) ~~(u)~~ no Obligor:
- (i) nor to its knowledge, any director, manager, officer or Affiliate of any Obligor or any member of the Group, 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
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- (iii) owns or controls a Prohibited Person;
- (v) ~~(v)~~ no proceeds of the Loan shall be made available directly or indirectly to or for the benefit of a Prohibited Person or in a Prohibited Jurisdiction nor shall they be otherwise directly or indirectly applied in a manner or for a purpose prohibited by Sanctions or in any other manner that would result in a violation of any Sanctions by any Obligor or any Creditor Party;
- (w) ~~(w)~~ the choice of governing law of each Transaction Document to which it is a party will be recognised and enforced in its Relevant Jurisdictions and 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;
- (x) ~~(x)~~ for the purposes of The Council of the European Union Regulation No. 2015/848 on Insolvency Proceedings (recast) (the "**Regulation**"), its centre of main interest (as that term is used in Article 3(1) of the Regulation) is situated outside of the European Union and it has no "establishment" (as that term is used in Article 2(10) of the Regulation) in a European Union country;
- (y) ~~(y)~~ no investments made and no payments made, received or to be made by the Borrower, the Member or the Guarantor under this Agreement, the Transaction Documents or any Finance Document have been or shall be funded, whether directly or, to the knowledge of the Borrower, indirectly, out of funds of Illicit Origin or otherwise derived from any activity with a Prohibited Person or in a Prohibited Jurisdiction or which would otherwise cause any Party to be in breach of any Sanctions and none of the sources of funds to be used by the Borrower, the Member or the Guarantor in connection with the Transaction Documents, the construction of the Ship or its business are, whether directly or, to the knowledge of the Borrower, indirectly, of Illicit Origin or derived from any activity with a Prohibited Person or in a Prohibited Jurisdiction;
- (z) ~~(zz)~~ no Prohibited Payment has been or will be received, made or provided, directly or indirectly, by (or on behalf of) the Borrower, the Member or the Guarantor (with respect to the Member and the Guarantor, to the best of the Borrower's knowledge), any of its affiliates or its officers, directors, managers, or any other person acting on its behalf to, or for the benefit of, any authority or public or government entity (or any official, officer, director, manager, agent or key employee of, or other person with management responsibilities in, of any authority or public or government entity) in connection with the Ship, this Agreement and/or the Finance Documents;
- (aa) ~~(aa)~~ no event has occurred which constitutes a default under or in respect of any Transaction Document to which any Obligor or the Builder is a party or by which any Obligor or the Builder may be bound (including (inter alia) this Agreement) and no event has occurred which constitutes a default under or in respect of any agreement or document to which any Obligor is a party or by which any Obligor may be bound to an extent or in a manner which might have a material adverse effect on the ability of that Obligor to perform its obligations under the Transaction Documents to which it is a party;
- (bb) ~~(bb)~~ none of the assets or rights of the Borrower is subject to any Security Interest except any Security Interest which (i) qualifies as a Permitted Security Interest with respect to the Borrower or (ii) is permitted by Clause ~~42-8-13.8~~ 13.8 (*Negative pledge*) of this Agreement;
- (cc) ~~(ee)~~ no litigation, arbitration or administrative proceedings are current or pending or, to its knowledge, threatened, which might, if adversely determined, have a material adverse effect
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on the ability of an Obligor to perform its obligations under the Transaction Documents to which it is a party;

- (dd) ~~(dd)~~ to the best of its knowledge, each of the Obligors has complied in all material respects with all taxation laws in all jurisdictions in which it is subject to taxation and has paid all material Taxes due and payable by it;
  - (ee) ~~(ee)~~ it is not required to make any deduction for or on account of Tax from any payment it may make under any Finance Document to which it is a party with respect to any Lender that provides the documentation described in paragraph (b) of Clause ~~40.7~~ 11.7 (*Lender Status*) indicating that it is not subject to tax withholding;
  - (ff) ~~(ff)~~ under the laws of its Relevant Jurisdictions it is not necessary that any stamp 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;
  - (gg) ~~(gg)~~ each member of the Group has good and marketable title to all its assets which are reflected in the audited accounts referred to in paragraph (o) of Clause ~~44.2~~ 12.2 (*Continuing representations and warranties*);
  - (hh) ~~(hh)~~ none of the Obligors has a place of business in any jurisdiction (except as already disclosed) which requires any of the Finance Documents to be filed or registered in that jurisdiction to ensure the validity of the Finance Documents to which it is a party;
  - (ii) ~~(ii)~~ the Borrower does not have a place of business in any country (except as already disclosed) other than that of its Original Jurisdiction;
  - (jj) ~~(jj)~~ the Borrower is in all material respects (except in the case of compliance with Sanctions which the Borrower complies with in all respects) compliant with all laws or regulations relating to it and its business generally;
  - (kk) ~~(kk)~~ each of the Obligors and each member of the Group:

    - (i) is in compliance with all Environmental Laws and Environmental Approvals provided that any non-compliance would not be expected to result in a Material Adverse Effect;
    - (ii) has not received any notice or threat of any Environmental Claim against any member of the Group and no person has claimed that an Environmental Incident has occurred in each case that would reasonably be expected to result in a Material Adverse Effect;
    - (iii) confirms that no Environmental Incident has occurred and no person has claimed that an Environmental Incident has occurred in each case that would reasonably be expected to result in a Material Adverse Effect;
  - (ll) ~~(ll)~~ the Borrower has read and acknowledged the principles provided under the Code of Ethics and Model;
  - (mm) ~~(mm)~~ the Borrower has implemented adequate internal procedures aimed at preventing commission of crimes provided under Legislative Decree 231/01;
  - (nn) ~~(nn)~~ no litigation is pending against the Borrower in relation to administrative liability provided under Legislative Decree 231/01;
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(oo) ~~(ee)~~ no final judgment under Legislative Decree 231/01 has been issued against the Borrower and no plea bargain (also known as *patteggiamento* under Italian law) has been agreed by the Borrower pursuant to article 444 of the Italian code of criminal procedure; and

(pp) ~~(pp)~~ neither the Borrower nor any of its assets are subject to any precautionary measure provided under Legislative Decree 231/01.

### 12.3 ~~44.3~~ Representations on the Delivery Date

The Borrower further represents and warrants to each of the Secured Parties ~~at~~ on the Delivery Date that:

- (a) the Ship is in its absolute and unencumbered ownership save as contemplated by the Finance Documents;
  - (b) the Ship is registered in its name under the laws and flag of the Maritime Registry;
  - (c) the Ship is classed with the highest classification available for a Ship of its type free of all recommendations and qualifications with Lloyd's Register, RINA or Bureau Veritas;
  - (d) the Ship is operationally seaworthy and in compliance with all relevant provisions, regulations and requirements (statutory or otherwise) applicable to ships registered under the laws and flag of the Maritime Registry;
  - (e) the Ship is in compliance with the ISM Code, the ISPS Code and Annex VI as they relate to the Borrower, any Approved Manager and the Ship;
  - (f) the Ship is insured in accordance with the provisions of Clause ~~44-15~~ 15 (*Insurance Undertakings*) and in compliance with the requirements therein in respect of such insurances;
  - (g) the Ship is managed by the Approved Manager and, in the event that the Approved Manager is not a member of the Group, on and subject to the terms set out in the Management Agreement;
  - (h) there is no agreement or understanding to allow or pay any rebate, premium, inducement, commission, discount or other benefit or payment (however described) to the Borrower or any other member of the Group, the Builder or a third party in connection with the purchase by the Borrower of the Ship, other than as disclosed to the Facility Agent in writing on or before the date of this Agreement;
  - (i) no 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;
  - (j) the Borrower is in all material respects (except in the case of compliance with Sanctions which the Borrower complies with in all respects) compliant with all laws or regulations relating to the Ship, its ownership, employment, operation, management and registration; and
  - (k) the copies of any Management Agreement, any charter and any charter guarantee which require a notice of assignment to be served under the terms of the General Assignment (if any) and any other relevant third party agreements including but without limitation the copies of
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any documents in respect of the Insurances delivered to the Facility Agent are true and complete copies of each such document constituting valid and binding obligations of the parties thereto enforceable in accordance with their respective terms and, subject to Clause ~~13.2~~ 14.2 (*Management and employment*), no amendments thereto or variations thereof have been agreed nor has any action been taken by the parties thereto which would in any way render such document inoperative or unenforceable.

### 13 ~~12~~ **GENERAL UNDERTAKINGS**

#### 13.1 ~~12.1~~ **General**

The Borrower undertakes with each Secured Party to comply with the following undertakings during the Security Period:

#### 13.2 ~~12.2~~ **Information**

(a) The Borrower will provide to the Facility Agent for the benefit of the Lenders and SACE (or will procure the provision of):

(i) ~~(a)~~ as soon as practicable (and in any event within one hundred and twenty (120) days after the close of its financial year) a Certified Copy of the audited consolidated accounts of the Guarantor and its subsidiaries for that year (commencing with accounts made up to 31 December 2018 in the case of the consolidated accounts of the Guarantor);

(ii) ~~(b)~~ as soon as practicable (and in any event within forty-five (45) days of the end of the contemplated quarter for the first three quarters in any fiscal year and within 90 days for the final quarter) a copy of the unaudited consolidated quarterly management accounts of the Guarantor (it being understood that the delivery by the Guarantor of quarterly or annual reports as filed with the Securities and Exchange Commission in respect of the Guarantor and its consolidated subsidiaries shall satisfy all the requirements of ~~paragraph (a) of~~ this paragraph (ii) ~~b~~);

(iii) ~~(c)~~ promptly, such further information in its possession or control regarding the condition or operations of the Ship and its financial condition and operations of the Borrower and those of any company in the Group as the Facility Agent may reasonably request for the benefit of the Secured Parties; and

(iv) ~~(d)~~ details of any material litigation, arbitration or administrative proceedings (including proceedings relating to any alleged or actual breach of Sanctions, the ISM Code or the ISPS Code) which affect any company in the Group as soon as the same are instituted and served, or, to the knowledge of the Borrower, threatened (and for this purpose proceedings shall be deemed to be material if they involve a claim in an amount exceeding twenty million Dollars (\$20,000,000) or the equivalent in another currency provided that this threshold shall not apply to any proceedings relating to Sanctions).

(b) All accounts required under this Clause ~~12.2~~ 13.2 (*Information*) shall be prepared in accordance with GAAP and shall fairly represent the financial condition of the relevant company.

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**13.3 ~~42.3~~ Equator Principles Compliance**

Upon the request of the Facility Agent, the Borrower shall provide to the Facility Agent information as may be reasonably requested by the Lenders for the purposes of monitoring that the Borrower conducts its operations in all material respects in accordance with the Equator Principles.

**13.4 ~~42.4~~ Sanctions and Illicit Payments**

- (a) The Borrower shall not directly or indirectly use or make available any of the proceeds of the Loan to or for the benefit of a Prohibited Person or in a Prohibited Jurisdiction nor shall they be otherwise directly or indirectly applied in a manner or for a purpose prohibited by Sanctions or in any other manner that would result in a violation of any Sanctions by any Obligor or any Creditor Party.
- (b) No payments made or received by the Borrower, the Member, the Guarantor or any Approved Manager which is a member of the Group under this Agreement or any Finance Document shall be funded directly or, to the knowledge of the Borrower, indirectly out of funds of Illicit Origin or derived from any activity with a Prohibited Person or in a Prohibited Jurisdiction or which would otherwise cause any Party to be in breach of any Sanctions, and none of the sources of funds to be used by the Borrower, the Member, the Guarantor or any Approved Manager which is a member of the Group in connection with the Transaction Documents or the construction of the Ship or its business shall be of directly or, to the knowledge of the Borrower, indirectly Illicit Origin or derived from any activity with a Prohibited Person or in a Prohibited Jurisdiction.
- (c) Without limiting the generality of the foregoing, no Loan nor any proceeds of the Loan shall be used to finance trade of equipment or any other kind of activity in relation to goods, technologies or sectors in a manner or for a purpose prohibited by Sanctions.

**13.5 ~~42.5~~ Prohibited Payments**

No Prohibited Payment shall be received, made or provided, directly or indirectly, by (or on behalf of) the Borrower, the Member, the Guarantor or any of their affiliates, officers, directors, managers or any other person acting on its behalf to, or for the benefit of, any authority or public or government entity (or any official, officer, director, manager, agent or key employee of, or other person with management responsibilities in, of any authority or public or government entity) in connection with the Ship, this Agreement and/or the Finance Documents.

**13.6 ~~42.6~~ Notification of default**

The Borrower will notify the Facility Agent of any Event of Default forthwith upon becoming aware of the occurrence thereof. Upon the Facility Agent's request from time to time the Borrower will issue a certificate stating whether any Obligor is aware of the occurrence of any Event of Default.

**13.7 ~~42.7~~ Consents and registrations**

The Borrower will procure that (and will promptly furnish Certified Copies to the Facility Agent on the request of the Facility Agent of) all such authorisations, approvals, consents, licences and exemptions as may be required under any applicable law or regulation to enable it or any Obligor to perform its obligations under, and ensure the validity or enforceability of, each of

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the Transaction Documents are obtained and promptly renewed from time to time and will procure that the terms of the same are complied with at all times. Insofar as such filings or registrations have not been completed on or before the Drawdown Date the Borrower will procure the filing or registration within applicable time limits of each Finance Document which requires filing or registration together with all ancillary documents required to preserve the priority and enforceability of the Finance Documents.

**13.8 ~~42.8~~Negative pledge**

The Borrower will not create or permit to subsist any Security Interest on the whole or any part of its present or future assets, except for the following:

- (a) Security Interests created with the prior consent of the Facility Agent and the Security Trustee; or
- (b) Security Interests qualifying as Permitted Security Interests with respect to the Borrower and described in paragraph (a) of the definition of "Permitted Security Interests" in Clause 1.1 (*Definitions*); or
- (c) Security Interests qualifying as Permitted Security Interests with respect to the Borrower and described in ~~paragraph~~ paragraphs (C), (E), (H) or (I) of such definition, provided that insofar as they are enforceable against the Ship they do not prevail over the Mortgage.

**13.9 ~~42.9~~Disposals**

Except in the case of a sale of the Ship if the completion of the sale is contemporaneous with prepayment of the Loan in accordance with the provisions of Clause ~~46.3~~ 17.3 (*Mandatory prepayment – Sale and Total Loss*) and except for charters and other arrangements complying with Clause ~~43.4~~ 14.1 (*Pooling of earnings and charters*) the Borrower shall not without the consent of the Majority Lenders and SACE, either in a single transaction or in a series of transactions whether related or not and whether voluntarily or involuntarily:

- (a) sell, transfer, lease or otherwise dispose of the Ship or any of the Ship's equipment except in the case of items:
    - (i) being replaced (by an equivalent or superior item) or renewed; or
    - (ii) that are being disposed of in the ordinary course of business,

**provided that** in the case of both sub-paragraphs (i) and (ii) above the net impact does not reduce the value of the Ship and, in the case of sub-paragraph (ii), the value of any such disposals during the term of this Agreement do not, in aggregate, exceed ten million Dollars (\$10,000,000);
  - (b) sell, transfer or otherwise dispose of any of its receivables on recourse terms;
  - (c) 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
  - (d) enter into any other preferential arrangement having the same 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.
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**13.10 ~~42.40~~Change of business**

Except with the prior consent of the Facility Agent, the Borrower shall not make or threaten to make any substantial change in its business as presently conducted, namely that of a single ship owning company for the Ship, or change its place of business to any country other than that of its Original Jurisdiction, or carry on any other business which is substantial in relation to its business as presently conducted so as to affect, in the opinion of the Facility Agent, the Borrower's ability to perform its obligations hereunder.

**13.11 ~~42.41~~Mergers**

Except with the prior consent of the Lenders and SACE and subject to compliance with all necessary "know your customer" requirements, the Borrower will not enter into any amalgamation, restructure, substantial reorganisation, merger, de-merger or consolidation or anything analogous to the foregoing nor will it acquire any equity, share capital or obligations of any corporation or other entity.

**13.12 ~~42.42~~Maintenance of status and franchises**

The Borrower will do all such things as are necessary to maintain its limited liability company existence in good standing and will ensure that it has the right and is duly qualified to conduct its business as it is conducted in all applicable jurisdictions and will obtain and maintain all franchises and rights necessary for the conduct of its business.

**13.13 ~~42.43~~Financial records**

The Borrower will keep proper books of record and account, in which proper and correct entries shall be made of all financial transactions and the assets, liabilities and business of the Borrower in accordance with GAAP.

**13.14 ~~42.44~~Financial Indebtedness and subordination of indebtedness**

The following restrictions shall apply:

- (a) otherwise than in the ordinary course of business as owner of the Ship, except as contemplated by this Agreement and except any loan, advance or credit extended by the Guarantor or any member of the Group which is a wholly owned Subsidiary of the Guarantor, the Borrower will not create, incur, assume or allow to exist any financial indebtedness, enter into any finance lease or undertake any material capital commitment (including but not limited to the purchase of any capital asset); and
  - (b) the Borrower shall procure that:
    - (i) any and all indebtedness (and in particular with any other Obligor) is at all times fully subordinated to the Finance Documents and the obligations of the Borrower hereunder; and
    - (ii) if required by any applicable laws, the subordinated liabilities created pursuant to such indebtedness shall be subject to security (in form and substance satisfactory to the Secured Parties) in favour of the Security Trustee ("**Subordinated Debt Security**") and any related legal opinions shall be issued if so required by the Secured Parties; and
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- (iii) upon the occurrence of an Event of Default, the Borrower shall not make any repayments of principal, payments of interest or of any other costs, fees, expenses or liabilities arising from or representing such indebtedness. In this paragraph (b) of Clause ~~12.14~~ 13.14 (*Financial Indebtedness and subordination of indebtedness*) "fully subordinated" shall mean that any claim of the lender against the Borrower in relation to such indebtedness shall rank after and be in all respects subordinate to all of the rights and claims of the Secured Parties under this Agreement and the other Finance Documents and that the lender shall not take any steps to enforce its rights to recover any monies owing to it by the Borrower and in particular but without limitation the lender will not institute any legal or quasi-legal proceedings under any jurisdiction at any time against the Ship, her Earnings or Insurances or the Borrower and it will not compete with the Secured Parties or any of them in a liquidation or other winding-up or bankruptcy of the Borrower or in any proceedings in connection with the Ship, her Earnings or Insurances.

### 13.15 ~~12.15~~ **Investments**

The Borrower shall not:

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

### 13.16 ~~12.16~~ **Unlawfulness, invalidity and ranking; security imperilled**

No Obligor shall 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 an Obligor to perform any of its obligations under the Transaction Documents;
  - (b) cause any obligation of an Obligor under the Finance Documents to cease to be legal, valid, binding or enforceable if that cessation individually or together with any other cessations materially or adversely affects the interests of the Secured Parties under the Transaction Documents;
  - (c) cause any Transaction Document to cease to be in full force and effect;
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- (d) cause any Security Interest to rank after, or lose its priority to, any other Security Interest; and
- (e) imperil or jeopardise any Security Interest.

**13.17 ~~12.17~~ Dividends and dividend restriction**

- (a) Subject to paragraph (b) below, the Borrower shall not make or pay any dividend or other distribution (in cash or in kind) in respect of its share capital other than dividends and distributions that are transferred to the Shareholder or the Guarantor provided that no Event of Default has occurred or is continuing or would result from the payment of any dividend.
- (b) During the Deferral Period, the Borrower shall not, and shall procure that the Guarantor, the Shareholder and the Holding shall not:
  - (i) declare, make or pay any dividend or other distribution (or interest on any unpaid dividend or other distribution) (whether in cash or in kind) on or in respect of its share capital (or any class of its share capital);
  - (ii) repay or distribute any dividend or share premium reserve;
  - (iii) make any repayment of any kind under any shareholder loan; or
  - (iv) redeem, repurchase (whether by way of share buy-back program or otherwise), defease, retire or repay any of its share capital or resolve to do so,

except that:

- (A) any Obligor other than the Guarantor may pay dividends and other distributions, directly or indirectly, to the Guarantor for the purpose of providing liquidity to the Guarantor to enable the Guarantor to satisfy payment obligations for which the Guarantor is an obligor;
  - (B) any Obligor may pay dividends in respect of the Tax liability to each relevant jurisdiction in respect of consolidated, combined, unitary or affiliated Tax returns for each relevant jurisdiction of the Group or the Holding or holder of the Guarantor's capital stock with respect to income taxable as a result of any member of the Group or the Holding being taxed as a pass-through entity for U.S. Federal, state and local income tax purposes or attributable to any member of the Group;
  - (C) the Guarantor and the Holding may pay dividends and other distributions (x) in respect of a conversion, exchange, or repurchase of convertible or exchangeable notes and any conversion of preference shares to ordinary shares in connection therewith, provided that the cash portion of a repurchase of convertible or exchangeable notes is limited to the amount of interest that would otherwise be payable through maturity on the amount of such convertible or exchangeable notes being repurchased plus any amount in lieu of fractional shares, and (y) to the extent contractually owed to holders of equity in the Guarantor or the Holding; and
  - (D) the Guarantor may pay dividends and other distributions to the Holding for the purposes of providing cash to the Holding for the payment of any Tax payable in connection with the Holding's equity plan,
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provided that the actions in paragraphs (B) and (C) above shall only be permitted if there is no Event of Default which is continuing under this Agreement and no Event of Default would arise from the payment of such dividend.

**13.18 ~~42.18~~ Loans and guarantees by the Borrower**

Otherwise than in the ordinary course of business in its ownership and operation of the Ship following the Delivery Date, the Borrower will not make any loan or advance or extend credit to any person, firm or corporation (other than as permitted pursuant to paragraph (a) of Clause ~~42.15~~ 13.15 (*Investments*)), or issue or enter into any guarantee or indemnity or otherwise become directly or contingently liable for the obligations of any other person, firm or corporation.

**13.19 ~~42.19~~ Acquisition of shares**

The Borrower will not:

- (a) acquire any equity, share capital, assets or obligations of any corporation or other entity; or
- (b) permit any of its limited liability company interests to be directly held other than by the Member.

**13.20 ~~42.20~~ Further assurance**

The Borrower will, from time to time on being required to do so by the Facility Agent, do or procure the doing of all such acts and/or execute or procure the execution of all such documents in a form satisfactory to the Facility Agent as the Facility Agent may reasonably consider necessary for giving full effect to any of the Transaction Documents, the Interest ~~Make-up~~ Make-Up Agreement or the SACE Insurance Policy or securing to the Secured Parties the full benefit of the rights, powers and remedies conferred upon the Secured Parties or any of them in any such Transaction Document, the Interest ~~Make-up~~ Make-Up Agreement or the SACE Insurance Policy.

**13.21 ~~42.21~~ Irrevocable payment instructions**

The Borrower shall not modify, revoke or withhold the payment instructions set out in Clause 4.1 (*Borrower's irrevocable payment instructions*) without the agreement of the Builder (in the case of paragraphs (b)(i), (d)(i) and (e)(i) of Clause 4.1 (*Borrower's irrevocable payment instructions*) only), the Facility Agent, SACE and the Lenders.

**13.22 ~~42.22~~ "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 the Original Facility Agreement;
    - (ii) any change in the status of the Borrower after the date of the Original Facility 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,
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obliges the Facility Agent or any Lender (or, in the case of sub-paragraph (iii) of paragraph (a) of Clause ~~42:22~~ 13.22 ("*Know your customer*" checks), 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 or the Lenders (acting reasonably) require any additional documents to supplement those already provided, the Borrower shall promptly upon the request of the Facility Agent or any Lender supply, or procure the supply of, such documentation and other evidence as is reasonably requested by the Facility Agent (for itself or on behalf of any Lender) or any Lender (for itself or, in the case of the event described in sub-paragraph (iii) of paragraph (a) of Clause ~~42:22~~ 13.22 ("*Know your customer*" checks), on behalf of any prospective new Lender) in order for the Facility Agent and, such 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.

#### 13.23 ~~42:23~~ Shipbuilding Contract

- (a) The Shipbuilding Contract constitutes legal, valid and binding and enforceable obligations of the Builder and accordingly the Borrower shall not modify the Shipbuilding Contract, directly or indirectly, in such a manner that would result in a change of the type, principal dimensions or class of the Ship or decrease the value of the Ship by equal to or greater than 5 per cent. (in aggregate) without the prior written consent of the Lenders and SACE.
- (b) The Borrower will, therefore, submit to the Facility Agent any proposals for any such modification and SACE and the Facility Agent on behalf of the Lenders will indicate in a timely manner whether the modification proposed will allow the Loan to be maintained.
- (c) The Borrower also undertakes to notify the Facility Agent of any change in the Intended Delivery Date as soon as practicable after each change has occurred.
- (d) The Borrower shall notify the Facility Agent promptly, and in any event within ten (10) Business Days of any other changes to the Shipbuilding Contract (other than Minor Modifications) and provide copies of the same to the Facility Agent.
- (e) The Borrower undertakes to notify the Facility Agent promptly of any termination and/or repudiation of the Shipbuilding Contract (including a termination and/or repudiation pursuant to article 32 of the Shipbuilding Contract).
- (f) For the avoidance of doubt, all modifications not falling under paragraph (a) above shall be permitted and the Borrower shall not be obliged to seek or obtain any consent from the Lenders and/or SACE in respect of any such modifications subject to the notification requirements as set out in ~~paragraphs~~ paragraphs (d) and (e) above.

#### 13.24 ~~42:24~~ FOREX Contracts

The Borrower shall:

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- (a) provide the Facility Agent with a copy of all FOREX Contracts together with all relevant details within ten (10) days of their execution; and
- (b) inform the Facility Agent, when requested by the Facility Agent, of its intended hedging policy for purchasing Euro with Dollars.

The Facility Agent shall inform the Lenders within ten (10) days of receipt of such information from the Borrower.

**13.25 ~~12.25~~ Compliance with laws etc.**

The Borrower shall:

- (a) comply, or procure compliance with:
  - (i) in all material respects (except in the case of compliance with Sanctions which the Borrower shall comply with in all respects), all laws and regulations relating to it and its business generally; and
  - (ii) in all material respects (except in the case of compliance with Sanctions which the Borrower shall comply with in all respects), all laws or regulations relating to the Ship, its ownership, employment, operation, management and registration,  
  
including 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 which are applicable to it; and
- (c) without limiting paragraph (a) above, not employ the Ship nor allow its employment, operation or management in any Prohibited Jurisdiction or 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 applicable anti-corruption laws.

**13.26 ~~12.26~~ Most favoured nations**

- (a) The Borrower shall procure that if at any time after the date of the Original Facility Agreement the Guarantor enters into any financial contract or financial document relating to any Financial Indebtedness with or which has the support of any export credit agency and which contains *pari passu* provisions or cross default provisions which are more favourable to the lenders than those contained in paragraph (l) of Clause ~~11.2-12.2~~ (*Continuing representations and warranties*) and Clause ~~18.6-19.6~~ (*Cross default*) respectively, the Borrower or the Guarantor shall immediately notify the Facility Agent of such provisions and the relevant provisions contained in this Agreement shall be deemed amended so that such more favourable *pari passu* provisions or cross default provisions are granted to the Creditor Parties pursuant to this Agreement.
  - (b) The Borrower undertakes that if at any time after the date of this Agreement and until the occurrence of a Reinstatement Event, it or any other member of the Group is required to grant additional security in relation to a financial contract or financial document relating to any existing Financial Indebtedness:
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- (i) with the support of any export credit agency (excluding any extensions, increases or changes to the terms and conditions thereof), such security shall be granted on a *pari passu* basis to the Lenders (and the Security Trustee agrees to enter and/or procure the entry by the relevant Secured Parties into such intercreditor documentation to reflect such *pari passu* ranking (in form and substance reasonably satisfactory to the Secured Parties) as may be required in connection with such arrangements); or
  - (ii) without the support of any export credit agency (excluding any extensions, increases or changes to the terms and conditions thereof), such security shall (without prejudice to any of the Obligors' other obligations under the Finance Documents), subject to the provisions of clause 11.11 (*Negative pledge*) of the Guarantee and Clause ~~42.8~~ 13.8 (*Negative pledge*), be permitted provided that it shall not have an adverse effect on any Security interests or other rights granted to the Secured Parties under the Finance Documents.
- (c) ~~In~~ Until the occurrence of a Reinstatement Event, in respect of any new Financial Indebtedness (other than Permitted Financial Indebtedness), or any extensions, increases or changes to the terms and conditions of any existing Financial Indebtedness, in each case with or which has the support of any export credit agency, the Borrower shall enter into good faith negotiations with the Security Trustee to grant additional security for the purpose of further securing the Loan, provided that any failure to reach agreement under this paragraph (c) following such good faith negotiations shall not constitute an Event of Default.

**13.27 ~~42.27~~ Code of Ethics and Model**

- (a) The Borrower shall not behave so as to cause any of the following persons to violate the principles set out in the Code of Ethics and/or Model:
  - (i) persons who are representatives, administrators or managers of CDP or of any of its organizational units with financial and functional independence;
  - (ii) persons who are managed or supervised by one of the persons referred to in paragraph (i) above; or
  - (iii) external advisors of CDP.
- (b) The Borrower shall maintain adequate internal procedures aimed at preventing liabilities provided under Legislative Decree 231/01.
- (c) The Borrower shall inform CDP of any (i) new pending litigation against it in relation to administrative liability provided under Legislative Decree 231/01; (ii) new final judgment under Legislative Decree 231/01, including, without limitation, any plea bargain (also known as *patteggiamento* under Italian law) pursuant to article 444 of the Italian code of criminal procedure; and (iii) new precautionary measures under Legislative Decree 231/01.

**13.28 ~~42.28~~ New capital raises or financing**

- (a) Save as provided below:
    - (i) no new debt ~~or equity issuance~~ shall be raised and no new Financial Indebtedness shall be incurred by the Group (including, for the avoidance of doubt, inter-company loans);
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- (ii) no non-arm's length disposals of any asset relating to the Group fleet shall be made; and
- (iii) no additional Security Interests securing existing Financial Indebtedness will be created or permitted to subsist by any Obligor (unless the Lenders benefit from this new security on a *pari passu* basis),

~~during the Deferral Period:~~

until 31 December 2023.

- (b) The restrictions in paragraph (a) of this Clause ~~42.28-13.28~~ (*New capital raises or financing*) above shall not apply in relation to:
    - (i) any refinancing of any bond issuance of, or loan entered into by, the Group (A) which matures during such period or (B) where not maturing during such period, shall be on terms ~~which include any of the following (evidence of which shall be provided to the Facility Agent by the Guarantor)~~ resulting, when taken as a whole, in an improvement of the ability of the Obligors to meet their obligations under the Finance Documents which terms include any of the following: an extension of the repayment terms; or a decrease in the interest rate; or the conversion of such Financial Indebtedness from secured to unsecured or first to second priority;
    - (ii) any debt ~~or equity issuance~~ provided prior to 31 December ~~2022-2023~~ to provide the Group with crisis and/or recovery related funding in respect of the impact of the Covid-19 pandemic;
    - (iii) any debt ~~or equity issuance~~ being raised on or after 31 December ~~2022-2023~~ to support the Group with the impact of the Covid-19 pandemic, made with the prior written consent of SACE;
    - (iv) any debt ~~or equity issuance~~ being raised to finance any instalment of a cruise vessel already contracted for or contracted for during such period or any refurbishment, maintenance, upgrade or lengthening of a cruise ship during such period (including without limitation any costs incurred by the owner of a cruise ship in connection therewith);
    - (v) any debt ~~or equity issuance~~ being raised to finance capital expenditure for projects which are already contracted for but in respect of which committed financing has not yet been obtained, and which, in each case has been (or will be) listed in the Information Package submitted to the Facility Agent prior to the February 2021 ~~Deferral~~ Effective Date;
    - (vi) any extension or renewal of revolving credit facilities, and made with the prior written consent of SACE if any additional security is to be granted;
    - (vii) any new debt ~~or equity issuance~~ otherwise agreed by SACE; or
    - (viii) any inter-company loan or operating arrangement which from an accounting perspective has the effect of an intercompany loan (an "**intercompany arrangement**") which:
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- (A) is existing as at the date of the February 2021 Amendment and Restatement Agreement;
- (B) is made among any Group members or any Group member with the Holding provided that:
  - (1) any inter-company arrangement is made solely for the purpose of regulatory or Tax purposes carried out in the ordinary course of business and on an arm's length basis; and
  - (2) the aggregate principal amount of any inter-company arrangements outstanding pursuant to ~~this sub-paragraph (2) of sub-paragraph (B) of sub-paragraph (viii) of paragraph (b) of b)(viii)(B)(2) of this~~ Clause ~~42.28-13.28~~ (New capital raises or financing) does not exceed [\*] (\$[\*]) at any time; or

(C) ~~(3)~~ has been approved with the prior written consent of SACE;

- (ix) any Permitted Security Interest;
- (x) any Security Interest otherwise approved with the prior written consent of SACE;
- (xi) any Financial Indebtedness incurred in the ordinary course of business which in the aggregate does not exceed USD [\*] during any twelve-month period; ~~and, it being provided that:~~

(A) prior to 31 December 2022, this amount shall be increased to USD [\*] for any Financial Indebtedness incurred to finance capital expenditure for Approved Projects; and

(B) if any part of such Financial Indebtedness allocated prior to 31 December 2022 to an Approved Project remains unused throughout the twelve-month period of year 2022, the surplus may be carried over to increase the relevant Financial Indebtedness throughout the twelve-month period of year 2023 for that Approved Project only;

- (xii) without prejudice to Clauses ~~42.44-13.11~~ (Mergers) and ~~42.45-13.15~~ (Investments) and clause 11.13 (No merger etc.) of the Guarantee, the issuance of share capital by any Group member to another Group member; ~~and~~

(xiii) any extension, renewal, replacement or upsizing in respect of the Term and Revolving Credit Facilities (including the granting of additional Security Interests),

and for the avoidance of doubt, no debt or equity issuance shall be raised in respect of any form of merger, sub-division, amalgamation, restructuring, consolidation, winding-up, dissolution or anything analogous thereto or acquisition of any entity, share capital or obligations of any corporation or other entity.

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## 14 ~~13~~SHIP UNDERTAKINGS

### 14.1 ~~13.1~~ Pooling of earnings and charters

The Borrower will not without the prior written consent of the Facility Agent or SACE enter into in respect of the Ship (such consent for the purposes of paragraph (e) of Clause ~~13.1~~ 14.1 (*Pooling of earnings and charters*) shall not be unreasonably withheld or delayed), nor permit to exist at any time following the Delivery Date:

- (a) any pooling agreement or other arrangement for the sharing of any of the Earnings or the expenses of the Ship except with a member of the Group and provided that it does not adversely affect the rights of the Secured Parties under the Finance Documents in the reasonable opinion of the Facility Agent; or
  - (b) any demise or bareboat charter (other than the Bareboat Charter), provided however that such consent shall not be unreasonably withheld in the event that the Borrower wishes to enter into a bareboat charter in a form approved by the Facility Agent with another member of the Group on condition that if so requested by the Facility Agent and without limitation:
    - (i) any such bareboat charterer shall enter into such deeds (including but not limited to a full subordination and assignment deed in respect of its rights under the bareboat charter and its interest in the Insurances and earnings payable to it arising out of its use of the Ship), agreements and indemnities as the Majority Lenders and SACE shall require prior to entering into the bareboat charter with the Borrower; and
    - (ii) the Borrower shall assign the benefit of any such bareboat charter and its interest in the Insurances to the Secured Parties by way of further security for the Borrower's obligations under the Finance Documents; or
  - (c) any charter whereunder two (2) months' ~~charterhire~~ charter hire (or the equivalent thereof) is payable in advance in respect of the Ship; or
  - (d) any charter of the Ship or employment which, with the exercise of options for extension, could be for a period longer than [\*] ([\*]) months; or
  - (e) any time charter of the Ship with a company outside the Group (other than a time charter entered into in the ordinary course of business which does not exceed [\*] ([\*]) months **provided that** (x) any such time charter is assigned to the Security Trustee and (y) during the period of such time charter, the Ship continues to be managed by the existing Approved Manager), provided however that such consent shall not be unreasonably withheld in the event that:
    - (i) such time charter is assigned to the Security Trustee and the Borrower agrees to:
      - (A) serve a notice of assignment of any time charter, the Earnings therefrom and any guarantee of the charterer's obligations on the time charterer and any time charter guarantor; and
      - (B) use commercially reasonable endeavours to obtain an acknowledgement of such assignment,and each of the notice of assignment and acknowledgement of assignment being substantially in the form appended to the General Assignment;
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- (ii) the Facility Agent is satisfied that the income from such time charter will be sufficient to cover the expenses of the Ship and to service repayment of the Loan and all other amounts from time to time outstanding under this Agreement; and
- (iii) during the term of such time charter, the Ship continues to be managed by the existing Approved Manager.

#### 14.2 ~~13.2~~ Management and employment

The Borrower will not as from the Delivery Date:

- (a) permit any person other than an Approved Manager to be the manager of, including providing crewing services to, the Ship, at all times acting upon terms approved in writing by the Facility Agent and having entered into (in the case of the Approved Manager) an Approved Manager's Undertaking;
- (b) permit any amendment to be made to the terms of any Management Agreement unless the amendment is advised by the Borrower's tax counsel or is deemed necessary by the parties thereto to reflect the prevailing circumstances but provided that the amendment does not imperil the security to be provided pursuant to the Finance Documents or adversely affect the ability of any Obligor to perform its obligations under the Transaction Documents; or
- (c) permit the Ship to be employed other than within the Norwegian Cruise Line brand unless the Borrower notifies the Lenders that they intend to employ the Ship within another brand of the Group and the ship remains employed within the Group.

#### 14.3 ~~13.3~~ Trading with the United States of America

The Borrower shall in respect of the Ship take all reasonable precautions as from the Delivery Date to prevent any infringements of the Anti-Drug Abuse Act of 1986 of the United States of America (as the same may be amended and/or re-enacted from time to time hereafter) or any similar legislation applicable to the Ship in any other jurisdiction in which the Ship shall trade (a "**Trading Jurisdiction**") where the Ship trades in the territorial waters of the United States of America or a Trading Jurisdiction.

#### 14.4 ~~13.4~~ Valuation of the Ship

The following shall apply in relation to the valuation of the Ship:

- (a) the Borrower will on or before 31 May of each year that commences after the delivery of the Ship and at annual intervals thereafter, unless an Event of Default has occurred and remains unremedied, at the Borrower's expense, procure that the Ship is valued by an Approved Broker (such valuation to be made without taking into account the benefit or otherwise of any fixed employment relating to the Ship);
  - (b) the Borrower shall procure that forthwith upon the issuance of any valuation obtained pursuant to this Clause ~~13.4~~ 14.4 (*Valuation of the Ship*) a copy thereof is sent directly to the Facility Agent and the Security Trustee for review; and
  - (c) in the event that the Borrower fails to procure a valuation in accordance with paragraph (a) of Clause ~~13.4~~ 14.4 (*Valuation of the Ship*), the Facility Agent shall be entitled to procure a valuation of the Ship on the same basis.
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**14.5 ~~13.5~~Earnings**

The Borrower will procure that the Earnings (if any) are paid in full without set off and free and clear of and without deduction for any taxes, levies, duties, imposts, charges, fees, restrictions or conditions of any nature whatsoever.

**14.6 ~~13.6~~Operation and maintenance of the Ship**

From the Delivery Date until the end of the Security Period at its own expense the Borrower will keep the Ship in a good and efficient state of repair so as to maintain it to the highest classification notation available for the Ship of its age and type free of all recommendations and qualifications with Bureau Veritas or DNV. On the Delivery Date and annually thereafter, it will furnish to the Facility Agent (with copy to the Security Trustee) a statement by such classification society that such classification notation is maintained. It will comply with all recommendations, regulations and requirements (statutory or otherwise) from time to time applicable to the Ship and shall have on board as and when required thereby valid certificates showing compliance therewith and shall procure that all repairs to or replacements of any damaged, worn or lost parts or equipment are carried out (both as regards workmanship and quality of materials) so as not to diminish the value or class of the Ship. It will not make any substantial modifications or alterations to the Ship or any part thereof which would reduce the market and commercial value of the Ship determined in accordance with Clause ~~13.4~~ 14.4 (*Valuation of the Ship*).

**14.7 ~~13.7~~Surveys and inspections**

The Borrower will:

- (a) submit the Ship to continuous survey in respect of its machinery and hull and such other surveys as may be required for classification purposes and, if so required by the Facility Agent, supply to the Facility Agent (with copy to the Security Trustee) copies in English of the survey reports;
- (b) permit surveyors or agents appointed by the Facility Agent to board the Ship to inspect its condition or satisfy themselves as to repairs proposed or already carried out and afford all proper facilities for such inspections **provided that**, unless an Event of Default has occurred or there is an accident to the Ship involving repairs the cost of which will or is likely to exceed [\*] Dollars (\$[\*]), such inspections shall be limited to one a year and shall all be at reasonable times.

**14.8 ~~13.8~~ISM Code**

The Borrower will comply, or procure that the Approved Manager will comply, with the ISM Code (as the same may be amended from time to time) or any replacement of the ISM Code (as the same may be amended from time to time) and in particular, without prejudice to the generality of the foregoing, as and when required to do so by the ISM Code and at all times thereafter:

- (a) hold, or procure that the Approved Manager holds, a valid Document of Compliance duly issued to the Borrower or the Approved Manager (as the case may be) pursuant to the ISM Code and a valid Safety Management Certificate duly issued to the Ship pursuant to the ISM Code;
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- (b) provide the Facility Agent (with copy to the Security Trustee) with copies of any such Document of Compliance and Safety Management Certificate as soon as the same are issued; and
- (c) keep, or procure that there is kept, on board the Ship a copy of any such Document of Compliance and the original of any such Safety Management Certificate.

**14.9 ~~13.9~~ ISPS Code**

The Borrower will comply, or procure that the Approved Manager will comply, with the ISPS Code (as the same may be amended from time to time) or any replacement of the ISPS Code (as the same may be amended from time to time) and in particular, without prejudice to the generality of the foregoing, as and when required to do so by the ISPS Code and at all times thereafter:

- (a) keep, or procure that there is kept, on board the Ship the original of the International Ship Security Certificate required by the ISPS Code; and
- (b) keep, or procure that there is kept, on board the Ship a copy of the ship security plan prepared pursuant to the ISPS Code.

**14.10 ~~13.10~~ Annex VI**

The Borrower will comply with Annex VI (as the same may be amended from time to time) or any replacement of Annex VI (as the same may be amended from time to time) and in particular, without limitation, to:

- (a) procure that the Ship's master and crew are familiar with, and that the Ship complies with, Annex VI; and
- (b) maintain for the Ship throughout the Security Period a valid and current IAPPC and provide a copy to the Facility Agent (with copy to the Security Trustee); and
- (c) notify the Facility Agent (with copy to the Security Trustee) immediately in writing of any actual or threatened withdrawal, suspension, cancellation or modification of the IAPPC.

**14.11 ~~13.11~~ Employment of Ship**

The Borrower shall:

- (a) not employ the Ship or permit its employment in any trade or business which is forbidden by any applicable law or is otherwise illicit or in carrying illicit or prohibited goods or in any manner whatsoever which may render it liable to condemnation in a prize court or to destruction, seizure or confiscation or that may expose the Ship to penalties. In the event of hostilities in any part of the world (whether war be declared or not) it will not employ the Ship or permit its employment in carrying any contraband goods; and
  - (b) promptly provide the Facility Agent (with copy to the Security Trustee) with (i) all information which the Facility Agent may reasonably require regarding the Ship, its employment, earnings, position and engagements (ii) particulars of all towages and salvages and (iii) copies of all charters and other contracts for its employment and otherwise concerning it.
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**14.12 ~~13.12~~ Provision of information**

The Borrower shall give notice to the Facility Agent and the Security Trustee promptly and in reasonable detail upon the Borrower or any other Obligor becoming aware of:

- (a) accidents to the Ship involving repairs the cost of which will or is likely to exceed [\*] Dollars (\$[\*]);
- (b) the Ship becoming or being likely to become a Total Loss;
- (c) any recommendation or requirement made by any insurer or classification society or by any competent authority which is not complied with, or cannot be complied with, within any time limit relating thereto and that might reasonably affect the maintenance of either the Insurances or the classification of the Ship;
- (d) any writ or claim served against or any arrest of the Ship or the exercise of any lien or purported lien on the Ship, her Earnings or Insurances;
- (e) the Ship ceasing to be registered under the flag of the Maritime Registry or anything which is done or not done whereby such registration may be imperilled;
- (f) it becoming impossible or unlawful for it to fulfil any of its obligations under the Finance Documents; and
- (g) anything done or permitted or not done in respect of the Ship by any person which is likely to imperil the security created by the Finance Documents.

**14.13 ~~13.13~~ Payment of liabilities**

The Borrower shall promptly pay and discharge:

- (a) all debts, damages and liabilities, taxes, assessments, charges, fines, penalties, tolls, dues and other outgoings in respect of the Ship and keep proper books of account in respect thereof provided always that the Borrower shall not be obliged to compromise any debts, damages and liabilities as aforesaid which are being contested in good faith subject always that full details of any such contested debt, damage or liability which, either individually or in aggregate exceeds [\*] Dollars (\$[\*]) shall forthwith be provided to the Facility Agent (with copy to the Security Trustee). As and when the Facility Agent may so require the Borrower will make such books available for inspection on behalf of the Facility Agent and provide evidence satisfactory to the Facility Agent that the wages and allotments and the insurance and pension contributions of the master and crew are being regularly paid, that all deductions of crew's wages in respect of any tax liability are being properly accounted for and that the master has no claim for disbursements other than those incurred in the ordinary course of trading on the voyage then in progress or completed prior to such inspection;
  - (b) all liabilities which have given rise, or may give rise, to liens or claims enforceable against the Ship under the laws of all countries to whose jurisdiction the Ship may from time to time be subject and in particular the Borrower hereby agrees to indemnify and hold the Secured Parties, their successors, assigns, directors, officers, shareholders, employees and agents harmless from and against any and all claims, losses, liabilities, damages, expenses (including attorneys, fees and expenses and consultant fees) and injuries of any kind whatsoever asserted against the Secured Parties, with respect to or as a result of the presence, escape, seepage, spillage, release, leaking, discharge or migration from the Ship or other properties owned or
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operated by the Borrower of any hazardous substance, including without limitation, any claims asserted or arising under any applicable environmental, health and safety laws, codes and ordinances, and all rules and regulations promulgated thereunder of all governmental agencies, regardless of whether or not caused by or within the control of the Borrower subject to the following:

- (i) it is the parties' understanding that the Secured Parties do not now, have never and do not intend in the future to exercise any operational control or maintenance over the Ship or any other properties and operations owned or operated by the Borrower, nor in the past, presently, or intend in the future to, maintain an ownership interest in the Ship or any other properties owned or operated by the Borrower except as may arise upon enforcement of the Lenders' rights under the Mortgage;
- (ii) unless and until an Event of Default shall have occurred and without prejudice to the right of each Lender to be indemnified pursuant to this paragraph (b) of Clause ~~13.13~~ 14.13 (*Payment of liabilities*):
  - (A) each Lender will, if it is reasonably practicable to do so, notify the Borrower upon receiving a claim in respect of which the relevant Lender is or may become entitled to an indemnity under this paragraph (b) of Clause ~~13.13~~ 14.13 (*Payment of liabilities*); and
  - (B) subject to the prior written approval of the relevant Lender which the Lender shall have the right to withhold, the Borrower will be entitled to take, in the name of the relevant Lender, such action as the Borrower may see fit to avoid, dispute, resist, appeal, compromise or defend any such claims, losses, liabilities, damages, expenses and injuries as are referred to above in this paragraph (b) of Clause ~~13.13~~ 14.13 (*Payment of liabilities*) or to recover the same from any third party, subject to the Borrower first ensuring that the relevant Lender is secured to its reasonable satisfaction against all expenses thereby incurred or to be incurred,

provided always that the Borrower shall not be obliged to compromise any liabilities as aforesaid which are being contested in good faith subject always that full details of any such contested liabilities which, either individually or in aggregate, exceed [\*] Dollars (\$[\*]) shall be forthwith provided to the Facility Agent (with copy to the Security Trustee). If the Ship is arrested or detained for any reason it will procure its immediate release by providing bail or taking such other steps as the circumstances may require.

#### 14.14 ~~13.14~~ **Certificate as to liabilities**

The Borrower shall give to the Facility Agent (with copy to the Security Trustee) at such times as it may from time to time reasonably require a certificate, duly signed on its behalf, as to the total amount of any debts, damages and liabilities relating to the Ship and details of such of those debts, damages and liabilities as are over a certain amount to be specified by the Facility Agent at the relevant time and, if so required by the Facility Agent, forthwith discharge such of those debts, damages and liabilities as the Facility Agent shall require other than those being contested in good faith.

#### 14.15 ~~13.15~~ **Modifications**

The Borrower shall maintain the type of the Ship as at the Delivery Date and not put the Ship into the possession of any person for the purpose of work being done on it in an amount

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exceeding or likely to exceed [\*] Dollars (\$[\*]) unless such person shall first have given to the Facility Agent a written undertaking addressed to the Facility Agent in terms satisfactory to the Facility Agent agreeing not to exercise a lien on the Ship or her Earnings for the cost of such work or for any other reason (or the Borrower is able to demonstrate to the reasonable satisfaction of the Facility Agent that the Borrower or the relevant Group company has set aside and will have funds readily available for payment when due of the cost of the work (to the extent not fully covered by insurance proceeds in the case of a partial loss)).

**14.16 ~~13.16~~Registration of Ship**

The Borrower shall maintain the registration of the Ship under and fly the flag of the Maritime Registry and not do or permit anything to be done whereby such registration may be forfeited or imperilled.

**14.17 ~~13.17~~Environmental Law**

The Borrower shall comply with all Environmental Laws, obtain, maintain and ensure compliance with all requisite Environmental Approvals, and implement procedures to monitor compliance with and to prevent liability under any Environmental Law.

**14.18 ~~13.18~~Notice of Mortgage**

The Borrower shall keep the Mortgage registered against the Ship as a valid first preferred mortgage, carry on board the Ship a certified copy of the Mortgage and place and maintain in a conspicuous place in the navigation room and the master's cabin of the Ship a framed printed notice stating that the Ship is mortgaged by the Borrower to the Security Trustee.

**14.19 ~~13.19~~Environmental claims**

Each Obligor shall, (through the Guarantor), promptly upon becoming aware of the same, inform the Facility Agent in writing of:

- (a) any Environmental Claim which is likely to result in a Material Adverse Effect 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 which is likely to result in a Material Adverse Effect.

**14.20 ~~13.20~~Trading in war zones**

In the event of hostilities in any part of the world (whether war is declared or not), the Borrower shall not cause or permit the Ship to enter or trade to any zone which is declared a war zone by the Ship's war risks insurers unless:

- (a) the prior written consent of the Security Trustee has been given; and
- (b) the Borrower has (at its expense) effected any special, additional or modified insurance cover which the Security Trustee may require.

**14.21 ~~13.21~~Poseidon Principles**

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The Borrower shall, upon the request of the Facility Agent and at the cost of the Borrower, on or before 31st July in each calendar year, supply to the Facility Agent all information necessary in order for the Lenders to comply with their obligations under the Poseidon Principles in respect of the preceding year, including, without limitation, all ship fuel oil consumption data required to be collected and reported in accordance with Regulation 22A of Annex VI and any Statement of Compliance, in each case relating to the Ship for the preceding calendar year provided always that, for the avoidance of doubt, such information shall be "Confidential Information" for the purposes of Clause ~~33-34~~ (Confidentiality) but the Borrower acknowledges that, in accordance with the Poseidon Principles, such information will form part of the information published regarding the Lenders' portfolio climate alignment.

## 15 ~~44~~INSURANCE UNDERTAKINGS

### 15.1 ~~44.1~~General

The undertakings in this Clause ~~44-15~~ (*Insurance Undertakings*) remain in force on and from the Delivery Date and throughout the rest of the Security Period except as the Facility Agent may otherwise permit.

### 15.2 ~~44.2~~Maintenance of obligatory insurances

The Borrower shall insure the Ship in its name and keep the Ship insured on an agreed value basis for an amount in the currency in which the Loan is denominated approved by the Facility Agent (acting on the instructions of the Majority Lenders) but not being less than the greater of (x) [\*] per cent. ([\*]%) of the amount of the Loan; and (y) the full market and commercial value of the Ship determined in accordance with Clause ~~13.4-14.4~~ (*Valuation of the Ship*) from time to time through internationally recognised independent first class insurance companies, underwriters, war risks and protection and indemnity associations acceptable to the Facility Agent (acting on the instruction of the Majority Lenders), acting reasonably, in each instance on terms and conditions approved by the Facility Agent including as to deductibles but at least in respect of:

- (a) fire and marine risks including but without limitation hull and machinery and all other risks customarily and usually covered by first-class and prudent shipowners in the global insurance markets under English or Norwegian marine policies or Facility Agent-approved policies containing the ordinary conditions applicable to similar Ships;
  - (b) war risks (including terrorism, piracy, blocking and trapping and protection and indemnity war risks) up to the insured amount;
  - (c) excess risks that is to say the proportion of claims for general average and salvage charges and under the running down clause not recoverable in consequence of the value at which the Ship is assessed for the purpose of such claims exceeding the insured value;
  - (d) protection and indemnity risks with full standard coverage as offered by first-class protection and indemnity associations which are a member of the International Group of P&I Association and up to the highest limit of liability available (for oil pollution risk the highest limit currently available is one billion Dollars (\$1,000,000,000) and this to be increased if reasonably requested by the Facility Agent and the increase is possible in accordance with the standard protection and indemnity cover for Ships of its type and is compatible with prudent insurance practice for first class cruise shipowners or operators in waters where the Ship trades from time to time from the Delivery Date until the end of the Security Period);
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- (e) when and while the Ship is laid-up, in lieu of hull insurance, normal port risks; and
- (f) such other risks as the Facility Agent may from time to time reasonably require;

and in any event in respect of those risks and at those levels covered by first class and prudent owners and/or financiers in the international market in respect of similar tonnage provided that if any of such insurances are also effected in the name of any other person (other than the Borrower and/or a Secured Party) such person shall if so required by the Facility Agent execute a first priority assignment of its interest in such insurances in favour of the Secured Parties in similar terms *mutatis mutandis* to the relevant provisions of the General Assignment.

### 15.3 ~~14.3~~ Mortgagee's interest and pollution risks insurances

The Facility Agent shall take out mortgagee interest insurance on such conditions as the Facility Agent may reasonably require and mortgagee interest insurance for pollution risks as from time to time agreed each for an amount in the currency in which the Loan is denominated of [\*] per cent. ([\*]%) of the amount of the Loan, the Borrower having no interest or entitlement in respect of such policies; the Borrower shall upon demand of the Facility Agent reimburse the Facility Agent for the costs of effecting and/or maintaining any such insurance(s).

### 15.4 ~~14.4~~ Trading in the United States of America

If the Ship shall trade in the United States of America and/or the Exclusive Economic Zone of the United States of America (the "EEZ") as such term is defined in the US Oil Pollution Act 1990 ("OPA"), to comply strictly with the requirements of OPA and any similar legislation which may from time to time be enacted in any jurisdiction in which the Ship presently trades or may or will trade at any time during the existence of this Agreement and in particular before such trade is commenced and during the entire period during which such trade is carried on:

- (a) to pay any additional premiums required to maintain full standard protection and indemnity cover for oil pollution up to the highest limit available to it for the Ship in the market;
  - (b) to make all such quarterly or other voyage declarations as may from time to time be required by the Ship's protection and indemnity association and to comply with all obligations in order to maintain such cover, and promptly to deliver to the Facility Agent (with copy to the Security Trustee) copies of such declarations;
  - (c) to submit the Ship to such additional periodic, classification, structural or other surveys which may be required by the Ship's protection and indemnity insurers to maintain cover for such trade and promptly to deliver to the Facility Agent copies of reports made in respect of such surveys;
  - (d) to implement any recommendations contained in the reports issued following the surveys referred to in paragraph (c) of Clause ~~14.4~~ 15.4 (*Trading in the United States of America*) within the time limit specified therein and to provide evidence satisfactory to the Facility Agent that the protection and indemnity insurers are satisfied that this has been done;
  - (e) in particular strictly to comply with the requirements of any applicable law, convention, regulation, proclamation or order with regard to financial responsibility for liabilities imposed on the Borrower or the Ship with respect to pollution by any state or nation or political subdivision thereof, including but not limited to OPA, and to provide the Facility Agent on demand with such information or evidence as it may reasonably require of such compliance;
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- (f) to procure that the protection and indemnity insurances do not contain a clause excluding the Ship from trading in waters of the United States of America and the EEZ or any other provision analogous thereto and to provide the Facility Agent with evidence that this is so; and
- (g) strictly to comply with any operational or structural regulations issued from time to time by any relevant authorities under OPA so that at all times the Ship falls within the provisions which limit strict liability under OPA for oil pollution.

**15.5 44.5 Protections for Secured Parties**

- (a) The Borrower shall give notice forthwith of any assignment of its interest in the Insurances to the relevant brokers, insurance companies, underwriters and/or associations in the form approved by the Facility Agent.
- (b) The Borrower shall execute and deliver all such documents and do all such things as may be necessary to confer upon the Secured Parties legal title to the Insurances in respect of the Ship and to procure that the interest of the Secured Parties is at all times filed with all slips, cover notes, policies and certificates of entry and to procure (a) that a loss payable clause in the form approved by the Facility Agent shall be filed with all the hull, machinery and equipment and war risks policies in respect of the Ship and (b) that a loss payable clause in the form approved by the Facility Agent shall be endorsed upon the protection and indemnity certificates of entry in respect of the Ship.
- (c) In the event of the Borrower making default in insuring and keeping insured the Ship as hereinbefore provided then the Facility Agent may (but shall not be bound to) insure the Ship or enter the Ship in such manner and to such extent as the Facility Agent in its discretion thinks fit and in such case all the cost of effecting and maintaining such insurance together with interest thereon at the interest rate shall be paid on demand by the Borrower to the Facility Agent.

**15.6 44.6 Copies of policies; letters of undertaking**

The Borrower will procure that each of the relevant brokers and associations furnishes the Facility Agent with a letter of undertaking in the standard form available in the relevant insurance market or otherwise in such form as may be required by the Facility Agent and waives any lien for premiums or calls except in relation to premiums or calls solely attributable to the Ship.

**15.7 44.7 Payment of premiums**

The Borrower shall punctually pay all premiums, calls, contributions or other sums payable in respect of the Insurances on the Ship and to produce all relevant receipts when so required by the Facility Agent.

**15.8 44.8 Renewal of obligatory insurances**

The Borrower shall notify the Facility Agent (with copy to the Security Trustee) of the renewal of the obligatory insurances at least five (5) days before the expiry thereof and shall procure that the relevant brokers or associations shall promptly confirm in writing to the Facility Agent (with copy to the Security Trustee) that such renewal is effected, it being understood by the Borrower that any failure to renew the Insurances on the Ship at least two (2) days before the expiry thereof or to give or procure the relevant notices of such renewal shall constitute an Event of Default.

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**15.9 ~~14.9~~Guarantees**

The Borrower shall arrange for the execution of such guarantees as may from time to time be required by any protection and indemnity and/or war risks association.

**15.10 ~~14.10~~Provision of insurances information**

The Borrower will furnish the Facility Agent (with copy to the Security Trustee) from time to time on request with full information about all Insurances maintained on the Ship and the names of the offices, companies, underwriters, associations or clubs with which such Insurances are placed.

**15.11 ~~14.11~~Alteration to terms of insurances**

The Borrower shall not make or agree to any variation in the terms of any of the Insurances on the Ship without the prior approval of the Facility Agent nor to do any act or voluntarily suffer or permit any act to be done whereby any Insurances shall or may be rendered invalid, void, voidable, suspended, defeated or unenforceable and not to suffer or permit the Ship to engage in any voyage nor to carry any cargo not permitted under any of the Insurances without first obtaining the consent of the insurers or reinsurers concerned and complying with such requirements as to payment of extra premiums or otherwise as the insurers or reinsurers may impose.

**15.12 ~~14.12~~Settlement of claims**

The Borrower shall not settle, compromise or abandon any claim in respect of any of the Insurances on the Ship other than a claim of less than [\*] Dollars (\$[\*]) or the equivalent in any other currency and not being a claim arising out of a Total Loss.

**15.13 ~~14.13~~Application of insurance proceeds**

The Borrower shall apply or ensure the appliance of all such sums receivable in respect of the Insurances on the Ship for the purpose of making good the loss and fully repairing all damage in respect whereof the insurance monies shall have been received.

**15.14 ~~14.14~~Insurance advisers**

The Facility Agent shall be entitled, immediately prior to the Delivery Date and thereafter no more frequently than annually on renewals but also additionally at any time when there is a proposed change of underwriters or the terms of any Insurances, to instruct independent reputable insurance advisers for the purpose of obtaining any advice or information regarding any matter concerning the Insurances which the Facility Agent shall deem necessary, it being hereby specifically agreed that the Borrower shall reimburse the Facility Agent on demand for the costs and expenses incurred by the Facility Agent in connection with the instruction of such advisers subject to a limit of ten thousand Dollars (\$10,000) at the time of delivery of the Ship or in the event of a change of underwriters or of terms of any Insurances and otherwise ten thousand Dollars (\$10,000) annually thereafter.

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## 16 ~~45~~SECURITY VALUE MAINTENANCE

### 16.1 ~~45.1~~Security Shortfall

If, upon receipt of a valuation of the Ship in accordance with Clause ~~13.4~~14.4 (*Valuation of the Ship*), the Security Value shall be less than the Security Requirement, the Facility Agent may give notice to the Borrower requiring that such deficiency be remedied and then the Borrower shall (unless the Ship has become a Total Loss) either:

- (a) prepay within a period of 30 days of the date of receipt by the Borrower of the Facility Agent's said notice such sum in Dollars as will result in the Security Requirement after such repayment (taking into account any other repayment of the Loan made between the date of the notice and the date of such prepayment) being equal to the Security Value; or
- (b) within 30 days of the date of receipt by the Borrower of the Facility Agent's said notice constitute to the reasonable satisfaction of the Facility Agent such further security for the Loan as shall be reasonably acceptable to the Facility Agent having a value for security purposes (as determined by the Facility Agent in its absolute discretion) at the date upon which such further security shall be constituted which, when added to the Security Value, shall not be less than the Security Requirement as at such date.

Clauses ~~45.2~~16.2 (*Costs*) and ~~45.4~~16.4 (*Documents and evidence*) and paragraph (c) of Clause ~~46.2~~17.2 (*Voluntary prepayment*) shall apply to prepayments under paragraph (a) of Clause ~~45.1~~16.1 (*Security Shortfall*).

### 16.2 ~~45.2~~Costs

All costs in connection with the Facility Agent obtaining any valuation of the Ship referred to in Clause ~~13.4~~14.4 (*Valuation of the Ship*), and obtaining any valuation either of any additional security for the purposes of ascertaining the Security Value at any time or necessitated by the Borrower electing to constitute additional security pursuant to paragraph (b) of Clause ~~45.1~~16.1 (*Security Shortfall*) shall be borne by the Borrower.

### 16.3 ~~45.3~~Valuation of additional security

For the purpose of this Clause ~~45~~16 (*Security Value Maintenance*), the market value of any additional security provided or to be provided to the Facility Agent and/or the Security Trustee shall be determined by the Facility Agent and the Security Trustee in their absolute discretion without any necessity for the Facility Agent or the Security Trustee assigning any reason thereto.

### 16.4 ~~45.4~~Documents and evidence

In connection with any additional security provided in accordance with this Clause ~~45~~16 (*Security Value Maintenance*), the Facility Agent shall be entitled to receive such evidence and documents of the kind referred to in Clause 3 (*Conditions Precedent*) in respect of other Finance Documents as may in the Facility Agent's opinion be appropriate.

### 16.5 ~~45.5~~Valuations binding

Any valuation under this Clause ~~45~~16 (*Security Value Maintenance*) shall be binding and conclusive as regards the Borrower.

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**16.6 ~~45.6~~ Provision of information**

- (a) The Borrower shall promptly provide the Facility Agent (with copy to the Security Trustee) and any shipbroker acting under this Clause ~~45-16~~ (*Security Value Maintenance*) with any information which the Facility Agent or the shipbroker may reasonably request for the purposes of the valuation.
- (b) If the 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.

**17 ~~46~~ CANCELLATION, PREPAYMENT AND MANDATORY PREPAYMENT**

**17.1 ~~46.4~~ Cancellation**

- (a) Subject to paragraph (b) below, at any time between the Effective Date and prior to the end of the Availability Period, the Borrower may give notice to the Facility Agent in writing that it wishes to cancel the whole or any part of the available Commitments in relation to a Tranche whereupon (without penalty to the Borrower but without prejudice to any liabilities of the Borrower including, without limitation, in respect of fees payable or accrued under this Agreement, arising on or prior to the date of such cancellation) such available Commitments under that Tranche shall terminate upon the date specified in such notice. Any cancellation under this paragraph (a) of Clause ~~46.4-17.1~~ (*Cancellation*) shall reduce the remaining Commitments under that Tranche of the relevant Lenders rateably.
- (b) If the SBC Effective Date has not occurred by 31 January 2019, then at any time thereafter, the Borrower may, by written notice (signed by the Borrower, the Member and the Guarantor) to the Facility Agent, terminate this Agreement and the other Finance Documents and, except for this Clause, Clause ~~40.11-11.11~~ (*Transaction Costs*), Clause ~~33-34~~ (*Confidentiality*) and the Fee Letter in relation to the Structuring Fee, this Agreement and the other Finance Documents shall, with effect from such termination, be null and void and no party nor any of its respective parents, subsidiaries, affiliates, officers or employees of any of the foregoing shall have any further liability or obligation whatsoever (including payment of fees and expenses other than in respect of fees payable or accrued under this Agreement, arising on or prior to the date of such termination) under or in connection with this Agreement and/or any other Finance Document or their termination and clause 4(c) of the Fee Letter in relation to the Structuring Fee shall apply.

**17.2 ~~46.2~~ Voluntary prepayment**

- (a) The Borrower may prepay all or part of the Loan on a pro rata basis amongst the Tranches (but if in part being an amount that reduces the Loan by a minimum amount of one (1) repayment instalment of principal of the Loan) together with interest thereon. Such prepayment shall, regardless of the date on which such prepayment is made, be made together with all of the amounts that SIMEST is entitled to charge, whether for taxes, costs, expenses, indemnities, penalties, losses or liabilities whatsoever, under and in accordance with the Interest ~~Make-up~~ Make-Up Agreement and Clause ~~20.2-21.2~~ (*Breakage costs and SIMEST arrangements*) but without any other penalty provided that the prepayment is made on the last day of an Interest Period and thirty-five (35) days prior written notice indicating the intended date of prepayment is given to the Facility Agent and the SACE Agent. However, the following amounts shall be payable to the Facility Agent if any prepayment made pursuant to this Clause ~~46.2-17.2~~ (*Voluntary prepayment*) is not made on the last day of an Interest Period:
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- (i) for the account of the relevant Lenders, whether the Borrower elected a Floating Interest Rate or a Fixed Interest Rate pursuant to Clause ~~6.4~~7.1 (*Fixed or Floating Interest Rate*), the difference (if positive), calculated by the relevant Lenders and notified by them to the Facility Agent, between the actual cost for those Lenders of the funding for the ~~relevant~~relevant Advance or Advances under a Tranche and the rate of interest for the monies to be invested by those Lenders, applied to the amounts so prepaid for the period from the said prepayment until the last day of the Interest Period during which the prepayment occurs (if prepayment does not occur on the last day of that Interest Period), details of any such calculation being supplied to the Borrower by the Facility Agent on behalf of the Lenders; or
  - (ii) for the account of SIMEST, if the Borrower elected a Fixed Interest Rate pursuant to Clause ~~6.4~~7.1 (*Fixed or Floating Interest Rate*), the sum of charges (if any) imposed by SIMEST representing funding or breakage costs of the Italian Authorities as more specifically set out in Clause ~~20.2~~21 (*Indemnities*).
- (b) For the avoidance of doubt, regardless of the date on which a voluntary prepayment is made, such prepayment shall be paid together with all amounts payable in accordance with Clause ~~20.2~~21.2 (*Breakage costs and SIMEST arrangements*) and if a voluntary prepayment is made other than on the last day of an Interest Period, the prepayment shall be paid together with such other amounts payable in accordance with Clauses ~~20.4~~21.1 (*Indemnities regarding borrowing and repayment of Loan*) and ~~20.2~~21.2 (*Breakage costs and SIMEST arrangements*).
  - (c) If the Borrower has selected the Fixed Interest Rate pursuant to Clause ~~6.4~~7.1 (*Fixed or Floating Interest Rate*), the SACE Agent shall give SIMEST thirty (30) days written notice of the intended date of prepayment.
  - (d) There may be no more than two voluntary prepayments in part of the Loan made in each 12-month period beginning on the Delivery Date unless the relevant prepayment is made at the end of an Interest Period relating to the Loan or the relevant part of the Loan (as applicable).

**17.3 ~~16.3~~ Mandatory prepayment – Sale and Total Loss**

The Borrower shall be obliged to prepay the whole of the Loan if the Ship is sold (without prejudice to Clause ~~12.9~~13.9 (*Disposals*)) or becomes a Total Loss:

- (a) in the case of a sale, on or before the date on which the sale is completed by delivery of the Ship to the buyer; or
- (b) in the case of a Total Loss, on the earlier of the date falling 120 days after the Total Loss Date and the date of receipt by the Facility Agent or the Security Trustee (as the case may be) of the proceeds of insurance relating to such Total Loss.

**17.4 ~~16.4~~ Mandatory prepayment – SACE Insurance Policy**

- (a) The Borrower shall be obliged to prepay the whole of the Loan if it is or becomes unlawful for SACE to perform or comply with any or all of its payment obligations pursuant to the SACE Insurance Policy, if the SACE Insurance Policy is revoked, rescinded, cancelled, terminated, suspended or otherwise becomes unenforceable or ceases to be valid, binding or in full force and effect.
  - (b) In the event that any other event occurs or any other circumstances arise or develop which would have a material adverse effect on SACE's ability to perform its obligations under the
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SACE Insurance Policy, the Borrower and the Lenders shall, provided that no Event of Default has occurred and is continuing, negotiate in good faith for a period of not less than 30 days with a view to agreeing such revised terms and conditions as the Lenders may require to enable the Lenders to maintain the entire Loan (and during such 30 day period, no Lender shall be obliged to make available to the Borrower their portion of the Loan to the extent such amounts have not already been drawn). In the event that following such negotiations the Borrower and the Lenders fail to agree on such revised terms, the Borrower shall be obliged to prepay, on demand by the Facility Agent, the outstanding principal amount of the Loan to the extent of the amount covered pursuant to the SACE Insurance Policy. If, during the period while negotiations are on-going pursuant to this paragraph (b)<sup>a</sup> of Clause ~~16.4-17.4~~ 17.4 (*Mandatory prepayment – SACE Insurance Policy*) the events described in paragraph (a)<sup>b</sup> of Clause ~~16.4-17.4~~ 17.4 (*Mandatory prepayment – SACE Insurance Policy*) should occur, the Borrower shall be obliged to prepay the Loan in full as required by paragraph (a) of Clause ~~16.4-17.4~~ 17.4 (*Mandatory prepayment – SACE Insurance Policy*).

#### **17.5 ~~16.5~~ Breach of new covenants or the Principles**

- (a) Failure to comply, until the end of the Deferral Period, with the provisions of Clause ~~12.17-13.17~~ 13.17 (*Dividends and dividend restriction*) and Clause ~~12.28-13.28~~ 13.28 (*New capital raises or financing*) or the provisions of paragraph (f) of clause 11.3 (*Additional financial reporting*), paragraph (c) of clause 11.17 (*Dividend restriction*), clause 11.19 (*New capital raises or financing*) and clause 11.20 (*Payments under the Shipbuilding contacts*) of the Guarantee, or to otherwise duly perform and observe the other requirements and obligations set out in the Principles shall, in each case, not constitute an Event of Default under this Agreement but (in the case of any failure that is capable of remedy (in the opinion of the Facility Agent, at its sole discretion) including any failure to comply with such provisions, only if such failure is not remedied within the Relevant Period pursuant to Clause ~~18.4-19.4~~ 19.4 (*Breach of other obligations*) from the date of such failure to comply) shall result in the reinstatement by the Facility Agent from the date of such breach of the requirement to comply with the financial covenants set out in paragraphs (b) and (c) of clause 11.15 (*Financial covenants*) of the Guarantee which was otherwise suspended during the Deferral Period.
- (b) Save as permitted by Clause ~~12.28-13.28~~ 13.28 (*New capital raises or financing*), if at any time after the February 2021 Deferral Effective Date and until the occurrence of a Reinstatement Event:
- (i) the Guarantor or any other Group member enters into any financial contract or financial document relating to any Financial Indebtedness and which contains any debt deferral or covenant waivers of existing debt, or the raising of any new debt intended to reimburse existing debt that benefits from additional security or more favourable terms than those available to the Lenders (unless they are granted to the Lenders on a *pari passu* basis), the requirement to comply with the financial covenants set out in paragraphs (b) and (c) of clause 11.15 (*Financial covenants*) of the Guarantee which was otherwise suspended during the Deferral Period shall be reinstated (it being provided that such covenants shall not be reinstated in case of such financial contract or financial document relating to the Term and Revolving Credit Facilities); or
- (ii) the Guarantor or any other Group member makes a prepayment (save for any mandatory prepayment necessary to avoid an event of default (however defined)) of any Financial Indebtedness (unless this is done on a *pari passu* basis with the obligations owed to the Lenders hereunder), the requirement to comply with the financial covenants set out in paragraphs (b) and (c) of clause 11.15 (*Financial covenants*) of the Guarantee which was otherwise suspended during the Deferral
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Period shall be reinstated, it being provided that such covenants shall not be reinstated in case of a prepayment relating to the revolving tranche of the Term and Revolving Credit Facilities within the ordinary course of business.

**17.6 ~~46.6~~ Mandatory Prepayment in case of refund by SACE to the Borrower of the second instalment of the Additional SACE Premium**

If at any time on or after the Leonardo Six Intended Delivery Date the Borrower receives a refund of the portion of the second instalment of the Additional SACE Premium pursuant to paragraphs (e) and (f) of Clause ~~8.5-9.5~~ (Additional SACE Premium), the Facility Agent shall declare the part of the Loan that corresponds to that refunded portion, together with any accrued interest thereon, due and payable on demand.

**17.7 ~~46.7~~ Other amounts**

Any prepayment of the whole of the Loan shall be made together with all other sums due under this Agreement (including, without limitation, the compensation calculated in accordance with Clause ~~46.2-17.2~~ (Voluntary prepayment)).

**17.8 ~~46.8~~ Application of partial prepayment**

Amounts prepaid shall be applied in accordance with paragraph (b) of Clause ~~49.4-20.1~~ (Receipts).

**17.9 ~~46.9~~ No reborrowing**

Amounts prepaid may not be reborrowed.

**18 ~~47~~ INTEREST ON LATE PAYMENTS**

**18.1 ~~47.4~~ Default rate of interest**

Without prejudice to the provisions of Clause ~~48-19~~ (Events of Default) and without this Clause in any way constituting a waiver of terms of payment, all sums due by the Borrower under this Agreement will automatically bear interest on a day to day basis from the date when they are payable until the date of actual payment at a rate per annum equal to ~~the higher of:~~

(a) before the Rate Switch Date, where the Floating Interest Rate is applicable, the aggregate of:

- (i) Overnight LIBOR;
- (ii) the ~~applicable~~ Margin; and
- (iii) [\*] per cent. (~~[\*]%-p.a.~~) per annum; or

(b) after the Rate Switch Date, where the Floating Interest Rate is applicable, the aggregate of:

- (i) Daily Simple SOFR;
  - (ii) the Credit Adjustment Spread;
  - (iii) the Margin; and
  - (iv) two per cent. (2%) per annum; or
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(c) ~~(b)~~ before the Rate Switch Date, where the Fixed Interest Rate is applicable, the higher of:

- (i) the Fixed Interest Rate plus [\*] per cent. ([\*]% ~~p.a.~~) per annum; and
- (ii) Overnight LIBOR plus the ~~applicable~~ Margin plus [\*] per cent. ([\*]% ~~p.a.~~) per annum; or

(d) after the Rate Switch Date, where the Fixed Interest Rate is applicable, the higher of:

- (i) the Fixed Interest Rate plus [\*] per cent. ([\*]%) per annum; and
- (ii) Daily Simple SOFR plus the Credit Adjustment Spread plus the Margin plus [\*] per cent. ([\*]%) per annum.

## 18.2 ~~17.2~~ **Compounding of default interest**

To the extent permitted by applicable law, any such interest will itself bear interest at the above rate if it is due for at least three (3) months and thereafter at three monthly intervals.

## 19 ~~18~~ **EVENTS OF DEFAULT**

### 19.1 ~~18.1~~ **Events of Default**

An Event of Default occurs if any of the events or circumstances described in Clauses ~~18.2-19.2~~ 19.2 (*Non-payment*) to ~~18.20-19.20~~ 19.20 (*Material Adverse Change*) occur.

### 19.2 ~~18.2~~ **Non-payment**

Any Obligor 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 and such failure is not remedied within three (3) Business Days of the due date or (if payable on demand) within three (3) Business Days of receiving the demand.

### 19.3 ~~18.3~~ **Non-remediable breaches**

The Borrower fails to comply with the provisions of Clauses ~~12.4-13.4~~ 13.4 (*Sanctions and Illicit payments*), ~~12.5-13.5~~ 13.5 (*Prohibited payments*) ~~12.8-13.8~~ 13.8 (*Negative pledge*), ~~12.9-13.9~~ 13.9 (*Disposals*), ~~12.11-13.11~~ 13.11 (*Mergers*) or ~~12.18-13.18~~ 13.18 (*Loans and guarantees by the Borrower*).

### 19.4 ~~18.4~~ **Breach of other obligations**

- (a) Any Obligor fails to comply with any provision of any Finance Document (other than a failure to comply covered by any of the other provisions of Clauses ~~18.2-19.2~~ 19.2 (*Non-payment*) to ~~18.20-19.20~~ 19.20 (*Material Adverse Change*)) and in particular but without limitation the Guarantor fails to comply with the provisions of clause 11 (*Undertakings*) of its Guarantee or there is any material breach in the opinion of the Majority Lenders and SACE of any of the Underlying Documents provided that (save in respect of Clause ~~12.27-13.27~~ 13.27 (*Code of Ethics and Model*)) no Event of Default shall be deemed to have occurred if, in the opinion of the Majority Lenders and SACE, such failure or material breach is capable of remedy and is remedied within the Relevant Period (as defined below) from the date of its occurrence, if the failure or material breach was known to that Obligor, or from the date the relevant Obligor is notified by the Facility Agent of the failure or material breach, if the failure or material breach was not known to that Obligor, unless in any such case as aforesaid the Majority Lenders and SACE consider
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that the failure or material breach is or could reasonably be expected to become materially prejudicial to the interests, rights or position of the Lenders, "**Relevant Period**" meaning for the purposes of this Clause fifteen (15) days in respect of a remedy period commencing after the date of the Original Facility Agreement.

- (b) There is a repudiation or termination of any Transaction Document (save for the Shipbuilding Contract and, to the extent replaced, any Management Agreement and any charter) or any of the parties thereto becomes entitled to terminate or repudiate any of them and evidences an intention so to do.

#### **19.5 ~~18.5~~ Misrepresentation**

Any representation, warranty or statement made or repeated in, or in connection with, any Transaction Document or the SACE Insurance Policy or in any accounts, certificate, statement or opinion delivered by or on behalf of any Obligor thereunder or in connection therewith is materially incorrect or misleading when made or would, if repeated at any time hereafter by reference to the facts subsisting at such time, no longer be materially correct.

#### **19.6 ~~18.6~~ Cross default**

- (a) Any event of default occurs under any financial contract or financial document relating to any Financial Indebtedness of the Borrower; or
  - (b) Any such Financial Indebtedness or any sum payable in respect thereof is not paid when due (after the expiry of any applicable grace period(s)) whether by acceleration or otherwise; or
  - (c) Any other Financial Indebtedness of any member of the Group is not paid when due or is or becomes capable of being declared due prematurely by reason of default or any Security Interest securing the same becomes enforceable by reason of default provided that no Event of Default will arise if the aggregate amount of the relevant Financial Indebtedness and liabilities secured by the relevant Security Interests is less than [\*] Dollars (\$[\*]) or its equivalent in other currencies; or
  - (d) Any other Security Interest over any assets of any member of the Group securing any alleged liability that does not qualify as Financial Indebtedness becomes enforceable where the alleged liability is in respect of a sum of, or sum aggregating, [\*] Dollars (\$[\*]) or its equivalent in other currencies, unless the alleged liability is being contested in good faith by appropriate means by the relevant Group member and the Facility Agent is reasonably satisfied that the relevant member of the Group has reasonable grounds for succeeding in its action; or
  - (e) No Event of Default will occur, or be deemed to have occurred, under this Clause ~~18.6~~ 19.6 (*Cross default*) if such Event of Default occurs during the Deferral Period (but without prejudice to the rights of the Lenders in respect of any further breach that may occur following the expiry of the Deferral Period) and is caused solely as a result of a breach of the financial covenants in respect of the Group equivalent to those set out in paragraphs (b) and (c) of clause 11.15 (*Financial Covenants*) of the Guarantee, under, or in relation to, any other SACE-backed facility agreement to which a Guarantor is a Party or has executed a guarantee and to which the Principles apply, unless at the time of such Event of Default, an event resulting in mandatory prepayment of the Loan pursuant to Clause ~~16.3~~ 17.3 (*Mandatory prepayment – sale and total loss*) or Clause ~~16.4~~ 17.4 (*Mandatory prepayment – SACE insurance policy*) has occurred.
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**19.7 ~~48.7~~Winding-up**

Any order is made or an effective resolution passed or other action taken for the suspension of payments or reorganisation, dissolution, termination of existence, liquidation, winding-up or bankruptcy of any Obligor.

**19.8 ~~48.8~~Appointment of liquidators etc.**

A liquidator, trustee, administrator, receiver, administrative receiver, manager or similar officer is appointed in respect of any Obligor or in respect of all or any substantial part of the assets of any Obligor.

**19.9 ~~48.9~~Enforcement of any security**

Any corporate action, legal proceeding or other procedure or step is taken in relation to enforcement of any security interests over any assets of the Borrower.

**19.10 ~~48.10~~Insolvency**

- (a) An Obligor is unable or admits inability to pay its debts as they fall due, is deemed to or declared to be unable to pay its debts under applicable law, suspends or threatens to suspend making payments on any of its debts.
- (b) The value of the assets of any Obligor is less than its liabilities (taking into account contingent liabilities).
- (c) A moratorium in respect of all or any debts of any Obligor or a compromise, composition, assignment or an arrangement with creditors of any Obligor or any similar proceeding or arrangement by which the assets of any Obligor are submitted to the control of its creditors is applied for, ordered or declared or any Obligor commences negotiations with any one or more of its creditors with a view to the general readjustment or rescheduling of all or a significant part of its Financial Indebtedness. If a moratorium occurs, the ending of the moratorium will not remedy any Event of Default caused by that moratorium.

**19.11 ~~48.11~~Legal process**

Any corporate action, legal proceeding, distress, execution, attachment or other process affects the whole or any substantial part of the assets of any Obligor and remains undischarged for a period of thirty (30) days, any step is taken in relation to enforcement of any security interests over any assets of any Obligor (other than the Borrower) or any uninsured judgment which, in each case, is in excess of [\*] Dollars (\$[\*]) following final appeal, remains unsatisfied for a period of ten (10) days.

**19.12 ~~48.12~~Analogous events**

Anything analogous to or having a substantially similar effect to any of the events specified in Clauses ~~48.7~~ 19.7 (*Winding-up*) to ~~48.11~~ 19.11 (*Legal process*) shall occur under the laws of any applicable jurisdiction.

**19.13 ~~48.13~~Cessation of business**

Any Obligor ceases to carry on all or a substantial part of its business.

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**19.14 ~~48.14~~ Revocation of consents**

Any authorisation, approval, consent, licence, exemption, filing, registration or notarisation or other requirement necessary to enable any Obligor to comply with any of its obligations under any of the Transaction Documents is materially adversely modified, revoked or withheld or does not remain in full force and effect and within ninety (90) days of the date of its occurrence such event is not remedied to the satisfaction of the Facility Agent consider that such failure is or might be expected to become materially prejudicial to the interests, rights or position of the Lenders provided that the Borrower shall not be entitled to the aforesaid ninety (90) day period if the modification, revocation or withholding of the authorisation, approval or consent is due to an act or omission of any Obligor and the Majority Lenders and SACE are satisfied that the Lenders' interests might reasonably be expected to be materially adversely affected.

**19.15 ~~48.15~~ Unlawfulness**

At any time it is unlawful or impossible for any Obligor to perform any of its material (to the Secured Parties or any of them) obligations under any Transaction Document to which it is a party or it is unlawful or impossible for the Secured Parties or any Lender to exercise any of their or its rights under any of the Transaction Documents provided that no Event of Default shall be deemed to have occurred where the unlawfulness or impossibility does not relate to the payment obligation of any Obligor under any Transaction Document and is cured within the period of twenty one (21) days of the date of occurrence of the event giving rise to the unlawfulness or impossibility and the affected Obligor performs its obligation within such period.

**19.16 ~~48.16~~ Insurances**

The Borrower fails to insure the Ship in the manner specified in Clause ~~44.15~~ 44.15 (*Insurance Undertakings*) or fails to renew the Insurances at least five (5) days prior to the date of expiry thereof and produce prompt confirmation of such renewal to the Facility Agent provided that if the insurers withdraw their cover an Event of Default shall be deemed to have occurred upon issue of the insurer's notice of withdrawal.

**19.17 ~~48.17~~ Disposals**

If the Borrower or any other Obligor shall have concealed, removed, or permitted to be concealed or removed, any part of its property, with intent to hinder, delay or defraud its creditors or any of them, or made or suffered a transfer of any of its property which may be fraudulent under any bankruptcy, fraudulent conveyance or similar law, or shall have made any transfer of its property to or for the benefit of a creditor with the intention of preferring such creditor over any other creditor.

**19.18 ~~48.18~~ Prejudice to security**

Anything is done or suffered or omitted to be done by any Obligor which in the reasonable opinion of the Facility Agent would or might be expected to imperil the security created by any of the Finance Documents.

**19.19 ~~48.19~~ Governmental intervention**

The authority of any Obligor in the conduct of its business is wholly or substantially curtailed by any seizure or intervention by or on behalf of any authority and within ninety (90) days of the date of its occurrence any such seizure or intervention is not relinquished or withdrawn

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and the Facility Agent reasonably considers that the relevant occurrence is or might be expected to become materially prejudicial to the interests, rights or position of the Lenders provided that the Borrower shall not be entitled to the aforesaid ninety (90) day period if the seizure or intervention executed by any authority is due to an act or omission of any Obligor and the Majority Lenders and SACE are satisfied that the Lenders' interest might reasonably be expected to be materially adversely affected.

**19.20 ~~18.20~~ Material Adverse Change**

- (a) Any event or circumstance occurs which results in a Material Adverse Effect.
- (b) Any event or circumstance occurs (including, without limitation, following the sending of a notice by the Borrower under paragraph (c) of Clause ~~12.27~~ 13.27 (*Code of Ethics and Model*)), which results in a material adverse effect on the ability of the Borrower, also under an economic and/or financial standpoint, to perform its obligations under this Agreement.

**19.21 ~~18.21~~ Actions following an Event of Default**

On, or at any time after, the occurrence of an Event of Default the Facility Agent may, and if so instructed by the Majority Lenders and SACE (acting through the SACE Agent), the Facility Agent shall:

- (a) serve on the Borrower a notice stating that the Commitments and all other obligations of each Lender to the Borrower under this Agreement are terminated; and/or
- (b) serve on the Borrower a notice stating that the Loan (including but without limitation the amount representing the financed First Instalment and Second Instalment of the SACE Premium, the financed second instalment of the Additional SACE Premium and the financed Tranche B Premium), 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
- (c) take any other action which, as a result of the Event of Default or any notice served under paragraph (a) or (b), the Facility Agent and/or the Lenders are entitled to take under any Finance Document or any applicable law.

**19.22 ~~18.22~~ Termination of Commitments**

On the service of a notice under paragraph (a) of Clause ~~18.21~~ 19.21 (*Actions following an Event of Default*), the Commitments and all other obligations of each Lender to the Borrower under this Agreement shall terminate.

**19.23 ~~18.23~~ Acceleration of Loan**

On the service of a notice under paragraph (b) of Clause ~~18.21~~ 19.21 (*Actions following an Event of Default*), the Loan, all accrued interest and all other amounts accrued or owing from the Borrower or any Obligor under this Agreement and every other Finance Document shall become immediately due and payable or, as the case may be, payable on demand.

**19.24 ~~18.24~~ Further amounts payable**

Upon an acceleration of repayment of the Loan following an Event of Default the Borrower shall be liable to pay compensation calculated in accordance with Clause ~~16.2~~ 17.2 (*Voluntary prepayment*).

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**19.25 ~~48-25~~ Multiple notices; action without notice**

The Facility Agent may serve notices under paragraphs (a) and (b) of Clause ~~48-24~~-19.21 (*Actions following an Event of Default*) simultaneously or on different dates and it may take any action referred to in paragraph (c) of Clause ~~48-24~~-19.21 (*Actions following an Event of Default*) if no such notice is served simultaneously with or at any time after the service of both or either of such notices.

**19.26 ~~48-26~~ Notification of Secured Parties and Obligors**

The Facility Agent shall send to the Italian Authorities, each Lender and each Obligor a copy or the text of any notice which the Facility Agent serves on the Borrower under Clause ~~48-24~~-19.21 (*Actions following an Event of Default*); but the notice shall become effective when it is served on the Borrower, and no failure or delay by the Facility Agent to send a copy or the text of the notice to any other person shall invalidate the notice or provide any Obligor with any form of claim or defence.

**19.27 ~~48-27~~ Lender's rights unimpaired**

Nothing in this Clause ~~48-19~~ (*Events of Default*) 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 Clauses 2.4 (*Creditor Parties' rights and obligations*) and 2.6 (*Obligations of Lenders several*).

**19.28 ~~48-28~~ Exclusion of Secured Party liability**

No Secured Party, and no receiver or manager appointed by the Facility Agent, shall have any liability to an Obligor:

- (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.

**20 ~~49~~ APPLICATION OF SUMS RECEIVED**

**20.1 ~~49-4~~ Receipts**

- (a) Except as any Finance Document may otherwise provide, all sums received under this Agreement or any other Finance Document by the Facility Agent, on behalf of the Lenders, the SACE Agent, the Security Trustee, Receiver, Delegate or by any of the Lenders for any reason whatsoever will be applied in the following order of priority:
    - (i) first, in discharging any unpaid fees, costs and expenses of, and any amounts owed to the Facility Agent, SACE Agent, Security Trustee, any Receiver or any Delegate on a pro rata basis;
    - (ii) second, to payments of any kind due or in arrears in the order of their due payment dates due to the Lenders and Joint Mandated Lead Arrangers in the following order of priority:
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- (A) first, to interest payable pursuant to Clause ~~47-18~~ 21.18 (*Interest on Late Payments*);
- (B) second, to interest payable pursuant to Clause 6 (*Interest*);
- (C) third, to the principal of the Loan payable pursuant to Clause 5 (*Repayment*);
- (D) fourth, to any sums due pursuant to Clause ~~20.2-21.2~~ 21.2 (*Breakage costs and SIMEST arrangements*); and
- (E) fifth, to any other sums due under this Agreement or any other Finance Document,

and, if relevant, payments under sub-paragraph (A) of sub-paragraph (ii) of paragraph (a) to sub-paragraph (E) of sub-paragraph (ii) of paragraph (a) above, shall be made *pro rata* to each of the Lenders and Joint Mandated Lead Arrangers as applicable.

- (b) if no payments are in arrears or if these payments have been discharged as set out above, then and to sums remaining due under this Agreement or any other Finance Document and, if relevant, pro rata to each of the Lenders and in each case in inverse order of maturity, the interest being recalculated accordingly.
- (c) The Facility Agent shall, if so directed by the Lenders and subject to SACE's prior written consent, vary the order set out in paragraph sub-paragraph (a)(ii)(A) of sub-paragraph (a)(ii) of paragraph (a) to sub-paragraph (D) of sub-paragraph (a)(ii) of paragraph (a) above.
- (d) Paragraphs (a), (b) and (c) above will override any appropriation made by an Obligor.

## 21 ~~20~~ INDEMNITIES

### 21.1 ~~20.1~~ Indemnities regarding borrowing and repayment of Loan

- (a) The Borrower shall fully indemnify the Facility Agent, SACE Agent, Security Trustee, any Delegate, any Receiver, each relevant Lender, SACE and SIMEST (but without double counting to the extent that a Lender is making a claim in respect of amounts owing to SIMEST) on the Facility Agent's demand in respect of all costs, claims, expenses, liabilities and losses which are made or brought against or incurred by that Secured Party, or which that Secured Party reasonably and with due diligence estimates that it will incur, as a result of or in connection with:
    - (i) the Loan not being borrowed on the date specified in the Drawdown Notice for any reason other than a default by the Lender claiming the indemnity;
    - (ii) 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;
    - (iii) any failure (for whatever reason) by the Borrower to comply with its obligations to make payment of any amount due under a Finance Document on the due date or, if so payable, on demand (after giving credit for any default interest paid by the Borrower on the amount concerned under Clause ~~47-18~~ 21.18 (*Interest on Late Payments*));
    - (iv) the occurrence and/or continuance of an Event of Default and/or the acceleration of repayment of the Loan under Clause ~~48-19~~ 21.19 (*Events of Default*);
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- (v) the taking, holding, protection or enforcement of a Security Interest;
  - (vi) the exercise of any of the rights, powers, discretions, authorities and remedies vested in the Security Trustee, each Receiver and each Delegate by a Finance Document or by law;
  - (vii) any default by any Obligor in the performance of any of the obligations expressed to be assumed by it in the Finance Documents; and
  - (viii) acting as Facility Agent, SACE Agent, Security Trustee, Receiver or Delegate under the Finance Documents or which otherwise relates to any of the Security Interests or Security Property (otherwise, in each case, excluding sub-paragraphs (v) and (vi) above, than by reason of the relevant Facility Agent's, Security Trustee's, Receiver's or Delegate's Gross Negligence or wilful misconduct).
- (b) The Security Trustee and every Receiver and Delegate may, in priority to any payment to the Secured Parties, indemnify itself out of the Security Property in respect of, and pay and retain, all sums necessary to give effect to the indemnity in this Clause ~~20.4~~21.1 (*Indemnities regarding borrowing and repayment of Loan*) and shall have a lien on the Security Interests and the proceeds of the enforcement of the Security Interests for all moneys payable to it.

#### **21.2 ~~20.2~~ Breakage costs and SIMEST arrangements**

Without limiting its generality, Clause ~~20.4~~21.1 (*Indemnities regarding borrowing and repayment of Loan*) covers:

- (a) any claim, expense, liability or loss, including a loss of a prospective profit, incurred by a Lender in liquidating or employing deposits from third parties acquired or arranged to fund or maintain all or any part of its Contributions and/or any overdue amount (or an aggregate amount which includes its Contributions or any overdue amount);
- (b) if the Borrower has selected the Fixed Interest Rate in accordance with Clause ~~6.4~~7.1 (*Fixed or Floating Interest Rate*), the CIRRR Break Costs; and
- (c) any other costs whatsoever or howsoever arising under or in respect of the Interest ~~Make-up~~ Make-Up Agreement which are passed to the SACE Agent,

and any such costs imposed by SIMEST shall be paid by the Borrower to SIMEST through the SACE Agent.

#### **21.3 ~~20.3~~ Miscellaneous indemnities**

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

- (a) any action taken, or omitted or neglected to be taken, under or in connection with any Finance Document by the Facility Agent or any other Secured Party or by any receiver appointed under a Finance Document;
  - (b) any other Pertinent Matter,
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other than claims, expenses, liabilities and losses which are shown to have been directly and mainly caused by the relevant Secured Party's (or its officers' or employees') Gross Negligence or wilful misconduct.

Without prejudice to its generality, this Clause ~~20-3~~21.3 (*Miscellaneous indemnities*) covers (i) any claims, expenses, liabilities and losses which arise, or are asserted, under or in connection with any law relating to safety at sea, the ISM Code or any Environmental Laws or any Sanctions and (ii) any claims, expenses, liabilities (including, without limitation, under a reputational standpoint) and losses which arise, or are asserted, against CDP under or in connection with any breach by the Borrower of any of the provisions of paragraphs (ll) to (pp) of Clause ~~11-2~~12.2 (*Continuing representations and warranties*) and/or of Clause ~~12-27~~13.27 (*Code of Ethics and Model*).

#### 21.4 ~~20-4~~ **Currency indemnity**

If any sum due from an Obligor to a Secured 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 an Obligor, whether in its liquidation, any arrangement involving it or otherwise; or
- (b) obtaining an order or judgment from any court or other tribunal; or
- (c) enforcing any such order or judgment,

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

In this Clause ~~20-4~~21.4 (*Currency indemnity*) the "**available rate of exchange**" means the rate at which the Secured Party concerned is able at the opening of business (Paris time) on the Business Day after it receives the sum concerned to purchase the Contractual Currency with the Payment Currency.

This Clause ~~20-4~~21.4 (*Currency indemnity*) creates a separate liability of the 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.

#### 21.5 ~~20-5~~ **Certification of amounts**

A notice which is signed by 2 officers of a Secured Party, which states that a specified amount, or aggregate amount, is due to that Secured Party under this Clause ~~20-21~~21 (*Indemnities*) and which indicates (without necessarily specifying a detailed breakdown) the matters in respect of which the amount, or aggregate amount, is due shall be prima facie evidence that the amount, or aggregate amount, is due.

#### 21.6 ~~20-6~~ **Sums deemed due to a Lender**

For the purposes of this Clause ~~20-21~~21 (*Indemnities*), a sum payable by the Borrower to the Facility Agent for distribution to a Lender shall be treated as a sum due to that Lender.

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## 21.7 ~~20.7~~ SACE obligations

To the extent that this Clause ~~20-21~~ (*Indemnities*) imposes obligations or restrictions on a Secured Party, such obligations or restrictions shall not apply to SACE and SACE shall have no obligations hereunder nor be constrained by such restrictions.

## 22 ~~24~~ ILLEGALITY, ETC.

### 22.1 ~~24.1~~ Illegality and Sanctions

This Clause ~~24-22~~ (*Illegality, etc.*) applies if:

- (a) a Lender (the "**Notifying Lender**") notifies the Facility Agent that:
  - (i) it is or becomes unlawful or contrary to any law, regulation (including Sanctions) – including by way of civil, administrative or criminal liability - in any applicable jurisdiction for the Notifying Lender to perform any of its obligations as contemplated by the Finance Documents or to fund its participation in the Loan; and/or
  - (ii) it is or becomes unlawful or contrary to any law, regulation (including Sanctions) – including by way of civil, administrative or criminal liability - in any applicable jurisdiction for the Notifying Lender to maintain its participation in the Loan; or
- (b) an Obligor is or becomes a Prohibited Person,  
(such event, an "**Illegality or Sanctions Event**").

### 22.2 ~~24.2~~ Notification of illegality

The Borrower shall promptly notify the Facility Agent of the occurrence of an event under paragraph (b) of Clause ~~24.1-22.1~~ (*Illegality and Sanctions*) above and the Facility Agent shall promptly notify the Lenders. The Facility Agent shall promptly notify the Borrower, the Obligors and the other Lenders of the notice under paragraph (a) of Clause ~~24.1-22.1~~ (*Illegality and Sanctions*) which the Facility Agent receives from the Notifying Lender.

### 22.3 ~~24.3~~ Prepayment; termination of Commitment

- (a) Upon the Facility Agent notifying the Borrower of an event under sub-paragraph (i) of paragraph (a) of Clause ~~24.1-22.1~~ (*Illegality and sanctions*) above, the Notifying Lender's Commitment will be immediately suspended and that Lender shall act in accordance with Clause ~~24.4-22.4~~ (*Mitigation*). To the extent no alternative arrangements have been agreed in accordance with Clause ~~24.4-22.4~~ (*Mitigation*) within the earlier of (i) the grace period permitted by law and (ii) a period of 15 Business Days from the date on which the Facility Agent became aware of the event (or if the mitigation or grace period described above is not permissible under applicable Sanctions, immediately upon the Facility Agent becoming aware of that event), the Notifying Lender may cancel, by notice to the Facility Agent (which notice the Facility Agent shall promptly send to the Borrower), its available Commitment;
  - (b) upon the Facility Agent notifying the Borrower of an event under sub-paragraph (ii) of paragraph (a) of Clause ~~24.1-22.1~~ (*Illegality and Sanctions*) above, the Notifying Lender shall act in accordance with Clause ~~24.4-22.4~~ (*Mitigation*). To the extent no alternative arrangements have been agreed in accordance with Clause ~~24.4-22.4~~ (*Mitigation*), within the earlier of (i) the grace period permitted by law and (ii) a period of 15 Business Days from the
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date on which the Facility Agent became aware of the event (or if the mitigation or grace period described above is not permissible under applicable Sanctions, immediately upon the Facility Agent becoming aware of that event) the Notifying Lender may require prepayment of its share of any Loan, in which case, that Lender's share of such Loan shall be prepaid in accordance with paragraph (d) below;

- (c) upon the Borrower notifying the Facility Agent and the Facility Agent notifying the Lenders of an event under paragraph (b) of Clause ~~21.4~~22.1 (*Illegality and Sanctions*) above, the Lenders shall act in accordance with Clause ~~21.4~~22.4 (*Mitigation*). To the extent no alternative arrangements have been agreed in accordance with Clause ~~21.4~~22.4 (*Mitigation*), within the earlier of (i) the grace period permitted by law and (ii) a period of 15 Business Days from the date on which the Facility Agent became aware of the event (or if the mitigation or grace period described above is not permissible under applicable Sanctions, immediately upon the Facility Agent becoming aware of that event) any Lender may cancel, by notice to the Facility Agent (which notice the Facility Agent shall promptly send to the Borrower), its available Commitment and may require prepayment of its share of any Loan, in which case, that Lender's share of such Loan shall be prepaid in accordance with paragraph (d) below;
- (d) The date for repayment or prepayment of a Lender's share in the Loan will be:
  - (i) the date specified by the Facility Agent in the notification under Clause ~~21.2~~22.2 (*Notification of Illegality*) above; or
  - (ii) the last day of the current Interest Period for the relevant Advance or Advances under a Tranche or, if earlier, the date specified by the Lender in the notification under paragraph (a) above and which must not be earlier than the last day of any applicable grace period allowed by law.

#### 22.4 ~~21.4~~ **Mitigation**

- (a) Each Creditor Party shall, in consultation with the Borrower, take all reasonable steps to mitigate any circumstances which arise and which would result in any amount becoming payable under or pursuant to, or cancelled pursuant to Clause ~~21.4~~22.1 (*Illegality and Sanctions*) or Clause ~~10-11~~ (*Taxes, Increased Costs, Costs and related Charges*) including (but not limited to) transferring its rights and obligations under the Finance Documents to another Affiliate or Facility Office.
- (b) Paragraph (a) above does not in any way limit the obligations of any Obligor under the Finance Documents.

#### 23 ~~22~~ **SET-OFF**

##### 23.1 ~~22.1~~ **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 the Borrower at any office in any country of that Creditor Party in or towards satisfaction of any sum then due from the Borrower to that Creditor Party under any of the Finance Documents; and
  - (b) for that purpose:
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- (i) break, or alter the maturity of, all or any part of a deposit of the Borrower;
- (ii) convert or translate all or any part of a deposit or other credit balance into Dollars;
- (iii) enter into any other transaction or make any entry with regard to the credit balance which the Creditor Party concerned considers appropriate.

### **23.2 ~~22-2~~ Existing rights unaffected**

No Creditor Party shall be obliged to exercise any of its rights under Clause ~~22-4~~23.1 (*Application of credit balances*); and those rights shall be without prejudice and in addition to any right of set-off, combination of accounts, charge, lien or other right or remedy to which a Creditor Party is entitled (whether under the general law or any document).

### **23.3 ~~22-3~~ Sums deemed due to a Lender**

For the purposes of this Clause ~~22-23~~ (*Set-Off*), a sum payable by the Borrower to the Facility Agent for distribution to, or for the account of, a Lender shall be treated as a sum due to that Lender; and each Lender's proportion of a sum so payable for distribution to, or for the account of, the Lenders shall be treated as a sum due to such Lender.

### **23.4 ~~22-4~~ No Security Interest**

This Clause ~~22-23~~ (*Set-Off*) gives the Creditor Parties a contractual right of set-off only, and does not create any equitable charge or other Security Interest over any credit balance of the Borrower.

## **24 ~~23~~ 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.

## **25 ~~24~~ CHANGES TO THE LENDERS**

### **25.1 ~~24-1~~ Transfer by a Lender**

Subject to Clause ~~24-2~~25.2 (*Conditions of assignment or transfer*), Clause ~~24-5~~25.5 (*No transfer without Transfer Certificate*), Clause ~~24-7~~25.17 (*Assignment or transfer to SACE*) and

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Clause ~~24.14-25.14~~ (*Change of Facility Office*), a Lender (the "**Transferor Lender**") may at any time provided they have obtained the prior written consent of the Italian Authorities cause:

- (a) its rights in respect of all or part of its Contributions; 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, in whole or in part any of its Affiliates or another bank or financial institution or a trust, fund, insurance or reinsurance company or other entity which is regularly engaged in or established for the purpose of making, purchasing or investing in loans, securities or other financial assets (a "**Transferee Lender**") by delivering to the Facility Agent a completed certificate in the form set out in Schedule 4 (*Form of Transfer Certificate*) with any modifications approved or required by the Facility Agent (a "**Transfer Certificate**") executed by the Transferor Lender and the Transferee Lender.

However any rights and obligations of the Transferor Lender in its capacity as Facility Agent or Security Trustee will have to be dealt with separately in accordance with the provisions of Clauses ~~26-27~~ (*Role of the Facility Agent ~~and~~ the Joint Mandated Lead Arrangers*) and ~~27~~ the SACE Agent and ~~28~~ The Security Trustee respectively.

#### 25.2 ~~24.2~~ **Conditions of assignment or transfer**

- (a) The consent of the Borrower is required at all times (subject to the provisions of Clauses ~~24.5-25.5~~ (*No transfer without Transfer Certificate*) and ~~24.17-25.17~~ (*Assignment or transfer to SACE or as directed by SACE*)) for an assignment or transfer by an Transferor Lender, unless (i) there is an Event of Default or (ii) the assignment or transfer is to another Lender or an Affiliate of a Lender or a vehicle (including trusts or funds) whose majority shares or notes are held by a Lender or an Affiliate of a Lender.
- (b) The consent of the Borrower to an assignment or transfer must not be unreasonably withheld or delayed. The Borrower will be deemed to have given its consent ten (10) Business Days after the Transferor Lender has requested it unless consent is expressly refused by that Borrower within that time.
- (c) The assignment or transfer must be with respect to a minimum Commitment of [\*] Dollars (\$[\*]) or, if less, the Transferor Lender's full Commitment.

#### 25.3 ~~24.3~~ **Transfer Certificate, delivery and notification**

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

- (a) sign the Transfer Certificate on behalf of itself, the Borrower, any other Obligors, the Security Trustee and each of the other Lenders;
  - (b) on behalf of the Transferee Lender, send to the Borrower and each Obligor letters or emails notifying them of the Transfer Certificate and attaching a copy of it; and
  - (c) send to the Transferee Lender copies of the letters or emails sent under paragraph (b) above,
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but the Facility Agent shall only be obliged to execute a Transfer Certificate delivered to it by the Transferor Lender and the Transferee Lender once it is satisfied that itself and the Security Trustee have complied with all necessary "know your customer" or other similar checks under all applicable laws and regulations in relation to the transfer to that Transferee Lender.

**25.4 24.4 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 Facility Agent under Clause ~~24.3~~ 25.3 (*Transfer Certificate, delivery and notification*) on or before that date.

**25.5 24.5 No transfer without Transfer Certificate**

Except as provided in Clause ~~24.16~~ 25.16 (*Security over Lenders' rights*), no assignment or transfer of any right or obligation of a Lender under any Finance Document is binding on, or effective in relation to, the Borrower, any Obligor, the Facility Agent or the Security Trustee unless it is effected, evidenced or perfected by a Transfer Certificate.

**25.6 24.6 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 Facility Agent may, if it sees fit, by notice to the successor and the Borrower and the Security Trustee waive the need for the execution and delivery of a Transfer Certificate; and, upon service of the Facility Agent's notice, the successor shall become a Lender with the same Commitment and Contributions as were held by the predecessor Lender.

**25.7 24.7 Effect of Transfer Certificate**

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

- (a) to the extent specified in the Transfer Certificate, all rights and interests (present, future or contingent) which the Transferor Lender has under or by virtue of the Finance Documents are assigned to the Transferee Lender absolutely, free of any defects in the Transferor Lender's title and of any rights or equities which the Borrower or any Obligor 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 Contributions 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 Facility Agent and the Security Trustee and, to the extent that the Transferee Lender becomes bound by those provisions (other than those relating to exclusion of liability), the Transferor Lender ceases to be bound by them;
  - (e) any part of the Loan which the Transferee Lender advances after the Transfer Certificate's effective date ranks in point of priority and security in the same way as it would have ranked had it been advanced by the Transferor Lender, assuming that any defects in the Transferor
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Lender's title and any rights or equities of the Borrower or any Obligor 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 ~~6-8-7.9~~ (*Market Disruption*) and Clause ~~9-10~~ (*Fees*), and to the extent that the Transferee Lender becomes entitled to such rights, the Transferor Lender ceases to be entitled to them; and
- (g) in respect of any breach of a warranty, undertaking, condition or other provision of a Finance Document or any misrepresentation made in or in connection with a Finance Document, the Transferee Lender shall be entitled to recover damages by reference to the loss incurred by it as a result of the breach or misrepresentation, irrespective of whether the original Lender would have incurred a loss of that kind or amount.

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

#### 25.8 ~~24.8~~ Maintenance of register of Lenders

During the Security Period the Facility Agent shall maintain a register in which it shall record the name, Commitment, Contributions and administrative details (including the Facility Office) from time to time of each Lender holding a Transfer Certificate and the effective date (in accordance with Clause ~~24.4-25.4~~ (*Effective Date of Transfer Certificate*)) of the Transfer Certificate; and the Facility Agent shall make the register available for inspection by any Lender, the Security Trustee and the Borrower during normal banking hours, subject to receiving at least 3 Business Days' prior notice.

#### 25.9 ~~24.9~~ 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 Facility Agent and the other parties to the Finance Documents for all purposes relating to the Finance Documents.

#### 25.10 ~~24.10~~ Authorisation of Facility Agent to sign Transfer Certificates

The Borrower, the Security Trustee and each Lender irrevocably authorise the Facility Agent to sign Transfer Certificates on its behalf.

#### 25.11 ~~24.11~~ Fees and Costs

In respect of any Transfer Certificate:

- (a) the Facility Agent shall be entitled to recover a registration fee of five thousand Euros (€5,000) from the Transferor Lender or (at the Facility Agent's option) the Transferee Lender;
  - (b) the Transferee Lender shall pay to the Facility Agent, upon demand, all reasonable costs and expenses, duties and fees, including but without limitation legal costs and out of pocket expenses, incurred by the Facility Agent or the Lenders in connection with any necessary amendment to or supplementing of the Transaction Documents or any of them or the SACE Insurance Policy as a consequence of the assignment or transfer; and
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- (c) the Transferee Lender shall pay to the Facility Agent, upon demand, such amount as is payable to the Italian Authorities to cover its costs of giving its approval under Clause ~~24.4~~ 25.1 (*Transfer by a Lender*).

**25.12 ~~24.12~~ Sub-participation; subrogation assignment**

A Lender may sub-participate all or any part of its rights and/or obligations under or in connection with the Finance Documents without the consent of, or any notice to, the Borrower, any Obligor, the Facility Agent or the Security Trustee but with the prior written consent of SACE.

**25.13 ~~24.13~~ Disclosure of information**

A Lender may disclose to a potential Transferee Lender or sub participant any information which the Lender has received in relation to the Borrower, any Obligor or their affairs under or in connection with any Finance Document, unless the information is clearly of a confidential nature.

**25.14 ~~24.14~~ Change of Facility Office**

Subject to the prior written consent of SACE, a Lender may change its Facility Office by giving notice to the Facility Agent and the change shall become effective on the later of:

- (a) the date on which the Facility Agent receives the notice; and
- (b) the date, if any, specified in the notice as the date on which the change will come into effect, provided that if (i) a Lender assigns or transfers any of its rights or obligations under the Finance Documents or changes its Facility Office, and (ii) as a result of circumstances existing at the date the assignment, transfer or change occurs, an Obligor would be obliged to make a payment or an increased payment to the new Lender or Lender acting through its new Facility Office under Clause ~~10-11~~ (*Taxes, Increased Costs, Costs and related Charges*), then the new Lender or Lender acting through its new Facility Office is only entitled to receive payment under that Clause 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.

**25.15 ~~24.15~~ Notification**

On receiving such a notice, the Facility Agent shall notify the Borrower and the Security Trustee; and, until the Facility Agent receives such a notice, it shall be entitled to assume that a Lender is acting through the Facility Office of which the Facility Agent last had notice.

**25.16 ~~24.16~~ Security over Lenders' rights**

In addition to the other rights provided to Lenders under this Clause ~~24-25~~ (*Changes to the Lenders*) each Lender may without consulting with or obtaining consent from the Borrower or any Obligor but subject to the prior written consent of SACE, 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 (i) to the benefit of any Affiliate and/or (ii) within the framework of its, or its Affiliates', direct or indirect funding operations including, without limitation:

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- (a) any charge, assignment or other Security Interest to secure obligations to a federal reserve, central bank or a multilateral development bank (including the European Investment Bank and the European Investment Fund); 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) alter the obligations of the Obligor or require any payments to be made by the Borrower or any Obligor 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.

Notwithstanding any provision to the contrary, upon the enforcement of any charge, assignment or other Security Interest referred to in paragraph (a) above, the beneficiary thereof (the "Beneficiary") shall deliver a notice of that enforcement to the Facility Agent (such notice to take effect in accordance with its terms) and the Beneficiary shall, upon fulfilment of the conditions referred to in Clauses ~~24-2~~ 25.2 (*Conditions of assignment or transfer*) and ~~24-3~~ 25.3 (*Transfer Certificate, delivery and notification*), become party as a new Lender in respect of the rights which are subject to that charge, assignment or Security Interest.

The Borrower shall comply with all necessary formalities, if any, and take all steps necessary in order to ensure the enforceability, recognition, priority and enforcement of the charge, assignment or Security Interest granted pursuant to this Clause ~~24-16~~ 25.16 (*Security over Lenders' rights*).

**25.17 ~~24-17~~ Assignment or transfer to SACE or as directed by SACE**

- (a) Notwithstanding the above provisions of this Clause ~~24-25~~ (*Changes to the Lenders*) each Lender and the Facility Agent may, if so requested by SACE in accordance with the provisions of the SACE Insurance Policy and without any requirement for the consent of any Obligor, assign its rights or (as the case may be) transfer its rights and obligations to SACE or to any person specified by SACE (but for the avoidance of doubt, SACE will not assume any of the Lenders' obligations (if any) under this Agreement), which assignment or transfer shall take effect upon the date stated in the relevant documentation subject to the relevant parties being satisfied that they have complied with all necessary "know your customer" requirements in relation to such assignment or transfer.
  - (b) The Facility Agent shall promptly notify the Borrower of any such assignment or transfer to SACE (or as directed by SACE) and, following an Event of Default, the Borrower shall pay to the Facility Agent, upon demand, all reasonable costs and expenses, duties and fees, including but without limitation, legal costs and out of pocket expenses, incurred by SACE, the Facility Agent or the Lenders in connection with any such assignment or transfer.
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**25.18 ~~24.18~~ Assignment or transfer by SACE**

- (a) SACE may, without any requirement for the consent of any Obligor, assign its rights or (as the case may be) transfer its rights under this Agreement, the Finance Documents or the SACE Insurance Policy to:
  - (i) providers of reinsurance, counter-guarantee or any form of risk enhancement (in each case, in favour of SACE);
  - (ii) pursuant to article 32 of the Italian law decree no. 91/2014 converted into law 116/2014; or
  - (iii) following any payment under the SACE Insurance Policy, any person.
- (b) The Facility Agent shall promptly notify the Obligors of such assignment or transfer by SACE and, following an Event of Default, the Obligors shall pay to the Facility Agent, within three (3) Business Days of a demand, all reasonable costs and expenses, duties and fees, including but without limitation, legal costs and out of pocket expenses, incurred by SACE, the Facility Agent or the Lenders in connection with any such assignment or transfer.

**25.19 ~~24.19~~ No prejudice to SACE rights**

Nothing in the Finance Documents shall prejudice or otherwise limit:

- (a) the rights of any Lender to assign its rights or transfer its rights and obligations, under or in connection with, any Finance Document, to SACE or as directed by SACE, or the rights of SACE to assign its rights or (as the case may be) transfer its rights and obligations pursuant to Clause ~~24.18~~ 25.18 (*Assignment or transfer by SACE*); and
- (b) the right of SACE to be subrogated to any Lender's rights under, or in connection with, any Finance Document.

**25.20 ~~24.20~~ SACE's power to direct**

- (a) The Creditor Parties agree and the Obligors acknowledge that SACE has the right to direct the decision making of the Facility Agent, including (without limitation) following an Event of Default; and
- (b) to the extent SACE makes any payment to the Creditor Parties under the SACE Insurance Policy in respect of principal and/or following an assignment or transfer pursuant to Clause ~~24.17~~ 25.17 (*Assignment or transfer to SACE or as directed by SACE*) or Clause ~~24.18~~ 25.18 (*Assignment or transfer by SACE*), SACE shall be entitled to exercise all voting rights with respect to the relevant principal as if the relevant corresponding Commitment had been transferred to it.

**25.21 ~~24.21~~ Definition of Affiliate**

For the purposes of this Clause ~~24~~ 25 (*Changes to the Lenders*), the definition of "Affiliate" in respect of Crédit Agricole Corporate and Investment Bank shall, for the avoidance of doubt, include any other member of Crédit Agricole Group, and in particular:

- (a) Crédit Agricole S.A.;
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- (b) Caisses Régionales de Crédit Agricole;
- (c) Crédit Agricole Assurances;
- (d) LCL SA; and/or
- (e) any company or legal entity in which one or more of the companies or entities referred to in paragraphs (a) to (d) above, together or separately, owns a direct majority interest.

**26 ~~25~~CHANGES TO THE OBLIGORS**

**26.1 ~~25.1~~No change without consent**

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

**27 ~~26~~ROLE OF THE FACILITY AGENT, THE JOINT MANDATED LEAD ARRANGERS, AND THE SACE AGENT ~~AND THE REFERENCE BANKS~~**

**27.1 ~~26.1~~Appointment of the Facility Agent**

- (a) Each other Creditor Party appoints the Facility Agent to act as its agent under and in connection with this Agreement, the other Finance Documents and the Interest Make-Up Agreement.
- (b) Each other Creditor Party authorises the Facility Agent 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.

**27.2 ~~26.2~~Duties of the Facility Agent**

- (a) 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.
- (b) 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.
- (c) If the Facility Agent receives notice from a Party referring to this Agreement, describing an Event of Default and stating that the circumstance described is an Event of Default, it shall promptly notify the other Secured Parties.
- (d) If the Facility Agent is aware of the non-payment of any principal, interest, commitment fee or other fee payable to a Secured Party (other than the Facility Agent or a Joint Mandated Lead Arranger) under this Agreement it shall promptly notify the other Secured Parties.
- (e) The Facility Agent's duties under the Finance Documents are solely administrative in nature.

**27.3 ~~26.3~~Role of Joint Mandated Lead Arrangers**

None of the Joint Mandated Lead Arrangers has any obligations of any kind to any other Party under or in connection with any Transaction Document, the Interest Make-Up Agreement or the SACE Insurance Policy.

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**27.4 ~~26.4~~No fiduciary duties**

- (a) Nothing in this Agreement constitutes the Facility Agent or any of the Joint Mandated Lead Arrangers as a trustee or fiduciary of any other person.
- (b) Neither the Facility Agent nor any of the Joint Mandated Lead Arrangers shall be bound to account to any Lender for any sum or the profit element of any sum received by it for its own account.

**27.5 ~~26.5~~Business with the Guarantor**

The Facility Agent and each of the Joint Mandated Lead Arrangers may accept deposits from, lend money to and generally engage in any kind of banking or other business with any Affiliate or Subsidiary of the Guarantor.

**27.6 ~~26.6~~Rights and discretions of the Facility Agent**

- (a) The Facility Agent may rely on:
  - (i) any representation, notice or document believed by it to be genuine, correct and appropriately authorised; and
  - (ii) any statement made by a director, manager, authorised signatory or employee of any person regarding any matters which may reasonably be assumed to be within his knowledge or within his power to verify.
- (b) The Facility Agent may assume (unless it has received notice to the contrary in its capacity as agent for the Lenders) that:
  - (i) no Event of Default has occurred (unless it has actual knowledge of an Event of Default); and
  - (ii) any right, power, authority or discretion vested in any Party or the Lenders has not been exercised.
- (c) The Facility Agent may engage, pay for and rely on the advice or services of any lawyers, accountants, surveyors or other experts.
- (d) The Facility Agent may act in relation to the Finance Documents through its personnel and agents.
- (e) The Facility Agent may disclose to any other Party any information it reasonably believes it has received as the Facility Agent under this Agreement.
- (f) Notwithstanding any other provision of any Finance Document to the contrary, neither the Facility Agent nor any of the Joint Mandated Lead Arrangers 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.

**27.7 ~~26.7~~Lenders' and SACE's instructions**

- (a) Unless a contrary indication appears in a Finance Document, the Facility Agent (and in the case of SACE, the SACE Agent) shall:
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- (i) exercise any right, power, authority or discretion vested in it as Facility Agent (or as SACE Agent as the case may be) in accordance with any instructions given to it by the Majority Lenders (or in the case of the SACE Agent, by SACE) (or, if so instructed by the Majority Lenders or, in the case of the SACE Agent, by SACE, refrain from exercising any right, power, authority or discretion vested in it as the Facility Agent or as the SACE Agent (as the case may be)); and
  - (ii) not be liable for any act (or omission) if it acts (or refrains from taking any action) in accordance with an instruction of the Majority Lenders and/or SACE (as applicable).
- (b) Unless a contrary indication appears in a Finance Document, any instructions given by the Majority Lenders and SACE will be binding on all the Secured Parties.
- (c) The Facility Agent (and the SACE Agent as regards SACE) may refrain from acting in accordance with the instructions of the Majority Lenders and SACE until it has received such security as it may require for any cost, loss or liability (together with any associated VAT) which it may incur in complying with the instructions.
- (d) In the absence of instructions from the Majority Lenders and SACE, the Facility Agent (or the SACE Agent as the case may be) may act (or refrain from taking action) as it considers to be in the best interest of the Secured Parties.
- (e) The Facility Agent is not authorised to act on behalf of a Lender (without first obtaining that Lender's consent) in any legal or arbitration proceedings relating to any Finance Document.
- (f) Notwithstanding anything to the contrary, the Lenders agree that if the Facility Agent (acting in its sole discretion) is of the opinion that or if any Lender notifies the Facility Agent that it is of the opinion that, the prior approval of the Italian Authorities should be obtained in relation to the exercise or non-exercise by the Facility Agent or the Lenders of any power, authority or discretion specifically given to them under or in connection with the Finance Documents or in relation to any other incidental rights, powers, authorities or discretions, then the SACE Agent shall seek such approval of the Italian Authorities prior to such exercise or non-exercise.

**27.8 26.8 Responsibility for documentation**

The Facility Agent is not responsible for:

- (a) the adequacy, accuracy and/or completeness of any information (whether oral or written) supplied by the Facility Agent, a Joint Mandated Lead Arranger, an Obligor or any other person given in or in connection with any Transaction Document, the SACE Insurance Policy or the Interest Make-Up Agreement; nor for
- (b) the legality, validity, effectiveness, adequacy or enforceability of any Transaction Document the SACE Insurance Policy or the Interest Make-Up Agreement or any other agreement, arrangement or document entered into, made or executed in anticipation of or in connection with any Transaction Document, the SACE Insurance Policy or the Interest ~~Make-up~~ Make-Up Agreement.

**27.9 26.9 Exclusion of liability**

- (a) Without limiting paragraph (b) of Clause ~~26.9~~ 27.9 (*Exclusion of liability*), the Facility Agent will not be liable for any action taken by it under or in connection with any Finance Document, the
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SACE Insurance Policy or the Interest Make-Up Agreement, unless directly caused by its Gross Negligence or wilful misconduct.

- (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 Finance Document, the SACE Insurance Policy or the Interest Make-Up Agreement and any officer, employee or agent of the Facility Agent may rely on this Clause subject to Clause ~~36.4~~ 37.4 (*Third party rights*) and the provisions of the Third Party 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, the SACE Insurance Policy or the Interest Make-Up Agreement 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 a Joint Mandated Lead Arranger to carry out any "know your customer" or other checks in relation to any person on behalf of any Lender and each Lender confirms to the Facility Agent and the Joint Mandated Lead Arrangers 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 a Joint Mandated Lead Arranger.

**27.10 ~~26.10~~ Lenders' indemnity to the Facility Agent**

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 (3) 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) in acting as Facility Agent under the Finance Documents (unless the Facility Agent has been reimbursed by an Obligor pursuant to a Finance Document).

**27.11 ~~26.11~~ Resignation of the Facility Agent**

- (a) The Facility Agent may resign and appoint one of its Affiliates as successor by giving notice to the other Creditor Parties, the Borrower and SACE and with the consent of SACE.
  - (b) Alternatively the Facility Agent may resign by giving notice to the other Secured Parties and the Borrower, in which case the Lenders (after consultation with the Borrower and the prior consent of SACE) may appoint a successor Facility Agent.
  - (c) If the Lenders have not appointed a successor Facility Agent in accordance with paragraph (b) of Clause ~~26.11~~ 27.11 (*Resignation of the Facility Agent*) within thirty (30) days after notice of resignation was given, the Facility Agent (after consultation with the Borrower and SACE) may appoint a successor Facility Agent.
  - (d) 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.
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- (e) The Facility Agent's resignation notice shall only take effect upon the appointment of a successor.
- (f) Upon the appointment of a successor, the retiring Facility Agent shall be discharged from any further obligation in respect of the Finance Documents but shall remain entitled to the benefit of this Clause ~~26-27~~ *(Role of the Facility Agent and the Joint Mandated Lead Arrangers and the SACE Agent)*. Its successor and each of the other Parties shall have the same rights and obligations amongst themselves as they would have had if such successor had been an original Party.
- (g) After consultation with the Italian Authorities, the Majority Lenders may, subject to the prior consent of the Italian Authorities, by notice to the Facility Agent, require it to resign in accordance with paragraph (b) of Clause ~~26-11~~ *27.11 (Resignation of the Facility Agent)*. In this event, the Facility Agent shall resign in accordance with paragraph (b) of Clause ~~26-11~~ *27.11 (Resignation of the Facility Agent)* but the cost referred to in paragraph (d) above shall be for the account of the Borrower.
- (h) The appointment of a successor Facility Agent pursuant to this Clause ~~26-11~~ *27.11 (Resignation of the Facility Agent)* shall be subject to compliance with all necessary "know your customer" requirements of the Lenders.

**27.12 ~~26-12~~ Confidentiality**

- (a) In acting as agent for the Secured 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 another division or department of the Facility Agent, it may be treated as confidential to that division or department and the Facility Agent shall not be deemed to have notice of it.

**27.13 ~~26-13~~ Relationship with the Lenders**

The Facility Agent may treat each Lender as a Lender, entitled to payments under this Agreement and acting through its Facility Office unless it has received not less than five (5) Business Days' prior notice from that Lender to the contrary in accordance with the terms of this Agreement.

**27.14 ~~26-14~~ Credit appraisal by the Lenders**

Without affecting the responsibility of any Obligor for information supplied by it or on its behalf in connection with any Finance Document, each Lender confirms to the Facility Agent and each of the Joint Mandated Lead Arrangers that it has been, and will continue to be, solely responsible for making its own independent appraisal and investigation of all risks arising under or in connection with any Finance Document including but not limited to:

- (a) the financial condition, status and nature of the Guarantor and each Subsidiary of the Guarantor;
  - (b) the legality, validity, effectiveness, adequacy or enforceability of any Finance Document and any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Finance Document;
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- (c) whether that Lender has recourse, and the nature and extent of that recourse, against any Party or any of its respective assets under or in connection with any Finance Document, the transactions contemplated by the Finance Documents or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Finance Document;
- (d) the adequacy, accuracy and/or completeness of any information provided by the Facility Agent, any Party or by any other person under or in connection with any Finance Document, the transactions contemplated by the Finance Documents or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Finance Document; and
- (e) the right or title of any person in or to or the value or sufficiency of any part of the Charged Property, the priority of any Security Interests or the existence of any Security Interest affecting the Charged Property.

**27.15 ~~26-15~~ 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.

**27.16 ~~26-16~~ Full freedom to enter into transactions**

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 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 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 Obligor or any other person; or
  - (ii) any options or other derivatives in connection with such securities; and
- (c) to provide advice or other services to the Borrower or any person who is a party to, or referred to in, a Finance Document,

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

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**27.17 ~~26.17~~ SACE Agent, SACE Insurance Policy and Interest Make-Up Agreement**

With the prior written consent of each of the Lenders, the SACE Agent (with a copy to the Facility Agent) may require SACE or SIMEST to amend or modify the SACE Insurance Policy and the Interest ~~Make-up~~ Make-Up Agreement provided that such amendments are not inconsistent with the commercial terms of this Agreement, otherwise, the SACE Agent (with a copy to the Facility Agent) undertakes not to require SACE or SIMEST to amend or modify the SACE Insurance Policy or the Interest ~~Make-up~~ Make-Up Agreement.

**27.18 ~~26.18~~ Resignation of the Facility Agent in relation to FATCA**

The Facility Agent shall resign in accordance with Clause ~~26.11~~ 27.11 (*Resignation of the Facility Agent*) (and, to the extent applicable, shall use reasonable endeavours to appoint a successor Facility Agent pursuant to paragraph (c) of Clause ~~26.11~~ 27.11 (*Resignation of the Facility Agent*)) 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:

- (a) the Facility Agent fails to respond to a request under Clause ~~10.9~~ 11.9 (*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;
- (b) the information supplied by the Facility Agent pursuant to Clause ~~10.9~~ 11.9 (*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
- (c) the Facility Agent notifies the Borrower and the Lenders that the Facility Agent will not be (or will have ceased to be) a FATCA Exempt Party on or after that FATCA Application Date,

and (in each case) a Lender reasonably believes that a Party will be required to make a FATCA Deduction that would not be required if the Facility Agent were a FATCA Exempt Party, and that Lender, by notice to the Facility Agent, requires it to resign.

**27.19 ~~26.19~~ No duty to monitor**

The Facility Agent shall not be bound to enquire:

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

**27.20 ~~26.20~~ Appointment of the SACE Agent**

- (a) Each Lender and each Joint Mandated Lead Arranger irrevocably appoints the SACE Agent to act as its agent under and in connection with:
    - (i) the SACE Insurance Policy; and
    - (ii) the Finance Documents in relation to matters involving SACE, SIMEST and the SACE Insurance Policy.
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- (b) Each Lender and each Joint Mandated Lead Arranger irrevocably authorises the SACE Agent to:
- (i) perform the duties, obligation and responsibilities and exercise the rights, powers, authorities and discretions specifically given to the SACE Agent under or in connection with the Finance Documents and the SACE Insurance Policy, together with any other incidental rights, powers, authorities and discretions; and
  - (ii) execute the SACE Insurance Policy.

**27.21 ~~26-24~~ Application of certain Clauses**

The provisions of Clauses ~~26-2~~ 27.2 (*Duties of the Facility Agent*), ~~26-4~~ 27.4 (*No fiduciary duties*), ~~26-6~~ 27.6 (*Rights and discretions of the Facility Agent*), ~~26-7~~ 27.7 (*Lenders' and SACE's instructions*) ~~26-8~~ 27.8 (*Responsibility for documentation*), ~~26-9~~ 27.9 (*Exclusion of liability*), ~~26-10~~ 27.10 (*Lenders' indemnity to the Facility Agent*), ~~26-11~~ 27.11 (*Resignation of the Facility Agent*), ~~26-12~~ 27.12 (*Confidentiality*), ~~26-13~~ 27.13 (*Relationship with the Lenders*), ~~26-14~~ 27.14 (*Credit appraisal by the Lenders*), ~~26-16~~ 27.16 (*Full freedom to enter into transactions*), ~~26-19~~ 27.19 (*No duty to monitor*) and ~~27-23~~ 28.23 (*Business with the Group*) shall apply in respect of the SACE Agent in its capacity as such as if each reference to the Facility Agent (or Security Trustee in the case of Clause ~~27-23~~ 28.23 (*Business with the Group*)) were a reference to the SACE Agent and each reference to the Finance Documents or Transaction Documents included a reference to the SACE Insurance Policy.

**~~26.22~~ 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 ~~26.22~~ (*Role of Reference Banks*) subject to Clause ~~36.4~~ (*Third party rights*) and the provisions of the Third Parties Act.~~

**~~26.23~~ Third Party Reference Banks**

~~A Reference Bank which is not a Party may rely on Clause ~~26.22~~ (*Role of Reference Banks*) and Clause ~~41~~ (*Confidentiality of Funding Rates and Reference Bank Quotations*) subject to Clause ~~36.4~~ (*Third party rights*) and the provisions of the Third Parties Act.~~

**28 ~~27~~ THE SECURITY TRUSTEE**

**28.1 ~~27.1~~ Trust**

- (a) The Security Trustee declares that it shall hold the Security Property on trust for the Secured Parties on the terms contained in this Agreement and shall deal with the Security Property in
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accordance with this Clause ~~27-28~~ (*The Security Trustee*) and the other provisions of the Finance Documents.

- (b) Each of the parties to this Agreement agrees that the Security Trustee shall have only those duties, obligations and responsibilities expressly specified in this Agreement or in the Finance Documents (and no others shall be implied).
- (c) The Security Trustee shall not have any liability to any person in respect of its duties, obligations and responsibilities under this Agreement or the other Finance Documents except as expressly set out in paragraph (a) of Clause ~~27-4-28.1~~ (*Trust*) and as excluded or limited by this Clause ~~27-28~~ (*The Security Trustee*) including in particular Clause ~~27-8-28.8~~ (*Instructions to Security Trustee and exercise of discretion*), Clause ~~27-13-28.13~~ (*Responsibility for documentation*), Clause ~~27-14-28.14~~ (*Exclusion of liability*), Clause ~~27-16-28.16~~ (*Lenders' indemnity to the Security Trustee*), Clause ~~27-23-28.23~~ (*Business with the Group*) and Clause ~~27-28-28.28~~ (*Full freedom to enter into transactions*).

**28.2 ~~27-2~~ Parallel Debt (Covenant to pay the Security Trustee)**

- (a) Each Obligor irrevocably and unconditionally undertakes to pay to the Security Trustee 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 purposes of this Clause ~~27-2-28.2~~ (*Parallel Debt (Covenant to pay the Security Trustee)*), the Security Trustee:
    - (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 Secured 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
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(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 Trustee in connection with this Clause ~~27.2-28.2~~ 28.2 (*Parallel Debt (Covenant to pay the Security Trustee)*) to the extent permitted by applicable law, shall be applied in accordance with Clause ~~49-20~~ 20 (*Application of sums received*).
- (f) This Clause ~~27.2-28.2~~ 28.2 (*Parallel Debt (Covenant to pay the Security Trustee)*) shall apply, with any necessary modifications, to each Finance Document.

### 28.3 ~~27.3~~ **No independent power**

The Secured Parties shall not have any independent power to enforce, or have recourse to, any Security Interest created by any of the Finance Documents or to exercise any rights or powers arising under the Finance Documents creating the Security Interest except through the Security Trustee.

### 28.4 ~~27.4~~ **Application of receipts**

- (a) Except as expressly stated to the contrary in any Finance Document, any moneys which the Security Trustee receives or recovers and which are, or are attributable to, Security Property (for the purposes of this Clause ~~27.2-28.2~~ 28.2 (*The Security Trustee*), the "**Recoveries**") shall be transferred to the Facility Agent for application in accordance with Clause ~~49-20~~ 20 (*Application of sums received*).
- (b) Paragraph (a) above is without prejudice to the rights of the Security Trustee, any Receiver or any Delegate:
  - (i) under Clause ~~26.10-27.10~~ 27.10 (*Lenders' indemnity to the Facility Agent*) to be indemnified out of the Charged Property; and
  - (ii) under any Finance Document to credit any moneys received or recovered by it to any suspense account.
- (c) Any transfer by the Security Trustee to the Facility Agent in accordance with paragraph (a) above shall be a good discharge, to the extent of that payment, by the Security Trustee.
- (d) The Security Trustee is under no obligation to make the payments to the Facility Agent under paragraph (a) of this Clause ~~27.4-28.4~~ 28.4 (*Application of receipts*) in the same currency as that in which the obligations and liabilities owing to the relevant Secured Party are denominated.

### 28.5 ~~27.5~~ **Deductions from receipts**

- (a) Before transferring any moneys to the Facility Agent under Clause ~~27.4-28.4~~ 28.4 (*Application of receipts*), the Security Trustee may, in its discretion:
    - (i) deduct any sum then due and payable under this Agreement or any other Finance Documents to the Security Trustee or any receiver and retain that sum for itself or, as the case may require, pay it to another person to whom it is then due and payable;
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- (ii) set aside by way of reserve amounts required to meet, and to make and pay, any deductions and withholdings (on account of Taxes or otherwise) which it is or may be required by any applicable law to make from any distribution or payment made by it under this Agreement; and
  - (iii) pay all Taxes which may be assessed against it in respect of any of the Security Property, or as a consequence of performing its duties, or by virtue of its capacity as Security Trustee 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 Trustee 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.

**28.6 ~~27.6~~ Prospective liabilities**

Following acceleration of any Security Interest, the Security Trustee may, in its discretion, or at the request of the Facility Agent, hold any ~~recoveries~~ Recoveries in an interest bearing suspense or impersonal account(s) in the name of the Security Trustee with such financial institution (including itself) and for so long as the Security Trustee shall think fit (the interest being credited to the relevant account) for later payment to the Facility Agent for application in accordance with Clause ~~19-20~~ (Application of sums received) in respect of:

- (a) any sum to the Security Trustee, any Receiver or Delegate; and
- (b) any part of the Secured Liabilities,

that the Security Trustee 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.

**28.7 ~~27.7~~ Investment of proceeds**

Prior to the payment of the proceeds of the ~~recoveries~~ Recoveries to the Facility Agent for application in accordance with Clause ~~27.4~~ 28.4 (*Application of receipts*) the Security Trustee 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 Trustee with such financial institution (including itself) and for so long as the Security Trustee shall think fit (the interest being credited to the relevant account) pending the payment from time to time of those moneys in the Security Trustee's discretion in accordance with the provisions of this Clause ~~27.7~~ 28.7 (*Investment of proceeds*).

**28.8 ~~27.8~~ Instructions to Security Trustee and exercise of discretion**

- (a) Subject to paragraph (d) below, the Security Trustee shall act in accordance with any instructions given to it by the Facility Agent (acting on the instructions of SACE and the Majority Lenders or all the Lenders (as appropriate)) or, if so instructed by the Facility Agent (acting on the instructions of SACE and the Majority Lenders or all the Lenders (as appropriate)), refrain from exercising any right, power, authority or discretion vested in it as Security Trustee and shall be entitled to assume that:
  - (i) any instructions received by it from the Facility Agent (acting on the instructions of SACE and the Majority Lenders or all the Lenders (as appropriate)) are duly given in accordance with the terms of the Finance Documents; and



- (ii) unless it has received actual notice of revocation, that those instructions or directions have not been revoked.
- (b) The Security Trustee shall be entitled to request instructions, or clarification of any direction, from the Facility Agent (acting on the instructions of SACE and the Majority Lenders or all the Lenders (as appropriate)) as to whether, and in what manner, it should exercise or refrain from exercising any rights, powers, authorities and discretions and the Security Trustee may refrain from acting unless and until those instructions or clarification are received by it.
- (c) Any instructions given to the Security Trustee by the Facility Agent (acting on the instructions of SACE and the Majority Lenders or all the Lenders (as appropriate)) shall override any conflicting instructions given by any other Party.
- (d) Paragraph (a) above shall not apply:
  - (i) where a contrary indication appears in this Agreement;
  - (ii) where this Agreement requires the Security Trustee to act in a specified manner or to take a specified action;
  - (iii) in respect of any provision which protects the Security Trustee's own position in its personal capacity as opposed to its role of Security Trustee for the Secured Parties including, without limitation, the provisions set out in Clauses ~~27-10-28.10~~ (*Security Trustee's discretions*) to Clause ~~27-28-28.28~~ (*Full freedom to enter into transactions*); and
  - (iv) in respect of the exercise of the Security Trustee's discretion to exercise a right, power or authority under any of Clause ~~27-5-28.5~~ (*Deductions from receipts*) and Clause ~~27-6-28.6~~ (*Prospective liabilities*).

**28.9 ~~27-9~~ Security Trustee's Actions**

Without prejudice to the provisions of Clause ~~27-4-28.4~~ (*Application of receipts*), the Security Trustee may (but shall not be obliged to), in the absence of any instructions to the contrary, take such action in the exercise of any of its powers and duties under the Finance Documents as it considers in its discretion to be appropriate.

**28.10 ~~27-10~~ Security Trustee's discretions**

- (a) The Security Trustee may:
    - (i) assume (unless it has received actual notice to the contrary from the Facility Agent) that (i) no Event of Default has occurred and no Obligor is in breach of or default under its obligations under any of the Finance Documents and (ii) any right, power, authority or discretion vested by any Finance Document in any person has not been exercised;
    - (ii) assume that any notice or request made by the Borrower (other than a Drawdown Notice) is made on behalf of and with the consent and knowledge of all the Obligors;
    - (iii) if it receives any instructions or directions to take any action in relation to a Security Interest under the Finance Documents, assume that all applicable conditions under the Finance Documents for taking that action have been satisfied;
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- (iv) engage, pay for and rely on the advice or services of any legal advisers, accountants, tax advisers, surveyors or other experts (whether obtained by the Security Trustee or by any other Secured Party) whose advice or services may at any time seem necessary, expedient or desirable;
  - (v) act in relation to the Finance Documents through its personnel and agents;
  - (vi) disclose to any other Party any information it reasonably believes it has received as Security Trustee under this Agreement;
  - (vii) rely upon any communication or document believed by it to be genuine and, as to any matters of fact which might reasonably be expected to be within the knowledge of a Secured Party or an Obligor, upon a certificate signed by or on behalf of that person; and
  - (viii) refrain from acting in accordance with the instructions of any Party (including bringing any legal action or proceeding arising out of or in connection with the Finance Documents) until it has received any indemnification and/or security that it may in its discretion require (which may be greater than that contained in the Finance Documents and which may include payment in advance or otherwise) for all costs, losses and liabilities which it may incur in so acting.
- (b) Notwithstanding any other provision of any Finance Document to the contrary, the Security Trustee 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.
- (c) Notwithstanding any provision of any Finance Document to the contrary, the Security Trustee 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 assured to it.

**28.11 ~~27.44~~ Security Trustee's obligations**

The Security Trustee shall promptly:

- (a) copy to the Facility Agent the contents of any notice or document received by it from any Obligor under any Finance Document;
- (b) forward to a Party the original or a copy of any document which is delivered to the Security Trustee for that Party by any other Party provided that the Security Trustee is not obliged to review or check the adequacy, accuracy or completeness of any document it forwards to another Party; and
- (c) inform the Facility Agent of the occurrence of any Event of Default or any default by an Obligor in the due performance of or compliance with its obligations under any Finance Document of which the Security Trustee has received notice from any other party to this Agreement.

**28.12 ~~27.42~~ Excluded obligations**

Notwithstanding anything to the contrary expressed or implied in the Finance Documents, the Security Trustee shall not:

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- (a) be bound to enquire as to (i) whether or not any Event of Default has occurred or (ii) the performance, default or any breach by an Obligor of its obligations under any of the Finance Documents;
- (b) 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;
- (c) be bound to disclose to any other person (including but not limited to any Secured Party) (i) any confidential information or (ii) any other information if disclosure would, or might in its reasonable opinion, constitute a breach of any law or be a breach of fiduciary duty;
- (d) be or be deemed to be an agent, trustee or fiduciary of any Obligor.

**28.13 ~~27.13~~ Responsibility for documentation**

None of the Security Trustee, any Receiver or Delegate shall accept responsibility or be liable for:

- (a) the adequacy, accuracy or completeness of any information (whether oral or written) supplied by the Security Trustee or any other person in or in connection with any Finance Document or the transactions contemplated in the Finance Documents, or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Finance Document;
- (b) the legality, validity, effectiveness, adequacy or enforceability of any Finance Document, the Security Property or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Finance Document or the Security Property; or
- (c) any determination as to whether any information provided or to be provided to any Secured Party is non-public information the use of which may be regulated or prohibited by applicable law or regulation relating to insider dealing or otherwise.

**28.14 ~~27.14~~ Exclusion of liability**

- (a) Without limiting Clause ~~27.15~~ 28.15 (*No proceedings*), (and without prejudice to any other provision of any Finance Document excluding or limiting the liability of the Security Trustee, any Receiver or Delegate), none of the Security Trustee or any Receiver nor any 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 any action taken by it or not taken by it under or in connection with any Finance Document or any Security Interest, 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 of the Finance Documents, the Security Property or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with, the Finance Documents or the Security Property;
    - (iii) any shortfall which arises on the enforcement or realisation of the Security Property; or
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- (iv) without prejudice to the generality of sub-paragraphs (i) to (iii) above, any damages, costs, losses, 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; 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) Nothing in this Agreement shall oblige the Security Trustee to carry out any "know your customer" or other checks in relation to any person on behalf of any Lender and each Lender confirms to the Security Trustee 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 Trustee.
- (c) Without prejudice to any provision of any Finance Document excluding or limiting the liability of the Security Trustee, any Receiver or Delegate, any liability of the Security Trustee, any Receiver or Delegate arising under or in connection with any Finance Document or the Security Property shall be limited to the amount of actual loss which has been finally judicially determined to have been suffered (as determined by reference to the date of default of the Security Trustee, Receiver or Delegate (as the case may be) 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 Trustee, Receiver or Delegate (as the case may be) at any time which increase the amount of that loss. In no event shall the Security Trustee, 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 Trustee, Receiver or Delegate (as the case may be) has been advised of the possibility of such loss or damages.

**28.15 ~~27.15~~ No proceedings**

No Party (other than the Security Trustee or that Receiver or that Delegate (as applicable)) may take any proceedings against any officer, employee or agent of the Security Trustee, Receiver or Delegate in respect of any claim it might have against the Security Trustee, Receiver or Delegate in respect of any act or omission of any kind by that officer, employee or agent in relation to any Finance Document or any Security Property and any officer, employee or agent of the Security Trustee, Receiver or Delegate may rely on this Clause subject to Clause ~~36.4~~ 37.4 (*Third party rights*) and the provisions of the Third Party Act.

**28.16 ~~27.16~~ Lenders' indemnity to the Security Trustee**

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 Trustee 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 relevant Security Trustee's, Receiver's or Delegate's Gross Negligence or wilful misconduct) in acting as Security Trustee, Receiver or Delegate under the

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Finance Documents (unless the relevant Security Trustee, Receiver or Delegate has been reimbursed by an Obligor pursuant to a Finance Document).

**28.17 ~~27.17~~ Own responsibility**

Without affecting the responsibility of any Obligor for information supplied by it or on its behalf in connection with any Finance Document, each Creditor Party confirms to the Security Trustee that it has been, and will continue to be, solely responsible for making its own independent appraisal and investigation of all risks arising under or in connection with any Finance Document including but not limited to:

- (a) the financial condition, status and nature of each member of the Group;
- (b) the legality, validity, effectiveness, adequacy and enforceability of any Finance Document, the Security Property and any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Finance Document or the Security Property;
- (c) whether that Creditor Party has recourse, and the nature and extent of that recourse, against any Party or any of its respective assets under or in connection with any Finance Document, the Security Property, the transactions contemplated by the Finance Documents or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Finance Document or the Security Property;
- (d) the adequacy, accuracy and/or completeness of any information provided by the Security Trustee or by any other person under or in connection with any Finance Document, the transactions contemplated by any Finance Document or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Finance Document; and
- (e) the right or title of any person in or to, or the value or sufficiency of any part of the Charged Property, the priority of any of the Security Interests created by the Finance Documents or the existence of any Security Interest affecting the Charged Property,

and each Creditor Party warrants to the Security Trustee that it has not relied on and will not at any time rely on the Security Trustee in respect of any of these matters.

**28.18 ~~27.18~~ No responsibility to perfect Security Interests**

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

- (a) require the deposit with it of any deed or document certifying, representing or constituting the title of any Obligor to any of the Charged Property;
  - (b) obtain any licence, consent or other authority for the execution, delivery, legality, validity, enforceability or admissibility in evidence of any of the Finance Documents or any Security Interest;
  - (c) register, file or record or otherwise protect any Security Interests (or the priority of any of Security Interest) under any applicable laws in any jurisdiction or to give notice to any person of the execution of any of the Finance Documents or of any Security Interest;
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- (d) take, or to require any of the Obligors to take, any steps to perfect its title to any of the Charged Property or to render any Security Interest effective or to secure the creation of any ancillary Security Interest under the laws of any jurisdiction; or
- (e) require any further assurances in relation to any of the Finance Documents creating the Security Interests.

**28.19 ~~27.19~~ Insurance by Security Trustee**

- (a) The Security Trustee shall not be under any obligation to insure any of the Charged Property, to require any other person to maintain any insurance or to verify any obligation to arrange or maintain insurance contained in the Finance Documents. The Security Trustee shall not be responsible for any loss which may be suffered by any person as a result of the lack of or inadequacy of any such insurance.
- (b) Where the Security Trustee is named on any insurance policy as an insured party, it shall not be responsible for any loss which may be suffered by reason of, directly or indirectly, 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 Facility Agent shall have requested it to do so in writing and the Security Trustee shall have failed to do so within fourteen (14) days after receipt of that request.

**28.20 ~~27.20~~ Custodians and nominees**

The Security Trustee may appoint and pay any person to act as a custodian or nominee on any terms in relation to any assets of the trust as the Security Trustee 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 Trustee 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.

**28.21 ~~27.24~~ Acceptance of title**

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

**28.22 ~~27.22~~ Refrain from illegality**

Notwithstanding anything to the contrary expressed or implied in the Finance Documents, the Security Trustee may refrain from doing anything which in its opinion will or may be contrary to any relevant law, directive or regulation of any jurisdiction and the Security Trustee may do anything which is, in its opinion, necessary to comply with any such law, directive or regulation.

**28.23 ~~27.23~~ Business with the Group**

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

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**28.24 27-24 Winding up of trust**

If the Security Trustee, with the approval of the Facility Agent determines that (a) all of the Secured Liabilities and all other obligations secured by the Finance Documents creating the Security Interests have been fully and finally discharged and (b) none of the Secured Parties is under any commitment, obligation or liability (actual or contingent) to make advances or provide other financial accommodation to any Obligor pursuant to the Finance Documents:

- (a) the trusts set out in this Agreement shall be wound up and the Security Trustee shall release, without recourse or warranty, all of the Security Interests and the rights of the Security Trustee under each of the Finance Documents creating the Security Interests; and
- (b) any Retiring Security Trustee shall release, without recourse or warranty, all of its rights under each of the Finance Documents creating the Security Interests.

**28.25 27-25 Powers supplemental**

The rights, powers and discretions conferred upon the Security Trustee by this Agreement 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 Trustee by general law or otherwise.

**28.26 27-26 Trustee division separate**

- (a) In acting as trustee for the Secured Parties, the Security Trustee shall be regarded as acting through its trustee division which shall be treated as a separate entity from any of its other divisions or departments.
- (b) If information is received by another division or department of the Security Trustee, it may be treated as confidential to that division or department and the Security Trustee shall not be deemed to have notice of it nor shall it be obliged to disclose such information to any Party.

**28.27 27-27 Disapplication**

In addition to its rights under or by virtue of this Agreement and the other Finance Documents, the Security Trustee shall have all the rights conferred on a trustee by the Trustee Act 1925, the Trustee Delegation Act 1999, the Trustee Act 2000 and by general law or otherwise, provided that:

- (a) section 1 of the Trustee Act 2000 shall not apply to the duties of the Security Trustee in relation to the trusts constituted by this Agreement and the other Finance Documents; and
- (b) 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 allowed by law, prevail and, in the case of any inconsistency with the Trustee Act 2000, such provisions shall constitute a restriction or exclusion for the purposes of the Trustee Act 2000.

**28.28 27-28 Full freedom to enter into transactions**

Notwithstanding any rule of law or equity to the contrary, the Security Trustee shall be absolutely entitled:

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- (a) to enter into and arrange banking, derivative, investment and/or other transactions of every kind with or affecting any 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 trustee for, and/or participating in, other facilities to such 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 Obligor or any other person; or
  - (ii) any options or other derivatives in connection with such securities; and
- (c) to provide advice or other services to the Borrower or any person who is a party to, or referred to in, a Finance Document,

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

#### 28.29 ~~27.29~~ Resignation of the Security Trustee

- (a) The Security Trustee may resign and appoint one of its affiliates as successor by giving notice to the Borrower and each Secured Party.
  - (b) Alternatively the Security Trustee may resign by giving notice to the other Parties in which case the Majority Lenders (with the prior consent of SACE) may appoint a successor Security Trustee.
  - (c) If the Majority Lenders have not appointed a successor Security Trustee in accordance with paragraph (b) above within 30 days after the notice of resignation was given, the Security Trustee (after consultation with the Facility Agent and SACE) may appoint a successor Security Trustee.
  - (d) The retiring Security Trustee (the "**Retiring Security Trustee**") shall, at its own cost, make available to the successor Security Trustee such documents and records and provide such assistance as the successor Security Trustee may reasonably request for the purposes of performing its functions as Security Trustee under the Finance Documents.
  - (e) The Security Trustee'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 of the Security Property to that successor.
  - (f) Upon the appointment of a successor, the Retiring Security Trustee 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 ~~27.24~~ 28.24 (*Winding up of trust*) and under paragraph (d) above) but shall, in respect of any act or omission by it whilst it was the Security Trustee, remain entitled to the benefit of Clause ~~27.28~~ 28 (*The Security Trustee*), Clause ~~27.5~~ 28.5 (*Deductions from receipts*), Clause ~~27.16~~ 28.16 (*Lenders' indemnity*)
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to the Security Trustee) and any other provisions of a Finance Document which are expressed to limit or exclude its liability in acting as Security Trustee. Its successor and each of the other Parties shall have the same rights and obligations amongst themselves as they would have had if that successor had been an original Party.

- (g) The Majority Lenders may, by notice to the Security Trustee, require it to resign in accordance with paragraph (b) above. In this event, the Security Trustee shall resign in accordance with paragraph (b) above but the cost referred to in paragraph (d) above shall be for the account of the Borrower.
- (h) The consent of the Borrower (or any other Obligor) is not required for an assignment or transfer of rights and/or obligations by the Security Trustee.
- (i) The appointment of a successor Security Trustee pursuant to this Clause ~~27.29~~28.29 (*Resignation of the Security Trustee*) shall be subject to compliance with all necessary "know your customer" requirements of the Lenders.

#### **28.30 ~~27.30~~ Delegation**

- (a) Each of the Security Trustee, any Receiver or any Delegate may, at any time, delegate by power of attorney or otherwise to any person for any period, all or any of the rights, powers and discretions vested in it by any of the Finance Documents.
- (b) That delegation may be made upon any terms and conditions and subject to any restrictions that the Security Trustee, that Receiver or that Delegate (as the case may be) considers in its discretion to be appropriate and it shall not be bound to supervise, or be in any way responsible for any damages, costs or losses incurred by reason of any misconduct or default on the part of any such delegate or sub delegate.
- (c) The Security Trustee shall exercise reasonable care in the selection of any such delegate or sub delegate.

#### **28.31 ~~27.31~~ Additional Security Trustee**

- (a) The Security Trustee 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 appropriate; or
    - (ii) for the purposes of conforming to any legal requirements, restrictions or conditions which the Security Trustee deems to be relevant; or
    - (iii) for obtaining or enforcing any judgment in any jurisdiction,and the Security Trustee shall give prior notice to the Borrower and the Facility Agent of that appointment.
  - (b) Any person so appointed shall have the rights, powers and discretions (not exceeding those conferred on the Security Trustee by this Agreement) and the duties and obligations that are conferred or imposed by the instrument of appointment.
  - (c) The remuneration that the Security Trustee may pay to that person, and any costs and expenses (together with any applicable VAT) incurred by that person in performing its
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functions pursuant to that appointment shall, for the purposes of this Agreement, be treated as costs and expenses incurred by the Security Trustee.

**28.32 ~~27-32~~ Financial Services and Markets Act 2000**

- (a) Notwithstanding anything in any Finance Document to the contrary, the Security Trustee shall not do, or be authorised or required to do, anything which might constitute a regulated activity for the purpose of the Financial Services and Markets Act 2000 ("**FSMA**"), unless it is authorised under FSMA to do so.
- (b) The Security Trustee shall have the discretion at any time:
  - (i) to delegate any of the functions which fall to be performed by an authorised person under FSMA to any other agent or person which also has the necessary authorisations and licences; and
  - (ii) to apply for authorisation under FSMA and perform any or all such functions itself if, in its absolute discretion, it considers it necessary, desirable or appropriate to do so.

**29 ~~28~~ CONDUCT OF BUSINESS BY THE CREDITOR PARTIES**

No provision of this Agreement will:

- (a) interfere with the right of any Creditor Party to arrange its affairs (Tax or otherwise) in whatever manner it thinks fit;
- (b) oblige any Creditor 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 Creditor Party to disclose any information relating to its affairs (Tax or otherwise) or any computations in respect of Tax.

**30 ~~29~~ SHARING AMONG THE CREDITOR PARTIES**

**30.1 ~~29.1~~ Payments to Creditor Parties**

If a Creditor Party (a "**Recovering Creditor Party**") receives or recovers any amount from an Obligor other than in accordance with this Clause ~~29-30~~ (*Sharing among the Creditor Parties*) and applies that amount to a payment due under the Finance Documents then:

- (a) the Recovering Creditor Party shall, within three (3) 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 Creditor Party would have been paid had the receipt or recovery been received or made by the Facility Agent and distributed in accordance with Clause ~~49-20~~ (*Application of sums received*) and Clause ~~30-31~~ (*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 Creditor Party shall, within three (3) 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
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Recovering Creditor Party as its share of any payment to be made, in accordance with Clause ~~19-20~~ (*Application of sums received*) and Clause ~~30-31~~ (*Payment Mechanics*).

### **30.2 ~~29-2~~ Redistribution of payments**

The Facility Agent shall treat the Sharing Payment as if it had been paid by the relevant Obligor and distribute it between the Creditor Parties (other than the Recovering Creditor Party) in accordance with Clause ~~19-20~~ (*Application of sums received*) and Clause ~~30-31~~ (*Payment Mechanics*).

### **30.3 ~~29-3~~ Recovering Creditor Party's rights**

- (a) On a distribution by the Facility Agent under Clause ~~29-2-30.2~~ (*Redistribution of payments*), the Recovering Creditor Party will, if possible under the relevant applicable laws, be subrogated to the rights of the Creditor Parties which have shared in the redistribution.
- (b) If and to the extent that the Recovering Creditor Party is not able to rely on its rights under paragraph (a) of Clause ~~29-3-30.3~~ (*Recovering Creditor Party's rights*), the relevant Obligor shall be liable to the Recovering Creditor Party for a debt equal to the Sharing Payment which is immediately due and payable.

### **30.4 ~~29-4~~ Reversal of redistribution**

If any part of the Sharing Payment received or recovered by a Recovering Creditor Party becomes repayable and is repaid by that Recovering Creditor Party, then:

- (a) each Lender which has received a share of the relevant Sharing Payment pursuant to Clause ~~29-2-30.2~~ (*Redistribution of payments*) shall, upon request of the Facility Agent, pay to the Facility Agent for account of that Recovering Creditor 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 Creditor Party for its proportion of any interest on the Sharing Payment which that Recovering Creditor Party is required to pay); and
- (b) that Recovering Creditor Party's rights of subrogation in respect of any reimbursement shall be cancelled and the relevant Obligor will be liable to the reimbursing Creditor Party for the amount so reimbursed.

### **30.5 ~~29-5~~ Exceptions**

- (a) This Clause ~~29-30~~ (*Sharing among the Creditor Parties*) shall not apply to the extent that the Recovering Creditor Party would not, after making any payment pursuant to this Clause, have a valid and enforceable claim against the relevant Obligor.
  - (b) A Recovering Creditor Party is not obliged to share with any other Creditor Party any amount which the Recovering Creditor Party has received or recovered as a result of taking legal or arbitration proceedings, if:
    - (i) it notified that other Creditor Party of the legal or arbitration proceedings; and
    - (ii) that other Creditor Party had an opportunity to participate in those legal or arbitration proceedings but did not do so as soon as reasonably practicable having received notice and did not take separate legal or arbitration proceedings.
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- (c) Following full indemnification by SACE of the SACE Agent (on behalf of the Lenders) under the SACE Insurance Policy, the provisions relating to the sharing of proceeds among the Creditor Parties in this Clause ~~29~~ 30 (*Sharing among the Creditor Parties*) shall not apply to any payment made to SACE by a Lender or the Borrower following a payment by SACE to any Lender under the SACE Insurance Policy.

## 31 ~~30~~PAYMENT MECHANICS

### 31.1 ~~30-1~~Payments to the Facility Agent

- (a) On each date on which an Obligor or a Lender is required to make a payment under a Finance Document, that Obligor or Lender shall make the same available to the 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 a Participating Member State or London) with such bank as the Facility Agent specifies.
- (c) Payment shall be made before 11.00 a.m. New York time or 11.00 a.m. Paris time (in the case of a payment in Euro).
- (d) For each payment by the Borrower, it shall notify the Facility Agent on the third Business Day prior to the due date for payment that it will issue to its bank (which shall be named in such notification) to make the payment.

### 31.2 ~~30-2~~Distributions by the Facility Agent or the SACE Agent

Each payment received by the Facility Agent or the SACE Agent under the Finance Documents or the SACE Insurance Policy for another Party shall, subject to Clause ~~30-3~~ 31.3 (*Distributions to an Obligor*), Clause ~~30-4~~ 31.4 (*Clawback*) be made available by the Facility Agent or SACE Agent (as the case may be) 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 (following which the Facility Agent shall promptly notify the SACE Agent, if relevant to it) by not less than five (5) Business Days' notice with a bank in the principal financial centre of the country of that currency.

### 31.3 ~~30-3~~Distributions to an Obligor

The Facility Agent may in accordance with Clause ~~22-23~~ 31.3 (*Set-Off*) apply any amount received by it for that Obligor in or towards payment (on the date and in the currency and funds of receipt) of any amount due from that Obligor under the Finance Documents or in or towards purchase of any amount of any currency to be so applied.

### 31.4 ~~30-4~~Clawback

- (a) Where a sum is to be paid to the Facility Agent or the SACE Agent under the Finance Documents or the SACE Insurance Policy 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.
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- (b) 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.

**31.5 ~~30.5~~ No set-off by Obligors**

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

**31.6 ~~30.6~~ Business Days**

- (a) Any payment which is due to be made on a day that is not a Business Day shall be made on the next Business Day in the same calendar month (if there is one) or the preceding Business Day (if there is not).
- (b) During any extension of the due date for payment of any principal or unpaid sum under this Agreement interest is payable on the principal or unpaid sum at the rate payable on the original due date.

**31.7 ~~30.7~~ Currency of account**

- (a) Subject to paragraphs (b) and (c) of Clause ~~30.7~~ 31.7 (*Currency of account*) Dollars is the currency of account and payment for any sum from an Obligor under any Finance Document.
- (b) Each payment in respect of costs, expenses or Taxes shall be made in the currency in which the costs, expenses or taxes are incurred.
- (c) Any amount expressed to be payable in a currency other than Dollars shall be paid in that other currency.

**31.8 ~~30.8~~ 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 Lenders and the Borrower); and
- (ii) any translation from one currency or currency unit to another shall be at the official rate of exchange recognised by the central bank for the conversion of that currency or currency unit into the other, rounded up or down by the Facility Agent (acting reasonably).
- (b) If a change in any currency of a country occurs, this Agreement will, to the extent the Facility Agent (acting reasonably and after consultation with the Lenders and the Borrower) specifies to be necessary, be amended to comply with any generally accepted conventions and market practice in the Relevant ~~Interbank~~-Market and otherwise to reflect the change in currency.
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### 31.9 ~~30.9~~ Distributions under the Interest ~~Make-up~~ Make-Up Agreement

Each payment received by the Facility Agent under the Interest ~~Make-up~~ Make-Up Agreement for a Lender shall be made available by the Facility Agent as soon as practicable after receipt to the Lender entitled to receive such payment in accordance with this Agreement (for the account of its Facility Office), to such account as that Lender may notify to the Facility Agent by not less than five (5) Business Days' notice with a bank 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).

## 32 ~~34~~ VARIATIONS AND WAIVERS

### 32.1 ~~34.1~~ Variations, waivers etc. by Majority Lenders

Subject to Clause ~~34.2~~ 32.2 (*Variations, waivers etc. requiring agreement of all Lenders*), a document shall be effective to vary, waive, amend, 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 email, by the Borrower, by the Facility Agent on behalf of the Majority Lenders, by the Facility Agent and the Security Trustee in their own rights, and, if the document relates to a Finance Document to which an Obligor is party, by an Obligor (provided that no amendment or variation may be made to this Agreement or any other Finance Document without the consent of the Italian Authorities); provided, further, that no amendment or variation may be made before the date falling ten Business Days after the terms of that amendment or variation have been notified by the Facility Agent to the Lenders. The Facility Agent shall notify the Lenders reasonably promptly of any amendments or variations proposed by the Borrower.

### 32.2 ~~34.2~~ Variations, waivers etc. requiring agreement of all Lenders

However, as regards the following, Clause ~~34.1~~ 32.1 (*Variations, waivers etc. by Majority Lenders*) applies as if the words "by the Facility Agent on behalf of the Majority Lenders" were replaced by the words "by or on behalf of every Lender":

- (a) a reduction in the applicable Margin;
  - (b) a postponement to the date for, or a reduction in the amount of, any payment of principal, interest, fees, commission or other sum payable under this Agreement;
  - (c) an increase in or extension of any Lender's Commitment under a Tranche, including, for the avoidance of doubt, any increase arising pursuant to the provisions of Clause ~~9.4~~ 9.1 (*SACE Premium*), any increase arising pursuant to the definition of Base Rate in Clause 1.1 (*Definitions*), any increase arising pursuant to the definition of Original Maximum Loan Amount and Amended Maximum Loan Amount in Clause 1.1 (*Definitions*) or any requirement that a cancellation of Commitments under any Tranche reduces the Commitments rateably under the Loan;
  - (d) a change to the definition of "**Majority Lenders**";
  - (e) a change to Clause 2 (*Facility*), Clause 6 (*Interest*), Clause ~~24~~ 25 (*Changes to the Lenders*) or this Clause ~~34~~ 32 (*Variations and Waivers*);
  - (f) any release of, or material variation to, a Security Interest, guarantee, indemnity or subordination arrangement set out in a Finance Document; and
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- (g) any other change or matter as regards which this Agreement or another Finance Document expressly provides that each Lender's consent is required.

**32.3 ~~34.3~~ Exclusion of other or implied variations**

Except for a document which satisfies the requirements of Clauses ~~34.4~~ 32.1 (*Variations, waivers etc. by Majority Lenders*) and ~~34.2~~ 32.2 (*Variations, waivers etc. requiring agreement of all Lenders*), no document, and no act, course of conduct, failure or neglect to act, delay or acquiescence on the part of the Creditor Parties or any of them (or any person acting on behalf of any of them) shall result in the Creditor Parties or any of them (or any person acting on behalf of any of them) being taken to have varied, waived, suspended or limited, or being precluded (permanently or temporarily) from enforcing, relying on or exercising:

- (a) a provision of this Agreement or another Finance Document; or
- (b) an Event of Default; or
- (c) a breach by the Borrower or an Obligor 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.

**33 ~~32~~ NOTICES**

**33.1 ~~32.1~~ 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.

**33.2 ~~32.2~~ Addresses for communications**

A notice shall be sent:

(a) to the Borrower:	7665 Corporate Center Drive Miami FL 33126 USA Attention: Chief Financial Officer and General Counsel Email: [*] / [*]
(b) to a Lender:	At the address below its name in Schedule 1 (Lenders and Commitments) or (as the case may require) in the relevant Transfer Certificate.
(c) to the Facility Agent:	CIB- ITO Global Banking Operations Credit Transaction Management-Export Finance 9 Rue du Débarcadère Immeuble Océanie ACI: CPE02A1

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	93500 Pantin <del>Attention: S-CASET-CARRIGABURU/A-SARANT</del> Email: sylvie.casetcarricaburu@bnpparibas.com / axel.sarant@bnpparibas.com
(d) to the SACE Agent:	12, place des Etats-Unis CS 70052 92547 Montrouge cedex Paris Fax: <del>+33 No. (33)</del> 1 41 89 19 34 <del>Attention</del> Attn: Shipping Middle Office – Ms Clémentine Costil and Romy Roussel E-mail: clementine.costil@ca-cib.com romy.roussel@ca-cib.com
(e) to the Security Trustee:	8 Canada Square London E14 5HQ Fax: +44 20 7991 4350 Email: Ctla.trustee.admin@hsbc.com Attention: Issuer Services – Security Trustee

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

**33.3 ~~32.3~~ Effective date of notices**

Subject to Clauses ~~32.4~~ 33.4 (*Service outside business hours*) and ~~32.5~~ 33.5 (*Electronic communication*), 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.

**33.4 ~~32.4~~ Service outside business hours**

However, if under Clause ~~32.3~~ 33.3 (*Effective date of notices*) a notice would be deemed to be served:

- (a) on a day which is not a business day in the place of receipt; or
- (b) on such a business day, but after 6 p.m. local time;

the notice shall (subject to Clause ~~32.5~~ 33.5 (*Electronic communication*)) be deemed to be served, and shall take effect, at 9 a.m. on the next day which is such a business day.

**33.5 ~~32.5~~ 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, 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 and if those two Parties:



- (i) notify each other in writing of their electronic mail address and/or any other information required to enable the sending and receipt of information by that means; and
  - (ii) notify each other of any change to their address or any other such information supplied by them by not less than five Business Days' notice.
- (b) Any electronic communication made between those two Parties will be effective only when actually received in readable form and in the case of any electronic communication made by a Party to the Facility Agent only if it is addressed in such a manner as the Facility Agent shall specify for this purpose.
- (c) Any electronic communication which becomes effective, in accordance with paragraph (b) above, after 5.00 p.m. in the place of receipt shall be deemed only to become effective on the following day.

**33.6 ~~32.6~~ Illegible notices**

Clauses ~~32.3~~33.3 (*Effective date of notices*) and ~~32.4~~33.4 (*Service outside business hours*) do not apply if the recipient of a notice notifies the sender within 1 hour after the time at which the notice would otherwise be deemed to be served that the notice has been received in a form which is illegible in a material respect.

**33.7 ~~32.7~~ 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.

**33.8 ~~32.8~~ English language**

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

**33.9 ~~32.9~~ Meaning of "notice"**

In this Clause ~~32~~33 (*Notices*), "notice" includes any demand, consent, authorisation, approval, instruction, waiver or other communication.

**34 ~~33~~ CONFIDENTIALITY**

**34.1 ~~33.1~~ 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 Clause ~~33.2~~34.2 (*Disclosure of Confidential*

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*Information*) 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.

#### **34.2 ~~33.2~~ Disclosure of Confidential Information**

Any Creditor Party may disclose:

- (a) to the Italian Authorities, to any of its Affiliates 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 and to any of that person's Affiliates, Representatives and professional advisers;
    - (ii) who is an insurer or reinsurer of any Creditor Party and requests such information;
    - (iii) with (or through) whom it enters into (or may potentially enter into), whether directly or indirectly, any sub-participation in relation to, or any other transaction under which payments are to be made or may be made by reference to, one or more Finance Documents and/or one or more Obligors and to any of that person's Affiliates, Representatives and professional advisers;
    - (iv) appointed by any Creditor Party or by a person to whom sub-paragraphs (i) or (ii) of paragraph (b) above applies to receive communications, notices, information or documents delivered pursuant to the Finance Documents on its behalf;
    - (v) who invests in or otherwise finances (or may potentially invest in or otherwise finance), directly or indirectly, any transaction referred to in sub-paragraphs (i) or (ii) of paragraph (b) above;
    - (vi) 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;
    - (vii) which is a classification society or other entity which a Lender has engaged to make the calculations necessary to enable that Lender to comply with its reporting obligations under the Poseidon Principles;
    - (viii) 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;
    - (ix) who is a Party, a member of the Group or any related entity of an Obligor;
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- (x) as a result of the registration of any Finance Document as contemplated by any Finance Document or any legal opinion obtained in connection with any Finance Document; or
- (xi) with the consent of the Guarantor; or
- (xii) any employee, officer, director or Representative of any Italian Authorities to whom information is required to be disclosed in the course of such person's employment or duties;
- (xiii) to whom or for whose benefit that Creditor Party charges, assigns or otherwise creates a Security Interest (or may do so) pursuant to Clause ~~24.16~~ 25.16 (*Security over Lenders' rights*).

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

- (A) in relation to sub-paragraphs (i), (ii), (iii) and (iv) 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 (v) 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 (vi), (viii) and (xiii) 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 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 sub-paragraphs (i) or (ii) of paragraph (b) above applies to provide administration or settlement services in respect of one or more of the Finance Documents including without limitation, in relation to the trading of participations in respect of the Finance Documents, such Confidential Information as may be required to be disclosed to enable such service provider to provide any of the services referred to in this paragraph (c) if the service provider to whom the Confidential Information is to be given has entered into a confidentiality agreement substantially in the form of the LMA Master Confidentiality Undertaking for Use With Administration/Settlement Service Providers or such other form of confidentiality undertaking agreed between the Borrower and the relevant Creditor Party;
  - (d) to any rating agency (including its professional advisers) such Confidential Information as may be required to be disclosed to enable such rating agency to carry out its normal rating activities in relation to the Finance Documents and/or the 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.
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**34.3 ~~33.3~~ Entire agreement**

This Clause ~~33-34~~ (*Confidentiality*) constitutes the entire agreement between the Parties in relation to the obligations of the Creditor Parties under the Finance Documents regarding Confidential Information and supersedes any previous agreement, whether express or implied, regarding Confidential Information.

**34.4 ~~33.4~~ Disclosure to information services**

(a) Any Creditor Party may disclose to any national or international information service company such as Dealogic, TF, GTR, TXF, IFR and any other similar information service company appointed by that Creditor Party, the following information:

- (i) names of Parties;
- (ii) country of domicile of Obligors;
- (iii) place of incorporation or formation, as the case may be of Obligors;
- (iv) date of ~~this~~ the Original Facility Agreement and Effective Date;
- (v) Clause ~~37-38~~ (*Governing Law*);
- (vi) the name of the Facility Agent;
- (vii) amount of Total Commitments;
- (viii) currency of the Facility;
- (ix) type of Facility;
- (x) ranking of Facility; and
- (xi) duration of Facility,

to enable such information service company to provide its usual services.

(b) Each Obligor represents that none of the information set out in sub-paragraphs (i) to (xi) of paragraph (a) above is, nor will at any time be, unpublished price-sensitive information.

**34.5 ~~33.5~~ 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.

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**34.6 ~~33.6~~ Notification of disclosure**

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

- (a) of the circumstances of any disclosure of Confidential Information made pursuant to sub-paragraph (vi) of paragraph (b) of Clause ~~33.2~~ 34.2 (*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 ~~33~~ 34 (*Confidentiality*).

**34.7 ~~33.7~~ Continuing obligations**

The obligations in this Clause ~~33~~ 34 (*Confidentiality*) 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 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 Creditor Party otherwise ceases to be a Creditor Party.

**34.8 ~~33.8~~ Disclosure by SACE**

Notwithstanding any other provision of this Agreement to the contrary, SACE may disclose any Confidential Information:

- (a) to its ultimate shareholder, holding, subsidiary, parent and affiliate companies;
- (b) to the Ministry of Economy and Finance of the Republic of Italy and its departments, other Italian Ministries (including any of their department), Interministerial committees of the Italian Government and any other Italian authority, committee, agency or governmental entity;
- (c) to providers of reinsurance/counter guarantee or any form of risk enhancement (including their agents, brokers and consultants) subject to such persons undertaking confidentiality obligations with SACE, unless they are subject to professional duties of confidentiality;
- (d) for the purposes of the State guarantee in favour of SACE pursuant to article 32 of law decree n. 91/2014 converted into law 116/2014 and for the purposes of article 2 of law decree 23/2020 converted into law 40/2020; or
- (e) following any payment due under the SACE Insurance Policy; or
- (f) with the consent of the Borrower, such consent not to be unreasonably withheld.

**34.9 ~~33.9~~ Disclosure by SIMEST**

Notwithstanding any other provision of this Agreement to the contrary, SACE may disclose any Confidential Information to SIMEST provided that SIMEST may, in turn, disclose such Confidential Information:

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- (a) to its ultimate shareholder, holding company, parent, subsidiaries and affiliates;
- (b) to its professional advisers provided that such advisers are under a professional duty to keep such information confidential;
- (c) to providers of hedging arrangements entered into by SIMEST in connection with the Facility (including their agents, brokers and consultants) subject to such persons undertaking confidentiality obligations with SIMEST (unless they are subject to professional duties of confidentiality) and with the written consent of the Borrower (such consent not to be unreasonably withheld); or
- (d) with the consent of the Borrower.

**34.10 ~~33.10~~ Press release**

Neither SACE nor the Borrower will issue any press release or make any public announcement in relation to the SACE Insurance Policy without the prior consent of the other party (such consent not to be unreasonably withheld).

**35 ~~34~~ LEGAL INDEPENDENCE AND UNCONDITIONAL OBLIGATIONS OF THE BORROWER**

**35.1 ~~34.1~~ Legal independence and Unconditional Obligations of the Borrower**

This Agreement is legally independent from the Shipbuilding Contract. The obligations of the Borrower to make payments and to observe and perform its obligations under the Transaction Documents are absolute, unconditional, irrevocable and several and such obligations shall not:

- (a) in any way be affected or discharged by reason of any matter affecting the Shipbuilding Contract including its performance, frustration or validity, the insolvency or dissolution of any party to the Shipbuilding Contract or the destruction, non-completion or non-functioning of the goods and equipment supplied under the Shipbuilding Contract;
  - (b) in any way be affected or discharged by reason of any dispute under the Shipbuilding Contract or any claim which it or any other person may have against, or consider that it has against, any person under the Shipbuilding Contract;
  - (c) in any way be affected or discharged by reason of unenforceability, illegality or invalidity of any obligation of the Borrower or any other person under the Shipbuilding Contract or any documents or agreements relating to the Shipbuilding Contract;
  - (d) in any way be affected by the fact that all or any part of the amount requested referred to in the Drawdown Notice is not or was not due or payable to the Builder;
  - (e) be conditional on the performance by the Creditor Parties of any obligations (except as otherwise stated herein) in order to give rise to a relevant obligation of the Borrower hereunder; or
  - (f) in any way be affected or discharged by the insolvency or dissolution of the Borrower.
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## 36 ~~35~~SACE SUBROGATION AND REIMBURSEMENT

### 36.1 ~~35.1~~Acknowledgement of Subrogation

Each of the Parties acknowledges that, upon any payment being made by or on behalf of SACE of any amount under the SACE Insurance Policy, SACE will be immediately and automatically subrogated to the rights of the Lenders in the amount of such payment under the Finance Documents in accordance with the SACE Insurance Policy. Following such subrogation, the Creditor Parties shall provide all assistance required by SACE to enforce its rights under this Agreement and the other Finance Documents.

### 36.2 ~~35.2~~Reimbursement

- (a) Without prejudice to Clause ~~35.1~~36.1 (*Acknowledgement of Subrogation*), each Obligor, jointly and severally undertakes to pay to SACE, and keep SACE indemnified from and against, each and every amount paid (whether by direct payment or set-off) by SACE to the Creditor Parties or any person on any of their behalf under the SACE Insurance Policy;
- (b) Each Obligor undertakes to pay SACE an amount in Dollars equal to:
  - (i) for each payment made by SACE to any of the Creditor Parties or any person on any of their behalf under the SACE Insurance Policy, the amount of such payment; and
  - (ii) for each deduction or withholding imposed, levied, collected, withheld or assessed on any payment by SACE to any of the Creditor Parties or any person on any of their behalf under the SACE Insurance Policy, the amount of such deduction or withholding,

in each case together with interest thereon (calculated in accordance with Clause ~~17.1~~18.1 (*Default rate of interest*) of this Agreement).

- (c) Each Obligor further agrees that its obligations under this Clause ~~35.2~~36.2 (*Reimbursement*) are separate from and in no way conditional upon the Obligor's obligations under this Agreement or any of the other Finance Documents and will not be affected or discharged by any matter relating thereto including, but not limited to, whether or not the Obligor is itself liable to make payment, or is disputing its liability to make payment, under this Agreement or any of the other Finance Documents.
- (d) SACE will promptly inform the Obligors of any amounts to be reimbursed and indemnified under this Clause ~~35.2~~36.2 (*Reimbursement*).
- (e) Each amount that is payable by the Obligors pursuant to Clause ~~35.2~~36.2 (*Reimbursement*) is due and payable to SACE in Dollars within five (5) Business Days of demand by SACE to the Obligors.

### 36.3 ~~35.3~~Obligations Absolute

The obligations of the Obligors under this Clause ~~35.2~~36.2 (*Reimbursement*), to the extent permitted by applicable law:

- (a) are absolute and unconditional;
  - (b) are to be discharged and/or performed strictly in accordance with this Agreement under all circumstances;
-

- (c) are continuing obligations and will extend to the ultimate balance of sums payable by SACE to any Creditor Party or any person on any of their behalf under the SACE Insurance Policy, regardless of any intermediate payment or discharge in whole or in part;
- (d) will not be affected by an act, omission, matter or thing which, but for this Clause, would reduce, release or prejudice any of its obligations under Clause ~~35.2~~ 36.2 (*Reimbursement*) (without limitation and whether or not known to it or any Creditor Party) including:
- (i) any time, waiver or consent granted to, or composition with any Obligor;
  - (ii) any lack of validity or enforceability of, or any amendment or other modifications of, or waiver with respect to, any of the Finance Documents;
  - (iii) any reduction or release of any other obligations under this Agreement;
  - (iv) the release of any Obligor or any other person under the terms of any composition or arrangement;
  - (v) the taking, variation, compromise, exchange, renewal, discharge, substitution or release of, or refusal or neglect to perfect, take up, realise or enforce, any rights against, or security over assets of, any Obligor 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;
  - (vi) any incapacity or lack of power, authority or legal personality of or dissolution or change in the members or status of any Obligor, any Creditor Party or any other person;
  - (vii) any amendment (however fundamental) or replacement of a Finance Document, the SACE Insurance Policy or any other document or security;
  - (viii) any unenforceability, illegality or invalidity of any obligation of any person under any Finance Document, the SACE Insurance Policy or any other document or security;
  - (ix) any insolvency or similar proceedings;
  - (x) the existence of any claim, set-off, defence, reduction, abatement or other right which any Obligor may have at any time against SACE;
  - (xi) any document presented in connection with the SACE Insurance Policy proving to be forged, fraudulent, invalid or insufficient in any respect or any statement therein being untrue or inaccurate in any respect;
  - (xii) any payment by SACE against presentation of a demand for payment substantially, on its face, in the form of a claim under the SACE Insurance Policy where any certificate or other document required to be provided with such claim in accordance with the terms of the SACE Insurance Policy either is not provided or does not comply with the terms of the SACE Insurance Policy; and
  - (xiii) any other circumstances which might otherwise constitute a defence available to, or discharge of any Obligor.
-



**37 ~~36~~SUPPLEMENTAL**

**37.1 ~~36.1~~Rights cumulative, non-exclusive**

The rights and remedies which the Finance Documents give to each Secured 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.

**37.2 ~~36.2~~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.

**37.3 ~~36.3~~Counterparts**

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

**37.4 ~~36.4~~Third party rights**

- (a) Except for SACE, SIMEST and their successors, transferees and assignees or as otherwise provided in a Finance Document, a person who is not a Party has no right under the Third Party Act to enforce or to enjoy the benefit of any term of this Agreement.
  - (b) Notwithstanding any provision of any Finance Document, the consent of any person (other than SACE, SIMEST or their successors, transferees and assignees) who is not a party to a Finance Document is not required to rescind, vary or terminate any Finance Document at any time.
  - (c) Subject to the provisions of the Third Party Act, and without prejudice to the provisions of paragraphs (a) and (b) above, each of SACE and/or SIMEST (as applicable) has the right to enforce and to enjoy the benefit of Clause ~~35-36~~ (SACE Subrogation and Reimbursement), Clause ~~47-18~~ (Interest on Late Payments), Clause ~~8-9~~ (SACE Premium and Italian Authorities), Clause ~~40-2-11.2~~ (Tax gross-up), Clause ~~40-3-11.3~~ (Tax indemnity), Clause ~~40-4-11.11~~ (Transaction Costs), Clause ~~20-4-21.1~~ (Indemnities regarding borrowing and repayment of Loan), Clause ~~20-2-21.2~~ (Breakage costs and SIMEST arrangements), Clause ~~20-3-21.3~~ (Miscellaneous indemnities), Clause ~~20-4-21.4~~ (Currency indemnity), Clause ~~22-23~~ (Set-Off), Clause ~~27-28~~ (The Security Trustee), Clause ~~40-6-11.6~~ (VAT), Clause ~~40-13-11.13~~ (SACE obligations), Clauses ~~33-8-34.8~~ (Disclosure by SACE), Clause ~~33-9-34.9~~ (Disclosure by SIMEST), ~~33-40-34.10~~ (Press release), Clause ~~38-39~~ (Enforcement) and any other provision of this Agreement which expressly confers rights on SACE and/or SIMEST (as applicable).
  - (d) Any amendment or waiver which relates to the rights of SACE and/or SIMEST (as applicable) under this Agreement, including under Clause ~~35-36~~ (SACE Subrogation and Reimbursement), Clause ~~47-18~~ (Interest on Late Payments), Clause ~~8-9~~ (SACE Premium and Italian Authorities), Clause ~~40-2-11.2~~ (Tax gross-up), Clause ~~40-3-11.3~~ (Tax indemnity), Clause ~~20-4-21.4~~ (Currency indemnity), Clause ~~22-23~~ (Set-Off), Clause ~~27-28~~ (The Security Trustee), Clause ~~20-3-21.3~~ (Miscellaneous indemnities), Clause ~~40-6-11.6~~ (VAT), Clause ~~40-4-11.11~~ (Transaction Costs),
-

Clause ~~20.4-21.1~~ (*Indemnities regarding borrowing and repayment of Loan*), Clauses ~~33.8-34.8~~ (*Disclosure by SACE*), Clause ~~33.9-34.9~~ (*Disclosure by SIMEST*), ~~33.10-34.10~~ (*Press release*), Clause ~~38-39~~ (*Enforcement*) and any other provision of this Agreement which expressly confers rights on SACE and/or SIMEST (as applicable) may not be effected without the consent of SACE and/or SIMEST (as applicable).

**37.5 36.5 No waiver**

No failure or delay on the part of a Secured Party in exercising any right, power or privilege hereunder shall operate as a waiver thereof; nor shall any single or partial exercise thereof preclude any other or further exercise thereof by the Secured Parties or the exercise by the Secured Parties of any other right, power or privilege. The rights and remedies of the Secured Parties herein provided are cumulative and not exclusive of any rights or remedies provided by law.

**37.6 36.6 Writing required**

This Agreement shall not be capable of being modified otherwise than by an express modification in writing signed by the Borrower, the Facility Agent and the Lenders.

**37.7 36.7 Non-applicable provisions between the Obligors, German Lenders and any Creditor Party subject to the EU Blocking Regulation**

- (a) A Creditor Party that is incorporated in the Federal Republic of Germany or is otherwise subject to the EU Blocking Regulation may notify the Facility Agent in writing that it elects that any provisions with respect to Sanctions, including, without limitation, the undertakings and covenants given under paragraph (iv) of Clause ~~12.2-13.2~~ (*Information*), Clause ~~12.4-13.4~~ (*Sanctions and Illicit Payments*), Clause ~~12.5-13.5~~ (*Prohibited Payments*), Clause ~~12.25-13.25~~ (*Compliance with laws etc.*) or provisions contained in Clause ~~20.3-21.3~~ (*Miscellaneous indemnities*) or Clause ~~21.4-22.1~~ (*Illegality and Sanctions*) and the representations and warranties given under paragraphs (u), (v), (y), (z) and (jj) of Clause ~~11.2-12.2~~ (*Continuing representations and warranties*) and paragraph (j) of Clause ~~11.3-12.3~~ (*Representations on the Delivery Date*) respectively (the "**Sanctions Provisions**") shall only enure to the benefit of, and be applicable to, that Creditor Party to the extent that such provisions would not result in: (i) any violation of, conflict with or liability under the EU Blocking Regulation; or (ii) in the case of a Creditor Party that is incorporated in the Federal Republic of Germany only, a violation or conflict with the German Blocking Provisions.
- (b) If a Creditor Party elects to be a Restricted Creditor Party, in respect of any proposed requirement to comply, enforcement, waiver, non-waiver, consent, variation or amendment of or in relation to a Finance Document relating to any Sanctions Provision (a "**Relevant Action**"), the Restricted Creditor Party shall notify the Facility Agent in writing whether or not it shall be deemed to be a Lender for the purposes of ascertaining whether the agreement of any specified group of Lenders has been obtained to approve the Relevant Action and upon receipt by the Facility Agent of such notice such Restricted Creditor Party shall be so deemed for such purposes.

**38 37 GOVERNING LAW**

This Agreement and any non-contractual obligations arising out of or in connection with it are governed by and construed in accordance with English law.

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## 39 ~~38~~ ENFORCEMENT

### 39.1 ~~38.1~~ Jurisdiction of English Courts

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) (a "**Dispute**"). Each Party agrees that the courts of England are the most appropriate and convenient courts to settle Disputes and accordingly no Party will argue to the contrary.

### 39.2 ~~38.2~~ Service of process

Without prejudice to any other mode of service allowed under any relevant law, the Borrower:

- (a) irrevocably appoints Hannaford Turner LLP, currently of 107 Cheapside, London UK, EC2V 6DN as its agent for service of process in relation to any proceedings before the English courts in connection with any Finance Document; and
- (b) agrees that failure by a process agent to notify the Borrower of the process will not invalidate the proceedings concerned.

If any person appointed as an agent for service of process is unable for any reason to act as agent for service of process, the Borrower (on behalf of all the Obligors) must immediately (and in any event within 15 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.

## 40 ~~39~~ WAIVER OF IMMUNITY

### 40.1 ~~39.1~~ To the fullest extent permitted by applicable law, the Borrower hereby irrevocably and unconditionally:

- (a) submits to the jurisdiction of the English courts in accordance with Clause 38 (*Enforcement*) and agrees not to claim any sovereign or other immunity from the jurisdiction of any such court;
  - (b) submits to the jurisdiction of the English courts in respect of any proceedings arising out of or connected with the enforcement and/or execution of any judgment made against it and waives and agrees not to claim any sovereign or other immunity from the jurisdiction of the English courts or the courts of any other jurisdiction in relation to the recognition of any such judgment or court order and agrees to ensure that no such claim is made on its behalf;
  - (c) consents generally in respect of any such proceedings to the giving of any relief in the English courts and the courts of any other jurisdiction whether before or after a final judgment including, without limitation: suit, relief by way of interim or final injunction or order for specific performance or recovery of any property, attachment of its assets prior to judgment, other attachment, the obtaining of judgment and enforcement or execution against any property, revenues or other assets whatsoever (irrespective of their use or intended use) and waives and agrees not to claim any sovereign or other immunity from the jurisdiction of the English courts or the courts of any other jurisdiction in relation to such enforcement and the giving of such relief (including to the extent that such immunity may be attributed to it) against itself or with respect to its assets, and agrees to ensure that no such claim is made on its behalf or with respect to its assets;
-

- (d) waives any right of immunity which it or its assets now has or may subsequently acquire; and
- (e) agrees not to claim any sovereign or other immunity from service of process against its assets or revenues for the enforcement of a judgment or an action in rem, for the arrest, detention or sale of any of its assets and revenues.

40.2 ~~39.2~~ The Borrower agrees that in any proceedings in the English courts this waiver shall have the fullest scope permitted by the English State Immunity Act 1978 (the "Act") and that this waiver is intended to be irrevocable for the purposes of such Act.

41 ~~40~~ **EFFECTIVE DATE**

This Agreement is effective from the ~~2024-Deferral~~ 2023 Effective Date.

42 ~~41~~ **CONFIDENTIALITY OF FUNDING RATES AND REFERENCE BANK QUOTATIONS**

42.1 ~~41.1~~ **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 ~~6.5~~ 7.5 (*Notification of Interest Periods and Floating Interest Rate*);
    - (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 ~~41-42~~ (*Confidentiality of Funding Rates and Reference Bank Quotations*) relating to the Reference Bank Quotations are without prejudice to its obligations to make notifications under Clause ~~6.5-7.5~~ (*Notification of Interest Periods and Floating Interest Rate*) 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.

#### 42.2 ~~44.2~~ Related Obligations

- (a) The Facility Agent and each Obligor acknowledge that each Funding Rate (and, in the case of the Facility Agent, each Reference Bank Quotation) is or may be price sensitive information and that its use may be regulated or prohibited by applicable legislation including securities law relating to insider dealing and market abuse and the Facility Agent and each Obligor undertake not to use any Funding Rate or, in the case of the Facility Agent, any Reference Bank Quotation, for any unlawful purpose.
- (b) The Facility Agent and each Obligor agree (to the extent permitted by law and regulation) to inform the relevant Lender or Reference Bank, as the case may be:
  - (i) of the circumstances of any disclosure made pursuant to sub-paragraph (ii) of (c) of Clause ~~41.1-42.1~~ (*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 ~~41-42~~ (*Confidentiality of Funding Rates and Reference Bank Quotations*).

#### 42.3 ~~44.3~~ No Event of Default

No Event of Default will occur under Clause ~~18.4-19.4~~ (*Breach of other obligations*) by reason only of an Obligor's failure to comply with this Clause ~~41-42~~ (*Confidentiality of Funding Rates and Reference Bank Quotations*).

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**This Agreement has been entered into and amended and restated on the date stated at the beginning of this Agreement.**



EXECUTION PAGES

**BORROWER**

SIGNED by )  
 )  
for and on behalf of )  
**O CLASS PLUS ONE, LLC** )  
in the presence of: )

**TRANCHE A LENDERS**

SIGNED by )  
 )  
for and on behalf of )  
**CRÉDIT AGRICOLE CORPORATE** )  
**AND INVESTMENT BANK** )  
**BANCO SANTANDER S.A.** )  
in the presence of: )

SIGNED by )  
 )  
for and on behalf of )  
**BNP PARIBAS FORTIS S.A./N.V.** )  
in the presence of: )

SIGNED by )  
 )  
for and on behalf of )  
**KFW IPEX BANK GMBH** )  
*in the presence of:* )

~~SIGNED by~~ )  
 )  
~~for and on behalf of~~ )  
~~**HSBC BANK PLC**~~ )  
~~in the presence of:~~ )

~~SIGNED by~~ )  
 )  
~~for and on behalf of~~ )  
**CASSA DEPOSITI E PRESTITI S.P.A.** )  
in the presence of: )

SIGNED by )  
 )

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for and on behalf of )  
CRÉDIT AGRICOLE CORPORATE )  
AND INVESTMENT BANK )  
in the presence of: )

SIGNED by )  
 )  
for and on behalf of )  
HSBC BANK PLC )  
in the presence of: )

SIGNED by )  
 )  
for and on behalf of )  
~~BANGO SANTANDER S.A.~~ )  
KFW IPEX-BANK GMBH )  
in the presence of: )

SIGNED by )  
 )  
for and on behalf of )  
SOCIETE GENERALE )  
in the presence of: )

**TRANCHE B LENDERS**

SIGNED by )  
 )  
for and on behalf of )  
~~CRÉDIT AGRICOLE CORPORATE~~ )  
~~AND INVESTMENT BANK~~ )  
~~in the presence of:~~ )

~~SIGNED by~~ )  
 )  
~~for and on behalf of~~ )  
~~BNP PARIBAS FORTIS S.A./N.V.~~ )  
in the presence of: )

SIGNED by )  
 )  
for and on behalf of )  
~~KFW IPEX-BANK GMBH~~ )

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CASSA DEPOSITI E PRESTITI S.P.A. )  
in the presence of: )

SIGNED by )  
 )  
for and on behalf of )  
CRÉDIT AGRICOLE CORPORATE )  
AND INVESTMENT BANK )  
in the presence of: )

SIGNED by )  
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for and on behalf of )  
HSBC BANK PLC )  
in the presence of: )

SIGNED by )  
 )  
for and on behalf of )  
~~CASSA DEPOSITI E PRESTITI S.P.A.~~ )  
KFW IPEX-BANK GMBH )  
in the presence of: )

SIGNED by )  
 )  
for and on behalf of )  
SOCIETE GENERALE )  
in the presence of: )

**TRANCHE C LENDERS**

SIGNED by )  
 )  
for and on behalf of )  
~~CRÉDIT AGRICOLE CORPORATE~~ )  
~~AND INVESTMENT BANK~~ )  
in the presence of: )

**SIGNED by** )  
 )  
**for and on behalf of** )  
**BNP PARIBAS FORTIS S.A./N.V.** )  
in the presence of: )

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SIGNED by \_\_\_\_\_ )  
 )  
for and on behalf of \_\_\_\_\_ )  
CASSA DEPOSITI E PRESTITI S.P.A. \_\_\_\_\_ )  
in the presence of: \_\_\_\_\_ )

SIGNED by \_\_\_\_\_ )  
 )  
for and on behalf of \_\_\_\_\_ )  
CRÉDIT AGRICOLE CORPORATE \_\_\_\_\_ )  
AND INVESTMENT BANK \_\_\_\_\_ )  
in the presence of: \_\_\_\_\_ )

SIGNED by \_\_\_\_\_ )  
 )  
for and on behalf of \_\_\_\_\_ )  
KFW IPEX-BANK GMBH \_\_\_\_\_ )  
in the presence of: \_\_\_\_\_ )

SIGNED by \_\_\_\_\_ )  
 )  
for and on behalf of \_\_\_\_\_ )  
HSBC BANK PLC \_\_\_\_\_ )  
~~in the presence of:~~ \_\_\_\_\_ →

~~SIGNED by~~ \_\_\_\_\_ →  
 )  
~~for and on behalf of~~ \_\_\_\_\_ →  
~~CASSA DEPOSITI E PRESTITI S.P.A.~~ \_\_\_\_\_ →  
~~in the presence of:~~ \_\_\_\_\_ →

~~SIGNED by~~ \_\_\_\_\_ →  
 )  
~~for and on behalf of~~ \_\_\_\_\_ →  
~~SOCIETE GENERALE~~ \_\_\_\_\_ →  
~~in the presence of:~~ \_\_\_\_\_ )

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**JOINT MANDATED LEAD ARRANGERS**

SIGNED by \_\_\_\_\_ )  
 )  
for and on behalf of \_\_\_\_\_ )  
BANCO SANTANDER S.A. \_\_\_\_\_ )  
in the presence of: \_\_\_\_\_ )

SIGNED by \_\_\_\_\_ )  
 )  
for and on behalf of \_\_\_\_\_ )  
BNP PARIBAS FORTIS S.A./N.V. \_\_\_\_\_ )  
in the presence of: \_\_\_\_\_ )

SIGNED by \_\_\_\_\_ )  
 )  
for and on behalf of \_\_\_\_\_ )  
CASSA DEPOSITI E PRESTITI S.P.A. \_\_\_\_\_ )  
in the presence of: \_\_\_\_\_ )

**SIGNED by** \_\_\_\_\_ )  
 )  
**for and on behalf of** \_\_\_\_\_ )  
**CRÉDIT AGRICOLE CORPORATE** \_\_\_\_\_ )  
**AND INVESTMENT BANK** \_\_\_\_\_ )  
**in the presence of:** \_\_\_\_\_ )

**SIGNED by** \_\_\_\_\_ )  
 )  
**for and on behalf of** \_\_\_\_\_ )  
**BNP PARIBAS FORTIS S.A./N.V.** \_\_\_\_\_ )  
**HSBC BANK PLC** \_\_\_\_\_ )  
**in the presence of:** \_\_\_\_\_ )

**SIGNED by** \_\_\_\_\_ )  
 )  
**for and on behalf of** \_\_\_\_\_ )  
**KFW IPEX-BANK GMBH** \_\_\_\_\_ )  
**in the presence of:** \_\_\_\_\_ )

**SIGNED by** \_\_\_\_\_ )  
 )  
**for and on behalf of** \_\_\_\_\_ )  
**HSBC BANK PLC** \_\_\_\_\_ )



in the presence of: )

**SIGNED by** )

for and on behalf of )

**CASSA DEPOSITI E PRESTITI S.P.A.** )

in the presence of: )

**SIGNED by** )

for and on behalf of )

**BANCO SANTANDER S.A.** )

in the presence of: )

**SIGNED by** )

for and on behalf of )

**SOCIETE GENERALE** )

in the presence of: )

**FACILITY AGENT**

**SIGNED by** )

for and on behalf of )

**BNP PARIBAS** )

in the presence of: )

**SACE AGENT**

**SIGNED by** )

for and on behalf of )

**CRÉDIT AGRICOLE CORPORATE** )

**AND INVESTMENT BANK** )

in the presence of: )

**SECURITY TRUSTEE**

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SIGNED by )  
 )  
for and on behalf of )  
**HSBC CORPORATE TRUSTEE** )  
**COMPANY (UK) LIMITED** ) )  
in the presence of: )



## APPENDIX 2

### FORM OF AMENDED AND RESTATED GUARANTEE (MARKED TO INDICATE AMENDMENTS)

Amendments are indicated as follows:

- 1 additions are indicated by underlined text in blue; and
  - 2 deletions are shown by strike-through text in red.
-

Originally dated 19 December 2018  
(as previously amended from time to time, including as amended and restated pursuant to an amendment and restatement agreement dated ~~February 2021~~ 17 February 2021, as further amended pursuant to a supplemental agreement dated 23 December 2021, as further amended pursuant to a supplemental agreement dated 16 December 2022 and as further amended and restated pursuant to an amendment and restatement agreement dated 2023)

**NCL CORPORATION LTD.**  
as Guarantor

and

**HSBC CORPORATE TRUSTEE COMPANY (UK) LIMITED**  
as Security Trustee

and

**NORWEGIAN CRUISE LINE HOLDINGS LTD.**  
as the Holding

**AMENDED AND RESTATED GUARANTEE**

relating to a facility agreement originally dated 19 December 2018 (as previously amended and restated by an amendment and restatement agreement dated ~~February 2021~~ 17 February 2021, as further amended and restated by an amendment and restatement agreement dated 17 June 2021, as further amended by a supplemental agreement dated 23 December 2021, as further amended by a supplemental agreement dated 16 December 2022 and as further amended and restated by an amendment and restatement agreement dated 2023) in respect of the part financing of the 1,258 passenger cruise ship newbuilding ~~presently designated as Hull No. 6308~~ at Fincantieri S.p.A., m.v. "Vista"

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**THIS GUARANTEE** is originally made on 19 December 2018 (as [previously amended from time to time, including as amended and restated by an amendment and restatement agreement dated ~~February 2021~~ 17 February 2021, as further amended pursuant to a supplemental agreement dated 23 December 2021, as further amended pursuant to a supplemental agreement dated 16 December 2022 and as further amended and restated pursuant to an amendment and restatement agreement dated 2023](#))

## **PARTIES**

- (1) **NCL CORPORATION LTD.**, an exempted company incorporated under the laws of Bermuda with its registered office at Park Place, 55 Par-la-Ville Road, Hamilton HM11, Bermuda (the "**Guarantor**")
- (2) **HSBC CORPORATE TRUSTEE COMPANY (UK) LIMITED**, a company incorporated in England and Wales (with registered number 06447555) whose registered office is at 8 Canada Square, London E14 5HQ as security trustee on behalf of the Secured Parties (the "**Security Trustee**", which expression includes its successors, transferees and assigns)
- (3) **NORWEGIAN CRUISE LINE HOLDINGS LTD.**, a company incorporated under the laws of Bermuda with its registered office at Park Place ~~56~~, 55 Par-la-Ville Road, Hamilton HM 11, Bermuda (the "**Holding**")

## **BACKGROUND**

- (A) By a shipbuilding contract dated 31 October 2018 (as amended from time to time) (the "**Shipbuilding Contract**") entered into between (i) Fincantieri S.p.A, a company incorporated in Italy with registered office in Trieste, via Genova, 1, and having fiscal code 00397130584 (the "**Builder**") and (ii) O Class Plus One, LLC (the "**Borrower**"), the Builder has agreed to design, construct and deliver, and the Borrower has agreed to purchase, a 1,258 passenger cruise ship ~~currently~~ having hull number [\*] as more particularly described in the Shipbuilding Contract ~~to be delivered on 31 March~~ [\*] subject to any adjustments of such delivery date in accordance with the Shipbuilding Contract.
- (B) By a loan agreement dated 19 December 2018 (the "**Original Loan Agreement**"), and made between (i) the Borrower, (ii) the Lenders, (iii) the Joint Mandated Lead Arrangers, (iv) the Facility Agent, (v) the SACE Agent and (vi) the Security Trustee, it was agreed that the Lenders would make available to the Borrower, a facility of the Dollar Equivalent of up to four hundred and sixty two million and nine hundred and sixty thousand Euros (€ 462,960,000) and the amount of the SACE Premium (but not exceeding six hundred and ninety million, seven hundred and eighteen thousand and seventy Dollars and fifty four cents (\$ 690,718,070.54)) for the purpose of assisting the Borrower, in financing (a) payment or reimbursement under the Shipbuilding Contract of all or part of 80% of the Final Contract Price up to the Eligible Amount and (b) reimbursement to the Borrower of 100% of the First Instalment of the SACE Premium paid by it to SACE and payment to SACE of 100% of the Second Instalment of the SACE Premium (as defined therein).
- (C) The execution and delivery to the Security Trustee of a guarantee by the Guarantor, which was executed on 19 December 2018 (the "**Original Guarantee**") was one of the conditions precedent to the availability of the facility under the Original Loan Agreement.
- (D) Due to the unprecedented and extraordinary impacts of the Covid-19 pandemic on the cruise sector and cruise operators, SACE informed the cruise operators of its availability to evaluate certain measures (the "**Temporary Measures**") applicable in relation to certain qualifying loan

agreements in order to assist companies which are financially sound but dealing with the impact of the temporary but unprecedented Covid-19 pandemic; the possibility to access to such measures was subject, amongst other things, to certain principles dated 15 April 2020 for cruise lines offered by SACE (the "**Original Principles**").

- (E) On 21 January 2021 SACE confirmed its availability to evaluate an extension of the Temporary Measures (the "**Extended Temporary Measures**"), again subject to certain principles set out in a document titled "Debt Deferral Extension Framework for ECA-backed Export Financings" dated 26 November 2020 for cruise lines offered by SACE (together with the Original Principles, the "**Principles**").
- (F) Pursuant to the consent request letter dated 3 December 2020, the Borrower and the Guarantor notified the Facility Agent and the SACE Agent of their wish to benefit from the Temporary Measures and the Extended Temporary Measures in relation to certain loan agreements listed therein, including the Original Loan Agreement, and requested, amongst other things, the temporary suspension of certain covenants under the Original Guarantee and the addition of certain covenants under the Original Loan Agreement for a period until 31 December 2022 (the "**Borrower Request**").
- (G) On 25 January 2021, the Facility Agent (for and on behalf of the Lenders) provided its consent to part of the Borrower Request in accordance with and subject to certain conditions as set out in an amendment and restatement agreement to the Original Loan Agreement and to the Original Guarantee dated ~~17~~ 17 February 2021 between, amongst others, the Borrower, the Guarantor, the Facility Agent and the SACE Agent (as further defined below, the "**February 2021 Amendment and Restatement Agreement**").
- (H) By an amendment and restatement agreement dated 17 June 2021 and made between, amongst others, the Borrower, the Facility Agent, the SACE Agent and the Security Trustee in order to, inter alia, provide for an increase of the Facility (the "**June 2021 Amendment and Restatement Agreement**").
- (I) By a supplemental agreement dated 23 December 2021 and made between, amongst others, the Borrower, the Facility Agent, the SACE Agent and the Security Trustee (the "**December 2021 Amendment Agreement**"), the Parties agreed to, inter alia, amend certain financial covenants and certain other provisions under the Original Loan Agreement (as amended and restated by the February 2021 Amendment and Restatement Agreement and as amended and restated by the June 2021 Amendment and Restatement Agreement) and the Original Guarantee (as amended and restated by the February 2021 Amendment and Restatement Agreement).
- (J) By a supplemental agreement dated 16 December 2022 and made between, amongst others, the Borrower, the Facility Agent, the SACE Agent and the Security Trustee (the "**December 2022 Amendment Agreement**"), the Parties agreed to, inter alia, amend certain financial covenants and certain other provisions under the Original Loan Agreement (as amended and restated by the February 2021 Amendment and Restatement Agreement, as amended and restated by the June 2021 Amendment and Restatement Agreement and as amended by the December 2021 Amendment Agreement) and the Original Guarantee (as amended and restated by the February 2021 Amendment and Restatement Agreement and as amended by the December 2021 Amendment Agreement).
- (K) The Parties have agreed to enter into an amendment and restatement agreement to the Original Loan Agreement (as amended and restated by the February 2021 Amendment and

Restatement Agreement, as amended and restated by the June 2021 Amendment and Restatement Agreement, as amended by the December 2021 Amendment Agreement and as amended by the December 2022 Amendment Agreement, the "Amended Loan Agreement") and to the Original Guarantee (as amended and restated by the February 2021 Amendment and Restatement Agreement, as amended by the December 2021 Amendment Agreement and as amended by the December 2022 Amendment Agreement, the "Amended Guarantee") dated \_\_\_\_\_ 2023 to, *inter alia*, incorporate certain amendments including the switch from LIBOR to SOFR (as defined therein) (the "2023 Amendment and Restatement Agreement" and the Amended Loan Agreement as amended and restated by the 2023 Amendment and Restatement Agreement, the "Loan Agreement").

(L) ~~(H)~~ This Guarantee sets out the terms and conditions of the ~~Original~~ Amended Guarantee as amended and restated pursuant to the ~~2021~~ 2023 Amendment and Restatement Agreement.

## OPERATIVE PROVISIONS

### 1 INTERPRETATION

#### 1.1 Defined expressions

Words and expressions defined in the Loan Agreement shall have the same meanings when used in this Guarantee unless the context otherwise requires.

#### 1.2 Construction of certain terms

In this Guarantee:

~~"2021-2023 Amendment and Restatement Agreement" means an amendment and restatement agreement to the Original Loan Agreement and the Original Guarantee dated \_\_\_\_\_ February 2021 and made between, amongst others, the Borrower, the Guarantor, the Facility Agent and the SAGE Agent. has the meaning given to it in Recital (K).~~

"**Bankruptcy**" includes a liquidation, receivership or administration and any form of suspension of payments, arrangement with creditors or reorganisation under any corporate or insolvency law of any country.

"**Capital Stock**" means:

- (a) in the case of a corporation or company, corporate stock or shares;
- (b) in the case of an association or business entity, any and all shares, interests, participations, rights or other equivalents (however designated) of corporate stock;
- (c) in the case of a partnership or limited liability company, partnership or membership interests (whether general or limited); and
- (d) any other interest or participation that confers on a person the right to receive a share of the profits and losses of, or distributions of assets of, the issuing person.

"**First Financial Quarter**" means the financial quarter ending immediately prior to or on the date falling forty five (45) days before the Intended Delivery Date.

**"Loan Agreement"** means the ~~Original Loan Agreement as amended and restated by the 2021 Amendment and Restatement Agreement~~ has the meaning given to it in Recital (K).

**"Management"** means the ~~employees of the Guarantor and its subsidiaries or their dependants or any trust for which such persons are the intended beneficiary~~.

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

**"Shareholder"** means Oceania Cruises S. de R.L., a Panamanian *sociedad de responsabilidad limitada* domiciled in Panama whose resident agent is at Arifa Building, West Boulevard, Santa Maria Business District, Panama, Republic of Panama as the sole member of the Borrower.

### 1.3 Application of construction and interpretation provisions of Loan Agreement

Clauses 1.2 (*Construction of certain terms*) to 1.5 (*General Interpretation*) of the Loan Agreement apply, with any necessary modifications, to this Guarantee.

### 1.4 ~~4.4~~ Inconsistency between Loan Agreement provisions and this Guarantee

This Guarantee shall be read together with the Loan Agreement, but in case of any conflict between the Loan Agreement and this Guarantee, unless expressly provided to the contrary in this Guarantee, the provisions of the Loan Agreement shall prevail.

### 1.5 ~~4.2~~ Non-applicable provisions between the Obligors, German Lenders and any Creditor Party subject to the EU Blocking Regulation

- (a) A Creditor Party that is incorporated in the Federal Republic of Germany or is otherwise subject to the EU Blocking Regulation may notify the Facility Agent in writing that it elects that any provisions with respect to Sanctions, including, without limitation, the undertakings and covenants given under any of Clause 10.12 (*Sanctions*) or any undertakings in Clause 11.22 (*Sanctions and Illicit Payments*), Clause 11.23 (*Prohibited Payments*) and Clause 11.24 (*Sanctions*) of this Guarantee respectively (the "**Sanctions Provisions**") shall only enure to the benefit of, and be applicable to, that Creditor Party to the extent that such provisions would not result in: (i) any violation of, conflict with or liability under the EU Blocking Regulation; or (ii) in the case of a Creditor Party that is incorporated in the Federal Republic of Germany only, a violation or conflict with the German Blocking Provisions.
- (b) If a Creditor Party elects to be a Restricted Creditor Party pursuant to the foregoing paragraph (a), in respect of any proposed requirement to comply, enforcement, waiver, non-waiver, consent, variation or amendment of or in relation to a Finance Document relating to any Sanctions Provision (a "**Relevant Action**"), the Restricted Creditor Party shall notify the Facility Agent in writing whether or not it shall be deemed to be a Lender for the purposes of ascertaining whether the agreement of any specified group of Lenders has been obtained to approve the Relevant Action and upon receipt by the Facility Agent of such notice such Restricted Creditor Party shall be so deemed for such purposes.

## 2 GUARANTEE

### 2.1 Guarantee and indemnity

The Guarantor unconditionally and irrevocably:

- (a) guarantees to the Security Trustee (acting on behalf of the Secured Parties) punctual performance by the Borrower of all the Borrower's obligations under or in connection with the Loan Agreement and every other Finance Document;
- (b) undertakes to the Security Trustee that whenever the Borrower does not pay any amount when due under or in connection with the Loan Agreement and the other Finance Documents, the Guarantor shall immediately on demand pay that amount as if it was the principal obligor;
- (c) agrees that if any obligation guaranteed by it is or becomes unenforceable, invalid or illegal, it will, as an independent and primary obligation, indemnify the Security Trustee and each other Secured Party immediately on demand by the Security Trustee against any cost, loss or liability it incurs as a result of the Borrower not paying any amount which would, but for such unenforceability, invalidity or illegality, have been payable by it under the Loan Agreement or any other Finance Document on the date when it would have been due. Any such demand for indemnification shall be made through the Security Trustee, for itself or on behalf of the Secured Parties. The amount payable by the Guarantor under this indemnity will not exceed the amount it would have had to pay under this Clause 2.1 (*Guarantee and indemnity*) if the amount claimed had been recoverable on the basis of a guarantee.

## **2.2 No limit on number of demands**

The Security Trustee may serve any number of demands under Clause 2.1 (*Guarantee and indemnity*).

## **3 LIABILITY AS PRINCIPAL AND INDEPENDENT DEBTOR**

### **3.1 Principal and independent debtor**

The Guarantor shall be liable under this Guarantee as a principal and independent debtor and accordingly it shall not have, as regards this Guarantee, any of the rights or defences of a surety.

### **3.2 Waiver of rights and defences**

Without limiting the generality of Clause 3.1 (*Principal and independent debtor*), the obligations of the Guarantor under this Guarantee will not be affected or discharged by an act, omission, matter or thing which, but for this Clause, would reduce, release or prejudice any of its obligations under this Guarantee (without limitation and whether or not known to it or any Secured Party) including:

- (a) any time, waiver or consent granted to, or composition with, the Borrower or other person;
- (b) the release of the Borrower or any other person under the terms of any composition or arrangement with any creditor of any affiliate of the Borrower;
- (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, the Borrower or other person or any non-presentation or non-observance of any formality or other requirement in respect of any instrument or any failure to realise the full value of any security;
- (d) any incapacity or lack of power, authority or legal personality of or dissolution or change in the members or status of the Borrower or any other person;

- (e) any amendment, novation, supplement, extension, restatement (however fundamental and whether or not more onerous) or replacement of any Finance Document or any other document or security including without limitation any change in the purpose of, any extension of or any increase in any facility or the addition of any new facility under any Finance Document or other document or security;
- (f) any insolvency or similar proceedings;
- (g) any arrangement or concession (including a rescheduling or acceptance of partial payments) relating to, or affecting, the Finance Documents;
- (h) any release or loss whatsoever of any guarantee, right or Security Interest created by the Finance Documents;
- (i) any failure whatsoever promptly or properly to exercise or enforce any such right or Security Interest, including a failure to realise for its full market value an asset covered by such a Security Interest;
- (j) any other Finance Document or any Security Interest now being or later becoming void, unenforceable, illegal or invalid or otherwise defective for any reason, including a neglect to register it; or
- (k) any unenforceability, illegality or invalidity of any obligation of any person under any Finance Document or any other document or security.

#### **4 EXPENSES**

##### **4.1 Costs of preservation of rights, enforcement etc.**

The Guarantor shall pay to the Security Trustee on its demand the amount of all expenses incurred by the Security Trustee or any other Secured Party in connection with any matter arising out of this Guarantee or any Security Interest connected with it, including any advice, claim or proceedings relating to this Guarantee or such a Security Interest.

##### **4.2 Fees and expenses payable under Loan Agreement**

Clause 4.1 (*Costs of preservation of rights, enforcement etc.*) is without prejudice to the Guarantor's liabilities in respect of the Borrower's obligations under clauses 9 (*Fees*) and 10 (*Taxes, Increased Costs, Costs and Related Charges*) of the Loan Agreement and under similar provisions of other Finance Documents.

#### **5 ADJUSTMENT OF TRANSACTIONS**

##### **5.1 Reinstatement of obligation to pay**

The Guarantor shall pay to the Security Trustee on its demand any amount which any Secured Party is required, or agrees, to pay pursuant to any claim by, or settlement with, a trustee in ~~bankruptcy~~ [Bankruptcy](#) of the Borrower or of any other Obligor (or similar person) on the ground that the Loan Agreement or any other Finance Document, or a payment by the Borrower or of such other Obligor, was invalid or on any similar ground.

## **6 PAYMENTS**

### **6.1 Method of payments**

Any amount due under this Guarantee shall be paid:

- (a) in immediately available funds;
- (b) to such account as the Security Trustee may from time to time notify to the Guarantor;
- (c) without any form of set-off, cross-claim or condition; and
- (d) free and clear of any Tax Deduction except a Tax Deduction which the Guarantor is required by law to make.

### **6.2 Grossing-up for taxes**

If the Guarantor is required by law to make a Tax Deduction, the amount due to the Security Trustee shall be increased by the amount necessary to ensure that the Security Trustee and (if the payment is not due to the Security Trustee for its own account) the Secured Party beneficially interested in the payment receives and retains a net amount which, after the Tax Deduction, is equal to the full amount that it would otherwise have received; provided that a payment shall not be increased under this Clause 6.2 (Grossing-up for taxes) if paragraph (d) of clause ~~40-2-11.2~~ 11.2 (Tax gross-up) of the Loan Agreement applies *mutatis mutandis*.

### **6.3 Tax Credits**

If an additional payment is made by the Guarantor under this Clause and any Secured Party determines that it has received or been granted a credit against or relief of or calculated with reference to the deduction giving rise to such additional payment, such Secured Party shall, to the extent that it can do so without prejudice to the retention of the amount of such credit, relief, remission or repayment and provided that it has received the cash benefit of such credit, relief or remission, pay to the Guarantor such amount as such Secured Party shall in its reasonable opinion have concluded to be attributable to the relevant deduction. Any such payment shall be conclusive evidence of the amount due to the Guarantor hereunder and shall be accepted by the Guarantor in full and final settlement of its rights of reimbursement hereunder in respect of such deduction. Nothing herein contained shall interfere with the right of each Secured Party to arrange its tax affairs in whatever manner it thinks fit.

### **6.4 FATCA Deduction**

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

## 6.5 FATCA Information

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

## 6.6 No obligations on SACE

To the extent that this Clause 6 (*Payments*) imposes obligations or restrictions on a Secured Party, such obligations or restrictions shall not apply to SACE and SACE shall have no obligations hereunder nor be constrained by such restrictions.



## **7 INTEREST**

### **7.1 Accrual of interest**

Any amount due under this Guarantee shall carry interest after the date on which the Security Trustee demands payment of it until it is actually paid, unless interest on that same amount also accrues under the Loan Agreement.

### **7.2 Calculation of interest**

Interest on sums payable under this Guarantee shall be calculated and accrue in the same way as interest under clause 6 (*Interest*) of the Loan Agreement.

### **7.3 Guarantee extends to interest payable under Loan Agreement**

For the avoidance of doubt, it is confirmed that this Guarantee covers all interest payable under the Loan Agreement, including that payable under clause 17 (*Interest on Late Payments*) of the Loan Agreement.

## **8 SUBORDINATION**

### **8.1 Subordination of rights of Guarantor**

Until all amounts which may be or become payable by the Obligors under or in connection with the Finance Documents have been irrevocably paid in full and unless the Facility Agent otherwise directs, all rights which the Guarantor at any time has (whether in respect of this Guarantee or any other transaction) against the Borrower, any other Obligor or their respective assets shall be fully subordinated to the rights of the Secured Parties under the Finance Documents; and in particular, the Guarantor shall not:

- (a) claim, or in a ~~bankruptcy~~ Bankruptcy of the Borrower or any other Obligor prove for, any amount payable to the Guarantor by the Borrower or any other Obligor, whether in respect of this Guarantee or any other transaction;
- (b) take or enforce any Security Interest for any such amount;
- (c) exercise any right to be indemnified by an Obligor;
- (d) bring legal or other proceedings for an order requiring the Borrower or any other Obligor to make any payment, or perform any obligation, in respect of which ~~any~~ the Guarantor has given a guarantee, undertaking or indemnity under this Guarantee;
- (e) claim to set-off any such amount against any amount payable by the Guarantor to the Borrower or any other Obligor; or
- (f) claim any subrogation or right of contribution or other right in respect of any Finance Document or any sum received or recovered by any Secured Party under a Finance Document.

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 Secured Parties by the Obligors under or in connection with the Finance Documents to be repaid in full on trust for the Secured Parties and shall promptly

pay or transfer the same to the Security Trustee or as the Security Trustee may direct for application in accordance with the Loan Agreement and the Finance Documents.

## **9 ENFORCEMENT**

### **9.1 No requirement to commence proceedings against Borrower**

The Guarantor waives any right it may have of first requiring the Security Trustee or any other Secured Party to proceed against or enforce any other rights or security or claim payment from any person before claiming from the Guarantor under this Guarantee. Neither the Security Trustee nor any other Secured Party will need to make any demand under, commence any proceedings under, or enforce any guarantee or any Security Interest contained in or created by, the Loan Agreement or any other Finance Document before claiming or commencing proceedings under this Guarantee. This waiver applies irrespective of any law or any provision of a Finance Document to the contrary.

### **9.2 Conclusive evidence of certain matters**

However, as against the Guarantor:

- (a) any judgment or order of a court in England or the jurisdiction of the Approved Flag or Bermuda or the United States of America in connection with the Loan Agreement; and
  - (b) any statement or admission by the Borrower in connection with the Loan Agreement,
- shall be binding and conclusive as to all matters of fact and law to which it relates.

### **9.3 Suspense account**

Until all amounts which may be or become payable by the Obligors under or in connection with the Finance Documents have been irrevocably paid in full, the Security Trustee and any Secured Party may:

- (a) refrain from applying or enforcing any other moneys, security or rights held or received by it (or any trustee or agent on its behalf which, in the case of a Secured Party, shall include the Facility Agent and the Security Trustee) 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 Guarantee.

## **10 REPRESENTATIONS AND WARRANTIES**

### **10.1 General**

The Guarantor represents and warrants to the Security Trustee as follows on the date of this Guarantee, which representations and warranties shall be deemed to be repeated, with reference *mutatis mutandis* to the facts and circumstances subsisting, as if made on each day from the date of this Guarantee to the end of the Security Period.

## **10.2 Status**

The Guarantor is duly incorporated and validly existing and in good standing under the laws of Bermuda as an exempted company.

## **10.3 Corporate power**

The Guarantor has the corporate capacity, and has taken all corporate action and obtained all consents necessary for it:

- (a) to execute this Guarantee; and
- (b) to make all the payments contemplated by, and to comply with, this Guarantee.

## **10.4 Consents in force**

All the consents referred to in Clause 10.3 (*Corporate power*) remain in force and nothing has occurred which makes any of them liable to revocation.

## **10.5 Legal validity**

This Guarantee constitutes the Guarantor's legal, valid and binding obligations enforceable against the Guarantor in accordance with its terms subject to any relevant insolvency laws affecting creditors' rights generally.

## **10.6 No conflicts**

The execution by the Guarantor of this Guarantee and its compliance with this Guarantee will not involve or lead to a contravention of:

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

## **10.7 No withholding taxes**

All payments which the Guarantor is liable to make under this Guarantee may be made without deduction or withholding for or on account of any tax payable under any law of Bermuda or the United States of America (other than a FATCA Deduction).

## **10.8 No default**

To the knowledge of the Guarantor, no Event of Default has occurred which is continuing.

## **10.9 Information**

All information which has been provided in writing by or on behalf of the Guarantor to the Security Trustee or any other Secured Party in connection with any Finance Document satisfied the requirements of Clause 11.2 (*Information provided to be accurate*); all audited and unaudited accounts which have been so provided satisfied the requirements of Clause 11.4

(*Form of financial statements*); and there has been no material adverse change in the financial position or state of affairs of the Guarantor from that disclosed in the latest of those accounts.

#### **10.10 No litigation**

No legal or administrative action involving the Guarantor has been commenced or taken or, to the Guarantor's knowledge, is likely to be commenced or taken which, in either case, would be likely to have a material adverse effect on the Guarantor's ability to perform its obligations under this Guarantee.

#### **10.11 No Security Interests**

None of the assets or rights of the Guarantor is subject to any Security Interest except any Security Interest which (i) qualifies as a Permitted Security Interest with respect to the Guarantor or (ii) is permitted by Clause 11.11 (*Negative pledge*).

#### **10.12 Sanctions**

- (a) No investments made and no payments made, received or to be made by the Guarantor under the Loan Agreement, the Transaction Documents or any Finance Document have been or shall be funded, whether directly or, to the knowledge of the Guarantor, indirectly out of funds of Illicit Origin or derived from any activity with a Prohibited Person or in a Prohibited Jurisdiction or which would otherwise cause any Party to be in breach of any Sanctions and none of the sources of funds to be used by the Guarantor in connection with the Transaction Documents, the construction of the Ship or its business, whether directly or, to the knowledge of the Guarantor, indirectly, are of Illicit Origin or derived from any activity with a Prohibited Person or in a Prohibited Jurisdiction.
- (b) No Prohibited Payment has been or will be made, received or provided, directly or indirectly, by (or on behalf of) it or the Borrower (to the best of the Guarantor's knowledge), any of its affiliates, officers, directors or any other person acting on its behalf to, or for the benefit of, any authority or any public or government entity (or any official, officer, director, agent or key employee of, or other person with management responsibilities in, any authority or public or government entity) in connection with the Ship, the Loan Agreement and/or the Finance Documents.
- (c) The Guarantor:
  - (i) nor to its knowledge any director, officer, or Affiliate of any Obligor or member of the Group, is not a Prohibited Person;
  - (ii) is not owned or controlled by or acting directly or indirectly on behalf of or for the benefit of, a Prohibited Person; or
  - (iii) does not own or control a Prohibited Person.

### **11 UNDERTAKINGS**

#### **11.1 General**

The Guarantor undertakes with the Security Trustee to comply with the following provisions of this Clause 11 (*Undertakings*) at all times from the date of this Guarantee to the end of the Security Period, except as the Security Trustee may otherwise permit.

## 11.2 Information provided to be accurate

All financial and other information (but, in respect of information relating to the business and affairs of the Guarantor, excluding any forward looking statements and projections) which is provided in writing by or on behalf of the Guarantor under or in connection with this Guarantee will be true and not misleading and will not omit any material fact or consideration.

## 11.3 Provision of financial statements

The Guarantor will send to the Security Trustee:

- (a) as soon as practicable, but in no event later than 120 days after the end of each financial year of the Guarantor beginning with the year ending 31 December 2018, the audited consolidated accounts of the Guarantor and its subsidiaries;
- (b) as soon as practicable (and in any event within forty-five (45) days of the end of the contemplated quarter in respect of the first three quarters of each fiscal year and 90 days in respect of the final quarter) a copy of the unaudited consolidated quarterly management accounts of the Guarantor certified as to their correctness by the chief financial officer of the Guarantor (it being understood that the delivery by the Guarantor of quarterly or annual reports as filed with the Securities and Exchange Commission in respect of the Guarantor and its consolidated subsidiaries shall satisfy all the requirements of this paragraph (b));
- (c) a compliance certificate in the form set out in Schedule 1 (*Form of Compliance Certificate*) to this Guarantee or in such other form as the Security Trustee may reasonably require (each a "**Compliance Certificate**"):
  - (i) for the first time, no later than the First Financial Quarter on the basis of the latest available quarterly financial statements, and
  - (ii) at the same time as there is delivered to the Security Trustee, and together with, each set of unaudited consolidated quarterly management accounts under paragraph (b) and, if applicable, audited consolidated accounts under paragraph (a), duly signed by the chief financial officer of the Guarantor and certifying whether or not the requirements of Clause 11.15 (*Financial Covenants*) are then complied with;
- (d) such additional financial or other relevant information regarding the Guarantor and the Group as the Security Trustee may reasonably request;
- (e) as soon as practicable (and in any event not later than January 31 of each fiscal year):
  - (i) updated financial projections of the Group for at least the next five years (including an income statement, balance sheet statement and cash flow statement and quarterly break downs for the first of those five years); and
  - (ii) an outline of the assumptions supporting such budget and financial projections including but without limitation any scheduled drydockings.
- (f) **Additional Financial Reporting**

In addition to the information to be provided in accordance with clause 12.2 (*Information*) of the Loan Agreement and this Clause 11.3 (*Provision of financial statements*), the Guarantor undertakes to provide to the Facility Agent a written report (in form and substance satisfactory

to SACE) from the February 2021 ~~Deferral~~ Effective Date ~~until the end of the Deferral Period~~, covering the information requested in the document entitled "Regular Monitoring Requirements", the form of which is included in Schedule 2 (*Regular Monitoring Requirements*), within the timelines specified therein.

- (g) For the avoidance of doubt, subject to the provisions of the Loan Agreement, paragraph (h) below and Clause 11.21 (*Breach of new covenants or the Principles*), the financial covenants contained in Clause 11.15 (*Financial Covenants*) will continue to be tested and the reporting obligations shall continue to apply in accordance with this Clause 11.3 (*Provision of financial statements*) in respect of the Deferral Period.
- (h) Any breach of any financial covenant contained in paragraphs (b) and (c) of Clause 11.15 (*Financial Covenants*) arising on a testing date during the Deferral Period, by reference to the financial position of the Group (on a consolidated basis), shall not (without prejudice to the rights of the Lenders in respect of any further breach of such financial covenants that may occur following the expiry of the Deferral Period (including, without limitation, the ability to terminate the waiver of the financial covenants granted pursuant to paragraphs (b) and (c) of Clause 11.15 (*Financial Covenants*) having occurred), and subject further to no Event of Default under clauses 18.7 (*Winding-up*) to clause 18.13 (*Cessation of business*) (inclusive) of the Loan Agreement having occurred and being continuing), result in an Event of Default.

#### **11.4 Form of financial statements**

All accounts (audited and unaudited) delivered under Clause 11.3 (*Provision of financial statements*) will:

- (a) be prepared in accordance with GAAP;
- (b) when required to be audited, be audited by the auditors which are the Guarantor's auditors at the date of this Guarantee or other auditors approved by the Security Trustee, provided that, such approval by the Security Trustee shall not be unreasonably withheld or delayed;
- (c) give a true and fair view of the state of affairs of the Guarantor and its subsidiaries at the date of those accounts and of their profit for the period to which those accounts relate; and
- (d) fully disclose or provide for all significant liabilities of the Guarantor and its subsidiaries.

#### **11.5 Shareholder and creditor notices**

The Guarantor will send the Security Trustee, at the same time as they are despatched, copies of all communications which are despatched to the Guarantor's shareholders or creditors generally or any class of them.

#### **11.6 Consents**

The Guarantor will maintain in force and promptly obtain or renew, and will promptly send certified copies to the Security Trustee of, all consents required:

- (a) for the Guarantor to perform its obligations under this Guarantee;
  - (b) for the validity or enforceability of this Guarantee,
- and the Guarantor will comply with the terms of all such consents.

### **11.7 Notification of litigation**

The Guarantor will provide the Security Trustee with details of any material legal or administrative action involving the Guarantor as soon as such action is instituted or it becomes apparent to the Guarantor that it is likely to be instituted (and for this purpose proceedings shall be deemed to be material if they involve a claim in an amount exceeding twenty million Dollars (\$20,000,000) or the equivalent in another currency).

### **11.8 Domicile and principal place of business**

The Guarantor:

- (a) will maintain its domicile and registered office at the address stated at the commencement of this Guarantee or at such other address in Bermuda as is notified beforehand to the Security Trustee;
- (b) will maintain its principal place of business and keep its corporate documents and records in the United States of America at 7665 Corporate Center Drive, Miami, 33126, Florida or at such other address in the United States of America as is notified beforehand to the Security Trustee; and
- (c) will not move its domicile out of Bermuda nor its principal place of business out of the United States of America without the prior agreement of the Security Trustee, acting with the authorisation of the Secured Parties, such agreement not to be unreasonably withheld.

### **11.9 Notification of default**

The Guarantor will notify the Security Trustee as soon as the Guarantor becomes aware of the occurrence of an Event of Default and will thereafter keep the Security Trustee fully up-to-date with all developments.

### **11.10 Maintenance of status**

The Guarantor will maintain its separate corporate existence and remain in good standing under the laws of Bermuda.

### **11.11 Negative pledge**

The Guarantor shall not, and shall procure that the Borrower will not, create or permit to arise any Security Interest over any asset present or future except Security Interests created or permitted by the Finance Documents and except for the following:

- (a) Security Interests created with the prior consent of the Security Trustee or otherwise permitted by the Finance Documents;
- (b) in the case of the Guarantor, Security Interests which qualify as Permitted Security Interests with respect to the Guarantor;
- (c) in the case of the Borrower, Security Interests permitted under clause 12.8 (*Negative pledge*) of the Loan Agreement;
- (d) Security Interests provided in favour of lenders under and in connection with any refinancing of the Existing Indebtedness or any financing arrangements entered into by any member of

the Group for the acquisition of additional or replacement ship(s) (including any refinancing of any such arrangement) but limited to:

- (i) pledges of the share capital of the relevant ship owning subsidiary(/ies); and/or
- (ii) ship mortgages and other securities over the financed ship(s).

**11.12 No disposal of assets, change of business**

The Guarantor will:

- (a) not, and shall procure that its subsidiaries, as a group, shall not, transfer all or substantially all of the cruise vessels owned by them and shall procure that any cruise vessels which are disposed of in compliance with the foregoing shall be disposed on a willing seller willing buyer basis at or about market rate and at arm's length subject always to the provisions of any pertinent loan documentation, and
- (b) continue to be a holding company for a group of companies whose main business is the operation of cruise vessels as well as the marketing of cruises on board such vessels and the Guarantor will not change its main line of business so as to affect any Obligor's ability to perform its obligations under the Finance Documents or to imperil, in the opinion of the Security Trustee, the security created by any of the Finance Documents or the SACE Insurance Policy.

**11.13 No merger etc.**

The Guarantor shall not enter into any form of merger, sub-division, amalgamation, restructuring, consolidation, winding-up, dissolution or anything analogous thereto or acquire any entity, share capital or obligations of any corporation or other entity (each of the foregoing being a "**Transaction**") unless:

- (a) the Guarantor has notified the Security Trustee in writing of the agreed terms of the relevant Transaction promptly after such terms have been agreed as heads of terms (or similar) and thereafter notified the Security Trustee in writing of any significant amendments to such terms during the course of the negotiation of the relevant Transaction; and
- (b) the relevant Transaction does not require or involve or result in any dissolution of the Guarantor so that at all times the Guarantor remains in existence; and
- (c) each notice delivered to the Security Trustee pursuant to paragraph (a) above is accompanied by a certificate signed by the chief financial officer of the Guarantor whereby the Guarantor represents and warrants to the Security Trustee that the relevant Transaction will not:
  - (i) adversely affect the ability of any Obligor to perform its obligations under the Finance Documents;
  - (ii) imperil the security created by any of the Finance Documents or the SACE Insurance Policy; or
  - (iii) affect the ability of the Guarantor to comply with the financial covenants contained in Clause 11.15 (*Financial Covenants*); and



- (d) if the merger or analogous transaction involves the Guarantor or the Borrower, all the necessary "Know your customer requirements" have been complied with.

**11.14 Maintenance of ownership of the Borrower and the Shareholder.**

- (a) The Guarantor shall remain the direct or indirect beneficial owner of the entire issued and allotted share capital of the Shareholder, free from any Security Interest and the Shareholder shall remain the legal holder and direct beneficial owner of all shares in the Borrower, free from any Security Interest, except that created in favour of the Security Trustee.
- (b) No person or "group" (within the meaning of Rules 13d-3 and 13d-5 under the Securities Exchange Act of 1934 (15 USC §78a et seq.) as in effect on the date of this Guarantee) shall acquire beneficial ownership of 35% or more on a fully diluted basis of the voting interest in the Guarantor's equity interests.

**11.15 Financial Covenants**

- (a) The Guarantor will not permit the Free Liquidity to be less than fifty million Dollars (\$50,000,000) at any time, save that ~~during the Deferral Period until 30 September 2026,~~ this amount shall be increased to two hundred and fifty million Dollars (~~\$200,000,000~~ \$250,000,000).
- (b) The Guarantor will not permit the ratio of Total Net Funded Debt to Total Capitalization to be greater than 0.70:1.00 at any time, save that from 1 January 2023 until 30 September 2026, this ratio shall be computed in accordance with the table below.
- (c) The Guarantor will not permit the ratio of Consolidated EBITDA to Consolidated Debt Service for the Group at the end of any fiscal quarter, computed for the period of the four consecutive fiscal quarters ending as at the end of the relevant fiscal quarter, to be less than 1.25:1.00 unless the Free Liquidity of the Group at all times during such period of four consecutive fiscal quarters ending as at the end of such fiscal quarter was equal to or greater than one hundred million Dollars (\$100,000,000); save that from 1 January 2023 until 30 September 2026, this amount shall be increased to three hundred million Dollars (\$300,000,000).

	<u>1Q</u> <u>2023</u>	<u>2Q</u> <u>2023</u>	<u>3Q</u> <u>2023</u>	<u>4Q</u> <u>2023</u>	<u>1Q</u> <u>2024</u>	<u>2Q</u> <u>2024</u>	<u>3Q</u> <u>2024</u>	<u>4Q</u> <u>2024</u>	<u>1Q</u> <u>2025</u>	<u>2Q</u> <u>2025</u>	<u>3Q</u> <u>2025</u>	<u>4Q</u> <u>2025</u>	<u>1Q</u> <u>2026</u>	<u>2Q</u> <u>2026</u>	<u>3Q</u> <u>2026</u>
<u>Total Net Funded Debt to Total Capitalization</u>	<u>0.93</u>	<u>0.92</u>	<u>0.91</u>	<u>0.91</u>	<u>0.91</u>	<u>0.90</u>	<u>0.88</u>	<u>0.87</u>	<u>0.87</u>	<u>0.85</u>	<u>0.82</u>	<u>0.79</u>	<u>0.79</u>	<u>0.76</u>	<u>0.73</u>

**11.16 Financial definitions**

For the purposes of Clause 11.15 (*Financial Covenants*):

- (a) "**Cash Balance**" shall mean, at any date of determination, the unencumbered and otherwise unrestricted cash and Cash Equivalents of the Group;
- (b) "**Cash Equivalents**" shall mean (i) securities issued or directly and fully guaranteed or insured by the United States or any agency or instrumentality thereof (provided that the full faith and

credit of the United States is pledged in support thereof) having maturities of not more than one year from the date of acquisition, (ii) time deposits and certificates of deposit of any commercial bank having, or which is the principal banking subsidiary of a bank holding company having capital, surplus and undivided profits aggregating in excess of two hundred million Dollars (\$200,000,000), with maturities of not more than one year from the date of acquisition by any person, (iii) repurchase obligations with a term of not more than 90 days for underlying securities of the types described in clause (i) above entered into with any bank meeting the qualifications specified in clause (ii) above, (iv) commercial paper issued by any person incorporated in the United States rated at least A-1 or the equivalent thereof by S&P or at least B-1 or the equivalent thereof by Moody's and in each case maturing not more than one year after the date of acquisition by any other person, and (v) investments in money market funds substantially all of whose assets are comprised of securities of the types described in clauses (i) through (iv) above;

(c) **"Consolidated Debt Service"** shall mean, for any relevant period, the sum (without double counting), determined in accordance with GAAP, of:

- (i) the aggregate principal payable or paid during such period on any Indebtedness for Borrowed Money of any member of the Group, other than:
  - (A) principal of any such Indebtedness for Borrowed Money prepaid at the option of the relevant member of the Group or by virtue of "cash sweep" or "special liquidity" cash sweep provisions (or analogous provisions) in any debt facility of the Group;
  - (B) principal of any such Indebtedness for Borrowed Money prepaid upon a sale or a Total Loss of any ship (as if references in that definition were to all ships and not just the Ship) owned or leased under a capital lease by any member of the Group; and
  - (C) balloon payments of any such Indebtedness for Borrowed Money payable during such period (and for the purpose of this paragraph (C) a "balloon payment" shall not include any scheduled repayment instalment of such Indebtedness for Borrowed Money which forms part of the balloon);
- (ii) Consolidated Interest Expense for such period;
- (iii) the aggregate amount of any dividend or distribution of present or future assets, undertakings, rights or revenues to any shareholder of any member of the Group (other than the Guarantor, or one of its wholly owned Subsidiaries) or any dividends or distributions other than tax distributions in each case paid during such period; and
- (iv) all rent under any capital lease obligations by which the Guarantor or any consolidated Subsidiary is bound which are payable or paid during such period and the portion of any debt discount that must be amortized in such period;

as calculated in accordance with GAAP and derived from the then latest accounts delivered under Clause 11.3 (*Provision of financial statements*);

(d) **"Consolidated EBITDA"** shall mean, for any relevant period, the aggregate of:

- (i) Consolidated Net Income from the Guarantor's operations for such period; and

- (ii) the aggregate amounts deducted in determining Consolidated Net Income for such period in respect of gains and losses from the sale of assets or reserves relating thereto, Consolidated Interest Expense, depreciation and amortization, impairment charges and any other non-cash charges and deferred income tax expense for such period.
- (e) **"Consolidated Interest Expense"** shall mean, for any relevant period, the consolidated interest expense (excluding capitalized interest) of the Group for such period;
- (f) **"Consolidated Net Income"** shall mean, for any relevant period, the consolidated net income (or loss) of the Group for such period as determined in accordance with GAAP;
- (g) **"Free Liquidity"** shall mean, at any date of determination, the aggregate of the Cash Balance or any other amounts available for drawing under other revolving or other credit facilities of the Group, which remain undrawn, could be drawn for general working capital purposes or other general corporate purposes and would not, if drawn, be repayable within six months;
- (h) **"Indebtedness"** shall mean any obligation for the payment or repayment of money, whether as principal or as surety and whether present or future, actual or contingent including, without limitation, pursuant to an Interest Rate Protection Agreement or Other Hedging Agreement;
- (i) **"Indebtedness for Borrowed Money"** shall mean Indebtedness (whether present or future, actual or contingent, long-term or short-term, secured or unsecured) in respect of:
  - (i) moneys borrowed or raised;
  - (ii) the advance or extension of credit (including interest and other charges on or in respect of any of the foregoing);
  - (iii) the amount of any liability in respect of leases which, in accordance with GAAP, are capital leases;
  - (iv) the amount of any liability in respect of the purchase price for assets or services payment of which is deferred for a period in excess of 180 days;
  - (v) all reimbursement obligations whether contingent or not in respect of amounts paid under a letter of credit or similar instrument; and
  - (vi) (without double counting) any guarantee of Indebtedness falling within sub-paragraphs (i) to (v) above;

**PROVIDED THAT** the following shall not constitute Indebtedness for Borrowed Money:

- (A) loans and advances made by other members of the Group which are subordinated to the rights of the Secured Parties;
- (B) loans and advances made by any shareholder of the Guarantor which are subordinated to the rights of the Secured Parties on terms reasonably satisfactory to the Facility Agent; and
- (C) any liabilities of the Guarantor or any other member of the Group under any Interest Rate Protection Agreement or any Other Hedging Agreement or other derivative transactions of a non-speculative nature;

- (j) **"Interest Rate Protection Agreement"** shall mean any interest rate swap agreement, interest rate cap agreement, interest collar agreement, interest rate hedging agreement, interest rate floor agreement or other similar agreement or arrangement entered into between a Lender or its Affiliate, or a Joint Mandated Lead Arranger or its Affiliate, and the Guarantor and/or the Borrower in relation to the Secured Liabilities of the Borrower under the Loan Agreement;
- (k) **"Other Hedging Agreement"** shall mean any foreign exchange contracts, currency swap agreements, commodity agreements or other similar agreements or arrangements entered into between a Lender or its Affiliate, or a Joint Mandated Lead Arranger or its Affiliates, and the Guarantor and/or the Borrower in relation to the Secured Liabilities of the Borrower under the Loan Agreement and designed to protect against the fluctuations in currency or commodity values;
- (l) **"Total Capitalization"** means, at any date of determination, the Total Net Funded Debt plus the consolidated stockholders' equity of the Group at such date determined in accordance with GAAP and derived from the then latest accounts delivered under Clause 11.3 (*Provision of financial statements*); provided it is understood that the effect of any impairment of intangible assets and, in relation to exchangeable or convertible notes or other debt instruments containing similar equity mechanisms, any non-cash loss, charge or expense shall be added back to stockholders' equity; ~~and~~
- (m) **"Total Net Funded Debt"** shall mean, as at any relevant date:
- (i) Indebtedness for Borrowed Money of the Group on a consolidated basis; and
  - (ii) the amount of any Indebtedness for Borrowed Money of any person which is not a member of the Group but which is guaranteed by a member of the Group as at such date;
- less an amount equal to any Cash Balance as at such date; provided that any Commitments and other amounts available for drawing under other revolving or other credit facilities of the Group which remain undrawn shall not be counted as cash or indebtedness for the purposes of this Guarantee.

#### 11.17 Negative Undertakings

- (a) The Guarantor may, subject to the provisions of paragraph (c) below:
- (i) at any time prior to the end of the First Financial Quarter, declare or pay dividends or make other distributions or payment in respect of Financial Indebtedness owed to its shareholders without the prior written consent of the Security Trustee;
  - (ii) at any time after the end of the First Financial Quarter, declare or pay dividends or make other distributions or payment in respect of Financial Indebtedness owed to its shareholders without the prior written consent of the Security Trustee, subject to it on each such occasion satisfying the Security Trustee acting on behalf of the Secured Parties that it will continue to meet all the requirements of Clause 11.15 (*Financial Covenants*), if such covenants were to be tested immediately following the payment of any such dividend; and
  - (iii) pay dividends (x) to persons responsible for paying the tax liability in respect of consolidated, combined, unitary or affiliated tax returns for each relevant jurisdiction of the Group, or (y) to holders of the Guarantor's Capital Stock with respect to income

taxable as a result of a member of the Group being taxed as a pass-through entity for U.S. Federal, state and local income tax purposes or attributable to any member of the Group,

provided that the actions in sub paragraphs (ii) and (iii) above shall only be permitted if there is no Event of Default which is continuing under the Loan Agreement and no Event of Default would arise from the payment of such dividend.

(b) ~~Subject to the restrictions set out in~~ Save as permitted by Clause 11.19 (*New Capital raises or financing*) below, the Guarantor shall not, and shall procure that none of its subsidiaries shall:

- (i) make loans to any person that is not the Guarantor or a direct or indirect subsidiary of the Guarantor; or
- (ii) issue or enter into one or more guarantees covering the obligations of any person which is not the Guarantor or a direct or indirect subsidiary of the Guarantor,

except if such loan is granted to a non subsidiary or such guarantee is issued in the ordinary course of business covering the obligations of a non subsidiary and the aggregate amount of all such loans and guarantees made or issued by the Guarantor and its subsidiaries does not exceed [\*] Dollars (\$[\*]) or is otherwise approved by the Security Trustee which approval shall not be unreasonably withheld if such loan or guarantee in respect of a non subsidiary would neither:

- (A) affect the ability of any Obligor to perform its obligations under the Finance Documents; nor
- (B) imperil the security created by any of the Finance Documents or the SACE Insurance Policy; nor
- (C) affect the ability of the Guarantor to comply with the financial covenants contained in Clause 11.15 (*Financial Covenants*) if such covenants were to be tested immediately following the grant of such loan or the issuance of such guarantee, as demonstrated by evidence satisfactory to the Security Trustee.

**(c) Dividend Restriction**

Neither the Guarantor nor the Holding shall, and the Guarantor shall procure that none of its subsidiaries shall:

- (i) declare, make or pay any dividend or other distribution (or interest on any unpaid dividend or other distribution) (whether in cash or in kind) on or in respect of its share capital (or any class of its share capital);
- (ii) repay or distribute any dividend or share premium reserve;
- (iii) make any repayment of any kind under any shareholder loan; or
- (iv) redeem, repurchase (whether by way of share buy-back program or otherwise), defease, retire or repay any of its share capital or resolve to do so,

during the period up to and including 31 December 2022, except that (A) any Obligor other than the Guarantor may pay dividends and other distributions, directly or indirectly, to the

Guarantor for the purpose of providing liquidity to the Guarantor to enable the Guarantor to satisfy payment obligations for which the Guarantor is an obligor, (B) any Obligor may pay dividends in respect of the Tax liability to each relevant jurisdiction in respect of consolidated, combined, unitary or affiliated Tax returns for each relevant jurisdiction of the Group or the Holding or holder of the Guarantor's ~~capital stock~~ Capital Stock with respect to income taxable as a result of any member of the Group or the Holding being taxed as a pass-through entity for U.S. Federal, state and local income Tax purposes or attributable to any member of the Group, (C) the Guarantor and the Holding may pay dividends and other distributions (x) in respect of a conversion, exchange, or repurchase of convertible or exchangeable notes and any conversion of preference shares to ordinary shares in connection therewith, provided that the cash portion of a repurchase of convertible or exchangeable notes is limited to the amount of interest that would otherwise be payable through maturity on the amount of such convertible or exchangeable notes being repurchased plus any amount in lieu of fractional shares, and (y) to the extent contractually owed to holders of equity in the Guarantor or the Holding and (D) the Guarantor may pay dividends and other distributions to the Holding for the purposes of providing cash to the Holding for the payment of any Tax payable in connection with the Holding's equity plan,

provided that the actions in paragraphs (B) and (C) above shall only be permitted if there is no Event of Default which is continuing under the Loan Agreement and no Event of Default would arise from the payment of such dividend.

For the avoidance of doubt, the Holding gives no guarantee of any kind nor undertakes any obligations under this Guarantee other than the undertaking as expressly specified in paragraph (c) above.

#### **11.18 Most favoured nations**

- (a) The Guarantor undertakes that if at any time after the date of this Guarantee it enters into any financial contract or financial document relating to any Financial Indebtedness with or which has the support of any export credit agency and which contains *pari passu* provisions or cross default provisions which are more favourable to the lenders than those contained in paragraph (l) of clause 11.2 (*Continuing representations and warranties*) of the Loan Agreement and clause 18.6 (*Cross default*) of the Loan Agreement respectively, the Guarantor shall immediately notify the Borrower and the Facility Agent of such provisions and the relevant provisions contained in the Loan Agreement shall be deemed amended so that such more favourable *pari passu* provisions or cross default provisions are granted to the Creditor Parties pursuant to the Loan Agreement.
- (b) The Guarantor undertakes that if at any time after the date of this Guarantee and until the occurrence of a Reinstatement Event, it or any other member of the Group is required to grant additional security in relation to a financial contract or financial document relating to any existing Financial Indebtedness:
  - (i) with the support of any export credit agency (excluding any extensions, increases or changes to the terms and conditions thereof), such security shall be granted on a *pari passu* basis to the Lenders (and the Security Trustee agrees to enter and/or procure the entry by the relevant Secured Parties into such intercreditor documentation to reflect such *pari passu* ranking (in form and substance reasonably satisfactory to the Secured Parties) as may be required in connection with such arrangements); or

- (ii) without the support of any export credit agency (excluding any extensions, increases or changes to the terms and conditions thereof), such security shall (without prejudice to any of the Obligors' other obligations under the Finance Documents), subject to the provisions of Clause 11.11 (*Negative pledge*) of this Guarantee and clause 12.8 (*Negative pledge*) of the Loan Agreement, be permitted provided that it shall not have an adverse effect on any Security Interests or other rights granted to the Secured Parties under the Finance Documents.
- (c) ~~In~~ Until the occurrence of a Reinstatement Event, in respect of any new Financial Indebtedness (other than Permitted Financial Indebtedness), or any extensions, increases or changes to the terms and conditions of any existing Financial Indebtedness, in each case with or which has the support of any export credit agency, the Guarantor shall enter into good faith negotiations with the Security Trustee to grant additional security for the purpose of further securing the Loan, provided that any failure to reach agreement under this paragraph (c) following such good faith negotiations shall not constitute an Event of Default.

#### 11.19 New capital raises or financing

- (a) Save as provided below:
  - (i) no new debt ~~or equity issuance~~ shall be raised and no new Financial Indebtedness shall be incurred by the Group (including, for the avoidance of doubt, inter-company loans);
  - (ii) no non-arm's length disposals of any asset relating to the Group fleet shall be made; and
  - (iii) no additional Security Interests securing existing Financial Indebtedness will be created or permitted to subsist by any Obligor (unless the Lenders benefit from this new security on a *pari passu* basis),

~~during the Deferral Period:~~

until 31 December 2023.

- (b) The restrictions in paragraph (a) above of this Clause 11.19 (New capital raises or financing) shall not apply in relation to:
  - (i) any refinancing of any bond issuance of, or loan entered into by, the Group (A) which matures during such period or (B) where not maturing during such period, which shall be on terms ~~which include any of the following (evidence of which shall be provided to the Facility Agent by the Guarantor)~~ resulting, when taken as a whole, in an improvement of the ability of the Obligors to meet their obligations under the Finance Documents, which terms include any of the following: an extension of the repayment terms; a decrease in the interest rate; or the conversion of such Financial Indebtedness from secured to unsecured or first to second priority;
  - (ii) any debt ~~or equity issuance~~ provided prior to 31 December ~~2022-2023~~ to provide the Group with crisis and/or recovery related funding in respect of the impact of the Covid-19 pandemic;
  - (iii) any debt ~~or equity issuance~~ being raised on or after 31 December ~~2022-2023~~ to support the Group with the impact of the Covid-19 pandemic, ~~made with the prior written consent of SACE;~~

- (iv) any debt ~~or equity issuance~~ being raised to finance any instalment of a cruise vessel already contracted for or contracted for during such period or any refurbishment, maintenance, upgrade or lengthening of a cruise ship during such period (including without limitation any costs incurred by the owner of a cruise ship in connection therewith);
- (v) any debt ~~or equity issuance~~ being raised to finance capital expenditure for projects which are already contracted for but in respect of which committed financing has not yet been obtained, and which, in each case has been (or will be) listed in the Information Package submitted to the Facility Agent prior to the February 2021 Deferral Effective Date;
- (vi) any extension or renewal of revolving credit facilities, and made with the prior written consent of SACE if any additional security is to be granted;
- (vii) any new debt ~~or equity issuance~~ otherwise agreed by SACE;
- (viii) any inter-company loan or operating arrangement which from an accounting perspective has the effect of an intercompany loan (an "**intercompany arrangement**") which:
  - (A) is existing as at the date of the February 2021 Amendment and Restatement Agreement; or
  - (B) is made among any Group members or any Group member with the Holding provided that:
    - (1) any inter-company arrangement is made solely for the purpose of regulatory or Tax purposes carried out in the ordinary course of business and on an arm's length basis; and
    - (2) the aggregate principal amount of any inter-company arrangements pursuant to ~~this paragraph~~ ~~(B sub-paragraph (b)(viii)(B) of this Clause 11.19 (New capital raises or financing))~~ does not exceed [\*] Dollars (\$[\*]) at any time; or
  - (C) has been approved with the prior written consent of SACE.
- (ix) any Permitted Security Interest;
- (x) any Security Interest otherwise approved with the prior written consent of SACE; or
- (xi) any Financial Indebtedness incurred in the ordinary course of business which in the aggregate does not exceed USD [\*] during any twelve-month period; ~~or, it being provided that:~~
  - (A) prior to 31 December 2022, this amount shall be increased to USD [\*] for any Financial Indebtedness incurred to finance capital expenditure for Approved Projects; and
  - (B) if any part of such Financial Indebtedness allocated to an Approved Project remains unused throughout the twelve-month period of year 2022, the surplus may be carried over to increase the relevant Financial Indebtedness



throughout the twelve-month period of year 2023 for that Approved Project only;

- (xii) without prejudice to clauses 12.11 (*Mergers*) and 12.15 (*Investments*) of the Loan Agreement and Clause 11.13 (*No merger etc*), the issuance of share capital by any Group member to another Group member; and

(xiii) any extension, renewal, replacement or upsizing in respect of the Term and Revolving Credit Facilities (including the granting of additional Security Interests);

and, for the avoidance of doubt, no debt or equity issuance shall be raised in respect of any form of merger, sub-division, amalgamation, restructuring, consolidation, winding-up, dissolution or anything analogous thereto or acquisition of any entity, share capital or obligations of any corporation or other entity.

#### **11.20 Payments under the Shipbuilding Contracts**

Until the end of the Deferral Period:

- (a) the Guarantor shall and the Guarantor shall procure that any member of the Group that has entered into a shipbuilding contract with a shipbuilder or enters into any such shipbuilding contract, in each case which is financed with the support of SACE (the "**Covered Shipbuilding Contracts**") shall continue to perform all of their respective obligations as set out in any Covered Shipbuilding Contract (including without limitation the payment of any instalments due under any Covered Shipbuilding Contract (as the same may have been amended prior to the February 2021 Deferral-Effective Date), and subject to any amendment agreed pursuant to paragraph (b) below). The Guarantor shall and the Guarantor shall procure that any member of the Group shall promptly notify the Facility Agent and SACE of any failure by it to comply with any due and owing obligations under a Covered Shipbuilding Contract; and
- (b) the Guarantor shall and the Guarantor shall procure that any member of the Group further undertakes to consult with the Facility Agent and SACE in respect of any proposed amendment to a Covered Shipbuilding Contract insofar as any such proposed amendment relates to a payment instalment or (save as expressly permitted by the Loan Agreement) a delivery date or any other substantial amendment which may affect the related financing and to obtain the Facility Agent and SACE's approval prior to executing any such amendment.

#### **11.21 Breach of new covenants or the Principles**

- (a) Failure to comply, until the end of the Deferral Period, with the provisions of paragraph (f) of Clauses 11.3 (*Additional financial reporting*), paragraph (c) of Clause 11.17 (*Dividend Restriction*), 11.19 (*New capital raises or financing*), 11.20 (*Payments under the Shipbuilding Contracts*), or to otherwise duly perform and observe the other requirements and obligations set out in the Principles shall, in each case, not constitute an Event of Default under the Loan Agreement but shall (in the case of any failure that is capable of remedy (in the opinion of the Facility Agent, at its sole discretion), including any failure to comply with Clause 11.20 (*Payments under the Shipbuilding Contracts*) or paragraph (f) of Clause 11.3 (*Additional financial reporting*), only if such failure is not remedied within the Relevant Period pursuant to clause 18.4 (*Breach of other obligations*) of the Loan Agreement from the date of such failure to comply) result in the reinstatement by the Facility Agent from the date of such breach of the requirement to comply with the financial covenants set out in paragraphs (b) and (c) of Clause 11.15 (*Financial covenants*) which was otherwise suspended during the Deferral Period.

- (b) Save as permitted by Clause 11.19 (*New capital raises or financing*), if at any time after the February 2021 Deferral Effective Date and until the occurrence of a Reinstatement Event:
- (i) the Guarantor or any other Group member enters into any financial contract or financial document relating to any Financial Indebtedness and which contains any debt deferral or covenant waivers of existing debt, or the raising of any new debt intended to reimburse existing debt that benefits from additional security or more favourable terms than those available to the Lenders (unless they are granted to the Lenders on a *pari passu* basis), the requirement to comply with the financial covenants set out in paragraphs (b) and (c) of Clause 11.15 (*Financial covenants*) which was otherwise suspended during the Deferral Period shall be reinstated (it being provided that such covenants shall not be reinstated in case of such financial contract or financial document relating to the Term and Revolving Credit Facilities); or
  - (ii) the Guarantor or any other Group member makes a prepayment (save for any mandatory prepayment necessary to avoid an event of default (however defined)) of any Financial Indebtedness (unless this is done on a *pari passu* basis with the obligations owed to the Lenders hereunder), the requirement to comply with the financial covenants set out in paragraphs (b) and (c) of Clause 11.15 (*Financial covenants*) which was otherwise suspended during the Deferral Period shall be reinstated, it being provided that such covenants shall not be reinstated in case of a prepayment relating to the revolving tranche of the Term and Revolving Credit Facilities within the ordinary course of business.

#### **11.22 Sanctions and Illicit Payments**

No payments made or received by the Guarantor under the Loan Agreement or any Finance Document shall be funded directly or, to the knowledge of the Guarantor, indirectly out of funds of Illicit Origin or derived from any activity with a Prohibited Person or in a Prohibited Jurisdiction or which would otherwise cause any Party to be in breach of any Sanctions, and none of the sources of funds to be used by the Guarantor in connection with the Transaction Documents or the construction of the Ship or its business shall be of directly or, to the knowledge of the Guarantor, indirectly Illicit Origin or derived from any activity with a Prohibited Person or in a Prohibited Jurisdiction.

#### **11.23 Prohibited Payments**

No Prohibited Payment shall be received, made or provided, directly or indirectly, by (or on behalf of) the Guarantor or any of its affiliates, officers, directors or any other person acting on its behalf to, or for the benefit of, any authority or public or government entity (or any official, officer, director, agent or key employee of, or other person with management responsibilities in, any authority or public or government entity) in connection with the Ship, this Agreement, the Loan Agreement and/or the other Finance Documents.

#### **11.24 Sanctions**

The Guarantor shall comply, or procure compliance by the entities and persons referred to in Clause 11.23 (*Prohibited Payments*), with all Sanctions and shall provide details of any material litigation, arbitration or administrative proceedings relating to any alleged or actual breach of Sanctions.

### **11.25 Additional Undertakings**

The Guarantor shall not and shall procure that no Obligor shall 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 an Obligor to perform any of its obligations under the Transaction Documents;
- (b) cause any obligation of an Obligor under the Finance Documents to cease to be legal, valid, binding or enforceable if that cessation individually or together with any other cessations materially or adversely affects the interests of the Secured Parties under the Transaction Documents;
- (c) cause any Transaction Document to cease to be in full force and effect;
- (d) cause any Security Interest created under the Finance Documents to lose its priority or ranking; and
- (e) imperil or jeopardise any Security Interest created under the Finance Documents.

## **12 JUDGMENTS AND CURRENCY INDEMNITY**

### **12.1 Judgments relating to Loan Agreement**

This Guarantee shall cover any amount payable by the Borrower under or in connection with any judgment relating to the Loan Agreement.

### **12.2 Currency indemnity**

In addition, clause 20.4 (*Currency indemnity*) of the Loan Agreement shall apply, with any necessary adaptations, in relation to this Guarantee.

## **13 SET-OFF**

### **13.1 Application of credit balances**

Each Secured 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 the Guarantor at any office in any country of that Secured Party in or towards satisfaction of any sum then due from the Guarantor to that Secured Party under this Guarantee; and
- (b) for that purpose:
  - (i) break, or alter the maturity of, all or any part of a deposit of the Guarantor;
  - (ii) convert or translate all or any part of a deposit or other credit balance into Dollars; or
  - (iii) enter into any other transaction or make any entry with regard to the credit balance which the Secured Party concerned considers appropriate.

### **13.2 Existing rights unaffected**

No Secured Party shall be obliged to exercise any of its rights under Clause 13.1 (*Application of credit balances*); and those rights shall be without prejudice and in addition to any right of set-off, combination of accounts, charge, lien or other right or remedy to which a Secured Party is entitled (whether under the general law or any document).

### **13.3 Sums deemed due to a Lender**

For the purposes of this Clause 13 (*Set-Off*), a sum payable by the Guarantor to 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 that Lender.

## **14 SUPPLEMENTAL**

### **14.1 Continuing guarantee**

This Guarantee shall remain in force as a continuing security at all times during the Security Period, regardless of any intermediate payment or discharge in whole or in part.

### **14.2 Rights cumulative, non-exclusive**

The Security Trustee's rights under and in connection with this Guarantee are cumulative, may be exercised as often as appears expedient and shall not be taken to exclude or limit any right or remedy conferred by law.

### **14.3 No impairment of rights under Guarantee**

If the Security Trustee omits to exercise, delays in exercising or invalidly exercises any of its rights under this Guarantee, that shall not impair that or any other right of the Security Trustee under this Guarantee.

### **14.4 Severability of provisions**

If any provision of this Guarantee is or subsequently becomes void, illegal, unenforceable or otherwise invalid, that shall not affect the validity, legality or enforceability of its other provisions.

### **14.5 Guarantee not affected by other security**

This Guarantee is in addition to and shall not impair, nor be impaired by, any other guarantee, any Security Interest or any right of set-off or netting or to combine accounts which the Security Trustee or any Secured Party may now or later hold in connection with the Loan Agreement.

### **14.6 Guarantor bound by Loan Agreement**

- (a) The Guarantor is fully familiar with, and agrees to all the provisions of, the Loan Agreement and the other Finance Documents to which it is not a party.
- (b) The Guarantor agrees with the Security Trustee:

- (i) to be bound by all provisions of the Loan Agreement which are applicable to the Obligors in the same way as if those provisions had been set out (with any necessary modifications) in this Guarantee; and
  - (ii) that any provision of the Loan Agreement which, by its terms, applies or relates to the Finance Documents generally applies to this Guarantee.
- (c) Clause 23 (*Bail-In*) of the Loan Agreement shall apply to this Guarantee as if it was expressly incorporated in this Guarantee with any necessary modifications.

#### **14.7 Applicability of provisions of Guarantee to other Security Interests**

Any Security Interest which the Guarantor creates (whether at the time at which it signs this Guarantee or at any later time) to secure any liability under this Guarantee shall be a principal and independent security, and Clauses 3 (*Liability as Principal and Independent Debtor*) and 17 (*Invalidity of Loan Agreement*) shall, with any necessary modifications, apply to it, notwithstanding that the document creating the Security Interest neither describes it as a principal or independent security nor includes provisions similar to Clauses 3 (*Liability as Principal and Independent Debtor*) and 17 (*Invalidity of Loan Agreement*).

#### **14.8 Applicability of provisions of Guarantee to other rights**

Clauses 3 (*Liability as Principal and Independent Debtor*) and 17 (*Invalidity of Loan Agreement*) shall also apply to any right of set-off or netting or to combine accounts which the Guarantor creates by an agreement entered into at the time of this Guarantee or at any later time (notwithstanding that the agreement does not include provisions similar to Clauses 3 (*Liability as Principal and Independent Debtor*) and 17 (*Invalidity of Loan Agreement*)), being an agreement referring to this Guarantee.

#### **14.9 Third party rights**

Other than a Secured Party or the Italian Authorities, no person who is not a party to this Guarantee has any right under the Contracts (Rights of Third Parties) Act 1999 to enforce or to enjoy the benefit of any term of this Guarantee.

#### **14.10 Waiver of rights against SACE**

Nothing in this Guarantee or any of the Finance Documents is intended to grant to the Guarantor or any other person any right of contribution from or any other right or claim against SACE and the Guarantor hereby waives irrevocably any right of contribution or other right or claim as between itself and SACE.

#### **14.11 Reinstatement**

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

#### **14.12 Guarantor intent**

Without prejudice to the generality of Clause 1.3 (*Application of construction and interpretation provisions of the Loan Agreement*) and Clause 3.2 (*Waiver of rights and defences*), the Guarantor expressly confirms that it intends that this Guarantee and any Security Interest created by it under 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.

#### **14.13 Certification or determination**

Any certification or determination by the Security Trustee of a rate or amount under any Finance Document or this Guarantee is, in the absence of manifest error, conclusive evidence of the matters to which it relates.

#### **14.14 SACE subrogation**

The Guarantor acknowledges that immediately upon any payment by SACE of any amount due under the SACE Insurance Policy, SACE shall be automatically subrogated to the extent of such payment to the rights of the Security Trustee under this Guarantee in accordance with the SACE Insurance Policy.

### **15 ASSIGNMENT AND TRANSFER**

#### **15.1 Assignment and transfer by Security Trustee**

- (a) The Security Trustee may assign or transfer its rights under and in connection with this Guarantee to the same extent as it may assign or transfer its rights under the Loan Agreement.
- (b) The Guarantor may not assign or transfer its rights under and in connection with this Guarantee.

### **16 NOTICES**

#### **16.1 Notices to Guarantor**

Any notice or demand to the Guarantor under or in connection with this Guarantee shall be given by letter or email at:

NCL Corporation Ltd.  
7665 Corporate Center Drive  
Miami  
Florida, 33126  
Attention: Chief Financial Officer and General Counsel

[Email: \[\\*\] /\[\\*\]](#)

or to such other address which the Guarantor may notify to the Security Trustee.

## **16.2 Application of certain provisions of Loan Agreement**

Clauses 32.3 (*Effective date of notices*) to 32.9 (*Meaning of "notice"*) of the Loan Agreement apply to any notice or demand under or in connection with this Guarantee.

## **16.3 Validity of demands**

A demand under this Guarantee shall be valid notwithstanding that it is served:

- (a) on the date on which the amount to which it relates is payable by the Borrower under the Loan Agreement; or
- (b) at the same time as the service of a notice under clause 18.21 (*Actions following an Event of Default*) of the Loan Agreement;

and a demand under this Guarantee may refer to all amounts payable under or in connection with the Loan Agreement without specifying a particular sum or aggregate sum.

## **16.4 Notices to Security Trustee**

Any notice to the Security Trustee under or in connection with this Guarantee shall be sent to the same address and in the same manner as notices to the Security Trustee under the Loan Agreement.

## **17 INVALIDITY OF LOAN AGREEMENT**

### **17.1 Invalidity of Loan Agreement**

In the event of:

- (a) the Loan Agreement or any provision thereof now being or later becoming, with immediate or retrospective effect, void, illegal, unenforceable or otherwise invalid for any reason whatsoever; or
- (b) without limiting the scope of paragraph (a) above, a ~~bankruptcy~~ [Bankruptcy](#) of the Borrower, the introduction of any law or any other matter resulting in the Borrower being discharged from liability under the Loan Agreement, or the Loan Agreement ceasing to operate (for example, by interest ceasing to accrue);

this Guarantee shall cover any amount which would have been or become payable under or in connection with the Loan Agreement if the Loan Agreement had been and remained entirely valid, legal and enforceable, or the Borrower had not suffered ~~bankruptcy~~ [Bankruptcy](#), or any combination of such events or circumstances, as the case may be, and the Borrower had remained fully liable under it for liabilities whether invalidly incurred or validly incurred but subsequently retrospectively invalidated; and references in this Guarantee to amounts payable by the Borrower under or in connection with the Loan Agreement shall include references to any amount which would have so been or become payable as aforesaid.

## 17.2 Invalidity of Finance Documents

Clause 17.1 (*Invalidity of Loan Agreement*) also applies to each of the other Finance Documents to which the Borrower is a party.

## 18 GOVERNING LAW AND JURISDICTION

### 18.1 English law

This Guarantee and any non-contractual obligations arising out of or in connection with it shall be governed by, and construed in accordance with, English law.

### 18.2 Exclusive English jurisdiction

The courts of England shall have exclusive jurisdiction to settle any Dispute.

### 18.3 Process agent

The Guarantor irrevocably appoints Hannaford Turner LLP, currently of ~~9-Cloak Lane~~[107 Cheapside](#), London ~~EC4R 2RU~~, [EC2V 6DN](#), United Kingdom, 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.

### 18.4 Secured Parties' rights unaffected

Nothing in this Clause 18 (*Governing Law and Jurisdiction*) shall exclude or limit any right which any Secured 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.

### 18.5 Meaning of "proceedings"

In this Clause 18 (*Governing Law and Jurisdiction*), "**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 Guarantee (including a dispute relating to the existence, validity or termination of this Guarantee) or any non-contractual obligation arising out of or in connection with this Guarantee.

~~THIS AMENDED AND RESTATED GUARANTEE~~ [This Amended and Restated Guarantee](#) has been entered into on the date stated at the beginning of this Guarantee.



**EXECUTION PAGE**

**GUARANTOR**

**SIGNED** by )  
for and on behalf of )  
**NCL CORPORATION LTD.** )  
as its duly appointed attorney-in-fact )  
in the presence of: )

**SECURITY TRUSTEE**

**SIGNED** by )  
for and on behalf of )  
**HSBC CORPORATE TRUSTEE COMPANY** )  
**(UK) LIMITED** )  
acting by its attorney/director )  
in the presence of: )

**HOLDING**

**SIGNED** by )  
for and on behalf of )  
**NORWEGIAN CRUISE LINE** )  
**HOLDINGS LTD.** )  
as its duly appointed attorney-in-fact )  
in the presence of: )

[\*]: THE IDENTIFIED INFORMATION HAS BEEN OMITTED FROM THE AGREEMENT BECAUSE IT IS BOTH (i) NOT MATERIAL AND (ii) WOULD BE COMPETITIVELY HARMFUL IF PUBLICLY DISCLOSED

Dated 19 May 2023

**RIVIERA NEW BUILD, LLC**  
as Borrower

and

**NCL CORPORATION LTD.**  
as Guarantor

and

**OCEANIA CRUISES S. DE R.L.**  
as Charterer  
and Shareholder

and

**NORWEGIAN CRUISE LINE HOLDINGS LTD.**  
as the Holding

and

**THE BANKS AND FINANCIAL INSTITUTIONS LISTED IN SCHEDULE 1**  
as Lenders

and

**CRÉDIT AGRICOLE CORPORATE AND INVESTMENT BANK  
SOCIÉTÉ GÉNÉRALE**  
as Mandated Lead Arrangers

and

**CRÉDIT AGRICOLE CORPORATE AND INVESTMENT BANK**  
as Agent  
and SACE Agent

**AMENDMENT AND RESTATEMENT AGREEMENT**

relating to a facility agreement originally dated 18 July 2008 (as amended from time to time, including as amended by a supplemental agreement dated 25 October 2010, a side letter dated 29 March 2012, as amended and restated by an amendment and restatement agreement dated 31 October 2014, as further amended by a framework agreement dated 31 January 2018, as amended by a supplemental agreement dated 4 June 2020, as further amended and restated by an amendment and restatement agreement dated 17 February 2021, as further amended by a

WATSON FARLEY  
&  
WILLIAMS

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supplemental agreement dated 23 December 2021 and as further amended by a supplemental agreement  
dated 16 December 2022)  
in respect of the part financing of the passenger cruise ship m.v. "RIVIERA"

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**Appendices**

- Form of Amended and Restated Facility Agreement (marked to indicate amendments)
  - Form of Amended and Restated Guarantee (marked to indicate amendments)
-

THIS AGREEMENT is made on 19 May 2023

**PARTIES**

- (1) **RIVIERA NEW BUILD, LLC**, a limited liability company formed in the Marshall Islands whose registered address is at c/o The Trust Company of the Marshall Islands Inc., Trust Company Complex, Ajeltake Island, Majuro MH 96960, Republic of the Marshall Islands as borrower (the "**Borrower**")
- (2) **NCL CORPORATION LTD.**, an exempted company incorporated under the laws of Bermuda with its registered office at Park Place, 55 Par-la-Ville Road, Hamilton HM 11, Bermuda (the "**Guarantor**")
- (3) **NORWEGIAN CRUISE LINE HOLDINGS LTD.**, a company incorporated under the laws of Bermuda with its registered office at Park Place, 55 Par-la-Ville Road, Hamilton HM 11, Bermuda (the " **Holding**")
- (4) **OCEANIA CRUISES S. DE R.L.**, a Panamanian limited liability company ("*sociedad de responsabilidad limitada*") domiciled in Panama whose resident agent is at Arifa Building, West Boulevard, Santa Maria Business District, Panama, Republic of Panama and registered at the Mercantile Section of the Panama Public Registry at Microjacket No. 423671, Document 396130 since 3 October 2002 (the "**Charterer**" and "**Shareholder**")
- (5) **THE FINANCIAL INSTITUTIONS** listed in Schedule 1 (*The Lenders*) as lenders (the "**Lenders**")
- (6) **CRÉDIT AGRICOLE CORPORATE AND INVESTMENT BANK**, a French société anonyme having its registered office located at 12, Place des États-Unis, CS 70052, 92547 Montrouge Cedex, France registered under number Siren 304 187 701 at the Registre du Commerce et des Sociétés of Nanterre, France and **SOCIÉTÉ GÉNÉRALE** a French société anonyme having its registered office located at 29 Boulevard Haussmann, 75009 Paris under number Siren 552 120 222 at the Registre du Commerce et des Sociétés of Paris, France as mandated lead arrangers (the "**Mandated Lead Arrangers**")
- (7) **CRÉDIT AGRICOLE CORPORATE AND INVESTMENT BANK**, a French société anonyme having its registered office located at 12, Place des États-Unis, CS 70052, 92547 Montrouge Cedex, France registered under number Siren 304 187 701 at the Registre du Commerce et des Sociétés of Nanterre, France as agent and SACE agent (the "**Agent**" and the "**SACE Agent**")

**BACKGROUND**

- (A) By the Original Facility Agreement, the Lenders agreed to make available to the Borrower a facility of originally the Dollar Equivalent of up to EUR 349,520,718 for the purpose of assisting the Borrower in financing (i) payment under the Shipbuilding Contract of all or part of 80% of the Final Contract Price up to the Eligible Amount and (ii) payment to SACE of the Dollar Equivalent of 100% of the second instalment of the SACE Premium payable on the original Drawdown Date.
  - (B) Due to the unprecedented and extraordinary impacts of the Covid-19 pandemic on the cruise sector and cruise operators, the Original Facility Agreement was amended pursuant to an amendment agreement dated 4 June 2020 (the "**2020 Amendment Agreement**"), amended and restated pursuant to an amendment and restatement agreement dated 17 February 2021 (the "**February 2021 Amendment and Restatement Agreement**"), further amended pursuant to a supplemental agreement dated 23 December 2021 (the "**December 2021 Amendment**")
-

**Agreement**") and further amended pursuant to a supplemental agreement dated 16 December 2022 (the "**December 2022 Amendment Agreement**") pursuant to which, *inter alia*, the parties agreed to the temporary amendment of certain covenants under the Guarantee and addition of certain covenants under the Original Facility Agreement.

- (C) The Parties have agreed to amend and restate the Facility Agreement as set out in this Agreement for the purposes of, *inter alia*, documenting the transition from LIBOR to SOFR (as defined below).

## OPERATIVE PROVISIONS

### 1 DEFINITIONS AND INTERPRETATION

#### 1.1 Definitions

In this Agreement:

**"2023 Finance Documents"** means this Agreement and the New Mortgage Addendum.

**"Amended and Restated Facility Agreement"** means the Facility Agreement as amended and restated by this Agreement in the form set out in Appendix 1.

**"Amended and Restated Guarantee"** means the Guarantee as amended and restated by this Agreement in the form set out in Appendix 2.

**"Effective Date"** means the date on which the Agent notifies the Borrower, the other Creditor Parties and SACE as to the satisfaction of the conditions precedent as provided in paragraph (a) of Clause 2.1 (*Conditions Precedent*).

**"Facility Agreement"** means the Original Facility Agreement, as amended by the 2020 Amendment Agreement, as amended and restated by the February 2021 Amendment and Restatement Agreement, as further amended by the December 2021 Amendment Agreement and as further amended by the December 2022 Amendment Agreement.

**"New Mortgage Addendum"** means the addendum to the Mortgage in the agreed form.

**"Obligors"** means the Borrower, the Guarantor, the Holding, the Charterer and the Shareholder.

**"Original Facility Agreement"** means the facility agreement dated 18 July 2008 (as amended pursuant to a supplemental agreement dated 25 October 2010, a side letter dated 29 March 2012, an amendment and restatement agreement dated 31 October 2014 and a framework agreement dated 31 January 2018) and made between, amongst others, (i) the Borrower, (ii) the Lenders, (iii) the Mandated Lead Arrangers and (iv) the Agent and the SACE Agent.

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

**"SOFR"** means the secured overnight financing rate (SOFR) administered by the Federal Reserve Bank of New York (or any other person which takes over the administration of that rate) published by the Federal Reserve Bank of New York (or for any other person which takes over the publication of that rate).

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## 1.2 Defined expressions

Defined expressions in the Facility Agreement and, with effect from the Effective Date, the Amended and Restated Facility Agreement, shall have the same meanings when used in this Agreement unless the context otherwise requires or unless otherwise defined in this Agreement.

## 1.3 Application of construction and interpretation provisions of Facility Agreement

Clause 1.2 (*construction of certain terms*) of the Facility Agreement applies to this Agreement as if it were expressly incorporated in it with any necessary modifications.

## 1.4 Agreed forms of new, and supplements to, Finance Documents

References in Clause 1.1 (*Definitions*) to any new or supplement to a Finance Document being in "agreed form" are to that Finance Document:

- (a) in a form attached to a certificate dated the same date as this Agreement (and signed by the Borrower and the Agent); or
- (b) in any other form agreed in writing between the Borrower and the Agent acting with the authorisation of the Majority Lenders or, where applicable, all the Lenders.

## 1.5 Designation as a Finance Document

The Borrower and the Agent designate this Agreement as a Finance Document.

## 1.6 Third party rights

- (a) Unless 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 other than SACE, who may enforce or to enjoy the benefit of and rely on the provisions of this Agreement and the Amended and Restated Facility Agreement subject to the provisions of the Third Parties Act.
- (b) Notwithstanding any term of any Finance Document, the consent of any person who is not a Party (other than SACE) is not required to rescind or vary this Agreement at any time.
- (c) For the avoidance of doubt and in accordance with clause 33.4 (*Third party rights*) of the Facility Agreement, nothing in this Clause 1.6 (*Third party rights*) shall limit or prejudice the exercise by SACE of its rights under this Agreement or the Finance Documents in the event that such rights are subrogated or assigned to it pursuant to the terms of the SACE Insurance Policy.

## 2 CONDITIONS PRECEDENT

### 2.1 The Effective Date cannot occur unless:

- (a) the Agent has received (or on the instructions of all the Lenders, waived receipt of) all of the documents and other evidence listed in Schedule 2 (*Conditions Precedent*) in form and substance satisfactory to the Agent;
  - (b) save as disclosed in writing to the Agent and SACE prior to the date of this Agreement, the representations and warranties contained in Clause 3 (*Representations*) are true and correct
-

on, and as of, each such time as if each was made with respect to the facts and circumstances existing at such time;

- (c) save as disclosed in writing to the Agent and SACE prior to the date of this Agreement, no Event of Default, event or circumstance specified in clause 18 (*Events of Default*) of the Facility Agreement 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, event resulting in mandatory prepayment of the Loan pursuant to clause 16.3 (*Mandatory prepayment*) of the Facility Agreement or Deferral Prepayment Event shall have occurred and be continuing or would result from the amendment and restatement of the Facility Agreement pursuant to this Agreement; and
  - (d) the Agent is satisfied that the Effective Date can occur and have not provided any instructions to the contrary informing the Parties that the Effective Date cannot occur.
- 2.2** Upon fulfilment or waiver of the conditions set out in Clause 2.1 above, the Agent shall provide the Borrower and the Creditor Parties and SACE with a copy of the executed certificate in the form set out in Schedule 3 (*Form of Effective Date Certificate*) confirming that the Effective Date has occurred and such certificate shall be binding on all Parties.
- 2.3** Other than to the extent that the Majority Lenders notify the Agent in writing to the contrary before the Agent provides the certificate described in Clause 2.2 above, the Creditor Parties authorise (but do not require) the Agent to execute and provide such certificate. The Agent shall not be liable for any damages, costs or losses whatsoever as a result of giving any such certificate.

### **3 REPRESENTATIONS**

#### **3.1 Facility Agreement representations**

On the date of this Agreement and on the Effective Date, each Obligor that is a party to the Facility Agreement makes each of the representations and warranties as set out in clause 12 (*Representations and warranties*) of the Facility Agreement, as amended and restated by this Agreement and updated with appropriate modifications to refer to this Agreement and (where relevant) the Amended and Restated Facility Agreement, the Amended and Restated Guarantee and the New Mortgage Addendum, by reference to the circumstances then existing.

#### **3.2 Finance Document representations**

On the date of this Agreement and on the Effective Date, each Obligor (save for the Holding) makes the representations and warranties set out in the Finance Documents (other than the Facility Agreement) to which it is a party, as amended and restated and/or supplemented by this Agreement and updated with appropriate modifications to refer to this Agreement, and, where appropriate, the Amended and Restated Guarantee and the New Mortgage Addendum, by reference to the circumstances then existing.

### **4 AMENDMENT AND RESTATEMENT OF FACILITY AGREEMENT AND OTHER FINANCE DOCUMENTS**

#### **4.1 Specific amendments to the Facility Agreement**

With effect on and from the Effective Date, the Facility Agreement shall be amended and restated in the form of the Amended and Restated Facility Agreement and, as so amended and

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restated, the Facility Agreement shall continue to be binding on each of the parties to it in accordance with its terms as so amended and restated.

#### **4.2 Specific amendments to the Guarantee**

With effect on and from the Effective Date, the Guarantee shall be amended and restated in the form of the Amended and Restated Guarantee and, as so amended and restated, the Guarantor confirms that:

- (a) its Guarantee extends to the obligations of the Borrower under the Finance Documents as amended, restated and/or supplemented by this Agreement;
- (b) the obligations of the relevant Obligors under the Finance Documents as amended, restated and/or supplemented by this Agreement are included in the Secured Liabilities (as defined in the Facility Agreement); and
- (c) the Guarantee shall continue to be binding on each of the parties to it and have full force and effect in accordance with its terms as so amended and restated.

#### **4.3 Holding confirmation**

On the Effective Date, the Holding confirms that, notwithstanding the amendments made to the Finance Documents pursuant to this Agreement, the undertakings given by the Holding under the Guarantee, as amended and restated by this Agreement and updated with appropriate modifications to refer to this Agreement shall remain in full force and effect in accordance with its original terms and the amendments to the Finance Documents as amended, restated and/or supplemented by this Agreement.

#### **4.4 Security Confirmation**

Without prejudice to the provisions of the New Mortgage Addendum, on the Effective Date, each Obligor confirms that:

- (a) any Security Interest created by it under the Finance Documents extends to the obligations of the relevant Obligors under the Finance Documents as amended, restated and/or supplemented by this Agreement;
- (b) the obligations of the relevant Obligors under the Finance Documents as amended, restated and/or supplemented by this Agreement are included in the Secured Liabilities (as defined in the Finance Documents to which it is a party);
- (c) the Security Interests created under the Finance Documents continue in full force and effect on the terms of the respective Finance Documents; and
- (d) to the extent that this confirmation creates a new Security Interest, such Security Interest shall be on the terms of the Finance Documents in respect of which this confirmation is given.

#### **4.5 Finance Documents to remain in full force and effect**

The Finance Documents shall remain in full force and effect and, from the Effective Date:

- (a) in the case of the Facility Agreement as amended and restated pursuant to Clause 4.1 (*Specific amendments to the Facility Agreement*);
-

- (b) in the case of the Guarantee, as amended and restated pursuant to Clause 4.2 (*Specific amendments to the Guarantee*);
- (c) the Facility Agreement and the applicable provisions of this Agreement will be read and construed as one document;
- (d) the Guarantee and the applicable provisions of this Agreement will be read and construed as one document; and
- (e) except to the extent expressly waived by the amendments effected by this Agreement, no waiver is given by this Agreement and the Lenders expressly reserve all their rights and remedies in respect of any breach of or other default under the Finance Documents.

**5 FURTHER ASSURANCE**

Clause 13.19 (*further assurance*) of the Facility Agreement, as amended and restated by this Agreement, applies to this Agreement as if it were expressly incorporated in it with any necessary modifications.

**6 COSTS, EXPENSES AND FEES**

Clause 11.6 (*Transaction Costs*) of the Facility Agreement, as amended and restated by this Agreement, applies to this Agreement as if it were expressly incorporated in it with any necessary modifications.

**7 NOTICES**

Clause 32 (*Notices*) of the Facility Agreement, as amended and restated by this Agreement, applies to this Agreement as if it were expressly incorporated in it with any necessary modifications.

**8 COUNTERPARTS**

This Agreement may be executed in any number of counterparts, and this has the same effect as if the signatures on the counterparts were on a single copy of this Agreement.

**9 SIGNING ELECTRONICALLY**

The Parties acknowledge and agree that they may execute this Agreement and any variation or amendment to the same, by electronic instrument. The Parties agree that the electronic signatures appearing on the documents shall have the same effect as handwritten signatures and the use of an electronic signature on this Agreement shall have the same validity and legal effect as the use of a signature affixed by hand and is made with the intention of authenticating this Agreement, and evidencing the Parties' intention to be bound by the terms and conditions contained herein. For the purposes of using an electronic signature, the Parties authorise each other to conduct the lawful processing of personal data of the signers for contract performance and their legitimate interests including contract management.

**10 GOVERNING LAW**

This Agreement and any non-contractual obligations arising out of or in connection with it are governed by English law.

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## 11 ENFORCEMENT

### 11.1 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.

### 11.2 Service of process

- (a) Without prejudice to any other mode of service allowed under any relevant law, each Obligor (other than an Obligor incorporated in England and Wales):
  - (i) irrevocably appoints Hannaford Turner LLP, currently of 107 Cheapside, London UK, EC2V 6DN, UK as its agent for service of process in relation to any proceedings before the English courts in connection with any Finance Document; and
  - (ii) agrees that failure by a process agent to notify the relevant Obligor of the process will not invalidate the proceedings concerned.
- (b) If any person appointed as an agent for service of process is unable for any reason to act as agent for service of process, the Borrower (on behalf of all the Obligors) must immediately (and in any event within 10 days of such event taking place) appoint another agent on terms acceptable to the Agent. Failing this, the Agent may appoint another agent for this purpose.

**This Agreement has been entered into on the date stated at the beginning of this Agreement.**

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**EXECUTION PAGES**

**BORROWER**

**SIGNED** by )  
Its ) /s/ Daniel S. Farkas  
duly authorised )  
for and on behalf of )  
**RIVIERA NEW BUILD, LLC** )

**GUARANTOR**

**SIGNED** by )  
duly authorised )  
for and on behalf of )  
**NCL CORPORATION LTD.** )

**HOLDING**

**SIGNED** by )  
for and on behalf of )  
**NORWEGIAN CRUISE LINE** )  
**HOLDINGS LTD.** )  
as its duly appointed attorney-in-fact )  
in the presence of: )

**CHARTERER**

**SIGNED** by )  
duly authorised )  
for and on behalf of )  
**OCEANIA CRUISES S. DE R.L.** )

**SHAREHOLDER**

**SIGNED** by )  
duly authorised )  
for and on behalf of )  
**OCEANIA CRUISES S. DE R.L.** )

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**LENDERS**

SIGNED by ) /s/ Anne-Laure Orange  
duly authorised )  
for and on behalf of )  
CRÉDIT AGRICOLE CORPORATE )  
AND INVESTMENT BANK ) /s/ Jérôme Leblond

SIGNED by ) /s/ Megan Parry  
duly authorised )  
for and on behalf of )  
DEKABANK DEUTSCHE GIROZENTRALE )

SIGNED by ) /s/ Isabelle Seneca  
duly authorised )  
for and on behalf of )  
SOCIÉTÉ GÉNÉRALE )

**MANDATED LEAD ARRANGERS**

SIGNED by ) /s/ Anne-Laure Orange  
duly authorised )  
for and on behalf of )  
CRÉDIT AGRICOLE CORPORATE )  
AND INVESTMENT BANK ) /s/ Jérôme Leblond

SIGNED by ) /s/ Isabelle Seneca  
duly authorised )  
for and on behalf of )  
SOCIÉTÉ GÉNÉRALE )

**AGENT**

SIGNED by ) /s/ Anne-Laure Orange  
duly authorised )  
for and on behalf of )  
CRÉDIT AGRICOLE CORPORATE AND )  
INVESTMENT BANK ) /s/ Jérôme Leblond

**SACE AGENT**

SIGNED by ) /s/ Anne-Laure Orange  
duly authorised )  
for and on behalf of )  
CRÉDIT AGRICOLE CORPORATE AND )  
INVESTMENT BANK ) /s/ Jérôme Leblond

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**APPENDIX 1**

**FORM OF AMENDED AND RESTATED FACILITY AGREEMENT (MARKED TO INDICATE AMENDMENTS)**

Amendments are indicated as follows:

- 1 additions are indicated by underlined text in blue; and
  - 2 deletions are shown by strike-through text in red.
-

**Dated ~~\_\_\_\_\_~~ February 2021**

**Originally dated 18 July 2008**  
**(as amended by a supplemental agreement dated 25 October 2010, as further amended by a side letter dated 29 March 2012, as further amended and restated by an amendment and restatement agreement dated 31 October 2014, as amended by a framework agreement dated 31 January 2018, as further amended by a supplemental agreement dated 4 June 2020 ~~and~~, as further amended and restated by an amendment and restatement agreement dated ~~\_\_\_\_\_~~ ~~February 2021~~ 17 February 2021, as further amended by a supplemental agreement dated 23 December 2021, as further amended by a supplemental agreement dated 16 December 2022 and as further amended and restated by an amendment and restatement agreement dated \_\_\_\_\_ 2023)**

**RIVIERA NEW BUILD, LLC**  
as Borrower

and

**THE BANKS AND FINANCIAL INSTITUTIONS**  
listed in Schedule 1  
as Lenders

and

**CRÉDIT AGRICOLE CORPORATE AND INVESTMENT BANK**  
**SOCIÉTÉ GÉNÉRALE**  
as Mandated Lead Arrangers

and

**CRÉDIT AGRICOLE CORPORATE AND INVESTMENT BANK**  
as Agent and SACE Agent

with the support of

**SACE S.P.A.**

**AMENDED AND RESTATED FACILITY AGREEMENT**

relating to  
the part financing of the passenger cruise ship m.v. "RIVIERA"

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**THIS AGREEMENT** is originally made on 18 July 2008 (as previously amended by a supplemental agreement dated 25 October 2010, a side letter dated 29 March 2012, as amended and restated by an amendment and restatement agreement dated 31 October 2014, as amended by a framework agreement dated 31 January 2018, as amended by a supplemental agreement dated 4 June 2020~~-and-~~, as further amended and restated by an amendment and restatement agreement dated ~~February 2021~~<sup>17 February 2021</sup>, as further amended by a supplemental agreement dated 23 December 2021, as further amended by a supplemental agreement dated 16 December 2022 and as further and amended and restated by an amendment and restatement agreement dated 2023)

## **PARTIES**

- (1) **RIVIERA NEW BUILD, LLC**, a limited liability company formed in the Marshall Islands whose registered office is at c/o The Trust Company of the Marshall Islands Inc., Trust Company Complex, Ajeltake Island, Ajeltake Road, Majuro MH 96960, Republic of the Marshall Islands (the "**Borrower**")
- (2) **THE BANKS AND FINANCIAL INSTITUTIONS** listed in Schedule 1 (*Lenders and Commitments*), as lenders (the "**Lenders**")
- (3) **CRÉDIT AGRICOLE CORPORATE AND INVESTMENT BANK** and **SOCIÉTÉ GÉNÉRALE** as mandated lead arrangers (the "**Mandated Lead Arrangers**")
- (4) **CRÉDIT AGRICOLE CORPORATE AND INVESTMENT BANK**, acting through its office at 12 Place des États-Unis, CS 70052, 92547, Montrouge Cedex, France, as agent (the "**Agent**") and SACE Agent (the "**SACE Agent**")

## **BACKGROUND**

- (A) By a Master (Shipbuilding Contracts and Options) Agreement dated 14 May 2008 (the "**Master Agreement**") entered into between (inter alia) Fincantieri - Cantieri Navali Italiani SpA, a company incorporated in Italy with registered office in Trieste, via Genova, 1, and having fiscal code 00397130584 (the "**Builder**"), Prestige Cruise Holdings Inc., Oceania Cruises, Inc. and, by way of endorsement, the Borrower providing for an original shipbuilding contract dated 13 June 2007 (the "**Original Shipbuilding Contract**") between the Borrower and the Builder to be novated and modified in the form and on the terms set out in the Master Agreement (the Original Shipbuilding Contract as novated and modified by the Master Agreement being hereinafter referred to as the "**Shipbuilding Contract**"), the Builder agreed to design, construct and deliver, and the Borrower agreed to purchase, a passenger cruise ship "Riviera" (ex. Hull number [\*]), which was delivered to the Borrower on 27 April 2012.
  - (B) The total price payable by the Borrower to the Builder under the Original Shipbuilding Contract is EUR 409,095,000.00 (the "**Initial Contract Price**") which has been paid on the following terms:
    - (i) as to [\*]%, by an initial payment which was made on the date when the Original Shipbuilding Contract entered into full effect pursuant to Article 33 of the Original Shipbuilding Contract and, as to the balance, upon signature of the Master Agreement;
    - (ii) as to [\*]% on the later of the start of steel cutting and 1 September 2009;
    - (iii) as to [\*]% on the later of keel laying and 1 February 2010;
-

- (iv) as to [\*]% on the later of float out and 30 November 2010; and
  - (v) as to [\*]% on delivery of the Ship.
- (C) The agreement was that the Initial Contract Price may be (i) increased or decreased from time to time under Article 24 of the Original Shipbuilding Contract in the event that the Borrower requests, and the Builder agrees, modifications to the specification or plans constituting a part of the Shipbuilding Contract or in the event that, subsequent to the date of the Shipbuilding Contract, variations are made to its provisions compliance with which is compulsory, the net cost of all such variations being payable on the Delivery Date (the "**Change Orders**"); and (ii) decreased at delivery of the Ship under Articles 13, 14, 16 and 17 of the Shipbuilding Contract (in aggregate the "**Liquidated Damages**") or by mutual agreement between the parties (the Initial Contract Price adjusted as aforesaid being the "**Final Contract Price**").
- (D) By a facility agreement dated 18 July 2008 (as amended by a supplemental agreement dated 25 October 2010, as further amended by a side letter dated 29 March 2012 and as further amended and restated by an amendment and restatement agreement dated 31 October 2014) (the "**Original Facility Agreement**") entered into between (i) the Borrower, (ii) the Lenders, (iii) the Mandated Lead Arrangers and (iv) the Agent and the SACE Agent, the Lenders agreed to make available to the Borrower a facility of originally the Dollar Equivalent of up to EUR 349,520,718.00 for the purpose of assisting the Borrower in financing, subject to exchange rate fluctuations, up to 80% of the Final Contract Price and 100% of the instalment of the relevant SACE Premium which was paid on the Drawdown Date.
- (E) By the amendment and restatement agreement dated 31 October 2014 (the "**2014 Amending and Restating Agreement**"), the parties thereto agreed to, among other things, (1) the Guarantor replacing the Prior Guarantors as a guarantor of the obligations of the Borrower under the Original Facility Agreement and (2) the amending and restating of the Original Facility Agreement pursuant to the terms set forth in the 2014 Amending and Restating Agreement.
- (F) By a framework agreement dated 31 January 2018 (the "**Framework Agreement**"), Société Générale in its capacity as Lender sold forty-one point ten per cent. (41.10%) of its participation in the Loan to DekaBank Deutsche Girozentrale as new lender.
- (G) Due to the unprecedented and extraordinary impacts of the Covid-19 pandemic on the cruise sector and cruise operators, SACE informed the cruise operators of its availability to evaluate certain measures (the "**Temporary Measures**") applicable in relation to certain qualifying loan agreements in order to assist companies which are financially sound but dealing with the impact of the temporary but unprecedented Covid-19 pandemic; the possibility to access to such measures was subject, amongst other things, to certain principles dated 15 April 2020 for cruise lines offered by SACE (the "**Original Principles**").
- (H) Pursuant to the consent request letter dated 18 April 2020, the Borrower and the Guarantor notified the Agent and the SACE Agent of the wish to benefit from the Temporary Measures in relation to certain loan agreements listed therein, including the Original Facility Agreement (as amended by the Framework Agreement), and requested, amongst other things, the deferral of repayments of principal under the Original Facility Agreement (as amended by the Framework Agreement) for a period of one year from 1 April 2020 to 31 March 2021 (the "**Borrower Request**").
-

- (I) On 25 May 2020, the Agent (for and on behalf of the Lenders) provided its consent to part of the Borrower Request in accordance with and subject to certain conditions as set out in an amendment to the Original Facility Agreement (as amended by the Framework Agreement) and to the Original Guarantee dated 4 June 2020 between, amongst others, the Borrower, the Agent and the SACE Agent (the "**2020 Amendment Agreement**") ~~(the Original Facility Agreement as amended pursuant to the Framework Agreement and the 2020 Amendment Agreement, the "**Facility Agreement**").~~
- (J) Due to the continued impacts of the Covid-19 pandemic on the cruise sector and cruise operators, SACE confirmed on 31 December 2020 its availability to evaluate an extension of the Temporary Measures (the "**Extended Temporary Measures**"), again subject to certain principles set out in a document titled "Debt Deferral Extension Framework for ECA-backed Export Financings" dated 26 November 2020 for cruise lines offered by SACE (together with the Original Principles, the "**Principles**").
- (K) Pursuant to the consent request letter dated 3 December 2020, the Borrower and the Guarantor notified the Agent and the SACE Agent of the wish to benefit from the Extended Temporary Measures in relation to certain loan agreements listed therein, including the Facility Agreement, and requested, amongst other things, the deferral of repayments of principal under the Original Facility Agreement (as amended by the Framework Agreement and the 2020 Amendment Agreement) for a further period of one year from 1 April 2021 to 31 March 2022 (the "**Second Borrower Request**").
- (L) On 25 January 2021, the Agent (for and on behalf of the Lenders) provided its consent to part of the Second Borrower Request in accordance with and subject to certain conditions as set out in an amendment and restatement agreement to the Original Facility Agreement ~~dated \_\_\_\_\_~~ (as amended by the Framework Agreement and the 2020 Amendment Agreement) dated 17 February 2021 between, amongst others, the Borrower, the Agent and the SACE Agent (the "**2021 Amendment and Restatement Agreement**").
- (M) By a supplemental agreement dated 23 December 2021 and made between, amongst others, the Borrower, the Guarantor, the Holding, the Agent and the SACE Agent (the "**December 2021 Amendment Agreement**"), the Parties agreed to, inter alia, amend certain financial covenants and certain other provisions under the Original Facility Agreement (as amended by the Framework Agreement, the 2020 Amendment Agreement and as amended and restated by the 2021 Amendment and Restatement Agreement).
- (N) By a supplemental agreement dated 16 December 2022 and made between, amongst others, the Borrower, the Guarantor, the Holding, the Agent and the SACE Agent (the "**December 2022 Amendment Agreement**"), the Parties agreed to, inter alia, amend certain financial covenants and certain other provisions under the Original Facility Agreement (as amended by the Framework Agreement, the 2020 Amendment Agreement, as amended and restated by the 2021 Amendment and Restatement Agreement and as amended by the December 2021 Amendment Agreement) (the Original Facility Agreement as amended pursuant to the Framework Agreement, the 2020 Amendment Agreement, the 2021 Amendment Agreement, the December 2021 Amendment Agreement and the December 2022 Amendment Agreement, the "**Facility Agreement**).
- (O) The Parties have agreed to enter into an amending and restating agreement (the "**2023 Amendment and Restatement Agreement**") to amend and restate the Facility Agreement in order to inter alia, incorporate certain amends to the Facility Agreement including the switch from LIBOR to SOFR (as defined below).
-

(P) ~~(M)~~ This Agreement sets out the terms and conditions of the Facility Agreement as amended and restated by the ~~2021~~2023 Amendment and Restatement Agreement.

## OPERATIVE PROVISIONS

### 1 INTERPRETATION

#### 1.1 Definitions

Subject to Clause 1.5 (*General Interpretation*), in this Agreement:

"**2014 Amending and Restating Agreement**" has the meaning given to the term in Recital (E).

"**2020 Amendment Agreement**" has the meaning given to the term in Recital (I).

"**2020 Deferral Commitment**" means in relation to any Lender as listed in Schedule 1 (*Lenders and Commitments*) to the 2020 Amendment Agreement, the amount in Dollars expressed as a percentage set opposite its name under the heading "Commitment" and the amount of any other commitment attributable to it (including the related 2020 Deferral Tranche Premium payable to SACE) under this Agreement in respect of the 2020 Deferral Tranche.

"**2020 Deferral Effective Date**" has the meaning given to the term Effective Date in the 2020 Amendment Agreement.

"**2020 Deferral Fee Letters**" means any letter between the Agent and any Obligor which sets out the fees payable in connection with the arrangements contemplated by the 2020 Amendment Agreement.

"**2020 Deferral Final Repayment Date**" means the Repayment Date falling 3 years and six months after the 2020 Deferral Repayment Starting Point, or, if earlier, the date on which the 2020 Deferral Tranche has been repaid or prepaid in full, as further set out in Schedule 4 (*Deferred Repayment Schedule*).

"**2020 Deferral Period**" means the period from 1 April 2020 to 31 March 2021.

"**2020 Deferral Repayment Starting Point**" means the date of the first Repayment Date falling after 31 March 2021, namely 27 April 2021.

"**2020 Deferral Tranche**" means the part of the Loan made available to the Borrower to finance or refinance (as the case may be) the aggregate of the 2020 Deferred Repayment Instalments and the related 2020 Deferral Tranche Premium payable to SACE (amounting to [\*] per cent. ([\*]%) of the Total Commitments as of 1 April 2020) in a principal amount not exceeding forty-five million, eight hundred and twenty eight thousand, nine hundred and sixty-five Dollars and eighty-four Cents (\$45,828,965.84).

"**2020 Deferral Tranche Premium**" has the meaning given to such term in paragraph (a) of Clause ~~9-5~~10.5 (*Deferral Tranches – additional premium*).

"**2020 Deferred Repayment Instalments**" means the repayment instalments due during the 2020 Deferral Period.

"**2021 Amendment and Restatement Agreement**" has the meaning given to such term in Recital (L).

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"**2021 Deferral Commitment**" means in relation to any Lender as listed in Schedule 1 (*Lenders and Commitments*) to the 2021 Amendment and Restatement Agreement, the amount in Dollars expressed as a percentage set opposite its name under the heading "Commitment" and the amount of any other commitment attributable to it under this Agreement in respect of the 2021 Deferral Tranche.

~~"2021 Deferral Effective Date" has the meaning given to the term Effective Date in the 2021 Amendment and Restatement Agreement.~~

"**2021 Deferral Fee Letters**" means any letter between the Agent or the SACE Agent and any Obligor which sets out the fees payable in connection with the arrangements contemplated by the 2021 Amendment and Restatement Agreement.

"**2021 Deferral Final Repayment Date**" means the Repayment Date falling 4 years and six months after the 2021 Deferral Repayment Starting Point, or, if earlier, the date on which the 2021 Deferral Tranche has been repaid or prepaid in full, as further set out in Schedule 4 (*Deferred Repayment Schedule*).

"**2021 Deferral Period**" means the period from 1 April 2021 to 31 March 2022.

"**2021 Deferred Repayment Instalments**" means the repayment instalments due during the 2021 Deferral Period.

"**2021 Deferral Repayment Starting Point**" means the date of the first Repayment Date falling after 31 March 2022, namely 27 April 2022.

"**2021 Deferral Tranche**" means the part of the Loan made or to be made available to the Borrower to repay the aggregate of the 2021 Deferred Repayment Instalments, including, for the avoidance of doubt, the repayment instalments due pursuant to paragraph (a) of Clause 5.5 (*Repayment of Deferral Tranches*).

"**2021 Deferral Tranche Premium**" has the meaning given to such term in paragraph (b) of Clause ~~9.5~~ 10.5 (*Deferral Tranches – additional premium*).

~~"2023 Amendment and Restatement Agreement" has the meaning given to such term in Recital (O).~~

~~"2023 Effective Date" has the meaning given to the term Effective Date in the 2023 Amendment and Restatement Agreement.~~

"**Affiliate**" means, with respect to any person, any other person controlling, controlled by or under common control with, such person and for purposes of this definition, "**control**" (including, with correlative meanings, the terms "**controlling**", "**controlled by**" and "**under common control with**"), as applied to any person, means the possession, directly or indirectly, of the power to vote ten per cent. (10%) or more of the securities having voting power for the election of directors of such person, or otherwise to direct or cause the direction of the management and policies of that person, whether through the ownership of voting securities or by contract or otherwise.

"**Agent**" means Crédit Agricole Corporate and Investment Bank, a French "société anonyme", having a share capital of EUR 7,851,636,342.00 and its registered office located at 12 Place des États-Unis, CS 70052 92547, Montrouge Cedex, France, registered under the n° Siren

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304 187 701 at the Registre du Commerce et des Sociétés of Nanterre or any successor of it appointed under Clause ~~25~~26 (*Role of the Agent and the Mandated Lead Arrangers*).

"**Annex VI**" means Annex VI (Regulations for the Prevention of Air Pollution from Ships) to the International Convention for the Prevention of Pollution from Ships 1973 (as modified in 1978 and 1997).

"**Approved Flag**" means the Marshall Islands flag or such other flag as the Agent may, with the authorisation of the Majority Lenders, approve from time to time.

"**Approved Manager**" means the Borrower or any other company (whether or not a member of the Group) which the Agent may, with the authorisation of the Majority Lenders, approve from time to time as the manager of the Ship.

"**Approved Manager's Undertaking**" means, in the event that the Approved Manager is a company other than the Borrower, a letter of undertaking executed by the Approved Manager in favour of the Agent, which will include, without limitation, an agreement by the Approved Manager to subordinate its rights against the Ship and the Borrower to the rights of the Creditor Parties under the Finance Documents, in the agreed form.

"Approved Project" means any of the projects identified in the Approved Projects List.

"Approved Projects List" means the approved projects list provided by the Guarantor and accepted by the Agent prior to the December 2021 Effective Date.

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

"**Availability Period**" means the period commencing on 18 July 2008 and ending on:

- (a) the earlier to occur of (i) the Delivery Date and (ii) the date falling 360 days (being the period stipulated in Article 8.6 of the Shipbuilding Contract) after 30 July 2011 (or such later date as the Agent may, with the authorisation of the Lenders, agree with the Borrower); or
- (b) if earlier, the date on which the Total Commitments are fully borrowed, cancelled or terminated.

"Backstop Rate Switch Date" means 30 June 2023 or any other date agreed between the Agent, the Majority Lenders and the Borrower.

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

"**Bail-In Legislation**" means:

- (a) in relation to an EEA Member Country which has implemented, or which at any time implements, Article 55 BRRD, the relevant implementing law or regulation as described in the EU Bail-In Legislation Schedule from time to time; and
  - (b) in relation to any state other than such an EEA Member Country or (to the extent that the United Kingdom is not such an EEA Member Country) the United Kingdom, any analogous law or regulation from time to time which requires contractual recognition of any Write-down and Conversion Powers contained in that law or regulation.
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"**Base Rate**" means one Euro for 1.5816 Dollars.

"**Builder**" has the meaning given in Recital (A).

"**Builder Letter of Credit**" means a letter of credit relating solely to the Shipbuilding Contract issued in favour of the Builder by the Letter of Credit Issuer in the form of Exhibit B or another agreed form.

"**Business Day**" means ~~a day on which banks are open in London~~;

- (a) a day (other than a Saturday or Sunday) on which banks are open in London, Frankfurt and Paris and, in relation to any payment to be made to the Builder, Milan and, in respect of a day on which a payment is required to be made under a Finance Document, also in New York City; and
- (b) (in relation to the fixing of an interest rate for a Term SOFR Loan) which is a US Government Securities Business Day.

"**Central Bank Rate**" means:

- (a) the short-term interest rate target set by the US Federal Open Market Committee as published by the Federal Reserve Bank of New York from time to time; or
- (b) if that target is not a single figure, the arithmetic mean of:
  - (i) the upper bound of the short-term interest rate target range set by the US Federal Open Market Committee and published by the Federal Reserve Bank of New York; and
  - (ii) the lower bound of that target range.

"**Central Bank Rate Adjustment**" means in relation to the Central Bank Rate prevailing at close of business on any US Government Securities Business Day, the 20 per cent trimmed arithmetic mean calculated by the Agent (or by any other Creditor Party which agrees to determine that mean in place of the Agent), of the Central Bank Rate Spreads for the five most immediately preceding US Government Securities Business Days for which SOFR is available.

"**Central Bank Rate Spread**" means in relation to any US Government Securities Business Day, the difference (expressed as a percentage rate per annum) calculated by the Agent (or by any other Creditor Party which agrees to calculate that rate in place of the Agent) of:

- (a) SOFR for that US Government Securities Business Day; and
- (b) the Central Bank Rate prevailing at close of business on that US Government Securities Business Day.

"**Certified Copy**" means in relation to any document delivered or issued by or on behalf of any company, a copy of such document certified as a true, complete and up-to-date copy of the original by any of the directors or the secretary or assistant secretary or any attorney-in-fact for the time being of that company.

"**CIRR**" (Commercial Interest Reference Rate) means 5.62% per annum or any other lower CIRR rate being the fixed rate for medium and long term export credits in Dollars applicable to the

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financing of the Ship according to the Organisation for Economic Co-operation and Development rules as determined by the competent Italian Authorities.

"**CISADA**" means the United States Comprehensive Iran Sanctions, Accountability and Divestment Act of 2010 as it applies to non-US persons.

"**Code**" means the United States Internal Revenue Code of 1986.

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

"**Compliance Certificate**" has the meaning given to "Compliance Certificate" in the Guarantee.

"**Contribution**" means, in relation to a Lender, the part of the Loan which is owing to that Lender.

"**Conversion Rate**" means the rate determined by the Agent on the Conversion Rate Fixing Date and notified to the Borrower as being:

- (a) the Base Rate; or
- (b) in the event that the FOREX Contracts Weighted Average Rate is lower than the Base Rate (i.e. such that a lower amount in Dollars is necessary to purchase Euro than is reflected by the Base Rate), the FOREX Contracts Weighted Average Rate; or
- (c) in the event that the FOREX Contracts Weighted Average Rate is higher than the Base Rate (i.e. such that a greater amount in Dollars is necessary to purchase Euro than is reflected by the Base Rate), the lower of:
  - (i) the FOREX Contracts Weighted Average Rate; and
  - (ii) the Base Rate increased by 10% (ten per cent.);

"**Conversion Rate Fixing Date**" means the date falling [\*] ([\*]) days before the Intended Delivery Date.

"**Credit Adjustment Spread**" means 0.42826% per annum.

"**Creditor Party**" means the Agent, the SACE Agent, the Mandated Lead Arrangers or any Lender, whether as at the date of the Original Facility Agreement or at any later time.

"**Daily Rate**" means for any US Government Securities Business Day:

- (a) SOFR for that US Government Securities Business Day; or
- (b) if SOFR is not available for that US Government Securities Business Day, the percentage rate per annum which is the aggregate of:
  - (i) the Central Bank Rate for that US Government Securities Business Day; and





(ii) the applicable Central Bank Rate Adjustment; or  
(c) if paragraph (b) above applies but the Central Bank Rate for that US Government Securities Business Day is not available, the percentage rate per annum which is the aggregate of:

(i) the most recent Central Bank Rate for a day which is no more than five US Government Securities Business Days before that US Government Securities Business Day; and

(ii) the applicable Central Bank Rate Adjustment.

rounded, in either case, to five decimal places and if, in either case, the aggregate of that rate and the applicable Credit Adjustment Spread is less than zero, the Daily Rate shall be deemed to be such a rate that the aggregate of the Daily Rate and the applicable Credit Adjustment Spread is zero.

"Daily Simple SOFR" means, for any day, a rate per annum equal to the Daily Rate for the day that is:

(a) for as long as the Interest Make-Up Agreement is in full force and effect, ten (10) US Government Securities Business Days; or

(b) if the Interest Make-Up Agreement ceases to be in full force and effect, five (5) US Government Securities Business Days.

prior to (i) if such day is a US Government Securities Business Day, that day or (ii) if such day is not a US Government Securities Business Day, the US Government Securities Business Day immediately preceding such day.

"December 2021 Amendment Agreement" has the meaning given to such term in Recital (M).

"December 2021 Effective Date" has the meaning given to the term Effective Date in the December 2021 Amendment Agreement.

"December 2021 Fee Letters" means any letter between the Agent (or the SACE Agent, as applicable) and any Obligor which sets out the fees payable in connection with the arrangements contemplated by the December 2021 Amendment Agreement.

"December 2022 Amendment Agreement" has the meaning given to such term in Recital (N).

"December 2022 Fee Letters" means any letter between the Agent (or the SACE Agent, as applicable) and any Obligor which sets out the fees payable in connection with the arrangements contemplated by the December 2022 Amendment Agreement.

"Deferral Commitment" means the 2020 Deferral Commitment or the 2021 Deferral Commitment and, together, "Deferral Commitments".

"Deferral Fee Letters" means any of the 2020 Deferral Fee Letters and/or the 2021 Deferral Fee Letters.

"Deferral Final Repayment Date" means any of the 2020 Deferral Final Repayment Date and/or the 2021 Deferral Final Repayment Date.

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"**Deferral Period**" means the period from 1 April 2020 to 31 March 2022.

"**Deferral Prepayment Event**" means the occurrence of any event entitling the Agent to exercise any rights granted to it pursuant to Clause ~~46.4~~ 17.4 (*Breach of new covenants or the Principles*), including, without limitation, the ability to cancel any part, or demand the immediate repayment of, any Deferral Tranche and to terminate the waiver of the covenant granted pursuant to Clause ~~44~~ 15 (*Security Value Maintenance*) or the waiver of the financial covenants granted pursuant to paragraphs (b) and (c) of clause 11.15 (*Financial Covenants*) of the Guarantee.

"**Deferral Tranche**" means the 2020 Deferral Tranche or the 2021 Deferral Tranche.

"**Deferral Tranche Premia**" has the meaning given to such term in paragraph (b) of Clause ~~9.5~~ 10.5 (*Deferral Tranches – additional premium*).

"**Deferred Costs Percentage**" means:

- (a) in relation to the 2020 Deferral Tranche, [\*]% p.a.; and
- (b) in relation to the 2021 Deferral Tranche, [\*]% p.a..

"**Delivered Vessel Facilities**" means, together, Marina Facility Agreement, Seven Seas Explorer Facility Agreement, Seven Seas Splendor Facility Agreement and this Agreement (as further amended, restated and supplemented from time to time).

"**Delivery Date**" means the date and time of delivery of the Ship by the Builder to the Borrower as stated in the Protocol of Delivery and Acceptance.

"**Dollar Equivalent**" means such amount in Dollars as is calculated by the Agent on the Conversion Rate Fixing Date to be the equivalent of an amount in Euro at the Conversion Rate.

"**Dollars**" and "\$" means the lawful currency for the time being of the United States of America.

"**Drawdown Date**" means the date on which the Loan is drawn down and applied in accordance with Clause 2 (*Facility*).

"**Drawdown Notice**" means a notice in the form set out in Schedule 2 (*Form of Drawdown Notice*) (or in any other form which the Agent approves or reasonably requires).

"**Earnings**" means all moneys whatsoever which are now, or later become, payable (actually or contingently) to the Borrower and which arise out of the use or operation of the Ship, including (but not limited to):

- (a) all freight, hire, fare and passage moneys, compensation payable to the Borrower or the Agent in the event of requisition of the Ship for hire, remuneration for salvage and towage services, demurrage and detention moneys and damages for breach (or payments for variation or termination) of any charterparty or other contract for the employment of the Ship;
  - (b) all moneys which are at any time payable under Insurances in respect of loss of earnings; and
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- (c) if and whenever the 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 the Ship.

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

**"Effective Date"** means the Effective Date defined in the Original Facility Agreement.

**"Eligible Amount"** means eighty per cent. (80%) of the lesser of:

- (a) the Dollar Equivalent of EUR 418,237,911; and  
(b) the Dollar Equivalent of the Final Contract Price

in each case less any Letter of Credit Reduction;

**"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.

**"EU Blocking Regulation"** means EU Regulation (EC) 2271/96 of 22 November 1996.

**"Euro"** and **"EUR"** means the single currency of the Participating Member States.

**"Event of Default"** means any of the events or circumstances described in Clause ~~18.4~~19.1 (*Events of Default*).

**"Existing Indebtedness"** means (a) Loan Agreement, dated as of July 31, 2013, by and among Explorer New Build, LLC, as Borrower, the banks and financial institutions party thereto, Crédit Agricole Corporate and Investment Bank, Société Générale, KfW IPEX-Bank GmbH and HSBC Bank plc as Joint Mandated Lead Arrangers, Crédit Agricole Corporate and Investment Bank, as Agent and as SACE Agent and Crédit Agricole Corporate and Investment Bank, as Agent and as Security Trustee (as amended from time to time); (b) Loan Agreement, dated as of July 18, 2008, by and among Riviera New Build, LLC, as Borrower, the banks and financial institutions party thereto, Crédit Agricole Corporate and Investment Bank (formerly Calyon) and Société Générale, as Mandated Lead Arrangers, and Crédit Agricole Corporate and Investment Bank, as Agent and as SACE Agent (as amended from time to time); (c) Credit Agreement, dated as of July 2, 2013, among Oceania Cruises, Inc., OCl Finance Corp., as Borrowers, the banks and financial institutions party thereto, Deutsche Bank AG, New York Branch, as administrative agent, as collateral agent and as mortgage trustee, Deutsche Bank Securities Inc., Barclays Bank Plc and UBS Securities LLC as co-syndication agents, HSBC Securities (USA) Inc. and Credit Agricole Corporate and Investment Bank as co-documentation agents, Barclays Bank Plc, UBS Securities LLC, HSBC Securities (USA) INC. and Credit Agricole Corporate and Investment Bank, as joint bookrunners, Deutsche Bank Securities Inc., Barclays Bank Plc and Ubs Securities LLC, as joint lead arrangers; (d) Credit Agreement, dated as of August 21, 2012 and amended on February 1, 2013, among Classic Cruises, LLC, Classic Cruises II, LLC, Seven Seas Cruises S. De R.L., a Panamanian sociedad de responsabilidad limitada, SSC Finance Corp., as Borrowers, Deutsche Bank Ag, New York Branch, as Administrative Agent and as Collateral Agent, and each lender from time to time party thereto; (e) \$225,000,000 of 9.125% Senior Secured Notes due 2019 and issued under that certain indenture dated as of May 19, 2011, by and among Seven Seas Cruises S. de R.L., as issuer; Celtic Pacific (UK) Two Limited; Supplystill Limited; Prestige Cruise Services (Europe) Limited (f/k/a Regent Seven Seas Cruises UK Limited); Celtic Pacific

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(UK) Limited; SSC (France) LLC; Mariner, LLC, each of the foregoing (other than the Issuer) as subsidiary guarantors; Wilmington Trust, National Association (successor by merger to Wilmington Trust FSB), as Trustee and Collateral Agent and any secured hedges in connection with the foregoing; (f) Financial Indebtedness referred to in the financial statements of the Guarantor delivered to the Agent prior to the Effective Date; (g) Credit Agreement, dated as of 14 July 2014, by and among Seahawk Two, Ltd., as borrower, NCL Corporation Ltd., as guarantor, the lenders party thereto, KFW IPEX-Bank GmbH as Hermes agent and KFW IPEX-Bank GmbH as facility agent, as collateral agent and as CIRR agent (as amended from time to time); and (h) Credit Agreement, dated as of 14 July 2014, by and among Seahawk One, Ltd., as borrower, NCL Corporation Ltd., as guarantor, the lenders party thereto, KFW IPEX-Bank GmbH as Hermes agent and KFW IPEX-Bank GmbH as facility agent, as collateral agent and as CIRR agent (as amended from time to time).

**"External Management Agreement"** means, in the event that the Approved Manager is not a member of the Group, the management agreement entered or to be entered into between the Borrower and the Approved Manager with respect to the Ship.

**"External Management Agreement Assignment"** means an assignment of the rights of the Borrower under the External Management Agreement (if any) executed or to be executed by the Borrower in favour of the Agent, the SACE Agent and the Lenders in the agreed form.

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

**"Fallback Interest Payment"** means the aggregate amount of interest that is, or is scheduled to become, payable under paragraph (d) of Clause 7.10 (Unavailability of Term SOFR) and relates to a Term SOFR Loan.

**"FATCA"** means:

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

**"FATCA 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 2017; or
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- (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 2017,

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 the Original Facility 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.

["February 2021 Effective Date" has the meaning given to the term Effective Date in the 2021 Amendment and Restatement Agreement.](#)

"**Final Contract Price**" has the meaning given in Recital (C).

"**Finance Documents**" means:

- (a) ~~the 2020 Amendment~~ this Agreement;
  - (b) the ~~2021-2020~~ 2020 Amendment ~~and Restatement~~ Agreement;
  - ~~(c)~~ ~~the Deferral Fee Letters;~~
  - ~~(c)~~ ~~(d)~~ this the 2021 Amendment and Restatement Agreement;
  - ~~(d)~~ the December 2021 Amendment Agreement;
  - ~~(e)~~ the December 2022 Amendment Agreement;
  - ~~(f)~~ the 2023 Amendment and Restatement Agreement;
  - ~~(g)~~ the December 2021 Fee Letters;
  - ~~(h)~~ the Deferral Fee Letters;
  - ~~(i)~~ the December 2022 Fee Letters;
  - ~~(j)~~ ~~(e)~~ the Approved Manager's Undertaking;
  - ~~(k)~~ ~~(f)~~ any External Management Agreement Assignment;
  - ~~(l)~~ ~~(g)~~ the Guarantee;
  - ~~(m)~~ ~~(h)~~ the Letter of Credit;
  - ~~(n)~~ ~~(i)~~ the Mortgage;
  - ~~(o)~~ ~~(j)~~ the Mortgage Addenda;
  - ~~(p)~~ ~~(k)~~ the Limited Liability Company Interests Security Deed;
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- (g) ~~(h)~~ the Post-Delivery Assignment;
- (r) ~~(m)~~ the SACE Reimbursement Agreement;
- (s) ~~(n)~~ the Supplemental Security Documents;
- (t) ~~(o)~~ any Time Charter Assignment;
- (u) ~~(p)~~ any Transfer Certificate;
- (v) ~~(q)~~ the Tripartite General Assignment; and
- (w) ~~(r)~~ any other document (whether creating a Security Interest or not) which is designated as a Finance Document by agreement between the Borrower and the Agent or which is executed at any time by the Borrower or any other person as security for, or to establish any form of subordination or priorities arrangement in relation to, any amount payable to the 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 made available to the debtor;
- (d) under a financial lease, a deferred purchase consideration arrangement or any other agreement having the commercial effect of a borrowing or raising of money by the debtor;
- (e) under any foreign exchange transaction, any interest or currency swap or any other kind of derivative transaction entered into by the debtor or, if the agreement under which any such transaction is entered into requires netting of mutual liabilities, the liability of the debtor for the net amount; or
- (f) under a guarantee, indemnity or similar obligation entered into by the debtor in respect of a liability of another person which would fall within paragraphs (a) to (e) if the references to the debtor referred to the other person;

**"Fixed Interest Rate"** means CIRR.

**"Floating Interest Rate"** means, in respect of any Interest Period, the rate per annum determined by the Agent to be ~~the aggregate of:~~

- (a) in relation to each LIBOR Loan, the percentage rate per annum which is the aggregate of:
    - (i) ~~(a)~~ the Margin; and
    - ~~(b)~~ ~~LIBOR for the relevant period.~~
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(ii) LIBOR.

(b) in relation to each Term SOFR Loan, the percentage rate per annum which is the aggregate of:

(i) the Margin;

(ii) Term SOFR Reference Rate; and

(iii) Credit Adjustment Spread.

**"FOREX Contracts"** means each actual purchase contract, spot or forward contract and any other contract, such as an option or collar arrangement, which is entered into in the foreign exchange markets for the acquisition of Euro intended to pay the delivery instalment under the Shipbuilding Contract, which:-

- (a) matures not later than the Intended Delivery Date, provided that option arrangements may mature up to one month after such date if at the time they are entered into there exists a reasonable uncertainty as to the date on which the Ship will be delivered;
- (b) is entered into by the Borrower or either Prior Guarantor (or, prior to the Effective Date, the Prior Guarantors) or a combination of the foregoing not later than two (2) days before the Conversion Rate Fixing Date so that the Borrower, directly or through a Prior Guarantor, purchases or may purchase Euro with Dollars at a pre-agreed rate; and
- (c) is notified to the Agent within ten (10) days of its execution but in any event no later than the day preceding the Conversion Rate Fixing Date, with a Certified Copy of each such contract being delivered to the Agent at such time;

**"FOREX Contracts Weighted Average Rate"** means the rate determined by the Agent at around 12 noon (Paris time) on the Conversion Rate Fixing Date in accordance with the following principles which (inter alia) are intended to take into account any maturity mismatch between the maturity of the FOREX Contracts and the Intended Delivery Date as well as FOREX Contracts that are unwound as part of the hedging strategy of the Borrower:

- (a) FOREX Contracts that are spot or forward foreign exchange contracts, if any, shall be valued at the contract value (taking into account any rescheduling);
  - (b) the difference between the Euro amount available under (a) above and the Euro amount balance payable to the Builder on the Delivery Date is assumed to be purchased at the official daily fixing rate of the European Central Bank for the purchase of Euro with Dollars as displayed on "Reuters Page ECB 37" at or around 2 p.m. (Paris time) on the Conversion Rate Fixing Date;
  - (c) any FOREX Contract which is an option or collar arrangement and is not unwound at the Conversion Rate Fixing Date will be marked to market and the resulting profit or loss shall reduce or increase the Dollar countervalue of the purchased Euro;
  - (d) any FOREX Contract which is an option or collar arrangement and is sold or purchased back at the time FOREX Contract(s) are entered into for an identical Euro amount shall be accounted for the net premium cost or profit, as the case may be.
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Any marked to market valuation, as required in (iii), shall be performed by Crédit Agricole Corporate and Investment Bank's dedicated desk in accordance with market practices. The Borrower shall have the right to request indicative valuations from time to time prior to the Conversion Rate Fixing Date.

"**Framework Agreement**" has the meaning given to such term in Recital (F).

"**Funding Rate**" means any individual rate notified by a Lender to the Agent pursuant to sub-paragraph (i) of paragraph (e) of Clause ~~6.10~~ 7.12 (*Cost of funds*).

"**GAAP**" means generally accepted accounting principles in the United States of America consistently applied (or, if not consistently applied, accompanied by details of the inconsistencies) including, without limitation, those set forth in the opinion and pronouncements of the Accounting Principles Board of the American Institute of Certified Public Accountants and statements and pronouncements of the Financial Accounting Standards Board.

"**German Blocking Provisions**" means section 7 of the German Foreign Trade Regulation (AWV) (*Außenwirtschaftsverordnung*) (in connection with section 4 paragraph 1 a no. 3 German Foreign Trade Law (AWG) (*Außenwirtschaftsgesetz*)).

"**Group**" means the Guarantor and its subsidiaries.

"**Guarantee**" means the Original Guarantee, as amended pursuant to the 2020 Amendment Agreement ~~and~~ as amended and restated pursuant to the 2021 Amendment and Restatement Agreement, as amended pursuant to the December 2021 Amendment Agreement, as further amended pursuant to the December 2022 Amendment Agreement and as further amended and restated by the 2023 Amendment and Restatement Agreement, and as may be further amended and/or supplemented from time to time.

"**Guarantor**" means NCL Corporation Ltd., a Bermuda company with its registered office at Park Place ~~55~~, 55 Par-la-Ville Road, Hamilton HM 11, Bermuda.

"**Historic Term SOFR**" means, in relation to any Term SOFR Loan, the most recent applicable Term SOFR for a period equal in length to the Interest Period of that Term SOFR Loan and which is as of a day which is no more than five US Government Securities Business Days before the Quotation Day.

"**Holding**" means Norwegian Cruise Line Holdings Ltd., a company incorporated under the laws of Bermuda with its registered office at Park Place ~~55~~, 55 Par-la-Ville Road, Hamilton HM 11, Bermuda.

"**IAPPC**" means a valid international air pollution prevention certificate for the Ship issued under Annex VI.

"**Illicit Origin**" means any origin which is illicit, fraudulent or in breach of Sanctions including, without limitation, drug trafficking, corruption, organised criminal activities, terrorism, money laundering or fraud.

"**Information Package**" means:

- (a) the information package in connection with the "Debt Holiday" application in the form set out in Schedule 4 (*Information Package*) of the 2020 Amendment Agreement,
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submitted by the Borrower (or the Guarantor on its behalf) in order to obtain the benefit of the measures provided for in the Original Principles; and

- (b) the information package in connection with the "Debt Holiday" application in the form set out in Schedule 4 (*Information Package*) of the 2021 Amendment and Restatement Agreement, submitted by the Borrower (or the Guarantor on its behalf) in order to obtain the benefit of the measures provided for in the Principles for the purpose of this Agreement and certain of the Borrower's and the Guarantor's obligations under this Agreement.

"**Initial Contract Price**" has the meaning given in Recital (B).

"**Insurances**" means:

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

"**Intended Delivery Date**" means 30 July 2011 (the date on which the Ship will be ready for delivery pursuant to the Shipbuilding Contract as at the date of the Original Facility Agreement) or any other date notified by the Borrower to the Agent in accordance with paragraph (a) of Clauses 3.5 (*No later than sixty (60) days before the Intended Delivery Date*) or paragraph (c) of Clause 3.7 (*No later than five (5) Business Days before the Intended Delivery Date*) as being the date on which the Builder and the Borrower have agreed that the Ship will be ready for delivery pursuant to the Shipbuilding Contract.

"**Interest Make-up Agreement**" means an agreement to be entered into between SIMEST and the Agent on behalf of the Lenders, in form and substance acceptable to the Mandated Lead Arrangers, whereby, inter alia, the return to the Lenders on the Loan made hereunder will be supplemented by SIMEST so that it equals that which the Lenders would have received if interest were payable on the Loan at LIBOR plus the Margin.

"**Interest Period**" means a period determined in accordance with Clause ~~7~~8 (*Interest Periods*).

"**Interpolated ~~Screen Rate~~Historic Term SOFR**" means, in relation to ~~the Loan or any part of the~~ Term SOFR Loan, the rate (rounded to the same number of decimal places as Term SOFR) which results from interpolating on a linear basis between:

(a) either:

- (i) ~~(a)~~ the most recent applicable ~~Screen Rate~~ Term SOFR (as of a day which is not more than five US Government Securities Business Days before the Quotation Day) for the longest period (for which that ~~Screen Rate~~ Term SOFR is available) which is less than the Interest Period of ~~the Loan or that part of the~~ Term SOFR Loan; ~~and/or~~
  - (ii) if no such Term SOFR is available for a period which is less than the Interest Period of that Term SOFR Loan, the most recent SOFR for a day which is no more than five US Government Securities Business Days (and no less than two US Government Securities Business Days) before the Quotation Day; and
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(b) the most recent applicable Term SOFR (as of a day which is not more than five US Government Securities Business Days before the Quotation Day) for the shortest period (for which Term SOFR is available) which exceeds the Interest Period of that Term SOFR Loan.

"Interpolated Screen Rate" means, in relation to any LIBOR 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 that LIBOR 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~~ LIBOR Loan,

each as of the Specified Time ~~for Dollars~~.

"Interpolated Term SOFR" means, in relation to any Term SOFR Loan, the rate (rounded to the same number of decimal places as Term SOFR) which results from interpolating on a linear basis between:

(a) either:

(i) the applicable Term SOFR (as of the Quotation Day) for the longest period (for which Term SOFR is available) which is less than the Interest Period of that Term SOFR Loan;  
or

(ii) if no such Term SOFR is available for a period which is less than the Interest Period of that Term SOFR Loan, SOFR for the day which is five (5) US Government Securities Business Days before the Quotation Day; and

(b) the applicable Term SOFR (as of the Quotation Day) for the shortest period (for which Term SOFR is available) which exceeds the Interest Period of that Term SOFR Loan.

"**ISM Code**" means the International Safety Management Code (including the guidelines on its implementation), adopted by the International Maritime Organisation Assembly as Resolutions A.741 (18) and A.788 (19), as the same may be amended or supplemented from time to time (and the terms "**safety management system**", "**Safety Management Certificate**" and "**Document of Compliance**" have the same meanings as are given to them in the ISM Code).

"**ISPS Code**" means the International Ship and Port Facility Security Code adopted by the International Maritime Organisation.

"**Italian Authorities**" means SACE and/or SIMEST and any other relevant Italian authorities involved in the implementation of the Loan.

"**Lender**" means a bank or financial institution listed in Schedule 1 (*Lenders and Commitments*) and acting through its Facility Office or its transferee, successor or assign.

"**Letter of Credit**" means a letter of credit issued by the Letter of Credit Issuer in favour of the Agent and released on 16 May 2014.

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**"Letter of Credit Amount"** means the face amount of the Letter of Credit.

**"Letter of Credit Issue Date"** means the date falling fifteen (15) Business Days prior to the Intended Delivery Date.

**"Letter of Credit Issuer"** means Lehman Brothers Bank, Federal Savings Bank, a company incorporated in Delaware or any other financial institution acceptable to the Agent.

**"Letter of Credit Reduction"** means USD50,000,000 less the aggregate of:

- (a) the Letter of Credit Amount; and
- (b) the cumulative amount of all drawings in respect of the Builder Letter of Credit on or prior to the earlier of:
  - (i) the date of issue of the Letter of Credit; and
  - (ii) the Letter of Credit Issue Date;

**"Limited Liability Company Interests Security Deed"** means a security pledge in relation to the limited liability company interests of the Borrower executed or to be executed by Oceania Cruises in favour of the Agent, the SACE Agent and the Lenders in the agreed form.

**"LIBOR"** means, in relation to ~~the Loan or any part of the~~ LIBOR Loan:

- (a) the applicable Screen Rate as of the Specified Time for ~~Dollars~~ dollars and for a period equal in length to the Interest Period of ~~the Loan or that part of the~~ LIBOR Loan; or
- (b) as otherwise determined pursuant to Clause ~~6.7~~ 7.8 (*Unavailability of Screen Rate before Rate Switch Date*),

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

**"LIBOR Loan"** means the Loan, any Deferral Tranche, any other part of the Loan or, if applicable, Unpaid Sum to which the Floating Interest Rate applies and which is not a Term SOFR Loan.

**"Loan"** means the loan made or to be made available under this Agreement (including under the Deferral Tranches) or the principal amount outstanding for the time being of that loan.

**"Majority Lenders"** means:

- (a) before the Loan has been made, Lenders whose Commitments total [\*] per cent. of the Total Commitments; and
- (b) after the Loan has been made, Lenders whose Contributions total [\*] per cent. of the Loan.

**"Margin"** means zero point fifty ~~five~~ per cent. per annum (0.55% p.a.), save for the 2021 Deferral Tranche in respect of which it shall mean zero point seventy ~~five~~ per cent. per annum (0.75% p.a.).

**"Marina Facility Agreement"** means, in respect of m.v. MARINA, a facility agreement originally dated 18 July 2008 (as amended by a supplemental agreement dated 25 October 2010, as

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further amended and restated by an amendment and restatement agreement dated 31 October 2014, as amended by a supplemental agreement dated 4 June 2020, as further amended and restated by an amendment and restatement agreement dated 17 February 2021, as further amended by a supplemental agreement dated 23 December 2021 and as further amended by a supplemental agreement dated 16 December 2022), as further amended, restated and supplemented from time to time.

**"Maritime Registry"** means the maritime registry which the Borrower will specify to the Lenders no later than three (3) months before the Intended Delivery Date, being that of the Marshall Islands or such other registry as the Agent may, with the authorisation of the Majority Lenders, approve.

**"Market Disruption Rate"** means the percentage rate per annum which is the aggregate of the Term SOFR Reference Rate and the applicable Credit Adjustment Spread.

**"Maximum Loan Amount"** means the aggregate of:

- (a) the Dollar Equivalent of Euro 334,590,328.80;
- (b) 100% of the Second Instalment of the SACE Premium payable on the original Drawdown Date, with (X) the Loan currently outstanding (including the drawn part of the 2020 Deferral Tranche and the 2021 Deferral Tranche) on the February 2021 ~~Deferral~~-Effective Date being equal to \$ 203,032,583.10 and (Y) an amount equal to \$ 56,372,560.68 under the 2021 Deferral Tranche being available for utilisation, to be made (or deemed to be made) available as provided for in this Agreement.

**"Mortgage"** means the Original Mortgage, as amended pursuant to both Mortgage Addenda and as may be further amended and/or supplemented from time to time.

**"Mortgage Addenda"** means:

- (a) the addendum to the Original Mortgage executed pursuant to the 2020 Amendment Agreement on 4 June 2020; ~~and~~
- (b) the addendum to the Original Mortgage executed pursuant to the 2021 Amendment and Restatement Agreement; and
- (c) ~~(b)~~ the addendum to the Original Mortgage (as amended pursuant to the addendum described in paragraph (a) and paragraph (b) above) executed pursuant to the ~~2021-~~2023 Amendment and Restatement Agreement on or about the date hereof.

**"Obligors"** means the Borrower, the Guarantor, Oceania Cruises and (in the event that the Approved Manager is a member of the Group) the Approved Manager.

**"OFAC"** means the Office of Foreign Assets Control of the United States Department of the Treasury.

**"Oceania Cruises"** means Oceania Cruises S. ~~De~~-de R.L., a Panamanian *sociedad de responsabilidad limitada* domiciled in Panama whose resident agent is at Arifa Building, West Boulevard, Santa Maria Business District, Panama, Republic of Panama.

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"**Oceania Cruises Guarantee**" means a guarantee issued as provided in Clause 3.2 (*No later than the date of the Original Facility Agreement*) by Oceania Cruises in favour of the Agent, the SACE Agent and the Lenders and terminated on the Effective Date.

"**Original Facility Agreement**" has the meaning given to such term in Recital (D).

"**Original Guarantee**" means the guarantee originally dated 31 October 2014 granted by the Guarantor in favour of, among others, the Agent.

"**Original Mortgage**" means the first preferred Marshall Islands mortgage on the Ship executed by the Borrower in favour of, among others, the Agent dated 19 January 2011.

"**Original Principles**" has the meaning given in Recital (G).

"**Other Loan Agreement**" means the loan agreement between Marina New Build, LLC and the parties to this Agreement (other than the Borrower) (as previously amended by a supplemental agreement dated 25 October 2010, as amended and restated by an amendment and restatement agreement dated 31 October 2014, as further amended by a supplemental agreement dated 4 June 2020 ~~and~~, as further amended and restated by an amendment and restatement agreement dated on or about the date of the 2021 Amendment and Restatement Agreement, as further amended by a supplemental agreement dated 23 December 2021 and as further amended by a supplemental agreement dated 16 December 2022).

"**Other Ship**" means the passenger cruise ship defined as the "Ship" in the Other Loan Agreement.

"**Overnight LIBOR**" means, in relation to ~~the Loan or any part of the~~ LIBOR Loan:

- (a) on any date, the applicable day to day Screen Rate as of the Specified Time for Dollars; or
- (b) as otherwise determined pursuant to Clause ~~6.7-7.8~~ 7.8 (*Unavailability of Screen Rate before Rate Switch Date*),

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

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

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

"**Permitted Financial Indebtedness**" means any Financial Indebtedness:

- (a) incurred under the Finance Documents; or
- (b) permitted pursuant to Clause ~~13.13-14.13~~ 14.13 (*Financial Indebtedness and subordination of indebtedness*).

"**Permitted Security Interests**" means:

- (a) in the case of the Borrower:
    - (i) any of the Security Interests referred to in paragraph (A) below, and
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- (ii) any of the Security Interests referred to in paragraphs (B), (C), (E), (H) and (b)(ii)(I) below if, by reason of any chartering or management arrangements for the Ship approved by the Agent pursuant to the provisions of this Agreement, such Security Interests are created by the Borrower in the case of paragraphs (b)(ii)(B), (b)(ii)(C) or (b)(ii)(E) or incurred by the Borrower in the case of paragraphs (b)(ii)(H) or (b)(ii)(I); and
  - (b) in the case of the Guarantor:
    - (i) any of the Security Interests referred to in paragraphs (A), (D), (F) and (G) below, and
    - (ii) any of the Security Interests referred to in paragraphs (C), (E), (H) and (I) below if, by reason of any chartering or management arrangements for the Ship approved by the Agent pursuant to the provisions of this Agreement, such Security Interests are created by the Guarantor in the case of paragraphs (C) or (E) or incurred by the Guarantor in the case of paragraphs (H) or (I);
      - (A) any Security Interest created by or pursuant to the Finance Documents and any deposits or other Security Interests placed or incurred in connection with any bond or other surety from time to time provided to the US Federal Maritime Commission in order to comply with laws, regulations and rules applicable to the operators of passenger vessels operating to or from ports in the United States of America;
      - (B) liens on the Ship up to an aggregate amount at any time not exceeding [\*] Dollars (\$[\*]) for current crew's wages and salvage and liens incurred in the ordinary course of trading the Ship;
      - (C) any deposits or pledges up to an aggregate amount at any time not exceeding [\*] Dollars (\$[\*]) to secure the performance of bids, tenders, bonds or contracts required in the ordinary course of business;
      - (D) any other Security Interest including in relation to the Existing Indebtedness over the assets of any Obligor other than the Borrower notified by the Borrower or any of the Obligors to the Agent prior to the date of this Agreement;
      - (E) (without prejudice to the provisions of Clause ~~13.13~~ 14.13 (*Financial indebtedness and subordination of indebtedness*)) liens on assets leased, acquired or upgraded after the date of the Original Facility Agreement or assets newly constructed or converted after the date of the Original Facility Agreement provided that (i) such liens secure Financial Indebtedness otherwise permitted under this Agreement, (ii) such liens are incurred at the time of such lease, acquisition, upgrade, construction or conversion and (iii) the Financial Indebtedness secured by such liens does not exceed the cost of such upgrade or the cost of such assets acquired or leased;
      - (F) other liens arising in the ordinary course of business of the Group unrelated to Financial Indebtedness and securing obligations not yet
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delinquent or which are being contested in good faith by appropriate proceedings and for which adequate reserves have been established provided that (i) the aggregate amount of all cash and the fair market value of all other property subject to such liens as are described in this paragraph (F) does not exceed [\*] Dollars (\$[\*]) and (ii) such cash and/or other property is not an asset of the Borrower;

- (G) subject to the other provisions of this Agreement and the Guarantee, any Security Interest in respect of existing Financial Indebtedness of a person which becomes a subsidiary of the Guarantor or is merged with or into the Guarantor or any of its subsidiaries;
- (H) liens in favour of credit card companies on unearned customer deposits pursuant to agreements therewith; and
- (I) liens in favour of customers on unearned customer deposits.

**"Pertinent Document"** means:

- (a) any Finance Document;
- (b) any policy or contract of insurance contemplated by or referred to in Clause ~~13~~14 (*Undertakings*) or any other provision of this Agreement or another Finance Document;
- (c) any other document contemplated by or referred to in any Finance Document; and
- (d) any document which has been or is at any time sent by or to the Agent in contemplation of or in connection with any Finance Document or any policy, contract or document falling within paragraphs (b) or (c).

**"Pertinent Matter"** means:

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

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

**"Poseidon Principles"** means the financial industry framework for assessing and disclosing the climate alignment of ship finance portfolios published in June 2019 as the same may be amended or replaced to reflect changes in applicable law or regulation or the introduction of or changes to mandatory requirements of the International Maritime Organisation from time to time.

**"Post-Delivery Assignment"** means an assignment of the rights of the Borrower in respect of the post-delivery guarantee liability of the Builder under Article 25 of the Shipbuilding Contract executed or to be executed by the Borrower in favour of the Agent, the SACE Agent and the Lenders in the agreed form.

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**"Prestige Holdings"** means Prestige Cruise Holdings Inc. a Panamanian *sociedad anonima* domiciled in Panama whose resident agent is Arias, Fabrega & Fabrega at Plaza 2000 Building, 16th Floor, 50th Street, Panama, Republic of Panama.

**"Prestige Holdings Guarantee"** means a guarantee issued as provided in Clause 3.2 (*No later than the date of the Original Facility Agreement*) by Prestige Holdings in favour of the Agent, the SACE Agent and the Lenders and terminated on the Effective Date.

**"Principles"** has the meaning given in Recital (I).

**"Prior Guarantees"** means the Oceania Cruises Guarantee and the Prestige Holdings Guarantee.

**"Prior Guarantors"** means Oceania Cruises and Prestige Holdings.

**"Prohibited Payment"** means:

- (a) any offer, gift, payment, promise to pay, commission, fee, loan or other consideration which would constitute bribery or an improper gift or payment under, or a breach of Sanctions or any laws of the Republic of Italy, England and Wales, Panama, the United States of America or any other applicable jurisdiction; or
- (b) any offer, gift, payment, promise to pay, commission, fee, loan or other consideration which would or might constitute bribery within the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions of 17 December 1997.

**"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.

**"Protocol of Delivery and Acceptance"** means the protocol of delivery and acceptance of the Ship to be signed by the Borrower and the Builder in accordance with Article 8 of the Shipbuilding Contract.

**"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 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);~~

- (a) in relation to a LIBOR Loan, two Business Days in London (other than Saturdays and Sundays on which banks are open in London) before the first day of that period unless market practice differs in the Relevant Market in which case the Quotation Day will be determined by the Agent in accordance with that market practice (and if quotations would normally be given on more than one day, the Quotation Day will be the last of those days); and
  - (b) in relation to a Term SOFR Loan, two US Government Securities Business Days before the first day of that period unless market practice differs in the relevant syndicated loan market in which case the Quotation Day will be determined by the Agent in accordance with that market practice (and if quotations would normally be given on more than one day, the Quotation Day will be the last of those days).
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"Quoted Tenor" means any period for which:

- (a) in relation to a LIBOR Loan, the Screen Rate is customarily displayed on the relevant page or screen of an information service (other than for one week and two months); and
- (b) in relation to a Term SOFR Loan, Term SOFR is customarily displayed on the relevant page or screen of an information service.

"Rate Switch Date" means the earlier of:

- (a) the Backstop Rate Switch Date; and
- (b) any Rate Switch Trigger Event Date.

"Rate Switch Trigger Event" means:

(1) \_\_\_\_\_

(1) -

(1) the administrator of the Screen Rate or its supervisor publicly announces that such administrator is insolvent; or

(2) information is published in any order, decree, notice, petition or filing, however described, of or filed with a court, tribunal, exchange, regulatory authority or similar administrative, regulatory or judicial body which reasonably confirms that the administrator of the Screen Rate is insolvent.

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

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

(3) the supervisor of the administrator of the Screen Rate publicly announces that the Screen Rate has been or will be permanently or indefinitely discontinued for any Quoted Tenor; or

(4) the administrator of the Screen Rate or its supervisor publicly announces that the Screen Rate for any Quoted Tenor may no longer be used; or

(2) the supervisor of the administrator of the Screen Rate publicly announces or publishes information:

(1) stating that the Screen Rate for any Quoted Tenor is no longer, or as of a specified future date will no longer be,

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representative of the underlying market and the economic reality that it is intended to measure and that such representativeness will not be restored (as determined by such supervisor); and

- (2) with awareness that any such announcement or publication will engage certain triggers for fallback provisions in contracts which may be activated by any such pre-cessation announcement or publication.

**"Rate Switch Trigger Event Date" means:**

- (1) in the case of an occurrence of a Rate Switch Trigger Event described in sub-paragraph (1) of paragraph (1) of the definition of Rate Switch Trigger Event, the date on which the Screen Rate ceases to be published or otherwise becomes unavailable;
- (2) in the case of an occurrence of a Rate Switch Trigger Event described in sub-paragraph (2), (3) or (4) of paragraph (1) of the definition of Rate Switch Trigger Event, the date on which the Screen Rate for the relevant Quoted Tenor ceases to be published or otherwise becomes unavailable; and
- (3) in the case of an occurrence of a Rate Switch Trigger Event described in paragraph (2) of the definition of Rate Switch Trigger Event, the date on which the Screen Rate for the relevant Quoted Tenor ceases to be representative of the underlying market and the economic reality that it is intended to measure (as determined by the supervisor of the administrator of such Screen Rate).

**"Reference Bank Quotation"** means any quotation supplied to the 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 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 such entities as may be appointed by the Agent in consultation with the Borrower.

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**"Reinstatement Date"** means:

- (a) in relation to this Agreement (as further amended, restated and supplemented from time to time), 19 January 2027;
- (b) in relation to the Riviera Facility Agreement, 27 October 2026;
- (c) in relation to the Seven Seas Explorer Facility Agreement, 31 December 2026; and
- (d) in relation to the Seven Seas Splendor Facility Agreement, 29 January 2027.

**"Reinstatement Event"** means the final Reinstatement Date or any date when all Deferral Tranches under the Delivered Vessel Facilities (as defined therein) are repaid or prepaid in full.

**"Relevant Interbank Market"** means ~~the London interbank market;~~

- (a) subject to paragraph (b) below, the London interbank market; and
- (b) on or after the Rate Switch Date, the market for overnight cash borrowing collateralised by US Government securities.

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

**"Repayment Date"** means a date on which a repayment is required to be made under Clause 5 (*Repayment*).

**~~"Replacement Benchmark"~~** ~~means a benchmark rate which is:~~

- (a) ~~formally designated, nominated or recommended as the replacement for a Screen Rate by:~~
  - (i) ~~the administrator of that Screen Rate (provided that the market or economic reality that such benchmark rate measures is the same as that measured by that Screen Rate); or~~
  - (ii) ~~any Relevant Nominating Body,~~

~~and if replacements have, at the relevant time, been formally designated, nominated or recommended under both paragraphs, the "Replacement Benchmark" will be the replacement under paragraph (ii) above;~~

- (b) ~~in the opinion of the Majority Lenders and the Borrower, generally accepted in the international or any relevant domestic syndicated loan markets as the appropriate successor to a Screen Rate; or~~
- (c) ~~in the opinion of the Majority Lenders and the Borrower, an appropriate successor to a Screen Rate.~~

**"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".

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

**"Restricted Creditor Party"** means a Creditor Party which serves a notice pursuant to paragraph (b) of Clause 1.5 (*Non-applicable provisions between the Obligors, German Lenders and any Creditor Party subject to the EU Blocking Regulation*).

**"Riviera Facility Agreement"** means, in respect of m.v. RIVIERA, a facility agreement originally dated 18 July 2008 (as amended by a supplemental agreement dated 25 October 2010, as amended by a side letter dated 29 March 2012, as amended and restated by an amendment and restatement agreement dated 31 October 2014, as amended by a framework agreement dated 31 January 2018, as amended by a supplemental agreement dated 4 June 2020, as further amended and restated by an amendment and restatement agreement dated 17 February 2021, as further amended by a supplemental agreement dated 23 December 2021 and as further amended by a supplemental agreement dated 16 December 2022), as further amended, restated and supplemented from time to time.

**"SACE"** means SACE S.p.A., an Italian joint stock company (*società per azioni*) with a sole shareholder, whose registered office is located at Piazza Poli 37/42, 00187 Rome, Italy and registered with the Companies Registry of Rome under number 05804521002.

**"SACE Agent"** means Crédit Agricole Corporate and Investment Bank, a French "société anonyme", having a share capital of EUR 7,851,636,342.00 and its registered office located at 12 Place des États-Unis, CS 70052 92547, Montrouge Cedex, France, registered under the n° Siren 304 187 701 at the Registre du Commerce et des Sociétés of Nanterre or any successor of it appointed under Clause **25 26** (*Role of the Agent and the Mandated Lead Arrangers*).

**"SACE Insurance Policy"** means the insurance policy (as amended and supplemented from time to time) in respect of this Agreement issued by SACE for the benefit of the Lenders, in form and substance satisfactory to the Agent.

**"SACE Premium"** means the amount payable by the Borrower to SACE through the Agent in several instalments in respect of the SACE Insurance Policy as set out in Clause **9-10** (*SACE Premium and Italian Authorities*) including the Deferral Tranche Premia (provided, for the avoidance of doubt, that the 2021 Deferral Tranche Premium shall not be financed).

**"SACE Reimbursement Agreement"** means the reimbursement agreement entered into on or before the Effective Date, as the context may require, between the Borrower, the Guarantor, the Lenders, the Agent, the SACE Agent and SACE.

**"Safety Management Certificate"** 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 imposed by any member state of the European Union or Switzerland;
  - (b) imposed by CISADA or OFAC; or
  - (c) otherwise imposed by any law or regulation,
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by which any Obligor is bound or to which it is subject or, as regards a regulation, compliance with which is reasonable in the ordinary course of business of any Obligor.

"**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 (before any correction, recalculation or republication by the administrator) on page LIBOR01 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 Agent may specify another page or service displaying the relevant rate after consultation with the Borrower.

~~"Screen Rate Contingency Period" means fifteen (15) Business Days;~~

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

- ~~(a) the methodology, formula or other means of determining that Screen Rate has, in the opinion of the Majority Lenders and the Borrower materially changed;~~
  - ~~(b)~~
    - ~~(i)~~
      - ~~(A) the administrator of that Screen Rate or its supervisor publicly announces that such administrator is insolvent; or~~
      - ~~(B) information is published in any order, decree, notice, petition or filing, however described, or filed with a court, tribunal, exchange, regulatory authority or similar administrative, regulatory or judicial body which reasonably confirms that the administrator of that Screen Rate is insolvent;~~
    - ~~(ii) provided that, in each case, at that time, there is no successor administrator to continue to provide that Screen Rate;~~
    - ~~(iii) the administrator of that Screen Rate publicly announces that it has ceased or will cease, to provide that Screen Rate permanently or indefinitely and, at that time, there is no successor administrator to continue to provide that Screen Rate;~~
    - ~~(iv) the supervisor of the administrator of that Screen Rate publicly announces that such Screen Rate has been or will be permanently or indefinitely discontinued; or~~
    - ~~(v) the administrator of that Screen Rate or its supervisor announces that that Screen Rate may no longer be used; or~~
  - ~~(c) the administrator of that Screen Rate determines that that Screen Rate should be calculated in accordance with its reduced submissions or other contingency or fallback policies or arrangements and either:~~
    - ~~(i) the circumstance(s) or event(s) leading to such determination are not (in the opinion of the Majority Lenders and the Borrower) temporary; or~~
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~~(ii) that Screen Rate is calculated in accordance with any such policy or arrangement for a period no less than the Screen Rate Contingency Period; or~~

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

**"Second Supplemental Tripartite General Assignment"** means second priority assignment, supplemental to the Tripartite General Assignment, as previously supplemented by the Supplemental Tripartite General Assignment, dated on or about the date of the 2021 Amendment and Restatement Agreement and made between the parties to the Tripartite General Assignment.

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

**"Security Interest"** means:

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

**"Security Period"** means the period commencing on the date of the Original Facility Agreement and ending on the date on which:

- (a) all amounts which have become due for payment by the Borrower or any Obligor under the Finance Documents have been paid;
  - (b) no amount is owing or has accrued (without yet having become due for payment) under any Finance Document;
  - (c) neither the Borrower nor any other Obligor has any future or contingent liability under [Clause 49 20 \(Application of Sums Received\)](#) below or any other provision of this Agreement or another Finance Document; and
  - (d) the Agent and the Majority 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 the Borrower or an Obligor 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.
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**"Security Requirement"** means the amount in Dollars (as certified by the Agent whose certificate shall, in the absence of manifest error, be conclusive and binding on the Borrower and the Agent) which is at any relevant time one hundred per cent (100%) of the Loan.

**"Security Value"** means the amount in Dollars (as certified by the Agent whose certificate shall, in the absence of manifest error, be conclusive and binding on the Borrower and the Agent) which, at any relevant time, is the aggregate of (i) the market value of the Ship as most recently determined in accordance with Clause ~~13.18~~-14.18 (*Trading with the United States of America*); and (ii) the market value of any additional security for the time being actually provided to the Agent pursuant to Clause ~~14~~15 (*Security Value Maintenance*).

**"Seven Seas Explorer Facility Agreement"** means, in respect of m.v. SEVEN SEAS EXPLORER, a facility agreement originally dated 31 July 2013 (as amended and restated by an amendment and restatement agreement dated 31 October 2014, as amended by a supplemental agreement dated 4 June 2020, as further amended and restated pursuant to an amendment and restatement agreement dated 17 February 2021, as further amended by a supplemental agreement dated 23 December 2021 and as further amended by a supplemental agreement dated 16 December 2022), as further amended, restated and supplemented from time to time.

**"Seven Seas Splendor Facility Agreement"** means, in respect of m.v. SEVEN SEAS SPLENDOR, a facility agreement originally dated 30 March 2016 (as amended by a supplemental agreement dated 4 June 2020, as further amended and restated pursuant to an amendment and restatement agreement dated 17 February 2021, as further amended by a supplemental agreement dated 23 December 2021 and as further amended by a supplemental agreement dated 16 December 2022), as further amended, restated and supplemented from time to time.

**"Ship"** means the passenger cruise ship "Riviera" (ex. Hull number [\*]) in the registered ownership of the Borrower under the Marshall Islands maritime registry (official no. 4353).

**"Shipbuilding Contract"** has the meaning given in Recital (A).

**"SIMEST"** means Società Italiana per Le Imprese all'Estero - SIMEST Spa, which grants export subsidies in Italy under and according to the Italian Legislative Decree n. 143/98 and its amendments.

**"SOFR"** means the secured overnight financing rate (SOFR) administered by the Federal Reserve Bank of New York (or any other person which takes over the administration of that rate) published (before any correction, recalculation or republication by the administrator) by the Federal Reserve Bank of New York (or any other person which takes over the publication of that rate).

**"Specified Time"** means a day or time determined in accordance with the following:

- (a) if LIBOR is fixed, the Quotation Day as of 11:00 am London time; and
- (b) in relation to a Reference Bank Rate calculated by reference to the available quotations in accordance with Clause ~~6-8~~-7.9 (*Calculation of Reference Bank Rate*), noon on the Quotation Day.

**"Supplemental Security Document"** means each of:

- (a) the Supplemental Tripartite General Assignment;
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- (b) the Second Supplemental Tripartite General Assignment; and
- (c) the Mortgage Addenda.

**"Supplemental Tripartite General Assignment"** means a second priority assignment, supplemental to the Tripartite General Assignment, dated 4 June 2020 and made between the parties to the Tripartite General Assignment.

**"Taxes"** means all present and future income and other taxes, levies, imposts, deductions, compulsory liens and withholdings whatsoever together with interest thereon and penalties with respect thereto, if any, and any payments made on or in respect thereof and **"Taxation"** shall be construed accordingly.

**"Term and Revolving Credit Facilities"** means the facilities granted pursuant to the credit agreement originally dated 24 May 2013 (as amended and restated from time to time) between, inter alios, the Guarantor and Voyager Vessel Company, LLC as borrowers, the lenders party thereto and JPMorgan Chase Bank, N.A., as administrative agent and collateral agent.

**"Term SOFR"** means the term SOFR reference rate administered by CME Group Benchmark Administration Limited (or any other person which takes over the administration of that rate) for the relevant period published (before any correction, recalculation or republication by the administrator) by CME Group Benchmark Administration Limited (or any other person which takes over the publication of that rate).

**"Term SOFR Loan"** means the Loan, any Deferral Tranche, any other part of the Loan or, if applicable, Unpaid Sum to which the Floating Interest Rate applies and which is, or becomes, a "Term SOFR Loan" pursuant to Clause 6 (Rate Switch).

**"Term SOFR Reference Rate"** means, in relation to any Term SOFR Loan:

- (a) the applicable Term SOFR as of the Quotation Day and for a period equal in length to the Interest Period of that Term SOFR Loan; or
- (b) as otherwise determined pursuant to Clause 7.10 (Unavailability of Term SOFR),

and if, in either case, the aggregate of that rate and the applicable Credit Adjustment Spread is less than zero, the Term SOFR Reference Rate shall be deemed to be such a rate that the aggregate of the Term SOFR Reference Rate and the Credit Adjustment Spread is zero.

**"Time Charter Assignment"** means a deed creating security in respect of a time or consecutive voyage charter in respect of the Ship (including any guarantee in respect of the obligations of the charterer under the charter) executed by the Borrower in favour of the Agent, the SACE Agent and the Lenders pursuant to Clause ~~13.14~~ 14.14 (*Pooling of earnings and charters*).

**"Total Loss"** means:

- (a) actual, constructive, compromised, agreed or arranged total loss of the Ship;
  - (b) any expropriation, confiscation, requisition or acquisition of the 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
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authority, (excluding a requisition for hire for a fixed period not exceeding 1 year without any right to an extension) unless it is within 1 month redelivered to the Borrower's full control;

- (c) any arrest, capture, seizure or detention of the Ship (including any hijacking or theft) unless it is within 1 month redelivered to the Borrower's full control.

**"Total Loss Date"** means:

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

**"Transaction Documents"** means the Finance Documents and the Underlying Documents.

**"Tripartite General Assignment"** means the tripartite general assignment dated 27 April 2012 and entered into between the Borrower, Oceania Cruises, the Lenders and the Agent, as supplemented (where the context requires) by the Supplemental General Assignment and the Second Supplemental General Assignment.

**"Underlying Documents"** means the Shipbuilding Contract, any External Management Agreement and any charter and associated guarantee in respect of which a Time Charter Assignment is, or by the terms of this Agreement is required to be, executed.

**"UK Bail-In Legislation"** means (to the extent that the United Kingdom is not an EEA Member Country which has implemented, or implements, Article 55 BRRD) Part 1 of the United Kingdom Banking Act 2009 and any other law or regulation applicable in the United Kingdom relating to the resolution of unsound or failing banks, investment firms or other financial institutes or their affiliates (otherwise than through liquidation, administration or other insolvency proceedings).

**"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 Government Securities Business Day"** means any day other than:

- (a) a Saturday or a Sunday; and
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(b) a day on which the Securities Industry and Financial Markets Association (or any successor organisation) recommends that the fixed income departments of its members be closed for the entire day for purposes of trading in US Government securities.

**"Write-down and Conversion Powers"** means:

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

## 1.2 Construction of certain terms

In this Agreement:

**"approved"** means, for the purposes of Clause ~~13.20~~ 14.20 (*Valuation of the Ship*), 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;

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"**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;

"**date of this Agreement**" means ~~February 2021~~ the 2023 Effective Date;

"**document**" includes a deed; also a letter or electronic mail;

"**excess risks**" means the proportion of claims for general average, salvage and salvage charges not recoverable under the hull and machinery policies in respect of the 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;

a Lender's "cost of funds" in relation to its participation in the Loan or any part of the Loan is a reference to the average cost (determined either on an actual or a notional basis) which that Lender would incur if it were to fund, from whatever source(s) it may reasonably select, an amount equal to the amount of that participation in the Loan or that part of the Loan for a period equal in length to the Interest Period of the Loan or that part of the Loan;

"**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 of its Security Council;

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

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

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

"**obligatory insurances**" means all insurances effected, or which the Borrower is obliged to effect, under Clause ~~13.20 (Valuation of Ship)~~ 14.22 (Insurances) or any other provision of this Agreement or another Finance Document;

"**parent company**" has the meaning given in Clause 1.4 (*Meaning of "subsidiary"*);

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

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

"**protection and indemnity risks**" means the usual risks covered by a protection and indemnity association managed in London, including pollution risks and the proportion (if any) of any sums payable to any other person or persons in case of collision which are not recoverable under the hull and machinery policies by reason of the incorporation in them of Clause 1 of the Institute Time Clauses (Hulls)(1/10/83) or Clause 8 of the Institute Time Clauses (Hulls)

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(1/11/1995) or the Institute Amended Running Down Clause (1/10/71) or any equivalent provision;

**"regulation"** includes any regulation, rule, official directive, request or guideline whether or not having the force of law of any governmental, intergovernmental or supranational body, agency, department or regulatory, self-regulatory or other authority or organisation;

**"subsidiary"** has the meaning given in Clause 1.4 (*Meaning of "subsidiary"*);

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

**"war risks"** includes the risk of mines and all risks excluded by Clause 23 of the Institute Time Clauses (Hulls)(1/10/83) or Clause 24 of the Institute Time Clauses (Hulls) (1/11/1995).

### **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 attaching to the issued shares of S; or
- (c) P has the direct or indirect power to appoint or remove a majority of the directors of S; or
- (d) P otherwise has the direct or indirect power to ensure that the affairs of S are conducted in accordance with the wishes of P;

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

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**1.5 Non-applicable provisions between the Obligors, German Lenders and any Creditor Party subject to the EU Blocking Regulation.**

- (a) The undertakings and covenants given under paragraph (d) of Clause ~~13.2-14.2~~ (*Information*), Clause ~~13.3-14.3~~ (*Illicit Payments*), Clause ~~13.4-14.4~~ (*Prohibited Payments*), Clause ~~13.28-14.28~~ (*Compliance with laws etc.*) or provisions contained in Clause ~~20.3-21.3~~ (*Miscellaneous indemnities*) or Clause ~~21.4-22.1~~ (*Illegality*) and the representations and warranties given under paragraphs (p), (q), (r) and (s) of Clause ~~12.2-13.2~~ (*Continuing representations and warranties*) respectively (the "**Sanctions Provisions**") shall only enure to the benefit of, and be applicable to a Creditor Party incorporated in the Federal Republic of Germany to the extent that such provisions would not result in any violation of, conflict with or liability under the EU Blocking Regulation, the German Blocking Provisions or any similar applicable anti-boycott law or regulation.
- (b) A Creditor Party (other than a Creditor Party incorporated in the Federal Republic of Germany) that is subject to the EU Blocking Regulation or any similar applicable anti-boycott law or regulation may notify the Agent in writing that it elects that any Sanctions Provisions shall only enure to the benefit of, and be applicable to, that Creditor Party to the extent that such provisions would not result in any violation of, conflict with or liability under the EU Blocking Regulation or any similar applicable anti-boycott law or regulation.
- (c) If a Creditor Party elects to be a Restricted Creditor Party pursuant to the foregoing paragraph (b), in respect of any proposed requirement to comply, enforcement, waiver, non-waiver, consent, variation or amendment of or in relation to a Finance Document relating to any Sanctions Provision (a "**Relevant Action**"), the Restricted Creditor Party shall notify the Agent in writing whether or not it shall be deemed to be a Lender for the purposes of ascertaining whether the agreement of any specified group of Lenders has been obtained to approve the Relevant Action and upon receipt by the Agent of such notice such Restricted Creditor Party shall be so deemed for such purposes.

**1.6 General Interpretation**

In this Agreement:

- (a) references in Clause 1.1 (*Definitions*) to a Finance Document or any other document being an "**agreed form**" are to the form agreed between the Agent (acting with the authorisation of each of the Creditor Parties) and the Borrower with any modifications to that form which the Agent (with the authorisation of the Majority Lenders in the case of substantial modifications) approves or reasonably requires;
  - (b) references to, or to a provision of, a Finance Document or any other document are references to it as amended, amended and restated, or supplemented, whether before the date of this Agreement or otherwise;
  - (c) references to, or to a provision of, any law or regulation include any amendment, extension, re-enactment or replacement, whether made before the date of this Agreement or otherwise;
  - (d) words denoting the singular number shall include the plural and vice versa; and
  - (e) Clauses 1.1 (*Definitions*) to 1.5 (*General Interpretation*) apply unless the contrary intention appears.
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## **1.7 Headings**

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

## **1.8 Effective Date**

This Agreement is effective from the ~~2021 Deferral~~ 2023 Effective Date.

## **2 FACILITY**

### **2.1 Amount of facility**

Subject to the other provisions of this Agreement, the Lenders agree to make available to the Borrower a loan not exceeding the Maximum Loan Amount intended to be applied as follows:

- (a) in payment to the Builder of all or part of 80% of the Final Contract Price up to the Eligible Amount; and
- (b) in reimbursement to the Agent on behalf of the Lenders of the amount of the second instalment of the SACE Premium payable by it to SACE on the Drawdown Date.

### **2.2 Lenders' participations in Loan**

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

### **2.3 Purpose of Loan**

The Borrower undertakes with each Creditor Party to use the Loan only to pay for:

- (a) goods and services of Italian origin incorporated in the design, construction or delivery of the Ship;
- (b) subject to the limits and conditions fixed by the Italian Authorities, goods and services incorporated in the design, construction or delivery of the Ship and originating from countries other than Italy where the provision of such goods or services has been sub-contracted by the Builder and therefore remains the Builder's responsibility under the Shipbuilding Contract;
- (c) the second instalment of the SACE Premium payable on the Drawdown Date; and
- (d) such purposes, relating to the 2020 Deferral Tranche and the 2021 Deferral Tranche, as specified in accordance with the 2020 Amendment Agreement and the 2021 Amendment and Restatement Agreement respectively.

### **2.4 Proceedings by individual Lender requiring Majority Lender consent**

Except for the SACE Agent, no Lender may commence proceedings against the Borrower or any other Obligor in connection with a Finance Document without the prior consent of all the Lenders.

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## **2.5 Obligations of Lenders several**

The obligations of the Lenders under this Agreement are several; and a failure of a Lender to perform its obligations under this Agreement shall not result in:

- (a) the obligations of the other Lenders being increased; nor
- (b) any Obligor or any other Lender being discharged (in whole or in part) from its obligations under any Finance Document;

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

## **3 CONDITIONS PRECEDENT**

### **3.1 General**

The Borrower may only draw under the Loan when the following conditions have been fulfilled to the satisfaction of the Agent and provided no Event of Default shall have occurred and remains unremedied or is likely to occur as a consequence of the drawing of the Loan. This Clause 3 (*Conditions Precedent*) shall not apply to the 2020 Deferral Tranche or the 2021 Deferral Tranche, save for Clause 3.10 (*Deferral Tranches*).

### **3.2 No later than the date of the Original Facility Agreement**

The Agent shall have received no later than the date of the Original Facility Agreement:

- (a) an opinion from legal counsel to the Agent as to Marshall Islands law, together with the limited liability company documentation of the Borrower supporting the opinion, including but without limitation the Certificate of Formation and Limited Liability Company Agreement as filed with the competent authorities and a certificate of a competent officer or manager of the Borrower containing specimen signatures of the persons authorised to sign the documents on behalf of the Borrower, to the effect that:
  - (i) the Borrower has been duly formed and is validly existing as a limited liability company under the laws of the Republic of the Marshall Islands;
  - (ii) the Original Facility Agreement falls within the scope of the Borrower's limited liability company purpose as defined by its Certificate of Formation and Limited Liability Company Agreement;
  - (iii) the Borrower's representatives were at the date of the Original Facility Agreement fully empowered to sign the Original Facility Agreement;
  - (iv) either all administrative requirements applicable to the Borrower (whether in the Republic of the Marshall Islands), concerning the transfer of funds abroad and acquisitions of Dollars to meet its obligations hereunder have been complied with, or that there are no such requirements; and
  - (v) the Original Facility Agreement constitutes the legal, valid and binding obligations of the Borrower enforceable in accordance with its terms,

and containing such exceptions as are standard for opinions of this type;

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- (b) an opinion from legal counsel to the Agent as to English law confirming that the obligations of the Borrower under the Original Facility Agreement are legally valid and binding obligations enforceable by the relevant Creditor Parties in the English courts;
  - (c) a Certified Copy of the executed Shipbuilding Contract;
  - (d) a confirmation from EC3 Services Limited that it will act for the Borrower as agent for service of process in England in respect of the Original Facility Agreement and any other Finance Document;
  - (e) an opinion from legal counsel to the Agent as to Panamanian law, together with the corporate documentation of each Prior Guarantor supporting the opinion, including but without limitation the Articles of Incorporation and By-laws as filed with the competent authorities and a certificate of a competent officer of each Prior Guarantor containing specimen signatures of the persons authorised to sign the documents on behalf of the Prior Guarantor, to the effect that:
    - (i) each Prior Guarantor has been duly organised and is validly existing and in good standing as a Panamanian *sociedad anonima* with its domicile in the Republic of Panama and its Resident Agent being (in the case of Prestige Holdings) Arias Fabrega & Fabrega with address at Plaza 2000 Building, 16th Floor, 50th Street, Panama and (in the case of Oceania Cruises) Marcela Rojas de Perez with address at 10 Elvira Mendez Street, Top Floor, Panama;
    - (ii) each Prior Guarantee falls within the scope of the relevant Prior Guarantor's corporate purpose as defined by its Articles of Incorporation and By-laws;
    - (iii) each Prior Guarantor's representative was at the date of the Prior Guarantee issued by it fully empowered to sign that Prior Guarantee;
    - (iv) either all administrative requirements applicable to each Prior Guarantor (whether in the Republic of Panama) concerning the transfer of funds abroad and acquisitions of Dollars to meet its obligations under the Prior Guarantee issued by it have been complied with, or that there are no such requirements;
    - (v) each Prior Guarantee is the legal, valid and binding obligations of the Prior Guarantor which issued it enforceable in accordance with its terms; and
    - (vi) none of the undertakings of either Prior Guarantor contained in either Prior Guarantee are contrary to public policy in the Republic of Panama,and containing such exceptions as are standard for opinions of this type;
  - (f) duly executed originals of the Prior Guarantees;
  - (g) an opinion from legal counsel to the Agent as to English law confirming that the obligations of each Prior Guarantor under the Prior Guarantee issued by it are legally valid and binding obligations enforceable by the relevant Creditor Parties in the English courts; and
  - (h) confirmation from EC3 Services Limited that it will act for each Prior Guarantor as agent for service of process in England in respect of the Prior Guarantee issued by that Prior Guarantor and any other Finance Document.
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**3.3 No later than ninety (90) days before the Intended Delivery Date**

The Agent shall have received no later than ninety (90) days before the Intended Delivery Date:

- (a) notification from the Borrower of its preferred Maritime Registry;
- (b) the SACE Insurance Policy documentation relating to the transaction contemplated by the Original Facility Agreement issued on terms whereby the SACE Insurance Policy will enter into full force and effect upon fulfilment of the conditions specified therein to be fulfilled on or before the Drawdown Date; and
- (c) notification of the Approved Manager.

**3.4 No later than the date falling ninety (90) days before the Intended Delivery Date and on each subsequent date on which a Compliance Certificate is to be received by the Agent pursuant to clause 11.3(e) of the Prestige Holdings Guarantee and clause 11.3(e) of the Oceania Cruises Guarantee**

The Agent shall have received on the date falling ninety (90) days before the Intended Delivery Date and also on each subsequent date on which a Compliance Certificate (as defined in and is to be received by the Agent pursuant to) clause 11.3(e) of the Prestige Holdings Guarantee and clause 11.3(e) of the Oceania Cruises Guarantee a duly completed Compliance Certificate (as defined in each Prior Guarantee) from each Prior Guarantor;

**3.5 No later than sixty (60) days before the Intended Delivery Date**

The Agent shall have received from the Borrower no later than sixty (60) days before the Intended Delivery Date:

- (a) notification of the Intended Delivery Date;
- (b) notification, signed by a duly authorised signatory of the Borrower, specifying which of the Fixed Interest Rate or the Floating Interest Rate shall be applicable to the Loan until the date of payment of the final repayment instalment of the Loan; and in absence of any such notification, the Borrower shall be deemed to have opted for the Floating Interest Rate.

**3.6 No later than fifteen (15) Business Days before the Intended Delivery Date**

The Agent shall have received no later than fifteen (15) Business Days before the Intended Delivery Date insurance documents in form and substance satisfactory to the Lenders confirming that the Insurances have been effected and will be in full force and effect on the Delivery Date.

**3.7 No later than five (5) Business Days before the Intended Delivery Date**

The Agent shall have received no later than five (5) Business Days before the Intended Delivery Date:

- (a) the Drawdown Notice from the Borrower, signed by a duly authorised signatory of the Borrower, specifying the amount of the Loan to be drawn down;
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- (b) a Certified Copy of each of the Change Orders, of any amendments to the Shipbuilding Contract and of the power of attorney pursuant to which the authorised signatory of the Borrower signed the Drawdown Notice and a specimen of his signature; and
- (c) a final confirmation of the Intended Delivery Date signed by a duly authorised signatory of the Borrower, and counter-signed by a duly authorised signatory of the Builder.

### **3.8 No later than the Delivery Date**

The Agent shall have received no later than the Delivery Date:

- (a) an opinion from legal counsel to the Agent as to Marshall Islands law together with the limited liability company documentation of the Borrower and a certificate of a competent officer or manager of the Borrower containing specimen signatures of the persons authorised to sign the documents on behalf of the Borrower, confirming that:
    - (i) the Lenders may continue to rely on the legal opinion given pursuant to paragraph (a) of Clause 3.2 (*No later than the date of the Original Facility Agreement*);
    - (ii) the Original Mortgage, the Tripartite General Assignment, the External Management Agreement Assignment (if any), the Post-Delivery Assignment and the Time Charter Assignment (if any) fall within the scope of the Borrower's limited liability company purpose as defined by its Certificate of Formation and Limited Liability Company Agreement and are binding on it; and
    - (iii) the Borrower's representatives are fully empowered to sign the Protocol of Delivery and Acceptance, the Original Mortgage, the Tripartite General Assignment, the External Management Agreement Assignment (if any), the Post-Delivery Assignment and the Time Charter Assignment (if any)
  - (b) in the event that the Approved Manager is not a member of the Group, an opinion from legal counsel to the Agent as to the law of the place of incorporation of the Approved Manager, together with the corporate documentation of the Approved Manager supporting the opinion, that the Tripartite General Assignment (if applicable) and the acknowledgement of the notice of assignment of the External Management Agreement fall within the scope of the Approved Manager's corporate purpose as defined by its constitutional documents and are binding on it and the Approved Manager's representatives are fully empowered to sign the Tripartite General Assignment (if applicable) and the acknowledgement of the notice of assignment of the External Management Agreement;
  - (c) evidence of payment to the Builder of:
    - (i) the [\*] ([\*]) pre-delivery instalments of the Final Contract Price; and
    - (ii) any other part of the Final Contract Price as at the Delivery Date not being financed hereunder;
  - (d) evidence of payment of all amounts which are due and payable hereunder by the Borrower on or prior to the Delivery Date;
  - (e) a certificate from the Borrower, signed by an authorised representative of the Borrower, confirming that the representations and warranties contained in Clause ~~42~~13 (*Representations*)
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*and Warranties*) are true and correct as of the Delivery Date in consideration of the facts and circumstances existing as of the Delivery Date;

- (f) the Interest Make-up Agreement relative to the Loan and in full force and effect;

provided always that the obligations of the Lenders to make the Loan available on the Delivery Date are subject to the Agent remaining satisfied that each of the SACE Insurance Policy and the Interest Make-up Agreement will cover the Loan following the advance of the Loan, payment of the second instalment of the SACE Premium and delivery to SACE of the documents listed in Schedule 3 (*Documents to be produced by the Builder to the Agent on Delivery*).

### **3.9 At Delivery**

Immediately prior to the delivery of the Ship by the Builder to the Borrower, the Agent shall have received:

- (a) evidence that immediately following delivery:
- (i) the Ship will be registered in the name of the Borrower in the Maritime Registry;
  - (ii) title to the Ship will be held by the Borrower free of all Security Interests other than any maritime lien in respect of crew's wages and trade debts arising out of equipment, consumable and other stores placed on board the Ship prior to or concurrently with delivery, none of which is overdue;
  - (iii) the Original Mortgage will be duly registered in the Maritime Registry and constitutes a first priority security interest over the Ship and that all taxes and fees payable to the Maritime Registry in respect of the Ship have been paid in full; and
  - (iv) the opinions mentioned in paragraphs (j), (k) and (l) of Clause 3.9 (*At Delivery*) and the documents mentioned in paragraph (m) of Clause 3.9 will be received by the Agent;
- (b) a Certified Copy of a classification certificate (or interim classification certificate) showing the Ship to be classed in accordance with paragraph (c) of Clause ~~12.4~~ 13.4 (*Representations on the Delivery Date*).
- (c) duly executed originals of the Tripartite General Assignment, any External Management Agreement Assignment, any Approved Manager's Undertaking, the Post-Delivery Assignment and any Time Charter Assignment together with relevant notices of assignment and the acknowledgement of the notice of assignment to be issued pursuant to any External Management Agreement Assignment and the Post-Delivery Assignment and the Time Charter Assignment (if any);
- (d) a duly executed original of the Limited Liability Company Interests Security Deed (and of each document required to be delivered under the Limited Liability Company Interests Security Deed);
- (e) a Certified Copy of any executed External Management Agreement and any time charterparty in respect of the Ship;
- (f) a Certified Copy of any current certificate of financial responsibility in respect of the Ship issued under OPA, a valid Safety Management Certificate (or interim Safety Management Certificate) issued to the Ship in respect of its management by the Approved Manager pursuant to the ISM
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Code, a valid Document of Compliance (or interim Document of Compliance) issued to the Approved Manager in respect of ships of the same type as the Ship pursuant to the ISM Code, a valid International Ship Security Certificate issued to the Ship in accordance with the ISPS Code and a valid IAPPC issued to the Ship in accordance with Annex VI and, if entered into, any carrier initiative agreement with the United States' Customs and Border Protection under the Customs-Trade Partnership Against Terrorism (C-TPAT) programme;

- (g) a Certified Copy of the power of attorney pursuant to which the authorised signatory(ies) of the Borrower signed the documents referred to in this Clause 3.9 (*At Delivery*) and to which the Borrower is a party and a specimen of his or their signature(s);
- (h) a confirmation from EC3 Services Limited that it will act for each of the relevant Obligors as agent for service of process in England in respect of the deed of covenants constituting part of the Original Mortgage (if applicable), the Tripartite General Assignment, the External Management Agreement Assignment (if any), the Post-Delivery Assignment and the Time Charter Assignment (if any).

Immediately following the delivery of the Ship by the Builder to the Borrower, the Agent shall receive:

- (i) a duly executed original of the Original Mortgage;
  - (j) an opinion from legal counsel to the Agent as to Panamanian law, together with the corporate documentation of Oceania Cruises supporting the opinion and a certificate of a competent officer of Oceania Cruises containing specimen signatures of the persons authorised to sign the Limited Liability Company Interests Security Deed on behalf of Oceania Cruises confirming that:
    - (i) the Lenders may continue to rely on the legal opinion given pursuant to paragraph (e) of Clause 3.2 (*No later than the date of the Original Facility Agreement*) in so far as it relates to Oceania Cruises;
    - (ii) the Limited Liability Company Interests Security Deed falls within the scope of Oceania Cruises' corporate purpose as defined by its Articles of Incorporation and By-laws; and
    - (iii) the representative of Oceania Cruises was at the date of the Limited Liability Company Interests Security Deed fully empowered to sign the Limited Liability Company Interests Security Deed.
  - (k) an opinion from legal counsel to the Agent as to the law of the Maritime Registry confirming:
    - (i) the valid registration of the Ship in the Maritime Registry; and
    - (ii) the Original Mortgage over the Ship has been validly registered in the Maritime Registry;
  - (l) an opinion from legal counsel to the Agent as to English law confirming that the obligations of the Borrower under the deed of covenants constituting part of the Original Mortgage (if applicable), the Tripartite General Assignment, any External Management Agreement Assignment, the Post-Delivery Assignment and any Time Charter Assignment are legally valid and binding obligations enforceable by the relevant Creditor Parties in the English courts;
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- (m) the documents listed in Schedule 3 (*Documents to be produced by the Builder to the Agent on Delivery*).

### **3.10 Deferral Tranches**

The relevant part of a Deferral Tranche shall only be advanced if the Agent shall have received (a) no later than five (5) Business Days before the date of the relevant advance (and only if required under Clause 4.9 (*Deferral Tranches*) hereunder), a Drawdown Notice from the Borrower, signed by a duly authorised signatory of the Borrower, specifying the amount of the Deferral Tranche to be drawn down, and (b) on the relevant date of the relevant advance or deemed advance (as applicable), confirmation that:

- (a) save as disclosed in writing to the Agent and SACE prior to the date of the 2020 Amendment Agreement, no Event of Default is continuing or would result from such advance or deemed advance (as applicable) and no Deferral Prepayment Event or event or circumstance specified in Clause ~~48~~19 (*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 has occurred; and
- (b) save as disclosed in writing to the Agent and SACE prior to the date of the 2020 Amendment Agreement, each of the repeating representations set out in Clause ~~42~~13 (*Representations and Warranties*) are true as at such date by reference to the facts and circumstances existing at such date,

it being provided that two advances under the 2020 Deferral Tranche have been made to the Borrower in respect of the 2020 Deferred Repayment Instalments.

## **4 DRAWDOWN**

### **4.1 Borrower's irrevocable payment instructions**

The Lenders shall not be obliged to fulfil their obligation to make the Loan available other than by paying the Builder all or part of 80% of the Final Contract Price up to the Eligible Amount on behalf of and in the name of the Borrower and by reimbursing the Agent for the instalment of the SACE Premium payable on the Delivery Date.

The Borrower hereby instructs the Lenders in accordance with this Clause 4.1 (*Borrower's irrevocable payment instructions*):

- (a) to pay to the Builder all or part of 80% of the Final Contract Price up to the Eligible Amount.
- (b) to pay to the Agent on behalf of the Lenders for onward payment to SACE (such payment to SACE to be made for value on the Drawdown Date), by drawing under the Loan, the amount of the second instalment of the related SACE Premium.

Payment to the Builder of the Dollar amount drawn under paragraph (a) of Clause 4.1 (*Borrower's irrevocable payment instructions*) above shall be made on the Delivery Date of the Ship during usual banking hours in Italy to the Builder's account as specified by the Builder in accordance with the Shipbuilding Contract after receipt and verification by the Agent of the documents provided under Schedule 3 (*Documents to be produced by the Builder to the Agent on delivery*).

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Verification of the documents provided under Schedule 3 (*Documents to be produced by the Builder to the Agent on delivery*) shall be limited to checking their apparent compliance as defined in the Uniform Customs and Practices for Documentary Credits - ICC Publication 600 (UCP 600 latest revision).

Save as contemplated in Clause 4.3 (*Modification of payment terms*) below, the payment instruction contained in this Clause 4.1 (*Borrower's irrevocable payment instructions*) is irrevocable.

#### **4.2 Conversion Rate for Loan**

The Dollar amount to be drawn down under paragraph (a) of Clause 4.1 (*Borrower's irrevocable payment instructions*) shall be calculated by the Agent on the Conversion Rate Fixing Date in accordance with the definitions of "Eligible Amount" and "Conversion Rate" in Clause 1.1 (*Definitions*).

#### **4.3 Modification of payment terms**

The Borrower expressly acknowledges that the payment terms set out in this Clause may only be modified with the agreement of the Builder, the Agent, the Lenders and the Borrower in the case of paragraph (a) of Clause 4.1 (*Borrower's irrevocable payment instructions*) and with the agreement of the Agent, the Lenders and the Borrower in the case of paragraph (b) of Clause 4.1 (*Borrower's irrevocable payment instructions*); **provided that** it is the intention of the Borrower, the Lenders and the Agent that prior to the Delivery Date agreement shall be reached with those financial institutions with whom the Borrower has entered into the FOREX Contracts (the "**Counterparties**") in order that the Euro payments due from the Counterparties under the FOREX Contracts shall be paid to the Agent for holding in escrow and to be released by the Agent simultaneously with (i) the payment in full to the Builder of the balance of the Final Contract Price denominated in Euro at the time of delivery of the Ship and (ii) the payment to the Counterparties of the Dollars due to them under the relevant FOREX Contracts out of the Dollar amount available under paragraph (a) of Clause 4.1 (*Borrower's irrevocable payment instructions*), subject only to delivery of the Ship by the Builder to the Borrower taking place as evidenced by the execution and delivery of the Protocol of Delivery and Acceptance and to the Borrower having deposited with the Agent before delivery, if and to the extent required, any Dollar and/or Euro amounts as may be needed to ensure the payment in full of both the balance of the Final Contract Price in Euro and the Dollars owed to the Counterparties under all the relevant FOREX Contracts.

#### **4.4 Availability**

Except as permitted by the provisions of the 2020 Amendment Agreement in respect of the 2020 Deferral Tranche and the 2021 Amendment and Restatement Agreement in respect of the 2021 Deferral Tranche, drawing may not be made under this Agreement (and the Loan shall not be available) after the earlier of the Delivery Date and the expiry of the Availability Period.

#### **4.5 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 Loan and the Drawdown Date;
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- (b) the amount of that Lender's participation in the Loan; and
- (c) the duration of the first Interest Period.

#### **4.6 Lenders to make available Contributions**

Subject to the provisions of this Agreement, each Lender shall, on and with value on the Drawdown Date, make available to the Agent the amount due from that Lender under Clause 2.2 (*Lenders' participations in Loan*).

#### **4.7 Disbursement of Loan**

Subject to the provisions of this Agreement, the Agent shall on the Drawdown Date pay the amounts which the Agent receives from the Lenders under Clause 4.6 (*Lenders to make available Contributions*):

- (a) in the case of the amount referred to in paragraph (a) of Clause 4.1 (*Borrower's irrevocable payment instructions*), to the account which the Borrower specifies in the Drawdown Notice;
- (b) in the case of the amount referred to in paragraph (b) of Clause 4.1 (*Borrower's irrevocable payment instructions*) to the account of SACE which the SACE Agent shall specify; and
- (c) in the like funds as the Agent received the payments from the Lenders.

#### **4.8 Disbursement of Loan to third party**

The payment by the Agent under Clause 4.7 (*Disbursement of Loan*) shall constitute the making of the Loan and the Borrower shall at that time become indebted, as principal and direct obligor, to each Lender in an amount equal to that Lender's Contribution.

#### **4.9 Deferral Tranches**

The Lenders have agreed, pursuant to the 2020 Amendment Agreement and the 2021 Amendment and Restatement Agreement, as set out in this Agreement (but without increasing the Maximum Loan Amount and the Total Commitments of each Lender save for the related 2020 Deferral Tranche Premium to be advanced in accordance with paragraph (d) below) to make available to the Borrower the Deferral Tranches as follows, as set out in further detail in Schedule 4 (*Deferred Repayment Schedule*):

- (a) on each Repayment Date during the 2020 Deferral Period, a portion of the 2020 Deferral Tranche in an amount equal to the relevant 2020 Deferred Repayment Instalment due on such Repayment Date shall be automatically drawn by the Borrower and applied towards repayment of the relevant 2020 Deferred Repayment Instalment due on such date. Each such advance under the 2020 Deferral Tranche shall be automatic and notional only, and effected by means of a book entry to finance the 2020 Deferred Repayment Instalments then due;
  - (b) if a 2020 Deferred Repayment Instalment has fallen due and been paid during the Deferral Period and prior to the 2020 Deferral Effective Date (the "**Paid Amount**"), on the date falling five (5) Business Days after the Effective Date (as such term is described in the 2020 Amendment Agreement), an amount equal to the Paid Amount shall be reimbursed to the Borrower to the account notified by the Borrower to the Agent on or prior to the Effective Date in accordance with the relevant Drawdown Notice;
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- (c) on each Repayment Date during the 2021 Deferral Period, a portion of the 2021 Deferral Tranche in an amount equal to the relevant 2021 Deferred Repayment Instalment due on such Repayment Date shall be automatically drawn by the Borrower and applied towards repayment of the relevant 2021 Deferred Repayment Instalment due on such date. Each such advance under the 2021 Deferral Tranche shall be automatic and notional only, and effected by means of a book entry to finance the 2021 Deferred Repayment Instalments then due; and
- (d) together with the first advance of the 2020 Deferral Tranche under this Clause 4.9 (*Deferral Tranches*), a portion of the 2020 Deferral Tranche in an amount equal to the amount to be paid to SACE in respect of the 2020 Deferral Tranche Premium payable to SACE due on the first advance under the 2020 Deferral Tranche shall be drawn by the Borrower and paid to SACE as specified in the relevant Drawdown Notice, it being provided that such amount was advanced to the Borrower on 29 June 2020 together with the first advance under the 2020 Deferral Tranche in respect of the 2020 Deferred Repayment Instalments.

Accordingly, the other provisions of this Clause 4 (*Drawdown*) shall not apply to the advances under the Deferral Tranches and each advance of any Deferral Tranches under this Clause 4.9 (*Deferral Tranches*) shall be deemed to satisfy the Borrower's obligations under Clause 5 (*Repayment*) in respect of the corresponding Deferred Repayment Instalment.

## **5 REPAYMENT**

### **5.1 Number of repayment instalments**

Subject to Clause 5.5 (*Repayment of Deferral Tranches*), the Borrower shall repay the Loan by twenty-four (24) consecutive six-monthly instalments.

### **5.2 Repayment Dates**

Subject to Clause 5.5 (*Repayment of Deferral Tranches*), the first instalment shall be repaid on the date falling six (6) months after the Drawdown Date and the last instalment on the date falling one hundred and forty four (144) months after the Drawdown Date, each date of payment of an instalment being a "**Repayment Date**".

### **5.3 Amount of repayment instalments**

Subject to Clause 5.5 (*Repayment of Deferral Tranches*), each of the twenty-four (24) consecutive six-monthly repayment instalments of the Loan shall be of an equal amount.

### **5.4 Final Repayment Date**

Subject to Clause 5.5 (*Repayment of Deferral Tranches*), on the final Repayment Date, the Borrower shall additionally pay to the Agent for the account of the Creditor Parties all other sums then accrued or owing under any Finance Document.

### **5.5 Repayment of Deferral Tranches**

Subject to Clause 4.9 (*Deferral Tranches*):

- (a) the 2020 Deferral Tranche shall be repaid in eight semi-annual instalments beginning on the 2020 Deferral Repayment Starting Point and until the 2020 Deferral Final Repayment Date, as set out in further detail in Schedule 4 (*Deferred Repayment Schedule*); and
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- (b) the 2021 Deferral Tranche shall be repaid in ten semi-annual instalments beginning on the 2021 Deferral Repayment Starting Point and until the 2021 Deferral Final Repayment Date, as set out in further detail in Schedule 4 (*Deferred Repayment Schedule*).

## **6** **RATE SWITCH**

### **6.1** **Switch to Term SOFR Reference Rate**

Subject to Clause 6.2 (*Delayed switch for existing LIBOR Loans*), on and from the Rate Switch Date, where the Floating Interest Rate applies:

- (a) use of the Term SOFR Reference Rate will replace the use of LIBOR for the calculation of interest for the Loan or any part of the Loan; and
- (b) the Loan or any part of the Loan or Unpaid Sum shall be a "Term SOFR Loan" and paragraph (b) of the definition of Floating Interest Rate shall apply to the Loan, any such part of the Loan or Unpaid Sum.

### **6.2** **Delayed Switch for Existing LIBOR Loans**

If the Rate Switch Date falls before the last day of an Interest Period for a LIBOR Loan:

- (a) the Loan, relevant part of the Loan or Unpaid Sum (as applicable) shall continue to be a LIBOR Loan for that Interest Period and paragraph (a) of the definition of Floating Interest Rate shall continue to apply to the Loan, relevant part of the Loan or Unpaid Sum (as applicable) for that Interest Period;
- (b) any provision of this Agreement which is expressed to relate solely to a Term SOFR Loan shall not apply in relation to the Loan, relevant part of the Loan or Unpaid Sum (as applicable) for that Interest Period; and
- (c) on and from the first day of the next Interest Period (if any) for the Loan, relevant part of the Loan or Unpaid Sum (as applicable):
- (i) the Loan, relevant part of the Loan or Unpaid Sum (as applicable) shall be a "Term SOFR Loan"; and
- (ii) paragraph (b) of the definition of Floating Interest Rate shall apply to it.

### **6.3** **Notifications by Agent**

- (1) Subject to paragraph (3) below, following the occurrence of a Rate Switch Trigger Event, the Agent shall:
- (a) promptly upon becoming aware of the occurrence of that Rate Switch Trigger Event, notify the Borrower and the Lenders of that occurrence; and
- (b) promptly upon becoming aware of the date of the Rate Switch Trigger Event Date applicable to that Rate Switch Trigger Event, notify the Borrower and the Lenders of that date
- (2) The Agent shall, promptly upon becoming aware of the occurrence of the Rate Switch Date, notify the Borrower and the Lenders of that occurrence.
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- (3) The Parties agree that the FCA Cessation Announcement constitutes a Rate Switch Trigger Event, that the Rate Switch Trigger Event Date applicable to such Rate Switch Trigger Event will be 1 July 2023 and that the Agent is not under any obligation under paragraph (1) above to notify any Party of such Rate Switch Trigger Event or Rate Switch Trigger Event Date resulting from the FCA Cessation Announcement.
- (4) For the purposes of paragraph (3) above, the "FCA Cessation Announcement" means the announcement on 5 March 2021 by the UK's Financial Conduct Authority that all LIBOR settings will, as of certain specified future dates, either cease to be provided by any administrator or no longer be representative of the market and economic reality that they are intended to measure and that such representativeness will not be restored.

## 7 **6INTEREST**

### **7.1 6-1Fixed Interest Rate**

If the Borrower has specified a Fixed Interest Rate pursuant to paragraph (b) of Clause 3.5 (*No later than Sixty (60) days before the Intended Delivery Date*), the Loan shall bear interest at the CIRR. Such interest shall accrue on the actual number of days elapsed based upon a 360 day year and shall be paid on each Repayment Date.

### **7.2 6-2Floating Interest Rate**

If:

- (a) the Borrower has specified a Floating Interest Rate pursuant to paragraph (b) of Clause 3.5 (*No later than Sixty (60) days before the Intended Delivery Date*); or
- (b) the Borrower has specified a Fixed Interest Rate pursuant to paragraph (b) of Clause 3.5 (*No later than Sixty (60) days before the Intended Delivery Date*) but thereafter for any reason whatsoever the Interest Make-up Agreement shall cease to be in effect,

the rate of interest on the Loan in respect of any Interest Period shall be the Floating Interest Rate applicable for that Interest Period and the following provisions of this Clause 6 (*Interest*) shall apply (in the case of the circumstances referred to in paragraph (b) above, with effect from the date on which the Interest Make-up Agreement ceases to be in effect, with such consequential amendments as shall be necessary to give effect to the switch from a Fixed Interest Rate to a Floating Interest Rate).

### **7.3 6-3Interest in respect of Deferral Tranches**

The rate of interest for each Interest Period in respect of each Deferral Tranche shall be the relevant Floating Interest Rate.

### **7.4 6-4Deferred Costs**

Independently to any other obligation to pay costs, expenses or interest under or in connection with this Agreement, the Borrower shall, as a separate obligation, also pay to the Agent (for distribution to each Lender) deferred costs in respect of any drawn portion of a Deferral Tranche at the relevant Deferred Costs Percentage for each Interest Period during which any part of that Deferral Tranche remains outstanding. Whilst not an interest liability, such deferred costs shall be charged from and including the first day of the applicable Interest Period in which an amount of the relevant Deferral Tranche is outstanding to (but not

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including) the last day of such Interest Period, and will be payable semi-annually in arrears on each interest payment date. Any deferred costs payable in accordance with this Clause ~~6.4-7.4~~ (*Deferred Costs*) shall be calculated on the basis of the actual number of days elapsed over a year comprised of 360 days. Any non-payment of such deferred costs shall be an Event of Default in accordance with Clause ~~48.2-19.2~~ (*Non-payment*).

**7.5 6-5 Payment of Floating Interest Rate**

Subject to the provisions of this Agreement, interest on the Loan in respect of each Interest Period shall accrue on the actual number of days elapsed based upon a 360 day year and shall be paid by the Borrower on the last day of that Interest Period.

**7.6 6-6 Notification of Interest Periods and Floating Interest Rate**

(a) ~~The Save where paragraph (d) of Clause 7.10 (Unavailability of Term SOFR) applies, the~~ Agent shall notify the Borrower and each Lender of each Floating Interest Rate and the duration of each Interest Period as soon as reasonably practicable after each is determined and no later than the Quotation Day.

(b) In respect of any Fallback Interest Payment, the Agent shall promptly upon a Fallback Interest Payment being determinable notify:

(i) the Borrower of that Fallback Interest Payment;

(ii) each relevant Lender of the proportion of that Fallback Interest Payment which relates to that Lender's participation in the Loan or the relevant part of the Loan; and

(iii) the relevant Lenders and the Borrower of each applicable Daily Simple SOFR relating to the determination of that Fallback Interest Payment.

(c) The Agent shall promptly notify the Borrower of each Funding Rate relating to the Loan or any part of the Loan.

7.7 This Clause 7.6 (Notification of Interest Periods and Floating Interest Rate) shall not require the Agent to make any notification to any Party on a day which is not a Business Day.

**7.8 6-7 Unavailability of Screen Rate before Rate Switch Date**

(a) *Interpolated Screen Rate*: If no Screen Rate is available for ~~LIBOR for~~ the Interest Period of ~~the Loan or any part of the LIBOR~~ 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 LIBOR~~ Loan.

(b) *Reference Bank Rate*: If no Screen Rate is available for LIBOR for:

(i) Dollars;

(ii) the Interest Period of ~~the Loan or any part of the LIBOR~~ Loan and it is not possible to calculate the Interpolated Screen Rate,

(iii) 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 LIBOR~~ Loan.

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- (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 that Loan or that part of the Loan (as applicable)~~ and Clause ~~6.10~~ 7.12 (*Cost of funds*) shall apply to the Loan or that part of the Loan for that Interest Period.

#### 7.9 **6.8** 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.

#### 7.10 Unavailability of Term SOFR

- (a) *Interpolated Term SOFR*: If no Term SOFR is available for the Interest Period of any Term SOFR Loan, the applicable Term SOFR Reference Rate shall be the Interpolated Term SOFR for a period equal in length to the Interest Period of that Term SOFR Loan.
- (b) *Historic Term SOFR*: If no Term SOFR is available for the Interest Period of any Term SOFR Loan and it is not possible to calculate the Interpolated Term SOFR, the applicable Term SOFR Reference Rate shall be the Historic Term SOFR for that Term SOFR Loan.
- (c) *Interpolated Historic Term SOFR*: If paragraph (b) above applies but no Historic Term SOFR is available for the Interest Period of any Term SOFR Loan, the applicable Term SOFR Reference Rate shall be the Interpolated Historic Term SOFR for a period equal in length to the Interest Period of that Term SOFR Loan.
- (d) *Daily Simple SOFR*: If, after giving effect to paragraph (c) above, no Term SOFR is available for the Interest Period of a Term SOFR Loan and it is not possible to calculate the Interpolated Historic Term SOFR, that Term SOFR Loan shall bear interest for any day of the relevant Interest Period at a rate per annum equal to the aggregate of the applicable (i) Daily Simple SOFR; (ii) Margin; and (iii) Credit Adjustment Spread.
- (e) *Cost of funds*: If paragraph (d) above applies but it is not possible to calculate the Daily Simple SOFR, there shall be no Term SOFR Reference Rate for that Term SOFR Loan and Clause 7.12 (*Cost of funds*) shall apply to that Term SOFR Loan for that Interest Period.

#### 7.11 **6.9** Market Disruption

- (a) ~~If in the case of a LIBOR Loan, if~~ before close of business in London on the Quotation Day for the relevant Interest Period the Agent receives notification from a Lender or Lenders (whose participations in the Loan or the relevant part of the Loan in aggregate exceed [\*] per cent. of the Loan or the relevant part of the Loan as appropriate) that the cost to it or each of them 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 ~~6.10~~ 7.12 (*Cost of funds*) shall apply to the Loan or that part of the Loan (as applicable) for the relevant Interest Period.
- (b) In the case of a Term SOFR Loan, if before close of business in London on the Quotation Day for the relevant Interest Period, the Agent receives notification from a Lender or Lenders (whose participations in the Loan or the relevant part of the Loan exceed 50 per cent. of the Loan or the relevant part of the Loan as appropriate) that its cost of funds relating to its
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participation in the Loan or that part of the Loan would be in excess of the Market Disruption Rate then Clause 7.12 (Cost of funds) shall apply to the Loan or that part of the Loan (as applicable) for the relevant Interest Period

**7.12 6.10 Cost of funds**

- (a) If this Clause ~~6.10~~7.12 (*Cost of funds*) applies, the rate of interest on the Loan or the relevant part of the Loan for the relevant Interest Period shall be the percentage rate per annum which is the sum of:
- (i) the Margin; and
  - (ii) the weighted average of the rates notified to the Agent by each 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 cost of funds relating to~~ its participation in the Loan or that part of the Loan from whatever source it may reasonably select.
- (b) If this Clause ~~6.10~~7.12 (*Cost of funds*) applies and the Agent or the Borrower so requires, the Agent and the Borrower shall enter into negotiations (for a period of not more than 30 days) with a view to agreeing a substitute basis for determining the rate of interest or (as the case may be) an alternative basis for funding.
- (c) Subject to Clause ~~6.11~~7.13 (~~Replacement of Screen Rate~~Changes to the reference rates), 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 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 ~~6.10~~7.12 (*Cost of funds*) applies pursuant to Clause ~~6.9~~7.10 (*Market disruption*) and:
- (i) in relation to a LIBOR Loan, a Lender's Funding Rate is less than LIBOR; or, that Lender's cost of funds relating to its participation in the Loan or the relevant part of the Loan for that Interest Period shall be deemed, for the purposes of sub-paragraph (ii) of paragraph (a) above, to be LIBOR.
  - (ii) in relation to a Term SOFR Loan, a Lender's Funding Rate is less than the Market Disruption Rate, that Lender's cost of funds relating to its participation in the Loan or the relevant part of the Loan for that Interest Period shall be deemed, for the purposes of sub-paragraph (ii) of paragraph (a) above, to be the Market Disruption Rate for that Term SOFR Loan.
  - (iii) ~~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 ~~6.10~~7.12 (*Cost of funds*) applies but any Lender does not ~~supply a quotation~~notify a rate to the Agent by the time specified in sub-paragraph (ii) of paragraph (a) above, the rate
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of interest shall be calculated on the basis of the ~~quotations of~~ rates notified by the remaining Lenders.

#### 6.14 Replacement of Screen Rate

#### 7.13 Changes to the reference rates

(a) ~~If a Screen~~ If a Published Rate Replacement Event has occurred in relation to the ~~Screen~~ Published Rate ~~for Dollars~~, any amendment or waiver which relates to:

- (i) ~~(a)~~ providing for the use of a Replacement ~~Benchmark~~ Reference Rate; and
- (ii) ~~(b)~~
  - (A) ~~(i)~~ aligning any provision of any Finance Document to the use of that Replacement ~~Benchmark~~ Reference Rate;
  - (B) ~~(ii)~~ enabling that Replacement ~~Benchmark~~ Reference Rate to be used for the calculation of interest under this Agreement (including, without limitation, any consequential changes required to enable that Replacement ~~Benchmark~~ Reference Rate to be used for the purposes of this Agreement);
  - (C) ~~(iii)~~ implementing market conventions applicable to that Replacement ~~Benchmark~~ Reference Rate;
  - (D) ~~(iv)~~ providing for appropriate fallback (and market disruption) provisions for that Replacement ~~Benchmark~~ Reference Rate; or
  - (E) ~~(v)~~ adjusting the pricing to reduce or eliminate, to the extent reasonably practicable, any transfer of economic value from one Party to another as a result of the application of that Replacement ~~Benchmark~~ Reference Rate (and if any adjustment or method for calculating any adjustment has been formally designated, nominated or recommended by the Relevant Nominating Body, the adjustment shall be determined on the basis of that designation, nomination or recommendation),

may be made with the consent of the Agent (acting on the instructions of the Majority Lenders), SACE and SIMEST (if applicable) and the Borrower.

- ~~(c) If, as at 30 September 2021, this Agreement provides that the rate of interest for the Loan in Dollars is to be determined by reference to the Screen Rate for LIBOR:~~
- ~~(i) a Screen Rate Replacement Event shall be deemed to have occurred on that date in relation to the Screen Rate for Dollars; and~~
  - ~~(ii) the Agent (acting on the instructions of the Majority Lenders) and the Obligors shall enter into negotiations in good faith with a view to agreeing the use of a Replacement Benchmark in relation to Dollars in place of that Screen Rate from and including a date no later than 30 November 2021, unless the Borrower and the Agent (acting on the instructions of the Majority Lenders) agree to defer the date of the negotiations required under this sub-paragraph (ii) together with the date for the use of such a Replacement Benchmark, in which case such dates shall be those so agreed.~~
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- (b) ~~(e)~~ If an amendment is required as contemplated in this Clause ~~6.11-7.13~~ (~~Replacement of Screen Rate Changes to reference rates~~), the Obligors shall reimburse ~~each of~~ the Agent ~~and the Security Trustee~~ for the amount of all costs and expenses (including legal fees and other professional expenses) incurred by each Creditor Party in relation to such amendment.

In this Clause 7.13:

"Published Rate" means:

- (a) SOFR; or
- (b) Term SOFR for any Quoted Tenor.

"Published Rate Contingency Period" means, in relation to:

- (a) Term SOFR (all Quoted Tenors), ten US Government Securities Business Days;
- (b) SOFR, ten US Government Securities Business Days.

"Published Rate Replacement Event" means, in relation to a Published Rate:

- (a) the methodology, formula or other means of determining that Published Rate has, in the opinion of the Majority Lenders, and the Borrower materially changed;

(b)

(i)

(A) the administrator of that Published Rate or its supervisor publicly announces that such administrator is insolvent; or

(B) information is published in any order, decree, notice, petition or filing, however described, of or filed with a court, tribunal, exchange, regulatory authority or similar administrative, regulatory or judicial body which reasonably confirms that the administrator of that Published Rate is insolvent,

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

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

(iii) the supervisor of the administrator of that Published Rate publicly announces that such Published Rate has been or will be permanently or indefinitely discontinued; or

(iv) the administrator of that Published Rate or its supervisor announces that that Published Rate may no longer be used; or

(c) the administrator of that Published Rate (or the administrator of an interest rate which is a constituent element of that Published Rate) determines that that Published Rate

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should be calculated in accordance with its reduced submissions or other contingency or fallback policies or arrangements and either:

- (i) the circumstance(s) or event(s) leading to such determination are not (in the opinion of the Majority Lenders and the Borrower) temporary; or
- (ii) that Published Rate is calculated in accordance with any such policy or arrangement for a period no less than the applicable Published Rate Contingency Period; or
- (d) in the opinion of the Majority Lenders and the Borrower, that Published Rate is otherwise no longer appropriate for the purposes of calculating interest under this Agreement.

**"Replacement Reference Rate"** means a reference rate which is:

- (a) formally designated, nominated or recommended as the replacement for a Published Rate by:
  - (i) the administrator of that Published Rate (provided that the market or economic reality that such reference rate measures is the same as that measured by that Published Rate); or
  - (ii) any Relevant Nominating Body,

and if replacements have, at the relevant time, been formally designated, nominated or recommended under both paragraphs, the "Replacement Reference Rate" will be the replacement under sub-paragraph (ii) above;

- (b) in the opinion of the Majority Lenders and the Borrower, generally accepted in the international or any relevant domestic syndicated loan markets as the appropriate successor or alternative to a Published Rate; or
- (c) in the opinion of the Majority Lenders and the Borrower, an appropriate successor or alternative to a Published Rate.

#### **7.14 ~~6.12~~ Notice of prepayment**

If no agreement is reached with the Borrower under Clause ~~6.11-7.13~~ (~~Replacement of Screen Rate Changes to the reference rates~~), the Borrower may give the Agent not less than 15 Business Days', or, if the Fixed Interest Rate has been selected pursuant to paragraph (a) of Clause 3.5 (*No later than Sixty (60) days before the Intended Delivery Date*), the Borrower may give the Agent not less than 60 days' notice of its intention to prepay at the end of the interest period set by the Agent.

#### **7.15 ~~6.13~~ Prepayment; termination of Commitments**

A notice under Clause ~~6.12-7.14~~ (*Notice of prepayment*) shall be irrevocable; the Agent shall promptly notify the Lenders of the Borrower's notice of intended prepayment; and:

- (a) on the date on which the Agent serves that notice, the Total Commitments shall be cancelled; and
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- (b) on the last Business Day of the Interest Period set by the Agent, the Borrower shall prepay (without premium or penalty) the Loan, together with accrued interest thereon at the applicable rate plus the Margin.

#### **7.16 ~~6.14~~ Application of prepayment**

The provisions of Clause ~~16~~17 (*Cancellation and Prepayment*) shall apply in relation to the prepayment.

### **8 ~~7~~ INTEREST PERIODS**

#### **8.1 ~~7.4~~ Floating Interest Rate**

This Clause ~~7~~8 (*Interest Periods*) applies where the Borrower has specified a Floating Interest Rate pursuant to paragraph (b) of Clause 3.5 (*No later than sixty (60) days before the Intended Delivery Date*) or in the case of each Deferral Tranche.

#### **8.2 ~~7.2~~ Commencement of Interest Periods**

The first Interest Period shall commence on the Drawdown Date and each subsequent Interest Period shall commence on the expiry of the preceding Interest Period.

#### **8.3 ~~7.3~~ Duration of Interest Periods**

Each Interest Period shall be 6 months and shall end on the next succeeding Repayment Date.

#### **8.4 ~~7.4~~ The first Interest Period in relation to each advance or deemed advance (as applicable) under each Deferral Tranche shall start on the date of such advance or deemed advance (as applicable) and end on the last day of the current Interest Period in respect of the Loan, following which all Interest Periods will be consolidated.**

### **9 ~~8~~ CLAIMS OR DEFENCES MAY NOT BE OPPOSED TO THE LENDERS**

#### **9.1 ~~8.4~~ Liability Preserved**

The Borrower may not escape liability under the terms of this Agreement by opposing to the Lenders claims or defences of any kind whatsoever arising under the Shipbuilding Contract, and in particular from its performance, or from any other relationship between the Borrower and the Builder.

### **10 ~~9~~ SACE PREMIUM AND ITALIAN AUTHORITIES**

#### **10.1 ~~9.4~~ SACE Premium**

The estimated SACE Premium is due and payable in two instalments as follows:

- (a) the first instalment of the SACE Premium shall be paid to SACE within 30 days of the issue of the SACE Insurance Policy documentation in the form required by paragraph (b) of Clause 3.3 (*No later than ninety (90) days before the Intended Delivery Date*) of this Agreement and shall be in such amount in Dollars as is calculated by the Agent to be the equivalent of EUR [\*] converted at the Base Rate (the "**First Instalment**"); and
- (b) the second instalment of the SACE Premium shall be such amount in Dollars as is calculated by the Agent to be the product of (i) [\*]% of the Loan actually advanced on the Drawdown Date
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LESS (ii) the amount of the First Instalment (the "**Second Instalment**") and shall be payable on the Drawdown Date.

#### **10.2 9-2 Reimbursement by the Borrower of the SACE Premium**

The Borrower irrevocably agrees to pay the First Instalment, and to instruct the Lenders to pay the Second Instalment on behalf of the Borrower, as follows:

- (a) The First Instalment shall be paid to SACE by the Borrower through the Agent upon notification by the Agent to the Borrower (i) of the issue of the SACE Insurance Policy documentation in the form required by paragraph (b) of Clause 3.3 (*No later than ninety (90) days before the Intended Delivery Date*) of this Agreement, and (ii) of the amount of the First Instalment.
- (b) The Borrower has requested and the Lenders have agreed to finance the payment of one hundred per cent. (100%) of the Second Instalment on the Drawdown Date in accordance with paragraph (b) of Clause 2.1 (*Amount of facility*) of this Agreement.

Consequently, the Borrower hereby irrevocably instructs the Agent on behalf of the Lenders to pay the Second Instalment to SACE on the Drawdown Date and to reimburse themselves by drawing under the Loan the amount of the Second Instalment in accordance with paragraph (b) of Clause 2.1 (*Amount of facility*) of this Agreement.

The Second Instalment financed by the Loan will be repayable in any event by the Borrower to the Lenders in the manner specified in Clause 5 (*Repayment*) and under any and all circumstances including but without limitation in the event of prepayment or acceleration of the Loan.

#### **10.3 9-3 Italian Authorities**

- (a) The Borrower acknowledges and agrees that the Agent and the Lenders are entitled to provide the Italian Authorities with any information they may have relative to the Loan and the business of the Group, to allow the Italian Authorities to inspect all their records relating to this Agreement and the other Transaction Documents and to furnish them with copies thereof. Any such information relative to the Loan may also be given by any Italian Authorities to international institutions charged with collecting statistical data.
- (b) The Borrower acknowledges that, in the making of any decision or determination or the exercise of any discretion or the taking or refraining to take any action under this Agreement or any of the other Finance Documents, the Agent and the Lenders shall be deemed to have acted reasonably if they have acted on the instructions of either of the Italian Authorities.
- (c) Each Party further undertakes not to act in a manner which is inconsistent with the terms of the SACE Insurance Policy.

#### **10.4 9-4 Refund**

In accordance with the SACE Insurance Policy, the Borrower has the right to receive a refund of the first instalment of the SACE Premium referred to in paragraph (a) of Clause ~~9-4~~10.1 (*SACE Premium*), provided that no Event of Default has occurred, in the event that no drawings have been made under this Agreement and the parties have mutually decided to cancel the SACE Insurance Policy following cancellation of the Total Commitments in accordance with Clause ~~16-1~~17.1 (*Cancellation*). In these circumstances, the Borrower may request in writing through the SACE Agent, and shall be entitled to receive from SACE through the SACE Agent, a

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refund of the first instalment of the SACE Premium subject to a deduction for SACE's administrative charges as calculated by SACE in an amount of not less than 15% of the refund or EUR 3,000 (calculated at the exchange rate valid at the date of the refund request) whichever is the higher.

In no event shall the SACE Agent be liable for any refund of the SACE Premium to be made by SACE.

#### **10.5 9-5 Deferral Tranches – additional premium**

A premium is payable by the Borrower to SACE in respect of:

- (a) the 2020 Deferral Tranche (the "**2020 Deferral Tranche Premium**"), it being provided that an amount of \$[\*] was advanced to the Borrower and paid to SACE on 29 June 2020 with the first Advance under the 2020 Deferral Tranche in respect of the 2020 Deferred Repayment Instalments; and
- (b) the 2021 Deferral Tranche (the "**2021 Deferral Tranche Premium**" and together with the 2020 Deferral Tranche Premium, the "**Deferral Tranche Premia**"), payable in an amount of \$[\*] no later than the earlier of (i) 30 days from the date of issuance of the relevant addendum to the SACE Insurance Policy in form and substance acceptable to the Lenders and (ii) the first Advance under the 2021 Deferral Tranche.

Each of the Deferral Tranche Premia paid or to be paid to SACE is non-refundable, and the 2021 Deferral Tranche Premium will not be financed.

#### **11 40 FEES**

##### **11.1 40-4 Fees**

The following fees shall be paid to the Agent by the Borrower as required hereunder:

- (a) for the Mandated Lead Arrangers and the SACE Agent, an arrangement fee in an amount and payable at the time separately agreed in writing between the Mandated Lead Arrangers, the SACE Agent and the Borrower;
- (b) for the Lenders, a commitment fee in Dollars for the period from the date of the Original Facility Agreement to the Delivery Date of the Ship, or the date of receipt by the Agent of the written cancellation notice sent by the Borrower as described in Clause ~~46.4~~ 17.1 (*Cancellation*), whichever is the earliest, computed at the rate of [\*] per cent. ([\*]%) per annum and calculated on the undrawn amount of the Maximum Loan Amount and payable in arrears on the date falling six (6) months after the date of this Agreement and on each date falling at the end of each following consecutive six (6) month period, with the exception of the commitment fee due in respect of the last period, which shall be paid on the Drawdown Date, or the date of receipt by the Agent of the written cancellation notice sent by the Borrower as described in Clause ~~46.4~~ 17.1 (*Cancellation*), whichever is the earliest, such commitment fee to be calculated on the actual number of days elapsed divided by three hundred and sixty (360);

For the purpose of the computation of the periodical commitment fee payable to the Lenders, the Maximum Loan Amount is assumed to be USD 608,082,164;

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In the event the actual amount drawn under the Loan on the Delivery Date is higher, the Borrower shall on the Delivery Date pay the difference between the aggregate commitment fee amounts paid up to that date and the aggregate commitment fee computed on the actual amount to be drawn on the Delivery Date;

- (c) With effect from the date of the 2020 Amendment Agreement, the Borrower shall pay to the Agent (for the account of the Lenders for application pro rata to their Commitments) a commitment fee in the amount of [\*] per cent. ([\*]%) per annum on the daily undrawn 2020 Deferral Commitment. The commitment fee shall be payable in arrears on the date of each advance or deemed advance, as applicable, of the 2020 Deferral Tranche in accordance with Clause 4.9 (*Deferral Tranches*) or, if cancelled, on the date of cancellation of the 2020 Deferral Tranche;
- (d) With effect from the date of the 2021 Amendment and Restatement Agreement, the Borrower shall pay to the Agent (for the account of the Lenders for application pro rata to their Commitments) a commitment fee in the amount of [\*] per cent. ([\*]%) per annum on the daily undrawn 2021 Deferral Commitment. The commitment fee shall be payable in arrears on the date of each advance or deemed advance, as applicable, of the 2021 Deferral Tranche in accordance with Clause 4.9 (*Deferral Tranches*) or, if cancelled, on the date of cancellation of the 2021 Deferral Tranche;
- (e) for the Agent, an agency fee of \$[\*] payable within ten (10) Business Days of the date of the Original Facility Agreement and on or before each anniversary date thereof until total repayment of the Loan unless the Total Commitments are terminated pursuant to Clause ~~46.4~~17.1 (*Cancellation*).

## 12 ~~44~~ TAXES, INCREASED COSTS, COSTS AND RELATED CHARGES

### 12.1 ~~41.4~~ Warranty

The Creditor Parties each warrant to the Borrower that as at the ~~effective date~~ Effective Date of this Agreement there are no Taxes payable in France as a consequence of the signature or performance of this Agreement (other than Taxes payable by each of the Lenders on its overall net income). Each of the Lenders specified in Schedule 1 (*Lenders and Commitments*) undertakes that: (i) its Facility Office is located in France at the ~~effective date~~ Effective Date of this Agreement; and (ii) it will not relocate its Facility Office to another jurisdiction if such relocation could result in the imposition of Taxes in connection with signature or performance of this Agreement (other than Taxes payable by a Lender on its overall net income), it being agreed, for the avoidance of doubt, that each Lender shall be entitled at any time to relocate its Facility Office to another jurisdiction provided that such relocation does not affect the tax status of the transaction for the Borrower by reference to the tax status that would apply were its Facility Office to be located in France.

### 12.2 ~~41.2~~ Taxes

- (a) All Taxes legally payable (other than Taxes payable by each of the Lenders on its overall net income) as a consequence of the signature or performance of this Agreement shall be paid by the Borrower. In consequence, all payments of principal and interest, interest on late payments, compensation, costs, fees and related charges, due in connection with this Agreement shall be made without any deduction or withholding in respect of Taxes. The Borrower therefore hereby agrees expressly that if for any reason full payment of the above amounts is not made, it will immediately pay the Lenders the sums necessary to compensate
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exactly the effect of the deductions or withholdings made in respect of Taxes. If the Borrower fails to perform this obligation, the Lenders shall be entitled, in accordance with Clause ~~48-19~~ 19 (*Events of Default*), either not to make available the Loan or, as the case may require, to require immediate repayment of the Loan.

- (b) If an additional payment is made under this Clause and any Lender or the Agent on its behalf determines that it has received or been granted a credit against or relief of or calculated with reference to the deduction or withholding giving rise to such additional payment, such Lender or the Agent (as the case may be) shall, to the extent that it can do so without prejudice to the retention of the amount of such credit, relief, remission or repayment and provided that it has received the cash benefit of such credit, relief or remission, pay to the Borrower such amount as such Lender or the Agent shall in its reasonable opinion have concluded to be attributable to the relevant deduction or withholding. Any such payment shall be conclusive evidence of the amount due to the Borrower hereunder and shall be accepted by the Borrower in full and final settlement of its rights of reimbursement hereunder in respect of such deduction or withholding. Nothing herein contained shall interfere with the right of any Lender and the Agent to arrange their respective tax affairs in whatever manner they think fit.
- (c) Nothing in this Clause ~~41-2-12.2~~ 12.2 (*Taxes*) shall require the Borrower to compensate the Lenders in respect of any tax imposed under or in connection with FATCA.

### **12.3 ~~41-3~~FATCA Deduction**

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

### **12.4 ~~41-4~~FATCA Information**

- (a) Subject to paragraph (c) below, each Party shall, within ten Business Days of a reasonable request by another Party:
    - (i) confirm to that other Party whether it is:
      - (A) a FATCA Exempt Party; or
      - (B) not a FATCA Exempt Party; and
    - (ii) supply to that other Party such forms (including any applicable W8 BEN-E or W9 or other equivalent form), 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 or any other law, regulation, or exchange of information regime.
  - (b) If a Party confirms to another Party pursuant to paragraph (a)(i) of Clause ~~41-4-12.4~~ 12.4 (*FATCA Information*) above that it is a FATCA Exempt Party and it subsequently becomes aware that it
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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 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.

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 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.

## **12.5 ~~11.5~~ Increased Costs**

If after the date of the Original Facility Agreement by reason of:

- (a) any change in law or in its interpretation or administration; and/or
- (b) compliance with any request from or requirement of any central bank or other fiscal, monetary or other authority including but without limitation the Basel Committee on Banking Regulations and Supervisory Practices whether or not having the force of law:
  - (i) any of the Lenders incurs a cost as a result of its performing its obligations under this Agreement and/or its making available its Commitment hereunder; or
  - (ii) there is any increase in the cost to any of the Lenders of funding or maintaining all or any of the advances comprised in a class of advances formed by or including its Commitment advanced or to be advanced by it hereunder; or
  - (iii) any of the Lenders incurs a cost as a result of its having entered into and/or its assuming or maintaining its commitment under this Agreement; or
  - (iv) any of the Lenders becomes liable to make any payment on account of Tax or otherwise (other than Tax on its overall net income) on or calculated by reference to the amount of its Commitment advanced or to be advanced hereunder and/or any sum received or receivable by it hereunder; or
  - (v) any of the Lenders suffers any decrease in its rate of return as a result of any changes in the requirements relating to capital ratios, monetary control ratios, the payment of special deposits, liquidity costs or other similar requirements affecting that Lender,

then the Borrower shall from time to time on demand pay to the Agent for the account of the relevant Lender or Lenders amounts sufficient to indemnify the relevant Lender or Lenders against, as the case may be, such cost, such increased cost (or such proportion of such increased cost as is in the reasonable opinion of the relevant Lender or Lenders attributable to the funding or maintaining of its or their Commitment(s) hereunder) or such liability.

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A Lender affected by any provision of this Clause ~~41.3~~-12.3 (*FATCA Deduction*) shall promptly inform the Agent after becoming aware of the relevant change and its possible results (which notice shall be conclusive evidence of the relevant change and its possible results) and the Agent shall, as soon as reasonably practicable thereafter, notify the Borrower of the change and its possible results. Without affecting the Borrower's obligations under this Clause ~~41.3~~-12.3 (*FATCA Deduction*) and in consultation with the Agent, the affected Lender will then take all such reasonable steps as may be open to it to mitigate the effect of the change (for example (if then possible) by changing its Facility Office or transferring some or all of its rights and obligations under this Agreement to another financial institution reasonably acceptable to the Borrower and the Agent). The reasonable costs of mitigating the effect of any such change shall be borne by the Borrower save where such costs are of an internal administrative nature and are not incurred in dealings by any Lender with third parties.

Nothing in this Clause ~~41.5~~-12.5 (*Increased Costs*) shall require the Borrower to compensate the Lenders in respect of any tax imposed under or in connection with FATCA.

#### **12.6 ~~41.6~~Transaction Costs**

The Borrower undertakes to pay to the Agent, upon demand, all costs and expenses, duties and fees, including but without limitation agreed legal costs, out of pocket expenses and travel costs, incurred by the Mandated Lead Arrangers and the Lenders (but not including any bank which becomes a Lender after the date of the Original Facility Agreement) in connection with the negotiation, preparation and execution of all agreements, guarantees, security agreements and related documents entered into, or to be entered into, for the purpose of the transaction contemplated hereby as well as all costs and expenses, duties and fees incurred by the Agent or the Lenders in connection with the registration, filing, enforcement or discharge of the said guarantees or security agreements, including without limitation the fees and expenses of legal advisers and insurance experts and the fees and expenses of SACE (including the fees and expenses of its legal advisers) payable by the Mandated Lead Arrangers to SACE, the cost of registration and discharge of security interests and the related travel and out of pocket expenses; the Borrower further undertakes to pay to the Agent all costs, expenses, duties and fees incurred by the Lenders and SACE in connection with any variation of this Agreement and the related documents, guarantees and security agreements, any supplements thereto and waiver given in relation thereto, in connection with the enforcement or preservation of any rights under this Agreement and/or the related guarantees and security agreements, including in each case the fees and expenses of legal advisers, and in connection with the consultations or proceedings made necessary or in the opinion of the Agent desirable by the acts of, or failure to act on the part of, the Borrower.

#### **12.7 ~~41.7~~Costs of delayed Delivery Date**

The Borrower undertakes to pay to the Agent, upon demand, any costs incurred by the Lenders in funding the Loan in the event that the Delivery Date is later than the Intended Delivery Date unless the Borrower has given the Agent at least three (3) Business Days' notification of such delay in the Delivery Date.

### **13 ~~42~~REPRESENTATIONS AND WARRANTIES**

#### **13.1 ~~42.4~~Timing and repetition**

The following applies in relation to the time at which representations and warranties are made and repeated:

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- (a) the representations and warranties in Clause ~~42.2~~13.2 (*Continuing representations and warranties*) are made on the date of the Original Facility Agreement and shall be deemed to be repeated, with reference mutatis mutandis to the facts and circumstances subsisting, as if made on each day until the Borrower has no remaining obligations, actual or contingent, under or pursuant to this Agreement or any of the other Finance Documents;
- (b) the representations and warranties in Clause ~~42.3~~13.3 (*Semi-continuing representations and warranties*) are made on the date of the Original Facility Agreement and shall be deemed to be repeated, with reference mutatis mutandis to the facts and circumstances subsisting, as if made on the date falling sixty (60) days before the Intended Delivery Date and thereafter on each day until the Borrower has no remaining obligations, actual or contingent, under or pursuant to this Agreement or any of the other Finance Documents; and
- (c) the representations and warranties in Clause ~~42.4~~13.4 (*Representations on the Delivery Date*) are made on the Delivery Date and shall be deemed to be repeated, with reference mutatis mutandis to the facts and circumstances subsisting, as if made thereafter on each day until the Borrower has no remaining obligations, actual or contingent, under or pursuant to this Agreement or any of the other Finance Documents.

### **13.2 ~~42.2~~Continuing representations and warranties**

The Borrower represents and warrants to each of the Lenders that:

- (a) each Obligor is a limited liability company or body corporate duly organised, constituted and validly existing under the laws of the country of its formation or (as the case may be) incorporation, possessing perpetual existence, the capacity to sue and be sued in its own name and the power to own and charge its assets and carry on its business as it is now being conducted;
- (b) each Obligor has the power to enter into and perform this Agreement and those of the other Transaction Documents to which it is a party and the transactions contemplated hereby and thereby and has taken all necessary action to authorise the entry into and performance of this Agreement and such other Transaction Documents and such transactions;
- (c) this Agreement and each other Transaction Document constitutes (or will constitute when executed) legal, valid and binding obligations of each Obligor expressed to be a party thereto enforceable in accordance with their respective terms and in entering into this Agreement and borrowing the Loan, the Borrower is acting on its own account;
- (d) the entry into and performance of this Agreement and the other Transaction Documents and the transactions contemplated hereby and thereby do not and will not conflict with:
  - (i) any law or regulation or any official or judicial order; or
  - (ii) the constitutional documents of any Obligor; or
  - (iii) any agreement or document to which any Obligor is a party or which is binding upon such Obligor or any of its assets,

nor result in the creation or imposition of any Security Interest on the Borrower or its assets pursuant to the provisions of any such agreement or document, except for Security Interests which qualify as Permitted Security Interests with respect to the Borrower;

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- (e) except for:
- (i) the filing of UCC-1 Financing Statements against the Borrower in respect of those Financing Documents to which it is a party and which create Security Interests;
  - (ii) the recording of the Original Mortgage in the office of the Maritime Administrator of the Republic of the Marshall Islands; and
  - (iii) the registration of the Ship under an Approved Flag,

all authorisations, approvals, consents, licences, exemptions, filings, registrations, notarisations and other matters, official or otherwise, required in connection with the entry into, performance, validity and enforceability of this Agreement and each of the other Transaction Documents to which any Obligor is a party and the transactions contemplated thereby have been obtained or effected and are in full force and effect except authorisations, approvals, consents, licences, exemptions, filings and registrations required in the normal day to day course of the operation of the Ship and not already obtained by the Borrower;

- (f) all information furnished by any Obligor relating to the business and affairs of any Obligor in connection with this Agreement and the other Transaction Documents was and remains true and correct in all material respects and there are no other material facts or considerations the omission of which would render any such information misleading;
  - (g) each Obligor has fully disclosed to the Agent all facts relating to each Obligor which it knows or should reasonably know and which might reasonably be expected to influence the Lenders in deciding whether or not to enter into this Agreement;
  - (h) the claims of the Creditor Parties against the Borrower under this Agreement will rank at least *pari passu* with the claims of all unsecured creditors of the Borrower (other than claims of such creditors to the extent that they are statutorily preferred) and in priority to the claims of any creditor of the Borrower who is also an Obligor;
  - (i) the Borrower is and shall remain, after the advance to it of the Loan, solvent in accordance with the laws of the Marshall Islands and the United Kingdom and in particular with the provisions of the Insolvency Act 1986 (as from time to time amended) and the requirements thereof;
  - (j) neither the Borrower nor any other Obligor has taken any corporate action nor have any other steps been taken or legal proceedings been started or (to the best of its knowledge and belief) threatened against any of them for the reorganisation, winding-up, dissolution or for the appointment of a liquidator, administrator, receiver, administrative receiver, trustee or similar officer of any of them or any or all of their assets or revenues nor has it sought any other relief under any applicable insolvency or bankruptcy law;
  - (k) the consolidated audited accounts of both Prior Guarantors for the period ending on 31 December 2013 (which accounts have been prepared in accordance with GAAP) fairly represent the financial condition of each Prior Guarantor as shown in such audited accounts and (B) (in relation to any date on which this representation and warranty is deemed to be repeated pursuant to paragraph (a) of Clause ~~42.4~~ 13.1 (*Timing and repetition*)) the latest available annual consolidated audited accounts of the Guarantor at the date of repetition (which accounts have been prepared in accordance with GAAP) fairly represent the financial condition of the Guarantor as shown in such audited accounts;
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- (l) none of the Obligors nor any of their respective assets enjoys any right of immunity (sovereign or otherwise) from set-off, suit or execution in respect of their obligations under this Agreement or any of the other Transaction Documents or by any relevant or applicable law;
  - (m) all the membership interest in the Borrower and all shares or membership interest in any Approved Manager which is a member of the Group shall be legally and beneficially owned directly or indirectly by (in the case of the Borrower) Oceania Cruises and (in the case of such Approved Manager) the Guarantor and such structure shall remain so throughout the Security Period;
  - (n) the copies of the Shipbuilding Contract, any External Management Agreement, any charter and any charter guarantee being the subject of a Time Charter Assignment (if any) and any other relevant third party agreements including but without limitation the copies of any documents in respect of the Insurances delivered to the Agent are true and complete copies of each such document constituting valid and binding obligations of the parties thereto enforceable in accordance with their respective terms and, subject to Clauses ~~13.14~~ 14.14 (*Pooling of earnings and charters*) and ~~13.24~~ 14.24 (*Irrevocable payment instructions*), no amendments thereto or variations thereof have been agreed nor has any action been taken by the parties thereto which would in any way render such document inoperative or unenforceable; and
  - (o) any borrowing by the Borrower under this Agreement, and the performance of its obligations under this Agreement and the other Transaction Documents, will be for its own account and will not involve any breach by it of any law or regulatory measure relating to "money laundering" as defined in Article 1 of the Directive (91/308/EEC) of the Council of the European Communities (as amended by Directive 2001/97/EC of the European Parliament and of the Council of 4 December 2001).
  - (p) no Obligor is:
    - (i) 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;
  - (q) 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;
  - (r) to the best of the Borrower's, Oceania Cruises and the Guarantor's knowledge, no Prohibited Payment has been or will be made or provided, directly or indirectly, by (or on behalf of) it, any of its affiliates, its or its officers, directors or any other person acting on its behalf to, or for the benefit of, any authority (or any official, officer, director, agent or key employee of, or other person with management responsibilities in, of any authority) in connection with the Ship, this Agreement and/or the Finance Documents;
  - (s) no payments made or to be made by the Borrower, Oceania Cruises or the Guarantor in respect of amounts due under this Agreement or any Finance Document have been or shall be funded out of funds of Illicit Origin and none of the sources of funds to be used by the Borrower, Oceania Cruises or the Guarantor in connection with the construction of the Ship or its business are of Illicit Origin.
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### 13.3 ~~12.3~~ Semi-continuing representations and warranties

The Borrower represents and warrants to each of the Lenders that:

- (a) no event has occurred which constitutes a default under or in respect of any Transaction Document to which any Obligor or the Builder is a party or by which any Obligor or the Builder may be bound (including (inter alia) this Agreement) and no event has occurred which constitutes a default under or in respect of any agreement or document to which any Obligor is a party or by which any Obligor may be bound to an extent or in a manner which might have a material adverse effect on the ability of that Obligor to perform its obligations under the Transaction Documents to which it is a party;
  - (b) none of the assets or rights of the Borrower is subject to any Security Interest except any Security Interest which (i) qualifies as a Permitted Security Interest with respect to the Borrower or (ii) is permitted by Clause ~~13.5~~ 14.5 (*Notification of default*) of this Agreement;
  - (c) no litigation, arbitration or administrative proceedings are current or pending or, to its knowledge, threatened, which might, if adversely determined, have a material adverse effect on the ability of an Obligor to perform its obligations under the Transaction Documents to which it is a party;
  - (d) to the best of its knowledge, each of the Obligors has complied with all taxation laws in all jurisdictions in which it is subject to taxation and has paid all Taxes due and payable by it;
  - (e) each member of the Group has good and marketable title to all its assets which are reflected in the audited accounts referred to in paragraph (k) of Clause ~~12.2~~ 13.2 (*Continuing representations and warranties*);
  - (f) none of the Obligors has a place of business in any jurisdiction (except as already disclosed) which requires any of the Finance Documents to be filed or registered in that jurisdiction to ensure the validity of the Finance Documents to which it is a party;
  - (g) each of the Obligors and each member of the Group:
    - (i) is in compliance with all applicable federal, state, local, foreign and international laws, regulations, conventions and agreements relating to pollution prevention or protection of human health or the environment (including, without limitation, ambient air, surface water, ground water, navigable waters, water of the contiguous zone, ocean waters and international waters), including without limitation, laws, regulations, conventions and agreements relating to:
      - (A) emissions, discharges, releases or threatened releases of chemicals, pollutants, contaminants, wastes, toxic substances, hazardous materials, oil, hazard substances, petroleum and petroleum products and by-products ("**Materials of Environmental Concern**"); or
      - (B) the manufacture, processing, distribution, use, treatment, storage, disposal, transport or handling of Materials of Environmental Concern (such laws, regulations, conventions and agreements the "**Environmental Laws**");
    - (ii) has all permits, licences, approvals, rulings, variances, exemptions, clearances, consents or other authorisations required under applicable Environmental Laws ("**Environmental Approvals**") and is in compliance with all Environmental Approvals
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required to operate its business as presently conducted or as reasonably anticipated to be conducted;

- (iii) has not received any notice, claim, action, cause of action, investigation or demand by any other person, alleging potential liability for, or a requirement to incur, investigatory costs, clean-up costs, response and/or remedial costs (whether incurred by a governmental entity or otherwise), natural resources damages, property damages, personal injuries, attorney's fees and expenses or fines or penalties, in each case arising out of, based on or resulting from:
  - (A) the presence or release or threat of release into the environment of any Material of Environmental Concern at any location, whether or not owned by such person; or
  - (B) circumstances forming the basis of any violation, or alleged violation, of any Environmental Law or Environmental Approval ("**Environmental Claim**"); and

there are no circumstances that may prevent or interfere with such full compliance in the future.

There is no material Environmental Claim pending or threatened against any of the Obligors or any member of the Group.

There are no past or present actions, activities, circumstances, conditions, events or incidents, including, without limitation, the release, emission, discharge or disposal of any Material of Environmental Concern, that could form the basis of any Environmental Claim against any of the Obligors or any member of the Group.

#### **13.4** ~~12.4~~ **Representations on the Delivery Date**

The Borrower further represents and warrants to each of the Lenders that on the Delivery Date the Ship was:

- (a) in its absolute and unencumbered ownership save as contemplated by the Finance Documents;
  - (b) registered in its name under the laws and flag of the Maritime Registry;
  - (c) classed with the highest classification available for a Ship of its type free of all recommendations and qualifications with Lloyd's Register, RINA or Bureau Veritas;
  - (d) operationally seaworthy and in compliance with all relevant provisions, regulations and requirements (statutory or otherwise) applicable to ships registered under the laws and flag of the Maritime Registry;
  - (e) in compliance with the ISM Code, the ISPS Code and Annex VI;
  - (f) insured in accordance with the provisions of Clause ~~13.22~~ 14.22 (*Insurances*) and in compliance with the requirements therein in respect of such insurances; and
  - (g) managed by the Approved Manager and, in the event that the Approved Manager is not a member of the Group, on and subject to the terms set out in the External Management Agreement.
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## **14 ~~13~~UNDERTAKINGS**

### **14.1 ~~13.1~~General**

The Borrower undertakes with each Creditor Party to comply with the following undertakings during the Security Period.

### **14.2 ~~13.2~~Information**

The Borrower will provide to the Agent for the benefit of the Lenders (or will procure the provision of):

- (a) as soon as practicable (and in any event within one hundred and twenty (120) days after the close of its financial year) a Certified Copy of the audited consolidated accounts of the Guarantor and its subsidiaries for that year (commencing with accounts made up to 31 December 2014 in the case of the consolidated accounts of the Guarantor);
- (b) as soon as practicable (and in any event within forty-five (45) days of the end of the contemplated quarter for the first three quarters in any fiscal year and within 90 days for the final quarter) a copy of the unaudited consolidated quarterly management accounts of the Guarantor (it being understood that the delivery by the Guarantor of quarterly or annual reports as filed with the Securities and Exchange Commission in respect of the Guarantor and its consolidated subsidiaries shall satisfy all the requirements of this paragraph (b));
- (c) promptly, such further information in its possession or control regarding the condition or operations of the Ship and its financial condition and operations of the Borrower and those of any company in the Group as the Agent may reasonably request for the benefit of the Creditor Parties; and
- (d) details of any material litigation, arbitration or administrative proceedings (including proceedings relating to any alleged or actual breach of Sanctions, the ISM Code of the ISPS Code) which affect any company in the Group as soon as the same are instituted and served, or, to the knowledge of the Borrower, threatened (and for this purpose proceedings shall be deemed to be material if they involve a claim in an amount exceeding Twenty million Dollars or the equivalent in another currency provided that this threshold shall not apply to any proceedings relating to Sanctions).

All accounts required under this Clause ~~13.2~~ 14.2 (*Information*) shall be prepared in accordance with GAAP and shall fairly represent the financial condition of the relevant company.

### **14.3 ~~13.3~~Illicit Payments**

No payments made by the Borrower, Oceania Cruises or the Guarantor in respect of amounts due under this Agreement or any Finance Document shall be funded out of funds of Illicit Origin and none of the sources of funds to be used by the Borrower, Oceania Cruises or the Guarantor in connection with the construction of the Ship or its business shall be of Illicit Origin

### **14.4 ~~13.4~~Prohibited Payments**

No Prohibited Payment shall be made or provided, directly or indirectly, by (or on behalf of) the Borrower, Oceania Cruises and the Guarantor or any of their affiliates, officers, directors or any other person acting on its behalf to, or for the benefit of, any authority (or any official, officer, director, agent or key employee of, or other person with management responsibilities

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in, of any authority) in connection with the Ship, this Agreement and/or the Finance Documents.

**14.5 ~~13.5~~ Notification of default**

The Borrower will notify the Agent of any Event of Default forthwith upon becoming aware of the occurrence thereof. Upon the Agent's request from time to time the Borrower will issue a certificate stating whether any Obligor is aware of the occurrence of any Event of Default.

**14.6 ~~13.6~~ Consents and registrations**

The Borrower will procure that (and will promptly furnish Certified Copies to the Agent on the request of the Agent of) all such authorisations, approvals, consents, licences and exemptions as may be required under any applicable law or regulation to enable it or any Obligor to perform its obligations under, and ensure the validity or enforceability of, each of the Transaction Documents are obtained and promptly renewed from time to time and will procure that the terms of the same are complied with at all times. Insofar as such filings or registrations have not been completed on or before the Drawdown Date the Borrower will procure the filing or registration within applicable time limits of each Finance Document which requires filing or registration together with all ancillary documents required to preserve the priority and enforceability of the Finance Documents.

**14.7 ~~13.7~~ Negative pledge**

The Borrower will not create or permit to subsist any Security Interest on the whole or any part of its present or future assets, except for the following:

- (a) Security Interests created with the prior consent of the Agent; or
- (b) Security Interests qualifying as Permitted Security Interests with respect to the Borrower and described in paragraphs (a) and (b) of the definition of "Permitted Security Interests" in Clause 1.1 (*Definitions*); or
- (c) Security Interests qualifying as Permitted Security Interests with respect to the Borrower and described in paragraphs (C), (E), (H) or (I) of such definition, provided that insofar as they are enforceable against the Ship they do not prevail over the Mortgage.

**14.8 ~~13.8~~ Disposals**

Except in the case of a sale of the Ship if the completion of the sale is contemporaneous with prepayment of the Loan in accordance with the provisions of Clause ~~16.3-17.3~~ 17.3 (*Mandatory prepayment*) and except for charters and other arrangements complying with Clause ~~13.12-14.12~~ 14.12 (*Financial Records*), the Borrower shall not without the consent of the Majority Lenders, either in a single transaction or in a series of transactions whether related or not and whether voluntarily or involuntarily, sell, transfer, lease or otherwise dispose of the Ship or any of the Ship's equipment except in the case of items being replaced or renewed provided that the net impact is not a reduction in the value of the Ship.

**14.9 ~~13.9~~ Change of business**

Except with the prior consent of the Agent, the Borrower shall not make or threaten to make any substantial change in its business as presently conducted, namely that of a single ship owning company for the Ship, or carry on any other business which is substantial in relation to

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its business as presently conducted so as to affect, in the opinion of the Agent, the Borrower's ability to perform its obligations hereunder.

**14.10 ~~43-40~~ Mergers**

Except with the prior consent of the Lenders, the Borrower will not enter into any amalgamation, restructure, substantial reorganisation, merger, de-merger or consolidation or anything analogous to the foregoing nor will it acquire any equity, share capital or obligations of any corporation or other entity.

**14.11 ~~43-44~~ Maintenance of status and franchises**

The Borrower will do all such things as are necessary to maintain its limited liability company existence in good standing and will ensure that it has the right and is duly qualified to conduct its business as it is conducted in all applicable jurisdictions and will obtain and maintain all franchises and rights necessary for the conduct of its business.

**14.12 ~~43-42~~ Financial records**

The Borrower will keep proper books of record and account, in which proper and correct entries shall be made of all financial transactions and the assets, liabilities and business of the Borrower in accordance with GAAP.

**14.13 ~~43-43~~ Financial indebtedness and subordination of indebtedness**

The following restrictions shall apply:

- (a) otherwise than in the ordinary course of business as owner of the Ship, except as contemplated by this Agreement and except any loan, advance or credit extended by the Guarantor or any member of the Group which is a wholly owned subsidiary of the Guarantor, the Borrower will not create, incur, assume or allow to exist any financial indebtedness, enter into any finance lease or undertake any material capital commitment (including but not limited to the purchase of any capital asset); and
  - (b) the Borrower shall procure that any and all indebtedness (and in particular with any other Obligor) is at all times fully subordinated to the Finance Documents and the obligations of the Borrower hereunder. Upon the occurrence of an Event of Default, the Borrower shall not make any repayments of principal, payments of interest or of any other costs, fees, expenses or liabilities arising from or representing such indebtedness. In this paragraph (b) of Clause ~~43-43~~ 14.13 (*Financial indebtedness and subordination of indebtedness*) "fully subordinated" shall mean that any claim of the lender against the Borrower in relation to such indebtedness shall rank after and be in all respects subordinate to all of the rights and claims of the Creditor Parties under this Agreement and the other Finance Documents and that the lender shall not take any steps to enforce its rights to recover any monies owing to it by the Borrower and in particular but without limitation the lender will not institute any legal or quasi-legal proceedings under any jurisdiction at any time against the Ship, her Earnings or Insurances or the Borrower and it will not compete with the Creditor Parties or any of them in a liquidation or other winding-up or bankruptcy of the Borrower or in any proceedings in connection with the Ship, her Earnings or Insurances.
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#### **14.14 ~~13.14~~ Pooling of earnings and charters**

The Borrower will not without the prior written consent of the Agent enter into in respect of the Ship, nor permit to exist at any time following the Delivery Date:

- (a) any pooling agreement or other arrangement for the sharing of any of the Earnings or the expenses of the Ship except with a member of the Group and provided that it does not adversely affect the rights of the Creditor Parties under the Finance Documents in the reasonable opinion of the Agent; or
- (b) any demise or bareboat charter, provided however that such consent shall not be unreasonably withheld in the event that the Borrower wishes to enter into a bareboat charter in a form approved by the Agent with any company which is a member of the Group on condition that if so requested by the Agent and without limitation:
  - (i) any such bareboat charterer shall enter into such deeds (including but not limited to a full subordination and assignment deed in respect of its rights under the bareboat charter and its interest in the Insurances and earnings payable to it arising out of its use of the Ship), agreements and indemnities as the Agent shall in its sole discretion require prior to entering into the bareboat charter with the Borrower; and
  - (ii) the Borrower shall assign the benefit of any such bareboat charter and its interest in the Insurances to the Creditor Parties by way of further security for the Borrower's obligations under the Finance Documents.; or
- (c) any charter whereunder two (2) months' charterhire (or the equivalent thereof) is payable in advance in respect of the Ship; or
- (d) any charter of the Ship or employment which, with the exercise of options for extension, could be for a period longer than [\*] ([\*]) months; or
- (e) any time charter of the Ship with a company outside the Group, provided however that such consent shall not be unreasonably withheld in the event that:
  - (i) the Borrower agrees to execute in favour of the Creditor Parties an assignment of such time charter, the Earnings therefrom and any guarantee of the charterer's obligations thereunder substantially in the form of the relevant provisions of the Time Charter Assignment and as required by the Agent; and
  - (ii) the Agent is satisfied that the income from such time charter will be sufficient to cover the expenses of the Ship and to service repayment of the Loan and all other amounts from time to time outstanding under this Agreement.

#### **14.15 ~~13.15~~ Loans and guarantees by the Borrower**

Otherwise than in the ordinary course of business in its ownership and operation of the Ship following the Delivery Date, the Borrower will not make any loan or advance or extend credit to any person, firm or corporation or issue or enter into any guarantee or indemnity or otherwise become directly or contingently liable for the obligations of any other person, firm or corporation.

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#### **14.16 ~~43-46~~ Management and employment**

The Borrower will not as from the Delivery Date:

- (a) permit any person other than the Approved Manager to be the manager of, including providing crewing services to, the Ship, acting upon terms approved in writing by the Agent and having entered into:-
  - (i) (in the case of the Approved Manager) an Approved Manager's Undertaking; and
  - (ii) (in the case of the Borrower if the Approved Manager is not a member of the Group) an External Management Agreement Assignment;
- (b) permit any amendment to be made to the terms of any External Management Agreement unless the amendment is advised by the Borrower's tax counsel or is deemed necessary by the parties thereto to reflect the prevailing circumstances but provided that the amendment does not imperil the security to be provided pursuant to the Finance Documents or adversely affect the ability of any Obligor to perform its obligations under the Transaction Documents; or
- (c) permit the Ship to be employed other than within the Oceania brand.

#### **14.17 ~~43-47~~ Acquisition of shares**

The Borrower will not acquire any equity, share capital, assets or obligations of any corporation or other entity or permit its membership interest to be held other than directly or indirectly by Oceania Cruises.

#### **14.18 ~~43-48~~ Trading with the United States of America**

The Borrower shall in respect of the Ship take all reasonable precautions as from the Delivery Date to prevent any infringements of the Anti-Drug Abuse Act of 1986 of the United States of America (as the same may be amended and/or re-enacted from time to time hereafter) or any similar legislation applicable to the Ship in any other jurisdiction in which the Ship shall trade (a "**Relevant Jurisdiction**") where the Ship trades in the territorial waters of the United States of America or a Relevant Jurisdiction.

#### **14.19 ~~43-49~~ Further assurance**

The Borrower will, from time to time on being required to do so by the Agent, do or procure the doing of all such acts and/or execute or procure the execution of all such documents in a form satisfactory to the Agent as the Agent may reasonably consider necessary for giving full effect to any of the Transaction Documents or the SACE Insurance Policy or securing to the Creditor Parties the full benefit of the rights, powers and remedies conferred upon the Creditor Parties or any of them in any such Transaction Document.

#### **14.20 ~~43-20~~ Valuation of the Ship**

The following shall apply in relation to the valuation of the Ship:

- (a) the Borrower will on or before 31 May of each year that commences (but at intervals no more frequently than annually at the Borrower's expense unless an Event of Default has occurred and remains unremedied) following the Delivery Date and within thirty (30) days of receiving any request to that effect from the Agent, procure that the Ship is valued by an independent
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reputable shipbroker or shipvaluer experienced in valuing cruise ships appointed by the Borrower and approved by the Agent (which approval shall not be unreasonably withheld or delayed and such valuation to be made with or without taking into account the benefit or otherwise of any fixed employment relating to the Ship as the Agent may require);

- (b) the Borrower shall procure that forthwith upon the issuance of any valuation obtained pursuant to this Clause ~~13.18-14.20~~ (~~Trading with the United States of America~~ Valuation of the Ship) a copy thereof is sent directly to the Agent for review; and
- (c) in the event that the Borrower fails to procure a valuation in accordance with Clause ~~13.18-14.20~~ (~~Trading with the United States of America~~ Valuation of the Ship), the Agent shall be entitled to procure a valuation of the Ship on the same basis.

#### **14.21 ~~13.21~~ Earnings**

The Borrower will procure that the Earnings (if any) are paid in full without set off and free and clear of and without deduction for any taxes, levies, duties, imposts, charges, fees, restrictions or conditions of any nature whatsoever.

#### **14.22 ~~13.22~~ Insurances**

The Borrower covenants with the Creditor Parties and undertakes with effect from the Delivery Date until the end of the Security Period:

- (a) to insure the Ship in its name and keep the Ship insured on an agreed value basis for an amount in the currency in which the Loan is denominated approved by the Agent but not being less than the greater of (x) [\*] per cent. ([\*]%) of the amount of the Loan; and (y) the full market and commercial value of the Ship determined in accordance with Clause ~~13.18-14.20~~ (~~Trading with the United States of America~~ Valuation of the Ship) from time to time through internationally recognised independent first class insurance companies, underwriters, war risks and protection and indemnity associations acceptable to the Agent in each instance on terms and conditions approved by the Agent including as to deductibles but at least in respect of:
    - (i) fire and marine risks including but without limitation hull and machinery and all other risks customarily and usually covered by first-class and prudent shipowners in the London insurance markets under English marine policies or Agent-approved policies containing the ordinary conditions applicable to similar Ships;
    - (ii) war risks and war risks (protection and indemnity) up to the insured amount;
    - (iii) excess risks that is to say the proportion of claims for general average and salvage charges and under the running down clause not recoverable in consequence of the value at which the Ship is assessed for the purpose of such claims exceeding the insured value;
    - (iv) protection and indemnity risks with full standard coverage as offered by first-class protection and indemnity associations and up to the highest limit of liability available (for oil pollution risk the highest limit currently available is one billion Dollars (USD1,000,000,000) and this to be increased if reasonably requested by the Agent and the increase is possible in accordance with the standard protection and indemnity cover for Ships of its type and is compatible with prudent insurance practice for first
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class cruise shipowners or operators in waters where the Ship trades from time to time from the Delivery Date until the end of the Security Period);

- (v) when and while the Ship is laid-up, in lieu of hull insurance, normal port risks; and
- (vi) such other risks as the Agent may from time to time reasonably require;

and in any event in respect of those risks and at those levels covered by first class and prudent owners and/or financiers in the international market in respect of similar tonnage provided that if any of such insurances are also effected in the name of any other person (other than the Borrower and/or a Creditor Party) such person shall if so required by the Agent execute a first priority assignment of its interest in such insurances in favour of the Creditor Parties in similar terms mutatis mutandis to the relevant provisions of the Tripartite General Assignment;

- (b) that the Agent shall take out mortgagee interest insurance on such conditions as the Agent may reasonably require and mortgagee interest insurance for pollution risks as from time to time agreed each for an amount in the currency in which the Loan is denominated of [\*] per cent. ([\*]%) of the amount of the Loan, the Borrower having no interest or entitlement in respect of such policies; the Borrower shall upon demand of the Agent reimburse the Agent for the costs of effecting and/or maintaining any such insurance(s);
  - (c) if the Ship shall trade in the United States of America and/or the Exclusive Economic Zone of the United States of America (the "EEZ") as such term is defined in the US Oil Pollution Act 1990 ("OPA"), to comply strictly with the requirements of OPA and any similar legislation which may from time to time be enacted in any jurisdiction in which the Ship presently trades or may or will trade at any time during the existence of this Agreement and in particular before such trade is commenced and during the entire period during which such trade is carried on:
    - (i) to pay any additional premiums required to maintain protection and indemnity cover for oil pollution up to the limit available to it for the Ship in the market;
    - (ii) to make all such quarterly or other voyage declarations as may from time to time be required by the Ship's protection and indemnity association and to comply with all obligations in order to maintain such cover, and promptly to deliver to the Agent copies of such declarations;
    - (iii) to submit the Ship to such additional periodic, classification, structural or other surveys which may be required by the Ship's protection and indemnity insurers to maintain cover for such trade and promptly to deliver to the Agent copies of reports made in respect of such surveys;
    - (iv) to implement any recommendations contained in the reports issued following the surveys referred to in paragraph (c)(iii) of Clause ~~13.22~~ 14.22 (*Insurances*) within the time limit specified therein and to provide evidence satisfactory to the Agent that the protection and indemnity insurers are satisfied that this has been done;
    - (v) in particular strictly to comply with the requirements of any applicable law, convention, regulation, proclamation or order with regard to financial responsibility for liabilities imposed on the Borrower or the Ship with respect to pollution by any state or nation or political subdivision thereof, including but not limited to OPA, and to provide the Agent on demand with such information or evidence as it may reasonably require of such compliance;
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- (vi) to procure that the protection and indemnity insurances do not contain a clause excluding the Ship from trading in waters of the United States of America and the EEZ or any other provision analogous thereto and to provide the Agent with evidence that this is so; and
  - (vii) strictly to comply with any operational or structural regulations issued from time to time by any relevant authorities under OPA so that at all times the Ship falls within the provisions which limit strict liability under OPA for oil pollution;
  - (d) to give notice forthwith of any assignment of its interest in the Insurances to the relevant brokers, insurance companies, underwriters and/or associations in the form approved by the Agent;
  - (e) to execute and deliver all such documents and do all such things as may be necessary to confer upon the Creditor Parties legal title to the Insurances in respect of the Ship and to procure that the interest of the Creditor Parties is at all times filed with all slips, cover notes, policies and certificates of entry and to procure (a) that a loss payable clause in the form approved by the Agent shall be filed with all the hull, machinery and equipment and war risks policies in respect of the Ship and (b) that a loss payable clause in the form approved by the Agent shall be endorsed upon the protection and indemnity certificates of entry in respect of the Ship;
  - (f) to procure that each of the relevant brokers and associations furnishes the Agent with a letter of undertaking in such form as may be required by the Agent and waives any lien for premiums or calls except in relation to premiums or calls solely attributable to the Ship;
  - (g) punctually to pay all premiums, calls, contributions or other sums payable in respect of the Insurances on the Ship and to produce all relevant receipts when so required by the Agent;
  - (h) to renew each of the ~~Insurances~~ obligatory insurances on the Ship at least five (5) days before the expiry thereof and to give immediate notice to the Agent of such renewal and to procure that the relevant brokers or associations shall promptly confirm in writing to the Agent that such renewal is effected it being understood by the Borrower that any failure to renew the Insurances on the Ship at least ten (10) days before the expiry thereof or to give or procure the relevant notices of such renewal shall constitute an Event of Default;
  - (i) to arrange for the execution of such guarantees as may from time to time be required by any protection and indemnity and/or war risks association;
  - (j) to furnish the Agent from time to time on request with full information about all Insurances maintained on the Ship and the names of the offices, companies, underwriters, associations or clubs with which such Insurances are placed;
  - (k) not to agree to any variation in the terms of any of the Insurances on the Ship without the prior approval of the Agent nor to do any act or voluntarily suffer or permit any act to be done whereby any Insurances shall or may be rendered invalid, void, voidable, suspended, defeated or unenforceable and not to suffer or permit the Ship to engage in any voyage nor to carry any cargo not permitted under any of the Insurances without first obtaining the consent of the insurers or reinsurers concerned and complying with such requirements as to payment of extra premiums or otherwise as the insurers or reinsurers may impose;
  - (l) not to settle, compromise or abandon any claim in respect of any of the Insurances on the Ship other than a claim of less than [\*] Dollars (\$[\*]) or the equivalent in any other currency and not being a claim arising out of a Total Loss;
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- (m) to apply or ensure the appliance of all such sums receivable in respect of the Insurances on the Ship for the purpose of making good the loss and fully repairing all damage in respect whereof the insurance monies shall have been received;
- (n) that in the event of it making default in insuring and keeping insured the Ship as hereinbefore provided then the Agent may (but shall not be bound to) insure the Ship or enter the Ship in such manner and to such extent as the Agent in its discretion thinks fit and in such case all the cost of effecting and maintaining such insurance together with interest thereon at the Interest Rate shall be paid on demand by the Borrower to the Agent; and
- (o) that the Agent shall be entitled, immediately prior to the Delivery Date and thereafter no more frequently than annually on renewals but also additionally at any time when there is a proposed change of underwriters or the terms of any Insurances, to instruct independent reputable insurance advisers for the purpose of obtaining any advice or information regarding any matter concerning the Insurances which the Agent shall at its sole discretion deem necessary, it being hereby specifically agreed that the Borrower shall reimburse the Agent on demand for the costs and expenses incurred by the Agent in connection with the instruction of such advisers subject to a limit of Twenty five thousand Euro at the time of delivery of the Ship or in the event of a change of underwriters or of terms of any Insurances and otherwise Ten thousand Euro annually thereafter.

#### **14.23 ~~13.23~~ Operation and maintenance of the Ship**

From the Delivery Date until the end of the Security Period at its own expense the Borrower will:

- (a) keep the Ship in a good and efficient state of repair so as to maintain it to the highest classification notation available for the Ship of its age and type free of all recommendations and qualifications with ~~Lloyd's Register, RINA or Bureau Veritas~~ or DNV. On the Delivery Date and annually thereafter, it will furnish to the Agent a statement by such classification society that such classification notation is maintained. It will comply with all recommendations, regulations and requirements (statutory or otherwise) from time to time applicable to the Ship and shall have on board as and when required thereby valid certificates showing compliance therewith and shall procure that all repairs to or replacements of any damaged, worn or lost parts or equipment are carried out (both as regards workmanship and quality of materials) so as not to diminish the value or class of the Ship. It will not make any substantial modifications or alterations to the Ship or any part thereof which would reduce the market and commercial value of the Ship determined in accordance with Clause ~~13.18~~ 14.20 (~~Trading with the United States of America~~ Valuation of the Ship);
  - (b) submit the Ship to continuous survey in respect of its machinery and hull and such other surveys as may be required for classification purposes and, if so required by the Agent, supply to the Agent copies in English of the survey reports;
  - (c) permit surveyors or agents appointed by the Agent to board the Ship at all reasonable times to inspect its condition or satisfy themselves as to repairs proposed or already carried out and afford all proper facilities for such inspections;
  - (d) comply, or procure that the Approved Manager will comply, with the ISM Code (as the same may be amended from time to time) or any replacement of the ISM Code (as the same may be amended from time to time) and in particular, without prejudice to the generality of the foregoing, as and when required to do so by the ISM Code and at all times thereafter:
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- (i) hold, or procure that the Approved Manager holds, a valid Document of Compliance duly issued to the Borrower or the Approved Manager (as the case may be) pursuant to the ISM Code and a valid Safety Management Certificate duly issued to the Ship pursuant to the ISM Code;
  - (ii) provide the Agent with copies of any such Document of Compliance and Safety Management Certificate as soon as the same are issued; and
  - (iii) keep, or procure that there is kept, on board the Ship a copy of any such Document of Compliance and the original of any such Safety Management Certificate;
- (e) comply, or procure that the Approved Manager will comply, with the ISPS Code (as the same may be amended from time to time) or any replacement of the ISPS Code (as the same may be amended from time to time) and in particular, without prejudice to the generality of the foregoing, as and when required to do so by the ISPS Code and at all times thereafter:
- (i) keep, or procure that there is kept, on board the Ship the original of the International Ship Security Certificate required by the ISPS Code; and
  - (ii) keep, or procure that there is kept, on board the Ship a copy of the ship security plan prepared pursuant to the ISPS Code;
- (f) comply with Annex VI (as the same may be amended from time to time) or any replacement of Annex VI (as the same may be amended from time to time) and in particular, without limitation, to:
- (i) procure that the Ship's master and crew are familiar with, and that the Ship complies with, Annex VI; and
  - (ii) maintain for the Ship throughout the Security Period a valid and current IAPPC and provide a copy to the Agent; and
  - (iii) notify the Agent immediately in writing of any actual or threatened withdrawal, suspension, cancellation or modification of the IAPPC;
- (g) not employ the Ship or permit its employment in any trade or business which is forbidden by any applicable law or is otherwise illicit or in carrying illicit or prohibited goods or in any manner whatsoever which may render it liable to condemnation in a prize court or to destruction, seizure or confiscation or that may expose the Ship to penalties. In the event of hostilities in any part of the world (whether war be declared or not) it will not employ the Ship or permit its employment in carrying any contraband goods;
- (h) promptly provide the Agent with (i) all information which the Agent may reasonably require regarding the Ship, its employment, earnings, position and engagements (ii) particulars of all towages and salvages and (iii) copies of all charters and other contracts for its employment and otherwise concerning it;
- (i) give notice to the Agent promptly and in reasonable detail upon the Borrower or any other Obligor becoming aware of:
- (i) accidents to the Ship involving repairs the cost of which will or is likely to exceed [\*] Dollars (\$[\*]);
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- (ii) the Ship becoming or being likely to become a Total Loss;
  - (iii) any recommendation or requirement made by any insurer or classification society or by any competent authority which is not complied with, or cannot be complied with, within any time limit relating thereto and that might reasonably affect the maintenance of either the Insurances or the classification of the Ship;
  - (iv) any writ or claim served against or any arrest of the Ship or the exercise of any lien or purported lien on the Ship, her Earnings or Insurances;
  - (v) the Ship ceasing to be registered under the flag of the Maritime Registry or anything which is done or not done whereby such registration may be imperilled;
  - (vi) it becoming impossible or unlawful for it to fulfil any of its obligations under the Finance Documents; and
  - (vii) anything done or permitted or not done in respect of the Ship by any person which is likely to imperil the security created by the Finance Documents;
- (j) promptly pay and discharge all debts, damages and liabilities, taxes, assessments, charges, fines, penalties, tolls, dues and other outgoings in respect of the Ship and keep proper books of account in respect thereof provided always that the Borrower shall not be obliged to compromise any debts, damages and liabilities as aforesaid which are being contested in good faith subject always that full details of any such contested debt, damage or liability which, either individually or in aggregate exceeds [\*] Dollars (\$[\*]) shall forthwith be provided to the Agent. As and when the Agent may so require the Borrower will make such books available for inspection on behalf of the Agent and provide evidence satisfactory to the Agent that the wages and allotments and the insurance and pension contributions of the master and crew are being regularly paid, that all deductions of crew's wages in respect of any tax liability are being properly accounted for and that the master has no claim for disbursements other than those incurred in the ordinary course of trading on the voyage then in progress or completed prior to such inspection;
- (k) maintain the type of the Ship as at the Delivery Date and not put the Ship into the possession of any person for the purpose of work being done on it in an amount exceeding or likely to exceed [\*] Dollars (\$[\*]) unless such person shall first have given to the Agent a written undertaking addressed to the Agent in terms satisfactory to the Agent agreeing not to exercise a lien on the Ship or her Earnings for the cost of such work or for any other reason;
- (l) promptly pay and discharge all liabilities which have given rise, or may give rise, to liens or claims enforceable against the Ship under the laws of all countries to whose jurisdiction the Ship may from time to time be subject and in particular the Borrower hereby agrees to indemnify and hold the Creditor Parties, their successors, assigns, directors, officers, shareholders, employees and agents harmless from and against any and all claims, losses, liabilities, damages, expenses (including attorneys, fees and expenses and consultant fees) and injuries of any kind whatsoever asserted against the Creditor Parties, with respect to or as a result of the presence, escape, seepage, spillage, release, leaking, discharge or migration from the Ship or other properties owned or operated by the Borrower of any hazardous substance, including without limitation, any claims asserted or arising under any applicable environmental, health and safety laws, codes and ordinances, and all rules and regulations promulgated thereunder of all governmental agencies, regardless of whether or not caused by or within the control of the Borrower subject to the following:
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- (i) it is the parties' understanding that the Creditor Parties do not now, have never and do not intend in the future to exercise any operational control or maintenance over the Ship or any other properties and operations owned or operated by the Borrower, nor in the past, presently, or intend in the future to, maintain an ownership interest in the Ship or any other properties owned or operated by the Borrower except as may arise upon enforcement of the Lenders' rights under the Mortgage;
- (ii) unless and until an Event of Default shall have occurred and without prejudice to the right of each Lender to be indemnified pursuant to this paragraph (l) of Clause ~~43.23~~ 14.23 (*Operation and maintenance of the Ship*):
  - (A) each Lender will, if it is reasonably practicable to do so, notify the Borrower upon receiving a claim in respect of which the relevant Lender is or may become entitled to an indemnity under this paragraph (l) of Clause ~~43.23~~ 14.23 (*Operation and maintenance of the Ship*); and
  - (B) subject to the prior written approval of the relevant Lender which the Lender shall have the right to withhold, the Borrower will be entitled to take, in the name of the relevant Lender, such action as the Borrower may see fit to avoid, dispute, resist, appeal, compromise or defend any such claims, losses, liabilities, damages, expenses and injuries as are referred to above in this paragraph (l) of Clause ~~43.23~~ 14.23 (*Operation and maintenance of the Ship*) or to recover the same from any third party, subject to the Borrower first ensuring that the relevant Lender is secured to its reasonable satisfaction against all expenses thereby incurred or to be incurred;

provided always that the Borrower shall not be obliged to compromise any liabilities as aforesaid which are being contested in good faith subject always that full details of any such contested liabilities which, either individually or in aggregate, exceed [\*] Dollars (\$[\*]) shall be forthwith provided to the Agent. If the Ship is arrested or detained for any reason it will procure its immediate release by providing bail or taking such other steps as the circumstances may require;

- (m) give to the Agent at such times as it may from time to time reasonably require a certificate, duly signed on its behalf, as to the total amount of any debts, damages and liabilities relating to the Ship and details of such of those debts, damages and liabilities as are over a certain amount to be specified by the Agent at the relevant time and, if so required by the Agent, forthwith discharge such of those debts, damages and liabilities as the Agent shall require other than those being contested in good faith; and
- (n) maintain the registration of the Ship under and fly the flag of the Maritime Registry and not do or permit anything to be done whereby such registration may be forfeited or imperilled.

#### **14.24 ~~43.24~~ Irrevocable payment instructions**

The Borrower shall not modify, revoke or withhold the payment instructions set out in Clause 4.1 (*Borrower's irrevocable payment instructions*) without the agreement of the Builder (in the case of paragraph (a) of Clause 4.1 (*Borrower's irrevocable payment instructions*) only), the Agent and the Lenders.

#### **14.25 ~~43.25~~ "Know your customer" checks**

If:

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- (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 a Borrower after the date of the Original Facility Agreement; or
- (c) a proposed assignment or transfer by a Lender of any of its rights and obligations under the Original Facility 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) of Clause ~~43.23~~14.23 (*Operation and maintenance of the Ship*), any prospective new Lender) to comply with "know your customer" or similar identification procedures in circumstances where the necessary information is not already available to it, the Borrower shall promptly upon the request of the Agent or any Lender supply, or procure the supply of, such documentation and other evidence as is reasonably requested by the Agent (for itself or on behalf of any Lender) or any Lender (for itself or, in the case of the event described in paragraph (c) of Clause ~~43.23~~14.23 (*Operation and maintenance of the Ship*), on behalf of any prospective new Lender) in order for the Agent and, such Lender or 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.

#### **14.26 ~~43.26~~ Shipbuilding Contract**

The Borrower shall not modify the Shipbuilding Contract, directly or indirectly, if, by reason of regulations which apply to a Lender, such modification would make such Lender's Commitment impossible to fulfil or would change the substance or form of its Commitment. The Borrower will, therefore, submit to the Agent any proposals for modification which, in its opinion, might have such a consequence, and the Agent on behalf of the Lenders will indicate in a timely manner whether the modification proposed will allow the Loan to be maintained. On or about the last day of each successive period of three (3) months commencing on the date of the Original Facility Agreement and on the date of the Drawdown Notice, the Borrower undertakes to provide the Agent with a copy of any Change Order entered into during that three (3) month or other period. The Borrower also undertakes to notify the Agent of any change in the Intended Delivery Date as soon as practicable after each change has occurred.

#### **14.27 ~~43.27~~ FOREX Contracts**

The Borrower shall

- (a) provide the Agent with a copy of all FOREX Contracts together with all relevant details with ten (10) days of their execution; and
- (b) inform the Agent, when requested by the Agent, of its intended hedging policy for purchasing Euro with Dollars.

#### **14.28 ~~43.28~~ Compliance with laws etc**

The Borrower shall:

- (a) comply, or procure compliance with:
    - (i) in all material respects, all laws and regulations relating to its business generally; and
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- (ii) in all material respects (except in the case of compliance with Sanctions which must be complied with in all respects), all laws or regulations relating to the Ship, its ownership, employment, operation, management and registration,

including 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 Environment Approvals which are applicable to it; and
- (c) without limiting paragraph (a) above, not employ the Ship 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.

#### **14.29 ~~13.29~~ Dividends and dividend restriction**

- (a) Subject to paragraph (b) below, the Borrower shall not make or pay any dividend or other distribution (in cash or in kind) in respect of its share capital other than dividends and distributions that are transferred to Oceania Cruises or the Guarantor provided that no Event of Default has occurred or is continuing or would result from the payment of any dividend.
- (b) During the period from the 2020 Deferral Effective Date up to and including the 2021 Deferral Final Repayment Date, the Borrower shall not, and shall procure that the Guarantor, Oceania Cruises and the Holding shall not:
  - (i) declare, make or pay any dividend or other distribution (or interest on any unpaid dividend or other distribution) (whether in cash or in kind) on or in respect of its share capital (or any class of its share capital);
  - (ii) repay or distribute any dividend or share premium reserve;
  - (iii) make any repayment of any kind under any shareholder loan; or
  - (iv) redeem, repurchase (whether by way of share buy-back program or otherwise), defease, retire or repay any of its share capital or resolve to do so,

except that

- (A) any Obligor other than the Guarantor may pay dividends and other distributions, directly or indirectly, to the Guarantor for the purpose of providing liquidity to the Guarantor to enable the Guarantor to satisfy payment obligations for which the Guarantor is an obligor;
  - (B) any Obligor may pay dividends in respect of the Tax liability to each relevant jurisdiction in respect of consolidated, combined, unitary or affiliated Tax returns for each relevant jurisdiction of the Group or the Holding or holder of the Guarantor's capital stock with respect to income taxable as a result of any member of the Group or the Holding being taxed as a pass-through entity for U.S. Federal, state and local income tax purposes or attributable to any member of the Group;
  - (C) the Guarantor and the Holding may pay dividends and other distributions (x) in respect of a conversion, exchange, or repurchase of convertible or
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exchangeable notes and any conversion of preference shares to ordinary shares in connection therewith, provided that the cash portion of a repurchase of convertible or exchangeable notes is limited to the amount of interest that would otherwise be payable through maturity on the amount of such convertible or exchangeable notes being repurchased plus any amount in lieu of fractional shares, and (y) to the extent contractually owed to holders of equity in the Guarantor or the Holding; and

- (D) the Guarantor may pay dividends and other distributions to the Holding for the purposes of providing cash to the Holding for the payment of any Tax payable in connection with the Holding's equity plan,

provided that the actions in paragraph (B) and (C) above shall only be permitted if there is no Event of Default which is continuing under this Agreement and no Event of Default would arise from the payment of such dividend.

#### **14.30 ~~13.30~~ New capital raises or financing**

(a) Save as provided below:

- (i) no new debt ~~or equity issuance~~ shall be raised and no new Financial Indebtedness shall be incurred by the Group (including, for the avoidance of doubt, inter-company loans);
- (ii) no non-arm's length disposals of any asset relating to the Group fleet shall be made; and
- (iii) no additional Security Interests securing existing Financial Indebtedness will be created or permitted to subsist by any Obligor (unless the Lenders benefit from this new security on a *pari passu* basis),

during the period up to and including the 2021 Deferral Final Repayment Date.

(b) The restrictions in paragraph (a) of Clause ~~13.30~~ 14.30 (*New capital raises or financing*) above shall not apply in relation to:

- (i) any refinancing of any bond issuance of, or loan entered into by, the Group (A) which matures during such period or (B) where not maturing during such period, shall be on terms ~~which include any of the following (evidence of which shall be provided to the Agent by the Guarantor)~~ resulting, when taken as a whole, in an improvement of the ability of the Obligors to meet their obligations under the Finance Documents, which terms include any of the following: an extension of the repayment terms; or a decrease in the interest rate; or the conversion of such Financial Indebtedness from secured to unsecured or first to second priority;
  - (ii) any debt ~~or equity issuance~~ provided prior to 31 December ~~2022~~ 2023 to provide the Group with crisis and/or recovery related funding in respect of the impact of the Covid-19 pandemic;
  - (iii) any debt ~~or equity issuance~~ being raised on or after 31 December ~~2022~~ 2023 to support the Group with the impact of the Covid-19 pandemic, ~~made with the prior written consent of SACE;~~
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- (iv) any debt ~~or equity issuance~~ being raised to finance any instalment of a cruise vessel already contracted for or contracted for during such period or any refurbishment, maintenance, upgrade or lengthening of a cruise ship during such period (including without limitation any costs incurred by the owner of a cruise ship in connection therewith);
  - (v) any debt ~~or equity issuance~~ being raised to finance capital expenditure for projects which are already contracted for but in respect of which committed financing has not yet been obtained, and which, in each case has been (or will be) listed in the Information Package submitted to the Agent prior to the February 2021 Deferral Effective Date;
  - (vi) any extension or renewal of revolving credit facilities, and made with the prior written consent of SACE if any additional security is to be granted;
  - (vii) any new debt ~~or equity issuance~~ otherwise agreed by SACE; or
  - (viii) any inter-company loan or operating arrangement which from an accounting perspective has the effect of an intercompany loan (an "intercompany arrangement") which:
    - (A) is existing as at the date of the 2021 Amendment and Restatement Agreement;
    - (B) is made among any Group members or any Group member with the Holding provided that:
      - (1) any inter-company arrangement is made solely for the purpose of regulatory or Tax purposes carried out in the ordinary course of business and on an arm's length basis; and
      - (2) the aggregate principal amount of any inter-company arrangements outstanding pursuant to ~~this sub-~~paragraph (b)(viii)(B) of Clause ~~13.30-14.30~~ 14.30 (*New capital raises or financing*) does not exceed [\*] Dollars (\$[\*]) at any time; or
    - (C) has been approved with the prior written consent of SACE;
  - (ix) any Permitted Security Interest;
  - (x) any Security Interest otherwise approved with the prior written consent of SACE;
  - (xi) any Financial Indebtedness incurred in the ordinary course of business which in the aggregate does not exceed USD [\*] during any twelve-month period; ~~and, it being provided that:~~
    - (A) prior to 31 December 2022, this amount shall be increased to USD [\*] for any Financial Indebtedness incurred to finance capital expenditure for Approved Projects; and
    - (B) if any part of such Financial Indebtedness allocated prior to 31 December 2022 to an Approved Project remains unused throughout the twelve-month period of year 2022, the surplus may be carried over to increase the relevant Financial
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Indebtedness throughout the twelve-month period of year 2023 for that Approved Project only;

- (xii) without prejudice to Clause ~~13.10~~-14.10 (*Mergers*) and clause 11.13 (*No merger etc.*) of the Guarantee, the issuance of ~~share capital shares or limited liability company interests, as applicable~~ by any Group member to another Group member; and

(xiii) any extension, renewal, replacement or upsizing in respect of the Term and Revolving Credit Facilities (including the granting of additional Security Interests),

and, for the avoidance of doubt, no debt or equity issuance shall be raised in respect of any form of merger, sub-division, amalgamation, restructuring, consolidation, winding-up, dissolution or anything analogous thereto or acquisition of any entity, shares or limited liability company interests or obligations of any corporation or other entity.

#### **14.31 ~~13.34~~ Most favoured nations**

- (a) The Borrower shall procure that if at any time after the date of the Original Facility Agreement the Guarantor enters into any financial contract or financial document relating to any Financial Indebtedness with or which has the support of any export credit agency and which contains *pari passu* provisions or cross default provisions which are more favourable to the lenders than those contained in paragraph (l) of Clause ~~12.2~~-13.2 (*Continuing representations and warranties*) and Clause ~~18.6~~-19.6 (*Cross default*) respectively, the Borrower or the Guarantor shall immediately notify the Agent of such provisions and the relevant provisions contained in this Agreement shall be deemed amended so that such more favourable *pari passu* provisions or cross default provisions are granted to the Creditor Parties pursuant to this Agreement.
- (b) The Borrower undertakes that if at any time after the date of this Agreement and until the occurrence of a Reinstatement Event, it or any other member of the Group is required to grant additional security in relation to a financial contract or financial document relating to any existing Financial Indebtedness:
- (i) with the support of any export credit agency (excluding any extensions, increases or changes to the terms and conditions thereof), such security shall be granted on a *pari passu* basis to the Lenders (and the ~~Security Trustee Agent~~ agrees to enter and/or procure the entry by the relevant Creditor Parties into such intercreditor documentation to reflect such *pari passu* ranking (in form and substance reasonably satisfactory to the Creditor Parties) as may be required in connection with such arrangements); or
- (ii) without the support of any export credit agency (excluding any extensions, increases or changes to the terms and conditions thereof), such security shall (without prejudice to any of the Obligors' other obligations under the Finance Documents), subject to the provisions of clause 11.11 (*Negative pledge*) of the Guarantee and Clause 13.7 (*Negative pledge*), be permitted provided that it shall not have an adverse effect on any Security Interests or other rights granted to the ~~Secured~~-Creditor Parties under the Finance Documents.
- (c) ~~In~~-Until the occurrence of a Reinstatement Event, in respect of any new Financial Indebtedness (other than Permitted Financial Indebtedness), or any extensions, increases or changes to the terms and conditions of any existing Financial Indebtedness, in each case with or which has the support of any export credit agency, the Borrower shall enter into good faith negotiations with
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the ~~Security Trustee Agent~~ to grant additional security for the purpose of further securing the Loan, provided that any failure to reach agreement under this paragraph (c) following such good faith negotiations shall not constitute an Event of Default.

#### 14.32 ~~43.32~~ Poseidon Principles

The Borrower shall, upon the request of the Agent and at the cost of the Borrower, on or before 31 July in each calendar year, supply to the Agent all information necessary in order for the Lenders to comply with their obligations under the Poseidon Principles in respect of the preceding year, including, without limitation, all ship fuel oil consumption data required to be collected and reported in accordance with Regulation 22A of Annex VI and any Statement of Compliance, in each case relating to the Ship for the preceding calendar year provided always that, for the avoidance of doubt, such information shall be confidential information but the Borrower acknowledges that, in accordance with the Poseidon Principles, such information will form part of the information published regarding the Lenders' portfolio climate alignment.

#### 15 ~~44~~ SECURITY VALUE MAINTENANCE

##### 15.1 ~~44.1~~ Security Shortfall

If, upon receipt of a valuation of the Ship in accordance with Clause ~~43.48~~ 14.18 (*Trading with the United States of America*), the Security Value shall be less than the Security Requirement, the Agent may give notice to the Borrower requiring that such deficiency be remedied and then the Borrower shall (unless the Ship has become a Total Loss) either:

- (a) prepay within a period of 30 days of the date of receipt by the Borrower of the Agent's said notice such sum in Dollars as will result in the Security Requirement after such repayment (taking into account any other repayment of the Loan made between the date of the notice and the date of such prepayment) being equal to the Security Value; or
- (b) within 30 days of the date of receipt by the Borrower of the Agent's said notice constitute to the reasonable satisfaction of the Agent such further security for the Loan as shall be reasonably acceptable to the Agent having a value for security purposes (as determined by the Agent in its absolute discretion) at the date upon which such further security shall be constituted which, when added to the Security Value, shall not be less than the Security Requirement as at such date. Clauses ~~44.2~~ 15.2 (*Costs*) and ~~44.4~~ 15.4 (*Documents and evidence*) shall apply to prepayments under paragraph (a) of Clause ~~44.1~~ 15.1 (*Security Shortfall*).

##### 15.2 ~~44.2~~ Costs

All costs in connection with the Agent obtaining any valuation of the Ship referred to in Clause ~~43.48~~ 14.18 (*Trading with the United States of America*), and obtaining any valuation either of any additional security for the purposes of ascertaining the Security Value at any time or necessitated by the Borrower electing to constitute additional security pursuant to paragraph (b) of Clause ~~44.1~~ 15.1 (*Security Shortfall*) shall be borne by the Borrower.

##### 15.3 ~~44.3~~ Valuation of additional security

For the purpose of this Clause ~~44~~ 15 (*Security Value Maintenance*), the market value of any additional security provided or to be provided to the Agent shall be determined by the Agent in its absolute discretion without any necessity for the Agent assigning any reason thereto.

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#### **15.4 ~~14.4~~ Documents and evidence**

In connection with any additional security provided in accordance with this Clause ~~14-15~~ (*Security Value Maintenance*), the Agent shall be entitled to receive such evidence and documents of the kind referred to in Clause 3 (*Conditions Precedent*) in respect of other Finance Documents as may in the Agent's opinion be appropriate.

#### **15.5 ~~14.5~~ Cash or a letter of credit as additional security**

For all purposes under this Clause ~~14-15~~ (*Security Value Maintenance*), it is agreed and understood that:

- (a) cash or a letter of credit shall be an acceptable form of security provided that in the case of a letter of credit it is issued on such terms and by such first class bank as shall have been approved in writing by the Agent (acting in its reasonable discretion); and
- (b) the value of such cash for security purposes shall be equal to the amount of such cash and the value of such letter of credit for security purposes shall be equal to its stated amount.

#### **15.6 ~~14.6~~ Suspension of Event of Default**

- (a) Notwithstanding the provisions of Clause ~~18-19~~ (*Events of Default*), any breach of the provisions of this Clause 14 (*Security Value Maintenance*) arising between the February 2021 ~~Deferral~~-Effective Date and 31 December 2022 shall not (subject further to no (a) Event of Default under clauses ~~18.7-19.7~~ (*Winding-up*) to ~~18.13-19.13~~ (*Cessation of business*) (inclusive) having occurred and being continuing or (b) Deferral Prepayment Event having occurred) result in an Event of Default.
- (b) For the avoidance of doubt, the Security Value will continue to be calculated in accordance with this Clause ~~14-15~~ (*Security Value Maintenance*) between the February 2021 ~~Deferral~~-Effective Date and 31 December 2022.

#### **16 ~~15~~ [RESERVED]**

#### **17 ~~16~~ CANCELLATION AND PREPAYMENT**

##### **17.1 ~~16.1~~ Cancellation**

At any time prior to the delivery of a Drawdown Notice and not less than ninety (90) Business Days prior to the Intended Delivery Date, the Borrower may give notice to the Agent in writing that it wishes to cancel the Total Commitments in their entirety whereupon (without penalty to the Borrower but without prejudice to any liabilities of the Borrower including, without limitation, in respect of fees payable or accrued under this Agreement, arising prior to the date of such cancellation) the Total Commitments shall terminate upon the date specified in such notice.

##### **17.2 ~~16.2~~ Voluntary prepayment**

The Borrower may prepay all or part of the Loan (but if in part being an amount that reduces the Loan by a minimum amount of one (1) repayment instalment of principal of the Loan) together with interest thereon without penalty provided the prepayment is made on the last day of an Interest Period and three (3) month's prior written notice indicating the intended

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date of prepayment is given to the Agent and the SACE Agent, but the following amounts shall be payable to the Agent for the account of the Lenders or the Italian Authorities in the sum of:

- (i) ~~(a)~~ if the Borrower has specified a Floating Interest Rate pursuant to paragraph (b) of Clause 3.5 (*No later than sixty (60) days before the Intended Delivery Date*), the difference (if positive), calculated by the Lenders and notified by them to the Agent, between the actual cost for the Lenders of the funding for the Loan and the rate of interest for the monies to be invested by the Lenders, applied to the amounts so prepaid for the period from the said prepayment until the last day of the Interest Period during which the prepayment occurs (if prepayment does not occur on the last day of that Interest Period), details of any such calculation being supplied to the Borrower by the Agent on behalf of the Lenders; or
  - (ii) ~~(b)~~ if the Borrower has selected the Fixed Interest Rate pursuant to paragraph (b) of Clause 3.5 (*No later than sixty (60) days before the Intended Delivery Date*), the charges (if any) imposed on the Lenders by the Italian Authorities representing funding or breakage costs of the Italian Authorities.
- (b) ~~(c)~~ Any voluntary prepayment shall be made in accordance with the provisions of this Clause ~~16.2-17.2~~ (*Voluntary prepayment*) and applied against the outstanding repayment instalments in the inverse order of their maturity, save that where there is an amount of a Deferral Tranche outstanding, any such prepayment shall first be applied against such Deferral Tranche in the inverse order of maturity, starting with the 2021 Deferral Tranche.
- (c) There may be no more than two voluntary prepayments in part of the Loan made in each 12-month period beginning on the Delivery Date unless the relevant prepayment is made at the end of an Interest Period relating to the Loan or the relevant part of the Loan (as applicable).

#### **17.3 ~~16.3~~ Mandatory prepayment**

The Borrower shall be obliged to prepay the whole of the Loan if:

- (a) the Ship is sold or becomes a Total Loss:
  - (i) in the case of a sale, on or before the date on which the sale is completed by delivery of the Ship to the buyer; or
  - (ii) in the case of a Total Loss, on the earlier of the date falling 120 days after the Total Loss Date and the date of receipt by the Agent of the proceeds of insurance relating to such Total Loss; or
- (b) the SACE Insurance Policy is modified, suspended, terminated or rescinded unless caused by the wilful misconduct or gross negligence of a Creditor Party.

#### **17.4 ~~16.4~~ Breach of new covenants or the Principles**

- (a) Failure to comply, until the 2021 Deferral Final Repayment Date, with the provisions of Clause ~~13.29~~ 14.29 (*Dividends and dividend restriction*) and Clause ~~13.30-14.30~~ (*New capital raises or financing*) or the provisions of clause 11.3(h) (*Additional financial reporting*), clause 11.17(c) (*Dividend restriction*), clause 11.19 (*New capital raises or financing*) and clause 11.20 (*Payments under the Shipbuilding contacts*) of the Guarantee, or to otherwise duly perform and observe the other requirements and obligations set out in the Principles shall, in each case, not constitute an Event of Default under this Agreement but (in the case of any failure that is
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capable of remedy (in the opinion of the Agent, at its sole discretion)) shall have the following consequences:

- (i) the Agent shall reinstate from the date of such breach the requirement to comply with the covenant granted pursuant to Clause ~~44-15~~ (Security Value Maintenance) and the financial covenants set out in paragraphs (b) and (c) of clause 11.15 (Financial covenants) of the Guarantee which was otherwise suspended until 31 December 2022;
  - (ii) in respect of, specifically, Clause ~~13-29-14.29~~ (Dividends and dividend restriction) and Clause ~~13-30-14.30~~ (New capital raises or financing), and clause 11.17(c) (Dividend restriction) and clause 11.19 (New capital raises or financing) of the Guarantee, as well as a failure to perform and observe the other requirements and obligations set out in the Principles (including but not limited to any Obligor (a) commencing, or having commenced against it, any case, proceeding or other action seeking (i) to adjudicate it as bankrupt or insolvent, (ii) reorganization, arrangement, winding-up, liquidation, dissolution, or other relief with respect to it or its debts, (iii) the appointment of a receiver, trustee, or custodian or other similar official for it or for all or a substantial part of its assets, (b) making a general assignment for the benefit of its creditors, (c) being unable to, or admitting in writing its inability to, pay its debts as they become due, or (d) taking any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the acts set forth in (a), (b) or (c) hereof):
    - (A) the Deferral Commitments and the availability of the Deferral Tranches will be immediately cancelled; and
    - (B) all or part of the Deferral Tranches, together with accrued interest, deferred costs pursuant to Clause ~~6-4-7.4~~ (Deferred Costs) and all other amounts accrued or outstanding under this Agreement in connection with the Deferral Tranches will be immediately due and payable, (including, for the avoidance of doubt, any breakage costs pursuant to Clause ~~20-2-21.2~~ (Breakage costs)); and
  - (iii) in respect of clause 11.3(h) (Additional financial reporting) and clause 11.20 (Payments under the Shipbuilding contacts) of the Guarantee, shall entitle the Agent, (acting on the instructions of the Lenders), by notice to the Borrower to:
    - (A) cancel the Deferral Commitments and the availability of the Deferral Tranches whereupon they shall immediately be cancelled; and
    - (B) declare that all or part of the Deferral Tranches, together with accrued interest, deferred costs pursuant to Clause ~~6-4-7.4~~ (Deferred Costs) of this Agreement and all other amounts accrued or outstanding under this Agreement in connection with the Deferral Tranches be immediately due and payable, whereupon they shall become immediately due and payable (including, for the avoidance of doubt, any breakage costs pursuant to Clause ~~20-2-21.2~~ (Breakage costs)); and
  - (b) Save as permitted by Clause 13.30 (New capital raises or financing), if at any time after the February 2021 Deferral Effective Date and until the occurrence of a Reinstatement Event:
    - (i) the Guarantor or any other Group member enters into any financial contract or financial document relating to any Financial Indebtedness and which contains any debt deferral or covenant waivers of existing debt, or the raising of any new debt intended to reimburse existing debt that benefits from
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additional security or more favourable terms than those available to the Lenders (unless they are granted to the Lenders on a *pari passu* basis):

~~(A)~~(A) the requirement to comply with the covenant granted pursuant to Clause 14 (*Security Value Maintenance*) and the financial covenants set out in paragraphs (b) and (c) of clause 11.15 (*Financial covenants*) of the Guarantee which was otherwise suspended until 31 December 2022 shall be reinstated;

~~(B)~~(B) the Deferral Commitments and the availability of the Deferral Tranches will be immediately cancelled; and

~~(C)~~(C) all or part of the Deferral Tranches, together with accrued interest, deferred costs pursuant to Clause 6.4 (*Deferred Costs*) and all other amounts accrued or outstanding under this Agreement in connection with the Deferral Tranches will be immediately due and payable, (including, for the avoidance of doubt, any breakage costs pursuant to Clause 20.2 (*Breakage costs*) ~~of this Agreement~~);

it being provided that such covenants in sub-paragraph (A) above shall not be reinstated and such provisions in sub-paragraphs (B) and (C) above shall not be triggered in case of such financial contract or financial document relating to the Term and Revolving Credit Facilities;

~~(ii)~~(ii) the Guarantor or any other Group member makes a prepayment (save for any mandatory prepayment necessary to avoid an event of default (however defined)) of any Financial Indebtedness (unless this is done on a *pari passu* basis with the obligations owed to the Lenders hereunder):

~~(A)~~(A) the requirement to comply with the covenant granted pursuant to Clause 14 (*Security Value Maintenance*) and the financial covenants set out in paragraphs (b) and (c) of clause 11.15 (*Financial Covenants*) of the Guarantee which was otherwise suspended until 31 December 2022 shall be reinstated; and

~~(B)~~(B) the Agent shall be entitled (acting on the instructions of the Lenders) to:

~~(1)~~(1) cancel the Deferral Commitments and the availability of the Deferral Tranches whereupon they shall immediately be cancelled; and

~~(2)~~(2) declare that all or part of the Deferral Tranches, together with accrued interest, deferred costs pursuant to Clause 6.4 (*Deferred Costs*) ~~of this Agreement~~ and all other amounts accrued or outstanding under ~~the Facility~~ this Agreement in connection with the Deferral Tranches will be immediately due and payable (including, for the avoidance of doubt, any breakage costs pursuant to ~~clause~~ Clause 20.2 (*Breakage costs*));

it being provided that such covenants in sub-paragraph (A) above shall not be reinstated and such provision in sub-paragraph (B) above shall not be triggered in case of a prepayment

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relating to the revolving tranche of the Term and Revolving Credit Facilities within the ordinary course of business.

**17.5 ~~46.5~~ Other amounts**

Any prepayment of the whole of the Loan shall be made together with all other sums due under this Agreement (including, without limitation, the compensation calculated in accordance with Clause ~~46.2~~ 17.2 (*Voluntary prepayment*)).

**17.6 ~~46.6~~ Application of partial prepayment**

Amounts prepaid shall be applied in accordance with paragraph (b) of Clause ~~49.1~~ 20.1 (*Receipts*).

**17.7 ~~46.7~~ No reborrowing**

Amounts prepaid may not be reborrowed.

**18 ~~47~~ INTEREST ON LATE PAYMENTS**

**18.1 ~~47.4~~ Default rate of interest**

Without prejudice to the provisions of Clause ~~48-19~~ (*Events of Default*) and without this Clause in any way constituting a waiver of terms of payment, all sums due by the Borrower under this Agreement will automatically bear interest on a day to day basis from the date when they are payable until the date of actual payment at a rate per annum equal to the higher of:

(a) before the Rate Switch Date, where the Floating Interest Rate is applicable, the aggregate of:

- (i) Overnight LIBOR;
- (ii) the Margin; and
- (iii) [\*] per cent. ([\*]%) per annum; or

(b) after the Rate Switch Date, where the Floating Interest Rate is applicable, the aggregate of:

- (i) Daily Simple SOFR;
- (ii) the Credit Adjustment Spread;
- (iii) the Margin; and
- (iv) two per cent. (2%) per annum; or

(c) ~~(b)~~ before the Rate Switch Date, where the Fixed Interest Rate is applicable, the higher of:

- (i) the CIRR plus [\*] per cent. ([\*]%) per annum; and
- (ii) Overnight LIBOR plus the applicable Margin plus two per cent. (2%) per annum; or

(d) after the Rate Switch Date, where the Fixed Interest Rate is applicable, the higher of:

- (i) the CIRR plus [\*] per cent. ([\*]%) per annum; and
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- (ii) Daily Simple SOFR plus the Credit Adjustment Spread plus the Margin plus [\*] per cent. ([\*]%) per annum.

## **18.2 ~~47.2~~ Compounding of default interest**

Any such interest will itself bear interest at the above rate if it is due for at least three (3) months and thereafter at three monthly intervals.

## **19 ~~48~~ EVENTS OF DEFAULT**

### **19.1 ~~48.4~~ Events of Default**

An Event of Default occurs if any of the events or circumstances described in Clause ~~48.2-19.2~~ (Non-payment) to Clause ~~48.21-19.21~~ (*Other Loan Agreement*) occur provided that if, at any time during the period commencing on the day after the date of this Facility Agreement and ending on the date falling ninety (90) days before the Intended Delivery Date (the "**Restriction Period**"), an event should occur that would constitute an Event of Default, the Agent shall not be entitled to serve any notice under paragraph (a) of Clause ~~48.22-19.22~~ (*Actions following an Event of Default*) during the Restriction Period unless the relevant event consists of:

- (a) a failure by the Borrower to comply with the provisions of Clauses ~~43.5-14.5~~ (*Notification of default*), ~~43.6-14.6~~ (*Consents and registrations*), ~~43.8-14.8~~ (*Disposals*) or ~~43.13-14.13~~ (*Financial indebtedness and subordination of indebtedness*);
- (b) the happening of any of the events specified in Clauses ~~48.2-19.2~~ (*Non-payment*), ~~48.7-19.7~~ (*Winding-up*), ~~48.8-19.8~~ (*Moratorium or arrangement with creditors*), ~~48.9-19.9~~ (*Appointment of liquidators etc.*), ~~48.10-19.10~~ (*Insolvency*), ~~48.11-19.11~~ (*Legal process*), ~~48.12-19.12~~ (*Analogous events*) or ~~48.13-19.13~~ (*Cessation of business*);
- (c) the repudiation or termination of the Shipbuilding Contract.

However, this provision shall not be interpreted as a waiver of:

- (i) the Agent's right to serve any notice under paragraph (a) of Clause ~~48.22-19.22~~ (*Actions following an Event of Default*) in respect of any Event of Default that has occurred and that remains unremedied on the last day of the Restriction Period; or
- (ii) the obligation of any Obligor under any Finance Document prior to the last day of the Restriction Period including (without limitation) the punctual delivery to the Agent of any information which the Agent is entitled to receive under the provisions of any Finance Document and the prompt notification to the Agent of the occurrence of any Event of Default whether or not the Agent is entitled to serve any notice under paragraph (a) of Clause ~~48.22-19.22~~ (*Actions following an Event of Default*).

### **19.2 ~~48.2~~ Non-payment**

Any Obligor 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 and such failure is not remedied within three (3) Business Days of the due date or (if payable on demand) within three (3) Business Days of receiving the demand.

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### 19.3 ~~18.3~~ Non-remediable breaches

The Borrower fails to comply with the provisions of Clauses ~~13.5~~ 14.5 (*Notification of default*), ~~13.6~~ 14.6 (*Consents and registrations*), ~~13.8~~ 14.8 (*Disposals*) or ~~13.13~~ 14.13 (*Financial indebtedness and subordination of indebtedness*).

### 19.4 ~~18.4~~ Breach of other obligations

- (a) Any Obligor fails to comply with any provision of any Finance Document (other than a failure to comply covered by any of the other provisions of Clauses ~~18.2~~ 19.2 (*Non-payment*) to ~~18.21~~ 19.21 (*Other Loan Agreement*)) and in particular but without limitation the Guarantor fails to comply with the provisions of clause 11 (*Undertakings*) of its Guarantee or there is any breach in the sole opinion of the Agent of any of the Underlying Documents provided that no Event of Default shall be deemed to have occurred if, in the opinion of the Agent in its sole discretion, such failure or breach is capable of remedy and is remedied within the Relevant Period (as defined below) from the date of its occurrence, if the failure was known to that Obligor, or from the date the relevant Obligor is notified by the Agent of the failure, if the failure was not known to that Obligor, unless in any such case as aforesaid the Agent in its sole discretion considers that the failure or breach is or could reasonably be expected to become materially prejudicial to the interests, rights or position of the Lenders, "**Relevant Period**" meaning for the purposes of this Clause thirty (30) days in respect of a remedy period commencing under this Clause not later than 30 September 2009 and fifteen (15) days in respect of a remedy period commencing after 30 September 2009; or
- (b) If there is a repudiation or termination of any Transaction Document or if any of the parties thereto becomes entitled to terminate or repudiate any of them and evidences an intention so to do. For the avoidance of doubt, the termination of the Prior Guarantees shall not be deemed to be a termination of a Transaction Document.

### 19.5 ~~18.5~~ Misrepresentation

Any representation, warranty or statement made or repeated in, or in connection with, any Transaction Document or the SACE Insurance Policy or in any accounts, certificate, statement or opinion delivered by or on behalf of any Obligor thereunder or in connection therewith is materially incorrect or misleading when made or would, if repeated at any time hereafter by reference to the facts subsisting at such time, no longer be materially correct.

### 19.6 ~~18.6~~ Cross default

- (a) Any event of default occurs under any financial contract or financial document relating to any Financial Indebtedness of the Borrower; or
  - (b) any such Financial Indebtedness or any sum payable in respect thereof is not paid when due (after the expiry of any applicable grace period(s)) whether by acceleration or otherwise; or
  - (c) any other Financial Indebtedness of any member of the Group is not paid when due or is or becomes capable of being declared due prematurely by reason of default or any Security Interest securing the same becomes enforceable by reason of default provided that no Event of Default will arise if the aggregate amount of the relevant Financial Indebtedness and liabilities secured by the relevant Security Interests is less than \$[\*] or its equivalent in other currencies; or
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- (d) any other Security Interest over any assets of any member of the Group securing any alleged liability that does not qualify as Financial Indebtedness becomes enforceable where the alleged liability is in respect of a sum of, or sum aggregating, \$[\*] or its equivalent in other currencies, unless the alleged liability is being contested in good faith by appropriate means by the relevant Group member and the Agent is reasonably satisfied that the relevant member of the Group has reasonable grounds for succeeding in its action.
- (e) No Event of Default will occur, or be deemed to have occurred, under this Clause ~~48.6~~-19.6 (*Cross default*) if such Event of Default occurs before 31 December 2022 (but without prejudice to the rights of the Lenders in respect of any further breach that may occur after 31 December 2022 ) and is caused solely as a result of a breach of the covenant granted pursuant to Clause ~~44~~-15 (*Security Value Maintenance*) or of the financial covenants in respect of the Group equivalent to those set out in paragraphs (b) and (c) of clause 11.15 (*Financial Covenants*) of the Guarantee, under, or in relation to, any other SACE-backed facility agreement to which a Guarantor is a Party or has executed a guarantee and to which the Principles apply, unless at the time of such Event of Default, an event resulting in mandatory prepayment of the Loan pursuant to paragraph (a) or (b) of Clause ~~46.3~~-17.3 (*Mandatory prepayment*) or a Deferral Prepayment Event has occurred.

**19.7 ~~48.7~~Winding-up**

Any order is made or an effective resolution passed or other action taken for the suspension of payments or reorganisation, dissolution, termination of existence, liquidation, winding-up or bankruptcy of any Obligor.

**19.8 ~~48.8~~Moratorium or arrangement with creditors**

A moratorium in respect of all or any debts of any Obligor or a composition or an arrangement with creditors of any Obligor or any similar proceeding or arrangement by which the assets of any Obligor are submitted to the control of its creditors is applied for, ordered or declared or any Obligor commences negotiations with any one or more of its creditors with a view to the general readjustment or rescheduling of all or a significant part of its Financial Indebtedness.

**19.9 ~~48.9~~Appointment of liquidators etc**

A liquidator, trustee, administrator, receiver, administrative receiver, manager or similar officer is appointed in respect of any Obligor or in respect of all or any substantial part of the assets of any Obligor.

**19.10 ~~48.10~~Insolvency**

Any Obligor becomes or is declared insolvent or is unable, or admits in writing its inability, to pay its debts as they fall due or becomes insolvent within the terms of any applicable law.

**19.11 ~~48.11~~Legal process**

Any distress, execution, attachment or other process affects the whole or any substantial part of the assets of any Obligor and remains undischarged for a period of thirty (30) days or any uninsured judgment in excess of [\*] Dollars (\$[\*]) following final appeal remains unsatisfied for a period of ten (10) days.

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**19.12 ~~48.42~~ Analogous events**

Anything analogous to or having a substantially similar effect to any of the events specified in Clauses ~~48.7~~ 19.7 (*Winding-up*) to ~~48.11~~ 19.11 (*Legal process*) shall occur under the laws of any applicable jurisdiction.

**19.13 ~~48.43~~ Cessation of business**

Any Obligor ceases to carry on all or a substantial part of its business.

**19.14 ~~48.44~~ Revocation of consents**

Any authorisation, approval, consent, licence, exemption, filing, registration or notarisation or other requirement necessary to enable any Obligor to comply with any of its obligations under any of the Transaction Documents is materially adversely modified, revoked or withheld or does not remain in full force and effect and within ninety (90) days of the date of its occurrence such event is not remedied to the satisfaction of the Agent and the Agent considers in its sole discretion that such failure is or might be expected to become materially prejudicial to the interests, rights or position of the Lenders provided that the Borrower shall not be entitled to the aforesaid ninety (90) day period if the modification, revocation or withholding of the authorisation, approval or consent is due to an act or omission of any Obligor and the Agent is satisfied in its sole discretion that the Lenders' interests might reasonably be expected to be materially adversely affected.

**19.15 ~~48.45~~ Unlawfulness**

At any time it is unlawful or impossible for any Obligor to perform any of its material (to the Creditor Parties or any of them) obligations under any Transaction Document to which it is a party or it is unlawful or impossible for the Creditor Parties or any Lender to exercise any of their or its rights under any of the Transaction Documents provided that no Event of Default shall be deemed to have occurred where the unlawfulness or impossibility does not relate to the payment obligation of any Obligor under any Transaction Document and is cured within the period of twenty one (21) days of the date of occurrence of the event giving rise to the unlawfulness or impossibility and the affected Obligor performs its obligation within such period.

**19.16 ~~48.46~~ Insurances**

The Borrower fails to insure the Ship in the manner specified in Clause ~~43.20~~ 14.20 (*Valuation of the Ship*) or fails to renew the Insurances at least five (5) days prior to the date of expiry thereof and produce prompt confirmation of such renewal to the Agent provided that if the insurers withdraw their cover an Event of Default shall be deemed to have occurred upon issue of the insurer's notice of withdrawal.

**19.17 ~~48.47~~ Disposals**

If the Borrower or any other Obligor shall have concealed, removed, or permitted to be concealed or removed, any part of its property, with intent to hinder, delay or defraud its creditors or any of them, or made or suffered a transfer of any of its property which may be fraudulent under any bankruptcy, fraudulent conveyance or similar law; or shall have made any transfer of its property to or for the benefit of a creditor with the intention of preferring such creditor over any other creditor.

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**19.18 ~~48-48~~ Prejudice to security**

Anything is done or suffered or omitted to be done by any Obligor which in the reasonable opinion of the Agent would or might be expected to imperil the security created by any of the Finance Documents.

**19.19 ~~48-49~~ Governmental intervention**

The authority of any Obligor in the conduct of its business is wholly or substantially curtailed by any seizure or intervention by or on behalf of any authority and within ninety (90) days of the date of its occurrence any such seizure or intervention is not relinquished or withdrawn and the Agent reasonably considers that the relevant occurrence is or might be expected to become materially prejudicial to the interests, rights or position of the Lenders provided that the Borrower shall not be entitled to the aforesaid ninety (90) day period if the seizure or intervention executed by any authority is due to an act or omission of any Obligor and the Agent is satisfied, in its sole discretion, that the Lenders' interest might reasonably be expected to be materially adversely affected.

**19.20 ~~48-20~~ [Reserved].**

**19.21 ~~48-24~~ Other Loan Agreement**

There shall occur an Event of Default (under and as defined in the Other Loan Agreement).

**19.22 ~~48-22~~ Actions following an Event of Default**

On, or at any time after, the occurrence of an Event of Default the Agent may, and if so instructed by the Majority Lenders, the Agent shall:

- (a) serve on the Borrower a notice stating that the Commitments and all other obligations of each Lender to the Borrower under this Agreement are terminated; and/or
- (b) serve on the Borrower a notice stating that the Loan (including but without limitation the amount representing the financed second instalment of the SACE Premium), 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
- (c) take any other action which, as a result of the Event of Default or any notice served under paragraph (a) or (b), the Agent and/or the Lenders are entitled to take under any Finance Document or any applicable law.

**19.23 ~~48-23~~ Termination of Commitments**

On the service of a notice under paragraph (a) of Clause ~~48-22-19.22~~ (*Actions following an Event of Default*), the Commitments and all other obligations of each Lender to the Borrower under this Agreement shall terminate.

**19.24 ~~48-24~~ Acceleration of Loan**

On the service of a notice under paragraph (b) of Clause ~~48-22-19.22~~ (*Actions following an Event of Default*), the Loan, all accrued interest and all other amounts accrued or owing from the Borrower or any Obligor under this Agreement and every other Finance Document shall become immediately due and payable or, as the case may be, payable on demand.

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**19.25 ~~48.25~~ Further amounts payable**

Upon an acceleration of repayment of the Loan following an Event of Default the Borrower shall be liable to pay compensation calculated in accordance with Clause ~~46-2~~ 17.2 (*Voluntary prepayment*).

**19.26 ~~48.26~~ Multiple notices; action without notice**

The Agent may serve notices under paragraphs (a) and (b) of Clause ~~48-22~~ 19.22 (*Actions following an Event of Default*) simultaneously or on different dates and it may take any action referred to in paragraph (c) of Clause ~~48-22~~ 19.22 (*Actions following an Event of Default*) if no such notice is served or simultaneously with or at any time after the service of both or either of such notices.

**19.27 ~~48.27~~ Notification of Creditor Parties and Obligors**

The Agent shall send to each Lender and each Obligor a copy or the text of any notice which the Agent serves on the Borrower under Clause ~~48-22~~ 19.22 (*Actions following an Event of Default*); but the notice shall become effective when it is served on the Borrower, and no failure or delay by the Agent to send a copy or the text of the notice to any other person shall invalidate the notice or provide any Obligor with any form of claim or defence.

**19.28 ~~48.28~~ Lender's rights unimpaired**

Nothing in this Clause ~~48-19~~ 19 (*Events of Default*) 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 Clauses 2.4 (*Proceedings by individual Lender requiring Majority Lender consent*) and 2.5 (*Obligations of Lenders several*).

**19.29 ~~48.29~~ Exclusion of Creditor Party liability**

No Creditor Party, and no receiver or manager appointed by the Agent, shall have any liability to an Obligor:

- (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.

**20 ~~49~~ APPLICATION OF SUMS RECEIVED**

**20.1 ~~49.1~~ Receipts**

Except as any Finance Document may otherwise provide, all sums received under this Agreement or any other Finance Document by the Agent, on behalf of the Lenders, or by any of the Lenders for any reason whatsoever will be applied:

- (a) in priority, to payments of any kind due or in arrears in the order of their due payment dates and first, to fees, charges and expenses, second, to interest payable pursuant to Clause ~~47-18~~ 18 (*Interest on Late Payments*), third, to interest payable pursuant to Clause 6 (*Interest*) and to
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any deferred costs payable pursuant to Clause ~~6-4~~7.4 (*Deferred Costs*), fourth, to the principal of the Loan payable pursuant to Clause 5 (*Repayment*) and, fifth, to any other sums due under this Agreement or any other Finance Document and, if relevant, *pro rata* to each of the Lenders and sixth, to any sums due pursuant to Clause ~~20-2~~21.2 (*Breakage costs*); or

- (b) if no payments are in arrears or if these payments have been discharged as set out above, then and to sums remaining due under this Agreement or any other Finance Document and, if relevant, *pro rata* to each of the Lenders and in each case in inverse order of maturity, the interest being recalculated accordingly.

## 21 ~~20~~ INDEMNITIES

### 21.1 ~~20-4~~ Indemnities regarding borrowing and repayment of Loan

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

- (a) the Loan not being borrowed on the date specified in the Drawdown Notice for any reason other than a default by the Lender claiming the indemnity;
- (b) the receipt or recovery of all or any part of the Loan or an overdue sum otherwise than on the last day of an Interest Period or other relevant period;
- (c) any failure (for whatever reason) by the Borrower to make payment of any amount due under a Finance Document on the due date or, if so payable, on demand (after giving credit for any default interest paid by the Borrower on the amount concerned under Clause ~~47-18~~18 (*Interest on Late Payments*));
- (d) the occurrence and/or continuance of an Event of Default and/or the acceleration of repayment of the Loan under Clause ~~48-19~~19 (*Events of Default*); and
- (e) in respect of any Tax (other than Tax on its overall net income) for which a Creditor Party is liable in connection with any amount paid or payable to that Creditor Party (whether for its own account or otherwise) under any Finance Document.

### 21.2 ~~20-2~~ Breakage costs

Without limiting its generality, Clause ~~20-4~~21.1 (*Indemnities regarding borrowing and repayment of Loan*) covers (i) any claim, expense, liability or loss, including a loss of a prospective profit, incurred by a Lender 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 (ii) if the Borrower has selected the Fixed Interest Rate in accordance with paragraph (b) of Clause 3.5 (*No later than sixty (60) days before the Intended Delivery Date*), any funding or breakage costs imposed by SIMEST as a consequence of (x) any total or partial prepayment of the Loan and/or (y) the Borrower deciding to switch from the Fixed Interest Rate to another interest rate after the Drawdown Date and/or (z) the Interest Make-up Agreement ceasing for any reason to be in effect; any such costs imposed by SIMEST shall be paid by the ~~Borrowers~~ Borrower to SIMEST through the Agent.

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### 21.3 ~~20-3~~ Miscellaneous indemnities

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

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

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

Without prejudice to its generality, this Clause ~~20-3-21.3~~ 21.3 (*Miscellaneous indemnities*) covers any claims, expenses, liabilities and losses which arise, or are asserted, under or in connection with any law relating to safety at sea, the ISM Code or any Environmental Laws or any Sanctions.

### 21.4 ~~20-4~~ Currency indemnity

If any sum due from an Obligor 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 an Obligor, whether in its liquidation, any arrangement involving it or otherwise; or
- (b) obtaining an order or judgment from any court or other tribunal; or
- (c) enforcing any such order or judgment,

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

In this Clause ~~20-4-21.4~~ 21.4 (*Currency indemnity*) the "available rate of exchange" means the rate at which the Creditor Party concerned is able at the opening of business (Paris time) on the Business Day after it receives the sum concerned to purchase the Contractual Currency with the Payment Currency.

This Clause ~~20-4-21.4~~ 21.4 (*Currency indemnity*) creates a separate liability of the 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.

### 21.5 ~~20-5~~ Certification of amounts

A notice which is signed by 2 officers of a Creditor Party, which states that a specified amount, or aggregate amount, is due to that Creditor Party under this Clause ~~20-21~~ 21 (*Indemnities*) and which indicates (without necessarily specifying a detailed breakdown) the matters in respect

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of which the amount, or aggregate amount, is due shall be prima facie evidence that the amount, or aggregate amount, is due.

#### **21.6 ~~20-6~~Sums deemed due to a Lender**

For the purposes of this Clause ~~20-21~~ (*Indemnities*), a sum payable by the Borrower to the Agent for distribution to a Lender shall be treated as a sum due to that Lender.

#### **22 ~~24~~ILLEGALITY, ETC.**

##### **22.1 ~~24-4~~Illegality**

This Clause ~~24-22~~ (*Illegality, etc.*) applies if:

- (a) a Lender (the "**Notifying Lender**") notifies the Agent that it has become, or will with effect from a specified date, become:
  - (i) 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 including for the avoidance of doubt in relation to Sanctions; or
  - (ii) 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; or

- (b) an Obligor is or becomes a Prohibited Person.

##### **22.2 ~~24-2~~Notification of illegality**

The Agent shall promptly notify the Borrower, the Obligors and the other Lenders of the notice under Clause ~~24-4~~22.1 (*Illegality*) which the Agent receives from the Notifying Lender.

##### **22.3 ~~24-3~~Prepayment; termination of Commitment**

On the Agent notifying the Borrower under Clause ~~24-2~~22.2 (*Notification of illegality*), the Notifying Lender's Commitment shall terminate; and thereupon or, if later, on the date specified in the Notifying Lender's notice under Clause ~~24-4~~22.1 (*Illegality*) as the date on which the notified event would become effective the Borrower shall prepay the Notifying Lender's Contribution and shall pay compensation to the Notifying Lender calculated in accordance with Clause ~~46-2~~17.2 (*Voluntary prepayment*).

#### **23 ~~22~~SET-OFF**

##### **23.1 ~~22-4~~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 the Borrower at any office in any country of that Creditor Party in or towards satisfaction of any sum then due from the Borrower to that Creditor Party under any of the Finance Documents; and
  - (b) for that purpose:
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- (i) break, or alter the maturity of, all or any part of a deposit of the Borrower;
- (ii) convert or translate all or any part of a deposit or other credit balance into Dollars;
- (iii) enter into any other transaction or make any entry with regard to the credit balance which the Creditor Party concerned considers appropriate.

**23.2 ~~22-2~~ Existing rights unaffected**

No Creditor Party shall be obliged to exercise any of its rights under Clause ~~22-4~~ 23.1 (*Application of credit balances*); and those rights shall be without prejudice and in addition to any right of set-off, combination of accounts, charge, lien or other right or remedy to which a Creditor Party is entitled (whether under the general law or any document).

**23.3 ~~22-3~~ Sums deemed due to a Lender**

For the purposes of this Clause ~~22-23~~ (*Set-Off*), a sum payable by the Borrower to the Agent for distribution to, or for the account of, a Lender shall be treated as a sum due to that Lender; and each Lender's proportion of a sum so payable for distribution to, or for the account of, the Lenders shall be treated as a sum due to such Lender.

**23.4 ~~22-4~~ No Security Interest**

This Clause ~~22-23~~ (*Set-Off*) gives the Creditor Parties a contractual right of set-off only, and does not create any equitable charge or other Security Interest over any credit balance of the Borrower.

**24 ~~23~~ CHANGES TO THE LENDERS**

**24.1 ~~23-1~~ Assignments and transfers by the Lenders**

Subject to this Clause ~~23-24~~ (*Changes to the Lenders*) and the prior written consent of the Italian Authorities having been obtained, a Lender (the "**Existing Lender**") may:

- (a) assign its rights; or
- (b) transfer by novation its rights and obligations,  
to another bank or financial institution (the "**New Lender**").

**24.2 ~~23-2~~ Conditions of assignment or transfer**

- (a) The consent of the Borrower is required for an assignment or transfer by a Lender (the "**Existing Lender**"), unless the assignment or transfer is to another Lender or an Affiliate of a Lender.
  - (b) The consent of the Borrower to an assignment or transfer must not be unreasonably withheld or delayed.
  - (c) The assignment or transfer must be with respect to a minimum Commitment of [\*] Dollars (\$[\*]) or, if less, the Existing Lender's full Commitment.
  - (d) An assignment will only be effective on:
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- (i) receipt by the Agent of written confirmation from the New Lender (in form and substance satisfactory to the Agent) that the New Lender will assume the same obligations to the other Creditor Parties as it would have been under if it was an original Lender; and
- (ii) performance by the Agent of all necessary "know your customer" or other similar checks under all applicable laws and regulations in relation to such assignment to a New Lender, the completion of which the Agent shall promptly notify to the Existing Lender and the New Lender.

**24.3 ~~23.3~~ Assignment or transfer fee**

The New Lender shall:

- (a) on the date upon which an assignment or transfer takes effect, pay to the Agent (for its own account) a fee of [\*] Euro (EUR [\*]);
- (b) pay to the Agent, upon demand, all reasonable costs and expenses, duties and fees, including but without limitation legal costs and out of pocket expenses, incurred by the Agent or the Lenders in connection with any necessary amendment to or supplementing of the Transaction Documents or any of them or the SACE Insurance Policy as a consequence of the assignment or transfer; and
- (c) pay to the Agent, upon demand, such amount as is payable to the Italian Authorities to cover its costs of giving its approval under Clause ~~23.4~~24.1 (*Assignments and transfers by the Lenders*).

**24.4 ~~23.4~~ Limitation of responsibility of Existing Lenders**

- (a) Unless expressly agreed to the contrary, an Existing Lender makes no representation or warranty and assumes no responsibility to a New Lender for:
    - (i) the legality, validity, effectiveness, adequacy or enforceability of the Finance Documents or any other documents;
    - (ii) the financial condition of any Obligor;
    - (iii) the performance and observance by any Obligor of its obligations under the Finance Documents or any other documents; or
    - (iv) the accuracy of any statements (whether written or oral) made in or in connection with any Finance Document or any other document,and any representations or warranties implied by law are excluded.
  - (b) Each New Lender confirms to the Existing Lender and the other 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 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 in connection with any Finance Document; and
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- (ii) will continue to make its own independent appraisal of the creditworthiness of each Obligor and its related entities whilst any amount is or may be outstanding under the Finance Documents or any Commitment is in force.
- (c) Nothing in any Finance Document obliges an Existing Lender to:
  - (i) accept a re-transfer from a New Lender of any of the rights and obligations assigned or transferred under this Clause ~~23-24~~ (*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 Obligor of its obligations under the Finance Documents or otherwise.

#### **24.5 ~~23-5~~ Permitted disclosure**

Any Creditor Party may disclose to any of its Affiliates and to the following other persons:

- (a) any person to (or through) whom that Lender assigns or transfers (or may potentially assign or transfer) all or any of its rights and obligations under this Agreement;
- (b) any person with (or through) whom that Lender enters into (or may potentially enter into) any sub-participation in relation to, or any other transaction under which payments are to be made by reference to, this Agreement or any Obligor;
- (c) any person to whom, and to the extent that, information is required to be disclosed by any applicable law or regulation;
- (d) any other Creditor Party, or any employee, officer, director or representative of such entity which needs to know such information or receive such document in the course of such person's employ or duties;
- (e) or any employee, officer, director or representative of any Italian Authorities which needs to know such information or receive such document in the course of such person's employ or duties;
- (f) the Guarantor or any other member of the Group, or any employee, officer, director or representative of such entity which needs to know such information or receive such document in the course of such person's employ or duties; or
- (g) auditors, insurance and reinsurance brokers, insurers and reinsurers and professional advisers, including legal advisers, which need to know such information,

any information about any Obligor, this Agreement and the other Finance Documents as that Creditor Party shall consider appropriate. Each of the Creditor Parties may also disclose to the Builder, or any employee, officer, director or representative of the Builder which needs to know such information or receive such document in the course of such person's employ or duties, such information about any Obligor, this Agreement and the other Finance Documents as that Creditor Party reasonably considers normal practice for an export credit.

#### **24.6 ~~23-6~~ Assignment or transfer to SACE**

Notwithstanding the above provisions of this Clause ~~23-24~~ (*Changes to the Lenders*):

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- (a) each Lender and the Agent shall, if so instructed by SACE in accordance with the provisions of the SACE Insurance Policy and without any requirement for the consent of the Borrower, assign its rights or (as the case may be) transfer its rights and obligations to SACE, which assignment or transfer shall take effect upon the date stated in the relevant documentation; and
- (b) the Agent shall promptly notify the Borrower of any such assignment or transfer to SACE and the Borrower shall pay to the Agent, upon demand, all reasonable costs and expenses, duties and fees, including but without limitation legal costs and out of pocket expenses, incurred by the Agent or the Lenders in connection with any such assignment or transfer.

#### **24.7 ~~23.7~~ Security over Lenders' rights**

In addition to the other rights provided to Lenders under this Clause ~~23~~-24 (*Changes to the Lenders*), each Lender may without consulting with or obtaining consent from the Borrower or any Obligor but subject to the prior written consent of SACE, 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 (i) to the benefit of any Affiliate and/or (ii) within the framework of its, or its Affiliates, direct or indirect funding operations 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) alter the obligations of the Obligor or require any payments to be made by the Borrower or any Obligor 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.

#### **25 ~~24~~ CHANGES TO THE OBLIGORS**

##### **25.1 ~~24.1~~ No change without consent**

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

#### **26 ~~25~~ ROLE OF THE AGENT AND THE MANDATED LEAD ARRANGERS**

##### **26.1 ~~25.1~~ Appointment of the Agent**

- (a) Each other Creditor Party appoints the Agent to act as its agent under and in connection with this Agreement and the other Finance Documents and the SACE Insurance Policy.
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- (b) Each other Creditor Party authorises the Agent to exercise the rights, powers, authorities and discretions specifically given to the Agent under or in connection with the Finance Documents together with any other incidental rights, powers, authorities and discretions.

#### **26.2 25-2 Duties of the Agent**

- (a) The Agent shall promptly forward to a Party the original or a copy of any document which is delivered to the Agent for that Party by any other Party.
- (b) Except where a Finance Document specifically provides otherwise, the Agent is not obliged to review or check the adequacy, accuracy or completeness of any document it forwards to another Party.
- (c) If the Agent receives notice from a Party referring to this Agreement, describing an Event of Default and stating that the circumstance described is an Event of Default, it shall promptly notify the other Creditor Parties.
- (d) If the Agent is aware of the non-payment of any principal, interest, commitment fee or other fee payable to a Creditor Party (other than the Agent or a Mandated Lead Arranger) under this Agreement it shall promptly notify the other Creditor Parties.
- (e) The Agent's duties under the Finance Documents are solely administrative in nature.

#### **26.3 25-3 Role of the Mandated Lead Arrangers**

None of the Mandated Lead Arrangers has any obligations of any kind to any other Party under or in connection with any Transaction Document or the SACE Insurance Policy.

#### **26.4 25-4 No fiduciary duties**

- (a) Nothing in this Agreement constitutes the Agent or any of the Mandated Lead Arrangers as a trustee or fiduciary of any other person.
- (b) Neither the Agent nor any of the Mandated Lead Arrangers shall be bound to account to any Lender for any sum or the profit element of any sum received by it for its own account.

#### **26.5 25-5 Business with the Guarantor**

The Agent and each of the Mandated Lead Arrangers may accept deposits from, lend money to and generally engage in any kind of banking or other business with any Affiliate or subsidiary of the Guarantor.

#### **26.6 25-6 Rights and discretions of the Agent**

- (a) The Agent may rely on:
    - (i) any representation, notice or document believed by it to be genuine, correct and appropriately authorised; and
    - (ii) any statement made by a director, authorised signatory or employee of any person regarding any matters which may reasonably be assumed to be within his knowledge or within his power to verify.
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- (b) The Agent may assume (unless it has received notice to the contrary in its capacity as agent for the Lenders) that:
  - (i) no Event of Default has occurred (unless it has actual knowledge of an Event of Default); and
  - (ii) any right, power, authority or discretion vested in any Party or the Lenders has not been exercised.
- (c) The Agent may engage, pay for and rely on the advice or services of any lawyers, accountants, surveyors or other experts.
- (d) The Agent may act in relation to the Finance Documents through its personnel and agents.
- (e) The Agent may disclose to any other Party any information it reasonably believes it has received as the Agent under this Agreement.
- (f) Notwithstanding any other provision of any Finance Document to the contrary, neither the Agent nor any of the Mandated Lead Arrangers 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.

**26.7 ~~25.7~~ Lenders' instructions**

- (a) Unless a contrary indication appears in a Finance Document, the Agent shall:
    - (i) exercise any right, power, authority or discretion vested in it as Agent in accordance with any instructions given to it by the Majority Lenders (or, if so instructed by the Majority Lenders, refrain from exercising any right, power, authority or discretion vested in it as the Agent); and
    - (ii) not be liable for any act (or omission) if it acts (or refrains from taking any action) in accordance with an instruction of the Majority Lenders.
  - (b) Unless a contrary indication appears in a Finance Document, any instructions given by the Majority Lenders will be binding on all the Creditor Parties.
  - (c) The Agent may refrain from acting in accordance with the instructions of the Majority Lenders until it has received such security as it may require for any cost, loss or liability (together with any associated value added tax) which it may incur in complying with the instructions.
  - (d) In the absence of instructions from the Majority Lenders the Agent may act (or refrain from taking action) as it considers to be in the best interest of the Lenders.
  - (e) The Agent is not authorised to act on behalf of a Lender (without first obtaining that Lender's consent) in any legal or arbitration proceedings relating to any Finance Document.
  - (f) Notwithstanding anything to the contrary, the Lenders agree that if the Agent (acting in its sole discretion) is of the opinion that, or if any Lender notifies the Agent that it is of the opinion that, the prior approval of SACE should be obtained in relation to the exercise or non-exercise by the Agent or the Lenders of any power, authority or discretion specifically given to them under or in connection with the Finance Documents or in relation to any other incidental rights,
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powers, authorities or discretions, then the Agent shall seek such approval of SACE prior to such exercise or non-exercise.

**26.8 ~~25-8~~ Responsibility for documentation**

The Agent is not responsible for:

- (a) the adequacy, accuracy and/or completeness of any information (whether oral or written) supplied by the Agent, a Mandated Lead Arranger, an Obligor or any other person given in or in connection with any Transaction Document or the SACE Insurance Policy; nor for
- (b) the legality, validity, effectiveness, adequacy or enforceability of any Transaction Document or the SACE Insurance Policy or any other agreement, arrangement or document entered into, made or executed in anticipation of or in connection with any Transaction Document or the SACE Insurance Policy.

**26.9 ~~25-9~~ Exclusion of liability**

- (a) Without limiting paragraph (b) of Clause ~~25-9~~26.9 (*Exclusion of liability*), the Agent will not be liable for any action taken by it under or in connection with any Finance Document, unless directly caused by its gross negligence or wilful misconduct.
- (b) No Party (other than the Agent) may take any proceedings against any officer, employee or agent of the Agent in respect of any claim it might have against the Agent or in respect of any act or omission of any kind by that officer, employee or agent in relation to any Finance Document or the SACE Insurance Policy and any officer, employee or agent of the Agent may rely on this Clause.
- (c) The Agent will not be liable for any delay (or any related consequences) in crediting an account with an amount required under the Finance Documents or the SACE Insurance Policy to be paid by the Agent if the 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 Agent for that purpose.
- (d) Nothing in this Agreement shall oblige the Agent or a Mandated Lead Arranger to carry out any "know your customer" or other checks in relation to any person on behalf of any Lender and each Lender confirms to the Agent and the Mandated Lead Arrangers that it is solely responsible for any such checks it is required to carry out and that it may not rely on any statement in relation to such checks made by the Agent or a Mandated Lead Arranger.

**26.10 ~~25-10~~ Lenders' indemnity to the Agent**

Each Lender shall (in proportion to its share of the Total Commitments or, if the Total Commitments are then zero, to its share of the Total Commitments immediately prior to their reduction to zero) indemnify the Agent, within three (3) Business Days of demand, against any cost, loss or liability incurred by the Agent (otherwise than by reason of the Agent's gross negligence or wilful misconduct) in acting as Agent under the Finance Documents (unless the Agent has been reimbursed by an Obligor pursuant to a Finance Document).

**26.11 ~~25-11~~ Resignation of the Agent**

- (a) The Agent may resign and appoint one of its Affiliates as successor by giving notice to the other Creditor Parties and the Borrower.
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- (b) Alternatively the Agent may resign by giving notice to the other Creditor Parties and the Borrower, in which case the Lenders (after consultation with the Borrower) may appoint a successor Agent.
- (c) If the Lenders have not appointed a successor Agent in accordance with paragraph (b) of Clause ~~25.14~~ 26.11 (*Resignation of the Agent*) within thirty (30) days after notice of resignation was given, the Agent (after consultation with the Borrower) may appoint a successor Agent.
- (d) The retiring Agent shall, at its own cost, make available to the successor Agent such documents and records and provide such assistance as the successor Agent may reasonably request for the purposes of performing its functions as Agent under the Finance Documents.
- (e) The Agent's resignation notice shall only take effect upon the appointment of a successor.
- (f) Upon the appointment of a successor, the retiring Agent shall be discharged from any further obligation in respect of the Finance Documents but shall remain entitled to the benefit of this Clause ~~25.26~~ (*Role of the Agent and the Mandated Lead Arrangers*). Its successor and each of the other Parties shall have the same rights and obligations amongst themselves as they would have had if such successor had been an original Party.
- (g) After consultation with SACE, the Lenders may, by notice to the Agent, require it to resign in accordance with paragraph (b) of Clause ~~25.14~~ 26.11 (*Resignation of the Agent*). In this event, the Agent shall resign in accordance with paragraph (b) of Clause ~~25.14~~ 26.11 (*Resignation of the Agent*).

**26.12 ~~25.12~~ Resignation of the Agent in relation to FATCA**

The Agent shall resign in accordance with Clause ~~25.14~~ 26.11 (*Resignation of the Agent*) (and, to the extent applicable, shall use reasonable endeavours to appoint a successor Agent pursuant to paragraph (c) of Clause ~~25.14~~ 26.11 (*Resignation of the Agent*)) if on or after the date which is three months before the earliest FATCA Application Date relating to any payment to the Agent under the Finance Documents, either:

- (a) the Agent fails to respond to a request under Clause ~~11.4~~ 12.4 (*FATCA Information*) and a Lender reasonably believes that the Agent will not be (or will have ceased to be) a FATCA Exempt Party on or after that FATCA Application Date;
- (b) the information supplied by the Agent pursuant to Clause ~~11.4~~ 12.4 (*FATCA Information*) indicates that the Agent will not be (or will have ceased to be) a FATCA Exempt Party on or after that FATCA Application Date; or
- (c) the Agent notifies the Borrower and the Lenders that the Agent will not be (or will have ceased to be) a FATCA Exempt Party on or after that FATCA Application Date;

and (in each case) a Lender reasonably believes that a Party will be required to make a FATCA Deduction that would not be required if the Agent were a FATCA Exempt Party, and that Lender, by notice to the Agent, requires it to resign.

**26.13 ~~25.13~~ Confidentiality**

- (a) In acting as agent for the Creditor Parties, the Agent shall be regarded as acting through its agency division which shall be treated as a separate entity from any other of its divisions or departments.
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- (b) If information is received by another division or department of the Agent, it may be treated as confidential to that division or department and the Agent shall not be deemed to have notice of it.
- (c) Notwithstanding any other provision of this Agreement to the contrary, SACE may disclose any confidential information:
  - (i) to its ultimate shareholder, holding, subsidiary, parent and affiliate companies;
  - (ii) to the Ministry of Economy and Finance of the Republic of Italy and its departments, other Italian Ministries (including any of their department), Interministerial committees of the Italian Government and any other Italian authority, committee, agency or governmental entity;
  - (iii) to providers of reinsurance/counter guarantee or any form of risk enhancement (including their agents, brokers and consultants) subject to such persons undertaking confidentiality obligations with SACE, unless they are subject to professional duties of confidentiality;
  - (iv) for the purposes of the State guarantee in favour of SACE pursuant to article 32 of law decree n. 91/2014 converted into law 116/2014 and for the purposes of article 2 of law decree 23/2020 converted into law 40/2020; or
  - (v) following any payment due under the SACE Insurance Policy.

**26.14 ~~25.14~~ Relationship with the Lenders**

The Agent may treat each Lender as a Lender, entitled to payments under this Agreement and acting through its Facility Office unless it has received not less than five (5) Business Days' prior notice from that Lender to the contrary in accordance with the terms of this Agreement.

**26.15 ~~25.15~~ Credit appraisal by the Lenders**

Without affecting the responsibility of any Obligor for information supplied by it or on its behalf in connection with any Finance Document, each Lender confirms to the Agent and each of the Mandated Lead Arrangers that it has been, and will continue to be, solely responsible for making its own independent appraisal and investigation of all risks arising under or in connection with any Finance Document including but not limited to:

- (a) the financial condition, status and nature of the Guarantor and each subsidiary of the Guarantor;
  - (b) the legality, validity, effectiveness, adequacy or enforceability of any Finance Document and any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Finance Document;
  - (c) whether that Lender has recourse, and the nature and extent of that recourse, against any Party or any of its respective assets under or in connection with any Finance Document, the transactions contemplated by the Finance Documents or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Finance Document; and
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- (d) the adequacy, accuracy and/or completeness of any information provided by the Agent, any Party or by any other person under or in connection with any Finance Document, the transactions contemplated by the Finance Documents or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Finance Document.

**26.16 ~~25.16~~ Deduction from amounts payable by the Agent**

If any Party owes an amount to the Agent under the Finance Documents the Agent may, after giving notice to that Party, deduct an amount not exceeding that amount from any payment to that Party which the Agent would otherwise be obliged to make under the Finance Documents and apply the amount deducted in or towards satisfaction of the amount owed. For the purposes of the Finance Documents that Party shall be regarded as having received any amount so deducted.

**26.17 ~~25.17~~ SACE Agent**

Where the context permits, references to the Agent shall include the SACE Agent. The Agent and the SACE Agent shall be the same entity throughout the Security Period.

**27 ~~26~~ CONDUCT OF BUSINESS BY THE CREDITOR PARTIES**

**27.1 ~~26.4~~ No provision of this Agreement will:**

- (a) interfere with the right of any Creditor Party to arrange its affairs (Tax or otherwise) in whatever manner it thinks fit;
- (b) oblige any Creditor 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 Creditor Party to disclose any information relating to its affairs (Tax or otherwise) or any computations in respect of Tax.

**28 ~~27~~ SHARING AMONG THE CREDITOR PARTIES**

**28.1 ~~27.4~~ Payments to Creditor Parties**

If a Creditor Party (a "**Recovering Creditor Party**") receives or recovers any amount from an Obligor other than in accordance with this Clause ~~27-28~~ (*Sharing among the creditor parties*) and applies that amount to a payment due under the Finance Documents then:

- (a) the Recovering Creditor Party shall, within three (3) Business Days, notify details of the receipt or recovery to the Agent;
- (b) the Agent shall determine whether the receipt or recovery is in excess of the amount the Recovering Creditor Party would have been paid had the receipt or recovery been received or made by the Agent and distributed in accordance with Clause ~~19-20~~ (*Application of Sums Received*) and Clause ~~28-29~~ (*Payment Mechanics*), without taking account of any Tax which would be imposed on the Agent in relation to the receipt, recovery or distribution; and
- (c) the Recovering Creditor Party shall, within three (3) Business Days of demand by the Agent, pay to the Agent an amount (the "**Sharing Payment**") equal to such receipt or recovery less any amount which the Agent determines may be retained by the Recovering Creditor Party as
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its share of any payment to be made, in accordance with Clause ~~49-20~~ (*Application of Sums Received*) and Clause ~~28-29~~ (*Payment Mechanics*).

#### **28.2 ~~27-2~~ Redistribution of payments**

The Agent shall treat the Sharing Payment as if it had been paid by the relevant Obligor and distribute it between the Creditor Parties (other than the Recovering Creditor Party) in accordance with Clause ~~49-20~~ (*Application of Sums Received*) and Clause ~~28-29~~ (*Payment Mechanics*).

#### **28.3 ~~27-3~~ Recovering Creditor Party's rights**

- (a) On a distribution by the Agent under Clause ~~27-2-28.2~~ (*Redistribution of payments*), the Recovering Creditor Party will, if possible under the relevant applicable laws, be subrogated to the rights of the Creditor Parties which have shared in the redistribution.
- (b) If and to the extent that the Recovering Creditor Party is not able to rely on its rights under paragraph (a) of Clause ~~27-3-28.3~~ (*Recovering Creditor Party's rights*), the relevant Obligor shall be liable to the Recovering Creditor Party for a debt equal to the Sharing Payment which is immediately due and payable.

#### **28.4 ~~27-4~~ Reversal of redistribution**

If any part of the Sharing Payment received or recovered by a Recovering Creditor Party becomes repayable and is repaid by that Recovering Creditor Party, then:

- (a) each Lender which has received a share of the relevant Sharing Payment pursuant to Clause ~~27-2-28.2~~ (*Redistribution of payments*) shall, upon request of the Agent, pay to the Agent for account of that Recovering Creditor 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 Creditor Party for its proportion of any interest on the Sharing Payment which that Recovering Creditor Party is required to pay); and
- (b) that Recovering Creditor Party's rights of subrogation in respect of any reimbursement shall be cancelled and the relevant Obligor will be liable to the reimbursing Creditor Party for the amount so reimbursed.

#### **28.5 ~~27-5~~ Exceptions**

- (a) This Clause ~~27-28~~ (*Sharing among the Creditor Parties*) shall not apply to the extent that the Recovering Creditor Party would not, after making any payment pursuant to this Clause, have a valid and enforceable claim against the relevant Obligor.
  - (b) A Recovering Creditor Party is not obliged to share with any other Creditor Party any amount which the Recovering Creditor Party has received or recovered as a result of taking legal or arbitration proceedings, if:
    - (i) it notified that other Creditor Party of the legal or arbitration proceedings; and
    - (ii) that other Creditor 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.
-

## **29 ~~28~~PAYMENT MECHANICS**

### **29.1 ~~28-1~~Payments to the Agent**

- (a) On each date on which an Obligor or a Lender is required to make a payment under a Finance Document, that Obligor or Lender shall make the same available to the Agent (unless a contrary indication appears in a Finance Document) for value on the due date at the time and in such funds specified by the Agent as being customary at the time for settlement of transactions in the relevant currency in the place of payment.
- (b) Payment shall be made to such account in the principal financial centre of the country of that currency (or, in relation to Euro, in a principal financial centre in a Participating Member State or London) with such bank as the Agent specifies.
- (c) Payment shall be made before 11.00 a.m. New York time or 11.00 a.m. Paris time (in the case of a payment in Euro).
- (d) For each payment by the Borrower, it shall notify the Agent on the third Business Day prior to the due date for payment that it will issue to its bank (which shall be named in such notification) to make the payment.

### **29.2 ~~28-2~~Distributions by the Agent**

Each payment received by the Agent under the Finance Documents for another Party shall, subject to Clause ~~28-3~~29.3 (*Distributions to an Obligor*), Clause ~~28-4~~29.4 (*Clawback*) and Clause ~~28-5~~29.5 (*No set-off by Obligors*) be made available by the Agent as soon as practicable after receipt to the Party entitled to receive payment in accordance with this Agreement (in the case of a Lender, for the account of its Facility Office), to such account as that Party may notify to the Agent by not less than five (5) Business Days' notice with a bank 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).

### **29.3 ~~28-3~~Distributions to an Obligor**

The Agent may in accordance with Clause ~~22-23~~23 (*Set-Off*) apply any amount received by it for that Obligor in or towards payment (on the date and in the currency and funds of receipt) of any amount due from that Obligor under the Finance Documents or in or towards purchase of any amount of any currency to be so applied.

### **29.4 ~~28-4~~Clawback**

- (a) Where a sum is to be paid to the Agent under the Finance Documents for another Party, the Agent is not obliged to pay that sum to that other Party (or to enter into or perform any related exchange contract) until it has been able to establish to its satisfaction that it has actually received that sum.
  - (b) If the Agent pays an amount to another Party and it proves to be the case that the Agent had not actually received that amount, then the Party to whom that amount (or the proceeds of any related exchange contract) was paid by the Agent shall on demand refund the same to the Agent together with interest on that amount from the date of payment to the date of receipt by the Agent, calculated by the Agent to reflect its cost of funds.
-



## **29.5** ~~28-5~~ No set-off by Obligors

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

## **29.6** ~~28-6~~ Business Days

- (a) Any payment which is due to be made on a day that is not a Business Day shall be made on the next Business Day in the same calendar month (if there is one) or the preceding Business Day (if there is not).
- (b) During any extension of the due date for payment of any principal or unpaid sum under this Agreement interest is payable on the principal or unpaid sum at the rate payable on the original due date.

## **29.7** ~~28-7~~ Currency of account

- (a) Subject to paragraphs (b) and (c) of Clause ~~28-7~~ 29.7 (*Currency of account*) Dollars is the currency of account and payment for any sum from an Obligor under any Finance Document.
- (b) Each payment in respect of costs, expenses or Taxes shall be made in the currency in which the costs, expenses or taxes are incurred.
- (c) Any amount expressed to be payable in a currency other than Dollars shall be paid in that other currency.

## **29.8** ~~28-8~~ Change of currency

- (a) Unless otherwise prohibited by law, if more than one currency or currency unit are at the same time recognised by the central bank of any country as the lawful currency of that country, then:
  - (i) any reference in the Finance Documents to, and any obligations arising under the Finance Documents in, the currency of that country shall be translated into, or paid in, the currency or currency unit of that country designated by the Agent (after consultation with the Lenders and the Borrower); and
  - (ii) any translation from one currency or currency unit to another shall be at the official rate of exchange recognised by the central bank for the conversion of that currency or currency unit into the other, rounded up or down by the Agent (acting reasonably).
- (b) If a change in any currency of a country occurs, this Agreement will, to the extent the Agent (acting reasonably and after consultation with the Lenders and the Borrower) specifies to be necessary, be amended to comply with any generally accepted conventions and market practice in the ~~relevant interbank market~~ Relevant Market and otherwise to reflect the change in currency.

## **30** ~~29~~ GOVERNING LAW

### **30.1** ~~29-1~~ Law

This Agreement is governed by English law.

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## 31 ~~30~~ ENFORCEMENT

### 31.1 ~~30.4~~ Jurisdiction of English courts

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) (a "**Dispute**"). Each Party agrees that the courts of England are the most appropriate and convenient courts to settle Disputes and accordingly no Party will argue to the contrary.

### 31.2 ~~30.2~~ Service of process

Without prejudice to any other mode of service allowed under any relevant law, the Borrower:

- (a) irrevocably appoints Hannaford Turner LLP, currently of ~~9 Cloak Lane~~ [107 Cheapside](#), London, ~~EC4R 2RU, UK~~, as its agent for service of process in relation to any proceedings before the English courts in connection with any Finance Document; and
- (b) agrees that failure by a process agent to notify the Borrower of the process will not invalidate the proceedings concerned.

## 32 ~~34~~ SCHEDULES

### 32.1 ~~34.4~~ Integral Part

The schedules form an integral part of this Agreement.

## 33 ~~32~~ NOTICES

### 33.1 ~~32.4~~ General

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

### 33.2 ~~32.2~~ Addresses for communications

A notice shall be sent:

- (a) to the Borrower:

7665 Corporate Center Drive  
Miami FL33126, USA

Attention: Chief Financial Officer and General Counsel

Email: [\*] / [\*]

- (b) to a Lender:

At the address below its name in Schedule 1 (*Lenders and Commitments*) or (as the case may require) in the relevant Transfer Certificate.

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- (c) to the Agent or the SACE Agent

12 Place des États-Unis  
CS 70052  
92547 Montrouge Cedex, France

Attn: Shipping Middle Office  
Ms Clémentine Costil and Romy Roussel

Fax No. (33) 1 41 89 19 34

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

**33.3 ~~32.3~~ Effective date of notices**

Subject to Clauses ~~32.4~~33.4 (*Service outside business hours*) and ~~32.5~~33.5 (*Illegible notices*), 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;

**33.4 ~~32.4~~ Service outside business hours**

However, if under Clause ~~32.3~~33.3 (*Effective date of notices*) a notice would be deemed to be served:

- (a) on a day which is not a business day in the place of receipt; or
- (b) on such a business day, but after 6 p.m. local time;

the notice shall (subject to Clause ~~32.5~~33.5 (*Illegible notices*)) be deemed to be served, and shall take effect, at 9 a.m. on the next day which is such a business day.

**33.5 ~~32.5~~ Illegible notices**

Clauses ~~32.3~~33.3 (*Effective date of notices*) and ~~32.4~~33.4 (*Service outside business hours*) do not apply if the recipient of a notice notifies the sender within 1 hour after the time at which the notice would otherwise be deemed to be served that the notice has been received in a form which is illegible in a material respect.

**33.6 ~~32.6~~ 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.
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**33.7 ~~32-7~~ English language**

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

**33.8 ~~32-8~~ Meaning of "notice"**

In this Clause ~~32-33~~ (Notices), "notice" includes any demand, consent, authorisation, approval, instruction, waiver or other communication.

**34 ~~33~~ SUPPLEMENTAL**

**34.1 ~~33-1~~ 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.

**34.2 ~~33-2~~ 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.

**34.3 ~~33-3~~ Counterparts**

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

**34.4 ~~33-4~~ Third party rights**

A person who is not a party to this Agreement has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce or to enjoy the benefit of any term of this Agreement provided that nothing in this Clause shall limit or prejudice the exercise by SACE of its rights under this Agreement or the Finance Documents in the event that such rights are subrogated or assigned to it pursuant to the terms of the SACE Insurance Policy.

**34.5 ~~33-5~~ No waiver**

No failure or delay on the part of a Creditor Party in exercising any right, power or privilege hereunder shall operate as a waiver thereof; nor shall any single or partial exercise thereof preclude any other or further exercise thereof by the Creditor Parties or the exercise by the Creditor Parties of any other right, power or privilege. The rights and remedies of the Creditor Parties herein provided are cumulative and not exclusive of any rights or remedies provided by law.

**34.6 ~~33-6~~ Writing required**

This Agreement shall not be capable of being modified otherwise than by an express modification in writing signed by the Borrower, the Agent and the Lenders.

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### **34.7** ~~33.7~~ Bail-In

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

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

### **35** ~~34~~ CONFIDENTIALITY OF FUNDING RATES AND REFERENCE BANK QUOTATIONS

#### **35.1** ~~34.1~~ Confidentiality and disclosure

- (a) The Agent and each Obligor agree to keep each Funding Rate (and, in the case of the 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 Agent may disclose:
    - (i) any Funding Rate (but not, for the avoidance of doubt, any Reference Bank Quotation) to the Borrower pursuant to Clause ~~6-6~~ 7.6 (*Notification of Interest Periods and Floating Interest Rate*);
    - (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 Agent and the relevant Lender or Reference Bank, as the case may be.
  - (c) The 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 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 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 Agent's obligations in this Clause ~~34-35~~ (*Confidentiality of Funding Rates and Reference Bank Quotations*) relating to Reference Bank Quotations are without prejudice to its obligations to make notifications under Clause ~~6-6-7.6~~ (*Notification of Interest Periods and Floating Interest Rate*) **provided that** (other than pursuant to sub-paragraph (i) of paragraph (b) above) the Agent shall not include the details of any individual Reference Bank Quotation as part of any such notification.

### **35.2 ~~34.2~~ Related obligations**

- (a) The Agent and each Obligor acknowledge that each Funding Rate (and, in the case of the 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 Agent and each Obligor undertake not to use any Funding Rate or, in the case of the Agent, any Reference Bank Quotation for any unlawful purpose.
  - (b) The 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 (c) of Clause ~~34.1-35.1~~ (*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 ~~34-35~~ (*Confidentiality of Funding Rates and Reference Bank Quotations*).
-

**35.3 ~~34.3~~ No Event of Default**

No Event of Default will occur under Clause ~~18.4~~19.4 (*Breach of other obligations*) by reason only of an Obligor's failure to comply with this Clause ~~34~~35 (*Confidentiality of Funding Rates and Reference Bank Quotations*).

**This Agreement has been entered into and amended and restated on the date stated at the beginning of this Agreement.**

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EXECUTION PAGES

**BORROWER**

SIGNED by )  
 )  
for and on behalf of )  
**RIVIERA NEW BUILD, LLC** )  
in the presence of: )

**LENDERS**

SIGNED by )  
 )  
for and on behalf of )  
**CRÉDIT AGRICOLE** )  
**CORPORATE AND** )  
**INVESTMENT BANK** )  
in the presence of: )

SIGNED by )  
 )  
for and on behalf of )  
~~SOCIÉTÉ GENERALE~~ )  
DEKABANK DEUTSCHE )  
GIROZENTRALE )  
in the presence of: )

SIGNED by )  
 )  
for and on behalf of )  
~~DEKABANK DEUTSCHE~~ )  
~~GIROZENTRALE~~ )  
SOCIÉTÉ GENERALE )  
in the presence of: )

**MANDATED LEAD ARRANGERS**

SIGNED by )  
 )  
for and on behalf of )  
**CRÉDIT AGRICOLE** )  
**CORPORATE AND** )  
**INVESTMENT BANK** )  
in the presence of: )

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**SIGNED** by )  
for and on behalf of ) **SOCIÉTÉ GÉNÉRALE)**  
**SOCIÉTÉ GÉNÉRALE** ) )  
in the presence of: )

**AGENT**

**SIGNED** by )  
for and on behalf of )  
**CRÉDIT AGRICOLE** )  
**CORPORATE AND** )  
**INVESTMENT BANK** )  
in the presence of: )

**SACE AGENT**

**SIGNED** by )  
for and on behalf of )  
**CRÉDIT AGRICOLE** )  
**CORPORATE AND** )  
**INVESTMENT BANK** )  
in the presence of: )

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## APPENDIX 2

### FORM OF AMENDED AND RESTATED GUARANTEE (MARKED TO INDICATE AMENDMENTS)

Amendments are indicated as follows:

- 1 additions are indicated by underlined text in blue; and
  - 2 deletions are shown by strike-through text in red.
-

Originally dated 31 October 2014 (as amended from time to time, including by a supplemental agreement dated 4 June 2020 ~~and~~, as further amended and restated by an amendment and restatement agreement dated ~~February 2021~~ 17 February 2021, as further amended by a supplemental agreement dated 23 December 2021, as further amended by a supplemental agreement dated 16 December 2022 and as further amended and restated by an amendment and restatement agreement dated 2023)

**NCL CORPORATION LTD.**  
as Guarantor

and

**NORWEGIAN CRUISE LINE HOLDINGS LTD.**  
as the Holding

and

**THE BANKS AND FINANCIAL INSTITUTIONS**  
listed in Schedule 1  
as Lenders

and

**CRÉDIT AGRICOLE CORPORATE AND INVESTMENT BANK**  
**SOCIÉTÉ GÉNÉRALE**  
as Mandated Lead Arrangers

and

**CRÉDIT AGRICOLE CORPORATE AND INVESTMENT BANK**  
as Agent and SACE Agent

**AMENDED AND RESTATED GUARANTEE**

relating to a loan agreement originally dated 18 July 2008 (as previously amended from time to time, including by a supplemental agreement dated 25 October 2010, as further amended by a side letter dated 29 March 2012, as further amended and restated by an amendment and restatement agreement dated 31 October 2014, as further amended by a framework agreement dated 31 January 2018, as further amended by a supplemental agreement dated 4 June 2020 ~~and~~, as further amended and restated by an amendment and restatement agreement dated ~~February 2021~~ 17 February 2021, as further amended by a supplemental agreement dated 23 December 2021, as further amended by a supplemental agreement dated 16 December 2022 and as further amended and restated by an amendment and restatement agreement dated 2023) in respect of the passenger cruise ship m.v. "RIVIERA"

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**THIS GUARANTEE** is originally made on 31 October 2014 (as amended from time to time, including by a supplemental agreement dated 4 June 2020 ~~and~~, as further amended and restated by an amendment and restatement agreement dated ~~February 2021~~ 17 February 2021, as further amended by a supplemental agreement dated 23 December 2021, as further amended by a supplemental agreement dated 16 December 2022 and as further amended and restated by an amendment and restatement agreement dated 2023)

## **PARTIES**

- (1) **NCL CORPORATION LTD.**, a company incorporated under the laws of Bermuda with its registered office at Park Place ~~55~~, 55 Par-la-Ville Road, Hamilton HM 11, Bermuda (the "**Guarantor**")
- (2) **NORWEGIAN CRUISE LINE HOLDINGS LTD.**, a company incorporated under the laws of Bermuda with its registered office at Park Place ~~55~~, 55 Par-la-Ville Road, Hamilton HM 11, Bermuda (the "**Holding**")
- (3) **THE BANKS AND FINANCIAL INSTITUTIONS listed in Schedule 1** of the Loan Agreement (the "**Lenders**")
- (4) **CRÉDIT AGRICOLE CORPORATE AND INVESTMENT BANK**, a French société anonyme having its registered office located at 12, Place des États-Unis, CS 70052, 92547 Montrouge Cedex, France registered under number Siren 304 187 701 at the Registre du Commerce et des Sociétés of Nanterre, France and **SOCIÉTÉ GÉNÉRALE** a French société anonyme having its registered office located at 29 Boulevard Haussmann, 75009 Paris under number Siren 552 120 222 at the Registre du Commerce et des Sociétés of Paris, France as mandated lead arrangers (the "**Mandated Lead Arrangers**")
- (5) **CRÉDIT AGRICOLE CORPORATE AND INVESTMENT BANK**, a French *société anonyme* having its registered office located at 12, Place des États-Unis, CS 70052, 92547 Montrouge Cedex, France registered under number Siren 304 187 701 at the Registre du Commerce et des Sociétés of Nanterre, France as agent (the "**Agent**", which expression includes its successors and assigns) and as SACE agent (the "SACE Agent")

## **BACKGROUND**

- (A) By a Master Shipbuilding (Contracts and Options) Agreement dated 14 May 2008 (the "**Master Agreement**") entered into between (inter alia) Fincantieri - Cantieri Navali Italiani SpA (the "**Builder**"), Prestige Cruise Holdings, Inc., Oceania Cruises, Inc. and, by way of endorsement, Riviera New Build, LLC (the "**Borrower**") providing for an original shipbuilding contract dated 13 June 2007 (the "**Original Shipbuilding Contract**") between the Borrower and the Builder to be novated and modified in the form and on the terms set out in the Master Agreement (the Original Shipbuilding Contract as novated and modified by the Master Agreement being hereinafter referred to as the "**Shipbuilding Contract**"), the Builder agreed to design, construct and deliver, and the Borrower agreed to purchase, a passenger cruise ship having hull number [\*].
- (B) By a loan agreement dated 18 July 2008 (as amended by a supplemental agreement dated 25 October 2010, as further amended and restated by an amendment and restatement agreement dated 31 October 2014) (the "**Original Loan Agreement**") and made between (i) the Borrower, (ii) the Lenders, (iii) the Mandated Lead Arrangers and (iv) the Agent and SACE Agent, it was agreed that the Lenders would make available to the Borrower a loan facility of the Dollar Equivalent of up to EUR 349,520,718.00 for the purpose of assisting the Borrower in

- financing (i) payment under the Shipbuilding Contract of all or part of 80% of the Final Contract Price up to the Eligible Amount and (ii) payment to SACE of the Dollar Equivalent of 100% of the second instalment of the SACE Premium.
- (C) By a guarantee dated 18 July 2008 (as amended by a side letter dated 14 December 2011, as further amended by a letter agreement dated 24 June 2013 and as otherwise amended from time to time) (the "**Prestige Guarantee**") and made between (i) Prestige Cruise Holdings, Inc. as guarantor (the "**Prestige Guarantor**"), (ii) the Lenders, (iii) the Mandated Lead Arrangers and (iv) the Agent, the Prestige Guarantor agreed to guarantee the obligations of the Borrower under the Original Loan Agreement.
- (D) By a guarantee dated 18 July 2008 (as amended by a side letter dated 14 December 2011, as further amended by a letter agreement dated 24 June 2013 and as otherwise amended from time to time) (the "**Oceania Guarantee**" and together with the Prestige Guarantee, the "**Prior Guarantees**") and made between (i) Oceania Cruises, Inc. as guarantor (the "**Oceania Guarantor**" and together with the Prestige Guarantor, the "**Prior Guarantors**"), (ii) the Lenders, (iii) the Mandated Lead Arrangers and (iv) the Agent, the Oceania Guarantor agreed to guarantee the obligations of the Borrower under the Original Loan Agreement.
- (E) By an amendment and restatement agreement dated 31 October 2014 and made between (i) the Borrower, (ii) the Lenders, (iii) the Mandated Lead Arrangers, and (iv) the Agent and SACE Agent, the parties thereto agreed to, among other things, the Guarantor replacing the Prior Guarantors as a guarantor of the obligations of the Borrower under the Original Loan Agreement with the corresponding termination of the Prior Guarantees and the execution and delivery of a replacement guarantee.
- (F) The execution and delivery to the Agent of the replacement guarantee referred to above by the Guarantor and dated 31 October 2014 (the "**Original Guarantee**") was one of the conditions precedent of the continuing availability of the facility under the Original Loan Agreement.
- (G) Due to the unprecedented and extraordinary impacts of the Covid-19 pandemic on the cruise sector and cruise operators, SACE informed the cruise operators of its availability to evaluate certain measures (the "**Temporary Measures**") applicable in relation to certain qualifying loan agreements in order to assist companies which are financially sound but dealing with the impact of the temporary but unprecedented Covid-19 pandemic; the possibility to access to such measures was subject, amongst other things, to certain principles dated 15 April 2020 for cruise lines offered by SACE (the "**Original Principles**").
- (H) Pursuant to the consent request letter dated 18 April 2020, the Borrower and the Guarantor notified the Agent and the SACE Agent of their wish to benefit from the Temporary Measures in relation to certain loan agreements listed therein, including the Original Loan Agreement, and requested, amongst other things, the deferral of repayments of principal under the Original Loan Agreement for a period of one year from 1 April 2020 to 31 March 2021 (the "**First Borrower Request**").
- (I) On 25 May 2020, the Agent (for and on behalf of the Lenders) provided its consent to part of the First Borrower Request in accordance with and subject to certain conditions as set out in an amendment to the Original Loan Agreement dated 4 June 2020 between, amongst others, the Borrower and the Agent (the "**2020 Amendment Agreement**") ~~(the Original Loan Agreement as amended pursuant to the 2020 Amendment Agreement, the "~~**Amended Loan Agreement**~~").~~

- (J) Due to the continued impacts of the Covid-19 pandemic on the cruise sector and cruise operators, SACE confirmed on 31 December 2020 its availability to evaluate an extension of the Temporary Measures (the "**Extended Temporary Measures**"), again subject to certain principles dated 26 November 2020 for cruise lines offered by SACE (together with the Original Principles, the "**Principles**").
- (K) Pursuant to the consent request letter dated 3 December 2020, the Borrower and the Guarantor notified the Agent and the SACE Agent of their wish to benefit from the Extended Temporary Measures in relation to certain loan agreements listed therein, including the ~~Amended-Original~~ Amended-Original Loan Agreement (as amended by the 2020 Amendment Agreement), and requested, amongst other things, the deferral of repayments of principal under the ~~Amended-Original~~ Amended-Original Loan Agreement (as amended by the 2020 Amendment Agreement) for a further period of one year from 1 April 2021 to 31 March 2022 (the "**Second Borrower Request**").
- (L) On 25 January 2021, the Agent (for and on behalf of the Lenders) provided its consent to part of the Second Borrower Request in accordance with and subject to certain conditions as set out in an amendment and restatement agreement to the ~~Amended-Original~~ Amended-Original Loan Agreement (as amended by the 2020 Amendment Agreement) and to the Original Guarantee (as amended pursuant to the 2020 Amendment Agreement, ~~the "Amended Guarantee"~~) dated ~~\_\_\_\_\_~~ 17 February 2021 between, amongst others, the Borrower, the Guarantor, the Holding, the Agent and the SACE Agent (the "~~2021 Amendment and Restatement Agreement~~", ~~and the Amended Loan Agreement as amended and restated by the February 2021 Amendment and Restatement Agreement, the "Loan Agreement"~~ Amendment and Restatement Agreement).
- (M) By a supplemental agreement dated 23 December 2021 and made between, amongst others, the Borrower, the Agent and the SACE Agent (the "December 2021 Amendment Agreement"), the Parties agreed to, *inter alia*, amend certain financial covenants and certain other provisions under the Original Loan Agreement (as amended by the 2020 Amendment Agreement and as amended and restated by the February 2021 Amendment and Restatement Agreement) and the Original Guarantee (as amended by the 2020 Amendment Agreement and as amended and restated by the February 2021 Amendment and Restatement Agreement).
- (N) By a supplemental agreement dated 16 December 2022 and made between, amongst others, the Borrower, the Agent and the SACE Agent (the "December 2022 Amendment Agreement"), the Parties agreed to, *inter alia*, amend certain financial covenants and certain other provisions under the Original Loan Agreement (as amended by the 2020 Amendment Agreement, as amended and restated by the February 2021 Amendment and Restatement Agreement and as amended by the December 2021 Amendment Agreement) and the Original Guarantee (as amended by the 2020 Amendment Agreement, as amended and restated by the February 2021 Amendment and Restatement Agreement and as amended by the December 2021 Amendment Agreement).
- (O) The Parties have agreed to enter into an amendment and restatement agreement to the Original Loan Agreement (as amended by the 2020 Amendment Agreement, as amended and restated by the February 2021 Amendment and Restatement Agreement, as amended by the December 2021 Amendment Agreement and as amended by the December 2022 Amendment Agreement, the "Amended Loan Agreement") and to the Original Guarantee (as amended by the 2020 Amendment Agreement, as amended and restated by the February 2021 Amendment and Restatement Agreement, as amended by the December 2021 Amendment Agreement and as amended by the December 2022 Amendment Agreement, the "Amended Guarantee") dated \_\_\_\_\_ 2023 to, *inter alia*, incorporate certain amendments including

the switch from LIBOR to SOFR (as defined therein) (the "2023 Amendment and Restatement Agreement" and the Amended Loan Agreement as amended and restated by the 2023 Amendment and Restatement Agreement, the "Loan Agreement").

(P) ~~(M)~~This Guarantee sets out the terms and conditions of the Amended Guarantee as amended and restated by the ~~2021-2023~~ 2023 Amendment and Restatement Agreement.

## OPERATIVE PROVISIONS

### 1 INTERPRETATION

#### 1.1 Defined expressions

Words and expressions defined in the Loan Agreement shall have the same meanings when used in this Guarantee unless the context otherwise requires.

#### 1.2 Construction of certain terms

In this Guarantee:

"**Bankruptcy**" includes a liquidation, receivership or administration and any form of suspension of payments, arrangement with creditors or reorganisation under any corporate or insolvency law of any country.

"**Capital Stock**" means:

- (a) in the case of a corporation or company, corporate stock or shares;
- (b) in the case of an association or business entity, any and all shares, interests, participations, rights or other equivalents (however designated) of corporate stock;
- (c) in the case of a partnership or limited liability company, partnership or membership interests (whether general or limited); and
- (d) any other interest or participation that confers on a person the right to receive a share of the profits and losses of, or distributions of assets of, the issuing person.

"**First Financial Quarter**" means the financial quarter ending immediately prior to or on the date falling 90 days before the Intended Delivery Date.

"**Loan Agreement**" has the meaning given to it in Recital ~~(L)~~(O).

~~"**Management**" means the employees of the Guarantor and its subsidiaries or their dependants or any trust for which such persons are the intended beneficiary.~~

#### 1.3 Application of construction and interpretation provisions of Loan Agreement

Clauses 1.2 (*Construction of certain terms*) to ~~4.5-1.6~~ 1.6 (*General Interpretation*) of the Loan Agreement apply, with any necessary modifications, to this Guarantee.



#### **1.4 Inconsistency between Loan Agreement provisions and this Guarantee**

This Guarantee shall be read together with the Loan Agreement, but in case of any conflict between the Loan Agreement and this Guarantee, unless expressly provided to the contrary in this Guarantee, the provisions of the Loan Agreement shall prevail.

## **2 GUARANTEE**

### **2.1 Guarantee and indemnity**

The Guarantor unconditionally and irrevocably:

- (a) guarantees to the Agent punctual performance by the Borrower of all the Borrower's obligations under or in connection with the Loan Agreement and every other Finance Document;
- (b) undertakes to the Agent that whenever the Borrower does not pay any amount when due under or in connection with the Loan Agreement and the other Finance Documents, the Guarantor shall immediately on demand pay that amount as if it was the principal obligor;
- (c) agrees that if any obligation guaranteed by it is or becomes unenforceable, invalid or illegal, it will, as an independent and primary obligation, indemnify the Agent and each other Creditor Party immediately on demand by the Agent against any cost, loss or liability it incurs as a result of the Borrower not paying any amount which would, but for such unenforceability, invalidity or illegality, have been payable by it under the Loan Agreement or any other Finance Document on the date when it would have been due. Any such demand for indemnification shall be made through the Agent, for itself or on behalf of the Creditor Parties. The amount payable by the Guarantor under this indemnity will not exceed the amount it would have had to pay under this Clause 2.1 (*Guarantee and indemnity*) if the amount claimed had been recoverable on the basis of a guarantee.

### **2.2 No limit on number of demands**

The Agent acting on behalf of the Creditor Parties may serve any number of demands under Clause 2.1 (*Guarantee and indemnity*).

## **3 LIABILITY AS PRINCIPAL AND INDEPENDENT DEBTOR**

### **3.1 Principal and independent debtor**

The Guarantor shall be liable under this Guarantee as a principal and independent debtor and accordingly it shall not have, as regards this Guarantee, any of the rights or defences of a surety.

### **3.2 Waiver of rights and defences**

Without limiting the generality of Clause 3.1 (*Principal and independent debtor*), the obligations of the Guarantor under this Guarantee will not be affected or discharged by an act, omission, matter or thing which, but for this Clause, would reduce, release or prejudice any of its obligations under this Guarantee (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, the Borrower or other person;

- (b) the release of the Borrower or any other person under the terms of any composition or arrangement with any creditor of any affiliate of the Borrower;
- (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, the Borrower or other person or any non-presentation or non-observance of any formality or other requirement in respect of any instrument or any failure to realise the full value of any security;
- (d) any incapacity or lack of power, authority or legal personality of or dissolution or change in the members or status of the Borrower or any other person;
- (e) any amendment, novation, supplement, extension, restatement (however fundamental and whether or not more onerous) or replacement of any Finance Document or any other document or security including without limitation any change in the purpose of, any extension of or any increase in any facility or the addition of any new facility under any Finance Document or other document or security;
- (f) any insolvency or similar proceedings;
- (g) any arrangement or concession (including a rescheduling or acceptance of partial payments) relating to, or affecting, the Finance Documents;
- (h) any release or loss whatsoever of any guarantee, right or Security Interest created by the Finance Documents;
- (i) any failure whatsoever promptly or properly to exercise or enforce any such right or Security Interest, including a failure to realise for its full market value an asset covered by such a Security Interest;
- (j) any other Finance Document or any Security Interest now being or later becoming void, unenforceable, illegal or invalid or otherwise defective for any reason, including a neglect to register it; or
- (k) any unenforceability, illegality or invalidity of any obligation of any person under any Finance Document or any other document or security.

#### **4 EXPENSES**

##### **4.1 Costs of preservation of rights, enforcement etc**

The Guarantor shall pay to the Agent on its demand the amount of all expenses incurred by the Agent or any other Creditor Party in connection with any matter arising out of this Guarantee or any Security Interest connected with it, including any advice, claim or proceedings relating to this Guarantee or such a Security Interest.

##### **4.2 Fees and expenses payable under Loan Agreement**

Clause 4.1 (*Costs of preservation of rights, enforcement etc*) is without prejudice to the Guarantor's liabilities in respect of the Borrower's obligations under clauses 10 (*Fees*) and 11 (*Taxes, Increased Costs, Costs and Related Charges*) of the Loan Agreement and under similar provisions of other Finance Documents.

## **5 ADJUSTMENT OF TRANSACTIONS**

### **5.1 Reinstatement of obligation to pay**

The Guarantor shall pay to the Agent on its demand any amount which any Creditor Party is required, or agrees, to pay pursuant to any claim by, or settlement with, a trustee in ~~bankruptcy~~ Bankruptcy of the Borrower or of any other Obligor (or similar person) on the ground that the Loan Agreement or any other Finance Document, or a payment by the Borrower or of such other Obligor, was invalid or on any similar ground.

## **6 PAYMENTS**

### **6.1 Method of payments**

Any amount due under this Guarantee shall be paid:

- (a) in immediately available funds;
- (b) to such account as the Agent acting on behalf of the other Creditor Parties may from time to time notify to the Guarantor;
- (c) without any form of set-off, cross-claim or condition; and
- (d) free and clear of any tax deduction except a tax deduction which the Guarantor is required by law to make.

### **6.2 Grossing-up for taxes**

If the Guarantor is required by law to make a tax deduction, the amount due to the Agent acting on behalf of the other Creditor Parties shall be increased by the amount necessary to ensure that the Agent and (if the payment is not due to the Agent for its own account) the Creditor Party beneficially interested in the payment receives and retains a net amount which, after the tax deduction, is equal to the full amount that it would otherwise have received.

### **6.3 Tax Credits**

If an additional payment is made by the Guarantor under this Clause and any Creditor Party determines that it has received or been granted a credit against or relief of or calculated with reference to the deduction giving rise to such additional payment, such Creditor Party shall, to the extent that it can do so without prejudice to the retention of the amount of such credit, relief, remission or repayment and provided that it has received the cash benefit of such credit, relief or remission, pay to the Guarantor such amount as such Creditor Party shall in its reasonable opinion have concluded to be attributable to the relevant deduction. Any such payment shall be conclusive evidence of the amount due to the Guarantor hereunder and shall be accepted by the Guarantor in full and final settlement of its rights of reimbursement hereunder in respect of such deduction. Nothing herein contained shall interfere with the right of each Creditor Party to arrange its tax affairs in whatever manner it thinks fit. Notwithstanding the foregoing, to the extent that this Clause imposes obligations or restrictions on a party, such obligations or restrictions shall not apply to SACE and SACE shall have no obligations hereunder nor be constrained by such restrictions.

- 6.4 To the extent that this Clause 6 (*Payments*) imposes obligations or restrictions on a Creditor Party, such obligations or restrictions shall not apply to SACE and SACE shall have no obligations hereunder nor be constrained by such restrictions.

## **7 INTEREST**

### **7.1 Accrual of interest**

Any amount due under this Guarantee shall carry interest after the date on which the Agent demands payment of it until it is actually paid, unless interest on that same amount also accrues under the Loan Agreement.

### **7.2 Calculation of interest**

Interest on sums payable under this Guarantee shall be calculated and accrue in the same way as interest under clause 6 (*Interest*) of the Loan Agreement.

### **7.3 Guarantee extends to interest payable under Loan Agreement**

For the avoidance of doubt, it is confirmed that this Guarantee covers all interest payable under the Loan Agreement, including that payable under clause 17 (*Interest on Late Payments*) of the Loan Agreement.

## **8 SUBORDINATION**

### **8.1 Subordination of rights of Guarantor**

Until all amounts which may be or become payable by the Obligors under or in connection with the Finance Documents have been irrevocably paid in full and unless the Agent otherwise directs, all rights which the Guarantor at any time has (whether in respect of this Guarantee or any other transaction) against the Borrower, any other Obligor or their respective assets shall be fully subordinated to the rights of the Creditor Parties under the Finance Documents; and in particular, the Guarantor shall not:

- (a) claim, or in a ~~bankruptcy~~ Bankruptcy of the Borrower or any other Obligor prove for, any amount payable to the Guarantor by the Borrower or any other Obligor, whether in respect of this Guarantee or any other transaction;
- (b) take or enforce any Security Interest for any such amount;
- (c) exercise any right to be indemnified by an Obligor;
- (d) bring legal or other proceedings for an order requiring the Borrower or any other Obligor to make any payment, or perform any obligation, in respect of which ~~any~~ the Guarantor has given a guarantee, undertaking or indemnity under this Guarantee;
- (e) claim to set-off any such amount against any amount payable by the Guarantor to the Borrower or any other Obligor; or
- (f) claim any subrogation or right of contribution or other right in respect of any Finance Document or any sum received or recovered by any Creditor Party under a Finance Document.

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 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 Agent or as the Agent may direct for application in accordance with the Loan Agreement and the Finance Documents.

## **9 ENFORCEMENT**

### **9.1 No requirement to commence proceedings against Borrower**

The Guarantor waives any right it may have of first requiring the Agent or any other Creditor Party to proceed against or enforce any other rights or security or claim payment from any person before claiming from ~~that the~~ Guarantor under this Guarantee. Neither the Agent nor any other Creditor Party will need to make any demand under, commence any proceedings under, or enforce any guarantee or any Security Interest contained in or created by, the Loan Agreement or any other Finance Document before claiming or commencing proceedings under this Guarantee. This waiver applies irrespective of any law or any provision of a Finance Document to the contrary.

### **9.2 Conclusive evidence of certain matters**

However, as against the Guarantor:

- (a) any judgment or order of a court in England or the Marshall Islands or Bermuda or the United States of America in connection with the Loan Agreement; and
  - (b) any statement or admission by the Borrower in connection with the Loan Agreement,
- shall be binding and conclusive as to all matters of fact and law to which it relates.

### **9.3 Suspense account**

Until all amounts which may be or become payable by the Obligors under or in connection with the Finance Documents have been irrevocably paid in full, the Agent and any Creditor Party may:

- (a) refrain from applying or enforcing any other moneys, security or rights held or received by it (or any trustee or agent on its behalf which, in the case of a Creditor Party, shall include the Agent) 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 ~~any the~~ Guarantor or on account of ~~any the~~ Guarantor's liability under this Guarantee.

## **10 REPRESENTATIONS AND WARRANTIES**

### **10.1 General**

The Guarantor represents and warrants to each of the Creditor Parties as follows on the date of this Guarantee, which representations and warranties shall be deemed to be repeated, with

reference mutatis mutandis to the facts and circumstances subsisting, as if made on each day from the date of this Guarantee to the end of the Security Period.

**10.2 Status**

The Guarantor is duly incorporated and validly existing and in good standing under the laws of Bermuda as an exempted company.

**10.3 Corporate power**

The Guarantor has the corporate capacity, and has taken all corporate action and obtained all consents necessary for it:

- (a) to execute this Guarantee; and
- (b) to make all the payments contemplated by, and to comply with, this Guarantee.

**10.4 Consents in force**

All the consents referred to in Clause 10.3 (*Corporate power*) remain in force and nothing has occurred which makes any of them liable to revocation.

**10.5 Legal validity**

This Guarantee constitutes the Guarantor's legal, valid and binding obligations enforceable against the Guarantor in accordance with its terms subject to any relevant insolvency laws affecting creditors' rights generally.

**10.6 No conflicts**

The execution by the Guarantor of this Guarantee and its compliance with this Guarantee will not involve or lead to a contravention of:

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

**10.7 No withholding taxes**

All payments which the Guarantor is liable to make under this Guarantee may be made without deduction or withholding for or on account of any tax payable under any law of Bermuda or the United States of America.

**10.8 No default**

To the knowledge of the Guarantor, no Event of Default has occurred which is continuing.

**10.9 Information**

All information which has been provided in writing by or on behalf of the Guarantor to the Agent or any other Creditor Party in connection with any Finance Document satisfied the

requirements of Clause 11.2 (*Information provided to be accurate*); all audited and unaudited accounts which have been so provided satisfied the requirements of Clause 11.4 (*Form of financial statements*); and there has been no material adverse change in the financial position or state of affairs of the Guarantor from that disclosed in the latest of those accounts.

#### **10.10 No litigation**

No legal or administrative action involving the Guarantor has been commenced or taken or, to the Guarantor's knowledge, is likely to be commenced or taken which, in either case, would be likely to have a material adverse effect on the Guarantor's financial position or profitability.

#### **10.11 No Security Interests**

None of the assets or rights of the Guarantor is subject to any Security Interest except any Security Interest which (i) qualifies as a Permitted Security Interest with respect to the Guarantor or (ii) is permitted by Clause 11.11 (*Negative pledge*).

### **11 UNDERTAKINGS**

#### **11.1 General**

The Guarantor undertakes with the Agent acting on behalf of the Creditor Parties to comply with the following provisions of this Clause 11 (*Undertakings*) at all times from the date of this Guarantee to the end of the Security Period, except as the Agent may otherwise permit.

#### **11.2 Information provided to be accurate**

All financial and other information which is provided in writing by or on behalf of the Guarantor under or in connection with this Guarantee will be true and not misleading and will not omit any material fact or consideration.

#### **11.3 Provision of financial statements**

The Guarantor will send to the Agent:

- (a) as soon as practicable, but in no event later than 120 days after the end of each financial year of the Guarantor beginning with the year ending 31 December 2014, the audited consolidated accounts of the Guarantor and its subsidiaries;
- (b) [reserved];
- (c) [reserved];
- (d) as soon as practicable (and in any event within forty-five (45) days of the end of the contemplated quarter in respect of the first three quarters of each fiscal year and 90 days in respect of the final quarter) a copy of the unaudited consolidated quarterly management accounts of the Guarantor certified as to their correctness by the chief financial officer of the Guarantor (it being understood that the delivery by the Guarantor of quarterly or annual reports as filed with the Securities and Exchange Commission in respect of the Guarantor and its consolidated subsidiaries shall satisfy all the requirements of this paragraph (d));
- (e) a compliance certificate in the form set out in Schedule 1 (*Form of Compliance Certificate*) to this Guarantee or in such other form as the Agent may reasonably require (each a "**Compliance**

**Certificate**") at the same time as there is delivered to the Agent, and together with, each set of unaudited consolidated quarterly management accounts under paragraph (d) and, if applicable, audited consolidated accounts under paragraph (a), duly signed by the chief financial officer of the Guarantor and certifying whether or not the requirements of Clause 11.15 (*Financial Covenants*) are then complied with;

- (f) such additional financial or other relevant information regarding the Guarantor and the Group as the Agent may reasonably request; and
- (g) as soon as practicable (and in any event not later than 31 January of each fiscal year):
  - (i) updated financial projections of the Group for at least the next five years (including an income statement, balance sheet statement and cash flow statement and quarterly break downs for the first of those five years); and
  - (ii) an outline of the assumptions supporting such budget and financial projections including but without limitation any scheduled drydockings.

**(h) Additional financial reporting**

In addition to the information to be provided in accordance with clause 13.2 (*Information*) of the Loan Agreement and this Clause 11.3 (*Provision of financial statements*), the Guarantor undertakes to provide to the Agent a written report (in form and substance satisfactory to SACE) from the 2021 Deferral Effective Date until the 2021 Deferral Final Repayment Date, covering the information requested in the document entitled "Debt Deferral Extension - Regular Monitoring Requirements", the form of which is included in Schedule 2 (*Debt Deferral Extension – Regular Monitoring Requirements*), within the timelines specified therein.

- (i) For the avoidance of doubt, subject to the provisions of the Loan Agreement, paragraph (j) below and Clause 11.21 (*Breach of new covenants or the Principles*), the financial covenants contained in Clause 11.15 (*Financial Covenants*) will continue to be tested and the reporting obligations shall continue to apply in accordance with this Clause 11.3 (*Provision of financial statements*) until 31 December 2022.
- (j) Any breach of the financial covenants contained in paragraphs (b) and (c) of Clause 11.15 (*Financial Covenants*) arising on a testing date between the 2021 Deferral Effective Date and 31 December 2022, by reference to the financial position of the Group (on a consolidated basis), shall not (without prejudice to the rights of the Lenders in respect of any further breach of such financial covenants that may occur after 31 December 2022, and subject further to no (a) Event of Default under clauses 18.7 (*Winding-up*) to clause 18.13 (*Cessation of business*) (inclusive) of the Loan Agreement having occurred and being continuing or (b) Deferral Prepayment Event having occurred) result in an Event of Default.

**11.4 Form of financial statements**

All accounts (audited and unaudited) delivered under Clause 11.3 (*Provision of financial statements*) will:

- (a) be prepared in accordance with GAAP;
- (b) when required to be audited, be audited by the auditors which are the Guarantor's auditors at the date of this Guarantee or other auditors approved by the Agent; **provided** that, such approval by the Agent shall not be unreasonably withheld or delayed;



- (c) give a true and fair view of the state of affairs of the Guarantor and its subsidiaries at the date of those accounts and of their profit for the period to which those accounts relate; and
- (d) fully disclose or provide for all significant liabilities of the Guarantor and its subsidiaries.

**11.5 Shareholder and creditor notices**

The Guarantor will send the Agent, at the same time as they are despatched, copies of all communications which are despatched to the Guarantor's shareholders or creditors generally or any class of them.

**11.6 Consents**

The Guarantor will maintain in force and promptly obtain or renew, and will promptly send certified copies to the Agent of, all consents required:

- (a) for the Guarantor to perform its obligations under this Guarantee;
- (b) for the validity or enforceability of this Guarantee;

and the Guarantor will comply with the terms of all such consents.

**11.7 Notification of litigation**

The Guarantor will provide the Agent with details of any material legal or administrative action involving the Guarantor as soon as such action is instituted or it becomes apparent to the Guarantor that it is likely to be instituted (and for this purpose proceedings shall be deemed to be material if they involve a claim in an amount exceeding ~~ten~~ twenty million Dollars (\$20,000,000) or the equivalent in another currency).

**11.8 Domicile and principal place of business**

The Guarantor:

- (a) will maintain its domicile and registered office at the address stated at the commencement of this Guarantee or at such other address in Bermuda as is notified beforehand to the Agent;
- (b) will maintain its principal place of business and keep its corporate documents and records in the United States of America at 7665 Corporate Center Drive, Miami, 33126 Florida or at such other address in the United States of America as is notified beforehand to the Agent; and
- (c) will not move its domicile out of Bermuda nor its principal place of business out of the United States of America without the prior agreement of the Agent, acting with the authorisation of the Creditor Parties, such agreement not to be unreasonably withheld.

**11.9 Notification of default**

The Guarantor will notify the Agent as soon as the Guarantor becomes aware of the occurrence of an Event of Default and will thereafter keep the Agent fully up-to-date with all developments.

#### **11.10 Maintenance of status**

The Guarantor will maintain its separate corporate existence and remain in good standing under the laws of Bermuda.

#### **11.11 Negative pledge**

The Guarantor shall not, and shall procure that the Borrower will not, create or permit to arise any Security Interest over any asset present or future except Security Interests created or permitted by the Finance Documents and except for the following:

- (a) Security Interests created with the prior consent of the Agent or otherwise permitted by the Finance Documents;
- (b) in the case of the Guarantor, Security Interests which qualify as Permitted Security Interests with respect to the Guarantor;
- (c) in the case of the Borrower, Security Interests permitted under clause 13.7 (*Negative pledge*) of the Loan Agreement;
- (d) Security Interests provided in favour of lenders under and in connection with any refinancing of the Existing Indebtedness or any financing arrangements entered into by any member of the Group for the acquisition of additional or replacement ship(s) (including any refinancing of any such arrangement) but limited to:
  - (i) pledges of the share capital of the relevant ship owning subsidiary(/ies); and/or
  - (ii) ship mortgages and other securities over the financed ship(s).

#### **11.12 No disposal of assets, change of business**

The Guarantor will:

- (a) not, and shall procure that its subsidiaries, as a group, shall not transfer all or substantially all of the cruise vessels owned by them and shall procure that any cruise vessels which are disposed of in compliance with the foregoing shall be disposed on a willing seller willing buyer basis at or about market rate and at arm's length subject always to the provisions of any pertinent loan documentation, and
- (b) continue to be a holding company for a group of companies whose main business is the operation of cruise vessels as well as the marketing of cruises on board such vessels and the Guarantor will not change its main line of business so as to affect any Obligor's ability to perform its obligations under the Finance Documents or to imperil, in the opinion of the Agent, the security created by any of the Finance Documents or the SACE Insurance Policy.

#### **11.13 No merger etc.**

The Guarantor shall not enter into any form of merger, sub-division, amalgamation, restructuring, consolidation, winding-up, dissolution or anything analogous thereto or acquire any entity, share capital or obligations of any corporation or other entity (each of the foregoing being a "**Transaction**") unless:

- (a) the Guarantor has notified the Agent in writing of the agreed terms of the relevant Transaction promptly after such terms have been agreed as heads of terms (or similar) and thereafter notified the Agent in writing of any significant amendments to such terms during the course of the negotiation of the relevant Transaction; and
- (b) the relevant Transaction does not require or involve or result in any dissolution of the Guarantor so that at all times the Guarantor remains in existence; and
- (c) each notice delivered to the Agent pursuant to paragraph (a) above is accompanied by a certificate signed by the chief financial officer of the Guarantor whereby the Guarantor represents and warrants to the Agent that the relevant Transaction will not:
  - (i) adversely affect the ability of any Obligor to perform its obligations under the Finance Documents;
  - (ii) imperil the security created by any of the Finance Documents or the SACE Insurance Policy; or
  - (iii) affect the ability of the Guarantor to comply with the financial covenants contained in Clause 11.15 (*Financial Covenants*).

**11.14 Maintenance of ownership of Oceania Cruises and Borrower**

- (a) The Guarantor shall remain the direct or indirect beneficial owner of the entire issued and allotted share capital of Oceania Cruises, free from any Security Interest and Oceania Cruises shall remain the legal holder and direct beneficial owner of all membership interest in the Borrower, free from any Security Interest, except that created in favour of the Agent acting on behalf of the other Creditor Parties; or
- (b) no person or "group" (within the meaning of Rules 13d-3 and 13d-5 under the Securities Exchange Act of 1934 (15 USC §78a et seq.) (the "**Exchange Act**") as in effect on the Delivery Date) shall acquire beneficial ownership of 35% or more on a fully diluted basis of the voting interest in the Guarantor's equity interests.

**11.15 Financial Covenants**

- (a) The Guarantor will not permit the Free Liquidity to be less than fifty million Dollars (\$50,000,000-) at any time, save that until ~~31 December 2022~~30 September 2026, this amount shall be increased to ~~\$200,000,000~~two hundred and fifty million Dollars (\$250,000,000).
- (b) The Guarantor will not permit the ratio of Total Net Funded Debt to Total Capitalization to be greater than 0.70:1.00 at any time, save that from 1 January 2023 until 30 September 2026, this ratio shall be computed in accordance with the table below.
- (c) The Guarantor will not permit the ratio of Consolidated EBITDA to Consolidated Debt Service for the Group at the end of any fiscal quarter, computed for the period of the four consecutive fiscal quarters ending as at the end of the relevant fiscal quarter, to be less than 1.25:1.00 unless the Free Liquidity of the Group at all times during such period of four consecutive fiscal quarters ending as at the end of such fiscal quarter was equal to or greater than one hundred million Dollars (\$100,000,000-), save that from 1 January 2023 until 30 September 2026, this amount shall be increased to three hundred million Dollars (\$300,000,000).

	<u>1Q 2023</u>	<u>2Q 2023</u>	<u>3Q 2023</u>	<u>4Q 2023</u>	<u>1Q 2024</u>	<u>2Q 2024</u>	<u>3Q 2024</u>	<u>4Q 2024</u>	<u>1Q 2025</u>	<u>2Q 2025</u>	<u>3Q 2025</u>	<u>4Q 2025</u>	<u>1Q 2026</u>	<u>2Q 2026</u>	<u>3Q 2026</u>
<u>Total Net Funded Debt to Total Capitalization</u>	<u>0.93</u>	<u>0.92</u>	<u>0.91</u>	<u>0.91</u>	<u>0.91</u>	<u>0.90</u>	<u>0.88</u>	<u>0.87</u>	<u>0.87</u>	<u>0.85</u>	<u>0.82</u>	<u>0.79</u>	<u>0.79</u>	<u>0.76</u>	<u>0.73</u>

**11.16 Financial definitions**

For the purposes of Clause 11.15 (*Financial Covenants*):

- (a) "**Cash Balance**" shall mean, at any date of determination, the unencumbered and otherwise unrestricted cash and Cash Equivalents of the Group;
- (b) "**Cash Equivalents**" shall mean
  - (i) ~~"Cash Equivalents" shall mean (i) securities issued or directly and fully guaranteed or insured by the United States or any agency or instrumentality thereof (provided that the full faith and credit of the United States is pledged in support thereof) having maturities of not more than one year from the date of acquisition, (ii) time deposits and certificates of deposit of any commercial bank having, or which is the principal banking subsidiary of a bank holding company having capital, surplus and undivided profits aggregating in excess of \$200,000,000, with maturities of not more than one year from the date of acquisition by any person, (iii) repurchase obligations~~

~~with a term of not more than 90 days for underlying securities of the types described in paragraph (i) above entered into with any bank meeting the qualifications specified in paragraph (ii) above, (iv) commercial paper issued by any person incorporated in the United States rated at least A-1 or the equivalent thereof by S&P or at least B-1 or the equivalent thereof by Moody's and in each case maturing not more than one year after the date of acquisition by any other person, and (v)~~

- ~~(ii) time deposits and certificates of deposit of any commercial bank having, or which is the principal banking subsidiary of a bank holding company having capital, surplus and undivided profits aggregating in excess of \$200,000,000, with maturities of not more than one year from the date of acquisition by any person,~~
  - ~~(iii) repurchase obligations with a term of not more than 90 days for underlying securities of the types described in paragraph (i) above entered into with any bank meeting the qualifications specified in paragraph (ii) above,~~
  - ~~(iv) (v) commercial paper issued by any person incorporated in the United States rated at least A-1 or the equivalent thereof by S&P or at least B-1 or the equivalent thereof by Moody's and in each case maturing not more than one year after the date of acquisition by any other person, and~~
  - ~~(v) investments in money market funds substantially all of whose assets are comprised of securities of the types described in paragraphs (i) through (iv) above;~~
- (c) **"Consolidated Debt Service"** shall mean, for any relevant period, the sum (without double counting), determined in accordance with GAAP, of:

- (i) the aggregate principal payable or paid during such period on any Indebtedness for Borrowed Money of any member of the Group, other than:
  - (A) principal of any such Indebtedness for Borrowed Money prepaid at the option of the relevant member of the Group or by virtue of "cash sweep" or "special liquidity" cash sweep provisions (or analogous provisions) in any debt facility of the Group;
  - (B) principal of any such Indebtedness for Borrowed Money prepaid upon a sale or a Total Loss of any ship (as if references in that definition were to all ships and not just the Ship) owned or leased under a capital lease by any member of the Group; and
  - (C) balloon payments of any such Indebtedness for Borrowed Money payable during such period (and for the purpose of this paragraph (c) a "balloon payment" shall not include any scheduled repayment instalment of such Indebtedness for Borrowed Money which forms part of the balloon);
- (ii) Consolidated Interest Expense for such period;
- (iii) the aggregate amount of any dividend or distribution of present or future assets, undertakings, rights or revenues to any shareholder of any member of the Group (other than the Guarantor, or one of its wholly owned subsidiaries) or any dividends or distributions other than tax distributions in each case paid during such period; and
- (iv) all rent under any capital lease obligations by which the Guarantor or any consolidated subsidiary is bound which are payable or paid during such period and the portion of any debt discount that must be amortized in such period;

as calculated in accordance with GAAP and derived from the then latest accounts delivered under Clause 11.3 (*Provision of financial statements*);

- (d) **"Consolidated EBITDA"** shall mean, for any relevant period, the aggregate of:
  - (i) Consolidated Net Income from the Guarantor's operations for such period; and
  - (ii) the aggregate amounts deducted in determining Consolidated Net Income for such period in respect of gains and losses from the sale of assets or reserves relating thereto, Consolidated Interest Expense, depreciation and amortization, impairment charges and any other non-cash charges and deferred income tax expense for such period;
- (e) **"Consolidated Interest Expense"** shall mean, for any relevant period, the consolidated interest expense (excluding capitalized interest) of the Group for such period;
- (f) **"Consolidated Net Income"** shall mean, for any relevant period, the consolidated net income (or loss) of the Group for such period as determined in accordance with GAAP;
- (g) **"Free Liquidity"** shall mean, at any date of determination, the aggregate of the Cash Balance or any other amounts available for drawing under other revolving or other credit facilities of the Group, which remain undrawn, could be drawn for general working capital purposes or other general corporate purposes and would not, if drawn, be repayable within six months;

- (h) **"Indebtedness"** shall mean any obligation for the payment or repayment of money, whether as principal or as surety and whether present or future, actual or contingent including, without limitation, pursuant to an Interest Rate Protection Agreement or Other Hedging Agreement;
- (i) **"Indebtedness for Borrowed Money"** shall mean Indebtedness (whether present or future, actual or contingent, long-term or short-term, secured or unsecured) in respect of:
  - (i) moneys borrowed or raised;
  - (ii) the advance or extension of credit (including interest and other charges on or in respect of any of the foregoing);
  - (iii) the amount of any liability in respect of leases which, in accordance with GAAP, are capital leases;
  - (iv) the amount of any liability in respect of the purchase price for assets or services payment of which is deferred for a period in excess of 180 days;
  - (v) all reimbursement obligations whether contingent or not in respect of amounts paid under a letter of credit or similar instrument; and
  - (vi) (without double counting) any guarantee of Indebtedness falling within paragraphs (i) to (v) above;

**Provided that** the following shall not constitute Indebtedness for Borrowed Money:

- (A) loans and advances made by other members of the Group which are subordinated to the rights of the Creditor Parties;
  - (B) loans and advances made by any shareholder of the Guarantor which are subordinated to the rights of the Creditor Parties on terms reasonably satisfactory to the Agent; and
  - (C) any liabilities of the Guarantor or any other member of the Group under any Interest Rate Protection Agreement or any Other Hedging Agreement or other derivative transactions of a non-speculative nature;
- (j) **"Interest Rate Protection Agreement"** shall mean any interest rate swap agreement, interest rate cap agreement, interest collar agreement, interest rate hedging agreement, interest rate floor agreement or other similar agreement or arrangement entered into between a Lender or its Affiliate, or a Mandated Lead Arranger or its Affiliate, and the Guarantor and/or the Borrower in relation to the Secured Liabilities of the Borrower under the Loan Agreement;
  - (k) **"Other Hedging Agreement"** shall mean any foreign exchange contracts, currency swap agreements, commodity agreements or other similar agreements or arrangements entered into between a Lender or its Affiliate, or a Mandated Lead Arranger or its Affiliates, and the Guarantor and/or the Borrower in relation to the Secured Liabilities of the Borrower under the Loan Agreement and designed to protect against the fluctuations in currency or commodity values;
  - (l) **"Total Capitalization"** means, at any date of determination, the Total Net Funded Debt plus the consolidated stockholders' equity of the Group at such date determined in accordance with GAAP and derived from the then latest accounts delivered under Clause 11.3 (*Provision of*

*financial statements*); provided it is understood that the effect of any impairment of intangible assets and, in relation to exchangeable or convertible notes or other debt instruments containing similar equity mechanisms, any non-cash loss, charge or expense shall be added back to stockholders' equity;

(m) "**Total Net Funded Debt**" shall mean, as at any relevant date:

- (i) Indebtedness for Borrowed Money of the Group on a consolidated basis; and
- (ii) the amount of any Indebtedness for Borrowed Money of any person which is not a member of the Group but which is guaranteed by a member of the Group as at such date;

less an amount equal to any Cash Balance as at such date; provided that any Commitments and other amounts available for drawing under other revolving or other credit facilities of the Group which remain undrawn shall not be counted as cash or indebtedness for the purposes of this Guarantee.

#### 11.17 Negative Undertakings

(a) The Guarantor may, subject to the provisions of paragraph (c) below:

- (i) at any time prior to the end of the First Financial Quarter, declare or pay dividends or make other distributions or payment in respect of Financial Indebtedness owed to its shareholders without the prior written consent of the Agent;
- (ii) at any time after the end of the First Financial Quarter, declare or pay dividends or make other distributions or payment in respect of Financial Indebtedness owed to its shareholders without the prior written consent of the Agent, subject to it on each such occasion satisfying the Agent acting on behalf of the Creditor Parties that it will continue to meet all the requirements of Clause 11.15 (*Financial Covenants*), if such covenants were to be tested immediately following the payment of any such dividend; and
- (iii) pay dividends (x) to persons responsible for paying the tax liability in respect of consolidated, combined, unitary or affiliated tax returns for each relevant jurisdiction of the Group, or (y) to holders of the Guarantor's Capital Stock with respect to income taxable as a result of a member of the Group being taxed as a pass-through entity for U.S. Federal, state and local income tax purposes or attributable to any member of the Group,

provided that the actions in paragraphs (ii) and (iii) above shall only be permitted if there is no Event of Default which is continuing under the Loan Agreement and no Event of Default would arise from the payment of such dividend.

(b) ~~Subject to the restrictions set out in~~ Save as permitted by paragraph (b) of Clause 11.19 (*New capital raises or financing*), the Guarantor shall not, and shall procure that none of its subsidiaries shall:

- (i) make loans to any person that is not the Guarantor or a direct or indirect subsidiary of the Guarantor; or

- (ii) issue or enter into one or more guarantees covering the obligations of any person which is not the Guarantor or a direct or indirect subsidiary of the Guarantor

except if such loan is granted to a non subsidiary or such guarantee is issued in the ordinary course of business covering the obligations of a non subsidiary and the aggregate amount of all such loans and guarantees made or issued by the Guarantor and its subsidiaries does not exceed ~~USD25,000,000~~ USD [\*](\$[\*]) or is otherwise approved by the Agent which approval shall not be unreasonably withheld if such loan or guarantee in respect of a non subsidiary would neither:

- (A) affect the ability of any Obligor to perform its obligations under the Finance Documents; nor
- (B) imperil the security created by any of the Finance Documents or the SACE Insurance Policy; nor
- (C) affect the ability of the Guarantor to comply with the financial covenants contained in Clause 11.15 (*Financial covenants*) if such covenants were to be tested immediately following the grant of such loan or the issuance of such guarantee, as demonstrated by evidence satisfactory to the Agent.

**(c) Dividend restriction**

During the period up to and including the 2021 Deferral Final Repayment Date, neither the Guarantor nor the Holding shall, and the Guarantor shall procure that none of its subsidiaries shall:

- (i) declare, make or pay any dividend or other distribution (or interest on any unpaid dividend or other distribution) (whether in cash or in kind) on or in respect of its share capital (or any class of its share capital);
- (ii) repay or distribute any dividend or share premium reserve;
- (iii) make any repayment of any kind under any shareholder loan; or
- (iv) redeem, repurchase (whether by way of share buy-back program or otherwise), defease, retire or repay any of its share capital or resolve to do so,

except that:

- (A) any Obligor other than the Guarantor may pay dividends and other distributions, directly or indirectly, to the Guarantor for the purpose of providing liquidity to the Guarantor to enable the Guarantor to satisfy payment obligations for which the Guarantor is an obligor;
- (B) any Obligor may pay dividends in respect of the Tax liability to each relevant jurisdiction in respect of consolidated, combined, unitary or affiliated Tax returns for each relevant jurisdiction of the Group or the Holding or holder of the Guarantor's ~~capital stock~~ Capital Stock with respect to income taxable as a result of any member of the Group or the Holding being taxed as a pass-through entity for U.S. Federal, state and local income Tax purposes or attributable to any member of the Group;



- (C) the Guarantor and the Holding may pay dividends and other distributions (x) in respect of a conversion, exchange, or repurchase of convertible or exchangeable notes and any conversion of preference shares to ordinary shares in connection therewith, provided that the cash portion of a repurchase of convertible or exchangeable notes is limited to the amount of interest that would otherwise be payable through maturity on the amount of such convertible or exchangeable notes being repurchased plus any amount in lieu of fractional shares and (y) to the extent contractually owed to holders of equity in the Guarantor or the Holding; and
- (D) the Guarantor may pay dividends and other distributions to the Holding for the purposes of providing cash to the Holding for the payment of any Tax payable in connection with the Holding's equity plan,

provided that the actions in paragraphs (B) and (C) above shall only be permitted if there is no Event of Default which is continuing under the Loan Agreement and no Event of Default would arise from the payment of such dividend.

- (d) For the avoidance of doubt, the Holding gives no guarantee of any kind nor undertakes any obligations under this Guarantee other than the undertaking as expressly specified in paragraph (c) above.

#### **11.18 Most favoured nations**

- (a) The Guarantor undertakes that if at any time after the date of this Guarantee it enters into any financial contract or financial document relating to any Financial Indebtedness with or which has the support of any export credit agency and which contains *pari passu* provisions or cross default provisions which are more favourable to the lenders than those contained in paragraph (l) of clause 12.2 (*Continuing representations and warranties*) of the Loan Agreement and clause 18.6 (*Cross default*) of the Loan Agreement respectively, the Guarantor shall immediately notify the Borrower and the Agent of such provisions and the relevant provisions contained in the Loan Agreement shall be deemed amended so that such more favourable *pari passu* provisions or cross default provisions are granted to the Creditor Parties pursuant to the Loan Agreement.
- (b) The Guarantor undertakes that if at any time after the date of this Guarantee and until the occurrence of a Reinstatement Event, it or any other member of the Group is required to grant additional security in relation to a financial contract or financial document relating to any existing Financial Indebtedness:
  - (i) with the support of any export credit agency (excluding any extensions, increases or changes to the terms and conditions thereof), such security shall be granted on a *pari passu* basis to the Lenders (and the Agent agrees to enter and/or procure the entry by the relevant Creditor Parties into such intercreditor documentation to reflect such *pari passu* ranking (in form and substance reasonably satisfactory to the Creditor Parties) as may be required in connection with such arrangements); or
  - (ii) without the support of any export credit agency (excluding any extensions, increases or changes to the terms and conditions thereof), such security shall (without prejudice to any of the Obligors' other obligations under the Finance Documents), subject to the provisions of Clause 11.11 (*Negative pledge*) of this Guarantee and clause 13.7 (*Negative pledge*) of the Loan Agreement, be permitted provided that it shall not have

an adverse effect on any Security Interests or other rights granted to the ~~Secured~~-Creditor Parties under the Finance Documents.

- (c) ~~In~~ Until the occurrence of a Reinstatement Event, in respect of any new Financial Indebtedness (other than Permitted Financial Indebtedness), or any extensions, increases or changes to the terms and conditions of any existing Financial Indebtedness, in each case with or which has the support of any export credit agency, the Guarantor shall enter into good faith negotiations with the Agent to grant additional security for the purpose of further securing the Loan, provided that any failure to reach agreement under this paragraph (c) following such good faith negotiations shall not constitute an Event of Default.

#### 11.19 New capital raises or financing

- (a) Save as provided below, during the period up to and including the 2021 Deferral Final Repayment Date:
- (i) no new debt ~~or equity issuance~~ shall be raised and no new Financial Indebtedness shall be incurred by the Group (including, for the avoidance of doubt, inter-company loans);
  - (ii) no non-arm's length disposals of any asset relating to the Group fleet shall be made; and
  - (iii) no additional Security Interests securing existing Financial Indebtedness will be created or permitted to subsist by any Obligor (unless the Lenders benefit from this new security on a *pari passu* basis).
- (b) The restrictions in paragraph (a) above shall not apply in relation to:
- (i) any refinancing of any bond issuance of, or loan entered into by, the Group (A) which matures during such period or (B) where not maturing during such period, which shall be on terms ~~which include any of the following (evidence of which shall be provided to the Agent by the Guarantor)~~ resulting, when taken as a whole, in an improvement of the ability of the Obligors to meet their obligations under the Finance Documents, which terms include any of the following: an extension of the repayment terms; a decrease in the interest rate; or the conversion of such Financial Indebtedness from secured to unsecured or first to second priority;
  - (ii) any debt ~~or equity issuance~~ provided prior to 31 December ~~2022~~-2023 to provide the Group with crisis and/or recovery related funding in respect of the impact of the Covid-19 pandemic;
  - (iii) any debt ~~or equity issuance~~ being raised on or after 31 December ~~2022~~-2023 to support the Group with the impact of the Covid-19 pandemic, made with the prior written consent of SACE;
  - (iv) any debt ~~or equity issuance~~ being raised to finance any instalment of a cruise vessel already contracted for or contracted for during such period or any refurbishment, maintenance, upgrade or lengthening of a cruise ship during such period (including without limitation any costs incurred by the owner of a cruise ship in connection therewith);
  - (v) any debt ~~or equity issuance~~ being raised to finance capital expenditure for projects which are already contracted for but in respect of which committed financing has not

yet been obtained, and which, in each case has been (or will be) listed in the Information Package submitted to the Agent prior to the February 2021 Deferral Effective Date;

- (vi) any extension or renewal of revolving credit facilities, and made with the prior written consent of SACE if any additional security is to be granted;
- (vii) any new debt ~~or equity issuance~~ otherwise agreed by SACE;
- (viii) any inter-company loan or operating arrangement which from an accounting perspective has the effect of an intercompany loan (an "intercompany arrangement") which:
  - (A) is existing as at the date of the 2021 Amendment and Restatement Agreement; or
  - (B) is made among any Group members or any Group member with the Holding provided that:
    - (1) any inter-company arrangement is made solely for the purpose of regulatory or Tax purposes carried out in the ordinary course of business and on an arm's length basis; and
    - (2) the aggregate principal amount of any inter-company arrangements pursuant to ~~this paragraph (B sub-paragraph (b)(viii)(B) of this Clause 11.19 (New capital raises or financing)~~ does not exceed [\*] Dollars (\$[\*]) at any time; or
  - (C) has been approved with the prior written consent of SACE;
- (ix) any Permitted Security Interest;
- (x) any Security Interest otherwise approved with the prior written consent of SACE;
- (xi) any Financial Indebtedness incurred in the ordinary course of business which in the aggregate does not exceed USD [\*] during any twelve-month period; ~~or, it being provided that:~~
  - (A) prior to 31 December 2022, this amount shall be increased to USD [\*] for any Financial Indebtedness incurred to finance capital expenditure for Approved Projects; and
  - (B) if any part of such Financial Indebtedness allocated to an Approved Project remains unused throughout the twelve-month period of year 2022, the surplus may be carried over to increase the relevant Financial Indebtedness throughout the twelve-month period of year 2023 for that Approved Project only;
- (xii) without prejudice to clause 13.10 (*Mergers*) of the Loan Agreement and Clause 11.13 (*No merger etc.*), the issuance of ~~share capital shares or limited liability company interests, as applicable,~~ by any Group member to another Group member; and

(xiii) any extension, renewal, replacement or upsizing in respect of the Term and Revolving Credit Facilities (including the granting of additional Security Interests),

and, for the avoidance of doubt, no debt or equity issuance shall be raised in respect of any form of merger, sub-division, amalgamation, restructuring, consolidation, winding-up, dissolution or anything analogous thereto or acquisition of any entity, shares or limited liability company interests or obligations of any corporation or other entity.

#### **11.20 Payments under the Shipbuilding Contracts**

Until the 2021 Deferral Final Repayment Date:

- (a) the Guarantor shall and the Guarantor shall procure that any member of the Group that has entered into a shipbuilding contract with a shipbuilder or enters into any such shipbuilding contract, in each case which is financed with the support of SACE (the "**Covered Shipbuilding Contracts**") shall continue to perform all of their respective obligations as set out in any Covered Shipbuilding Contract (including without limitation the payment of any instalments due under any Covered Shipbuilding Contract (as the same may have been amended prior to the 2021 Deferral Effective Date), and subject to any amendment agreed pursuant to paragraph (b) below). The Guarantor shall and the Guarantor shall procure that any member of the Group shall promptly notify the Agent and SACE of any failure by it to comply with any due and owing obligations under a Covered Shipbuilding Contract; and
- (b) the Guarantor shall and the Guarantor shall procure that any member of the Group further undertakes to consult with the Agent and SACE in respect of any proposed amendment to a Covered Shipbuilding Contract insofar as any such proposed amendment relates to a payment instalment or (save as expressly permitted by the Loan Agreement) a delivery date or any other substantial amendment which may affect the related financing and to obtain the Agent and SACE's approval prior to executing any such amendment.

#### **11.21 Breach of new covenants or the Principles**

- (a) Failure to comply, until the 2021 Deferral Final Repayment Date, with the provisions of paragraph (h) of Clause 11.3 (*Provision of financial statements*), paragraph (c) of Clause 11.17 (*Negative Undertakings*), Clause 11.19 (b) (*New capital raises or financing*), Clause 11.20 (*Payments under the Shipbuilding Contracts*), or to otherwise duly perform and observe the other requirements and obligations set out in the Principles shall, in each case, not constitute an Event of Default under the Loan Agreement but (in the case of any failure that is capable of remedy (in the opinion of the Agent, at its sole discretion), including any failure to comply with Clause 11.20 (*Payments under the Shipbuilding Contracts*) or paragraph (h) of Clause 11.3 (*Provision of financial statements*), only if such failure is not remedied within the Relevant Period pursuant to clause 18.4 (*Breach of other obligations*) of the Loan Agreement from the date of such failure to comply) shall have the following consequences:
  - (i) the Agent shall reinstate from the date of such breach the requirement to comply with the covenant granted pursuant to clause 14 (*Security Value Maintenance*) of the Loan Agreement and the financial covenants set out in paragraphs (b) and (c) of Clause 11.15 (*Financial covenants*) which was otherwise suspended by operation of the Loan Agreement and this Guarantee;
  - (ii) in respect of paragraph (c) of Clause 11.17 (*Negative Undertakings*) and paragraph (b) of Clause 11.19 (*New capital raises or financing*), as well as a failure to perform and

observe the other requirements and obligations set out in the Principles (including but not limited to any Obligor (a) commencing, or having commenced against it, any case, proceeding or other action seeking (i) to adjudicate it as bankrupt or insolvent, (ii) reorganization, arrangement, winding-up, liquidation, dissolution, or other relief with respect to it or its debts, (iii) the appointment of a receiver, trustee, or custodian or other similar official for it or for all or a substantial part of its assets, (b) making a general assignment for the benefit of its creditors, (c) being unable to, or admitting in writing its inability to, pay its debts as they become due, or (d) taking any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the acts set forth in (a), (b) or (c) hereof):

- (A) the Deferral Commitments and the availability of the Deferral Tranches will be immediately cancelled;
  - (B) all or part of the Deferral Tranches, together with accrued interest, deferred costs pursuant to clause 6.4 (*Deferred Costs*) of the Loan Agreement and all other amounts accrued or outstanding under the Loan Agreement in connection with the Deferral Tranches will be immediately due and payable, (including, for the avoidance of doubt, any breakage costs pursuant to clause 20.2 (*Breakage costs*) of the Loan Agreement); and
- (iii) in respect of Clause 11.20 (*Payments under the Shipbuilding Contracts*) and paragraph (h) of Clause 11.3 (*Additional financial reporting*) of Clause 11.3 (*Provision of financial statements*), shall entitle the Agent, (acting on the instructions of the Lenders), by notice to the Guarantor and the Borrower to:
- (A) cancel the Deferral Commitments and the availability of the Deferral Tranches whereupon they shall immediately be cancelled; and
  - (B) declare that all or part of the Deferral Tranches, together with accrued interest, deferred costs pursuant to clause 6.4 (*Deferred Costs*) of the Loan Agreement and all other amounts accrued or outstanding under the Loan Agreement in connection with the Deferral Tranches be immediately due and payable, whereupon they shall become immediately due and payable (including, for the avoidance of doubt, any breakage costs pursuant to clause 20.2 (*Breakage costs*) of the Loan Agreement); and
- (b) Save as permitted by Clause 11.19 (*New capital raises or financing*), if at any time after the February 2021 ~~Deferral~~ Effective Date and until the occurrence of a Reinstatement Event:
- (i) the Guarantor or any other Group member enters into any financial contract or financial document relating to any Financial Indebtedness and which contains any debt deferral or covenant waivers of existing debt, or the raising of any new debt intended to reimburse existing debt that benefits from additional security or more favourable terms than those available to the Lenders (unless they are granted to the Lenders on a *pari passu* basis);
    - (A) the requirement to comply with the covenant granted pursuant to clause 14 (*Security Value Maintenance*) of the Loan Agreement and the financial covenants set out in paragraphs (b) and (c) of Clause 11.15 (*Financial Covenants*) which was otherwise suspended until 31 December 2022 shall be reinstated;

- (B) the Deferral Commitments and the availability of the Deferral Tranches will be immediately cancelled; and
- (C) all or part of the Deferral Tranches, together with accrued interest, deferred costs pursuant to clause 6.4 (*Deferred Costs*) of the Loan Agreement and all other amounts accrued or outstanding under the Loan Agreement in connection with the Deferral Tranches will be immediately due and payable, (including, for the avoidance of doubt, any breakage costs pursuant to clause 20.2 (*Breakage costs*) of the Loan Agreement);

it being provided that such covenants in sub-paragraph (A) above shall not be reinstated and such provisions in sub-paragraphs (B) and (C) above shall not be triggered in case of such financial contract or financial document relating to the Term and Revolving Credit Facilities;

- (ii) the Guarantor or any other Group member makes a prepayment (save for any mandatory prepayment necessary to avoid an event of default (however defined)) of any Financial Indebtedness (unless this is done on a *pari passu* basis with the obligations owed to the Lenders hereunder):
  - (A) the requirement to comply with the covenant granted pursuant to clause 14 (*Security Value Maintenance*) of the Loan Agreement and the financial covenants set out in paragraphs (b) and (c) of Clause 11.15 (*Financial Covenants*) which was otherwise suspended until 31 December 2022 shall be reinstated; and
  - (B) the Agent shall be entitled (acting on the instructions of the Lenders) to:
    - (1) cancel the Deferral Commitments and the availability of the Deferral Tranches whereupon they shall immediately be cancelled; and
    - (2) declare that all or part of the Deferral Tranches, together with accrued interest, deferred costs pursuant to clause 6.4 (*Deferred Costs*) of the Loan Agreement and all other amounts accrued or outstanding under the Loan Agreement in connection with the Deferral Tranches will be immediately due and payable (including, for the avoidance of doubt, any breakage costs pursuant to clause 20.2 (*Breakage costs*) of the Loan Agreement);

it being provided that such covenants in sub-paragraph (A) above shall not be reinstated and such provision in sub-paragraph (B) above shall not be triggered in case of a prepayment relating to the revolving tranche of the Term and Revolving Credit Facilities within the ordinary course of business.

## 12 JUDGMENTS AND CURRENCY INDEMNITY

### 12.1 Judgments relating to Loan Agreement

This Guarantee shall cover any amount payable by the Borrower under or in connection with any judgment relating to the Loan Agreement.

## **12.2 Currency indemnity**

In addition, clause 20.4 (*Currency indemnity*) of the Loan Agreement shall apply, with any necessary adaptations, in relation to this Guarantee.

## **13 SET-OFF**

### **13.1 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 the Guarantor at any office in any country of that Creditor Party in or towards satisfaction of any sum then due from the Guarantor to that Creditor Party under this Guarantee; and
- (b) for that purpose:
  - (i) break, or alter the maturity of, all or any part of a deposit of the Guarantor;
  - (ii) convert or translate all or any part of a deposit or other credit balance into Dollars;
  - (iii) enter into any other transaction or make any entry with regard to the credit balance which the Creditor Party concerned considers appropriate.

### **13.2 Existing rights unaffected**

No Creditor Party shall be obliged to exercise any of its rights under Clause 13.1 (*Application of credit balances*); and those rights shall be without prejudice and in addition to any right of set-off, combination of accounts, charge, lien or other right or remedy to which a Creditor Party is entitled (whether under the general law or any document).

### **13.3 Sums deemed due to a Lender**

For the purposes of this Clause 13 (*Set-Off*), a sum payable by the Guarantor to the Agent acting on behalf of the Creditor Parties 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 that Lender.

## **14 SUPPLEMENTAL**

### **14.1 Continuing guarantee**

This Guarantee shall remain in force as a continuing security at all times during the Security Period, regardless of any intermediate payment or discharge in whole or in part.

### **14.2 Rights cumulative, non-exclusive**

The Agent's and any other Creditor Party's rights under and in connection with this Guarantee are cumulative, may be exercised as often as appears expedient and shall not be taken to exclude or limit any right or remedy conferred by law.

#### **14.3 No impairment of rights under Guarantee**

If the Agent or any other Creditor Party omits to exercise, delays in exercising or invalidly exercises any of its rights under this Guarantee, that shall not impair that or any other right of the Agent or any other Creditor Party under this Guarantee.

#### **14.4 Severability of provisions**

If any provision of this Guarantee is or subsequently becomes void, illegal, unenforceable or otherwise invalid, that shall not affect the validity, legality or enforceability of its other provisions.

#### **14.5 Guarantee not affected by other security**

This Guarantee is in addition to and shall not impair, nor be impaired by, any other guarantee, any Security Interest or any right of set-off or netting or to combine accounts which the Agent or any other Creditor Party may now or later hold in connection with the Loan Agreement.

#### **14.6 Guarantor bound by Loan Agreement**

- (a) The Guarantor is fully familiar with, and agrees to all the provisions of, the Loan Agreement and the other Finance Documents to which it is not a party.
- (b) The Guarantor agrees with the Agent and any other Creditor Party:
  - (i) to be bound by all provisions of the Loan Agreement which are applicable to the Obligors in the same way as if those provisions had been set out (with any necessary modifications) in this Guarantee; and
  - (ii) that any provision of the Loan Agreement which, by its terms, applies or relates to the Finance Documents generally applies to this Guarantee.
- (c) Clause 33.7 (*Bail-In*) of the Loan Agreement shall apply to this Guarantee as if it was expressly incorporated in this Guarantee with any necessary modifications.

#### **14.7 Applicability of provisions of Guarantee to other Security Interests**

Any Security Interest which the Guarantor creates (whether at the time at which it signs this Guarantee or at any later time) to secure any liability under this Guarantee shall be a principal and independent security, and Clauses 3 (*Liability as Principal and Independent Debtor*) and 17 (*Invalidity of Loan Agreement*) shall, with any necessary modifications, apply to it, notwithstanding that the document creating the Security Interest neither describes it as a principal or independent security nor includes provisions similar to Clauses 3 (*Liability as Principal and Independent Debtor*) and 17 (*Invalidity of Loan Agreement*).

#### **14.8 Applicability of provisions of Guarantee to other rights**

Clauses 3 (*Liability as Principal and Independent Debtor*) and 17 (*Invalidity of Loan Agreement*) shall also apply to any right of set-off or netting or to combine accounts which the Guarantor creates by an agreement entered into at the time of this Guarantee or at any later time (notwithstanding that the agreement does not include provisions similar to Clauses 3 (*Liability as Principal and Independent Debtor*) and 17 (*Invalidity of Loan Agreement*)), being an agreement referring to this Guarantee.



#### **14.9 Third party rights**

Other than a Creditor Party or the Italian Authorities, no person who is not a party to this Guarantee has any right under the Contracts (Rights of Third Parties) Act 1999 to enforce or to enjoy the benefit of any term of this Guarantee.

#### **14.10 Waiver of rights against SACE**

Nothing in this Guarantee or any of the Finance Documents is intended to grant to the Guarantor or any other person any right of contribution from or any other right or claim against SACE and the Guarantor hereby waives irrevocably any right of contribution or other right or claim as between itself and SACE.

#### **14.11 Reinstatement**

If any discharge, release or arrangement (whether in respect of the obligations of the Borrower 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 Guarantee will continue or be reinstated as if the discharge, release or arrangement had not occurred.

#### **14.12 Guarantor intent**

Without prejudice to the generality of Clause 1.3 (*Application of construction and interpretation provisions of the Loan Agreement*) and Clause 3.2 (*Waiver of rights and defences*), the Guarantor expressly confirms that it intends that this Guarantee and any Security Interest created by it under 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.

### **15 ASSIGNMENT AND TRANSFER**

#### **15.1 Assignment and transfer by Creditor Parties**

- (a) The Agent and Creditor Parties may assign or transfer their rights under and in connection with this Guarantee to the same extent as they may assign or transfer their rights under the Loan Agreement.
- (b) The Guarantor may not assign or transfer its rights under and in connection with this Guarantee.

## 16 NOTICES

### 16.1 Notices to Guarantor

Any notice or demand to the Guarantor under or in connection with this Guarantee shall be given by letter or email at:

NCL Corporation Ltd.  
7665 Corporate Center Drive  
Miami Florida 33126  
Attention: Chief Financial Officer and General Counsel

Email: [\*] / [\*]

or to such other address which the Guarantor may notify to the Agent.

### 16.2 Application of certain provisions of Loan Agreement

Clauses 32.3 (*Effective date of notices*) to 32.8 (*Meaning of "notice"*) of the Loan Agreement apply to any notice or demand under or in connection with this Guarantee.

### 16.3 Validity of demands

A demand under this Guarantee shall be valid notwithstanding that it is served:

- (a) on the date on which the amount to which it relates is payable by the Borrower under the Loan Agreement;
- (b) at the same time as the service of a notice under clause 18.22 (*Actions following an Event of Default*) of the Loan Agreement;

and a demand under this Guarantee may refer to all amounts payable under or in connection with the Loan Agreement without specifying a particular sum or aggregate sum.

### 16.4 Notices to Agent

Any notice to the Agent acting on behalf of the Creditor Parties under or in connection with this Guarantee shall be sent to the same address and in the same manner as notices to the Agent under the Loan Agreement.

## 17 INVALIDITY OF LOAN AGREEMENT

### 17.1 Invalidity of Loan Agreement

In the event of:

- (a) the Loan Agreement or any provision thereof now being or later becoming, with immediate or retrospective effect, void, illegal, unenforceable or otherwise invalid for any reason whatsoever; or
- (b) without limiting the scope of paragraph (a), a ~~bankruptcy~~ Bankruptcy of the Borrower, the introduction of any law or any other matter resulting in the Borrower being discharged from liability under the Loan Agreement, or the Loan Agreement ceasing to operate (for example, by interest ceasing to accrue);

this Guarantee shall cover any amount which would have been or become payable under or in connection with the Loan Agreement if the Loan Agreement had been and remained entirely valid, legal and enforceable, or the Borrower had not suffered ~~bankruptcy~~[Bankruptcy](#), or any combination of such events or circumstances, as the case may be, and the Borrower had remained fully liable under it for liabilities whether invalidly incurred or validly incurred but subsequently retrospectively invalidated; and references in this Guarantee to amounts payable by the Borrower under or in connection with the Loan Agreement shall include references to any amount which would have so been or become payable as aforesaid.

## **17.2 Invalidity of Finance Documents**

Clause 17.1 (*Invalidity of Loan Agreement*) also applies to each of the other Finance Documents to which the Borrower is a party.

## **18 GOVERNING LAW AND JURISDICTION**

### **18.1 English law**

This Guarantee and any non-contractual obligations arising out of or in connection with it shall be governed by, and construed in accordance with, English law.

### **18.2 Exclusive English jurisdiction**

The courts of England shall have exclusive jurisdiction to settle Dispute.

### **18.3 Process agent**

The Guarantor irrevocably appoints Hannaford Turner LLP, currently of ~~9 Cloak Lane~~[107 Cheapside](#), London-~~EC4R 2RU~~,[EC2V 6DN](#), United Kingdom, 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.

### **18.4 Creditor Parties' rights unaffected**

Nothing in this Clause 18 (*Governing Law and Jurisdiction*) shall exclude or limit any right which any Creditor Party may have (whether under the law of any country, an international convention or otherwise) with regard to the bringing of proceedings, the service of process, the recognition or enforcement of a judgment or any similar or related matter in any jurisdiction.

### **18.5 Meaning of "proceedings"**

In this Clause 18 (*Governing Law and Jurisdiction*), "**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 Guarantee (including a dispute relating to the existence, validity or termination of this Guarantee) or any non-contractual obligation arising out of or in connection with this Guarantee.

**This Amended and Restated Guarantee has been entered into on the date stated at the beginning of this Guarantee.**

EXECUTION PAGE

**GUARANTOR**

**SIGNED** by )  
duly authorised )  
for and on behalf of )  
**NCL CORPORATION LTD.** )  
as its duly appointed attorney-in-fact )  
in the presence of: )

**HOLDING**

**SIGNED** by )  
for and on behalf of )  
**NORWEGIAN CRUISE LINE HOLDINGS LTD.** )  
as its duly appointed attorney-in-fact )  
in the presence of: )

**LENDERS**

**SIGNED** by )  
for and on behalf of )  
**CRÉDIT AGRICOLE CORPORATE** )  
**AND INVESTMENT BANK** )  
as its duly appointed attorney-in-fact )  
in the presence of: )

**SIGNED** by )  
for and on behalf of )  
**SOCIÉTÉ GÉNÉRALE** )  
as its duly appointed attorney-in-fact )  
in the presence of: )

**SIGNED** by )  
for and on behalf of )  
**DEKABANK DEUTSCHE** )  
**GIROZENTRALE** )  
in the presence of: )



[\*]: THE IDENTIFIED INFORMATION HAS BEEN OMITTED FROM THE AGREEMENT BECAUSE IT IS BOTH (i) NOT MATERIAL AND (ii) WOULD BE COMPETITIVELY HARMFUL IF PUBLICLY DISCLOSED

Dated 19 May 2023

**EXPLORER II NEW BUILD, LLC**  
as Borrower

and

**NCL CORPORATION LTD.**  
as Guarantor

and

**SEVEN SEAS CRUISES S. DE R.L.**  
as Charterer  
and Shareholder

and

**NORWEGIAN CRUISE LINE HOLDINGS LTD.**  
as the Holding

and

**THE BANKS AND FINANCIAL INSTITUTIONS LISTED IN SCHEDULE 1**  
as Lenders

and

**CRÉDIT AGRICOLE CORPORATE AND INVESTMENT BANK**  
**SOCIÉTÉ GÉNÉRALE**  
**HSBC BANK PLC**  
**KFW IPEX-BANK GMBH**

as Joint Mandated Lead Arrangers

and

**CRÉDIT AGRICOLE CORPORATE AND INVESTMENT BANK**  
as Agent  
and SACE Agent

and

**CRÉDIT AGRICOLE CORPORATE AND INVESTMENT BANK**  
as Security Trustee

#### **AMENDMENT AND RESTATEMENT AGREEMENT**

relating to a facility agreement originally dated 30 March 2016, (as amended from time to time, including as amended by a supplemental agreement dated 4 June 2020, as further amended and restated pursuant to an amendment and restatement agreement dated 17 February 2021, as further

WATSON FARLEY  
&  
WILLIAMS

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amended pursuant to a supplemental agreement dated 23 December 2021 and as further amended pursuant to a supplemental agreement dated 16 December 2022) in respect of the part financing of the passenger cruise ship m.v. "SEVEN SEAS SPLENDOR"

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	Form of Amended and Restated Facility Agreement (marked to indicate amendments)	
	Form of Amended and Restated Guarantee (marked to indicate amendments)	

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THIS AGREEMENT is made on 19 May 2023

## PARTIES

- (1) **EXPLORER II NEW BUILD, LLC**, a limited liability company formed in the state of Delaware whose registered office is at Corporate Creations Network, Inc., 3411 Silverside Road, Tatnall Building Suite 104, Wilmington, DE 19810, United States of America as borrower (the "**Borrower**")
- (2) **NCL CORPORATION LTD.**, an exempted company incorporated under the laws of Bermuda with its registered office at Park Place, 55 Par-la-Ville Road, Hamilton HM 11, Bermuda (the "**Guarantor**")
- (3) **NORWEGIAN CRUISE LINE HOLDINGS LTD.**, a company incorporated under the laws of Bermuda with its registered office at Park Place, 55 Par-la-Ville Road, Hamilton HM 11, Bermuda (the " **Holding**")
- (4) **SEVEN SEAS CRUISES S. DE R.L.**, a Panamanian limited liability company ("*sociedad de responsabilidad limitada*") domiciled in Panama whose resident agent is at Arifa Building, West Boulevard, Santa Maria Business District, Panama, Republic of Panama and registered at the Mercantile Section of the Panama Public Registry at Microjacket 876, Document 1238212 since 7 November 2007 (the "**Charterer**" and "**Shareholder**")
- (5) **THE FINANCIAL INSTITUTIONS** listed in Schedule 1 (*The Lenders*) as lenders (the "**Lenders**")
- (6) **CRÉDIT AGRICOLE CORPORATE AND INVESTMENT BANK**, a French société anonyme having its registered office located at 12, Place des États-Unis, CS 70052, 92547 Montrouge Cedex, France registered under number Siren 304 187 701 at the Registre du Commerce et des Sociétés of Nanterre, France, **SOCIÉTÉ GÉNÉRALE** a French société anonyme having its registered office located at 29 Boulevard Haussmann, 75009 Paris under number Siren 552 120 222 at the Registre du Commerce et des Sociétés of Paris, France, **HSBC BANK PLC** of Level 2, 8 Canada Square, London, E14 5HQ, United Kingdom and **KFW IPEX-BANK GMBH** of Palmengartenstraße, 5-9 60325, Frankfurt, as mandated lead arrangers (the "**Mandated Lead Arrangers**")
- (7) **CRÉDIT AGRICOLE CORPORATE AND INVESTMENT BANK**, a French société anonyme having its registered office located at 12, Place des États-Unis, CS 70052, 92547 Montrouge Cedex, France registered under number Siren 304 187 701 at the Registre du Commerce et des Sociétés of Nanterre, France as agent and SACE agent (the "**Agent**" and the "**SACE Agent**")
- (8) **CRÉDIT AGRICOLE CORPORATE AND INVESTMENT BANK**, a French société anonyme having its registered office located at 12, Place des États-Unis, CS 70052, 92547 Montrouge Cedex, France registered under number Siren 304 187 701 at the Registre du Commerce et des Sociétés of Nanterre, France as security trustee (the "**Security Trustee**")

## BACKGROUND

- (A) By the Original Facility Agreement, the Lenders agreed to make available to the Borrower a facility of the Dollar Equivalent of up to EUR 360,222,680.41 (not to exceed USD 498,187,967.01) for the purpose of assisting the Borrower in financing (i) payment or reimbursement under the Shipbuilding Contract of all or part of 80% of the Final Contract Price up to the Eligible Amount and (ii) payment to SACE of 100% of the SACE Premium.
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- (B) Due to the unprecedented and extraordinary impacts of the Covid-19 pandemic on the cruise sector and cruise operators, the Original Facility Agreement was amended pursuant to an amendment agreement dated 4 June 2020 (the "**2020 Amendment Agreement**"), amended and restated pursuant to an amendment and restatement agreement dated 17 February 2021 (the "**February 2021 Amendment and Restatement Agreement**"), further amended pursuant to a supplemental agreement dated 23 December 2021 (the "**December 2021 Amendment Agreement**") and further amended pursuant to a supplemental agreement dated 16 December 2022 (the "**December 2022 Amendment Agreement**") pursuant to which, *inter alia*, the parties agreed to the temporary amendment of certain covenants under the Guarantee and addition of certain covenants under the Original Facility Agreement.
- (C) The Parties have agreed to amend and restate the Facility Agreement as set out in this Agreement for the purposes of, *inter alia*, documenting the transition from LIBOR to SOFR (as defined below).

## OPERATIVE PROVISIONS

### 1 DEFINITIONS AND INTERPRETATION

#### 1.1 Definitions

In this Agreement:

"**2023 Finance Documents**" means this Agreement and the New Mortgage Addendum.

"**Amended and Restated Facility Agreement**" means the Facility Agreement as amended and restated by this Agreement in the form set out in Appendix 1.

"**Amended and Restated Guarantee**" means the Guarantee as amended and restated by this Agreement in the form set out in Appendix 2.

"**Effective Date**" means the date on which the Agent notifies the Borrower, the other Creditor Parties, SIMEST and SACE as to the satisfaction of the conditions precedent as provided in paragraph (a) of Clause 2.1 (*Conditions Precedent*).

"**Facility Agreement**" means the Original Facility Agreement, as amended by the 2020 Amendment Agreement, as amended and restated by the February 2021 Amendment and Restatement Agreement, as further amended by the December 2021 Amendment Agreement and as further amended by the December 2022 Amendment Agreement.

"**New Mortgage Addendum**" means the addendum to the Mortgage in the agreed form.

"**Obligors**" means the Borrower, the Guarantor, the Holding, the Charterer and the Shareholder.

"**Original Facility Agreement**" means the facility agreement dated 30 March 2016 and made between, amongst others, (i) the Borrower, (ii) the Lenders, (iii) the Mandated Lead Arrangers, (iv) the Agent and the SACE Agent and (v) the Security Trustee.

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

"**SOFR**" means the secured overnight financing rate (SOFR) administered by the Federal Reserve Bank of New York (or any other person which takes over the administration of that

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rate) published by the Federal Reserve Bank of New York (or for any other person which takes over the publication of that rate).

**1.2 Defined expressions**

Defined expressions in the Facility Agreement and, with effect from the Effective Date, the Amended and Restated Facility Agreement, shall have the same meanings when used in this Agreement unless the context otherwise requires or unless otherwise defined in this Agreement.

**1.3 Application of construction and interpretation provisions of Facility Agreement**

Clause 1.2 (*construction of certain terms*) of the Facility Agreement applies to this Agreement as if it were expressly incorporated in it with any necessary modifications.

**1.4 Agreed forms of new, and supplements to, Finance Documents**

References in Clause 1.1 (*Definitions*) to any new or supplement to a Finance Document being in "agreed form" are to that Finance Document:

- (a) in a form attached to a certificate dated the same date as this Agreement (and signed by the Borrower and the Agent); or
- (b) in any other form agreed in writing between the Borrower and the Agent acting with the authorisation of the Majority Lenders or, where clause 30.2 (*Variations, waivers etc. requiring agreement of all Lenders*) of the Facility Agreement applies, all the Lenders.

**1.5 Designation as a Finance Document**

The Borrower and the Agent designate this Agreement as a Finance Document.

**1.6 Third party rights**

- (a) Unless 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 other than SACE and SIMEST, who may enforce or to enjoy the benefit of and rely on the provisions of this Agreement and the Amended and Restated Facility Agreement subject to the provisions of the Third Parties Act.
  - (b) Notwithstanding any term of any Finance Document, the consent of any person who is not a Party (other than SACE and SIMEST) is not required to rescind or vary this Agreement at any time.
  - (c) For the avoidance of doubt and in accordance with clause 35.4 (*Third party rights*) of the Facility Agreement, nothing in this Clause 1.6 (*Third party rights*) shall limit or prejudice the exercise by SACE of its rights under this Agreement or the Finance Documents in the event that such rights are subrogated or assigned to it pursuant to the terms of the SACE Insurance Policy.
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## 2 CONDITIONS PRECEDENT

### 2.1 The Effective Date cannot occur unless:

- (a) the Agent has received (or on the instructions of all the Lenders, waived receipt of) all of the documents and other evidence listed in Schedule 2 (*Conditions Precedent*) in form and substance satisfactory to the Agent;
- (b) save as disclosed in writing to the Agent and SACE prior to the date of this Agreement, the representations and warranties contained in Clause 3 (*Representations*) are true and correct on, and as of, each such time as if each was made with respect to the facts and circumstances existing at such time;
- (c) save as disclosed in writing to the Agent and SACE prior to the date of this Agreement, no Event of Default, event or circumstance specified in clause 18 (*Events of Default*) of the Facility Agreement 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, event resulting in mandatory prepayment of the Loan pursuant to clause 16.3 (*Mandatory prepayment – Sale and Total Loss*) and clause 16.4 (*Mandatory prepayment – SACE Insurance Policy*) of the Facility Agreement or Deferral Prepayment Event shall have occurred and be continuing or would result from the amendment and restatement of the Facility Agreement pursuant to this Agreement; and
- (d) the Agent is satisfied that the Effective Date can occur and have not provided any instructions to the contrary informing the Parties that the Effective Date cannot occur.

2.2 Upon fulfilment or waiver of the conditions set out in Clause 2.1 above, the Agent shall provide the Borrower and the Creditor Parties SIMEST and SACE with a copy of the executed certificate in the form set out in Schedule 3 (*Form of Effective Date Certificate*) confirming that the Effective Date has occurred and such certificate shall be binding on all Parties.

2.3 Other than to the extent that the Majority Lenders notify the Agent in writing to the contrary before the Agent provides the certificate described in Clause 2.2 above, the Creditor Parties authorise (but do not require) the Agent to execute and provide such certificate. The Agent shall not be liable for any damages, costs or losses whatsoever as a result of giving any such certificate.

## 3 REPRESENTATIONS

### 3.1 Facility Agreement representations

On the date of this Agreement and on the Effective Date, each Obligor that is a party to the Facility Agreement makes each of the representations and warranties as set out in clause 11 (*Representations and warranties*) of the Facility Agreement, as amended and restated by this Agreement and updated with appropriate modifications to refer to this Agreement and (where relevant) the Amended and Restated Facility Agreement, the Amended and Restated Guarantee and the New Mortgage Addendum, by reference to the circumstances then existing.

### 3.2 Finance Document representations

On the date of this Agreement and on the Effective Date, each Obligor (save for the Holding) makes the representations and warranties set out in the Finance Documents (other than the Facility Agreement) to which it is a party, as amended and restated and/or supplemented by

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this Agreement and updated with appropriate modifications to refer to this Agreement, and, where appropriate, the Amended and Restated Guarantee and the New Mortgage Addendum, by reference to the circumstances then existing.

#### **4 AMENDMENT AND RESTATEMENT OF FACILITY AGREEMENT AND OTHER FINANCE DOCUMENTS**

##### **4.1 Specific amendments to the Facility Agreement**

With effect on and from the Effective Date, the Facility Agreement shall be amended and restated in the form of the Amended and Restated Facility Agreement and, as so amended and restated, the Facility Agreement shall continue to be binding on each of the parties to it in accordance with its terms as so amended and restated.

##### **4.2 Specific amendments to the Guarantee**

With effect on and from the Effective Date, the Guarantee shall be amended and restated in the form of the Amended and Restated Guarantee and, as so amended and restated, the Guarantor confirms that:

- (a) its Guarantee extends to the obligations of the Borrower under the Finance Documents as amended, restated and/or supplemented by this Agreement;
- (b) the obligations of the relevant Obligors under the Finance Documents as amended, restated and/or supplemented by this Agreement are included in the Secured Liabilities (as defined in the Facility Agreement); and
- (c) the Guarantee shall continue to be binding on each of the parties to it and have full force and effect in accordance with its terms as so amended and restated.

##### **4.3 Holding confirmation**

On the Effective Date, the Holding confirms that, notwithstanding the amendments made to the Finance Documents pursuant to this Agreement, the undertakings given by the Holding under the Guarantee, as amended and restated by this Agreement and updated with appropriate modifications to refer to this Agreement shall remain in full force and effect in accordance with its original terms and the amendments to the Finance Documents as amended, restated and/or supplemented by this Agreement.

##### **4.4 Security Confirmation**

Without prejudice to the provisions of the New Mortgage Addendum, on the Effective Date, each Obligor confirms that:

- (a) any Security Interest created by it under the Finance Documents extends to the obligations of the relevant Obligors under the Finance Documents as amended, restated and/or supplemented by this Agreement;
  - (b) the obligations of the relevant Obligors under the Finance Documents as amended, restated and/or supplemented by this Agreement are included in the Secured Liabilities (as defined in the Finance Documents to which it is a party);
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- (c) the Security Interests created under the Finance Documents continue in full force and effect on the terms of the respective Finance Documents; and
- (d) to the extent that this confirmation creates a new Security Interest, such Security Interest shall be on the terms of the Finance Documents in respect of which this confirmation is given.

**4.5 Finance Documents to remain in full force and effect**

The Finance Documents shall remain in full force and effect and, from the Effective Date:

- (a) in the case of the Facility Agreement as amended and restated pursuant to Clause 4.1 (*Specific amendments to the Facility Agreement*);
- (b) in the case of the Guarantee, as amended and restated pursuant to Clause 4.2 (*Specific amendments to the Guarantee*);
- (c) the Facility Agreement and the applicable provisions of this Agreement will be read and construed as one document;
- (d) the Guarantee and the applicable provisions of this Agreement will be read and construed as one document; and
- (e) except to the extent expressly waived by the amendments effected by this Agreement, no waiver is given by this Agreement and the Lenders expressly reserve all their rights and remedies in respect of any breach of or other default under the Finance Documents.

**5 FURTHER ASSURANCE**

Clause 12.19 (*Further assurance*) of the Facility Agreement, as amended and restated by this Agreement, applies to this Agreement as if it were expressly incorporated in it with any necessary modifications.

**6 COSTS, EXPENSES AND FEES**

Clause 10.11 (*Transaction Costs*) of the Facility Agreement, as amended and restated by this Agreement, applies to this Agreement as if it were expressly incorporated in it with any necessary modifications.

**7 NOTICES**

Clause 31 (*Notices*) of the Facility Agreement, as amended and restated by this Agreement, applies to this Agreement as if it were expressly incorporated in it with any necessary modifications.

**8 COUNTERPARTS**

This Agreement may be executed in any number of counterparts, and this has the same effect as if the signatures on the counterparts were on a single copy of this Agreement.

**9 SIGNING ELECTRONICALLY**

The Parties acknowledge and agree that they may execute this Agreement and any variation or amendment to the same, by electronic instrument. The Parties agree that the electronic signatures appearing on the documents shall have the same effect as handwritten signatures

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and the use of an electronic signature on this Agreement shall have the same validity and legal effect as the use of a signature affixed by hand and is made with the intention of authenticating this Agreement, and evidencing the Parties' intention to be bound by the terms and conditions contained herein. For the purposes of using an electronic signature, the Parties authorise each other to conduct the lawful processing of personal data of the signers for contract performance and their legitimate interests including contract management.

**10 GOVERNING LAW**

This Agreement and any non-contractual obligations arising out of or in connection with it are governed by English law.

**11 ENFORCEMENT**

**11.1 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.

**11.2 Service of process**

- (a) Without prejudice to any other mode of service allowed under any relevant law, each Obligor (other than an Obligor incorporated in England and Wales):
  - (i) irrevocably appoints Hannaford Turner LLP, currently of 107 Cheapside, London UK, EC2V 6DN as its agent for service of process in relation to any proceedings before the English courts in connection with any Finance Document; and
  - (ii) agrees that failure by a process agent to notify the relevant Obligor of the process will not invalidate the proceedings concerned.
- (b) If any person appointed as an agent for service of process is unable for any reason to act as agent for service of process, the Borrower (on behalf of all the Obligors) must immediately (and in any event within 10 days of such event taking place) appoint another agent on terms acceptable to the Agent. Failing this, the Agent may appoint another agent for this purpose.

**This Agreement has been entered into on the date stated at the beginning of this Agreement.**

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**LENDERS**

**SIGNED** by )  
duly authorised )  
for and on behalf of )  
**CRÉDIT AGRICOLE CORPORATE** )  
**AND INVESTMENT BANK** ) ) /s/ Anne-Laure Orange  
/s/ Jérôme Leblond

**SIGNED** by )  
duly authorised )  
for and on behalf of )  
**HSBC BANK PLC** ) ) /s/ Varsha Sharan

**SIGNED** by )  
duly authorised )  
for and on behalf of )  
**KFW IPEX-BANK GMBH** ) ) /s/ André Tiele  
/s/ Claudia Coenenberg

**SIGNED** by )  
duly authorised )  
for and on behalf of )  
**SOCIÉTÉ GÉNÉRALE** ) ) /s/ Isabelle Seneca

---

**MANDATED LEAD ARRANGERS**

**SIGNED** by )  
duly authorised ) /s/ Anne-Laure Orange  
for and on behalf of )  
**CRÉDIT AGRICOLE CORPORATE** ) )  
**AND INVESTMENT BANK** ) ) /s/ Jérôme Leblond

**SIGNED** by )  
duly authorised ) /s/ Varsha Sharan  
for and on behalf of )  
**HSBC BANK PLC** ) )

**SIGNED** by )  
duly authorised ) /s/ André Tiele  
for and on behalf of )  
**KFW IPEX-BANK GMBH** ) ) /s/ Claudia Coenenberg

**SIGNED** by )  
duly authorised ) /s/ Isabelle Seneca  
for and on behalf of )  
**SOCIÉTÉ GÉNÉRALE** ) )

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**AGENT**

**SIGNED** by ) /s/ Anne-Laure Orange  
duly authorised )  
for and on behalf of )  
**CRÉDIT AGRICOLE CORPORATE AND** )  
**INVESTMENT BANK** ) /s/ Jérôme Leblond

**SACE AGENT**

**SIGNED** by ) /s/ Anne-Laure Orange  
duly authorised )  
for and on behalf of )  
**CRÉDIT AGRICOLE CORPORATE AND** )  
**INVESTMENT BANK** ) /s/ Jérôme Leblond

**SECURITY TRUSTEE**

**SIGNED** by ) /s/ Anne-Laure Orange  
duly authorised )  
for and on behalf of )  
**CRÉDIT AGRICOLE CORPORATE AND** )  
**INVESTMENT BANK** ) /s/ Jérôme Leblond

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**APPENDIX 1**

**FORM OF AMENDED AND RESTATED FACILITY AGREEMENT (MARKED TO INDICATE AMENDMENTS)**

Amendments are indicated as follows:

- 1 additions are indicated by underlined text in blue; and
  - 2 deletions are shown by strike-through text in red.
-

Dated \_\_\_\_\_ 2023

Originally dated 30 March 2016  
(as amended from time to time, including by a supplemental agreement dated 4 June 2020 ~~and~~ as further amended and restated pursuant to an amendment and restatement agreement dated \_\_\_\_\_ 17 February 2021, as amended pursuant to a supplemental agreement dated 23 December 2021, as further amended pursuant to a supplemental agreement dated 16 December 2022 as further amended and restated by an amendment and restatement agreement dated \_\_\_\_\_ 2023)

**EXPLORER II NEW BUILD, LLC**  
as Borrower

and

**THE BANKS AND FINANCIAL INSTITUTIONS  
LISTED IN SCHEDULE 1**  
as Lenders

and

**CRÉDIT AGRICOLE CORPORATE AND INVESTMENT BANK  
SOCIÉTÉ GÉNÉRALE  
HSBC BANK PLC  
KFW IPEX-BANK GMBH**  
as Joint Mandated Lead Arrangers

and

**CRÉDIT AGRICOLE CORPORATE AND INVESTMENT BANK**  
as Agent and SACE Agent

and

**CRÉDIT AGRICOLE CORPORATE AND INVESTMENT BANK**  
as Security Trustee

with the support of

**SACE S.p.A.**

**AMENDED AND RESTATED LOAN AGREEMENT**

relating to  
the part financing of the passenger cruise ship m.v. "SEVEN SEAS SPLENDOR"

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**THIS AGREEMENT** is originally made on 30 March 2016 (as amended by a supplemental agreement dated 4 June 2020 ~~and~~, as further amended and restated pursuant to ~~by~~ an amendment and restatement agreement dated ~~February 2021~~ February 2021, as further amended by a supplemental agreement dated 23 December 2021, as further amended by a supplemental agreement dated 16 December 2022 and as further amended and restated by an amendment and restatement agreement dated 2023)

## **PARTIES**

- (1) **EXPLORER II NEW BUILD, LLC**, a limited liability company formed in the state of Delaware whose registered office is at Corporate Creations Network, Inc., 3411 Silverside Road, Tatnall Building Suite 104, Wilmington, DE 19810, United States of America as borrower (the "**Borrower**")
- (2) **THE BANKS AND FINANCIAL INSTITUTIONS** listed in Schedule 1 (*Lenders and Commitments*) as lenders (the "**Lenders**")
- (3) **CRÉDIT AGRICOLE CORPORATE AND INVESTMENT BANK, SOCIÉTÉ GÉNÉRALE, KFW IPEX-BANK GMBH** and **HSBC BANK PLC** as joint mandated lead arrangers (the "**Joint Mandated Lead Arrangers**")
- (4) **CRÉDIT AGRICOLE CORPORATE AND INVESTMENT BANK**, acting through its office at 12 Place des États-Unis, CS 70052, 92547, Montrouge Cedex, France, as agent (the "**Agent**") and SACE agent (the "**SACE Agent**")
- (5) **CRÉDIT AGRICOLE CORPORATE AND INVESTMENT BANK**, acting through its office at 12 Place des États-Unis, CS 70052, 92547, Montrouge Cedex, France, as the security trustee (the "**Security Trustee**")

## **BACKGROUND**

- (A) By a shipbuilding contract dated as of 22 December 2015 entered into between (i) Fincantieri S.p.A., a company incorporated in Italy with registered office in Trieste, via Genova, 1, and having fiscal code 00397130584 (the "**Builder**") and (ii) the Borrower, the Builder agreed to design, construct and deliver, and the Borrower agreed to purchase, the 754 passenger cruise ship "Seven Seas Splendor" (ex. hull number [\*]), which was delivered to the Borrower on [\*].
  - (B) The total price payable by the Borrower to the Builder under the Shipbuilding Contract is EUR 422,000,000 (the "**Initial Contract Price**") which has been paid on the following terms:
    - (i) as to [\*]%, being EUR [\*], by an initial payment which is to be within 5 Business Days after the effective date of the Shipbuilding Contract in accordance with Article 10.1(A) of the Shipbuilding Contract;
    - (ii) as to [\*]%, being EUR [\*], on the later of the date of commencement of steel cutting and the date falling 26 months prior to the Delivery Date;
    - (iii) as to [\*]%, being EUR [\*], on the later of keel laying in dry-dock and the date falling 20 months prior to the Delivery Date;
    - (iv) as to [\*]%, being EUR [\*], on the later of launching and the date falling 12 months prior to the Delivery Date; and
-



- (v) as to [\*]%, being EUR [\*], on delivery of the Ship on the Delivery Date,  
as each such event is described in the Shipbuilding Contract.
- (C) The agreement was that the Initial Contract Price may be (i) increased or decreased from time to time under Article 24 of the Shipbuilding Contract in the event that the Borrower requests, and the Builder agrees, modifications to the specification or plans constituting a part of the Shipbuilding Contract or in the event that, subsequent to the date of the Shipbuilding Contract, variations are made to its provisions compliance with which is compulsory, the final net cost of all such variations being payable by no later than the Delivery Date (the "**Change Orders**"); and (ii) decreased at delivery of the Ship under Articles 13, 14, 16, 17, 19 and 20 of the Shipbuilding Contract (in aggregate the "**Liquidated Damages**") or by mutual agreement between the parties (the Initial Contract Price adjusted as aforesaid being the "**Final Contract Price**").
- (D) By a facility agreement dated 30 March 2016 (the "**Original Facility Agreement**"), the Lenders agreed to make available to the Borrower a facility of the Dollar Equivalent of up to EUR 360,222,680.41 (not to exceed \$498,187,967.01) for the purpose of assisting the Borrower in financing (i) payment or reimbursement under the Shipbuilding Contract of all or part of 80% of the Final Contract Price up to the Eligible Amount and (ii) payment to SACE of 100% of the SACE Premium.
- (E) Due to the unprecedented and extraordinary impacts of the Covid-19 pandemic on the cruise sector and cruise operators, SACE informed the cruise operators of its availability to evaluate certain measures (the "**Temporary Measures**") applicable in relation to certain qualifying loan agreements in order to assist companies which are financially sound but dealing with the impact of the temporary but unprecedented Covid-19 pandemic; the possibility to access to such measures was subject, amongst other things, to certain principles dated 15 April 2020 for cruise lines offered by SACE (the "**Original Principles**").
- (F) Pursuant to the consent request letter dated 18 April 2020, the Borrower and the Guarantor notified the Agent and the SACE Agent of the wish to benefit from the Temporary Measures in relation to certain loan agreements listed therein, including the Original Facility Agreement, and requested, amongst other things, the deferral of repayments of principal under the Original Facility Agreement for a period of one year from 1 April 2020 to 31 March 2021 (the "**Borrower Request**").
- (G) On 25 May 2020, the Agent (for and on behalf of the Lenders) provided its consent to part of the Borrower Request in accordance with and subject to certain conditions as set out in an amendment to the Original Facility Agreement and to the Original Guarantee dated 4 June 2020 between, amongst others, the Borrower, the Agent and the SACE Agent (the "**2020 Amendment Agreement**") (~~the Original Facility Agreement as amended pursuant to the 2020 Amendment Agreement, the "**Facility Agreement**"~~).
- (H) Due to the continued impacts of the Covid-19 pandemic on the cruise sector and cruise operators, SACE confirmed on 31 December 2020 its availability to evaluate an extension of the Temporary Measures (the "**Extended Temporary Measures**"), again subject to certain principles set out in a document titled "Debt Deferral Extension Framework for ECA-backed Export Financings" dated 26 November 2020 for cruise lines offered by SACE (together with the Original Principles, the "**Principles**").
-

- (I) Pursuant to the consent request letter dated 3 December 2020, the Borrower and the Guarantor notified the Agent and the SACE Agent of the wish to benefit from the Extended Temporary Measures in relation to certain loan agreements listed therein, including the Facility Agreement, and requested, amongst other things, the deferral of repayments of principal under the Facility Agreement for a further period of one year from 1 April 2021 to 31 March 2022 (the "**Second Borrower Request**").
- (J) On 25 January 2021, the Agent (for and on behalf of the Lenders) provided its consent to part of the Second Borrower Request in accordance with and subject to certain conditions as set out in an amendment and restatement agreement to the Original Facility Agreement (as amended by the 2020 Amendment Agreement), dated 17 February 2021 between, amongst others, the Borrower, the Agent and the SACE Agent (the "**2021 Amendment and Restatement Agreement**").
- (K) ~~This Agreement sets out the terms and conditions of the Facility Agreement~~ By a supplemental agreement dated 23 December 2021 and made between, amongst others, the Borrower, the Guarantor, the Holding, the Agent and the SACE Agent (the "December 2021 Amendment Agreement"), the Parties agreed to, *inter alia*, amend certain financial covenants and certain other provisions under the Original Facility Agreement (as amended by the 2020 Amendment Agreement and as amended and restated by the 2021 Amendment and Restatement Agreement).
- (L) By a supplemental agreement dated 16 December 2022 and made between, amongst others, the Borrower, the Guarantor, the Holding, the Agent and the SACE Agent (the "December 2022 Amendment Agreement"), the Parties agreed to, *inter alia*, amend certain financial covenants and certain other provisions under the Original Facility Agreement (as amended by the 2020 Amendment Agreement, as amended and restated by the 2021 Amendment and Restatement Agreement and as amended by the December 2021 Amendment Agreement).
- (M) The Parties have agreed to enter into an amendment and restatement agreement (the "**2023 Amendment and Restatement Agreement**") to amend and restate the Original Facility Agreement (as amended by the 2020 Amendment Agreement, as amended and restated by the 2021 Amendment and Restatement Agreement, as amended by the December 2021 Amendment Agreement and as amended by the December 2022 Amendment Agreement) in order to, *inter alia*, document the transition from LIBOR to SOFR (as defined below) (the Original Facility Agreement as amended by the 2020 Amendment Agreement, as amended and restated by the 2021 Amendment and Restatement Agreement, as amended by the December 2021 Amendment Agreement and as amended by the December 2022 Amendment Agreement, the "**Facility Agreement**).
- (N) This Agreement sets out the terms and conditions of the Facility Agreement as amended and restated by the 2023 Amendment and Restatement Agreement.

## OPERATIVE PROVISIONS

### 1 INTERPRETATION

#### 1.1 Definitions

Subject to Clause ~~4.5~~ 1.6 (*General Interpretation*), in this Agreement:

"**2020 Amendment Agreement**" has the meaning given to such term in Recital (G).

---

**"2020 Deferral Commitment"** means in relation to any Lender as listed in Schedule 1 (*Lenders and Commitments*) to the 2020 Amendment Agreement, the amount in Dollars expressed as a percentage set opposite its name under the heading "Commitment" and the amount of any other commitment attributable to it (including the related 2020 Deferral Tranche Premium payable to SACE) under this Agreement in respect of the 2020 Deferral Tranche.

**"2020 Deferral Effective Date"** has the meaning given to the term Effective Date in the 2020 Amendment Agreement.

**"2020 Deferral Fee Letters"** means any letter between the Agent and any Obligor which sets out the fees payable in connection with the arrangements contemplated by the 2020 Amendment Agreement.

**"2020 Deferral Final Repayment Date"** means the Repayment Date falling 3 years and six months after the 2020 Deferral Repayment Starting Point, or, if earlier, the date on which the 2020 Deferral Tranche has been repaid or prepaid in full, as further set out in Schedule 6 (*Deferred Repayment Schedule*).

**"2020 Deferral Period"** means the period from 1 April 2020 to 31 March 2021.

**"2020 Deferral Repayment Starting Point"** means the date of the first Repayment Date falling after 31 March 2021, namely 30 July 2021.

**"2020 Deferral Tranche"** means the part of the Loan made available to the Borrower to finance the aggregate of the 2020 Deferred Repayment Instalments and the related 2020 Deferral Tranche Premium payable to SACE (amounting to zero point ten per cent. (0.10%) of the Total Commitments as of 1 April 2020) in a principal amount not exceeding thirty-five million, nine hundred and twenty-five thousand, three hundred and sixty-nine Dollars and ninety-nine Cents (\$35,925,369.99).

**"2020 Deferral Tranche Premium"** has the meaning given to such term in paragraph (a) of Clause [8-5 9.5](#) (*Deferral Tranches – additional premium*).

**"2020 Deferred Repayment Instalments"** means the repayment instalments due during the 2020 Deferral Period.

**"2021 Amendment and Restatement Agreement"** has the meaning given to such term in Recital J.

**"2021 Deferral Commitment"** means in relation to any Lender as listed in Schedule 1 (*Lenders and Commitments*) to the 2021 Amendment and Restatement Agreement, the amount in Dollars expressed as a percentage set opposite its name under the heading "Commitment" and the amount of any other commitment attributable to it under this Agreement in respect of the 2021 Deferral Tranche.

~~**"2021 Deferral Effective Date"** has the meaning given to the term Effective Date in the 2021 Amendment and Restatement Agreement.~~

**"2021 Deferral Fee Letters"** means any letter between the Agent or the SACE Agent and any Obligor which sets out the fees payable in connection with the arrangements contemplated by the 2021 Amendment and Restatement Agreement.

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**"2021 Deferral Final Repayment Date"** means the Repayment Date falling 4 years and six months after the 2021 Deferral Repayment Starting Point, or, if earlier, the date on which the 2021 Deferral Tranche has been repaid or prepaid in full, as further set out in Schedule 6 (*Deferred Repayment Schedule*).

**"2021 Deferral Period"** means the period from 1 April 2021 to 31 March 2022.

**"2021 Deferred Repayment Instalments"** means the repayment instalments due during the 2021 Deferral Period.

**"2021 Deferral Repayment Starting Point"** means the date of the first Repayment Date falling after 31 March 2022, namely 29 July 2022.

**"2021 Deferral Tranche"** means the part of the Loan made or to be made available to the Borrower to repay the aggregate of the 2021 Deferred Repayment Instalments, including, for the avoidance of doubt, the repayment instalments due pursuant to paragraph (a) of Clause 5.5 (*Repayment of Deferral Tranches*).

**"2021 Deferral Tranche Premium"** has the meaning given to such term in Clause ~~8-5~~9.5(b) (*Deferral Tranches – additional premium*).

**"2021 Amendment and Restatement Agreement"** has the meaning given to such term in Recital (J).

**"2023 Amendment and Restatement Agreement"** has the meaning given to such term in Recital (M).

**"2023 Effective Date"** has the meaning given to the term Effective Date in the 2023 Amendment and Restatement 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.

**"Agent"** means Crédit Agricole Corporate and Investment Bank, a French "société anonyme", having a share capital of EUR 7,851,636,342.00 and its registered office located at 12 Place des États-Unis, CS 70052 92547, Montrouge Cedex, France, registered under the n° Siren 304 187 701 at the Registre du Commerce et des Sociétés of Nanterre or any successor of it appointed under Clause ~~25-26~~ (*Role of the Agent and the Joint Mandated Lead Arrangers*).

**"Annex VI"** means Annex VI (Regulations for the Prevention of Air Pollution from Ships) to the International Convention for the Prevention of Pollution from Ships 1973 (as modified in 1978 and 1997, 2005, 2007, 2008, 2010 and 2012).

**"Approved Broker"** means Clarkson Platou, Barry Rogliano Salles, Fearnleys AS, Rocca & Partners, Brax Shipbrokers AS (or any Affiliate of such person through which valuations are commonly issued) or such other shipbroker or ship valuer experienced in valuing cruise ships nominated by the Borrower and approved by the Agent.

**"Approved Flag"** means the Marshall Islands flag, the Bahamas flag or such other flag as the Agent may approve from time to time.

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**"Approved Manager"** means the Borrower, Seven Seas as bareboat charterer, Prestige Cruise Services LLC, or any other company (whether or not a member of the Group) which the Agent may approve from time to time as the manager of the Ship.

**"Approved Manager's Undertaking"** means, in the event that the Approved Manager is a company other than the Borrower or (Seven Seas as bareboat charterer), a letter of undertaking executed or to be executed by the Approved Manager in favour of the Agent, which will include, without limitation, an agreement by the Approved Manager to subordinate its rights against the Ship and the Borrower to the rights of the Secured Parties under the Finance Documents, in the agreed form.

**"Approved Project"** means any of the projects identified in the Approved Projects List.

**"Approved Projects List"** means the approved projects list provided by the Guarantor and accepted by the Agent prior to the December 2021 Effective Date.

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

**"Availability Period"** means the period commencing on the date of the Original Facility Agreement and ending on:

- (a) the earlier to occur of (i) the Delivery Date and (ii) 27 September 2020 (or such later date as the Agent may, with the authorisation of the Lenders, agree with the Borrower); or
- (b) if earlier, the date on which the Total Commitments are fully borrowed, cancelled or terminated.

**"Backstop Rate Switch Date"** means 30 June 2023 or any other date agreed between the Agent, the Majority Lenders and the Borrower.

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

**"Bail-In Legislation"** means:

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

**"Bareboat Charter"** means the bareboat charter of the Ship by the Borrower as owner to Seven Seas as bareboat charterer which shall be entered into no later than the Delivery Date in the form of draft approved by the Agent before the date of the Original Facility Agreement with such reasonable changes thereto as the Agent may approve from time to time.

**"Base Rate"** means one Euro for 1.3830 Dollars.

**"Builder"** has the meaning given in Recital (A).

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**"Business Day"** means:

- (a) for the purposes of Recital (B) above, a day (other than a Saturday or a Sunday) on which banks are open in Paris, New York, Milan and Rome; ~~and~~
- (b) for the purposes of any other provision in this Agreement, a day (other than a Saturday or a Sunday) on which banks are open in London, Frankfurt, Rome and Paris and, in relation to any payment to be made to the Builder, Milan and, in respect of a day on which a payment is required to be made under a Finance Document, also in New York City; ~~and~~
- (c) (in relation to the fixing of an interest rate for a Term SOFR Loan) which is a US Government Securities Business Day.

**"Central Bank Rate"** means:

- (a) the short-term interest rate target set by the US Federal Open Market Committee as published by the Federal Reserve Bank of New York from time to time; or
- (b) if that target is not a single figure, the arithmetic mean of:
  - (i) the upper bound of the short-term interest rate target range set by the US Federal Open Market Committee and published by the Federal Reserve Bank of New York; and
  - (ii) the lower bound of that target range.

**"Central Bank Rate Adjustment"** means in relation to the Central Bank Rate prevailing at close of business on any US Government Securities Business Day, the 20 per cent trimmed arithmetic mean calculated by the Agent (or by any other Creditor Party which agrees to determine that mean in place of the Agent), of the Central Bank Rate Spreads for the five most immediately preceding US Government Securities Business Days for which SOFR is available.

**"Central Bank Rate Spread"** means in relation to any US Government Securities Business Day, the difference (expressed as a percentage rate per annum) calculated by the Agent (or by any other Creditor Party which agrees to calculate that rate in place of the Agent) of:

- (a) SOFR for that US Government Securities Business Day; and
- (b) the Central Bank Rate prevailing at close of business on that US Government Securities Business Day.

**"Certified Copy"** means in relation to any document delivered or issued by or on behalf of any company, a copy of such document certified as a true, complete and up-to-date copy of the original by any of the directors or the secretary or assistant secretary or any attorney-in-fact for the time being of that company.

**"Charged Property"** means all of the assets which from time to time are, or are expressed to be, the subject of Security Interests pursuant to the Finance Documents.

**"CIRR"** (Commercial Interest Reference Rate) means 2.76% per annum or any other CIRR rate being the fixed rate for medium and long term export credits in Dollars applicable to the

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financing of the Ship according to the Organisation for Economic Co-operation and Development rules as determined by the competent Italian Authorities.

"**CISADA**" means the United States Comprehensive Iran Sanctions, Accountability and Divestment Act of 2010 as it applies to non-US persons.

"**Code**" means the United States Internal Revenue Code of 1986.

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

"**Compliance Certificate**" has the meaning given to the term "Compliance Certificate" in the Guarantee.

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

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

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

- (i) is or becomes public information other than as a direct or indirect result of any breach by that Secured Party of Clause ~~32~~33 (*Confidentiality*); or
- (ii) is identified in writing at the time of delivery as non-confidential by any member of the Group or any of its advisers; or
- (iii) is known by that Secured Party before the date the information is disclosed to it in accordance with paragraphs (a) or (b) above or is lawfully obtained by that Secured Party after that date, from a source which is, as far as that Secured Party is aware, unconnected with the Group and which, in either case, as far as that Secured Party is aware, has not been obtained in breach of, and is not otherwise subject to, any obligation of confidentiality.

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

"**Contribution**" means, in relation to a Lender, the part of the Loan which is owing to that Lender.

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"**Conversion Rate**" means the rate determined by the Agent on the Conversion Rate Fixing Date and notified to the Borrower as being the lower of:

- (a) the Base Rate; or
- (b) the FOREX Contracts Weighted Average Rate.

"**Conversion Rate Fixing Date**" means the date falling [\*] ([\*]) days before the Intended Delivery Date.

"**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.

"Credit Adjustment Spread" means 0.42826% per annum.

"**Creditor Party**" means the Agent, the Security Trustee, the SACE Agent, the Joint Mandated Lead Arrangers or any Lender, whether as at the date of the Original Facility Agreement or at any later time.

"Daily Rate" means for any US Government Securities Business Day:

- (a) SOFR for that US Government Securities Business Day; or
- (b) if SOFR is not available for that US Government Securities Business Day, the percentage rate per annum which is the aggregate of:
  - (i) the Central Bank Rate for that US Government Securities Business Day; and
  - (ii) the applicable Central Bank Rate Adjustment; or
- (c) if paragraph (b) above applies but the Central Bank Rate for that US Government Securities Business Day is not available, the percentage rate per annum which is the aggregate of:
  - (i) the most recent Central Bank Rate for a day which is no more than five US Government Securities Business Days before that US Government Securities Business Day; and
  - (ii) the applicable Central Bank Rate Adjustment.

rounded, in either case, to five decimal places and if, in either case, the aggregate of that rate and the applicable Credit Adjustment Spread is less than zero, the Daily Rate shall be deemed to be such a rate that the aggregate of the Daily Rate and the applicable Credit Adjustment Spread is zero.

"Daily Simple SOFR" means, for any day, a rate per annum equal to the Daily Rate for the day that is:

- (a) for as long as the Interest Make-Up Agreement is in full force and effect, ten (10) US Government Securities Business Days; or
  - (b) if the Interest Make-Up Agreement ceases to be in full force and effect, five (5) US Government Securities Business Days.
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prior to (i) if such day is a US Government Securities Business Day, that day or (ii) if such day is not a US Government Securities Business Day, the US Government Securities Business Day immediately preceding such day.

**"December 2021 Amendment Agreement"** has the meaning given to such term in Recital (K).

**"December 2021 Effective Date"** has the meaning given to the term Effective Date in the December 2021 Amendment Agreement.

**"December 2021 Fee Letters"** means any letter between the Agent (or the SACE Agent, as applicable) and any Obligor which sets out the fees payable in connection with the arrangements contemplated by the December 2021 Amendment Agreement.

**"December 2022 Amendment Agreement"** has the meaning given to such term in Recital (L).

**"December 2022 Fee Letters"** means any letter between the Agent (or the SACE Agent, as applicable) and any Obligor which sets out the fees payable in connection with the arrangements contemplated by the December 2022 Amendment Agreement.

**"Deferral Commitment"** means the 2020 Deferral Commitment or the 2021 Deferral Commitment and, together, **"Deferral Commitments"**.

**"Deferral Fee Letters"** means any of the 2020 Deferral Fee Letters and/or the 2021 Deferral Fee Letters.

**"Deferral Final Repayment Date"** means any of the 2020 Deferral Final Repayment Date and/or the 2021 Deferral Final Repayment Date.

**"Deferral Period"** means the period from 1 April 2020 to 31 March 2022.

**"Deferral Prepayment Event"** means the occurrence of any event entitling the Agent to exercise any rights granted to it pursuant to Clause ~~46-5~~ 17.5 (*Breach of new covenants or the Principles*), including, without limitation, the ability to cancel any part, or demand the immediate repayment of, any Deferral Tranche and to terminate the waiver of the covenant granted pursuant to Clause ~~45-16~~ (*Security Value Maintenance*) or the waiver of the financial covenants granted pursuant to paragraphs (b) and (c) of clause 11.15 (*Financial Covenants*) of the Guarantee.

**"Deferral Tranche"** means the 2020 Deferral Tranche or the 2021 Deferral Tranche.

**"Deferral Tranche Premia"** has the meaning given to such term in paragraph (b) of Clause ~~8-5~~ 9.5 (*Deferral Tranches – additional premium*).

**"Deferred Costs Percentage"** means:

- (a) in relation to the 2020 Deferral Tranche, 0% p.a.; and
- (b) in relation to the 2021 Deferral Tranche, 0% p.a..

**"Delivered Vessel Facilities"** means, together, Marina Facility Agreement, Riviera Facility Agreement, Seven Seas Explorer Facility Agreement and this Agreement (as further amended, restated and supplemented from time to time).

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"**Delivery Date**" means the date and time of delivery of the Ship by the Builder to the Borrower as stated in the Protocol of Delivery and Acceptance.

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

"**Dollar Equivalent**" means such amount in Dollars as is calculated by the Agent on the Conversion Rate Fixing Date to be the equivalent of an amount in Euro at the Conversion Rate.

"**Dollars**" and "\$" means the lawful currency for the time being of the United States of America.

"**Drawdown Date**" means the date on which the Loan is drawn down and applied in accordance with Clause 2 (*Facility*).

"**Drawdown Notice**" means a notice in the form set out in Schedule 2 (*Form of Drawdown Notice*) (or in any other form which the Agent approves or reasonably requires).

"**Earnings**" means all moneys whatsoever which are now, or later become, payable (actually or contingently) to the Borrower, by Seven Seas as bareboat charterer and which arise out of the use or operation of the Ship, including (but not limited to):

- (a) all freight, hire, fare and passage moneys, compensation payable to the Borrower or the Agent in the event of requisition of the Ship for hire, remuneration for salvage and towage services, demurrage and detention moneys and damages for breach (or payments for variation or termination) of any charterparty or other contract for the employment of the Ship;
- (b) all moneys which are at any time payable under Insurances in respect of loss of earnings;
- (c) all moneys which are at any time payable to the Borrower in respect of the general average contribution; and
- (d) if and whenever the 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 the Ship.

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

"**Eligible Amount**" means eighty per cent. (80%) of the lesser of:

- (a) the Dollar Equivalent of EUR 436,770,000; and
- (b) the Dollar Equivalent of the Final Contract Price.

"**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

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

**"EU Blocking Regulation"** means EU Regulation (EC) 2271/96 of 22 November 1996.

**"Euro"** and **"EUR"** means the single currency of the Participating Member States.

**"Event of Default"** means any of the events or circumstances described in Clause ~~18.1~~[19.1](#) (*Events of Default*).

**"Existing Indebtedness"** means Financial Indebtedness referred to in the financial statements of the Guarantor delivered to the Agent prior to the date of this Agreement.

**"Exporter Declaration"** means a declaration in the form required by SIMEST at the relevant time duly signed by an authorised signatory of the Builder.

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"**Facility Agreement**" has the meaning given to such term in Recital G.

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

"**Fallback Interest Payment**" means the aggregate amount of interest that is, or is scheduled to become, payable under paragraph (d) of Clause 7.9 (Unavailability of Term SOFR) and relates to a Term SOFR Loan.

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

"**FATCA 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 the Original Facility 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.

"**February 2021 Effective Date**" has the meaning given to the term Effective Date in the 2021 Amendment and Restatement Agreement.

"**Fee Letter**" means any letter dated on or about the date of the Original Facility Agreement between the SACE Agent and the Borrower setting out the fees referred to in paragraph (f) of Clause ~~9.1~~ 10 (Fees).

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"Final Contract Price" has the meaning given in Recital (C).

"Finance Documents" means:

- (a) ~~the 2020 Amendment~~ this Agreement;
- (b) the 2021-2020 Amendment ~~and Restatement~~ Agreement;
- ~~(c) the Deferral Fee Letters;~~
- ~~(c)~~ ~~(d)~~ this the 2021 Amendment and Restatement Agreement;
- (d) the December 2021 Amendment Agreement;
- (e) the December 2022 Amendment Agreement;
- (f) the 2023 Amendment and Restatement Agreement;
- (g) the December 2021 Fee Letters;
- (h) the Deferral Fee Letters;
- (i) the December 2022 Fee Letters;
- (j) ~~(e)~~ any Fee Letter;
- (k) ~~(f)~~ the Guarantee;
- (l) ~~(g)~~ the Tripartite General Assignment;
- (m) ~~(h)~~ the Mortgage;
- (n) ~~(i)~~ the Mortgage Addenda;
- (o) ~~(j)~~ the Post-Delivery Assignment;
- (p) ~~(k)~~ the Limited Liability Company Interests Security Deed;
- (q) ~~(l)~~ the Approved Manager's Undertaking;
- (r) ~~(m)~~ any Transfer Certificate;
- (s) ~~(n)~~ any other document (whether creating a Security Interest or not) which is executed as security for, or for the purpose of establishing any priority or subordination arrangement in relation to, the Secured Liabilities; and
- (t) ~~(o)~~ any other document (whether creating a Security Interest or not) which is designated as a Finance Document by agreement between the Borrower, SACE and the Agent.

"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;
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- (b) under any loan stock, bond, note or other security issued by the debtor;
- (c) under any acceptance credit, guarantee or letter of credit facility made available to the debtor;
- (d) under a financial lease, a deferred purchase consideration arrangement or any other agreement having the commercial effect of a borrowing or raising of money by the debtor;
- (e) under any 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;
- (f) under a guarantee, indemnity or similar obligation entered into by the debtor in respect of a liability of another person which would fall within paragraphs (a) to (e) if the references to the debtor referred to the other person; or
- (g) receivables sold or discounted (other than receivables to the extent they are sold on a non-recourse basis).

**"First Instalment"** means the first instalment of the SACE Premium as more particularly described in paragraph (a) of Clause ~~8.4~~9.1 (*SACE Premium*).

**"Fixed Interest Rate"** means, in respect of any Interest Period, the rate per annum determined by the Agent to be the aggregate of:

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

**"Floating Interest Rate"** means, in respect of any Interest Period, the rate per annum determined by the Agent to be ~~the aggregate of:~~

(a) in relation to each LIBOR Loan, the percentage rate per annum which is the aggregate of:

- (i) ~~(a)~~the Margin; and
- (ii) ~~(b)~~LIBOR ~~for the relevant period.~~

(b) in relation to each Term SOFR Loan, the percentage rate per annum which is the aggregate of:

- (i) the Margin;
- (ii) the Term SOFR Reference Rate; and
- (iii) the Credit Adjustment Spread.

**"FOREX Contracts"** means each actual purchase contract, spot or forward contract and any other contract, such as an option or collar arrangement, which is entered into in the foreign exchange markets for the acquisition of Euro intended to pay the delivery instalment under the Shipbuilding Contract, which:

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- (a) matures not later than the Intended Delivery Date, provided that option arrangements may mature up to one month after such date if at the time they are entered into there exists a reasonable uncertainty as to the date on which the Ship will be delivered;
- (b) is entered into by the Borrower or the Guarantor or a combination of the foregoing not later than two (2) days before the Conversion Rate Fixing Date so that the Borrower, directly or through the Guarantor, purchases or may purchase Euro with Dollars at a pre-agreed rate; and
- (c) is notified to the Agent within ten (10) days of its execution but in any event no later than the day preceding the Conversion Rate Fixing Date, with a Certified Copy of each such contract being delivered to the Agent at such time.

**"FOREX Contracts Weighted Average Rate"** means the rate determined by the Agent on the Conversion Rate Fixing Date in accordance with the following principles which (inter alia) are intended to take into account any maturity mismatch between the maturity of the FOREX Contracts and the Intended Delivery Date as well as FOREX Contracts that are unwound as part of the hedging strategy of the Borrower:

- (a) FOREX Contracts that are spot or forward foreign exchange contracts, if any, shall be valued at the contract value (taking into account any rescheduling);
- (b) the difference between the Euro amount available under (a) above and the Euro amount balance payable to the Builder on the Delivery Date is assumed to be purchased at the official daily fixing rate of the European Central Bank for the purchase of Euro with Dollars as displayed on "Reuters Page ECB 37" (or such other pages as may replace that page on that service or a successor service) at or around 2 p.m. (Paris time) on the Conversion Rate Fixing Date;
- (c) any FOREX Contract which is an option or collar arrangement and is not unwound at the Conversion Rate Fixing Date will be marked to market and the resulting profit or loss shall reduce or increase the Dollar countervalue of the purchased Euro;
- (d) any FOREX Contract which is an option or collar arrangement and is sold or purchased back at the time FOREX Contract(s) are entered into for an identical Euro amount shall be accounted for the net premium cost or profit, as the case may be.

Any marked to market valuation, as required in paragraph (c) above, shall be performed by Crédit Agricole Corporate and Investment Bank's dedicated desk in accordance with market practices. The Borrower shall have the right to request indicative valuations from time to time prior to the Conversion Rate Fixing Date.

**"Funding Rate"** means any individual rate notified by a Lender to the Agent pursuant to sub-paragraph (i) of paragraph (e) of Clause ~~6.10~~ 7.11 (*Cost of funds*).

**"GAAP"** means generally accepted accounting principles in the United States of America consistently applied (or, if not consistently applied, accompanied by details of the inconsistencies) including, without limitation, those set forth in the opinion and pronouncements of the Accounting Principles Board of the American Institute of Certified Public Accountants and statements and pronouncements of the Financial Accounting Standards Board.

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**"German Blocking Provisions"** means section 7 of the German Foreign Trade Regulation (AWV) (*Außenwirtschaftsverordnung*) (in connection with section 4 paragraph 1 a no. 3 German Foreign Trade Law (AWG) (*Außenwirtschaftsgesetz*)).

**"Gross Negligence"** means any act or omission, whether deliberate or not, which in the circumstances (including both the probability and seriousness of the consequences likely to result) would reasonably be regarded by those familiar with the nature of the activity in question and with the surrounding circumstances, as amounting to the reckless disregard of, or serious indifference to, the consequences, being in any case more than a negligent failure to exercise proper skill and care.

**"Group"** means the Guarantor and its Subsidiaries.

**"Guarantee"** means the Original Guarantee, as amended pursuant to the 2020 Amendment Agreement ~~and~~ as amended and restated pursuant to the 2021 [Amendment and Restatement Agreement, as amended pursuant to the December 2021 Amendment Agreement, as further amended pursuant to the December 2022 Amendment Agreement and as further amended and restated by the 2023 Amendment and Restatement Agreement](#) and as may be further amended and/or supplemented from time to time.

**"Guarantor"** means NCL Corporation Ltd., a Bermuda company with its registered office at Park Place ~~55~~, [55](#) Par-la-Ville Road, Hamilton HM 11, Bermuda.

**"Historic Term SOFR"** means, in relation to any Term SOFR Loan, the most recent applicable Term SOFR for a period equal in length to the Interest Period of that Term SOFR Loan and which is as of a day which is no more than five US Government Securities Business Days before the Quotation Day.

**"Holding"** means Norwegian Cruise Line Holdings Ltd., a company incorporated under the laws of Bermuda with its registered office at Park Place ~~55~~, [55](#) Par-la-Ville Road, Hamilton HM 11, Bermuda.

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

**"IAPPC"** means a valid international air pollution prevention certificate for the Ship issued under Annex VI.

**"Illicit Origin"** means any origin which is illicit, fraudulent or in breach of Sanctions including, without limitation, drug trafficking, corruption, organised criminal activities, terrorism, money laundering or fraud.

**"Information Package"** means:

- (a) the information package in connection with the "Debt Holiday" application in the form set out in Schedule 4 (*Information Package*) of the 2020 Amendment Agreement, submitted by the Borrower (or the Guarantor on its behalf) in order to obtain the benefit of the measures provided for in the Original Principles; and
  - (b) the information package in connection with the "Debt Holiday" application in the form set out in Schedule 4 (*Information Package*) of the 2021 Amendment and Restatement Agreement, submitted by the Borrower (or the Guarantor on its behalf) in order to obtain the benefit of the measures provided for in the Principles for the purpose of
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this Agreement and certain of the Borrower's and the Guarantor's obligations under this Agreement.

"Initial Contract Price" has the meaning given in Recital (B).

"Insurances" means:

- (a) all policies and contracts of insurance, including entries of the Ship in any protection and indemnity or war risks association, which are effected in respect of the Ship, its Earnings or otherwise in relation to it; 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 a premium.

"Intended Delivery Date" means [\*] (the date on which the Ship will be ready for delivery pursuant to the Shipbuilding Contract as at the date of the Original Facility Agreement) or any other date notified by the Borrower to the Agent in accordance with paragraph (a)(i) of Clause 3.4 (*No later than sixty (60) days before the Intended Delivery Date*) or paragraph (c) of Clause 3.7 (*No later than five (5) Business Days before the Intended Delivery Date*) as being the date on which the Builder and the Borrower have agreed that the Ship will be ready for delivery pursuant to the Shipbuilding Contract.

"Interest ~~Make-up~~ Make-Up Agreement" means an interest make up agreement (*Capitolato*) to be entered into between SIMEST and the Agent on behalf of the Lenders and in form and substance acceptable to the Joint Mandated Lead Arrangers, whereby, inter alia, the return to the Lenders on the Loan made hereunder will be supplemented by SIMEST so that it equals that which the Lenders would have received if interest were payable on the Loan at LIBOR plus the Margin.

"Interest Period" means a period determined in accordance with Clause ~~7~~8 (*Interest Periods*).

"Interpolated ~~Screen Rate~~Historic Term SOFR" means, in relation to ~~the Loan or any part of the Term SOFR~~ Loan, the rate (rounded to the same number of decimal places as Term SOFR) which results from interpolating on a linear basis between:

(a) either:

(i) ~~(a)~~ the most recent applicable ~~Screen Rate~~ Term SOFR (as of a day which is not more than five US Government Securities Business Days before the Quotation Day) for the longest period (for which that ~~Screen Rate~~ Term SOFR is available) which is less than the Interest Period of ~~the Loan or that part of the~~ Term SOFR Loan; ~~and or~~

(ii) if no such Term SOFR is available for a period which is less than the Interest Period of that Term SOFR Loan, the most recent SOFR for a day which is no more than five US Government Securities Business Days (and no less than two US Government Securities Business Days) before the Quotation Day; and

(b) the most recent applicable Term SOFR (as of a day which is not more than five US Government Securities Business Days before the Quotation Day) for the shortest period (for which Term SOFR is available) which exceeds the Interest Period of that Term SOFR Loan.

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"Interpolated Screen Rate" means, in relation to any LIBOR 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 that LIBOR 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~~ LIBOR Loan,

each as of the Specified Time ~~for Dollars.~~

"Interpolated Term SOFR" means, in relation to any Term SOFR Loan, the rate (rounded to the same number of decimal places as Term SOFR) which results from interpolating on a linear basis between:

- (a) either
  - (i) the applicable Term SOFR (as of the Quotation Day) for the longest period (for which Term SOFR is available) which is less than the Interest Period of that Term SOFR Loan; or
  - (ii) if no such Term SOFR is available for a period which is less than the Interest Period of that Term SOFR Loan, SOFR for the day which is five (5) US Government Securities Business Days before the Quotation Day; and
- (b) the applicable Term SOFR (as of the Quotation Day) for the shortest period (for which Term SOFR is available) which exceeds the Interest Period of that Term SOFR Loan.

"**ISM Code**" means the International Safety Management Code for the safe operation of ships and for pollution prevention (including the guidelines on its implementation), adopted by the International Maritime Organisation as the same may be amended or supplemented from time to time.

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

"**Italian Authorities**" means SACE and/or SIMEST and any other relevant Italian authorities involved in the implementation of the Loan.

"**Lender**" means a bank, financial institution, trust, fund or other entity listed in Schedule 1 (*Lenders and Commitments*) and acting through its Facility Office or its transferee, successor or assign.

"**LIBOR**" means, in relation to ~~the Loan or any part of the~~ LIBOR Loan:

- (a) the applicable Screen Rate as of the Specified Time for ~~Dollars~~ dollars and for a period equal in length to the Interest Period of ~~the Loan or that part of the~~ LIBOR Loan; or
  - (b) as otherwise determined pursuant to Clause ~~6.7-7.7~~ 6.7-7.7 (*Unavailability of Screen Rate before Rate Switch Date*),
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and if, in either case, that rate is less than zero, LIBOR shall be deemed to be zero.

**"LIBOR Loan"** means [the Loan, any Deferral Tranche, any other part of the Loan or, if applicable, Unpaid Sum to which the Floating Interest Rate applies and which is not a Term SOFR Loan.](#)

**"Limited Liability Company Interests Security Deed"** means a security pledge in relation to the limited liability company interests of the Borrower executed or to be executed by Seven Seas in favour of the Security Trustee in the agreed form.

**"Loan"** means the loan made or to be made available under this Agreement (including under the Deferral Tranches) or the principal amount outstanding for the time being of that loan.

**"Majority Lenders"** means:

- (a) before the Loan has been made, Lenders whose Commitments total [\*] per cent. of the Total Commitments; and
- (b) after the Loan has been made, Lenders whose Contributions total [\*] per cent. of the Loan.

**"Management Agreement"** means the management agreement (if any) entered or to be entered into between the Borrower and an Approved Manager which is not a member of the Group with respect to the Ship on terms reasonably acceptable to the Majority Lenders and SACE.

**"Margin"** means:

- (a) in relation to the Fixed Interest Rate zero point twenty-five per cent. per annum (0.25% p.a.); and
- (b) in relation to the Floating Interest Rate, one point seventy-five per cent. per annum (1.75% p.a.), save for the 2021 Deferral Tranche in respect of which it shall mean one point ninety-five per cent. (1.95%).

**"Marina Facility Agreement"** means, [in respect of m.v. MARINA, a facility agreement originally dated 18 July 2008 \(as amended by a supplemental agreement dated 25 October 2010, as further amended and restated by an amendment and restatement agreement dated 31 October 2014, as amended by a supplemental agreement dated 4 June 2020, as further amended and restated by an amendment and restatement agreement dated 17 February 2021, as further amended by a supplemental agreement dated 23 December 2021 and as further amended by a supplemental agreement dated 16 December 2022\), as further amended, restated and supplemented from time to time.](#)

**"Maritime Registry"** means the maritime registry which the Borrower will specify to the Lenders no later than 90 days before the Intended Delivery Date, being that of the Marshall Islands, Bahamas or such other registry as the Agent may approve.

**"Market Disruption Rate"** means [the percentage rate per annum which is the aggregate of the Term SOFR Reference Rate and the applicable Credit Adjustment Spread.](#)

**"Material Adverse Effect"** means the occurrence of any event or circumstance which reasonably would be expected to have a material adverse effect on:

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

**"Maximum Loan Amount"** means the aggregate of:

- (a) the Dollar Equivalent of Euro 349,416,000;
- ~~(b) "Maximum Loan Amount" means the aggregate of (a) the Dollar Equivalent of Euro 349,416,000; (b) 100% of the First Instalment of the SACE Premium to be paid by the Borrower direct to SACE on the earlier of (i) the date falling 30 days following the issuance of the SACE Insurance Policy and (ii) the date falling 6 months after the date of SACE's board approval; and (c) 100% of the Second Instalment of the SACE Premium payable on the original Drawdown Date, with (X) the Loan currently outstanding (including the drawn part of the 2020 Deferral Tranche) on the February 2021 Effective Date being equal to \$426,413,887.05 and (Y) an amount equal to \$44,480,298.60 under the 2021 Deferral Tranche being available for utilisation, to be made (or deemed to be made) available as provided for in this Agreement.~~

- ~~(c) 100% of the Second Instalment of the SACE Premium payable on the original Drawdown Date, with (X) the Loan currently outstanding (including the drawn part of the 2020 Deferral Tranche and the 2021 Deferral Tranche) on the February 2021 Effective Date being equal to \$426,413,887.05 and (Y) an amount equal to \$44,480,298.60 under the 2021 Deferral Tranche being available for utilisation, to be made (or deemed to be made) available as provided for in this Agreement.~~

**"Mortgage"** means the Original Mortgage, as amended pursuant to both Mortgage Addenda and as may be further amended and/or supplemented from time to time.

**"Mortgage Addenda"** means:

- (a) the addendum to the Original Mortgage executed pursuant to the 2020 Amendment Agreement on 4 June 2020; ~~and~~
- (b) the addendum to the Original Mortgage (as amended pursuant to the addendum described in paragraph (a) above) executed pursuant to the 2021 Amendment and Restatement Agreement ~~on or about the date hereof;~~ and
- ~~(c) the addendum to the Original Mortgage (as amended pursuant to the addendum described in paragraph (a) and paragraph (b) above) executed pursuant to the 2023 Amendment and Restatement Agreement, on or about the date hereof.~~

**"Obligors"** means the Borrower, the Guarantor, Seven Seas and (in the event that the Approved Manager is a member of the Group) the Approved Manager.

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"OFAC" means the Office of Foreign Assets Control of the United States Department of the Treasury.

"Original Facility Agreement" has the meaning given to such term in Recital (D).

"Original Guarantee" means the guarantee issued by the Guarantor in favour of the Security Trustee on 31 March 2016.

"Original Mortgage" means the first preferred Marshall Islands mortgage on the Ship, executed by the Borrower in favour of the Security Trustee on 30 January 2020.

"Original Principles" has the meaning given in Recital E.

"Overnight LIBOR" means, in relation to ~~the Loan or any part of the~~ LIBOR Loan:

- (a) on any date, the applicable day to day Screen Rate as of the Specified Time for Dollars; or
- (b) as otherwise determined pursuant to Clause ~~6.7-7.7~~ 7.7 (*Unavailability of Screen Rate before Rate Switch Date*),

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

"Overseas Regulations" means the United Kingdom Overseas Companies Regulations 2009.

"Parallel Debt" means any amount which an Obligor owes to the Security Trustee under Clause ~~26-27.2~~ 27.2 (*Parallel Debt (Covenant to pay the Security Trustee)*).

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

"Party" means a party to this Agreement from time to time.

"Permitted Financial Indebtedness" means any Financial Indebtedness:

- (a) incurred under the Finance Documents; or
- (b) permitted pursuant to Clause ~~12-13~~ 13.13 (*Financial Indebtedness and subordination of indebtedness*).

"Permitted Security Interests" means:

- (a) in the case of the Borrower:
    - (i) any of the Security Interests referred to in paragraph (b)(ii)(A) below, and
    - (ii) any of the Security Interests referred to in paragraphs (b)(ii)(B), (b)(ii)(C), (b)(ii)(E), (b)(ii)(H) and (b)(ii)(I) below if, by reason of any chartering or management arrangements for the Ship approved by the Agent pursuant to the provisions of this Agreement, such Security Interests are created by the Borrower in the case of paragraphs (b)(ii)(C) or (b)(ii)(E) or incurred by the Borrower in the case of paragraphs (b)(ii)(B), (b)(ii)(H) or (b)(ii)(I); and
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- (b) in the case of the Guarantor:
- (i) any of the Security Interests referred to in paragraphs (ii)(A), (ii)(D), (ii)(F) and (ii)(G) below, and
  - (ii) any of the Security Interests referred to in paragraphs (C), (E), (H) and (I) below if, by reason of any chartering or management arrangements for the Ship approved by the Agent pursuant to the provisions of this Agreement, such Security Interests are created by the Guarantor in the case of paragraphs (C) or (E) or incurred by the Guarantor in the case of paragraphs (H) or (I);
    - (A) any Security Interest created by or pursuant to the Finance Documents and any deposits or other Security Interests placed or incurred in connection with any bond or other surety from time to time provided to the US Federal Maritime Commission in order to comply with laws, regulations and rules applicable to the operators of passenger vessels operating to or from ports in the United States of America;
    - (B) liens on the Ship up to an aggregate amount at any time not exceeding [\*] Dollars (\$[\*]) for current crew's wages and salvage and liens incurred in the ordinary course of trading the Ship;
    - (C) any deposits or pledges up to an aggregate amount at any time not exceeding [\*] Dollars (\$[\*]) to secure the performance of bids, tenders, bonds or contracts required in the ordinary course of business;
    - (D) any other Security Interest including in relation to the Existing Indebtedness over the assets of any Obligor other than the Borrower notified by the Borrower or any of the Obligors to the Agent and accepted by it prior to the date of this Agreement;
    - (E) (without prejudice to the provisions of Clause ~~42.13~~13.13 (*Financial Indebtedness and subordination of indebtedness*)) liens on assets leased, acquired or upgraded after the date of the Original Facility Agreement or assets newly constructed or converted after the date of the Original Facility Agreement provided that (i) such liens secure Financial Indebtedness otherwise permitted under this Agreement, (ii) such liens are incurred at the time of such lease, acquisition, upgrade, construction or conversion and (iii) the Financial Indebtedness secured by such liens does not exceed the cost of such upgrade or the cost of such assets acquired or leased;
    - (F) other liens arising in the ordinary course of business of the Group unrelated to Financial Indebtedness and securing obligations not yet delinquent or which are being contested in good faith by appropriate proceedings and for which adequate reserves have been established provided that (i) the aggregate amount of all cash and the fair market value of all other property subject to such liens as are described in this paragraph (F) does not exceed [\*] Dollars (\$[\*]) and (ii) such cash and/or other property is not an asset of the Borrower;
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- (G) subject to the other provisions of this Agreement and the Guarantee, any Security Interest in respect of existing Financial Indebtedness of a person which becomes a Subsidiary of the Guarantor or is merged with or into the Guarantor or any of its subsidiaries;
- (H) liens in favour of credit card companies on unearned customer deposits pursuant to agreements therewith; and
- (I) liens in favour of customers on unearned customer deposits.

**"Pertinent Document"** means:

- (a) any Finance Document;
- (b) any policy or contract of insurance contemplated by or referred to in Clause ~~42~~13 (*General Undertakings*) or any other provision of this Agreement or another Finance Document;
- (c) any other document contemplated by or referred to in any Finance Document; and
- (d) any document which has been or is at any time sent by or to the Agent in contemplation of or in connection with any Finance Document or any policy, contract or document falling within paragraphs (b) or (c).

**"Pertinent Matter"** means:

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

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

**"Poseidon Principles"** means the financial industry framework for assessing and disclosing the climate alignment of ship finance portfolios published in June 2019 as the same may be amended or replaced to reflect changes in applicable law or regulation or the introduction of or changes to mandatory requirements of the International Maritime Organisation from time to time.

**"Post-Delivery Assignment"** means an assignment of the rights of the Borrower in respect of the post-delivery guarantee liability of the Builder under Article 25 of the Shipbuilding Contract executed or to be executed by the Borrower in favour of the Security Trustee in the agreed form.

**"Principles"** has the meaning given in Recital (H).

**"Prohibited Payment"** means:

- (a) any offer, gift, payment, promise to pay, commission, fee, loan or other consideration which would constitute bribery or an improper gift or payment under, or a breach of Sanctions, any laws of the Republic of Italy, England and Wales, Panama, the Council
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of the European Union, Germany, the United States of America or any other applicable jurisdiction; or

- (b) any offer, gift, payment, promise to pay, commission, fee, loan or other consideration which would or might constitute bribery within the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions of 17 December 1997.

**"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.

**"Protocol of Delivery and Acceptance"** means the protocol of delivery and acceptance of the Ship to be signed by the Borrower and the Builder in accordance with Article 8 of the Shipbuilding Contract.

**"Qualifying Certificate"** means the certificate to be issued by the Builder on the Delivery Date and issued to the Agent and copied to the Borrower substantially in the form set out in Schedule 5 (*Qualifying Certificate*).

**"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 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);~~

(a) in relation to a LIBOR Loan, two Business Days in London (other than Saturdays and Sundays on which banks are open in London) before the first day of that period unless market practice differs in the Relevant Market in which case the Quotation Day will be determined by the Agent in accordance with that market practice (and if quotations would normally be given on more than one day, the Quotation Day will be the last of those days); and

(b) in relation to a Term SOFR Loan, two US Government Securities Business Days before the first day of that period unless market practice differs in the relevant syndicated loan market in which case the Quotation Day will be determined by the Agent in accordance with that market practice (and if quotations would normally be given on more than one day, the Quotation Day will be the last of those days).

**"Quoted Tenor"** means any period for which:

(a) in relation to a LIBOR Loan, the Screen Rate is customarily displayed on the relevant page or screen of an information service (other than for one week and two months); and

(b) in relation to a Term SOFR Loan, Term SOFR is customarily displayed on the relevant page or screen of an information service.

**"Rate Switch Date"** means the earlier of:

(a) the Backstop Rate Switch Date; and

(b) any Rate Switch Trigger Event Date.

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**"Rate Switch Trigger Event" means:**

(1)

(1) -

(1) the administrator of the Screen Rate or its supervisor publicly announces that such administrator is insolvent; or

(2) information is published in any order, decree, notice, petition or filing, however described, of or filed with a court, tribunal, exchange, regulatory authority or similar administrative, regulatory or judicial body which reasonably confirms that the administrator of the Screen Rate is insolvent.

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

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

(3) the supervisor of the administrator of the Screen Rate publicly announces that the Screen Rate has been or will be permanently or indefinitely discontinued for any Quoted Tenor; or

(4) the administrator of the Screen Rate or its supervisor publicly announces that the Screen Rate for any Quoted Tenor may no longer be used; or

(2) the supervisor of the administrator of the Screen Rate publicly announces or publishes information:

(1) stating that the Screen Rate for any Quoted Tenor is no longer, or as of a specified future date will no longer be, representative of the underlying market and the economic reality that it is intended to measure and that such representativeness will not be restored (as determined by such supervisor); and

(2) with awareness that any such announcement or publication will engage certain triggers for fallback provisions in contracts which may be activated by any such pre-cessation announcement or publication.

**"Rate Switch Trigger Event Date" means:**

(1) in the case of an occurrence of a Rate Switch Trigger Event described in sub-paragraph (1) of paragraph (1) of the definition of Rate Switch Trigger Event, the date on which the

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Screen Rate ceases to be published or otherwise becomes unavailable;

- (2) in the case of an occurrence of a Rate Switch Trigger Event described in sub-paragraph (2), (3) or (4) of paragraph (1) of the definition of Rate Switch Trigger Event, the date on which the Screen Rate for the relevant Quoted Tenor ceases to be published or otherwise becomes unavailable; and
- (3) in the case of an occurrence of a Rate Switch Trigger Event described in paragraph (2) of the definition of Rate Switch Trigger Event, the date on which the Screen Rate for the relevant Quoted Tenor ceases to be representative of the underlying market and the economic reality that it is intended to measure (as determined by the supervisor of the administrator of such Screen Rate).

**"Reference Bank Quotation"** means any quotation supplied to the 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 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 such entities as may be appointed by the Agent in consultation with the Borrower.

~~**"Relevant Interbank Market"** means the London interbank market.~~

**"Reinstatement Date"** means:

- (a) in relation to this Agreement (as further amended, restated and supplemented from time to time), 29 January 2027;
  - (b) in relation to the Marina Facility Agreement, 19 January 2027;
  - (c) in relation to the Riviera Facility Agreement, 27 October 2026; and
  - (d) in relation to the Seven Seas Explorer Facility Agreement, 31 December 2026.
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"Reinstatement Event" means the final Reinstatement Date or any date when all Deferral Tranches under the Delivered Vessel Facilities (as defined therein) are repaid or prepaid in full.

"Relevant Jurisdiction" means, in relation to an Obligor:

- (a) its jurisdiction of incorporation;
- (b) any jurisdiction where any asset subject to, or intended to be subject to, any of the Security Interests created, or intended to be created, under the Finance Documents to which it is a party is situated;
- (c) any jurisdiction where it conducts its business; and
- (d) the jurisdiction whose laws govern the perfection of any of the Security Interests created, or intended to be created, under the Finance Documents to which it is a party.

"Relevant Market" means:

- (a) subject to paragraph (b) below, the London interbank market; and
- (b) on or after the Rate Switch Date, the market for overnight cash borrowing collateralised by US Government securities.

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

"Repayment Date" means a date on which a repayment is required to be made under Clause 5 (*Repayment*).

~~"Replacement Benchmark" means a benchmark rate which is:~~

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

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

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

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

**"Restricted Creditor Party"** means a Creditor Party which serves a notice pursuant to paragraph (a) of Clause ~~4-5-1.6~~ (*Non-applicable provisions between the Obligors, German Lenders and any Creditor Party subject to the EU Blocking Regulation*).

**"Riviera Facility Agreement"** means, in respect of m.v. RIVIERA, a facility agreement originally dated 18 July 2008 (as amended by a supplemental agreement dated 25 October 2010, as amended by a side letter dated 29 March 2012, as amended and restated by an amendment and restatement agreement dated 31 October 2014, as amended by a framework agreement dated 31 January 2018, as amended by a supplemental agreement dated 4 June 2020, as further amended and restated by an amendment and restatement agreement dated 17 February 2021, as further amended by a supplemental agreement dated 23 December 2021 and as further amended by a supplemental agreement dated 16 December 2022), as further amended, restated and supplemented from time to time.

**"SACE"** means SACE S.p.A., an Italian joint stock company (*società per azioni*) with a sole shareholder, whose registered office is located at Piazza Poli 37/42, 00187 Rome, Italy and registered with the Companies Registry of Rome under number 05804521002.

**"SACE Agent"** means Crédit Agricole Corporate and Investment Bank, a French "société anonyme", having a share capital of EUR 7,851,636,342.00 and its registered office located at 12 Place des États-Unis, CS 70052 92547, Montrouge Cedex, France, registered under the n° Siren 304 187 701 at the Registre du Commerce et des Sociétés of Nanterre or any successor of it appointed under Clause ~~25~~ 26 (*Role of the Agent and the Joint Mandated Lead Arrangers*).

**"SACE Insurance Policy"** means the insurance policy (as amended and supplemented from time to time) in respect of this Agreement (which, in all material respects, is not inconsistent with the commercial terms of this Agreement) issued by SACE for the benefit of the Lenders in respect of 95% of the Loan in form and substance satisfactory to the Agent and the Lenders.

**"SACE Premium"** means the amount payable by the Borrower to SACE directly or through the Agent in several instalments in respect of the SACE Insurance Policy as set out in Clause ~~8-9~~ (*SACE Premium and Italian Authorities*), including the Deferral Tranche Premia (provided, for the avoidance of doubt, that the 2021 Deferral Tranche Premium shall not be financed).

**"SACE Required Documents"** means in relation to the Drawdown Notice:

- (a) a duly completed and executed Qualifying Certificate; and
- (b) each of the other documents, information and other evidence specified in or required to be enclosed with such Qualifying Certificate.

**"Safety Management Certificate"** 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):

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- (a) imposed by law or regulation of the United Kingdom, the Council of the European Union, the United Nations or its Security Council or imposed by any member state of the European Union or Switzerland;
- (b) imposed by CISADA or OFAC; or
- (c) otherwise imposed by any law or regulation,

by which any Obligor is bound or to which it is subject or, as regards a regulation, compliance with which is reasonable in the ordinary course of business of any Obligor.

"**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 (before any correction, recalculation or republication by the administrator) on page LIBOR01 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 Agent may specify another page or service displaying the relevant rate after consultation with the Borrower.

~~"Screen Rate Contingency Period" means fifteen (15) Business Days.~~

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

- ~~(a) the methodology, formula or other means of determining that Screen Rate has, in the opinion of the Majority Lenders and the Borrower materially changed;~~
  - ~~(b)~~
    - ~~(i)~~
      - ~~(A) the administrator of that Screen Rate or its supervisor publicly announces that such administrator is insolvent; or~~
      - ~~(B) information is published in any order, decree, notice, petition or filing, however described, or filed with a court, tribunal, exchange, regulatory authority or similar administrative, regulatory or judicial body which reasonably confirms that the administrator of that Screen Rate is insolvent,~~
    - ~~(ii) provided that, in each case, at that time, there is no successor administrator to continue to provide that Screen Rate;~~
    - ~~(iii) the administrator of that Screen Rate publicly announces that it has ceased or will cease, to provide that Screen Rate permanently or indefinitely and, at that time, there is no successor administrator to continue to provide that Screen Rate;~~
    - ~~(iv) the supervisor of the administrator of that Screen Rate publicly announces that such Screen Rate has been or will be permanently or indefinitely discontinued; or~~
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- ~~(v) the administrator of that Screen Rate or its supervisor announces that that Screen Rate may no longer be used; or~~
- ~~(e) the administrator of that Screen Rate determines that that Screen Rate should be calculated in accordance with its reduced submissions or other contingency or fallback policies or arrangements and either:
  - ~~(i) the circumstance(s) or event(s) leading to such determination are not (in the opinion of the Majority Lenders and the Borrower) temporary; or~~
  - ~~(ii) that Screen Rate is calculated in accordance with any such policy or arrangement for a period no less than the Screen Rate Contingency Period; or~~~~
- ~~(d) in the opinion of the Majority Lenders and the Borrower, that Screen Rate is otherwise no longer appropriate for the purposes of calculating interest under this Agreement.~~

"**Second Instalment**" means the second instalment of the SACE Premium as more particularly described in paragraph (b) of Clause ~~8.4~~ 9.1 (*SACE Premium*).

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

"**Secured Party**" means SACE, the Agent, the Security Trustee, the SACE Agent, the Joint Mandated Lead Arrangers or any Lender whether at the date of the Original Facility Agreement or any later time.

"**Security Interest**" means:

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

"**Security Period**" means the period commencing on the date of the Original Facility Agreement and ending on the date on which:

- (a) all amounts which have become due for payment by the Borrower or any Obligor 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;
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- (c) neither the Borrower nor any other Obligor has any future or contingent liability under Clause ~~49~~ 20 (*Application of sums received*) below or any other provision of this Agreement or another Finance Document; and
- (d) the Agent does 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 the Borrower or an Obligor 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 Property"** means:

- (a) the Security Interests expressed to be granted in favour of the Security Trustee as trustee for the Secured Parties and all proceeds received or recovered by or on behalf of the Security Trustee under or by virtue of any Security Interest including any money or other assets which are received or recovered by it as a result of the enforcement or exercise by it of such a Security Interest or right;
- (b) all obligations expressed to be undertaken by an Obligor to pay amounts in respect of the Secured Liabilities to the Security Trustee as trustee for the Secured Parties and secured by the Security Interests together with all representations and warranties expressed to be given by an Obligor in favour of the Security Trustee as trustee for the Secured Parties;
- (c) the Security Trustee'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 Trustee is required by the terms of the Finance Documents to hold as trustee on trust for the Secured Parties,

except:

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

**"Security Requirement"** means the amount in Dollars (as certified by the Agent whose certificate shall, in the absence of manifest error, be conclusive and binding on the Borrower and the Agent) which is at any relevant time one hundred per cent (100%) of the Loan.

**"Security Trustee"** means Crédit Agricole Corporate and Investment Bank, a French "société anonyme", having a share capital of EUR 7,851,636,342.00 and its registered office located at 12 Place des États-Unis, CS 70052 92547, Montrouge Cedex, France, registered under the n° Siren 304 187 701 at the Registre du Commerce et des Sociétés of Nanterre or any successor of it appointed under Clause ~~26-27~~ 27 (*The Security Trustee*).

**"Security Value"** means the amount in Dollars (as certified by the Agent whose certificate shall, in the absence of manifest error, be conclusive and binding on the Borrower and the Agent) which, at any relevant time, is the aggregate of (i) the market value of the Ship as most recently

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determined in accordance with Clause ~~13.4~~ 14.4 (*Valuation of the Ship*); and (ii) the market value of any additional security for the time being actually provided to the Agent pursuant to Clause ~~15~~ 16 (*Security Value Maintenance*).

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

"**Seven Seas**" means Seven Seas Cruises S. de R.L., a Panamanian *sociedad de responsabilidad limitada* domiciled in Panama whose resident agent is at Arifa Building, West Boulevard, Santa Maria Business District, Panama, Republic of Panama.

"**Seven Seas Explorer Facility Agreement**" means, in respect of m.v. SEVEN SEAS EXPLORER, a facility agreement originally dated 31 July 2013 (as amended and restated by an amendment and restatement agreement dated 31 October 2014, as amended by a supplemental agreement dated 4 June 2020, as further amended and restated pursuant to an amendment and restatement agreement dated 17 February 2021, as further amended by a supplemental agreement dated 23 December 2021 and as further amended by a supplemental agreement dated 16 December 2022), as further amended, restated and supplemented from time to time.

"**Ship**" means the passenger cruise ship "Seven Seas Splendor" (ex. hull number [\*]) in the in the registered ownership of the Borrower under the Marshall Islands maritime registry (official no. 7673).

"**Shipbuilding Contract**" has the meaning given in Recital (A).

"**SIMEST**" means Società Italiana per Le Imprese all'Estero - SIMEST Spa, which grants export subsidies in Italy under and according to the Italian Legislative Decree n. 143/98 and its amendments.

"**SOFR**" means the secured overnight financing rate (SOFR) administered by the Federal Reserve Bank of New York (or any other person which takes over the administration of that rate) published (before any correction, recalculation or republication by the administrator) by the Federal Reserve Bank of New York (or any other person which takes over the publication of that rate).

"**Specified Time**" means a day or time determined in accordance with the following:

- (a) if LIBOR is fixed, the Quotation Day as of 11:00 am London time; and
- (b) in relation to a Reference Bank Rate calculated by reference to the available quotations in accordance with Clause ~~6.8~~ 7.8 (*Calculation of Reference Bank Rate*), noon on the Quotation Day.

"**Subsidiary**" has the following meaning:

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 attaching to the issued shares of S; or
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- (c) P has the direct or indirect power to appoint or remove a majority of the directors of S; or
- (d) P otherwise has the direct or indirect power to ensure that the affairs of S are conducted in accordance with the wishes of P;

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

"**Tax**" means any tax, levy, impost, duty, assessment, fee, deduction or other charge or withholding of a similar nature imposed by any governmental authority (including any penalty or interest payable in connection with any failure to pay or any delay in paying any of the same).

"Term and Revolving Credit Facilities" means the facilities granted pursuant to the credit agreement originally dated 24 May 2013 (as amended and restated from time to time) between, inter alios, the Guarantor and Voyager Vessel Company, LLC as borrowers, the lenders party thereto and JPMorgan Chase Bank, N.A., as administrative agent and collateral agent.

"Term SOFR" means the term SOFR reference rate administered by CME Group Benchmark Administration Limited (or any other person which takes over the administration of that rate) for the relevant period published (before any correction, recalculation or republication by the administrator) by CME Group Benchmark Administration Limited (or any other person which takes over the publication of that rate).

"Term SOFR Loan" means the Loan, any Deferral Tranche, any other part of the Loan or, if applicable, Unpaid Sum to which the Floating Interest Rate applies and which is, or becomes, a "Term SOFR Loan" pursuant to Clause 6 (Rate Switch).

"Term SOFR Reference Rate" means, in relation to any Term SOFR Loan:

- (a) the applicable Term SOFR as of the Quotation Day and for a period equal in length to the Interest Period of that Term SOFR Loan; or
- (b) as otherwise determined pursuant to Clause 7.9 (Unavailability of Term SOFR),

and if, in either case, the aggregate of that rate and the applicable Credit Adjustment Spread is less than zero, the Term SOFR Reference Rate shall be deemed to be such a rate that the aggregate of the Term SOFR Reference Rate and the Credit Adjustment Spread is zero.

"**Total Loss**" means:

- (a) actual, constructive, compromised, agreed or arranged total loss of the Ship;
  - (b) any expropriation, confiscation, requisition or acquisition of the 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 1 year without any right to an extension) unless it is within 1 month redelivered to the Borrower's full control;
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- (c) any arrest, capture, seizure or detention of the Ship (including any hijacking or theft) unless it is within 1 month redelivered to the Borrower's full control.

**"Total Loss Date"** means:

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

**"Transaction Documents"** means the Finance Documents and the Underlying Documents.

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

**"Tripartite General Assignment"** means the tripartite general assignment dated 30 January 2020 and executed by the Borrower as owner and Seven Seas as bareboat charterer in favour of the Security Trustee.

**"UK Bail-In Legislation"** means (to the extent that the United Kingdom is not an EEA Member Country which has implemented, or implements, Article 55 BRRD) Part 1 of the United Kingdom Banking Act 2009 and any other law or regulation applicable in the United Kingdom relating to the resolution of unsound or failing banks, investment firms or other financial institutes or their affiliates (otherwise than through liquidation, administration or other insolvency proceedings).

**"Underlying Documents"** means the Shipbuilding Contract, any Management Agreement, the Bareboat Charter and any charter and associated guarantee in respect of which a notice of assignment is required to be served under the terms of the Tripartite General Assignment.

**"Unpaid Sum"** means (i) any sum due and payable but unpaid by an Obligor under the Finance Documents and (ii) any part of the SACE Premium unpaid by the Borrower.

**"US" means the United States of America.**

**"US Government Securities Business Day" means any day other than:**

- (a) a Saturday or a Sunday; and
- (b) a day on which the Securities Industry and Financial Markets Association (or any successor organisation) recommends that the fixed income departments of its
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[members be closed for the entire day for purposes of trading in US Government securities.](#)

"VAT" means:

- (c) ~~(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
- (d) ~~(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.

"Write-down and Conversion Powers" means:

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

In this Agreement:

"Agent", the "SACE Agent", the "Joint Mandated Lead Arranger", the "Security Trustee", any "Creditor Party", any "Secured Party", any "Lender", any "Obligor" or any other "person", shall be construed so as to include its successors in title, permitted assigns and permitted transferees;

"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.

"date of this Agreement" means ~~February 2024~~ [the 2023 Effective Date](#).

"document" includes a deed; also a letter or electronic mail.

"expense" means any kind of cost, charge or expense (including all legal costs, charges and expenses) and any applicable Taxes including VAT.

"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.

"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;

[a Lender's "cost of funds" in relation to its participation in the Loan or any part of the Loan is a reference to the average cost \(determined either on an actual or a notional basis\) which that Lender would incur if it were to fund, from whatever source\(s\) it may reasonably select, an amount equal to the amount of that participation in the Loan or that part of the Loan for a period equal in length to the Interest Period of the Loan or that part of the Loan;](#)

"law" includes any order or decree, any form of delegated legislation, any treaty or international convention and any regulation or resolution of the Council of the European Union, the European Commission, the United Nations or its Security Council.

"legal or administrative action" means any legal proceeding or arbitration and any administrative or regulatory action or investigation.

"liability" includes every kind of debt or liability (present or future, certain or contingent), whether incurred as principal or surety or otherwise.

"months" shall be construed in accordance with Clause 1.4 (*Meaning of "month"*).

"parent company" has the meaning given in the definition of "Subsidiary".

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"person" includes any individual, firm, company, corporation, government, any state, political subdivision of a state and local or municipal authority, agency of a state or any association, trust, joint venture, consortium or partnership; and any international organisation (whether or not having a separate legal personality).

"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;

"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.

### 1.3 Construction of Insurance Terms

"approved" means, for the purposes of Clause ~~44~~15 (*Insurance Undertakings*), approved in writing by the Agent.

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

"obligatory insurances" means all insurances effected, or which the Borrower is obliged to effect, under Clause ~~44~~15 (*Insurance Undertakings*) or any other provision of this Agreement or another Finance Document.

"policy" in relation to any insurance, includes a slip, cover note, certificate of entry or other document evidencing the contract of insurance or its terms.

"protection and indemnity risks" means the usual risks covered by a protection and indemnity association managed in London, including pollution risks and the proportion (if any) of any sums payable to any other person or persons in case of collision which are not recoverable under the hull and machinery policies by reason of the incorporation in them of ~~Clause clause~~ 1 of the Institute Time Clauses (Hulls)(1/10/82) or ~~Clause clause~~ 8 of the Institute Time Clauses (Hulls) (1/11/1995) or the Institute Amended Running Down ~~elause-Clause~~ (1/10/71) or any equivalent provision.

"war risks" includes the risk of mines and all risks excluded by ~~Clause clause~~ 23 of the Institute Time Clauses (Hulls)(1/10/83) or clause 24 of the Institute Time Clauses (Hulls) (1/11/1995).

### 1.4 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;
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and "month" and "monthly" shall be construed accordingly.

#### 1.5 Non-applicable provisions between the Obligors, German Lenders and any Creditor Party subject to the EU Blocking Regulation

- (a) A Creditor Party that is incorporated in the Federal Republic of Germany or is otherwise subject to the EU Blocking Regulation may notify the Agent in writing that it elects that any provisions with respect to Sanctions, including, without limitation, the undertakings and covenants given under paragraph (d) of Clause ~~42.2-13.2~~ 13.2 (*Information*), Clause ~~42.3-13.3~~ 13.3 (*Illicit Payments*), Clause ~~42.4-13.4~~ 13.4 (*Prohibited Payments*), Clause ~~42.24-13.24~~ 13.24 (*Compliance with laws etc.*) or provisions contained in Clause ~~20.3-21.3~~ 21.3 (*Miscellaneous indemnities*) or Clause ~~24.1-22.1~~ 22.1 (*Illegality*) and the representations and warranties given under paragraphs (t), (u), (x) and (y) of Clause ~~44.2-12.2~~ 12.2 (*Continuing representations and warranties*) respectively (the "**Sanctions Provisions**") shall only enure to the benefit of, and be applicable to, that Creditor Party to the extent that such provisions would not result in: (i) any violation of, conflict with or liability under the EU Blocking Regulation; or (ii) in the case of a Creditor Party that is incorporated in the Federal Republic of Germany only, a violation or conflict with the German Blocking Provisions.
- (b) If a Creditor Party elects to be a Restricted Creditor Party, in respect of any proposed requirement to comply, enforcement, waiver, non-waiver, consent, variation or amendment of or in relation to a Finance Document relating to any Sanctions Provision (a "**Relevant Action**"), the Restricted Creditor Party shall notify the Agent in writing whether or not it shall be deemed to be a Lender for the purposes of ascertaining whether the agreement of any specified group of Lenders has been obtained to approve the Relevant Action and upon receipt by the Agent of such notice such Restricted Creditor Party shall be so deemed for such purposes.

#### 1.6 General Interpretation

In this Agreement:

- (a) references in Clause 1.1 (*Definitions*) to a Finance Document or any other document being an "**agreed form**" are to the form agreed between the Agent (acting with the authorisation of each of the Creditor Parties and SACE) and the Borrower with any modifications to that form which the Agent (with the authorisation of the Majority Lenders and SACE in the case of substantial modifications) approves or reasonably requires;
- (b) references to, or to a provision of, a Finance Document or any other document are references to it as amended, amended and restated or supplemented, whether before the date of this Agreement or otherwise;
- (c) references to, or to a provision of, any law or regulation include any amendment, extension, re-enactment or replacement, whether made before the date of this Agreement or otherwise;
- (d) 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;
- (e) words denoting the singular number shall include the plural and vice versa; and
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- (f) Clauses 1.1 (*Definitions*) to ~~4-5~~1.6 (*General Interpretation*) apply unless the contrary intention appears.

## 1.7 Headings

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

## 1.8 Schedules

The schedules form an integral part of this Agreement.

## 1.9 Effective Date

[This Agreement is effective from the 2023 Effective Date.](#)

## 2 FACILITY

### 2.1 Amount of facility

Subject to the other provisions of this Agreement, the Lenders agree to make available to the Borrower a loan not exceeding the Maximum Loan Amount intended to be applied as follows:

- (a) in payment to the Builder, up to the Eligible Amount, of all or part of 70% of the Final Contract Price and in reimbursement to the Borrower of all or part of 10% of the Final Contract Price;
- (b) in reimbursement to the Borrower of the amount of the First Instalment of the SACE Premium paid by it to SACE in accordance with paragraph (a) of Clause ~~8-4~~9.1 (*SACE Premium*); and
- (c) in payment to SACE of the amount of the Second Instalment of the SACE Premium payable by the Borrower to SACE in accordance with paragraph (b) of Clause ~~8-4~~9.1 (*SACE Premium*).

### 2.2 Lenders' participations in Loan

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

### 2.3 Purpose of Loan

The Borrower undertakes with each Secured Party to use the Loan only to pay for:

- (a) goods and services of Italian origin incorporated in the design, construction or delivery of the Ship;
  - (b) subject to the limits and conditions fixed by the Italian Authorities, goods and services incorporated in the design, construction or delivery of the Ship and originating from countries other than Italy where the provision of such goods or services has been sub-contracted by the Builder and therefore remains the Builder's responsibility under the Shipbuilding Contract;
  - (c) reimbursement to the Borrower of the First Instalment of the SACE Premium paid by the Borrower direct to SACE in accordance with paragraph (a) of Clause ~~8-4~~9.1 (*SACE Premium*);
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- (d) reimbursement to the Borrower of all or part of 10% of the Final Contract Price paid by the Borrower to the Builder prior to the Delivery Date;
- (e) the Second Instalment of the SACE Premium payable in accordance with paragraph (b) of Clause ~~8-4~~ 9.1 (*SACE Premium*); and
- (f) such purposes, relating to the 2020 Deferral Tranche and the 2021 Deferral Tranche, as specified in accordance with the 2020 Amendment Agreement and the 2021 Amendment and Restatement Agreement respectively.

#### **2.4 Creditor Parties' rights and obligations**

- (a) The obligations of each Creditor Party under the Finance Documents are several. Failure by a Creditor Party to perform its obligations under the Finance Documents does not affect the obligations of any other Party under the Finance Documents. No Creditor Party is responsible for the obligations of any other Creditor Party under the Finance Documents.
- (b) The rights of each Creditor Party and SACE under or in connection with the Finance Documents are separate and independent rights and any debt arising under the Finance Documents to a Creditor Party and SACE from an Obligor shall be a separate and independent debt.
- (c) A Creditor Party and SACE may not, except as otherwise stated in the Finance Documents, separately enforce its rights under the Finance Documents.
- (d) Notwithstanding any other provision of the Finance Documents and subject to the prior written consent of SACE, a Creditor Party may separately sue for any Unpaid Sum due to it without the consent of any other Creditor Party or joining any other Creditor Party to the relevant proceedings (it being understood that a Creditor Party may file a claim noting the amounts due to it in the event insolvency proceedings are commenced against the Borrower by a third party).

#### **2.5 Monitoring**

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

#### **2.6 Obligations of Lenders several**

The obligations of the Lenders under this Agreement are several; and a failure of a Lender to perform its obligations under this Agreement shall not result in:

- (a) the obligations of the other Lenders being increased; nor
- (b) any Obligor or any other Lender being discharged (in whole or in part) from its obligations under any Finance Document;

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

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## **2.7 Unconditional Obligations of the Borrower**

The obligations of the Borrower to make payments and to observe and perform its obligations under the Transaction Documents are absolute, unconditional, irrevocable and several and such obligations shall not:

- (a) in any way be discharged by reason of any matter affecting the Shipbuilding Contract including its performance, frustration or validity, the insolvency or dissolution of any party to the Shipbuilding Contract or the destruction, non-completion or non-functioning of the goods and equipment supplied under the Shipbuilding Contract;
- (b) in any way be affected or discharged by reason of any dispute under the Shipbuilding Contract or any claim which it or any other person may have against, or consider that it has against, any person under the Shipbuilding Contract;
- (c) in any way be affected or discharged by reason of unenforceability, illegality or invalidity of any obligation of the Borrower or any other person under the Shipbuilding Contract or any documents or agreements relating to the Shipbuilding Contract;
- (d) in any way be affected by the fact that all or any part of the amount requested referred to in the Drawdown Notice is not or was not due or payable to the Builder;
- (e) be conditional on the performance by the Creditor Parties of any obligations (except as otherwise stated herein) in order to give rise to a relevant obligation of the Borrower hereunder; or
- (f) in any way be affected or discharged by the insolvency or dissolution of the Borrower.

## **3 CONDITIONS PRECEDENT**

### **3.1 General**

The Borrower may only draw under the Loan when the following conditions have been fulfilled to the satisfaction of the Agent and provided no Event of Default shall have occurred and remains unremedied or is likely to occur as a consequence of the drawing of the Loan. This Clause 3 (*Conditions Precedent*) shall not apply to the 2020 Deferral Tranche or the 2021 Deferral Tranche, save for Clause 3.15 (*Deferral Tranches*).

### **3.2 No later than the date of the Original Facility Agreement**

The Agent shall have received no later than the date of the Original Facility Agreement:

- (a) an opinion from legal counsel acceptable to the Secured Parties as to the laws of the state of Delaware in form and substance satisfactory to the Agent and the Secured Parties, together with the limited liability company documentation of the Borrower supporting the opinion, including but without limitation the Certificate of Formation and Limited Liability Company Agreement as filed with the competent authorities and a certificate of a competent officer or manager of the Borrower containing specimen signatures of the persons authorised to sign the documents on behalf of the Borrower, including, without limitation:
    - (i) the Borrower has been duly formed and is validly existing as a limited liability company under the laws of the state of Delaware;
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- (ii) the Original Facility Agreement falls within the scope of the Borrower's limited liability company purpose as defined by its Certificate of Formation and Limited Liability Company Agreement;
- (iii) the Borrower's representatives were at the date of the Original Facility Agreement fully empowered to sign the Original Facility Agreement;
- (iv) either all administrative requirements applicable to the Borrower (whether in the state of Delaware or elsewhere), concerning the transfer of funds abroad and acquisitions of Dollars to meet its obligations hereunder have been complied with, or that there are no such requirements;
- (v) no withholding tax or stamp duty implications arise by virtue of the Borrower entering into the Original Facility Agreement;
- (vi) a judgment of an English Court in relation to ~~this~~ the Original Facility Agreement and any relevant Finance Documents will be recognised by and acknowledged by the Courts in the State of Delaware; and
- (vii) the Original Facility Agreement constitutes the legal, valid and binding obligations of the Borrower enforceable in accordance with its terms,

and containing such qualifications and assumptions as are standard for opinions of this type;

- (b) an opinion from legal counsel to the Secured Parties as to English law in form and substance satisfactory to the Agent and the Secured Parties confirming, without limitation, that (i) the obligations of the Borrower under the Original Facility Agreement and (ii) that the obligations of the Guarantor under the Guarantee are legally valid and binding obligations enforceable by the relevant Creditor Parties;
  - (c) an opinion from legal counsel to the Secured Parties as to New York law in form and substance satisfactory to the Agent and the Secured Parties in respect of the validity and enforceability of the Limited Liability Company Interests Security Deed;
  - (d) an opinion from legal counsel to the Secured Parties as to Bermudian law in form and substance satisfactory to the Agent and the Secured Parties in respect of the Guarantor's execution of the Original Guarantee;
  - (e) a Certified Copy of the executed Shipbuilding Contract;
  - (f) a confirmation from EC3 Services Limited of The St Botolph Building, 138 Houndsditch, London EC3A 7AR that it will act for the Borrower and the Guarantor as agent for service of process in England in respect of the Original Facility Agreement and any other Finance Document;
  - (g) an opinion from legal counsel acceptable to the Secured Parties as to Panamanian law in form and substance satisfactory to the Agent and the Secured Parties, together with the corporate documentation of Seven Seas supporting the opinion, including but without limitation the Articles of Incorporation and By-laws as filed with the competent authorities and a certificate of a competent officer of Seven Seas containing specimen signatures of the persons authorised to sign the documents on behalf of Seven Seas including without limitation:
    - (i) Seven Seas has been duly organised and is validly existing and in good standing as a Panamanian *sociedad anonima* or a *sociedad de responsabilidad limitada* with its
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domicile in the Republic of Panama and its Resident Agent being Arias Fabrega & Fabrega with address at Plaza 2000 Building, 16th Floor, 50th Street, Panama;

- (ii) the Limited Liability Company Interests Security Deed is the legal, valid and binding obligation of Seven Seas which issued it enforceable in accordance with its terms;
  - (iii) the Limited Liability Company Interests Security Deed falls within the scope of Seven Seas' corporate purpose as defined by its Articles of Incorporation and By-laws; and
  - (iv) the representative of Seven Seas was at the date of the Limited Liability Company Interests Security Deed fully empowered to sign the Limited Liability Company Interests Security Deed, and containing such qualifications and assumptions as are standard for opinions of this type;
- (h) duly executed originals of the Original Guarantee and the Limited Liability Company Interests Security Deed.

### **3.3 No later than ninety (90) days before the Intended Delivery Date**

The Agent shall have received no later than ninety (90) days before the Intended Delivery Date:

- (a) notification from the Borrower of its chosen Maritime Registry;
- (b) the SACE Insurance Policy documentation relating to the transaction contemplated by the Original Facility Agreement issued on terms whereby the SACE Insurance Policy will enter into full force and effect upon fulfilment of the conditions specified therein to be fulfilled on or before the Drawdown Date;
- (c) evidence that the Borrower has paid the First Instalment of the SACE Premium to SACE in accordance with paragraph (a) of Clause ~~8-1~~9.1 (*SACE Premium*);
- (d) notification of the Approved Manager;
- (e) (and on each subsequent date on which a Compliance Certificate is to be received by the Security Trustee pursuant to clause 11.3(c) of the Original Guarantee) a duly completed Compliance Certificate from the Guarantor; and
- (f) an opinion from legal counsel to the Creditor Parties as to Italian law in form and substance satisfactory to the Agent and the Secured Parties in respect of SACE's issuance of the SACE Insurance Policy and compliance with the principles governing the eligibility of credit risk mitigation techniques as per Article 194 of the Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013.

### **3.4 No later than sixty (60) days before the Intended Delivery Date**

- (a) The Agent shall have received from the Borrower no later than sixty (60) days before the Intended Delivery Date:
    - (i) notification of the Intended Delivery Date; and
    - (ii) a US tax opinion from legal counsel to the Secured Parties in respect of the tax treatment of the entry by the US incorporated Borrower into the Original Facility
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Agreement and the other Finance Documents substantially in the form notified to the Borrower on or around the date of the Original Facility Agreement and updated to reflect any changes in law;

- (b) The Agent shall notify to the Borrower any documents required under the ISM Code and the ISPS Code which are to be provided at delivery pursuant to paragraph (f) of Clause 3.10 (*At Delivery*) below.

**3.5 No later than thirty (30) days before the Intended Delivery Date**

The Agent shall have received from the Borrower no later than thirty (30) days before the Intended Delivery Date notification, signed by a duly authorised signatory of the Borrower, specifying:

- (a) which of the Fixed Interest Rate or the Floating Interest Rate shall be applicable to the Loan until the date of payment of the final repayment instalment of the Loan; and
- (b) if the Floating Interest Rate is applicable, whether the duration of the Interest Periods applicable to the Loan shall be 3 months or 6 months,

and in absence of any such notification, the Borrower shall be deemed to have opted for the Floating Interest Rate with Interest Periods of 6 months.

**3.6 No later than fifteen (15) Business Days before the Intended Delivery Date**

The Agent shall have received no later than fifteen (15) Business Days before the Intended Delivery Date insurance documents in form and substance satisfactory to the Lenders confirming that the Insurances have been effected and will be in full force and effect on the Delivery Date.

**3.7 No later than five (5) Business Days before the Intended Delivery Date**

The Agent shall have received no later than five (5) Business Days before the Intended Delivery Date:

- (a) the Drawdown Notice from the Borrower, signed by a duly authorised signatory of the Borrower, specifying the amount of the Loan to be drawn down;
- (b) a Certified Copy of each of the Change Orders, of any amendments to the Shipbuilding Contract and of the power of attorney pursuant to which the authorised signatory of the Borrower signed the Drawdown Notice and a specimen of his signature;
- (c) a final confirmation of the Intended Delivery Date signed by a duly authorised signatory of the Borrower, and counter-signed by a duly authorised signatory of the Builder.

**3.8 Examination of documents by the Agent**

The Agent shall ensure that an officer or employee or other person designated by it as its authorised representative is present at the Builder on the proposed Drawdown Date for the purpose of examining originals (or certified copies) of the SACE Required Documents duly signed by the parties thereto and collecting copies thereof (which copies shall be certified as true copies by an authorised signatory of the Builder and/or the Borrower, as applicable).

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### 3.9 No later than the Delivery Date

The Agent shall have received no later than the Delivery Date:

- (a) an opinion from legal counsel acceptable to the Secured Parties as to the laws of the state of Delaware in form and substance satisfactory to the Agent and the Secured Parties together with the limited liability company documentation of the Borrower and a certificate of a competent officer or manager of the Borrower containing specimen signatures of the persons authorised to sign the documents on behalf of the Borrower, confirming that, without limitation:
    - (i) the Original Mortgage, the Tripartite General Assignment, the Post-Delivery Assignment and the Bareboat Charter fall within the scope of the Borrower's limited liability company purpose as defined by its Certificate of Formation and Limited Liability Company Agreement and are binding on it; and
    - (ii) the Borrower's representatives are fully empowered to sign the Protocol of Delivery and Acceptance, the Original Mortgage, the Tripartite General Assignment, the Post-Delivery Assignment and the Bareboat Charter;
  - (b) an opinion from legal counsel acceptable to the Secured Parties as to Panamanian law in form and substance satisfactory to the Agent and the Secured Parties together with the corporate documentation of Seven Seas and a certificate of a competent officer of Seven Seas containing specimen signatures of the persons authorised to sign the Tripartite General Assignment on behalf of Seven Seas, confirming that, without limitation:
    - (i) the Tripartite General Assignment falls within the scope of Seven Sea's corporate purpose as defined by its Articles of Incorporation and By-laws; and
    - (ii) the representative of Seven Seas is fully empowered to sign the Tripartite General Assignment;
  - (c) evidence of payment to and receipt by the Builder of:
    - (i) the [\*] ([\*]) pre-delivery instalments of the Final Contract Price; and
    - (ii) any other part of the Final Contract Price as at the Delivery Date not being financed hereunder;
  - (d) evidence of payment of all amounts which are due and payable hereunder by the Borrower on or prior to the Delivery Date;
  - (e) a certificate from the Borrower, signed by an authorised representative of the Borrower, confirming that the representations and warranties contained in Clause ~~44~~12 (*Representations and Warranties*) are true and correct as of the Delivery Date in consideration of the facts and circumstances existing as of the Delivery Date;
  - (f) an original of the Interest ~~Make-up~~ Make-Up Agreement relative to the Loan and in full force and effect;
  - (g) an original of the SACE Insurance Policy;
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- (h) an original or a certified copy of each of the SACE Required Documents and SACE and the Agent shall be satisfied that the SACE Required Documents on their face appear properly completed and comply with the requirements of the Original Facility Agreement and the requirements of the SACE Insurance Policy; and

provided always that the obligations of the Lenders to make the Loan available on the Delivery Date are subject to the Lenders remaining satisfied that each of the SACE Insurance Policy and the Interest ~~Make-up~~ Make-Up Agreement will cover the Loan following the advance of the Loan, payment of the Second Instalment of the SACE Premium and delivery to the Agent of the documents listed in Schedule 3 (*Documents to be produced by the Builder to the Agent on Delivery*).

### 3.10 At Delivery

Immediately prior to the delivery of the Ship by the Builder to the Borrower, the Agent shall have received:

- (a) evidence that immediately following delivery:
- (i) the Ship will be registered in the name of the Borrower in the Maritime Registry;
  - (ii) title to the Ship will be held by the Borrower free of all Security Interests other than any maritime lien in respect of crew's wages and trade debts arising out of equipment, consumable and other stores placed on board the Ship prior to or concurrently with delivery, none of which is overdue;
  - (iii) the Original Mortgage will be duly registered in the Maritime Registry and constitutes a first priority security interest over the Ship and that all taxes and fees payable to the Maritime Registry in respect of the Ship have been paid in full; and
  - (iv) the opinions mentioned in paragraphs (b) and (c) of Clause 3.11, in draft form immediately prior to the delivery of the Ship, and the documents mentioned in paragraph (d) of Clause 3.11 will be issued to and received by the Agent;
- (b) a Certified Copy of a classification certificate (or interim classification certificate) showing the Ship to be classed in accordance with paragraph (c) of Clause ~~44.3~~ 12.3 (*Representations on the Delivery Date*).
- (c) duly executed originals of the Tripartite General Assignment, any Approved Manager's Undertaking and the Post-Delivery Assignment together with relevant notices of assignment and the acknowledgement of the notice of assignment to be issued pursuant to the Tripartite General Assignment and the Post-Delivery Assignment;
- (d) a duly executed original of the Limited Liability Company Interests Security Deed (and of each document required to be delivered under the Limited Liability Company Interests Security Deed);
- (e) a Certified Copy of any executed Management Agreement, the Bareboat Charter and any time charterparty in respect of the Ship;
- (f) a Certified Copy of any current certificate of financial responsibility in respect of the Ship issued under OPA, a valid Safety Management Certificate (or interim Safety Management Certificate) issued to the Ship in respect of its management by the Approved Manager pursuant to the ISM
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Code, a valid Document of Compliance (or interim Document of Compliance) issued to the Approved Manager in respect of ships of the same type as the Ship pursuant to the ISM Code, a valid International Ship Security Certificate issued to the Ship in accordance with the ISPS Code and a valid IAPPC issued to the Ship in accordance with Annex VI and, if entered into, any carrier initiative agreement with the United States' Customs and Border Protection under the Customs-Trade Partnership Against Terrorism (C-TPAT) programme along with any other documents required under the ISM Code and the ISPS Code and notified to the Borrower in accordance with paragraph (b) of Clause 3.4 (*No later than sixty (60) days before the Intended Delivery Date*) above;

- (g) a Certified Copy of the power of attorney pursuant to which the authorised signatory(ies) of the Borrower signed the documents referred to in this Clause 3.10 (*At Delivery*) and to which the Borrower is a party and a specimen of his or their signature(s);
- (h) a confirmation from EC3 Services Limited of The St Botolph Building, 138 Houndsditch, London EC3A 7AR (or any replacement process agent satisfactory to the Agent acting reasonably) that it will act for each of the relevant Obligors as agent for service of process in England in respect of the deed of covenants constituting part of the Original Mortgage (if applicable), the Tripartite General Assignment and the Post-Delivery Assignment.

3.11 Immediately following the delivery of the Ship by the Builder to the Borrower, the Agent shall receive:

- (a) a duly executed original of the Original Mortgage;
- (b) an opinion from legal counsel acceptable to the Secured Parties as to the law of the Maritime Registry in form and substance satisfactory to the Agent and the Secured Parties confirming:
  - (i) the valid registration of the Ship in the Maritime Registry; and
  - (ii) the Original Mortgage over the Ship has been validly registered in the Maritime Registry;
- (c) an opinion from legal counsel to the Secured Parties as to English law in form and substance satisfactory to the Agent and the Secured Parties confirming, without limitation, that the obligations of the Borrower under the deed of covenants constituting part of the Original Mortgage (if applicable), the Tripartite General Assignment and the Post-Delivery Assignment are legally valid and binding obligations enforceable by the relevant Creditor Parties in the English courts;
- (d) the documents listed in Schedule 3 (*Documents to be produced by the Builder to the Agent on Delivery*).

### **3.12 Notification of satisfaction of conditions precedent**

The Agent shall notify the Lenders and SACE promptly upon being satisfied as to the satisfaction of the conditions precedent referred to in this Clause 3 (*Conditions Precedent*).

### **3.13 Waiver of conditions precedent**

If the Majority Lenders, at their discretion, subject to the prior written consent of SACE, permit the Loan to be borrowed before any of the conditions precedent referred to in Clause 3 (*Conditions Precedent*) has been satisfied, the Borrower shall ensure that that condition is

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satisfied within five (5) Business Days after the date (as specified in the relevant part of Clause 3 (*Conditions Precedent*)) or such later date as the Agent may agree in writing with the Borrower.

### 3.14 Changes to SACE requirements

- (a) If SACE notifies the Agent in writing of a change to the requirements of the SACE Insurance Policy with the effect that, in the opinion of the Agent, certain documents which the Borrower is or may be required to provide for the purpose of drawing the Loan under this Agreement are no longer necessary to ensure that:
- (i) such SACE Insurance Policy will apply to the Loan made or to be made under this Agreement; and
  - (ii) any claim which may be made in respect of the Loan under such SACE Insurance Policy will be valid and continue to be issued by SACE,

then the Agent shall promptly notify the Borrower of any changes the Agent considers appropriate to be made to this Agreement to reflect such a change in SACE's requirements.

- (b) If the Agent notifies the Borrower of any proposed changes to this Agreement under paragraph (a) above, and provided that:
- (i) all the Lenders and the Borrower agree with such changes; and
  - (ii) the Borrower indemnifies and holds harmless the Agent and the Lenders for any reasonable costs that it may incur arising from or in connection with any such amendments (including legal fees),

then such changes will be made to this Agreement in accordance with the terms hereof.

- (c) If, in the opinion of the Lenders, there are any provisions of this Agreement that contradict or conflict with any provision of the SACE Insurance Policy to an extent that the same may have the effect of rendering all or any part of the SACE Insurance Policy void, voidable or otherwise not in full force and effect, this Agreement will be amended to the extent agreed in writing between the Borrower and the Agent to ensure compliance with the terms of the SACE Insurance Policy.

### 3.15 Deferral Tranches

The relevant part of a Deferral Tranche shall only be advanced if the Agent shall have received (a) no later than five (5) Business Days before the date of the relevant advance (and only if required under Clause 4.9 (*Deferral Tranches*) hereunder), a Drawdown Notice from the Borrower, signed by a duly authorised signatory of the Borrower, specifying the amount of the Deferral Tranche to be drawn down, and (b) on the relevant date of the relevant advance or deemed advance (as applicable), confirmation that:

- (a) save as disclosed in writing to the Agent and SACE prior to the date of the 2020 Amendment Agreement, no Event of Default is continuing or would result from such advance or deemed advance (as applicable) and no Deferral Prepayment Event or event or circumstance specified in Clause ~~18~~19 (*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 has occurred; and
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- (b) save as disclosed in writing to the Agent and SACE prior to the date of the 2020 Amendment Agreement, each of the repeating representations set out in Clause ~~41~~12 (*Representations and warranties*) are true as at such date by reference to the facts and circumstances existing at such date,

it being provided that two advances under the 2020 Deferral Tranche have been made to the Borrower in respect of the 2020 Deferred Repayment Instalments.

#### **4 DRAWDOWN**

##### **4.1 Borrower's irrevocable payment instructions**

The Lenders shall not be obliged to fulfil their obligation to make the Loan available other than (i) by reimbursing the Borrower, up to the Eligible Amount, all or part of 10% of the Final Contract Price and by paying the Builder all or part of 70% of the Final Contract Price on behalf of and in the name of the Borrower, (ii) by reimbursing the Borrower for the First Instalment of the SACE Premium which was paid by the Borrower to SACE on the earlier of (A) the date falling 30 days after the issuance of the SACE Insurance Policy and (B) the date falling 6 months after the date of SACE's board approval and (iii) by payment to SACE of the Second Instalment of the SACE Premium payable on the Delivery Date. For the avoidance of doubt, the amount of the Loan shall not exceed the Maximum Loan Amount.

The Borrower hereby instructs the Lenders in accordance with this Clause 4.1 (*Borrower's irrevocable payment instructions*):

- (a) to pay to the Builder, up to the Eligible Amount, all or part of 70% of the Final Contract Price and to reimburse the Borrower all or part of 10% of the Final Contract Price;
- (b) to reimburse the Borrower the amount of the First Instalment of the SACE Premium already paid by the Borrower to SACE on the earlier of (i) the date falling 30 days after the issuance of the SACE Insurance Policy and (ii) the date falling 6 months after the date of SACE's board approval; and
- (c) to pay to the Agent on behalf of the Lenders for onward payment to SACE (such payment to SACE to be made for value on the Drawdown Date), by drawing under the Loan, the amount of the Second Instalment of the related SACE Premium.

Payment to the Builder of the amount drawn under paragraph (a) of Clause 4.1 (*Borrower's irrevocable payment instructions*) above shall be made on the Delivery Date of the Ship during usual banking hours in Italy to the Builder's account as specified by the Builder in accordance with the Shipbuilding Contract after receipt and verification by the Agent of the documents provided under Schedule 3 (*Documents to be produced by the Builder to the Agent on Delivery*).

Save as contemplated in Clause 4.3 (*Modification of payment terms*) below, the payment instruction contained in this Clause 4.1 (*Borrower's irrevocable payment instructions*) is irrevocable.

##### **4.2 Conversion Rate for Loan**

The Dollar amount to be drawn down under paragraph (a) of Clause 4.1 (*Borrower's irrevocable payment instructions*) shall be calculated by the Agent on the Conversion Rate Fixing Date in accordance with the definitions of "Eligible Amount" and "Conversion Rate" in Clause 1.1 (*Definitions*).

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#### **4.3 Modification of payment terms**

The Borrower expressly acknowledges that the payment terms set out in this Clause may only be modified with the agreement of the Italian Authorities, the Agent, the Security Trustee, the Lenders and the Borrower in the case of paragraph (a) of Clause 4.1 (*Borrower's irrevocable payment instructions*) and with the agreement of the Italian Authorities, the Agent, the Lenders and the Borrower in the case of paragraphs (b) and (c) of Clause 4.1 (*Borrower's irrevocable payment instructions*); **provided that** it is the intention of the Borrower, the Lenders, the Security Trustee and the Agent that prior to the Conversion Rate Fixing Date agreement shall be reached with those financial institutions with whom the Borrower has entered into the FOREX Contracts (the "**Counterparties**") in order that the Euro payments due from the Counterparties under the FOREX Contracts shall be paid to the Agent for holding in escrow and to be released by the Agent simultaneously with (i) the payment in full to the Builder of the balance of the Final Contract Price denominated in Euro at the time of delivery of the Ship and (ii) the payment to the Counterparties of the Dollars due to them under the relevant FOREX Contracts out of the Dollar amount available under paragraph (a) of Clause 4.1 (*Borrower's irrevocable payment instructions*), subject only to delivery of the Ship by the Builder to the Borrower taking place as evidenced by the execution and delivery of the Protocol of Delivery and Acceptance and to the Borrower having deposited with the Agent before delivery, if and to the extent required, any Dollar and/or Euro amounts as may be needed to ensure the payment in full of both the balance of the Final Contract Price in Euro and the Dollars owed to the Counterparties under all the relevant FOREX Contracts.

#### **4.4 Availability and conditions**

Except as permitted by the provisions of the 2020 Amendment Agreement in respect of the 2020 Deferral Tranche and the 2021 Amendment and Restatement Agreement in respect of the 2021 Deferral Tranche:

- (a) drawing may not be made under this Agreement (and the Loan shall not be available) after the earlier of the Delivery Date and the expiry of the Availability Period;
- (b) there will be only one drawing under this Agreement; and
- (c) the drawing cannot exceed the Maximum Loan Amount.

#### **4.5 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 Loan and the Drawdown Date;
- (b) the amount of that Lender's participation in the Loan; and
- (c) the duration of the first Interest Period.

#### **4.6 Lenders to make available Contributions**

Subject to the provisions of this Agreement, each Lender shall, on and with value on the Drawdown Date, make available to the Agent the amount due from that Lender under Clause 2.2 (*Lenders' participations in Loan*).

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#### **4.7 Disbursement of Loan**

Subject to the provisions of this Agreement, the Agent shall on the Drawdown Date pay the amounts which the Agent receives from the Lenders under Clause 4.6 (*Lenders to make available Contributions*) in the like funds as the Agent received the payments from the Lenders:

- (a) in the case of the amount referred to in paragraph (a) of Clause 4.1 (*Borrower's irrevocable payment instructions*), to the account of the Builder and the Borrower which the Borrower specifies in the Drawdown Notice; and
- (b) in the case of the amount referred to in paragraph (b) of Clause 4.1 (*Borrower's irrevocable payment instructions*) to the account of the Borrower which the Borrower shall specify; and
- (c) in the case of the amount referred to in paragraph (c) of Clause 4.1 (*Borrower's irrevocable payment instructions*) to the account of SACE which the SACE Agent shall specify.

#### **4.8 Disbursement of Loan to third party**

The payment by the Agent under Clause 4.7 (*Disbursement of Loan*) shall constitute the making of the Loan and the Borrower shall at that time become indebted, as principal and direct obligor, to each Lender in an amount equal to that Lender's Contribution.

#### **4.9 Deferral Tranches**

The Lenders have agreed, pursuant to the 2020 Amendment Agreement and the 2021 Amendment and Restatement Agreement, as set out in this Agreement (but without increasing the Maximum Loan Amount and the Total Commitments of each Lender save for the related 2020 Deferral Tranche Premium to be advanced in accordance with paragraph (c) below) to make available to the Borrower the Deferral Tranches as follows, as set out in further detail in Schedule 6 (*Deferred Repayment Schedule*):

- (a) on each Repayment Date during the 2020 Deferral Period, a portion of the 2020 Deferral Tranche in an amount equal to the relevant 2020 Deferred Repayment Instalment due on such Repayment Date shall be automatically drawn by the Borrower and applied towards repayment of the relevant 2020 Deferred Repayment Instalment due on such date. Each such advance under the 2020 Deferral Tranche shall be automatic and notional only, and effected by means of a book entry to finance the 2020 Deferred Repayment Instalments then due;
  - (b) on each Repayment Date during the 2021 Deferral Period, a portion of the 2021 Deferral Tranche in an amount equal to the relevant 2021 Deferred Repayment Instalment due on such Repayment Date shall be automatically drawn by the Borrower and applied towards repayment of the relevant 2021 Deferred Repayment Instalment due on such date. Each such advance under the 2021 Deferral Tranche shall be automatic and notional only, and effected by means of a book entry to finance the 2021 Deferred Repayment Instalments then due; and
  - (c) together with the first advance of the 2020 Deferral Tranche under this Clause 4.9 (*Deferral Tranches*), a portion of the 2020 Deferral Tranche in an amount equal to the amount to be paid to SACE in respect of the 2020 Deferral Tranche Premium payable to SACE due on the first advance under the 2020 Deferral Tranche shall be drawn by the Borrower and paid to SACE as specified in the relevant Drawdown Notice, it being provided that such amount was advanced to the Borrower on 30 July 2020 together with the first advance under the 2020 Deferral Tranche in respect of the 2020 Deferred Repayment Instalments.
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Accordingly, the other provisions of this Clause 4 (*Drawdown*) shall not apply to the advances under the Deferral Tranches and each advance of any Deferral Tranches under this Clause 4.9 (*Deferral Tranches*) shall be deemed to satisfy the Borrower's obligations under Clause 5 (*Repayment*) in respect of the corresponding Deferred Repayment Instalment.

## **5 REPAYMENT**

### **5.1 Number of repayment instalments**

Subject to Clause 5.5 (*Repayment of Deferral Tranches*), the Borrower shall repay the Loan by:

- (a) if the Borrower has specified a Fixed Interest Rate pursuant to paragraph (a) of Clause 3.5 (*No later than thirty (30) days before the Intended Delivery Date*), twenty-four (24) consecutive six-monthly instalments;
- (b) if the Borrower has specified a Floating Interest Rate pursuant to paragraph (a) of Clause 3.5 (*No later than thirty (30) days before the Intended Delivery Date*) and Interest Periods of 6 months pursuant to paragraph (b) of Clause 3.5 (*No later than thirty (30) days before the Intended Delivery Date*) or the Borrower has not provided a notification pursuant to Clause 3.5 (*No later than thirty (30) days before the Intended Delivery Date*), twenty-four (24) consecutive six-monthly instalments; or
- (c) if the Borrower has specified a Floating Interest Rate pursuant to paragraph (a) of Clause 3.5 (*No later than thirty (30) days before the Intended Delivery Date*) and Interest Periods of 3 months pursuant to paragraph (b) of Clause 3.5 (*No later than thirty (30) days before the Intended Delivery Date*) forty-eight (48) quarterly instalments.

### **5.2 Repayment Dates**

Subject to Clause 5.5 (*Repayment of Deferral Tranches*), the first instalment shall be repaid on the date falling:

- (a) if paragraph (a) or paragraph (b) of Clause 5.1 (*Number of repayment instalments*) apply, six (6) months after the Delivery Date; or
- (b) if paragraph (c) of Clause 5.1 (*Number of repayment instalments*) applies, three (3) months after the Delivery Date,

and the last instalment on the date falling one hundred and forty four (144) months after the Delivery Date, each date of payment of an instalment being a "**Repayment Date**".

### **5.3 Amount of repayment instalments**

Subject to Clause 5.5 (*Repayment of Deferral Tranches*), each repayment instalment of the Loan shall be of an equal amount.

### **5.4 Final Repayment Date**

Subject to Clause 5.5 (*Repayment of Deferral Tranches*), on the final Repayment Date, the Borrower shall additionally pay to the Agent for the account of the Creditor Parties all other sums then accrued or owing under any Finance Document.

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## 5.5 Repayment of Deferral Tranches

Subject to Clause 4.9 (*Deferral Tranches*):

- (a) the 2020 Deferral Tranche shall be repaid in eight semi-annual instalments beginning on the 2020 Deferral Repayment Starting Point and until the 2020 Deferral Final Repayment Date, as set out in further detail in Schedule 6 (*Deferred Repayment Schedule*); and
- (b) the 2021 Deferral Tranche shall be repaid in ten semi-annual instalments beginning on the 2021 Deferral Repayment Starting Point and until the 2021 Deferral Final Repayment Date, as set out in further detail in Schedule 6 (*Deferred Repayment Schedule*).

## 6 RATE SWITCH

### 6.1 Switch to Term SOFR Reference Rate

Subject to Clause 6.2 (*Delayed switch for existing LIBOR Loans*), on and from the Rate Switch Date, where the Floating Interest Rate applies:

- (a) use of the Term SOFR Reference Rate will replace the use of LIBOR for the calculation of interest for the Loan or any part of the Loan; and
- (b) the Loan or any part of the Loan or Unpaid Sum shall be a "Term SOFR Loan" and paragraph (b) of the definition of Floating Interest Rate shall apply to the Loan, any such part of the Loan or Unpaid Sum.

### 6.2 Delayed Switch for Existing LIBOR Loans

If the Rate Switch Date falls before the last day of an Interest Period for a LIBOR Loan:

- (a) the Loan, relevant part of the Loan or Unpaid Sum (as applicable) shall continue to be a LIBOR Loan for that Interest Period and paragraph (a) of the definition of Floating Interest Rate shall continue to apply to the Loan, relevant part of the Loan or Unpaid Sum (as applicable) for that Interest Period;
- (b) any provision of this Agreement which is expressed to relate solely to a Term SOFR Loan shall not apply in relation to the Loan, relevant part of the Loan or Unpaid Sum (as applicable) for that Interest Period; and
- (c) on and from the first day of the next Interest Period (if any) for the Loan, relevant part of the Loan or Unpaid Sum (as applicable):
  - (i) the Loan, relevant part of the Loan or Unpaid Sum (as applicable) shall be a "Term SOFR Loan"; and
  - (ii) paragraph (b) of the definition of Floating Interest Rate shall apply to it.

### 6.3 Notifications by Agent

- (1) Subject to paragraph (3) below, following the occurrence of a Rate Switch Trigger Event, the Agent shall:
    - (a) promptly upon becoming aware of the occurrence of that Rate Switch Trigger Event, notify the Borrower and the Lenders of that occurrence; and
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- (b) promptly upon becoming aware of the date of the Rate Switch Trigger Event Date applicable to that Rate Switch Trigger Event, notify the Borrower and the Lenders of that date.
- (2) The Agent shall, promptly upon becoming aware of the occurrence of the Rate Switch Date, notify the Borrower and the Lenders of that occurrence.
- (1) The Parties agree that the FCA Cessation Announcement constitutes a Rate Switch Trigger Event, that the Rate Switch Trigger Event Date applicable to such Rate Switch Trigger Event will be 1 July 2023 and that the Agent is not under any obligation under paragraph (1) above to notify any Party of such Rate Switch Trigger Event or Rate Switch Trigger Event Date resulting from the FCA Cessation Announcement.
- (2) For the purposes of paragraph (3) above, the "FCA Cessation Announcement" means the announcement on 5 March 2021 by the UK's Financial Conduct Authority that all LIBOR settings will, as of certain specified future dates, either cease to be provided by any administrator or no longer be representative of the market and economic reality that they are intended to measure and that such representativeness will not be restored.

## 7 **6INTEREST**

### 7.1 **6-4Fixed Interest Rate**

If the Borrower has specified a Fixed Interest Rate pursuant to paragraph (a) of Clause 3.5 (*No later than thirty (30) days before the Intended Delivery Date*), the Loan shall bear interest at the Fixed Interest Rate. Such interest shall accrue on the actual number of days elapsed based upon a 360 day year and shall be paid on each Repayment Date.

### 7.2 **6-2Floating Interest Rate**

If:

- (a) the Borrower has specified a Floating Interest Rate pursuant to paragraph (a) of Clause 3.5 (*No later than thirty (30) days before the Intended Delivery Date*); or
- (b) the Borrower has specified a Fixed Interest Rate pursuant to paragraph (a) of Clause 3.5 (*No later than thirty (30) days before the Intended Delivery Date*) but thereafter for any reason whatsoever the Interest ~~Make-up~~ Make-Up Agreement is suspended or otherwise ceases to be in effect; or
- (c) SIMEST has requested a change of currency pursuant to the Interest Make-Up Agreement and such change of currency is not agreed by the Borrower or Lenders in accordance with Clause ~~6.16~~ 7.17 (*Change of currency*); or
- (d) SIMEST has failed to make a net payment of interest to the Lenders pursuant to the Interest Make-Up Agreement,

the rate of interest on the Loan in respect of any Interest Period shall be the Floating Interest Rate applicable for that Interest Period and the following provisions of this Clause 6 (*Interest*) shall apply (in the case of the circumstances referred to in paragraph (b) above, with effect from the date on which the Interest ~~Make-up~~ Make-Up Agreement ceases to be in effect, with such consequential amendments as shall be necessary to give effect to the switch from a Fixed Interest Rate to a Floating Interest Rate).

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**7.3 ~~6-3~~ Interest in respect of Deferral Tranches**

The rate of interest for each Interest Period in respect of each Deferral Tranche shall be the relevant Floating Interest Rate.

**7.4 ~~6-4~~ Deferred Costs**

Independently to any other obligation to pay costs, expenses or interest under or in connection with this Agreement, the Borrower shall, as a separate obligation, also pay to the Agent (for distribution to each Lender) deferred costs in respect of any drawn portion of a Deferral Tranche at the relevant Deferred Costs Percentage for each Interest Period during which any part of that Deferral Tranche remains outstanding. Whilst not an interest liability, such deferred costs shall be charged from and including the first day of the applicable Interest Period in which an amount of the relevant Deferral Tranche is outstanding to (but not including) the last day of such Interest Period, and will be payable semi-annually in arrears on each interest payment date. Any deferred costs payable in accordance with this Clause ~~6-4-7.4~~ 7.4 (*Deferred Costs*) shall be calculated on the basis of the actual number of days elapsed over a year comprised of 360 days. Any non-payment of such deferred costs shall be an Event of Default in accordance with Clause ~~18-2-19.2~~ 19.2 (*Non-payment*).

**7.5 ~~6-5~~ Payment of Floating Interest Rate**

Subject to the provisions of this Agreement, interest on the Loan in respect of each Interest Period shall accrue on the actual number of days elapsed based upon a 360-day year and shall be paid by the Borrower on the last day of that Interest Period.

**7.6 ~~6-6~~ Notification of Interest Periods and Floating Interest Rate**

- (a) ~~The Save where paragraph (d) of Clause 7.9 (Unavailability of Term SOFR) applies, the~~ Agent shall notify the Borrower and each Lender of each Floating Interest Rate and the duration of each Interest Period as soon as reasonably practicable after each is determined and no later than the Quotation Day.
  - (b) In respect of any Fallback Interest Payment, the Agent shall promptly upon a Fallback Interest Payment being determinable notify:
    - (i) the Borrower of that Fallback Interest Payment;
    - (ii) each relevant Lender of the proportion of that Fallback Interest Payment which relates to that Lender's participation in the Loan or the relevant part of the Loan; and
    - (iii) the relevant Lenders and the Borrower of each applicable Daily Simple SOFR relating to the determination of that Fallback Interest Payment.
  - (c) The Agent shall promptly notify the Borrower of each Funding Rate relating to the Loan or any part of the Loan.
  - (d) This Clause 7.6 (Notification of Interest Periods and Floating Interest Rate) shall not require the Agent to make any notification to any Party on a day which is not a Business Day.
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### 7.7 **6.7** Unavailability of Screen Rate before Rate Switch Date

- (a) *Interpolated Screen Rate*: If no Screen Rate is available for ~~LIBOR for~~ the Interest Period of ~~the Loan or any part of the LIBOR~~ 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 LIBOR~~ Loan.
- (b) *Reference Bank Rate*: If no Screen Rate is available for LIBOR for:
- (i) Dollars;
  - (ii) the Interest Period of ~~the Loan or any part of the LIBOR~~ Loan and it is not possible to calculate the Interpolated Screen Rate,
  - (iii) 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 LIBOR~~ 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 that LIBOR~~ Loan ~~or that part of the Loan (as applicable)~~ and Clause ~~6.10~~ 7.11 (*Cost of funds*) shall apply to the Loan or that part of the Loan for that Interest Period.

### 7.8 **6.8** 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.

### 7.9 **Unavailability of Term SOFR**

- (a) *Interpolated Term SOFR*: If no Term SOFR is available for the Interest Period of any Term SOFR Loan, the applicable Term SOFR Reference Rate shall be the Interpolated Term SOFR for a period equal in length to the Interest Period of that Term SOFR Loan.
- (b) *Historic Term SOFR*: If no Term SOFR is available for the Interest Period of any Term SOFR Loan and it is not possible to calculate the Interpolated Term SOFR, the applicable Term SOFR Reference Rate shall be the Historic Term SOFR for that Term SOFR Loan.
- (c) *Interpolated Historic Term SOFR*: If paragraph (b) above applies but no Historic Term SOFR is available for the Interest Period of any Term SOFR Loan, the applicable Term SOFR Reference Rate shall be the Interpolated Historic Term SOFR for a period equal in length to the Interest Period of that Term SOFR Loan.
- (d) *Daily Simple SOFR*: If, after giving effect to paragraph (c) above, no Term SOFR is available for the Interest Period of a Term SOFR Loan and it is not possible to calculate the Interpolated Historic Term SOFR, that Term SOFR Loan shall bear interest for any day of the relevant Interest Period at a rate per annum equal to the aggregate of the applicable (i) Daily Simple SOFR; (ii) Margin; and (iii) Credit Adjustment Spread.
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- (e) Cost of funds: If paragraph (d) above applies but it is not possible to calculate the Daily Simple SOFR, there shall be no Term SOFR Reference Rate for that Term SOFR Loan and Clause 7.11 (Cost of funds) shall apply to that Term SOFR Loan for that Interest Period.

**7.10 6.9 Market Disruption**

- (a) ~~If~~ In the case of a LIBOR Loan, if before close of business in London on the Quotation Day for the relevant Interest Period the Agent receives notification from a Lender or Lenders (whose participations in the Loan or the relevant part of the Loan in aggregate exceed [\*] per cent. of the Loan or the relevant part of the Loan as appropriate) that the cost to it or each of them 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 ~~6.10 (Cost of funds) shall apply to the Loan or that part of the Loan (as applicable) for the relevant Interest Period.~~ 7.11 (Cost of funds) shall apply to the Loan or that part of the Loan (as applicable) for the relevant Interest Period.
- (b) In the case of a Term SOFR Loan, if before close of business in London on the Quotation Day for the relevant Interest Period, the Agent receives notification from a Lender or Lenders (whose participations in the Loan or the relevant part of the Loan exceed 50 per cent. of the Loan or the relevant part of the Loan as appropriate) that its cost of funds relating to its participation in the Loan or that part of the Loan would be in excess of the Market Disruption Rate then Clause 7.11 (Cost of funds) shall apply to the Loan or that part of the Loan (as applicable) for the relevant Interest Period.

**7.11 6.10 Cost of funds**

- (a) If this Clause ~~6.10~~ 7.11 (Cost of funds) applies, the rate of interest on the Loan or the relevant part of the Loan for the relevant Interest Period shall be the percentage rate per annum which is the sum of:
- (i) the Margin; and
  - (ii) the weighted average of the rates notified to the Agent by each 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 cost of funds relating to~~ its cost of funds relating to its participation in the Loan or that part of the Loan from whatever source it may reasonably select.
- (b) If this Clause ~~6.10~~ 7.11 (Cost of funds) applies and the Agent or the Borrower so requires, the Agent and the Borrower shall enter into negotiations (for a period of not more than 30 days) with a view to agreeing a substitute basis for determining the rate of interest or (as the case may be) an alternative basis for funding.
- (c) Subject to Clause ~~6.11~~ 7.12 (Replacement of Screen Rate Changes to the reference rates), 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 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 ~~6.10~~ 7.11 (Cost of funds) applies pursuant to Clause ~~6.9~~ 7.10 (Market disruption) and:
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- (i) in relation to a LIBOR Loan, a Lender's Funding Rate is less than LIBOR; or, that Lender's cost of funds relating to its participation in the Loan or the relevant part of the Loan for that Interest Period shall be deemed, for the purposes of sub-paragraph (ii) of paragraph (a) above, to be LIBOR.
- (ii) in relation to a Term SOFR Loan, a Lender's Funding Rate is less than the Market Disruption Rate, that Lender's cost of funds relating to its participation in the Loan or the relevant part of the Loan for that Interest Period shall be deemed, for the purposes of sub-paragraph (ii) of paragraph (a) above, to be the Market Disruption Rate for that Term SOFR Loan.
- ~~(iii) 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 ~~6.10~~ 7.11 (Cost of funds) applies but any Lender does not ~~supply a quotation~~ notify a rate to the Agent by the time specified in sub-paragraph (ii) of paragraph (a) above, the rate of interest shall be calculated on the basis of the ~~quotations of rates notified by~~ the remaining Lenders.

#### **6.11 Replacement of Screen Rate**

#### **7.12 Changes to the reference rates**

~~If a Screen~~ If a Published Rate Replacement Event has occurred in relation to the ~~Screen~~ Published Rate ~~for Dollars~~, any amendment or waiver which relates to:

- (a) providing for the use of a Replacement ~~Benchmark~~ Reference Rate; and
  - (b)
    - (i) aligning any provision of any Finance Document to the use of that Replacement ~~Benchmark~~ Reference Rate;
    - (ii) enabling that Replacement ~~Benchmark~~ Reference Rate to be used for the calculation of interest under this Agreement (including, without limitation, any consequential changes required to enable that Replacement ~~Benchmark~~ Reference Rate to be used for the purposes of this Agreement);
    - (iii) implementing market conventions applicable to that Replacement ~~Benchmark~~ Reference Rate;
    - (iv) providing for appropriate fallback (and market disruption) provisions for that Replacement ~~Benchmark~~ Reference Rate; or
    - (v) adjusting the pricing to reduce or eliminate, to the extent reasonably practicable, any transfer of economic value from one Party to another as a result of the application of that Replacement ~~Benchmark~~ Reference Rate (and if any adjustment or method for calculating any adjustment has been formally designated, nominated or recommended by the Relevant Nominating Body, the adjustment shall be determined on the basis of that designation, nomination or recommendation),
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may be made with the consent of the Agent (acting on the instructions of the Majority Lenders), SACE and SIMEST (if applicable) and the Borrower.

- (c) ~~If, as at 30 September 2021, this Agreement provides that the rate of interest for the Loan in Dollars is to be determined by reference to the Screen Rate for LIBOR:~~
- (i) ~~a Screen Rate Replacement Event shall be deemed to have occurred on that date in relation to the Screen Rate for Dollars; and~~
  - (ii) ~~the Agent (acting on the instructions of the Majority Lenders) and the Obligors shall enter into negotiations in good faith with a view to agreeing the use of a Replacement Benchmark in relation to Dollars in place of that Screen Rate from and including a date no later than 30 November 2021, unless the Borrower and the Agent (acting on the instructions of the Majority Lenders) agree to defer the date of the negotiations required under this sub-paragraph (ii) together with the date for the use of such a Replacement Benchmark, in which case such dates shall be those so agreed.~~
- (c) ~~(d)~~ If an amendment is required as contemplated in this Clause ~~6.11~~7.12 (~~Replacement of Screen Rate~~Changes to the reference rates), the Obligors shall reimburse each of the Agent and the Security Trustee for the amount of all costs and expenses (including legal fees and other professional expenses) incurred by each Secured Party in relation to such amendment.

In this Clause 7.12:

"Published Rate" means:

- (a) SOFR; or
- (b) Term SOFR for any Quoted Tenor.

"Published Rate Contingency Period" means, in relation to:

- (a) Term SOFR (all Quoted Tenors), ten US Government Securities Business Days;
- (b) SOFR, ten US Government Securities Business Days.

"Published Rate Replacement Event" means, in relation to a Published Rate:

(a) the methodology, formula or other means of determining that Published Rate has, in the opinion of the Majority Lenders, and the Borrower materially changed;

(b) \_\_\_\_\_

(i) \_\_\_\_\_

(A) the administrator of that Published Rate or its supervisor publicly announces that such administrator is insolvent; or

(B) information is published in any order, decree, notice, petition or filing, however described, of or filed with a court, tribunal, exchange, regulatory authority or similar administrative, regulatory or judicial body which reasonably confirms that the administrator of that Published Rate is insolvent.

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

- (ii) the administrator of that Published Rate publicly announces that it has ceased or will cease, to provide that Published Rate permanently or indefinitely and, at that time, there is no successor administrator to continue to provide that Published Rate;
  - (iii) the supervisor of the administrator of that Published Rate publicly announces that such Published Rate has been or will be permanently or indefinitely discontinued; or
  - (iv) the administrator of that Published Rate or its supervisor announces that that Published Rate may no longer be used; or
- (c) the administrator of that Published Rate (or the administrator of an interest rate which is a constituent element of that Published Rate) determines that that Published Rate should be calculated in accordance with its reduced submissions or other contingency or fallback policies or arrangements and either:
- (A) the circumstance(s) or event(s) leading to such determination are not (in the opinion of the Majority Lenders and the Borrower) temporary; or
  - (B) that Published Rate is calculated in accordance with any such policy or arrangement for a period no less than the applicable Published Rate Contingency Period; or
- (d) in the opinion of the Majority Lenders and the Borrower, that Published Rate is otherwise no longer appropriate for the purposes of calculating interest under this Agreement.

"Replacement Reference Rate" means a reference rate which is:

- (a) formally designated, nominated or recommended as the replacement for a Published Rate by:
    - (i) the administrator of that Published Rate (provided that the market or economic reality that such reference rate measures is the same as that measured by that Published Rate); or
    - (ii) any Relevant Nominating Body,
- and if replacements have, at the relevant time, been formally designated, nominated or recommended under both paragraphs, the "Replacement Reference Rate" will be the replacement under sub-paragraph (i) above;
- (b) in the opinion of the Majority Lenders and the Borrower, generally accepted in the international or any relevant domestic syndicated loan markets as the appropriate successor or alternative to a Published Rate; or
  - (c) in the opinion of the Majority Lenders and the Borrower, an appropriate successor or alternative to a Published Rate.
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**7.13 ~~6.42~~ Notice of prepayment**

If no agreement is reached with the Borrower under Clause ~~6.11-7.12~~ (~~Replacement of Screen Rate~~ Changes to the reference rates), the Borrower may give the Agent not less than 15 Business Days', or, if the Fixed Interest Rate has been selected pursuant to paragraph (a) of Clause 3.5 (*No later than thirty (30) days before the Intended Delivery Date*), the Borrower may give the Agent not less than 30 days' notice of its intention to prepay at the end of the interest period set by the Agent.

**7.14 ~~6.43~~ Prepayment; termination of Commitments**

A notice under Clause ~~6.42-7.13~~ (*Notice of prepayment*) shall be irrevocable; the Agent shall promptly notify the Lenders and, if the Fixed Interest Rate has been selected by the Borrower, SIMEST of the Borrower's notice of intended prepayment; and:

- (a) on the date on which the Agent serves that notice, the Total Commitments shall be cancelled; and
- (b) on the last Business Day of the Interest Period set by the Agent, the Borrower shall prepay (without premium or penalty subject to the provisions of Clause ~~20.2-21.2~~ (*Breakage costs and SIMEST arrangements*)) the Loan together with accrued interest thereon at the applicable rate (being either the Floating Interest Rate or the Fixed Interest Rate as specified by the Borrower pursuant to paragraph (a) of Clause 3.5 (*No later than thirty (30) days before the Intended Delivery Date*)).

**7.15 ~~6.44~~ Application of prepayment**

The provisions of Clause ~~46-17~~ (*Cancellation, Prepayment and Mandatory Prepayment*) shall apply in relation to the prepayment.

**7.16 ~~6.45~~ Certain Circumstances**

Notwithstanding anything to the contrary in this Agreement:

- (a) in the event of any circumstances falling within Clause ~~6.9-7.9~~ (*Market Disruption*) which might affect the advance of the Loan on the Drawdown Date (the "**Relevant Circumstances**"):
    - (i) occurring and being continuing on the date falling ninety (90) days before the Intended Delivery Date (the "**Relevant Date**"), each Lender will notify the Borrower (through the Agent) of the Relevant Circumstances on the Relevant Date or, if the Relevant Date is not a Business Day, on the next following Business Day; and
    - (ii) occurring after the Relevant Date, each Lender will notify the Borrower (through the Agent) immediately each Lender become aware of the Relevant Circumstances;
  - (b) in the event of any Relevant Circumstances falling within Clause ~~6.9-7.9~~ (*Market Disruption*) (the "**Pricing-Related Relevant Circumstances**") occurring before the Loan is made available, each Lender will fund its respective Contributions by reference to the agreed alternative rate of interest in accordance with Clauses ~~6.7-7.7~~ (*Unavailability of Screen Rate before Rate Switch Date*) ~~6.8-7.8~~ (*Calculation of Reference Bank Rate*), ~~6.9-7.9~~ (*Market Disruption*), ~~6.10-7.11~~ (*Cost of funds*) and ~~6.11-7.12~~ (~~Replacement of Screen Rate~~ Changes to the reference rates) as if the provisions of such Clauses applied not only in the event that the Pricing-Related Relevant
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Circumstances have been notified by the Agent to the Borrower after the making of the Loan but also before the making of the Loan.

- (c) in the event of any Relevant Circumstances falling within Clause ~~6-9-7.9~~ (*Market Disruption*) (the "**Availability-Related Relevant Circumstances**") occurring before the Loan is made and notwithstanding the provisions of Clause ~~6-7-7.7~~ (*Unavailability of Screen Rate*), ~~before Rate Switch Date~~, each Lender will enter into good faith discussions with the Borrower for a period not exceeding 10 Business Days in order to discuss a basis on which the Lenders could be able to fund their respective Contributions in Dollars (or, if unavailable in Dollars, then in any available currency). Such discussions shall be without obligation on the Lenders provided that during such discussion period, such circumstances continue.

#### 7.17 ~~6-16~~ **Change of currency**

- (a) In the event that the Agent notifies the Borrower that SIMEST has requested a change in the currency of the Loan in accordance with clause 6.3 of the Interest Make-Up Agreement, the Borrower and the Lenders shall, without obligation, consider such request for a change of currency acting reasonably for a period of not exceeding 10 Business Days. Following such discussions the Agent shall report the decision of the Borrower and the Lenders to SIMEST, providing their reason for any negative decision.
- (b) In the event that a change of currency is agreed the Parties agree to negotiate in good faith the necessary changes to this Agreement, the Finance Documents, the SACE Insurance Policy and the Interest Make-Up Agreement in order to document the change in currency.
- (c) In the event that a change in currency is not acceptable to the Lenders or the Borrower, the provision of paragraph (c) of Clause ~~6-2-7.2~~ (*Floating Interest Rate*) shall apply.

### 8 ~~7~~ **INTEREST PERIODS**

#### 8.1 ~~7-4~~ **Commencement of Interest Periods**

The first Interest Period shall commence on the Drawdown Date and each subsequent Interest Period shall commence on the expiry of the preceding Interest Period.

#### 8.2 ~~7-2~~ **Duration of Interest Periods**

If:

- (a) the Borrower has specified a Fixed Interest Rate pursuant to paragraph (a) of Clause 3.5 (*No later than thirty (30) days before the Intended Delivery Date*), each Interest Period shall be 6 months and shall end on the next succeeding Repayment Date;
  - (b) the Borrower has specified a Floating Interest Rate pursuant to paragraph (a) of Clause 3.5 (*No later than thirty (30) days before the Intended Delivery Date*), each Interest Period shall be 3 months or 6 months at the Borrower's option, such option to be selected pursuant to paragraph (b) of Clause 3.5 (*No later than thirty (30) days before the Intended Delivery Date*); or
  - (c) paragraphs (b), (c) or (d) of Clause ~~6-2-7.2~~ (*Floating Interest Rate*) apply, each Interest Period shall be 6 months.
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8.3 ~~7.3~~ The first Interest Period in relation to each advance or deemed advance (as applicable) under each Deferral Tranche shall start on the date of such advance or deemed advance (as applicable) and end on the last day of the current Interest Period in respect of the Loan, following which all Interest Periods will be consolidated.

## 9 ~~8~~ SACE PREMIUM AND ITALIAN AUTHORITIES

### 9.1 ~~8.1~~ SACE Premium

The estimated SACE Premium for a maximum amount of \$[\*] (being [\*]% of the Maximum Loan Amount) is due and payable in two instalments as follows:

- (a) the first instalment of the SACE Premium being an amount of \$[\*] (calculated as being [\*]% of [\*]% of the Maximum Loan Amount) (the "**First Instalment**") shall be paid by the Borrower to SACE (provided that the Borrower and the Lenders have been notified by the SACE Agent that the SACE Insurance Policy has been issued) on the earlier of (i) the date falling 30 days after the issuance of the SACE Insurance Policy and (ii) the date falling 6 months after the date of SACE's board approval; and
- (b) the second instalment of the SACE Premium shall be such amount in Dollars as is calculated by SACE at the Conversion Rate as being [\*]% of [\*]% of the Loan actually advanced on the Drawdown Date (the "**Second Instalment**") and shall be payable on or prior to the Drawdown Date. For the sake of clarity, no set-off with the first instalment of the SACE Premium shall be permitted.

### 9.2 ~~8.2~~ Reimbursement by the Borrower of the SACE Premium

The Borrower irrevocably agrees to pay the First Instalment, and to instruct the Lenders to pay the Second Instalment on behalf of the Borrower, as follows:

- (a) the Borrower has requested and the Lenders have agreed to reimburse the payment of one hundred per cent. (100%) of the First Instalment to the Borrower on the Drawdown Date, it being agreed that such First Instalment shall be paid to SACE by the Borrower in accordance with paragraph (a) of Clause ~~8.1~~ 9.1 (*SACE Premium*) and upon notification by the Agent to the Borrower (i) of the issuance of the SACE Insurance Policy documentation in the form required by paragraph (b) of Clause 3.3 (*No later than ninety (90) days before the Intended Delivery Date*) of this Agreement, and (ii) of the amount of the First Instalment;
- (b) the Borrower has requested and the Lenders have agreed to finance the payment of one hundred per cent. (100%) of the Second Instalment on the Drawdown Date in accordance with paragraph (c) of Clause 2.1 (*Amount of facility*) of this Agreement.

Consequently, the Borrower hereby irrevocably instructs the Agent on behalf of the Lenders to pay the Second Instalment to SACE on the Drawdown Date in accordance with paragraph (c) of Clause 2.1 (*Amount of facility*) of this Agreement and to reimburse the Borrower by the Borrower drawing under the Loan the amount of the First Instalment in accordance with paragraph (b) of Clause 2.1 (*Amount of facility*) of this Agreement.

The First Instalment and Second Instalment each financed by the Loan will be repayable in any event by the Borrower to the Lenders in the manner specified in Clause 5 (*Repayment*) and under any and all circumstances including but without limitation in the event of prepayment or acceleration of the Loan.

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### 9.3 ~~8.3~~ Italian Authorities

- (a) The Borrower acknowledges and agrees that the Agent and the Lenders are entitled to provide the Italian Authorities with any information they may have relative to the Loan and the business of the Group, to allow the Italian Authorities to inspect all their records relating to this Agreement and the other Transaction Documents and to furnish them with copies thereof. Any such information relative to the Loan may also be given by any Italian Authorities to international institutions charged with collecting statistical data.
- (b) The Borrower acknowledges that, in the making of any decision or determination or the exercise of any discretion or the taking or refraining to take any action under this Agreement or any of the other Finance Documents, the Agent and the Lenders shall be deemed to have acted reasonably if they have acted on the instructions of either of the Italian Authorities.
- (c) Each Party further undertakes not to act in a manner which is inconsistent with the terms of the SACE Insurance Policy and the Interest Make Up Agreement.

### 9.4 ~~8.4~~ Refund

- (a) Provided that no Event of Default has occurred and is then continuing and no loss has occurred under the SACE Insurance Policy, the Borrower shall be entitled to a refund of the First Instalment of the SACE Premium in accordance with the terms of the SACE Insurance Policy in the event that no disbursements have been made under this Agreement and, as a result thereof, the SACE Insurance Policy has been definitely terminated by mutual consent between the parties thereto.
- (b) If the Borrower draws down less than the Eligible Amount, the Borrower shall be entitled to a refund of the SACE Premium in an amount corresponding to the undrawn amount.
- (c) Any refund of the SACE Premium, whether in whole or in part, must be expressly requested from SACE by the SACE Agent in writing following a request by the Borrower to the SACE Agent. Under the terms of the SACE Insurance Policy, a fixed amount of [\*] per cent. ([\*]%) shall be withheld from the amount of the SACE Premium to be refunded. Such withholding, charged as a lump sum to cover administration and management costs for the SACE Insurance Policy, may not, in any event, amount to less than the equivalent of €[\*], calculated at the exchange rate as at the date of the refund request.
- (d) Except as set out in paragraph (a) to (c) above, no part of the SACE Premium is refundable to any Obligor.
- (e) In no event shall the SACE Agent be liable for any refund of the SACE Premium to be made by SACE.

### 9.5 ~~8.5~~ Deferral Tranches – additional premium

A premium is payable by the Borrower to SACE in respect of:

- (a) the 2020 Deferral Tranche (the "**2020 Deferral Tranche Premium**"), it being provided that an amount of \$[\*] was advanced to the Borrower and paid to SACE on 30 July 2020 with the first Advance under the 2020 Deferral Tranche in respect of the 2020 Deferred Repayment Instalments; and
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- (b) the 2021 Deferral Tranche (the "**2021 Deferral Tranche Premium**" and together with the 2020 Deferral Tranche Premium, the "**Deferral Tranche Premia**"), payable in an amount of \$[\*] no later than the earlier of (i) 30 days from the date of issuance of the relevant addendum to the SACE Insurance Policy in form and substance acceptable to the Lenders and (ii) the first Advance under the 2021 Deferral Tranche.

Each of the Deferral Tranche Premia paid or to be paid to SACE is non-refundable, and the 2021 Deferral Tranche Premium will not be financed.

## 10 **9FEES**

### **9.1 Fees**

The following fees shall be paid to the Agent by the Borrower as required hereunder:

- (a) for the benefit of the Joint Mandated Lead Arrangers, a Joint Mandated Lead Arranger structuring fee in Euros, computed at the rate of [\*] per cent. ([\*]%) flat on EUR [\*] being the Maximum Loan Amount converted in to Euros at the Base Rate and payable on the date of the Original Facility Agreement;
- (b) for the benefit of the Lenders, a commitment fee in Dollars for the period from the date of the Original Facility Agreement to the Delivery Date of the Ship, or the date of receipt by the Agent of the written cancellation notice sent by the Borrower as described in Clause ~~46.4~~ 17.1 (*Cancellation*), whichever is the earliest, computed at the rate of [\*] per cent. ([\*]%) per annum and calculated on the undrawn amount of the Maximum Loan Amount and payable in arrears on the date falling six (6) months after the date of the Original Facility Agreement and on each date falling at the end of each following consecutive six (6) month period, with the exception of the commitment fee due in respect of the last period, which shall be paid on the Drawdown Date, or the date of receipt by the Agent of the written cancellation notice sent by the Borrower as described in Clause ~~46.4~~ 17.1 (*Cancellation*), whichever is the earliest, such commitment fee to be calculated on the actual number of days elapsed divided by three hundred and sixty (360). For the purpose of the computation of the periodical commitment fee payable to the Lenders, the Maximum Loan Amount is assumed to be \$498,187,967.01;
- (c) With effect from the date of the 2020 Amendment Agreement, the Borrower shall pay to the Agent (for the account of the Lenders for application pro rata to their Commitments) a commitment fee in the amount of [\*] per cent. ([\*]%) per annum on the daily undrawn 2020 Deferral Commitment. The commitment fee shall be payable in arrears on the date of each advance or deemed advance, as applicable, of the 2020 Deferral Tranche in accordance with Clause 4.9 (*Deferral Tranches*) or, if cancelled, on the date of cancellation of the 2020 Deferral Tranche;
- (d) With effect from the date of the 2021 Amendment and Restatement Agreement, the Borrower shall pay to the Agent (for the account of the Lenders for application pro rata to their Commitments) a commitment fee in the amount of [\*] per cent. ([\*]%) per annum on the daily undrawn 2021 Deferral Commitment. The commitment fee shall be payable in arrears on the date of each advance or deemed advance, as applicable, of the 2021 Deferral Tranche in accordance with Clause 4.9 (*Deferral Tranches*) or, if cancelled, on the date of cancellation of the 2021 Deferral Tranche;
- (e) for the Agent, an agency fee of \$[\*] payable on the date of the Original Facility Agreement and on or before each anniversary date thereof until total repayment of the Loan unless the Total Commitments are terminated pursuant to Clause ~~46.4~~ 17.1 (*Cancellation*); and
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- (f) for the SACE Agent an Agent structuring fee in the amount and payable at the time separately agreed in writing between the SACE Agent and the Borrower.

## 11 ~~40~~TAXES, INCREASED COSTS, COSTS AND RELATED CHARGES

### 11.1 ~~40.1~~Definitions

- (a) In this Agreement:

**"Protected Party"** means a Secured 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 Secured Party under Clause ~~40.2~~ 11.2 (*Tax gross-up*) or a payment under Clause ~~40.3~~ 11.3 (*Tax indemnity*).

- (b) Unless a contrary indication appears, in this Clause ~~40.11~~ 11 (*Taxes, Increased Costs, Costs and Related Charges*) reference to "**determines**" or "**determined**" means a determination made in the absolute discretion of the person making the determination.

### 11.2 ~~40.2~~Tax gross-up

- (a) Each Obligor shall make all payments to be made by it under the Finance Documents without any Tax Deduction, unless a Tax Deduction is required by law.
- (b) The Borrower shall promptly upon becoming aware that an Obligor must make a Tax Deduction (or that there is any change in the rate or the basis of a Tax Deduction) notify the Agent accordingly. Similarly, a Lender shall notify the Agent on becoming so aware in respect of a payment payable to that Lender. If the Agent receives such notification from a Lender it shall notify the Borrower and that Obligor.
- (c) If a Tax Deduction is required by law to be made by an Obligor, the amount of the payment due from that Obligor shall be increased to an amount which (after making any Tax Deduction) leaves an amount equal to the payment which would have been due if no Tax Deduction had been required.
- (d) A payment shall not be increased under paragraph (c) above if on the date on which the payment falls due the Obligor making the payment is able to demonstrate that the payment could have been made to the Lender without the Tax Deduction had that Lender (having been given notice of the documentation requested under Clause ~~40.7~~ 11.7 (*Lender Status*) at least 30 Business Days prior to such payment date) complied with its obligations under Clause ~~40.7~~ 11.7 (*Lender Status*).
- (e) 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.
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- (f) Within thirty 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 Agent for the Secured Party entitled to the payment evidence reasonably satisfactory to that Secured Party that the Tax Deduction has been made or (as applicable) any appropriate payment paid to the relevant taxing authority.

**11.3 ~~40.3~~ Tax indemnity**

- (a) The Borrower shall (within three Business Days of demand by the Agent) pay to a Protected Party an amount equal to the loss, liability or cost which that Protected Party determines will be or has been (directly or indirectly) suffered for or on account of Tax by that Protected Party in respect of a Finance Document.
- (b) Paragraph (a) above shall not apply:
- (i) with respect to any Tax assessed on a Secured Party:
- (A) under the law of the jurisdiction in which that Secured Party is incorporated or, if different, the jurisdiction (or jurisdictions) in which that Secured Party is treated as resident for tax purposes; or
- (B) under the law of the jurisdiction in which that Lender'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 Secured Party; or
- (ii) to the extent a loss, liability or cost is compensated for by an increased payment under Clause ~~40.2-11.2~~ (*Tax gross-up*) or would have been compensated for by an increased payment under Clause ~~40.2-11.2~~ (*Tax gross-up*) but was not so compensated solely because an exclusion in paragraph (d) of Clause ~~40.2-11.2~~ (*Tax gross-up*) applied, or relates to a FATCA Deduction required to be made by a Party; or
- (iii) with respect to the Taxes in the nature of a branch profits tax imposed by Section 884(a) of the Code that is imposed by any jurisdiction described in paragraph (b)(i)(B) above.
- (c) A Protected Party making, or intending to make a claim under paragraph (a) above shall promptly notify the Agent of the event which will give, or has given, rise to the claim, following which the Agent shall notify the Borrower.
- (d) A Protected Party shall, on receiving a payment from an Obligor under this Clause ~~40.3-11.3~~ (*Tax indemnity*), notify the Agent.

**11.4 ~~40.4~~ Tax Credit**

If an Obligor makes a Tax Payment and the relevant Creditor Party determines that:

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

the Creditor Party shall pay an amount to the Obligor which that Creditor 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.

**11.5 ~~10-5~~ Stamp taxes**

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

**11.6 ~~10-6~~ VAT**

- (a) All amounts expressed to be payable under a Finance Document by any Party to a Secured 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 Secured Party to any Party under a Finance Document and such Secured Party is required to account to the relevant tax authority for the VAT, that Party must pay to such Secured 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 Secured Party must promptly provide an appropriate VAT invoice to that Party).
- (b) If VAT is or becomes chargeable on any supply made by any Secured Party (the "**Supplier**") to any other Secured 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 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 Secured Party for any cost or expense, that Party shall reimburse or indemnify (as the case may be) such Secured Party for the full amount of such cost or expense, including such part of it as represents VAT, save to the extent that such Secured 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 ~~10-6~~ 11.6 (VAT) to any Party being required to account to a tax authority for VAT shall, at any time when such Party is treated as a member of a group for VAT
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purposes, include a reference to another member of that group being required to so account to the relevant tax authority.

- (e) In relation to any supply made by a Secured Party to any Party under a Finance Document, if reasonably requested by such Secured Party, that Party must promptly provide such Secured Party with details of that Party's VAT registration and such other information as is reasonably requested in connection with such Secured Party's VAT reporting requirements in relation to such supply.

#### **11.7 40-7 Lender Status**

- (a) Any Lender that is entitled to an exemption from or reduction of withholding Tax with respect to payments made under a Finance Document shall deliver to the Agent and the Borrower, at the time or times reasonably requested by the Agent or the Borrower, such properly completed and executed documentation reasonably requested by the Agent or the Borrower (and which it is reasonable for the Lender to complete and execute) as will permit such payments to be made without withholding or at a reduced rate of withholding. In addition, any Lender, if reasonably requested by the Agent or the Borrower, shall deliver such other documentation as prescribed by applicable law and reasonably requested by the Agent or the Borrower as will enable the Agent or the Borrower to determine whether or not such Lender is subject to backup withholding or information reporting requirements.
- (b) Any Lender shall, to the extent it is legally entitled to do so, deliver to the Agent and the Borrower on or prior to the date on which such Lender becomes a Lender under this Agreement or promptly thereafter (and from time to time thereafter as prescribed by applicable law or upon the request of the Agent or the Borrower), duly executed and properly completed copies of Internal Revenue Service Form W-9 or W-8, as applicable, certifying that it is not subject to U.S. federal backup withholding or establishing an exemption from, or reduction of, U.S. federal withholding Tax.

#### **11.8 40-8 FATCA Deduction**

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

#### **11.9 40-9 FATCA Information**

- (a) Subject to paragraph (c) below, each Party shall, within ten Business Days of a reasonable request by another Party:
    - (i) confirm to that other Party whether it is:
      - (A) a FATCA Exempt Party; or
      - (B) not a FATCA Exempt Party;
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- (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 paragraph (a)(i) 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 to do anything, and paragraph (a)(iii) 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 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 (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) Each Lender shall, within ten Business Days of (i) where the relevant Lender is a Lender at the date of the Original Facility Agreement, the date of the Original Facility Agreement and (ii) where the relevant Lender is a Transferee Lender, the effective date of a Transfer Certificate under Clause ~~23.4~~24.4 (*Effective Date of Transfer Certificate*), supply to the Agent:
    - (i) a withholding certificate on Form W-8, Form W-9 or any other relevant form; or
    - (ii) any withholding statement or other document, authorisation or waiver as the Agent may require to certify or establish the status of such Lender under FATCA or that other law or regulation.
  - (f) The Agent shall provide any withholding certificate, withholding statement, document, authorisation or waiver it receives from a Lender pursuant to paragraph (e) above to the relevant Borrower.
  - (g) If any withholding certificate, withholding statement, document, authorisation or waiver provided to the 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 Agent unless it is unlawful for the Lender to do so (in which case the Lender shall promptly notify the Agent). The Agent shall provide any such updated withholding certificate, withholding statement, document, authorisation or waiver to the relevant Borrower.
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- (h) The 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 Agent shall not be liable for any action taken by it under or in connection with paragraphs (e), (f) or (g) above.

**11.10 ~~40-40~~ Increased Costs**

- (a) If after the date of the Original Facility Agreement by reason of (x) any change in law or in its interpretation or administration and/or (y) compliance with any request from or requirement of any central bank or other fiscal, monetary or other authority including but without limitation the Basel Committee on Banking Regulations and Supervisory Practices whether or not having the force of law:
- (i) any of the Lenders incurs a cost as a result of its performing its obligations under this Agreement and/or its making available its Commitment hereunder; or
  - (ii) there is any increase in the cost to any of the Lenders of funding or maintaining all or any of the advances comprised in a class of advances formed by or including its Commitment advanced or to be advanced by it hereunder; or
  - (iii) any of the Lenders incurs a cost as a result of its having entered into and/or its assuming or maintaining its commitment under this Agreement; or
  - (iv) any of the Lenders becomes liable to make any payment on account of Tax or otherwise (other than Tax on its overall net income) on or calculated by reference to the amount of its Commitment advanced or to be advanced hereunder and/or any sum received or receivable by it hereunder; or
  - (v) any of the Lenders suffers any decrease in its rate of return as a result of any changes in the requirements relating to capital ratios, monetary control ratios, the payment of special deposits, liquidity costs or other similar requirements affecting that Lender,

then the Borrower shall on demand pay to the Agent for the account of the relevant Lender or Lenders amounts sufficient to indemnify the relevant Lender or Lenders against, as the case may be, such cost, such increased cost (or such proportion of such increased cost as is in the reasonable opinion of the relevant Lender or Lenders attributable to the funding or maintaining of its or their Commitment(s) hereunder) or such liability.

- (b) This Clause ~~40-40~~ 11.10 (*Increased Costs*) does not apply to the extent any increased cost is:
- (i) attributable to a Tax Deduction required by law to be made by an Obligor;
  - (ii) attributable to a FATCA Deduction required to be made by a Party;
  - (iii) compensated for by Clause ~~40-3-11.3~~ 11.3 (*Tax indemnity*) (or would have been compensated for under Clause ~~40-3-11.3~~ 11.3 (*Tax indemnity*) but was not compensated solely because any of the exclusions in paragraph (b) of Clause ~~40-3-11.3~~ 11.3 (*Tax indemnity*) applied); or
  - (iv) attributable to the wilful breach by the relevant Creditor Party or its Affiliates of any law of regulation.
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- (c) In this Clause ~~40-40-11.10~~ 11.10 (*Increased Costs*), a reference to a "Tax Deduction" has the same meaning given to the term in Clause ~~40-4-11.1~~ 11.1 (*Definitions*).
- (d) A Lender affected by any provision of this Clause ~~40-40-11.10~~ 11.10 (*Increased Costs*) shall promptly inform the Agent after becoming aware of the relevant change and its possible results (which notice shall be conclusive evidence of the relevant change and its possible results) and the Agent shall, as soon as reasonably practicable thereafter, notify the Borrower of the change and its possible results. Without affecting the Borrower's obligations under this Clause ~~40-40-11.10~~ 11.10 (*Increased Costs*) and in consultation with the Agent and the Italian Authorities, the affected Lender will then take all such reasonable steps as may be open to it to mitigate the effect of the change (for example (if then possible) by changing its Facility Office or transferring some or all of its rights and obligations under this Agreement to another financial institution reasonably acceptable to the Borrower and the Agent and the Italian Authorities). The reasonable costs of mitigating the effect of any such change shall be borne by the Borrower save where such costs are of an internal administrative nature and are not incurred in dealings by any Lender with third parties.

#### 11.11 ~~40-44~~ **Transaction Costs**

The Borrower undertakes to pay to the Agent, upon demand, all costs and expenses, duties and fees, including but without limitation pre-agreed legal costs (which, for avoidance of doubt are exclusive of VAT and disbursements) out of pocket expenses and travel costs, reasonably incurred by the Italian Authorities, the Joint Mandated Lead Arrangers and the Lenders (but not including any bank which becomes a Lender after the date of the Original Facility Agreement) in connection with the negotiation, preparation and execution of all agreements, guarantees, security agreements and related documents entered into, or to be entered into, for the purpose of the transaction contemplated hereby as well as all costs and expenses, duties and fees incurred by the Agent or the Lenders in connection with the registration, filing, enforcement or discharge of the said guarantees or security agreements, including without limitation the fees and expenses of legal advisers and insurance experts (provided that such insurance costs are not to exceed \$10,000) and the fees and expenses of the Italian Authorities (including the fees and expenses of its legal advisers) payable by the Joint Mandated Lead Arrangers to the Italian Authorities, the cost of registration and discharge of security interests and the related travel and out of pocket expenses; the Borrower further undertakes to pay to the Agent all costs, expenses, duties and fees incurred by the Lenders and the Italian Authorities in connection with any variation of this Agreement and the related documents, guarantees and security agreements, any supplements thereto and waiver given in relation thereto, in connection with the investigation of any potential Event of Default, the enforcement or preservation of any rights under this Agreement and/or the related guarantees and security agreements, including in each case the fees and expenses of legal advisers, and in connection with the consultations or proceedings made necessary or in the opinion of the Agent desirable by the acts of, or failure to act on the part of, the Borrower.

#### 11.12 ~~40-42~~ **Costs of delayed Delivery Date**

The Borrower undertakes to pay to the Agent, upon demand, any costs incurred by the Lenders and/or the Italian Authorities in funding the Loan in the event that the Delivery Date is later than the Intended Delivery Date unless the Borrower has given the Agent at least three (3) Business Days' notification of such delay in the Delivery Date.

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### 11.13 ~~40-43~~ SACE obligations

To the extent that this Clause ~~40-11~~ (*Taxes, Increased Costs, Costs and Related Charges*) imposes obligations or restrictions on a Secured Party, such obligations or restrictions shall not apply to SACE and SACE shall have no obligations hereunder nor be constrained by such restrictions.

## 12 ~~44~~ REPRESENTATIONS AND WARRANTIES

### 12.1 ~~44-4~~ Timing and repetition

The following applies in relation to the time at which representations and warranties are made and repeated:

- (a) the representations and warranties in Clause ~~44-2-12.2~~ (*Continuing representations and warranties*) are made on the date of the Original Facility Agreement (apart from the representation at paragraphs (dd) and (ee) of Clause ~~44-2-12.2~~ (*Continuing representations and warranties*) which shall only be made on the date of the Original Facility Agreement and shall not be repeated) and shall be deemed to be repeated, with reference mutatis mutandis to the facts and circumstances subsisting, as if made on each day until the Borrower has no remaining obligations, actual or contingent, under or pursuant to this Agreement or any of the other Finance Documents; and
- (b) the representations and warranties in Clause ~~44-3-12.3~~ (*Representations on the Delivery Date*) are made on the Delivery Date and shall be deemed to be repeated, with reference mutatis mutandis to the facts and circumstances subsisting, as if made thereafter on each day until the Borrower has no remaining obligations, actual or contingent, under or pursuant to this Agreement or any of the other Finance Documents.

### 12.2 ~~44-2~~ Continuing representations and warranties

The Borrower represents and warrants to each of the Secured Parties that:

- (a) each Obligor is a limited liability company or body corporate duly organised, constituted and validly existing under the laws of the country of its formation or (as the case may be) incorporation, possessing perpetual existence, the capacity to sue and be sued in its own name and the power to own and charge its assets and carry on its business as it is now being conducted;
  - (b) the Borrower has an authorised 1000 Common Units all of which have been issued to Seven Seas;
  - (c) the legal title to and beneficial interest in the equity in the Borrower is held free of any security or any other claim by Seven Seas;
  - (d) none of the equity in the Borrower is subject to any option to purchase, pre-emption rights or similar rights;
  - (e) each Obligor has the power to enter into and perform this Agreement and those of the other Transaction Documents to which it is a party and the transactions contemplated hereby and thereby and has taken all necessary action to authorise the entry into and performance of this Agreement and such other Transaction Documents and such transactions;
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- (f) this Agreement and each other Transaction Document constitutes (or will constitute when executed) legal, valid and binding obligations of each Obligor expressed to be a party thereto enforceable in accordance with their respective terms and in entering into this Agreement and borrowing the Loan, the Borrower is acting on its own account;
- (g) the entry into and performance of this Agreement and the other Transaction Documents and the transactions contemplated hereby and thereby do not and will not conflict with:
  - (i) any law or regulation or any official or judicial order; or
  - (ii) the constitutional documents of any Obligor; or
  - (iii) any agreement or document to which any Obligor is a party or which is binding upon such Obligor or any of its assets,

nor result in the creation or imposition of any Security Interest on the Borrower or its assets pursuant to the provisions of any such agreement or document, except for Security Interests which qualify as Permitted Security Interests with respect to the Borrower;

- (h) except for:
  - (i) the filing of UCC-1 Financing Statements against the Borrower in respect of those Financing Documents to which it is a party and which create Security Interests;
  - (ii) the recording of the Original Mortgage in the office of the Maritime Administrator of the Republic of the Marshall Islands; and
  - (iii) the registration of the Ship under an Approved Flag,

all authorisations, approvals, consents, licences, exemptions, filings, registrations, notarisations and other matters, official or otherwise, required in connection with the entry into, performance, validity and enforceability of this Agreement and each of the other Transaction Documents to which any Obligor is a party and the transactions contemplated thereby have been obtained or effected and are in full force and effect except authorisations, approvals, consents, licences, exemptions, filings and registrations required in the normal day to day course of the operation of the Ship and not already obtained by the Borrower;

- (i) it is disregarded as an entity separate from its owner for U.S. federal Tax purposes;
  - (j) all information furnished by any Obligor relating to the business and affairs of any Obligor in connection with this Agreement and the other Transaction Documents was and remains true and correct in all material respects and there are no other material facts or considerations the omission of which would render any such information misleading;
  - (k) each Obligor has fully disclosed to the Agent all facts relating to each Obligor which it knows or should reasonably know and which might reasonably be expected to influence the Lenders in deciding whether or not to enter into this Agreement;
  - (l) the obligations of the Borrower and the Guarantor under the Finance Documents rank at least pari passu with all its other present unsecured and unsubordinated indebtedness with the exception of any obligations which are mandatorily preferred by law;
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- (m) the Borrower is and shall remain, after the advance to it of the Loan, solvent in accordance with the laws of the state of Delaware and the United Kingdom and in particular with the provisions of the Insolvency Act 1986 (as from time to time amended) and the requirements thereof;
  - (n) neither the Borrower nor any other Obligor has taken any corporate action nor have any other steps been taken or legal proceedings been started or (to the best of its knowledge and belief) threatened against any of them for the reorganisation, winding-up, dissolution or for the appointment of a liquidator, administrator, receiver, administrative receiver, trustee or similar officer of any of them or any or all of their assets or revenues nor has it sought any other relief under any applicable insolvency or bankruptcy law;
  - (o) (in relation to any date on which this representation and warranty is deemed to be repeated pursuant to paragraph (a) of Clause ~~4.4~~ 12.1 (*Timing and repetition*)) the latest available annual consolidated audited accounts of the Guarantor at the date of repetition (which accounts have been prepared in accordance with GAAP) fairly represent the financial condition of the Guarantor as shown in such audited accounts;
  - (p) none of the Obligors nor any of their respective assets enjoys any right of immunity (sovereign or otherwise) from set-off, suit or execution in respect of their obligations under this Agreement or any of the other Transaction Documents or by any relevant or applicable law;
  - (q) all the membership interest in the Borrower and all shares or membership interest in any Approved Manager which is a member of the Group shall be legally and beneficially owned directly or indirectly by (in the case of the Borrower) Seven Seas and (in the case of such Approved Manager) the Guarantor and such structure shall remain so throughout the Security Period;
  - (r) the copies of the Shipbuilding Contract, any Management Agreement, any charter and any charter guarantee which require a notice of assignment to be served under the terms of the Tripartite General Assignment (if any) and any other relevant third party agreements including but without limitation the copies of any documents in respect of the Insurances delivered to the Agent are true and complete copies of each such document constituting valid and binding obligations of the parties thereto enforceable in accordance with their respective terms and, subject to Clauses ~~13.2~~ 14.2 (*Management and employment*) and ~~12.22~~ 13.22 (*Shipbuilding Contract*), no amendments thereto or variations thereof have been agreed nor has any action been taken by the parties thereto which would in any way render such document inoperative or unenforceable;
  - (s) any borrowing by the Borrower under this Agreement, and the performance of its obligations under this Agreement and the other Transaction Documents, will be for its own account and will not involve any breach by it of any law or regulatory measure relating to "money laundering" as defined in Article 1 of the Directive (91/308/EEC) of the Council of the European Communities (as amended by Directive 2001/97/EC of the European Parliament and of the Council of 4 December 2001); and
  - (t) no Obligor is:
    - (i) 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;
  - (u) 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;
  - (v) the choice of governing law of each Transaction Documents to which it is a party will be recognised and enforced in its Relevant Jurisdictions and 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;
  - (w) 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 situated outside of the European Union and it has no "establishment" (as that term is used in Article 2(h) of the Regulation) in European Union country;
  - (x) no payments made or to be made by the Borrower, Seven Seas or the Guarantor in respect of amounts due under this Agreement or any Finance Document have been or shall be funded out of funds of Illicit Origin and none of the sources of funds to be used by the Borrower, Seven Seas or the Guarantor in connection with the construction of the Ship or its business are of Illicit Origin;
  - (y) to the best of the Borrower's, Seven Seas' and the Guarantor's knowledge, no Prohibited Payment has been or will be made or provided, directly or indirectly, by (or on behalf of) it, any of its affiliates, its or its officers, directors or any other person acting on its behalf to, or for the benefit of, any authority (or any official, officer, director, agent or key employee of, or other person with management responsibilities in, of any authority) in connection with the Ship, this Agreement and/or the Finance Documents;
  - (z) no event has occurred which constitutes a default under or in respect of any Transaction Document to which any Obligor or the Builder is a party or by which any Obligor or the Builder may be bound (including (inter alia) this Agreement) and no event has occurred which constitutes a default under or in respect of any agreement or document to which any Obligor is a party or by which any Obligor may be bound to an extent or in a manner which might have a material adverse effect on the ability of that Obligor to perform its obligations under the Transaction Documents to which it is a party;
  - (aa) none of the assets or rights of the Borrower is subject to any Security Interest except any Security Interest which (i) qualifies as a Permitted Security Interest with respect to the Borrower or (ii) is permitted by Clause ~~42.7~~ [13.7](#) (*Negative pledge*) of this Agreement;
  - (bb) no litigation, arbitration or administrative proceedings are current or pending or, to its knowledge, threatened, which might, if adversely determined, have a material adverse effect on the ability of an Obligor to perform its obligations under the Transaction Documents to which it is a party;
  - (cc) to the best of its knowledge, each of the Obligors has complied with all taxation laws in all jurisdictions in which it is subject to taxation and has paid all Taxes due and payable by it;
  - (dd) it is not required to make any deduction for or on account of Tax from any payment it may make under any Finance Document to which it is a party with respect to any Lender that
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- provides the documentation described in paragraph (b) of Clause ~~10.7~~11.7 (*Lender Status*) indicating that it is not subject to tax withholding;
- (ee) under the laws of its Relevant Jurisdictions it is not necessary that any stamp 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;
  - (ff) each member of the Group has good and marketable title to all its assets which are reflected in the audited accounts referred to in paragraph (o) of Clause ~~11.2~~12.2 (*Continuing representations and warranties*);
  - (gg) none of the Obligors has a place of business in any jurisdiction (except as already disclosed) which requires any of the Finance Documents to be filed or registered in that jurisdiction to ensure the validity of the Finance Documents to which it is a party;
  - (hh) each of the Obligors and each member of the Group:
    - (i) is in compliance with all Environmental Laws and Environmental Approvals provided that any non-compliance would not be expected to result in a Material Adverse Effect;
    - (ii) has not received any notice or threat of any Environmental Claim against any member of the Group and no person has claimed that an Environmental Incident has occurred in each case that would reasonably be expected to result in a Material Adverse Effect;
    - (iii) confirms that no Environmental Incident has occurred and no person has claimed that an Environmental Incident has occurred in each case that would reasonably be expected to result in a Material Adverse Effect.

### 12.3 ~~11.3~~ **Representations on the Delivery Date**

The Borrower further represents and warrants to each of the Secured Parties on the Delivery Date that:

- (a) the Ship is in its absolute and unencumbered ownership save as contemplated by the Finance Documents;
  - (b) the Ship is registered in its name under the laws and flag of the Maritime Registry;
  - (c) the Ship is classed with the highest classification available for a Ship of its type free of all recommendations and qualifications with Lloyd's Register, RINA or Bureau Veritas;
  - (d) the Ship is operationally seaworthy and in compliance with all relevant provisions, regulations and requirements (statutory or otherwise) applicable to ships registered under the laws and flag of the Maritime Registry;
  - (e) the Ship is in compliance with the ISM Code, the ISPS Code and Annex VI as they relate to the Borrower, any Approved Manager and the Ship;
  - (f) the Ship is insured in accordance with the provisions of Clause ~~14~~15 (*Insurance Undertakings*) and in compliance with the requirements therein in respect of such insurances;
-

- (g) the Ship is managed by the Approved Manager and, in the event that the Approved Manager is not a member of the Group, on and subject to the terms set out in the Management Agreement;
- (h) there is no agreement or understanding to allow or pay any rebate, premium, inducement, commission, discount or other benefit or payment (however described) to the Borrower or any other member of the Group, the Builder or a third party in connection with the purchase by the Borrower of the Ship, other than as disclosed to the Agent in writing on or before the date of this Agreement; and
- (i) no 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 Agent sufficient details to enable an accurate search against it to be undertaken by the Lenders at the Companies Registry.

## **13 ~~42~~GENERAL UNDERTAKINGS**

### **13.1 ~~42.1~~General**

The Borrower undertakes with each Secured Party to comply with the following undertakings during the Security Period:

### **13.2 ~~42.2~~Information**

The Borrower will provide to the Agent for the benefit of the Lenders and SACE (or will procure the provision of):

- (a) as soon as practicable (and in any event within one hundred and twenty (120) days after the close of its financial year) a Certified Copy of the audited consolidated accounts of the Guarantor and its subsidiaries for that year (commencing with accounts made up to 31 December 2016 in the case of the consolidated accounts of the Guarantor);
  - (b) as soon as practicable (and in any event within forty-five (45) days of the end of the contemplated quarter for the first three quarters in any fiscal year and within 90 days for the final quarter) a copy of the unaudited consolidated quarterly management accounts of the Guarantor (it being understood that the delivery by the Guarantor of quarterly or annual reports as filed with the Securities and Exchange Commission in respect of the Guarantor and its consolidated subsidiaries shall satisfy all the requirements of this paragraph (b));
  - (c) promptly, such further information in its possession or control regarding the condition or operations of the Ship and its financial condition and operations of the Borrower and those of any company in the Group as the Agent may reasonably request for the benefit of the Secured Parties; and
  - (d) details of any material litigation, arbitration or administrative proceedings (including proceedings relating to any alleged or actual breach of Sanctions, the ISM Code of the ISPS Code) which affect any company in the Group as soon as the same are instituted and served, or, to the knowledge of the Borrower, threatened (and for this purpose proceedings shall be deemed to be material if they involve a claim in an amount exceeding twenty million Dollars or the equivalent in another currency provided that this threshold shall not apply to any proceedings relating to Sanctions).
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All accounts required under this Clause ~~42.2-13.2~~ (*Information*) shall be prepared in accordance with GAAP and shall fairly represent the financial condition of the relevant company.

**13.3 ~~42.3~~ Illicit Payments**

No payments made by the Borrower, Seven Seas, the Guarantor or any Approved Manager which is a member of the Group in respect of amounts due under this Agreement or any Finance Document shall be funded out of funds of Illicit Origin and none of the sources of funds to be used by the Borrower, Seven Seas, the Guarantor or any Approved Manager which is a member of the Group in connection with the construction of the Ship or its business shall be of Illicit Origin.

**13.4 ~~42.4~~ Prohibited Payments**

No Prohibited Payment shall be made or provided, directly or indirectly, by (or on behalf of) the Borrower, Seven Seas, the Guarantor or any of their affiliates, officers, directors or any other person acting on its behalf to, or for the benefit of, any authority (or any official, officer, director, agent or key employee of, or other person with management responsibilities in, of any authority) in connection with the Ship, this Agreement and/or the Finance Documents.

**13.5 ~~42.5~~ Notification of default**

The Borrower will notify the Agent of any Event of Default forthwith upon becoming aware of the occurrence thereof. Upon the Agent's request from time to time the Borrower will issue a certificate stating whether any Obligor is aware of the occurrence of any Event of Default.

**13.6 ~~42.6~~ Consents and registrations**

The Borrower will procure that (and will promptly furnish Certified Copies to the Agent on the request of the Agent of) all such authorisations, approvals, consents, licences and exemptions as may be required under any applicable law or regulation to enable it or any Obligor to perform its obligations under, and ensure the validity or enforceability of, each of the Transaction Documents are obtained and promptly renewed from time to time and will procure that the terms of the same are complied with at all times. Insofar as such filings or registrations have not been completed on or before the Drawdown Date the Borrower will procure the filing or registration within applicable time limits of each Finance Document which requires filing or registration together with all ancillary documents required to preserve the priority and enforceability of the Finance Documents.

**13.7 ~~42.7~~ Negative pledge**

The Borrower will not create or permit to subsist any Security Interest on the whole or any part of its present or future assets, except for the following:

- (a) Security Interests created with the prior consent of the Agent; or
  - (b) Security Interests qualifying as Permitted Security Interests with respect to the Borrower and described in paragraphs (a) and (b) of the definition of "Permitted Security Interests" in Clause 1.1 (*Definitions*); or
  - (c) Security Interests qualifying as Permitted Security Interests with respect to the Borrower and described in paragraphs (C), (E), (H) or (I) of such definition, provided that insofar as they are enforceable against the Ship they do not prevail over the Mortgage.
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### **13.8 ~~42-8~~ Disposals**

Except in the case of a sale of the Ship if the completion of the sale is contemporaneous with prepayment of the Loan in accordance with the provisions of Clause ~~46-3~~ 17.3 (*Mandatory prepayment – Sale and Total Loss*) and except for charters and other arrangements complying with Clause ~~43-4~~ 14.1 (*Pooling of earnings and charters*) the Borrower shall not without the consent of the Majority Lenders and SACE, either in a single transaction or in a series of transactions whether related or not and whether voluntarily or involuntarily, (i) sell, transfer, lease or otherwise dispose of the Ship or any of the Ship's equipment except in the case of items (a) being replaced (by an equivalent or superior item) or renewed or (b) that are being disposed of in the ordinary course of business **provided that** in the case of both (a) and (b) the net impact does not reduce the value of the Ship and, in the case of (b), the value of any such disposals during the term of this Agreement do not, in aggregate, exceed \$3,000,000 (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 the same 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.

### **13.9 ~~42-9~~ Change of business**

Except with the prior consent of the Agent, the Borrower shall not make or threaten to make any substantial change in its business as presently conducted, namely that of a single ship owning company for the Ship, or carry on any other business which is substantial in relation to its business as presently conducted so as to affect, in the opinion of the Agent, the Borrower's ability to perform its obligations hereunder.

### **13.10 ~~42-10~~ Mergers**

Except with the prior consent of the Lenders and SACE and subject to compliance with all necessary "know your customer" requirements, the Borrower will not enter into any amalgamation, restructure, substantial reorganisation, merger, de-merger or consolidation or anything analogous to the foregoing nor will it acquire any equity, share capital or obligations of any corporation or other entity.

### **13.11 ~~42-11~~ Maintenance of status and franchises**

The Borrower will do all such things as are necessary to maintain its limited liability company existence in good standing and will ensure that it has the right and is duly qualified to conduct its business as it is conducted in all applicable jurisdictions and will obtain and maintain all franchises and rights necessary for the conduct of its business.

### **13.12 ~~42-12~~ Financial records**

The Borrower will keep proper books of record and account, in which proper and correct entries shall be made of all financial transactions and the assets, liabilities and business of the Borrower in accordance with GAAP.

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**13.13 ~~42-43~~ Financial Indebtedness and subordination of indebtedness**

The following restrictions shall apply:

- (a) otherwise than in the ordinary course of business as owner of the Ship, except as contemplated by this Agreement and except any loan, advance or credit extended by the Guarantor or any member of the Group which is a wholly owned Subsidiary of the Guarantor, the Borrower will not create, incur, assume or allow to exist any financial indebtedness, enter into any finance lease or undertake any material capital commitment (including but not limited to the purchase of any capital asset); and
- (b) the Borrower shall procure that any and all indebtedness (and in particular with any other Obligor) is at all times fully subordinated to the Finance Documents and the obligations of the Borrower hereunder. Upon the occurrence of an Event of Default, the Borrower shall not make any repayments of principal, payments of interest or of any other costs, fees, expenses or liabilities arising from or representing such indebtedness. In this paragraph (b) of Clause ~~42-43~~ 13.13 (*Financial Indebtedness and subordination of indebtedness*) "fully subordinated" shall mean that any claim of the lender against the Borrower in relation to such indebtedness shall rank after and be in all respects subordinate to all of the rights and claims of the Secured Parties under this Agreement and the other Finance Documents and that the lender shall not take any steps to enforce its rights to recover any monies owing to it by the Borrower and in particular but without limitation the lender will not institute any legal or quasi-legal proceedings under any jurisdiction at any time against the Ship, her Earnings or Insurances or the Borrower and it will not compete with the Secured Parties or any of them in a liquidation or other winding-up or bankruptcy of the Borrower or in any proceedings in connection with the Ship, her Earnings or Insurances.

**13.14 ~~42-44~~ Investments**

The Borrower shall not:

- (a) be the creditor in respect of any loan or any form of credit to any person other than another Obligor and where such loan or form of credit is Permitted Financial Indebtedness;
  - (b) 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 the Borrower assumes any liability of any other person other than any guarantee or indemnity given under the Finance Documents.
  - (c) enter into any material agreement other than:
    - (i) the Transaction Documents;
    - (ii) any other agreement expressly allowed under any other term of this Agreement; and
  - (d) enter into any transaction on terms which are, in any respect, less favourable to the Borrower than those which it could obtain in a bargain made at arms' length; or
  - (e) acquire any shares or other securities other than US or UK Treasury bills and certificates of deposit issued by major North American or European banks.
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**13.15 ~~42.45~~ Unlawfulness, invalidity and ranking; Security imperilled**

No Obligor shall 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 an Obligor to perform any of its obligations under the Transaction Documents;
- (b) cause any obligation of an Obligor under the Finance Documents to cease to be legal, valid, binding or enforceable if that cessation individually or together with any other cessations materially or adversely affects the interests of the Secured Parties under the Transaction Documents;
- (c) cause any Transaction Document to cease to be in full force and effect;
- (d) cause any Security Interest to rank after, or lose its priority to, any other Security Interest; and
- (e) imperil or jeopardise any Security Interest.

**13.16 ~~42.46~~ Dividends and dividend restriction**

- (a) Subject to paragraph (b) below, the Borrower shall not make or pay any dividend or other distribution (in cash or in kind) in respect of its share capital other than dividends and distributions that are transferred to Seven Seas or the Guarantor provided that no Event of Default has occurred or is continuing or would result from the payment of any dividend.
- (b) During the period from the 2020 Deferral Effective Date up to and including the 2021 Deferral Final Repayment Date, the Borrower shall not, and shall procure that the Guarantor, Seven Seas and the Holding shall not:
  - (i) declare, make or pay any dividend or other distribution (or interest on any unpaid dividend or other distribution) (whether in cash or in kind) on or in respect of its share capital (or any class of its share capital);
  - (ii) repay or distribute any dividend or share premium reserve;
  - (iii) make any repayment of any kind under any shareholder loan; or
  - (iv) redeem, repurchase (whether by way of share buy-back program or otherwise), defease, retire or repay any of its share capital or resolve to do so,

except that (A) any Obligor other than the Guarantor may pay dividends and other distributions, directly or indirectly, to the Guarantor for the purpose of providing liquidity to the Guarantor to enable the Guarantor to satisfy payment obligations for which the Guarantor is an obligor and (B) any Obligor may pay dividends in respect of the Tax liability to each relevant jurisdiction in respect of consolidated, combined, unitary or affiliated Tax returns for each relevant jurisdiction of the Group or the Holding or holder of the Guarantor's capital stock with respect to income taxable as a result of any member of the Group or the Holding being taxed as a pass-through entity for U.S. Federal, state and local income tax purposes or attributable to any member of the Group, (C) the Guarantor and the Holding may pay dividends and other distributions (x) in respect of a conversion, exchange, or repurchase of convertible or exchangeable notes and any conversion of preference shares to ordinary shares in connection therewith, provided that the cash portion of a repurchase of convertible or

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exchangeable notes is limited to the amount of interest that would otherwise be payable through maturity on the amount of such convertible or exchangeable notes being repurchased plus any amount in lieu of fractional shares, and (y) to the extent contractually owed to holders of equity in the Guarantor or the Holding and (D) the Guarantor may pay dividends and other distributions to the Holding for the purposes of providing cash to the Holding for the payment of any Tax payable in connection with the Holding's equity plan,

provided that the actions in paragraph (B) and (C) above shall only be permitted if there is no Event of Default which is continuing under this Agreement and no Event of Default would arise from the payment of such dividend.

**13.17 ~~42:47~~ Loans and guarantees by the Borrower**

Otherwise than in the ordinary course of business in its ownership and operation of the Ship following the Delivery Date, the Borrower will not make any loan or advance or extend credit to any person, firm or corporation or issue or enter into any guarantee or indemnity or otherwise become directly or contingently liable for the obligations of any other person, firm or corporation.

**13.18 ~~42:48~~ Acquisition of shares**

The Borrower will not:

- (a) acquire any equity, share capital, assets or obligations of any corporation or other entity; or
- (b) permit any of its membership interest to be directly held other than by Seven Seas.

**13.19 ~~42:49~~ Further assurance**

The Borrower will, from time to time on being required to do so by the Agent, do or procure the doing of all such acts and/or execute or procure the execution of all such documents in a form satisfactory to the Agent as the Agent may reasonably consider necessary for giving full effect to any of the Transaction Documents, the Interest Make-Up Agreement or the SACE Insurance Policy or securing to the Secured Parties the full benefit of the rights, powers and remedies conferred upon the Secured Parties or any of them in any such Transaction Document the Interest Make-Up Agreement or the SACE Insurance Policy.

**13.20 ~~42:20~~ Irrevocable payment instructions**

The Borrower shall not modify, revoke or withhold the payment instructions set out in Clause 4.1 (*Borrower's irrevocable payment instructions*) without the agreement of the Builder (in the case of paragraph (a) of Clause 4.1 (*Borrower's irrevocable payment instructions*) only), the Agent, SACE and the Lenders.

**13.21 ~~42:24~~ "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 the Original Facility Agreement;
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- (ii) any change in the status of the Borrower after the date of the Original Facility Agreement; or
- (iii) a proposed assignment or transfer by a Lender of any of its rights and obligations under this Agreement to a party that is not a Lender prior to such assignment or transfer,

obliges the Agent or any Lender (or, in the case of paragraph (iii) of Clause ~~42-21~~ 13.21 ("*Know your customer*" checks), 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 or the Lenders (acting reasonably) require any additional documents to supplement those already provided, the Borrower shall promptly upon the request of the Agent or any Lender supply, or procure the supply of, such documentation and other evidence as is reasonably requested by the Agent (for itself or on behalf of any Lender) or any Lender (for itself or, in the case of the event described in paragraph (iii) of Clause ~~42-21~~ 13.21 ("*Know your customer*" checks), on behalf of any prospective new Lender) in order for the Agent and, such 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.

### 13.22 ~~42-22~~ **Shipbuilding Contract**

The Shipbuilding Contract constitutes legal, valid and binding and enforceable obligations of the Builder and the Borrower shall not modify the Shipbuilding Contract, directly or indirectly, if such modifications (in aggregate) would result in (i) a change to the type or class of the Ship or (ii) decrease the value of the Ship by equal to or greater than 5 per cent (in aggregate). The Borrower will, therefore, submit to the Agent any proposals for any such modification and SACE and the Agent on behalf of the Lenders will indicate in a timely manner whether the modification proposed will allow the Loan to be maintained. On or about the last day of each successive period of three (3) months commencing on the date of the Original Facility Agreement and on the date of the Drawdown Notice, the Borrower undertakes to provide the Agent with a copy of any Change Order entered into during that three (3) month or other period. The Borrower also undertakes to notify the Agent of any change in the Intended Delivery Date as soon as practicable after each change has occurred.

### 13.23 ~~42-23~~ **FOREX Contracts**

The Borrower shall:

- (a) provide the Agent with a copy of all FOREX Contracts together with all relevant details within ten (10) days of their execution; and
- (b) inform the Agent, when requested by the Agent, of its intended hedging policy for purchasing Euro with Dollars.

The Agent shall inform the Lenders within ten (10) days of receipt of such information from the Borrower.

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**13.24 ~~42-24~~ Compliance with laws etc.**

The Borrower shall:

- (a) comply, or procure compliance with:
  - (i) in all material respects, all laws and regulations relating to its business generally; and
  - (ii) in all material respects (except in the case of compliance with Sanctions which must be complied with in all respects), all laws or regulations relating to the Ship, its ownership, employment, operation, management and registration,  
  
including 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 Environment Approvals which are applicable to it; and
- (c) without limiting paragraph (a) above, not employ the Ship 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.

**13.25 ~~42-25~~ Most favoured nations**

- (a) The Borrower shall procure that if at any time after the date of the Original Facility Agreement the Guarantor enters into any financial contract or financial document relating to any Financial Indebtedness with or which has the support of any export credit agency and which contains *pari passu* provisions or cross default provisions which are more favourable to the lenders than those contained in paragraph (l) of Clause ~~11-2-12.2~~ (*Continuing representations and warranties*) and Clause ~~18-6-19.6~~ (*Cross default*) respectively, the Borrower or the Guarantor shall immediately notify the Agent of such provisions and the relevant provisions contained in this Agreement shall be deemed amended so that such more favourable *pari passu* provisions or cross default provisions are granted to the Creditor Parties pursuant to this Agreement.
  - (b) The Borrower undertakes that if at any time after the date of this Agreement and until the occurrence of a Reinstatement Event, it or any other member of the Group is required to grant additional security in relation to a financial contract or financial document relating to any existing Financial Indebtedness:
    - (i) with the support of any export credit agency (excluding any extensions, increases or changes to the terms and conditions thereof), such security shall be granted on a *pari passu* basis to the Lenders (and the Security Trustee agrees to enter and/or procure the entry by the relevant Secured Parties into such intercreditor documentation to reflect such *pari passu* ranking (in form and substance reasonably satisfactory to the Secured Parties) as may be required in connection with such arrangements); or
    - (ii) without the support of any export credit agency (excluding any extensions, increases or changes to the terms and conditions thereof), such security shall (without prejudice to any of the Obligors' other obligations under the Finance Documents), subject to the provisions of clause 11.11 (*Negative pledge*) of the Guarantee and Clause ~~42-7-13.7~~ (*Negative pledge*), be permitted provided that it shall not have an adverse effect on any Security Interests or other rights granted to the Secured Parties under the Finance Documents.
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- (c) ~~In~~ Until the occurrence of a Reinstatement Event, in respect of any new Financial Indebtedness (other than Permitted Financial Indebtedness), or any extensions, increases or changes to the terms and conditions of any existing Financial Indebtedness, in each case with or which has the support of any export credit agency, the Borrower shall enter into good faith negotiations with the Security Trustee to grant additional security for the purpose of further securing the Loan, provided that any failure to reach agreement under this paragraph (c) following such good faith negotiations shall not constitute an Event of Default.

**13.26 ~~42.26~~ New capital raises or financing**

- (a) Save as provided below:
- (i) no new debt ~~or equity issuance~~ shall be raised and no new Financial Indebtedness shall be incurred by the Group (including, for the avoidance of doubt, inter-company loans);
  - (ii) no non-arm's length disposals of any asset relating to the Group fleet shall be made; and
  - (iii) no additional Security Interests securing existing Financial Indebtedness will be created or permitted to subsist by any Obligor (unless the Lenders benefit from this new security on a *pari passu* basis),

during the period up to and including the 2021 Deferral Final Repayment Date.

- (b) The restrictions in paragraph (a) of this Clause ~~42.26-13.26~~ (*New capital raises or financing*) above shall not apply in relation to:
- (i) any refinancing of any bond issuance of, or loan entered into by, the Group (A) which matures during such period or (B) where not maturing during such period, shall be on terms ~~which include any of the following (evidence of which shall be provided to the Agent by the Guarantor)~~ resulting, when taken as a whole, in an improvement of the ability of the Obligors to meet their obligations under the Finance Documents, which terms include any of the following: an extension of the repayment terms; or a decrease in the interest rate; or the conversion of such Financial Indebtedness from secured to unsecured or first to second priority;
  - (ii) any debt ~~or equity issuance~~ provided prior to 31 December ~~2022-2023~~ to provide the Group with crisis and/or recovery related funding in respect of the impact of the Covid-19 pandemic;
  - (iii) any debt ~~or equity issuance~~ being raised on or after 31 December ~~2022-2023~~ to support the Group with the impact of the Covid-19 pandemic, made with the prior written consent of SACE;
  - (iv) any debt ~~or equity issuance~~ being raised to finance any instalment of a cruise vessel already contracted for or contracted for during such period or any refurbishment, maintenance, upgrade or lengthening of a cruise ship during such period (including without limitation any costs incurred by the owner of a cruise ship in connection therewith);
  - (v) any debt ~~or equity issuance~~ being raised to finance capital expenditure for projects which are already contracted for but in respect of which committed financing has not yet been obtained, and which, in each case has been (or will be) listed in the
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Information Package submitted to the Agent prior to the February 2021 Deferral-Effective Date;

- (vi) any extension or renewal of revolving credit facilities, and made with the prior written consent of SACE if any additional security is to be granted;
  - (vii) any new debt ~~or equity issuance~~ otherwise agreed by SACE; or
  - (viii) any inter-company loan or operating arrangement which from an accounting perspective has the effect of an intercompany loan (an "**intercompany arrangement**") which:
    - (A) is existing as at the date of the 2021 Amendment and Restatement Agreement;
    - (B) is made among any Group members or any Group member with the Holding provided that:
      - (1) any inter-company arrangement is made solely for the purpose of regulatory or Tax purposes carried out in the ordinary course of business and on an arm's length basis; and
      - (2) the aggregate principal amount of any inter-company arrangements outstanding pursuant to ~~this sub-~~paragraph (b)(viii)(B) of Clause ~~12.26-13.26~~ (*New capital raises or financing*) does not exceed [\*] Dollars (\$[\*]) at any time; or
    - (C) has been approved with the prior written consent of SACE;
  - (ix) any Permitted Security Interest;
  - (x) any Security Interest ~~pursuant~~ otherwise approved with the prior written consent of SACE; and
  - (xi) any Financial Indebtedness incurred in the ordinary course of business which in the aggregate does not exceed USD [\*] during any twelve-month period; ~~and, it being provided that:~~
    - (A) prior to 31 December 2022, this amount shall be increased to USD [\*] for any Financial Indebtedness incurred to finance capital expenditure for Approved Projects; and
    - (B) if any part of such Financial Indebtedness allocated prior to 31 December 2022 to an Approved Project remains unused throughout the twelve-month period of year 2022, the surplus may be carried over to increase the relevant Financial Indebtedness throughout the twelve-month period of year 2023 for that Approved Project only;
  - (xii) without prejudice to Clauses ~~12.10-13.10~~ (*Mergers*) and ~~12.14-13.14~~ (*Investments*) and clause 11.13 (*No merger*) of the Guarantee, the issuance of share capital by any Group member to another Group member; and
  - (xiii) any extension, renewal, replacement or upsizing in respect of the Term and Revolving Credit Facilities (including the granting of additional Security Interests).
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(xiv) and, for the avoidance of doubt, no debt or equity issuance shall be raised in respect of any form of merger, sub-division, amalgamation, restructuring, consolidation, winding-up, dissolution or anything analogous thereto or acquisition of any entity, share capital or obligations of any corporation or other entity.

## **14 ~~13~~SHIP UNDERTAKINGS**

### **14.1 ~~13.1~~Pooling of earnings and charters**

The Borrower will not without the prior written consent of the Agent or SACE enter into in respect of the Ship (such consent for the purposes of paragraph (e) of Clause ~~13.1~~14.1 (*Pooling of earnings and charters*) shall not be unreasonably withheld or delayed), nor permit to exist at any time following the Delivery Date:

- (a) any pooling agreement or other arrangement for the sharing of any of the Earnings or the expenses of the Ship except with a member of the Group and provided that it does not adversely affect the rights of the Secured Parties under the Finance Documents in the reasonable opinion of the Agent; or
  - (b) any demise or bareboat charter (other than the Bareboat Charter), provided however that such consent shall not be unreasonably withheld in the event that the Borrower wishes to enter into a bareboat charter in a form approved by the Agent with another member of the Group on condition that if so requested by the Agent and without limitation:
    - (i) any such bareboat charterer shall enter into such deeds (including but not limited to a full subordination and assignment deed in respect of its rights under the bareboat charter and its interest in the Insurances and earnings payable to it arising out of its use of the Ship), agreements and indemnities as the Majority Lenders and SACE shall require prior to entering into the bareboat charter with the Borrower; and
    - (ii) the Borrower shall assign the benefit of any such bareboat charter and its interest in the Insurances to the Secured Parties by way of further security for the Borrower's obligations under the Finance Documents.; or
  - (c) any charter whereunder two (2) months' charterhire (or the equivalent thereof) is payable in advance in respect of the Ship; or
  - (d) any charter of the Ship or employment which, with the exercise of options for extension, could be for a period longer than [\*] ([\*]) months; or
  - (e) any time charter of the Ship with a company outside the Group (other than a time charter entered into in the ordinary course of business which does not exceed [\*] ([\*]) months **provided that** any such time charter (y) is assigned to the Security Trustee and (z) during the period of such time charter, the Ship continues to be managed by the existing Approved Manager), provided however that such consent shall not be unreasonably withheld in the event that:
    - (i) such time charter is assigned to the Security Trustee and the Borrower agrees to serve a notice of assignment of any time charter, the Earnings therefrom and any guarantee of the charterer's obligations on the time charterer and any time charter guarantor substantially in the form appended to the Tripartite General Assignment;
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- (ii) the Agent is satisfied that the income from such time charter will be sufficient to cover the expenses of the Ship and to service repayment of the Loan and all other amounts from time to time outstanding under this Agreement; and
- (iii) during the term of such time charter, the Ship continues to be managed by the existing Approved Manager.

#### 14.2 ~~13.2~~ Management and employment

The Borrower will not as from the Delivery Date:

- (a) permit any person other than an Approved Manager to be the manager of, including providing crewing services to, the Ship, at all times acting upon terms approved in writing by the Agent and having entered into (in the case of the Approved Manager) an Approved Manager's Undertaking; and
- (b) permit any amendment to be made to the terms of any Management Agreement unless the amendment is advised by the Borrower's tax counsel or is deemed necessary by the parties thereto to reflect the prevailing circumstances but provided that the amendment does not imperil the security to be provided pursuant to the Finance Documents or adversely affect the ability of any Obligor to perform its obligations under the Transaction Documents; or
- (c) permit the Ship to be employed other than within the Seven Seas brand unless the Borrower notifies the Lenders that they intend to employ the Ship within another brand of the Group and the ship remains employed within the Group.

#### 14.3 ~~13.3~~ Trading with the United States of America

The Borrower shall in respect of the Ship take all reasonable precautions as from the Delivery Date to prevent any infringements of the Anti-Drug Abuse Act of 1986 of the United States of America (as the same may be amended and/or re-enacted from time to time hereafter) or any similar legislation applicable to the Ship in any other jurisdiction in which the Ship shall trade (a "**Relevant Jurisdiction**") where the Ship trades in the territorial waters of the United States of America or a Relevant Jurisdiction.

#### 14.4 ~~13.4~~ Valuation of the Ship

The following shall apply in relation to the valuation of the Ship:

- (a) the Borrower will on or before 31 May of each year that commences after the delivery of the Ship and at annual intervals thereafter unless an Event of Default has occurred and remains unremedied, at the Borrower's expense, procure that the Ship is valued by an Approved Broker (such valuation to be made without taking into account the benefit or otherwise of any fixed employment relating to the Ship);
  - (b) the Borrower shall procure that forthwith upon the issuance of any valuation obtained pursuant to this Clause ~~13.4~~ 14.4 (*Valuation of the Ship*) a copy thereof is sent directly to the Agent for review; and
  - (c) in the event that the Borrower fails to procure a valuation in accordance with paragraph (a) of Clause ~~13.4~~ 14.4 (*Valuation of the Ship*), the Agent shall be entitled to procure a valuation of the Ship on the same basis.
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#### 14.5 ~~13-5~~ Earnings

The Borrower will procure that the Earnings (if any) are paid in full without set off and free and clear of and without deduction for any taxes, levies, duties, imposts, charges, fees, restrictions or conditions of any nature whatsoever.

#### 14.6 ~~13-6~~ Operation and maintenance of the Ship

From the Delivery Date until the end of the Security Period at its own expense the Borrower will keep the Ship in a good and efficient state of repair so as to maintain it to the highest classification notation available for the Ship of its age and type free of all recommendations and qualifications with Bureau Veritas or DNV. On the Delivery Date and annually thereafter, it will furnish to the Agent a statement by such classification society that such classification notation is maintained. It will comply with all recommendations, regulations and requirements (statutory or otherwise) from time to time applicable to the Ship and shall have on board as and when required thereby valid certificates showing compliance therewith and shall procure that all repairs to or replacements of any damaged, worn or lost parts or equipment are carried out (both as regards workmanship and quality of materials) so as not to diminish the value or class of the Ship. It will not make any substantial modifications or alterations to the Ship or any part thereof which would reduce the market and commercial value of the Ship determined in accordance with Clause ~~13-4~~ 14.4 (*Valuation of the Ship*).

#### 14.7 ~~13-7~~ Surveys and inspections

The Borrower will:

- (a) submit the Ship to continuous survey in respect of its machinery and hull and such other surveys as may be required for classification purposes and, if so required by the Agent, supply to the Agent copies in English of the survey reports;
- (b) permit surveyors or agents appointed by the Agent to board the Ship to inspect its condition or satisfy themselves as to repairs proposed or already carried out and afford all proper facilities for such inspections **provided that**, unless an Event of Default has occurred or there is an accident to the Ship involving repairs the cost of which will or is likely to exceed \$[\*], such inspections shall be limited to one a year and shall be at all reasonable times.

#### 14.8 ~~13-8~~ ISM Code

The Borrower will comply, or procure that the Approved Manager will comply, with the ISM Code (as the same may be amended from time to time) or any replacement of the ISM Code (as the same may be amended from time to time) and in particular, without prejudice to the generality of the foregoing, as and when required to do so by the ISM Code and at all times thereafter:

- (a) hold, or procure that the Approved Manager holds, a valid Document of Compliance duly issued to the Borrower or the Approved Manager (as the case may be) pursuant to the ISM Code and a valid Safety Management Certificate duly issued to the Ship pursuant to the ISM Code;
  - (b) provide the Agent with copies of any such Document of Compliance and Safety Management Certificate as soon as the same are issued; and
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- (c) keep, or procure that there is kept, on board the Ship a copy of any such Document of Compliance and the original of any such Safety Management Certificate.

**14.9 ~~43-9~~ ISPS Code**

The Borrower will comply, or procure that the Approved Manager will comply, with the ISPS Code (as the same may be amended from time to time) or any replacement of the ISPS Code (as the same may be amended from time to time) and in particular, without prejudice to the generality of the foregoing, as and when required to do so by the ISPS Code and at all times thereafter:

- (a) keep, or procure that there is kept, on board the Ship the original of the International Ship Security Certificate required by the ISPS Code; and
- (b) keep, or procure that there is kept, on board the Ship a copy of the ship security plan prepared pursuant to the ISPS Code.

**14.10 ~~43-10~~ Annex VI**

The Borrower will comply with Annex VI (as the same may be amended from time to time) or any replacement of Annex VI (as the same may be amended from time to time) and in particular, without limitation, to:

- (a) procure that the Ship's master and crew are familiar with, and that the Ship complies with, Annex VI; and
- (b) maintain for the Ship throughout the Security Period a valid and current IAPPC and provide a copy to the Agent; and
- (c) notify the Agent immediately in writing of any actual or threatened withdrawal, suspension, cancellation or modification of the IAPPC.

**14.11 ~~43-11~~ Employment of Ship**

The Borrower shall:

- (a) not employ the Ship or permit its employment in any trade or business which is forbidden by any applicable law or is otherwise illicit or in carrying illicit or prohibited goods or in any manner whatsoever which may render it liable to condemnation in a prize court or to destruction, seizure or confiscation or that may expose the Ship to penalties. In the event of hostilities in any part of the world (whether war be declared or not) it will not employ the Ship or permit its employment in carrying any contraband goods; and
- (b) promptly provide the Agent with (i) all information which the Agent may reasonably require regarding the Ship, its employment, earnings, position and engagements (ii) particulars of all towages and salvages and (iii) copies of all charters and other contracts for its employment and otherwise concerning it.

**14.12 ~~43-12~~ Provision of information**

The Borrower shall give notice to the Agent promptly and in reasonable detail upon the Borrower or any other Obligor becoming aware of:

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- (a) accidents to the Ship involving repairs the cost of which will or is likely to exceed [\*] Dollars (\$[\*]);
- (b) the Ship becoming or being likely to become a Total Loss;
- (c) any recommendation or requirement made by any insurer or classification society or by any competent authority which is not complied with, or cannot be complied with, within any time limit relating thereto and that might reasonably affect the maintenance of either the Insurances or the classification of the Ship;
- (d) any writ or claim served against or any arrest of the Ship or the exercise of any lien or purported lien on the Ship, her Earnings or Insurances;
- (e) the Ship ceasing to be registered under the flag of the Maritime Registry or anything which is done or not done whereby such registration may be imperilled;
- (f) it becoming impossible or unlawful for it to fulfil any of its obligations under the Finance Documents; and
- (g) anything done or permitted or not done in respect of the Ship by any person which is likely to imperil the security created by the Finance Documents.

**14.13 ~~13.13~~ Payment of liabilities**

The Borrower shall promptly pay and discharge:

- (a) all debts, damages and liabilities, taxes, assessments, charges, fines, penalties, tolls, dues and other outgoings in respect of the Ship and keep proper books of account in respect thereof provided always that the Borrower shall not be obliged to compromise any debts, damages and liabilities as aforesaid which are being contested in good faith subject always that full details of any such contested debt, damage or liability which, either individually or in aggregate exceeds [\*] Dollars (\$[\*]) shall forthwith be provided to the Agent. As and when the Agent may so require the Borrower will make such books available for inspection on behalf of the Agent and provide evidence satisfactory to the Agent that the wages and allotments and the insurance and pension contributions of the master and crew are being regularly paid, that all deductions of crew's wages in respect of any tax liability are being properly accounted for and that the master has no claim for disbursements other than those incurred in the ordinary course of trading on the voyage then in progress or completed prior to such inspection;
  - (b) all liabilities which have given rise, or may give rise, to liens or claims enforceable against the Ship under the laws of all countries to whose jurisdiction the Ship may from time to time be subject and in particular the Borrower hereby agrees to indemnify and hold the Secured Parties, their successors, assigns, directors, officers, shareholders, employees and agents harmless from and against any and all claims, losses, liabilities, damages, expenses (including attorneys, fees and expenses and consultant fees) and injuries of any kind whatsoever asserted against the Secured Parties, with respect to or as a result of the presence, escape, seepage, spillage, release, leaking, discharge or migration from the Ship or other properties owned or operated by the Borrower of any hazardous substance, including without limitation, any claims asserted or arising under any applicable environmental, health and safety laws, codes and ordinances, and all rules and regulations promulgated thereunder of all governmental agencies, regardless of whether or not caused by or within the control of the Borrower subject to the following:
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- (i) it is the parties' understanding that the Secured Parties do not now, have never and do not intend in the future to exercise any operational control or maintenance over the Ship or any other properties and operations owned or operated by the Borrower, nor in the past, presently, or intend in the future to, maintain an ownership interest in the Ship or any other properties owned or operated by the Borrower except as may arise upon enforcement of the Lenders' rights under the Mortgage;
- (ii) unless and until an Event of Default shall have occurred and without prejudice to the right of each Lender to be indemnified pursuant to this paragraph (b) of Clause ~~13.13~~ 14.13 (*Payment of liabilities*):
  - (A) each Lender will, if it is reasonably practicable to do so, notify the Borrower upon receiving a claim in respect of which the relevant Lender is or may become entitled to an indemnity under this paragraph (b) of Clause ~~13.13~~ 14.13 (*Payment of liabilities*); and
  - (B) subject to the prior written approval of the relevant Lender which the Lender shall have the right to withhold, the Borrower will be entitled to take, in the name of the relevant Lender, such action as the Borrower may see fit to avoid, dispute, resist, appeal, compromise or defend any such claims, losses, liabilities, damages, expenses and injuries as are referred to above in this paragraph (b) of Clause ~~13.13~~ 14.13 (*Payment of liabilities*) or to recover the same from any third party, subject to the Borrower first ensuring that the relevant Lender is secured to its reasonable satisfaction against all expenses thereby incurred or to be incurred;

provided always that the Borrower shall not be obliged to compromise any liabilities as aforesaid which are being contested in good faith subject always that full details of any such contested liabilities which, either individually or in aggregate, exceed [\*] Dollars (\$[\*]) shall be forthwith provided to the Agent. If the Ship is arrested or detained for any reason it will procure its immediate release by providing bail or taking such other steps as the circumstances may require.

#### 14.14 ~~13.14~~ **Certificate as to liabilities**

The Borrower shall give to the Agent at such times as it may from time to time reasonably require a certificate, duly signed on its behalf, as to the total amount of any debts, damages and liabilities relating to the Ship and details of such of those debts, damages and liabilities as are over a certain amount to be specified by the Agent at the relevant time and, if so required by the Agent, forthwith discharge such of those debts, damages and liabilities as the Agent shall require other than those being contested in good faith.

#### 14.15 ~~13.15~~ **Modifications**

The Borrower shall maintain the type of the Ship as at the Delivery Date and not put the Ship into the possession of any person for the purpose of work being done on it in an amount exceeding or likely to exceed [\*] Dollars (\$[\*]) unless such person shall first have given to the Agent a written undertaking addressed to the Agent in terms satisfactory to the Agent agreeing not to exercise a lien on the Ship or her Earnings for the cost of such work or for any other reason (or the Borrower is able to demonstrate to the reasonable satisfaction of the Agent that the Borrower or Seven Seas has set aside and will have funds readily available for payment

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when due of the cost of the work (to the extent not fully covered by insurance proceeds in the case of a partial loss)).

**14.16 ~~43-46~~Registration of Ship**

The Borrower shall maintain the registration of the Ship under and fly the flag of the Maritime Registry and not do or permit anything to be done whereby such registration may be forfeited or imperilled.

**14.17 ~~43-47~~Environmental Law**

The Borrower shall comply with all Environmental Laws, obtain, maintain and ensure compliance with all requisite Environmental Approvals, and implement procedures to monitor compliance with and to prevent liability under any Environmental Law.

**14.18 ~~43-48~~Notice of Mortgage**

The Borrower shall keep the Mortgage registered against the Ship as a valid first preferred mortgage, carry on board the Ship a certified copy of the Mortgage and place and maintain in a conspicuous place in the navigation room and the master's cabin of the Ship a framed printed notice stating that the Ship is mortgaged by the Borrower to the Security Trustee.

**14.19 ~~43-49~~Environmental claims**

Each Obligor shall, (through the Guarantor), promptly upon becoming aware of the same, inform the Agent in writing of:

- (a) any Environmental Claim which is likely to result in a Material Adverse Effect 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 which is likely to result in a Material Adverse Effect.

**14.20 ~~43-20~~Trading in war zones**

In the event of hostilities in any part of the world (whether war is declared or not), the Borrower shall not cause or permit the Ship to enter or trade to any zone which is declared a war zone by the Ship's war risks insurers unless:

- (a) the prior written consent of the Security Trustee has been given; and
- (b) the Borrower has (at its expense) effected any special, additional or modified insurance cover which the Security Trustee may require.

**14.21 ~~43-21~~Poseidon Principles**

The Borrower shall, upon the request of the Agent and at the cost of the Borrower, on or before 31st July in each calendar year, supply to the Agent all information necessary in order for the Lenders to comply with their obligations under the Poseidon Principles in respect of the preceding year, including, without limitation, all ship fuel oil consumption data required to be collected and reported in accordance with Regulation 22A of Annex VI and any Statement of Compliance, in each case relating to the Ship for the preceding calendar year provided always

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that, for the avoidance of doubt, such information shall be "Confidential Information" for the purposes of Clause ~~32-33~~ 33 (*Confidentiality*) but the Borrower acknowledges that, in accordance with the Poseidon Principles, such information will form part of the information published regarding the Lenders' portfolio climate alignment.

## 15 ~~14~~ **INSURANCE UNDERTAKINGS**

### 15.1 ~~14.1~~ **General**

The undertakings in this Clause ~~14-15~~ 15 (*Insurance Undertakings*) remain in force on and from the Delivery Date and throughout the rest of the Security Period except as the Agent may otherwise permit.

### 15.2 ~~14.2~~ **Maintenance of obligatory insurances**

The Borrower shall insure the Ship in its name and keep the Ship insured on an agreed value basis for an amount in the currency in which the Loan is denominated approved by the Agent but not being less than the greater of (x) [\*] per cent. ([\*]%) of the amount of the Loan; and (y) the full market and commercial value of the Ship determined in accordance with Clause ~~13.4-14.4~~ 14.4 (*Valuation of the Ship*) from time to time through internationally recognised independent first class insurance companies, underwriters, war risks and protection and indemnity associations acceptable to the Agent, acting reasonably, in each instance on terms and conditions approved by the Agent including as to deductibles but at least in respect of:

- (a) fire and marine risks including but without limitation hull and machinery and all other risks customarily and usually covered by first-class and prudent shipowners in the global insurance markets under English or Norwegian marine policies or Agent-approved policies containing the ordinary conditions applicable to similar Ships;
- (b) war risks (including terrorism, piracy, blocking and trapping and protection and indemnity war risks) up to the insured amount;
- (c) excess risks that is to say the proportion of claims for general average and salvage charges and under the running down clause not recoverable in consequence of the value at which the Ship is assessed for the purpose of such claims exceeding the insured value;
- (d) protection and indemnity risks with full standard coverage as offered by first-class protection and indemnity associations which are a member of the International Group of P&I Association and up to the highest limit of liability available (for oil pollution risk the highest limit currently available is one billion Dollars (\$1,000,000,000) and this to be increased if reasonably requested by the Agent and the increase is possible in accordance with the standard protection and indemnity cover for Ships of its type and is compatible with prudent insurance practice for first class cruise shipowners or operators in waters where the Ship trades from time to time from the Delivery Date until the end of the Security Period);
- (e) when and while the Ship is laid-up, in lieu of hull insurance, normal port risks; and
- (f) such other risks as the Agent may from time to time reasonably require;

and in any event in respect of those risks and at those levels covered by first class and prudent owners and/or financiers in the international market in respect of similar tonnage provided that if any of such insurances are also effected in the name of any other person (other than the Borrower and/or a Secured Party) such person shall if so required by the Agent execute a

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first priority assignment of its interest in such insurances in favour of the Secured Parties in similar terms mutatis mutandis to the relevant provisions of the Tripartite General Assignment.

**15.3 ~~14.3~~ Mortgagee's interest and pollution risks insurances**

The Agent shall take out mortgagee interest insurance on such conditions as the Agent may reasonably require and mortgagee interest insurance for pollution risks as from time to time agreed each for an amount in the currency in which the Loan is denominated of [\*] per cent. ([\*]%) of the amount of the Loan, the Borrower having no interest or entitlement in respect of such policies; the Borrower shall upon demand of the Agent reimburse the Agent for the costs of effecting and/or maintaining any such insurance(s).

**15.4 ~~14.4~~ Trading in the United States of America**

If the Ship shall trade in the United States of America and/or the Exclusive Economic Zone of the United States of America (the "EEZ") as such term is defined in the US Oil Pollution Act 1990 ("OPA"), to comply strictly with the requirements of OPA and any similar legislation which may from time to time be enacted in any jurisdiction in which the Ship presently trades or may or will trade at any time during the existence of this Agreement and in particular before such trade is commenced and during the entire period during which such trade is carried on:

- (a) to pay any additional premiums required to maintain full standard protection and indemnity cover for oil pollution up to the highest limit available to it for the Ship in the market;
  - (b) to make all such quarterly or other voyage declarations as may from time to time be required by the Ship's protection and indemnity association and to comply with all obligations in order to maintain such cover, and promptly to deliver to the Agent copies of such declarations;
  - (c) to submit the Ship to such additional periodic, classification, structural or other surveys which may be required by the Ship's protection and indemnity insurers to maintain cover for such trade and promptly to deliver to the Agent copies of reports made in respect of such surveys;
  - (d) to implement any recommendations contained in the reports issued following the surveys referred to in paragraph (c) of Clause ~~14.4~~ 15.4 (*Trading in the United States of America*) within the time limit specified therein and to provide evidence satisfactory to the Agent that the protection and indemnity insurers are satisfied that this has been done;
  - (e) in particular strictly to comply with the requirements of any applicable law, convention, regulation, proclamation or order with regard to financial responsibility for liabilities imposed on the Borrower or the Ship with respect to pollution by any state or nation or political subdivision thereof, including but not limited to OPA, and to provide the Agent on demand with such information or evidence as it may reasonably require of such compliance;
  - (f) to procure that the protection and indemnity insurances do not contain a clause excluding the Ship from trading in waters of the United States of America and the EEZ or any other provision analogous thereto and to provide the Agent with evidence that this is so; and
  - (g) strictly to comply with any operational or structural regulations issued from time to time by any relevant authorities under OPA so that at all times the Ship falls within the provisions which limit strict liability under OPA for oil pollution.
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**15.5 ~~14.5~~ Protections for Secured Parties**

- (a) The Borrower shall give notice forthwith of any assignment of its interest in the Insurances to the relevant brokers, insurance companies, underwriters and/or associations in the form approved by the Agent;
- (b) The Borrower shall execute and deliver all such documents and do all such things as may be necessary to confer upon the Secured Parties legal title to the Insurances in respect of the Ship and to procure that the interest of the Secured Parties is at all times filed with all slips, cover notes, policies and certificates of entry and to procure (a) that a loss payable clause in the form approved by the Agent shall be filed with all the hull, machinery and equipment and war risks policies in respect of the Ship and (b) that a loss payable clause in the form approved by the Agent shall be endorsed upon the protection and indemnity certificates of entry in respect of the Ship; and
- (c) In the event of the Borrower making default in insuring and keeping insured the Ship as hereinbefore provided then the Agent may (but shall not be bound to) insure the Ship or enter the Ship in such manner and to such extent as the Agent in its discretion thinks fit and in such case all the cost of effecting and maintaining such insurance together with interest thereon at the Interest Rate shall be paid on demand by the Borrower to the Agent.

**15.6 ~~14.6~~ Copies of policies; letters of undertaking**

The Borrower will procure that each of the relevant brokers and associations furnishes the Agent with a letter of undertaking in the standard form available in the relevant insurance market or otherwise in such form as may be required by the Agent and waives any lien for premiums or calls except in relation to premiums or calls solely attributable to the Ship.

**15.7 ~~14.7~~ Payment of premiums**

The Borrower shall punctually pay all premiums, calls, contributions or other sums payable in respect of the Insurances on the Ship and to produce all relevant receipts when so required by the Agent.

**15.8 ~~14.8~~ Renewal of obligatory insurances**

The Borrower shall notify the Agent of the renewal of the obligatory insurances at least five (5) days before the expiry thereof and shall procure that the relevant brokers or associations shall promptly confirm in writing to the Agent that such renewal is effected it being understood by the Borrower that any failure to renew the Insurances on the Ship at least two (2) days before the expiry thereof or to give or procure the relevant notices of such renewal shall constitute an Event of Default.

**15.9 ~~14.9~~ Guarantees**

The Borrower shall arrange for the execution of such guarantees as may from time to time be required by any protection and indemnity and/or war risks association.

**15.10 ~~14.10~~ Provision of insurances information**

The Borrower will furnish the Agent from time to time on request with full information about all Insurances maintained on the Ship and the names of the offices, companies, underwriters, associations or clubs with which such Insurances are placed.

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**15.11 ~~14.11~~ Alteration to terms of insurances**

The Borrower shall not make or agree to any variation in the terms of any of the Insurances on the Ship without the prior approval of the Agent nor to do any act or voluntarily suffer or permit any act to be done whereby any Insurances shall or may be rendered invalid, void, voidable, suspended, defeated or unenforceable and not to suffer or permit the Ship to engage in any voyage nor to carry any cargo not permitted under any of the Insurances without first obtaining the consent of the insurers or reinsurers concerned and complying with such requirements as to payment of extra premiums or otherwise as the insurers or reinsurers may impose.

**15.12 ~~14.12~~ Settlement of claims**

The Borrower shall not settle, compromise or abandon any claim in respect of any of the Insurances on the Ship other than a claim of less than [\*] Dollars (\$[\*]) or the equivalent in any other currency and not being a claim arising out of a Total Loss.

**15.13 ~~14.13~~ Application of insurance proceeds**

The Borrower shall apply or ensure the appliance of all such sums receivable in respect of the Insurances on the Ship for the purpose of making good the loss and fully repairing all damage in respect whereof the insurance monies shall have been received.

**15.14 ~~14.14~~ Insurance advisers**

The Agent shall be entitled, immediately prior to the Delivery Date and thereafter no more frequently than annually on renewals but also additionally at any time when there is a proposed change of underwriters or the terms of any Insurances, to instruct independent reputable insurance advisers for the purpose of obtaining any advice or information regarding any matter concerning the Insurances which the Agent shall deem necessary, it being hereby specifically agreed that the Borrower shall reimburse the Agent on demand for the costs and expenses incurred by the Agent in connection with the instruction of such advisers subject to a limit of \$10,000 at the time of delivery of the Ship or in the event of a change of underwriters or of terms of any Insurances and otherwise \$10,000 annually thereafter.

**16 ~~15~~ SECURITY VALUE MAINTENANCE**

**16.1 ~~15.1~~ Security Shortfall**

If, upon receipt of a valuation of the Ship in accordance with Clause ~~13.4~~ 14.4 (*Valuation of the Ship*), the Security Value shall be less than the Security Requirement, the Agent may give notice to the Borrower requiring that such deficiency be remedied and then the Borrower shall (unless the Ship has become a Total Loss) either:

- (a) prepay within a period of 30 days of the date of receipt by the Borrower of the Agent's said notice such sum in Dollars as will result in the Security Requirement after such repayment (taking into account any other repayment of the Loan made between the date of the notice and the date of such prepayment) being equal to the Security Value; or
  - (b) within 30 days of the date of receipt by the Borrower of the Agent's said notice constitute to the reasonable satisfaction of the Agent such further security for the Loan as shall be reasonably acceptable to the Agent having a value for security purposes (as determined by the Agent in its absolute discretion) at the date upon which such further security shall be
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constituted which, when added to the Security Value, shall not be less than the Security Requirement as at such date.

Clauses ~~45-2-16.2~~ (Costs) and ~~45-4-16.4~~ (Documents and evidence) and paragraph (c) of Clause ~~46-2-17.2~~ (Voluntary prepayment) shall apply to prepayments under paragraph (a) of Clause ~~45-1-16.1~~ (Security Shortfall).

#### **16.2 ~~45-2~~Costs**

All costs in connection with the Agent obtaining any valuation of the Ship referred to in Clause ~~43-4-14.4~~ (Valuation of the Ship), and obtaining any valuation either of any additional security for the purposes of ascertaining the Security Value at any time or necessitated by the Borrower electing to constitute additional security pursuant to paragraph (b) of Clause ~~45-1-16.1~~ (Security Shortfall) shall be borne by the Borrower.

#### **16.3 ~~45-3~~Valuation of additional security**

For the purpose of this Clause ~~45-16~~ (Security Value Maintenance), the market value of any additional security provided or to be provided to the Agent shall be determined by the Agent in its absolute discretion without any necessity for the Agent assigning any reason thereto.

#### **16.4 ~~45-4~~Documents and evidence**

In connection with any additional security provided in accordance with this Clause ~~45-16~~ (Security Value Maintenance), the Agent shall be entitled to receive such evidence and documents of the kind referred to in Clause 3 (Conditions Precedent) in respect of other Finance Documents as may in the Agent's opinion be appropriate.

#### **16.5 ~~45-5~~Valuations binding**

Any valuation under this Clause ~~45-16~~ (Security Value Maintenance) shall be binding and conclusive as regards the Borrower.

#### **16.6 ~~45-6~~Provision of information**

- (a) The Borrower shall promptly provide the Agent and any shipbroker acting under this Clause ~~45-16~~ (Security Value Maintenance) with any information which the Agent or the shipbroker may reasonably request for the purposes of the valuation.
- (b) If the 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 Agent considers prudent.

#### **16.7 ~~45-7~~Suspension of Event of Default**

- (a) Notwithstanding the provisions of Clause ~~48-19~~ (Events of Default), any breach of the provisions of this Clause ~~45-16~~ (Security Value Maintenance) arising between the February 2021 ~~Deferral~~ Effective Date and 31 December 2022 shall not (subject further to no (a) Event of Default under Clause 18.7 (Winding-up) to Clause 18.13 (Cessation of business) (inclusive) having occurred and being continuing or (b) Deferral Prepayment Event having occurred) result in an Event of Default.
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- (b) For the avoidance of doubt, the Security Value will continue to be calculated in accordance with this Clause ~~45-16~~ (*Security Value Maintenance*) between the February 2021 Deferral Effective Date and 31 December 2022.

## 17 ~~46~~ CANCELLATION, PREPAYMENT AND MANDATORY PREPAYMENT

### 17.1 ~~46.4~~ Cancellation

At any time prior to the delivery of a Drawdown Notice and not less than ninety (90) Business Days prior to the Intended Delivery Date, the Borrower may give notice to the Agent in writing that it wishes to cancel the Total Commitments in their entirety whereupon (without penalty to the Borrower but without prejudice to any liabilities of the Borrower including, without limitation, in respect of fees payable or accrued under this Agreement, arising prior to the date of such cancellation) the Total Commitments shall terminate upon the date specified in such notice.

### 17.2 ~~46.2~~ Voluntary prepayment

- (a) The Borrower may prepay all or part of the Loan (but if in part being an amount that reduces the Loan by a minimum amount of one (1) repayment instalment of principal of the Loan) together with interest thereon. Such prepayment shall, regardless of the date on which such prepayment is made, be made together with all of the amounts that SIMEST is entitled to charge, whether for taxes, costs, expenses, indemnities, penalties, losses or liabilities whatsoever, under and in accordance with the Interest ~~Make-up~~ Make-Up Agreement and Clause ~~20.2-21.2~~ (*Breakage costs and SIMEST arrangements*) but without any other penalty provided that the prepayment is made on the last day of an Interest Period and thirty-five (35) days prior written notice indicating the intended date of prepayment is given to the Agent and the SACE Agent. However, the following amounts shall be payable to the Agent for the account of the Lenders, or SIMEST, as the case may be, if any prepayment made pursuant to this Clause ~~46.2-17.2~~ (*Voluntary prepayment*) is not made on the last day of an Interest Period:
- (i) if the Borrower elected a Floating Interest Rate pursuant to paragraph (a) of Clause 3.5, the difference (if positive), calculated by the Lenders and notified by them to the Agent, between the actual cost for the Lenders of the funding for the Loan and the rate of interest for the monies to be invested by the Lenders, applied to the amounts so prepaid for the period from the said prepayment until the last day of the Interest Period during which the prepayment occurs (if prepayment does not occur on the last day of that Interest Period), details of any such calculation being supplied to the Borrower by the Agent on behalf of the Lenders; or
  - (ii) if the Borrower elected a Fixed Interest Rate pursuant to paragraph (a) of Clause 3.5, the sum of charges (if any) imposed by SIMEST representing funding or breakage costs of the Italian Authorities as more specifically set out in Clause ~~20-21~~ (*Indemnities*).
- (b) For the avoidance of doubt, regardless of the date on which a voluntary prepayment is made, such prepayment shall be paid together with all amounts payable in accordance with Clause ~~20.2-21.2~~ (*Breakage costs and SIMEST arrangements*) and if a voluntary prepayment is made other than on the last day of an Interest Period, the prepayment shall be paid together with such other amounts payable in accordance with Clauses ~~20.4-21.1~~ (*Indemnities regarding borrowing and repayment of Loan*) and ~~20.2-21.2~~ (*Breakage costs and SIMEST arrangements*).
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- (c) If the Borrower has selected the Fixed Interest Rate pursuant to paragraph (a) of Clause 3.5 (*No later than thirty (30) days before the Intended Delivery Date*), the SACE Agent shall give SIMEST thirty (30) days written notice of the intended date of prepayment.
- (d) Any voluntary prepayment shall be made in accordance with the provisions of this Clause ~~16.2-17.2~~ (*Voluntary prepayment*) and applied against the outstanding repayment instalments in the inverse order of their maturity, save that where there is an amount of a Deferral Tranche outstanding, any such prepayment shall first be applied against such Deferral Tranche in the inverse order of maturity, starting with the 2021 Deferral Tranche.
- (e) There may be no more than two voluntary prepayments in part of the Loan made in each 12-month period beginning on the Delivery Date unless the relevant prepayment is made at the end of an Interest Period relating to the Loan or the relevant part of the Loan (as applicable).

### **17.3 ~~16.3~~ Mandatory prepayment – Sale and Total Loss**

The Borrower shall be obliged to prepay the whole of the Loan if the Ship is sold or becomes a Total Loss:

- (a) in the case of a sale, on or before the date on which the sale is completed by delivery of the Ship to the buyer; or
- (b) in the case of a Total Loss, on the earlier of the date falling 120 days after the Total Loss Date and the date of receipt by the Agent of the proceeds of insurance relating to such Total Loss.

### **17.4 ~~16.4~~ Mandatory prepayment – SACE Insurance Policy**

- (a) The Borrower shall be obliged to prepay the whole of the Loan if the SACE Insurance Policy is revoked, rescinded, cancelled, terminated, suspended or otherwise becomes unenforceable or ceases to be in full force and effect.
- (b) In the event that any other event occurs or any other circumstances arise or develop which would have a material adverse effect on SACE's ability to perform its obligations under the SACE Insurance Policy, the Borrower and the Lenders shall, provided that no Event of Default has occurred and is continuing, negotiate in good faith for a period of not less than 30 days with a view to agreeing such revised terms and conditions as the Lenders may require to enable the Lenders to maintain the entire Loan (and during such 30 day period, no Lender shall be obliged to make available to the Borrower their portion of the Loan to the extent such amounts have not already been drawn). In the event that following such negotiations the Borrower and the Lenders fail to agree on such revised terms, the Borrower shall be obliged to prepay, on demand by the Agent, the outstanding principal amount of the Loan to the extent of the amount covered pursuant to the SACE Insurance Policy. If, during the period while negotiations are on-going pursuant to this paragraph (b) of Clause ~~16.4-17.4~~ (*Mandatory prepayment – SACE Insurance Policy*) the events described in paragraph (a) of Clause ~~16.4-17.4~~ (*Mandatory prepayment – SACE Insurance Policy*) should occur, the Borrower shall be obliged to prepay the Loan in full as required by paragraph (a) of Clause ~~16.4-17.4~~ (*Mandatory prepayment – SACE Insurance Policy*).

### **17.5 ~~16.5~~ Breach of new covenants or the Principles**

- (a) Failure to comply, until the 2021 Deferral Final Repayment Date, with the provisions of Clause ~~12.16~~ 13.16 (*Dividends and dividend restriction*) and Clause ~~12.26-13.26~~ (*New capital raises or financing*) or the provisions of clause 11.3(f) (*Additional financial reporting*), clause 11.17(c)
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(*Dividend restriction*), clause 11.19 (*New capital raises or financing*) and clause 11.20 (*Payments under the Shipbuilding contracts*) of the Guarantee, or to otherwise duly perform and observe the other requirements and obligations set out in the Principles shall, in each case, not constitute an Event of Default under this Agreement but (in the case of any failure that is capable of remedy (in the opinion of the Agent, at its sole discretion)) shall have the following consequences:

- (i) the Agent shall reinstate from the date of such breach the requirement to comply with the covenant granted pursuant to Clause ~~15-16~~ 13.16 (*Security Value Maintenance*) and the financial covenants set out in paragraphs (b) and (c) of clause 11.15 (*Financial covenants*) of the Guarantee which was otherwise suspended until 31 December 2022;
  - (ii) in respect of, specifically, Clause ~~12.16-13.26~~ 13.16 (*Dividends and dividend restriction*) and Clause ~~12.26-13.26~~ 13.26 (*New capital raises or financing*), and clause 11.17(c) (*Dividend restriction*) and clause 11.19 (*New capital raises or financing*) of the Guarantee, as well as a failure to perform and observe the other requirements and obligations set out in the Principles (including but not limited to any Obligor (a) commencing, or having commenced against it, any case, proceeding or other action seeking (i) to adjudicate it as bankrupt or insolvent, (ii) reorganization, arrangement, winding-up, liquidation, dissolution, or other relief with respect to it or its debts, (iii) the appointment of a receiver, trustee, or custodian or other similar official for it or for all or a substantial part of its assets, (b) making a general assignment for the benefit of its creditors, (c) being unable to, or admitting in writing its inability to, pay its debts as they become due, or (d) taking any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the acts set forth in (a), (b) or (c) hereof):
    - (A) the Deferral Commitments and the availability of the Deferral Tranches will be immediately cancelled; and
    - (B) all or part of the Deferral Tranches, together with accrued interest, deferred costs pursuant to Clause ~~6.4-7.4~~ 7.4 (*Deferred Costs*) and all other amounts accrued or outstanding under this Agreement in connection with the Deferral Tranches will be immediately due and payable, (including, for the avoidance of doubt, any breakage costs pursuant to Clause ~~20.2-21.2~~ 21.2 (*Breakage costs and SIMEST arrangements*)); and
  - (iii) in respect of clause 11.3(f) (*Additional financial reporting*) and clause 11.20 (*Payments under the Shipbuilding contracts*) of the Guarantee, shall entitle the Agent, (acting on the instructions of the Lenders), by notice to the Borrower to:
    - (A) cancel the Deferral Commitments and the availability of the Deferral Tranches whereupon they shall immediately be cancelled; and
    - (B) declare that all or part of the Deferral Tranches, together with accrued interest, deferred costs pursuant to Clause ~~6.4-7.4~~ 7.4 (*Deferred Costs*) of this Agreement and all other amounts accrued or outstanding under this Agreement in connection with the Deferral Tranches be immediately due and payable, whereupon they shall become immediately due and payable (including, for the avoidance of doubt, any breakage costs pursuant to Clause ~~20.2-21.2~~ 21.2 (*Breakage costs sand SIMEST arrangements*) of this Agreement); and
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- (b) Save as permitted by Clause ~~12-26~~ 13.26 (*New capital raises or financing*), if at any time after the February 2021 Deferral-Effective Date and until the occurrence of a Reinstatement Event:
- (i) the Guarantor or any other Group member enters into any financial contract or financial document relating to any Financial Indebtedness and which contains any debt deferral or covenant waivers of existing debt, or the raising of any new debt intended to reimburse existing debt that benefits from additional security or more favourable terms than those available to the Lenders (unless they are granted to the Lenders on a *pari passu* basis):
- (A) the requirement to comply with the covenant granted pursuant to Clause ~~45-16~~ (*Security Value Maintenance*) and the financial covenants set out in paragraphs (b) and (c) of clause 11.15 (*Financial covenants*) of the Guarantee which was otherwise suspended until 31 December 2022 shall be reinstated;
- (B) the Deferral Commitments and the availability of the Deferral Tranches will be immediately cancelled; and
- (C) all or part of the Deferral Tranches, together with accrued interest, deferred costs pursuant to Clause ~~6-4-7.4~~ (*Deferred Costs*) and all other amounts accrued or outstanding under this Agreement in connection with the Deferral Tranches will be immediately due and payable, (including, for the avoidance of doubt, any breakage costs pursuant to Clause ~~20-2-21.2~~ (*Breakage costs and SIMEST arrangements*));
- it being provided that such covenants in sub-paragraph (A) above shall not be reinstated and such provisions in sub-paragraphs (B) and (C) above shall not be triggered in case of such financial contract or financial document relating to the Term and Revolving Credit Facilities;
- (ii) the Guarantor or any other Group member makes a prepayment (save for any mandatory prepayment necessary to avoid an event of default (however defined)) of any Financial Indebtedness (unless this is done on a *pari passu* basis with the obligations owed to the Lenders hereunder):
- (A) the requirement to comply with the covenant granted pursuant to Clause ~~45-16~~ (*Security Value Maintenance*) and the financial covenants set out in paragraphs (b) and (c) of clause 11.15 (*Financial Covenants*) of the Guarantee which was otherwise suspended until 31 December 2022 shall be reinstated; and
- (B) the Agent shall be entitled (acting on the instructions of the Lenders) to:
- (1) cancel the Deferral Commitments and the availability of the Deferral Tranches whereupon they shall immediately be cancelled; and
- (2) declare that all or part of the Deferral Tranches, together with accrued interest, deferred costs pursuant to Clause ~~6-4-7.4~~ (*Deferred Costs*) and all other amounts accrued or outstanding under this Agreement in connection with the Deferral Tranches will be immediately due and payable (including, for the avoidance of doubt, any breakage costs pursuant to Clause ~~20-2-21.2~~ (*Breakage costs and SIMEST arrangements*));
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it being provided that such covenants in sub-paragraph (A) above shall not be reinstated and such provision in sub-paragraph (B) above shall not be triggered in case of a prepayment relating to the revolving tranche of the Term and Revolving Credit Facilities within the ordinary course of business.

**17.6 ~~46-6~~ Other amounts**

Any prepayment of the whole of the Loan shall be made together with all other sums due under this Agreement (including, without limitation, the compensation calculated in accordance with Clause ~~46-2~~ 17.2 (*Voluntary prepayment*)).

**17.7 ~~46-7~~ Application of partial prepayment**

Amounts prepaid shall be applied in accordance with paragraph (b) of Clause ~~49-4~~ 20.1 (*Receipts*).

**17.8 ~~46-8~~ No reborrowing**

Amounts prepaid may not be reborrowed.

**18 ~~47~~ INTEREST ON LATE PAYMENTS**

**18.1 ~~47-4~~ Default rate of interest**

Without prejudice to the provisions of Clause ~~48-19~~ 19 (*Events of Default*) and without this Clause in any way constituting a waiver of terms of payment, all sums due by the Borrower under this Agreement will automatically bear interest on a day to day basis from the date when they are payable until the date of actual payment at a rate per annum equal to the higher of:

(a) before the Rate Switch Date, where the Floating Interest Rate is applicable, the aggregate of:

- (i) Overnight LIBOR;
- (ii) the Margin; and
- (iii) [\*] per cent. ([\*]%) per annum; or

(b) after the Rate Switch Date, where the Floating Interest Rate is applicable, the aggregate of:

- (i) Daily Simple SOFR;
- (ii) the Credit Adjustment Spread;
- (iii) the Margin; and
- (iv) [\*] per cent. ([\*] p.a.) per annum; or

(c) ~~(b)~~ before the Rate Switch Date, where the Fixed Interest Rate is applicable, the higher of:

- (i) the Fixed Interest Rate plus [\*] per cent. ([\*]%) per annum; and
  - (ii) Overnight LIBOR plus the applicable Margin plus [\*] per cent. ([\*]%) per annum; or
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(d) after the Rate Switch Date, where the Fixed Interest Rate is applicable, the higher of:

(i) the Fixed Interest Rate plus [\*] per cent. ([\*]%) per annum; and

(ii) Daily Simple SOFR plus the Credit Adjustment Spread plus the Margin plus [\*] per cent. ([\*]%) per annum.

**18.2 ~~47.2~~ Compounding of default interest**

Any such interest will itself bear interest at the above rate if it is due for at least three (3) months and thereafter at three monthly intervals.

**19 ~~48~~ EVENTS OF DEFAULT**

**19.1 ~~48.4~~ Events of Default**

An Event of Default occurs if any of the events or circumstances described in Clauses ~~48.2-19.2~~ (*Non-payment*) to ~~48.20-19.20~~ (*Material Adverse Change*) occur.

**19.2 ~~48.2~~ Non-payment**

Any Obligor 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 and such failure is not remedied within three (3) Business Days of the due date or (if payable on demand) within three (3) Business Days of receiving the demand.

**19.3 ~~48.3~~ Non-remediable breaches**

The Borrower fails to comply with the provisions of Clauses ~~42.7-13.7~~ (*Negative pledge*), ~~42.8-13.8~~ (*Disposals*), ~~42.40-13.10~~ (*Mergers*) or ~~42.47-13.17~~ (*Loans and guarantees by the Borrower*).

**19.4 ~~48.4~~ Breach of other obligations**

- (a) Any Obligor fails to comply with any provision of any Finance Document (other than a failure to comply covered by any of the other provisions of Clauses ~~48.2-19.2~~ (*Non-payment*) to ~~48.20-19.20~~ (*Material Adverse Change*)) and in particular but without limitation the Guarantor fails to comply with the provisions of clause 11 (*Undertakings*) of its Guarantee or there is any breach in the opinion of the Majority Lenders and SACE of any of the Underlying Documents provided that no Event of Default shall be deemed to have occurred if, in the opinion of the Majority Lenders and SACE, such failure or breach is capable of remedy and is remedied within the Relevant Period (as defined below) from the date of its occurrence, if the failure was known to that Obligor, or from the date the relevant Obligor is notified by the Agent of the failure, if the failure was not known to that Obligor, unless in any such case as aforesaid the Majority Lenders and SACE consider that the failure or breach is or could reasonably be expected to become materially prejudicial to the interests, rights or position of the Lenders, "**Relevant Period**" meaning for the purposes of this Clause thirty (30) days in respect of a remedy period commencing under this Clause not later than 31 January 2019 and fifteen (15) days in respect of a remedy period commencing after 31 January 2019; or
- (b) If there is a repudiation or termination of any Transaction Document or if any of the parties thereto becomes entitled to terminate or repudiate any of them and evidences an intention so to do.
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#### 19.5 ~~48-5~~ Misrepresentation

Any representation, warranty or statement made or repeated in, or in connection with, any Transaction Document or the SACE Insurance Policy or in any accounts, certificate, statement or opinion delivered by or on behalf of any Obligor thereunder or in connection therewith is materially incorrect or misleading when made or would, if repeated at any time hereafter by reference to the facts subsisting at such time, no longer be materially correct.

#### 19.6 ~~48-6~~ Cross default

- (a) Any event of default occurs under any financial contract or financial document relating to any Financial Indebtedness of the Borrower; or
- (b) any such Financial Indebtedness or any sum payable in respect thereof is not paid when due (after the expiry of any applicable grace period(s)) whether by acceleration or otherwise; or
- (c) any other Financial Indebtedness of any member of the Group is not paid when due or is or becomes capable of being declared due prematurely by reason of default or any Security Interest securing the same becomes enforceable by reason of default provided that no Event of Default will arise if the aggregate amount of the relevant Financial Indebtedness and liabilities secured by the relevant Security Interests is less than \$[\*] or its equivalent in other currencies; or
- (d) any other Security Interest over any assets of any member of the Group securing any alleged liability that does not qualify as Financial Indebtedness becomes enforceable where the alleged liability is in respect of a sum of, or sum aggregating, \$[\*] or its equivalent in other currencies, unless the alleged liability is being contested in good faith by appropriate means by the relevant Group member and the Agent is reasonably satisfied that the relevant member of the Group has reasonable grounds for succeeding in its action.
- (e) No Event of Default will occur, or be deemed to have occurred, under this Clause ~~48-6-19.6~~ (*Cross default*) if such Event of Default occurs before 31 December 2022 (but without prejudice to the rights of the Lenders in respect of any further breach that may occur after 31 December 2022 ) and is caused solely as a result of a breach of the covenant granted pursuant to Clause ~~45-16~~ (*Security Value Maintenance*) or of the financial covenants in respect of the Group equivalent to those set out in paragraphs (b) and (c) of clause 11.15 (*Financial Covenants*) of the Guarantee, under, or in relation to, any other SACE-backed facility agreement to which a Guarantor is a Party or has executed a guarantee and to which the Principles apply, unless at the time of such Event of Default, an event resulting in mandatory prepayment of the Loan pursuant to Clause ~~46-3-17.3~~ (*Mandatory prepayment – sale and total loss*) or Clause ~~46-4-17.4~~ (*Mandatory prepayment – SACE insurance policy*) or a Deferral Prepayment Event has occurred.

#### 19.7 ~~48-7~~ Winding-up

Any order is made or an effective resolution passed or other action taken for the suspension of payments or reorganisation, dissolution, termination of existence, liquidation, winding-up or bankruptcy of any Obligor.

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**19.8 ~~48-8~~ Appointment of liquidators etc.**

A liquidator, trustee, administrator, receiver, administrative receiver, manager or similar officer is appointed in respect of any Obligor or in respect of all or any substantial part of the assets of any Obligor.

**19.9 ~~48-9~~ Enforcement of any security**

Any corporate action, legal proceeding or other procedure or step is taken in relation to enforcement of any security interests over any assets of the Borrower.

**19.10 ~~48-10~~ Insolvency**

- (a) An Obligor is unable or admits inability to pay its debts as they fall due, is deemed to or declared to be unable to pay its debts under applicable law, suspends or threatens to suspend making payments on any of its debts.
- (b) The value of the assets of any Obligor is less than its liabilities (taking into account contingent liabilities).
- (c) A moratorium in respect of all or any debts of any Obligor or a compromise, composition, assignment or an arrangement with creditors of any Obligor or any similar proceeding or arrangement by which the assets of any Obligor are submitted to the control of its creditors is applied for, ordered or declared or any Obligor commences negotiations with any one or more of its creditors with a view to the general readjustment or rescheduling of all or a significant part of its Financial Indebtedness. If a moratorium occurs, the ending of the moratorium will not remedy any Event of Default caused by that moratorium.

**19.11 ~~48-11~~ Legal process**

Any corporate action, legal proceeding, distress, execution, attachment or other process affects the whole or any substantial part of the assets of any Obligor and remains undischarged for a period of thirty (30) days, any step is taken in relation to enforcement of any security interests over any assets of any Obligor (other than the Borrower) or any uninsured judgment which, in each case, is in excess of [\*] Dollars (\$[\*]) following final appeal, remains unsatisfied for a period of ten (10) days.

**19.12 ~~48-12~~ Analogous events**

Anything analogous to or having a substantially similar effect to any of the events specified in Clauses ~~48-7~~ 19.7 (*Winding-up*) to ~~48-11~~ 19.11 (*Legal process*) shall occur under the laws of any applicable jurisdiction.

**19.13 ~~48-13~~ Cessation of business**

Any Obligor ceases to carry on all or a substantial part of its business.

**19.14 ~~48-14~~ Revocation of consents**

Any authorisation, approval, consent, licence, exemption, filing, registration or notarisation or other requirement necessary to enable any Obligor to comply with any of its obligations under any of the Transaction Documents is materially adversely modified, revoked or withheld or does not remain in full force and effect and within ninety (90) days of the date of its occurrence

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such event is not remedied to the satisfaction of the Agent consider that such failure is or might be expected to become materially prejudicial to the interests, rights or position of the Lenders provided that the Borrower shall not be entitled to the aforesaid ninety (90) day period if the modification, revocation or withholding of the authorisation, approval or consent is due to an act or omission of any Obligor and the Majority Lenders and SACE are satisfied that the Lenders' interests might reasonably be expected to be materially adversely affected.

**19.15 ~~48-45~~ Unlawfulness**

At any time it is unlawful or impossible for any Obligor to perform any of its material (to the Secured Parties or any of them) obligations under any Transaction Document to which it is a party or it is unlawful or impossible for the Secured Parties or any Lender to exercise any of their or its rights under any of the Transaction Documents provided that no Event of Default shall be deemed to have occurred where the unlawfulness or impossibility does not relate to the payment obligation of any Obligor under any Transaction Document and is cured within the period of twenty one (21) days of the date of occurrence of the event giving rise to the unlawfulness or impossibility and the affected Obligor performs its obligation within such period.

**19.16 ~~48-46~~ Insurances**

The Borrower fails to insure the Ship in the manner specified in Clause ~~44-15~~ 44-15 (*Insurance Undertakings*) or fails to renew the Insurances at least five (5) days prior to the date of expiry thereof and produce prompt confirmation of such renewal to the Agent provided that if the insurers withdraw their cover an Event of Default shall be deemed to have occurred upon issue of the insurer's notice of withdrawal.

**19.17 ~~48-47~~ Disposals**

If the Borrower or any other Obligor shall have concealed, removed, or permitted to be concealed or removed, any part of its property, with intent to hinder, delay or defraud its creditors or any of them, or made or suffered a transfer of any of its property which may be fraudulent under any bankruptcy, fraudulent conveyance or similar law; or shall have made any transfer of its property to or for the benefit of a creditor with the intention of preferring such creditor over any other creditor.

**19.18 ~~48-48~~ Prejudice to security**

Anything is done or suffered or omitted to be done by any Obligor which in the reasonable opinion of the Agent would or might be expected to imperil the security created by any of the Finance Documents.

**19.19 ~~48-49~~ Governmental intervention**

The authority of any Obligor in the conduct of its business is wholly or substantially curtailed by any seizure or intervention by or on behalf of any authority and within ninety (90) days of the date of its occurrence any such seizure or intervention is not relinquished or withdrawn and the Agent reasonably considers that the relevant occurrence is or might be expected to become materially prejudicial to the interests, rights or position of the Lenders provided that the Borrower shall not be entitled to the aforesaid ninety (90) day period if the seizure or intervention executed by any authority is due to an act or omission of any Obligor and the Majority Lenders and SACE are satisfied that the Lenders' interest might reasonably be expected to be materially adversely affected.

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**19.20 ~~48-20~~ Material Adverse Change**

Any event or circumstance occurs which results in a Material Adverse Effect.

**19.21 ~~48-24~~ Actions following an Event of Default**

On, or at any time after, the occurrence of an Event of Default the Agent may, and if so instructed by the Majority Lenders and SACE, the Agent shall:

- (a) serve on the Borrower a notice stating that the Commitments and all other obligations of each Lender to the Borrower under this Agreement are terminated; and/or
- (b) serve on the Borrower a notice stating that the Loan (including but without limitation the amount representing the financed First Instalment and Second Instalment of the SACE Premium), 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
- (c) take any other action which, as a result of the Event of Default or any notice served under paragraph (a) or (b), the Agent and/or the Lenders are entitled to take under any Finance Document or any applicable law.

**19.22 ~~48-22~~ Termination of Commitments**

On the service of a notice under paragraph (a) of Clause ~~48-24-19.21~~ 19.21 (*Actions following an Event of Default*), the Commitments and all other obligations of each Lender to the Borrower under this Agreement shall terminate.

**19.23 ~~48-23~~ Acceleration of Loan**

On the service of a notice under paragraph (b) of Clause ~~48-24-19.21~~ 19.21 (*Actions following an Event of Default*), the Loan, all accrued interest and all other amounts accrued or owing from the Borrower or any Obligor under this Agreement and every other Finance Document shall become immediately due and payable or, as the case may be, payable on demand.

**19.24 ~~48-24~~ Further amounts payable**

Upon an acceleration of repayment of the Loan following an Event of Default the Borrower shall be liable to pay compensation calculated in accordance with Clause ~~46-2-17.2~~ 17.2 (*Voluntary prepayment*).

**19.25 ~~48-25~~ Multiple notices; action without notice**

The Agent may serve notices under paragraphs (a) and (b) of Clause ~~48-24-19.21~~ 19.21 (*Actions following an Event of Default*) simultaneously or on different dates and it may take any action referred to in paragraph (c) of Clause ~~48-24-19.21~~ 19.21 (*Actions following an Event of Default*) if no such notice is served or simultaneously with or at any time after the service of both or either of such notices.

**19.26 ~~48-26~~ Notification of Secured Parties and Obligors**

The Agent shall send to the Italian Authorities, each Lender and each Obligor a copy or the text of any notice which the Agent serves on the Borrower under Clause ~~48-24-19.21~~ 19.21 (*Actions following an Event of Default*); but the notice shall become effective when it is served on the

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Borrower, and no failure or delay by the Agent to send a copy or the text of the notice to any other person shall invalidate the notice or provide any Obligor with any form of claim or defence.

#### **19.27 ~~48-27~~Lender's rights unimpaired**

Nothing in this Clause ~~48-19~~ (*Events of Default*) 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 Clauses 2.4 (*Creditor Parties' rights and obligations*) and 2.6 (*Obligations of Lenders several*).

#### **19.28 ~~48-28~~Exclusion of Secured Party liability**

No Secured Party, and no receiver or manager appointed by the Agent, shall have any liability to an Obligor:

- (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.

#### **20 ~~49~~APPLICATION OF SUMS RECEIVED**

##### **20.1 ~~49-1~~Receipts**

Except as any Finance Document may otherwise provide, all sums received under this Agreement or any other Finance Document by the Agent, on behalf of the Lenders, or by any of the Lenders for any reason whatsoever will be applied:

- (a) in priority, to payments of any kind due or in arrears in the order of their due payment dates and first, to fees, charges and expenses, second, to interest payable pursuant to Clause ~~47-18~~ (*Interest on Late Payments*), third, to interest payable pursuant to Clause 6 (*Interest*) and to any deferred costs payable pursuant to Clause ~~6-4-7.4~~ (*Deferred Costs*), fourth, to the principal of the Loan payable pursuant to Clause 5 (*Repayment*), fifth, to any sums due pursuant to Clause ~~20-2-21.2~~ (*Breakage costs and SIMEST arrangements*) and, sixth, to any other sums due under this Agreement or any other Finance Document and, if relevant, *pro rata* to each of the Lenders; or
- (b) if no payments are in arrears or if these payments have been discharged as set out above, then and to sums remaining due under this Agreement or any other Finance Document and, if relevant, *pro rata* to each of the Lenders and in each case in inverse order of maturity, the interest being recalculated accordingly.

#### **21 ~~20~~INDEMNITIES**

##### **21.1 ~~20-4~~Indemnities regarding borrowing and repayment of Loan**

The Borrower shall fully indemnify the Agent and each Lender or SIMEST (but without double counting to the extent that a Lender is making a claim in respect of amounts owing to SIMEST) on the Agent's demand in respect of all claims, expenses, liabilities and losses which are made

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or brought against or incurred by that Secured Party, or which that Secured Party reasonably and with due diligence estimates that it will incur, as a result of or in connection with:

- (a) the Loan not being borrowed on the date specified in the Drawdown Notice for any reason other than a default by the Lender claiming the indemnity;
- (b) the receipt or recovery of all or any part of the Loan or an overdue sum otherwise than on the last day of an Interest Period or other relevant period;
- (c) any failure (for whatever reason) by the Borrower to make payment of any amount due under a Finance Document on the due date or, if so payable, on demand (after giving credit for any default interest paid by the Borrower on the amount concerned under Clause ~~47-18~~ 18 (*Interest on Late Payments*)); and
- (d) the occurrence and/or continuance of an Event of Default and/or the acceleration of repayment of the Loan under Clause ~~48-19~~ 19 (*Events of Default*).

#### 21.2 ~~20.2~~ Breakage costs and SIMEST arrangements

Without limiting its generality, Clause ~~20.1-21.1~~ 21.1 (*Indemnities regarding borrowing and repayment of Loan*) covers:

- (a) any claim, expense, liability or loss, including a loss of a prospective profit, incurred by a Lender 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);
- (b) if the Borrower has selected the Fixed Interest Rate in accordance with paragraph (a) of Clause 3.5 (*No later than thirty (30) days before the Intended Delivery Date*), all of the amounts that SIMEST is entitled to charge, whether for taxes, costs, expenses, indemnities, penalties, losses or liabilities whatsoever, under and in accordance with the Interest ~~Make-up~~ Make-Up Agreement, including without limitation, as a result of any prepayment of all or any part of the Loan under this Agreement (whether voluntary, mandatory, following acceleration of the Loan or otherwise), as a result of an Interest Make-Up Event or as a result of the Borrower deciding to switch from the Fixed Interest Rate to another interest rate after the Drawdown Date and/or an Interest ~~Make-up~~ Make-Up Event. Such amounts include, without limitation, (i) breakage costs, (ii) any amount due as a consequence of the close-out of any hedging arrangement entered into by SIMEST in relation to this Agreement, (iii) default interest and penalties (*maggiorazioni*) whenever applicable, and (iv) all amounts (if any) to be returned by the Agent to SIMEST under and pursuant to the Interest Make-Up Agreement; and
- (c) any other costs whatsoever or howsoever arising under or in respect of the Interest Make-Up Agreement which are passed to the Agent,

and any such costs imposed by SIMEST shall be paid by the Borrower to SIMEST through the Agent.

For the purposes of this Clause ~~20.2-21.2~~ 21.2 (*Breakage costs and SIMEST arrangements*) "**Interest Make-Up Event**" means the occurrence of any circumstances which result in the termination, cancellation, revocation, cessation or suspension (in each case, in whole or in part) of the Interest Make-Up Agreement or the Interest Make-Up Agreement otherwise ceases or may cease to be in full force and effect or the Agent notifies the Borrower that the Fixed Interest

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Rate is not available for any reason, in each case, in accordance with the terms of the Interest Make-Up Agreement.

**21.3 ~~20.3~~ Miscellaneous indemnities**

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

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

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

Without prejudice to its generality, this Clause ~~20.3~~ 21.3 (*Miscellaneous indemnities*) covers any claims, expenses, liabilities and losses which arise, or are asserted, under or in connection with any law relating to safety at sea, the ISM Code or any Environmental Laws or any Sanctions.

**21.4 ~~20.4~~ Currency indemnity**

If any sum due from an Obligor to a Secured 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 an Obligor, whether in its liquidation, any arrangement involving it or otherwise; or
- (b) obtaining an order or judgment from any court or other tribunal; or
- (c) enforcing any such order or judgment,

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

In this Clause ~~20.4~~ 21.4 (*Currency indemnity*) the "**available rate of exchange**" means the rate at which the Secured Party concerned is able at the opening of business (Paris time) on the Business Day after it receives the sum concerned to purchase the Contractual Currency with the Payment Currency.

This Clause ~~20.4~~ 21.4 (*Currency indemnity*) creates a separate liability of the 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.

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## 21.5 ~~20-5~~ Certification of amounts

A notice which is signed by 2 officers of a Secured Party, which states that a specified amount, or aggregate amount, is due to that Secured Party under this Clause ~~20-21~~ (*Indemnities*) and which indicates (without necessarily specifying a detailed breakdown) the matters in respect of which the amount, or aggregate amount, is due shall be prima facie evidence that the amount, or aggregate amount, is due.

## 21.6 ~~20-6~~ Sums deemed due to a Lender

For the purposes of this Clause ~~20-21~~ (*Indemnities*), a sum payable by the Borrower to the Agent for distribution to a Lender shall be treated as a sum due to that Lender.

## 21.7 ~~20-7~~ SACE obligations

To the extent that this Clause ~~20-21~~ (*Indemnities*) imposes obligations or restrictions on a Secured Party, such obligations or restrictions shall not apply to SACE and SACE shall have no obligations hereunder nor be constrained by such restrictions.

## 22 ~~24~~ ILLEGALITY, ETC.

### 22.1 ~~24-4~~ Illegality

This Clause ~~24-22~~ (*Illegality, etc.*) applies if

- (a) a Lender (the "**Notifying Lender**") notifies the Agent that it has become, or will with effect from a specified date, become:

(i) 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, including for the avoidance of doubt in relation to Sanctions; or

(ii) 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; or

- (b) an Obligor is or becomes a Prohibited Person.

### 22.2 ~~24-2~~ Notification of illegality

- (a) The Agent shall promptly notify the Borrower, the Obligors and the other Lenders of the notice under Clause ~~24-4-22.1~~ (*Illegality*) which the Agent receives from the Notifying Lender.

- (b) Upon receipt of the notice under paragraph (a) above and provided that such illegality is not applicable with immediate effect (in which case paragraph (a) of Clause ~~24-3-22.3~~ (*Prepayment; termination of Commitment*) will apply immediately and this paragraph (a) of Clause ~~24-2-22.2~~ (*Notification of illegality*) will not apply), the Agent shall, where the Borrower has selected the Fixed Interest Rate pursuant to paragraph (a) of Clause 3.5 (*No later than thirty (30) days before the Intended Delivery Date*) inform SIMEST in writing in order to start consultations between themselves (pursuant to clause 6 of the Interest Make-Up Agreement) with a view to exploring any possible solution to mitigate the unlawfulness preventing that Lender from performing any of its obligations under a Finance Document or funding or maintaining its share in the Loan.
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Any solution agreed between the Agent and SIMEST at the end of the consultation period (which shall last for a period of ten (10) days from the service of such notice on SIMEST) will be binding among themselves and shall be notified by the Agent to each Obligor immediately thereafter (and in any case no later than ten (10) days following such decision).

- (c) If at the end of the consultation procedure set out in paragraph (b) above, no solution is agreed between the Agent and SIMEST, the Agent must immediately notify the Lenders and the Obligors.

### **22.3 ~~21.3~~Prepayment; termination of Commitment**

- (a) After notification under paragraph (c) of Clause ~~21.2-22.2~~ (*Notification of illegality*) above or (in case the Interest Make-Up Agreement has ceased to be in force and effect or the Fixed Interest Rate has not been selected pursuant to paragraph (a) of Clause 3.5 (*No later than thirty (30) days before the Intended Delivery Date*)) after notification under paragraph (a) of Clause ~~21.2-22.2~~ (*Notification of illegality*) and subject to Clause ~~21.4-22.4~~ (*Mitigation*) below the Borrower must repay or prepay that Lender's share in the Loan on the date specified in paragraph (c) below together with any breakage costs payable under Clause ~~20.2-21.2~~ (*Breakage costs and SIMEST arrangements*) and any indemnity payable under paragraph (c) of Clause ~~20.2-21.2~~ (*Breakage costs and SIMEST arrangements*) in respect of the Interest Make-Up Agreement;
- (b) On the Agent notifying the Borrower under paragraph (c) of Clause ~~21.2-22.2~~ (*Notification of illegality*), the Notifying Lender's Commitment shall terminate; and thereupon or, if later, on the date specified in the Notifying Lender's notice under Clause ~~21.1-22.1~~ (*Illegality*) as the date on which the notified event would become effective the Borrower shall prepay the Notifying Lender's Contribution and shall pay compensation to the Notifying Lender calculated in accordance with Clause ~~16.2-17.2~~ (*Voluntary prepayment*).
- (c) The date for repayment or prepayment of a Lender's share in the Loan will be:
  - (i) the date specified by the Agent in the notification under paragraph (b) above; or
  - (ii) in case the Interest Make-Up Agreement has ceased to be in force and effect or the Fixed Interest Rate has not been selected pursuant to paragraph (a) of Clause 3.5 (*No later than thirty (30) days before the Intended Delivery Date*), the last day of the current Interest Period for the Loan or, if earlier, the date specified by the Lender in the notification under paragraph (a) above and which must not be earlier than the last day of any applicable grace period allowed by law.

### **22.4 ~~21.4~~Mitigation**

- (a) Each Secured Party shall, in consultation with the Borrower, take all reasonable steps to mitigate any circumstances which arise and which would result in any amount becoming payable under or pursuant to, or cancelled pursuant to Clause ~~21-22~~ (*Illegality, etc.*) including (but not limited to) transferring its rights and obligations under the Finance Documents to another Affiliate or Facility Office.
  - (b) Paragraph (a) above does not in any way limit the obligations of any Obligor under the Finance Documents.
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## 23 ~~22~~SET-OFF

### 23.1 ~~22-1~~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 the Borrower at any office in any country of that Creditor Party in or towards satisfaction of any sum then due from the Borrower to that Creditor Party under any of the Finance Documents; and
- (b) for that purpose:
  - (i) break, or alter the maturity of, all or any part of a deposit of the Borrower;
  - (ii) convert or translate all or any part of a deposit or other credit balance into Dollars;
  - (iii) enter into any other transaction or make any entry with regard to the credit balance which the Creditor Party concerned considers appropriate.

### 23.2 ~~22-2~~Existing rights unaffected

No Creditor Party shall be obliged to exercise any of its rights under Clause ~~22-1~~ 23.1 (*Application of credit balances*); and those rights shall be without prejudice and in addition to any right of set-off, combination of accounts, charge, lien or other right or remedy to which a Creditor Party is entitled (whether under the general law or any document).

### 23.3 ~~22-3~~Sums deemed due to a Lender

For the purposes of this Clause ~~22-23~~ (*Set-Off*), a sum payable by the Borrower to the Agent for distribution to, or for the account of, a Lender shall be treated as a sum due to that Lender; and each Lender's proportion of a sum so payable for distribution to, or for the account of, the Lenders shall be treated as a sum due to such Lender.

### 23.4 ~~22-4~~No Security Interest

This Clause ~~22-23~~ (*Set-Off*) gives the Creditor Parties a contractual right of set-off only, and does not create any equitable charge or other Security Interest over any credit balance of the Borrower.

## 24 ~~23~~CHANGES TO THE LENDERS

### 24.1 ~~23-1~~Transfer by a Lender

Subject to Clause ~~23-5~~ 24.5 (*No transfer without Transfer Certificate*), Clause ~~23-17~~ 24.17 (*Assignment or transfer to SACE*) and Clause ~~23-14~~ 24.14 (*Change of Facility Office*), a Lender (the "**Transferor Lender**") may at any time provided they have obtained the prior written consent of the Italian Authorities cause:

- (a) its rights in respect of all or part of its Contribution; or
  - (b) its obligations in respect of all or part of its Commitment; or
  - (c) a combination of (a) and (b),
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to be (in the case of its rights) transferred to, or (in the case of its obligations) assumed by, in whole or in part any of its Affiliates or another bank or financial institution or 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 (a "**Transferee Lender**") by delivering to the Agent a completed certificate in the form set out in Schedule 4 (*Form of Transfer Certificate*) with any modifications approved or required by the Agent (a "**Transfer Certificate**") executed by the Transferor Lender and the Transferee Lender.

However any rights and obligations of the Transferor Lender in its capacity as Agent or Security Trustee will have to be dealt with separately in accordance with the provisions of Clauses ~~25-26~~ (*Role of the Agent and the Joint Mandated Lead Arrangers*) and ~~26-27~~ (*The Security Trustee*) respectively.

#### 24.2 ~~23-2~~ **Conditions of assignment or transfer**

- (a) The consent of the Borrower is required at all times (subject to the provisions of Clauses ~~23-5~~ 24.5 (*No transfer without Transfer Certificate*) and ~~23.17-24.17~~ (*Assignment or transfer to SACE*)) for an assignment or transfer by a Lender (the "**Existing Lender**"), unless (i) there is an Event of Default or (ii) the assignment or transfer is to another Lender or an Affiliate of a Lender.
- (b) The consent of the Borrower to an assignment or transfer must not be unreasonably withheld or delayed. The Borrower will be deemed to have given its consent ten (10) Business Days after the Existing Lender has requested it unless consent is expressly refused by that Borrower within that time.
- (c) The assignment or transfer must be with respect to a minimum Commitment of [\*] Dollars (\$[\*]) or, if less, the Existing Lender's full Commitment.

#### 24.3 ~~23-3~~ **Transfer Certificate, delivery and notification**

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

- (a) sign the Transfer Certificate on behalf of itself, the Borrower, any other Obligors, the Security Trustee and each of the other Lenders;
- (b) on behalf of the Transferee Lender, send to the Borrower and each Obligor letters or emails notifying them of the Transfer Certificate and attaching a copy of it; and
- (c) send to the Transferee Lender copies of the letters or emails sent under paragraph (b) above,

but the Agent shall only be obliged to execute a Transfer Certificate delivered to it by the Transferor Lender and the Transferee 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 that Transferee Lender.

#### 24.4 ~~23-4~~ **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 ~~23.3-24.3~~ (*Transfer Certificate, delivery and notification*) on or before that date.

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**24.5 ~~23-5~~ No transfer without Transfer Certificate**

Except as provided in Clause ~~23-16~~24.16 (*Security over Lenders' rights*), no assignment or transfer of any right or obligation of a Lender under any Finance Document is binding on, or effective in relation to, the Borrower, any Obligor, the Agent or the Security Trustee unless it is effected, evidenced or perfected by a Transfer Certificate.

**24.6 ~~23-6~~ Lender re-organisation; waiver of Transfer Certificate**

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

**24.7 ~~23-7~~ Effect of Transfer Certificate**

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

- (a) to the extent specified in the Transfer Certificate, all rights and interests (present, future or contingent) which the Transferor Lender has under or by virtue of the Finance Documents are assigned to the Transferee Lender absolutely, free of any defects in the Transferor Lender's title and of any rights or equities which the Borrower or any Obligor 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 the Borrower or any Obligor 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 ~~6-9~~7.9 (*Market Disruption*) and Clause ~~9-10~~ (*Fees*), 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
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Transferee Lender shall be entitled to recover damages by reference to the loss incurred by it as a result of the breach or misrepresentation, irrespective of whether the original Lender would have incurred a loss of that kind or amount.

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

**24.8 ~~23-8~~ 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 Facility Office) from time to time of each Lender holding a Transfer Certificate and the effective date (in accordance with Clause ~~23-4~~ 24.4 (*Effective Date of Transfer Certificate*)) of the Transfer Certificate; and the Agent shall make the register available for inspection by any Lender, the Security Trustee and the Borrower during normal banking hours, subject to receiving at least 3 Business Days' prior notice.

**24.9 ~~23-9~~ 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.

**24.10 ~~23-10~~ Authorisation of Agent to sign Transfer Certificates**

The Borrower, the Security Trustee and each Lender irrevocably authorise the Agent to sign Transfer Certificates on its behalf.

**24.11 ~~23-11~~ Fees and Costs**

In respect of any Transfer Certificate:

- (a) the Agent shall be entitled to recover a registration fee of EUR 5,000 from the Transferor Lender or (at the Agent's option) the Transferee Lender;
- (b) the Transferee Lender shall pay to the Agent, upon demand, all reasonable costs and expenses, duties and fees, including but without limitation legal costs and out of pocket expenses, incurred by the Agent or the Lenders in connection with any necessary amendment to or supplementing of the Transaction Documents or any of them or the SACE Insurance Policy as a consequence of the assignment or transfer; and
- (c) the Transferee Lender shall pay to the Agent, upon demand, such amount as is payable to the Italian Authorities to cover its costs of giving its approval under Clause ~~23-1~~ 24.1 (*Transfer by a Lender*).

**24.12 ~~23-12~~ Sub-participation; subrogation assignment**

A Lender may sub-participate all or any part of its rights and/or obligations under or in connection with the Finance Documents without the consent of, or any notice to, the Borrower, any Obligor, the Agent or the Security Trustee but with the prior written consent of SACE.

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**24.13 ~~23-13~~ Disclosure of information**

A Lender may disclose to a potential Transferee Lender or sub participant any information which the Lender has received in relation to the Borrower, any Obligor or their affairs under or in connection with any Finance Document, unless the information is clearly of a confidential nature.

**24.14 ~~23-14~~ Change of Facility Office**

Subject to the prior written consent of SACE, a Lender may change its Facility 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, provided that if (i) a Lender assigns or transfers any of its rights or obligations under the Finance Documents or changes its Facility Office, and (ii) as a result of circumstances existing at the date the assignment, transfer or change occurs, an Obligor would be obliged to make a payment or an increased payment to the new Lender or Lender acting through its new Facility Office under Clause ~~40-11~~ 11 (*Taxes, Increased Costs, Costs and Related Charges*), then the new Lender or Lender acting through its new Facility Office is only entitled to receive payment under that Clause 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.

**24.15 ~~23-15~~ Notification**

On receiving such a notice, the Agent shall notify the Borrower and the Security Trustee; and, until the Agent receives such a notice, it shall be entitled to assume that a Lender is acting through the Facility Office of which the Agent last had notice.

**24.16 ~~23-16~~ Security over Lenders' rights**

In addition to the other rights provided to Lenders under this Clause ~~23-24~~ 24 (*Changes to the Lenders*), each Lender may without consulting with or obtaining consent from the Borrower or any Obligor but subject to the prior written consent of SACE, 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 (i) to the benefit of any Affiliate and/or (ii) within the framework of its, or its Affiliates, direct or indirect funding operations 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
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- (ii) alter the obligations of the Obligor or require any payments to be made by the Borrower or any Obligor 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.

**24.17 ~~23-17~~ Assignment or transfer to SACE**

- (a) Notwithstanding the above provisions of this Clause ~~23-24~~ 24 (*Changes to the Lenders*) each Lender and the Agent shall, if so instructed by SACE in accordance with the provisions of the SACE Insurance Policy and without any requirement for the consent of any Obligor, assign its rights or (as the case may be) transfer its rights and obligations to SACE (but for the avoidance of doubt, SACE will not assume any of the Lenders' obligations pursuant to Clauses ~~40-11~~ 11 (*Taxes, Increased Costs, Costs and Related Charges*) or ~~32-33~~ 33 (*Confidentiality*) of this Agreement), which assignment or transfer shall take effect upon the date stated in the relevant documentation subject to SACE being satisfied that it has complied with all necessary "know your customer" requirements in relation to such assignment or transfer;
- (b) The Agent shall promptly notify the Obligors of any such assignment or transfer to SACE and, following an Event of Default, the Obligors shall pay to the Agent, upon demand, all reasonable costs and expenses, duties and fees, including but without limitation legal costs and out of pocket expenses, incurred by SACE, the Agent or the Lenders in connection with any such assignment or transfer.

**24.18 ~~23-18~~ No prejudice to SACE rights**

Nothing in the Finance Documents shall prejudice or otherwise limit:

- (a) the rights of any Lender to assign its rights or transfer its rights and obligations, under, or in connection with, any Finance Document to SACE or as directed by SACE; and
- (b) the right of SACE to be subrogated to any Lender's rights under, or in connection with, any Finance Document.

**24.19 ~~23-19~~ SACE's power to direct**

The Creditor Parties agree and the Obligors acknowledge that SACE has the right to direct the decision-making of the Agent and/or the Security Trustee, including (without limitation) following an Event of Default.

**25 ~~24~~ CHANGES TO THE OBLIGORS**

**25.1 ~~24-1~~ No change without consent**

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

**26 ~~25~~ ROLE OF THE AGENT AND THE JOINT MANDATED LEAD ARRANGERS**

**26.1 ~~25-1~~ Appointment of the Agent**

- (a) Each other Secured Party appoints the Agent to act as its agent under and in connection with this Agreement and the other Finance Documents, the SACE Insurance Policy and the Interest Make Up Agreement.
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- (b) Each other Secured Party authorises the Agent to exercise the rights, powers, authorities and discretions specifically given to the Agent under or in connection with the Finance Documents together with any other incidental rights, powers, authorities and discretions.

**26.2 25.2 Duties of the Agent**

- (a) The Agent shall promptly forward to a Party the original or a copy of any document which is delivered to the Agent for that Party by any other Party.
- (b) Except where a Finance Document specifically provides otherwise, the Agent is not obliged to review or check the adequacy, accuracy or completeness of any document it forwards to another Party.
- (c) If the Agent receives notice from a Party referring to this Agreement, describing an Event of Default and stating that the circumstance described is an Event of Default, it shall promptly notify the other Secured Parties.
- (d) If the Agent is aware of the non-payment of any principal, interest, commitment fee or other fee payable to a Secured Party (other than the Agent or a Joint Mandated Lead Arranger) under this Agreement it shall promptly notify the other Secured Parties.
- (e) The Agent's duties under the Finance Documents are solely administrative in nature.

**26.3 25.3 Role of Joint Mandated Lead Arrangers**

None of the Joint Mandated Lead Arrangers has any obligations of any kind to any other Party under or in connection with any Transaction Document, the Interest Make-Up Agreement or the SACE Insurance Policy.

**26.4 25.4 No fiduciary duties**

- (a) Nothing in this Agreement constitutes the Agent or any of the Joint Mandated Lead Arrangers as a trustee or fiduciary of any other person.
- (b) Neither the Agent nor any of the Joint Mandated Lead Arrangers shall be bound to account to any Lender for any sum or the profit element of any sum received by it for its own account.

**26.5 25.5 Business with the Guarantor**

The Agent and each of the Joint Mandated Lead Arrangers may accept deposits from, lend money to and generally engage in any kind of banking or other business with any Affiliate or Subsidiary of the Guarantor.

**26.6 25.6 Rights and discretions of the Agent**

- (a) The Agent may rely on:
    - (i) any representation, notice or document believed by it to be genuine, correct and appropriately authorised; and
    - (ii) any statement made by a director, authorised signatory or employee of any person regarding any matters which may reasonably be assumed to be within his knowledge or within his power to verify.
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- (b) The Agent may assume (unless it has received notice to the contrary in its capacity as agent for the Lenders) that:
  - (i) no Event of Default has occurred (unless it has actual knowledge of an Event of Default); and
  - (ii) any right, power, authority or discretion vested in any Party or the Lenders has not been exercised.
- (c) The Agent may engage, pay for and rely on the advice or services of any lawyers, accountants, surveyors or other experts.
- (d) The Agent may act in relation to the Finance Documents through its personnel and agents.
- (e) The Agent may disclose to any other Party any information it reasonably believes it has received as the Agent under this Agreement.
- (f) Notwithstanding any other provision of any Finance Document to the contrary, neither the Agent nor any of the Joint Mandated Lead Arrangers 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.

**26.7 ~~25.7~~ Lenders' and SACE's instructions**

- (a) Unless a contrary indication appears in a Finance Document, the Agent shall:
    - (i) exercise any right, power, authority or discretion vested in it as Agent in accordance with any instructions given to it by the Majority Lenders and SACE (or, if so instructed by the Majority Lenders and SACE, refrain from exercising any right, power, authority or discretion vested in it as the Agent); and
    - (ii) not be liable for any act (or omission) if it acts (or refrains from taking any action) in accordance with an instruction of the Majority Lenders and SACE.
  - (b) Unless a contrary indication appears in a Finance Document, any instructions given by the Majority Lenders and SACE will be binding on all the Secured Parties.
  - (c) The Agent may refrain from acting in accordance with the instructions of the Majority Lenders and SACE until it has received such security as it may require for any cost, loss or liability (together with any associated VAT) which it may incur in complying with the instructions.
  - (d) In the absence of instructions from the Majority Lenders and SACE the Agent may act (or refrain from taking action) as it considers to be in the best interest of the Secured Parties.
  - (e) The Agent is not authorised to act on behalf of a Lender (without first obtaining that Lender's consent) in any legal or arbitration proceedings relating to any Finance Document.
  - (f) Notwithstanding anything to the contrary, the Lenders agree that if the Agent (acting in its sole discretion) is of the opinion that or if any Lender notifies the Agent that it is of the opinion that, the prior approval of the Italian Authorities should be obtained in relation to the exercise or non-exercise by the Agent or the Lenders of any power, authority or discretion specifically given to them under or in connection with the Finance Documents or in relation to any other
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incidental rights, powers, authorities or discretions, then the Agent shall seek such approval of the Italian Authorities prior to such exercise or non-exercise.

**26.8 25-8 Responsibility for documentation**

The Agent is not responsible for:

- (a) the adequacy, accuracy and/or completeness of any information (whether oral or written) supplied by the Agent, a Joint Mandated Lead Arranger, an Obligor or any other person given in or in connection with any Transaction Document, the SACE Insurance Policy or the Interest Make-Up Agreement; nor for
- (b) the legality, validity, effectiveness, adequacy or enforceability of any Transaction Document the SACE Insurance Policy or the Interest Make-Up Agreement or any other agreement, arrangement or document entered into, made or executed in anticipation of or in connection with any Transaction Document, the SACE Insurance Policy or the Interest Make-Up Agreement.

**26.9 25-9 Exclusion of liability**

- (a) Without limiting paragraph (b) of Clause ~~25-9~~26.9 (*Exclusion of liability*), the Agent will not be liable for any action taken by it under or in connection with any Finance Document, the SACE Insurance Policy or the Interest Make-Up Agreement, unless directly caused by its Gross Negligence or wilful misconduct.
- (b) No Party (other than the Agent) may take any proceedings against any officer, employee or agent of the Agent in respect of any claim it might have against the Agent or in respect of any act or omission of any kind by that officer, employee or agent in relation to any Finance Document, the SACE Insurance Policy or the Interest Make-Up Agreement and any officer, employee or agent of the Agent may rely on this Clause subject to Clause ~~35-4~~36.4 (*Third party rights*) and the provisions of the Third Parties Rights Act.
- (c) The Agent will not be liable for any delay (or any related consequences) in crediting an account with an amount required under the Finance Documents, the SACE Insurance Policy or the Interest Make-Up Agreement to be paid by the Agent if the 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 Agent for that purpose.
- (d) Nothing in this Agreement shall oblige the Agent or a Joint Mandated Lead Arranger to carry out any "know your customer" or other checks in relation to any person on behalf of any Lender and each Lender confirms to the Agent and the Joint Mandated Lead Arrangers that it is solely responsible for any such checks it is required to carry out and that it may not rely on any statement in relation to such checks made by the Agent or a Joint Mandated Lead Arranger.

**26.10 25-10 Lenders' indemnity to the Agent**

Each Lender shall (in proportion to its share of the Total Commitments or, if the Total Commitments are then zero, to its share of the Total Commitments immediately prior to their reduction to zero) indemnify the Agent, within three (3) Business Days of demand, against any cost, loss or liability incurred by the Agent (otherwise than by reason of the Agent's Gross Negligence or wilful misconduct) in acting as Agent under the Finance Documents (unless the Agent has been reimbursed by an Obligor pursuant to a Finance Document).

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**26.11 ~~25.44~~ Resignation of the Agent**

- (a) The Agent may resign and appoint one of its Affiliates as successor by giving notice to the other Creditor Parties, the Borrower and SACE and with the consent of SACE.
- (b) Alternatively the Agent may resign by giving notice to the other Secured Parties and the Borrower, in which case the Lenders (after consultation with the Borrower and the prior consent of SACE) may appoint a successor Agent.
- (c) If the Lenders have not appointed a successor Agent in accordance with paragraph (b) of Clause ~~25.44~~ 26.11 (*Resignation of the Agent*) within thirty (30) days after notice of resignation was given, the Agent (after consultation with the Borrower and SACE) may appoint a successor Agent.
- (d) The retiring Agent shall, at its own cost, make available to the successor Agent such documents and records and provide such assistance as the successor Agent may reasonably request for the purposes of performing its functions as Agent under the Finance Documents.
- (e) The Agent's resignation notice shall only take effect upon the appointment of a successor.
- (f) Upon the appointment of a successor, the retiring Agent shall be discharged from any further obligation in respect of the Finance Documents but shall remain entitled to the benefit of this Clause ~~25.26~~ (*Role of the Agent and the Joint Mandated Lead Arrangers*). Its successor and each of the other Parties shall have the same rights and obligations amongst themselves as they would have had if such successor had been an original Party.
- (g) After consultation with the Italian Authorities, the Majority Lenders may, subject to the prior consent of the Italian Authorities, by notice to the Agent, require it to resign in accordance with paragraph (b) of Clause ~~25.44~~ 26.11 (*Resignation of the Agent*). In this event, the Agent shall resign in accordance with paragraph (b) of Clause ~~25.44~~ 26.11 (*Resignation of the Agent*) but the cost referred to in paragraph (d) above shall be for the account of the Borrower.
- (h) The appointment of a successor Agent pursuant to this Clause ~~25.44~~ 26.11 (*Resignation of the Agent*) shall be subject to compliance with all necessary "know your customer" requirements of the Lenders.

**26.12 ~~25.42~~ Confidentiality**

- (a) In acting as agent for the Secured Parties, the 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 another division or department of the Agent, it may be treated as confidential to that division or department and the Agent shall not be deemed to have notice of it.

**26.13 ~~25.43~~ Relationship with the Lenders**

The Agent may treat each Lender as a Lender, entitled to payments under this Agreement and acting through its Facility Office unless it has received not less than five (5) Business Days' prior notice from that Lender to the contrary in accordance with the terms of this Agreement.

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**26.14 ~~25.14~~ Credit appraisal by the Lenders**

Without affecting the responsibility of any Obligor for information supplied by it or on its behalf in connection with any Finance Document, each Lender confirms to the Agent and each of the Joint Mandated Lead Arrangers that it has been, and will continue to be, solely responsible for making its own independent appraisal and investigation of all risks arising under or in connection with any Finance Document including but not limited to:

- (a) the financial condition, status and nature of the Guarantor and each Subsidiary of the Guarantor;
- (b) the legality, validity, effectiveness, adequacy or enforceability of any Finance Document and any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Finance Document;
- (c) whether that Lender has recourse, and the nature and extent of that recourse, against any Party or any of its respective assets under or in connection with any Finance Document, the transactions contemplated by the Finance Documents or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Finance Document;
- (d) the adequacy, accuracy and/or completeness of any information provided by the Agent, any Party or by any other person under or in connection with any Finance Document, the transactions contemplated by the Finance Documents or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Finance Document; and
- (e) the right or title of any person in or to or the value or sufficiency of any part of the Charged Property, the priority of any Security Interests or the existence of any Security Interest affecting the Charged Property.

**26.15 ~~25.15~~ Deduction from amounts payable by the Agent**

If any Party owes an amount to the Agent under the Finance Documents the Agent may, after giving notice to that Party, deduct an amount not exceeding that amount from any payment to that Party which the Agent would otherwise be obliged to make under the Finance Documents and apply the amount deducted in or towards satisfaction of the amount owed. For the purposes of the Finance Documents that Party shall be regarded as having received any amount so deducted.

**26.16 ~~25.16~~ Full freedom to enter into transactions**

Notwithstanding any rule of law or equity to the contrary, the 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 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 Obligor or any person who is party to, or referred to in, a Finance Document);
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- (b) to deal in and enter into and arrange transactions relating to:
  - (i) any securities issued or to be issued by any Obligor or any other person; or
  - (ii) any options or other derivatives in connection with such securities; and
- (c) to provide advice or other services to the Borrower or any person who is a party to, or referred to in, a Finance Document,

and, in particular, the 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.

**26.17 ~~25.17~~ SACE Agent, SACE Insurance Policy and Interest Make-Up Agreement**

- (a) Where the context permits, references to the Agent shall include the SACE Agent. The Agent and the SACE Agent shall be the same entity throughout the Security Period.
- (b) With the prior written consent of each of the Lenders, the SACE Agent may amend or modify the SACE Insurance Policy and the Interest Make-Up Agreement provided that such amendments are not inconsistent with the commercial terms of this Agreement, otherwise, the SACE Agent undertakes not to amend or modify the SACE Insurance Policy or the Interest Make-Up Agreement.

**26.18 ~~25.18~~ Resignation of the Agent in relation to FATCA**

The Agent shall resign in accordance with Clause ~~25.11~~ 26.11 (*Resignation of the Agent*) (and, to the extent applicable, shall use reasonable endeavours to appoint a successor Agent pursuant to paragraph (c) of Clause ~~25.11~~ 26.11 (*Resignation of the Agent*)) if on or after the date which is three months before the earliest FATCA Application Date relating to any payment to the Agent under the Finance Documents, either:

- (a) the Agent fails to respond to a request under Clause ~~40.9~~ 11.9 (*FATCA Information*) and a Lender reasonably believes that the Agent will not be (or will have ceased to be) a FATCA Exempt Party on or after that FATCA Application Date;
- (b) the information supplied by the Agent pursuant to Clause ~~40.9~~ 11.9 (*FATCA Information*) indicates that the Agent will not be (or will have ceased to be) a FATCA Exempt Party on or after that FATCA Application Date; or
- (c) the Agent notifies the Borrower and the Lenders that the Agent will not be (or will have ceased to be) a FATCA Exempt Party on or after that FATCA Application Date;

and (in each case) a Lender reasonably believes that a Party will be required to make a FATCA Deduction that would not be required if the Agent were a FATCA Exempt Party, and that Lender, by notice to the Agent, requires it to resign.

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**27** ~~26~~ **THE SECURITY TRUSTEE**

**27.1** ~~26.1~~ **Trust**

- (a) The Security Trustee declares that it shall hold the Security Property on trust for the Secured Parties on the terms contained in this Agreement and shall deal with the Security Property in accordance with this Clause ~~26-27~~ 27 (*The Security Trustee*) and the other provisions of the Finance Documents.
- (b) Each of the parties to this Agreement agrees that the Security Trustee shall have only those duties, obligations and responsibilities expressly specified in this Agreement or in the Finance Documents (and no others shall be implied).
- (c) The Security Trustee shall not have any liability to any person in respect of its duties, obligations and responsibilities under this Agreement or the other Finance Documents except as expressly set out in paragraph (a) of Clause ~~26.1-27.1~~ 27.1 (*Trust*) and as excluded or limited by this Clause ~~26-27~~ 27 (*The Security Trustee*) including in particular Clause ~~26.8-27.8~~ 27.8 (*Instructions to Security Trustee and exercise of discretion*), Clause ~~26.13-27.13~~ 27.13 (*Responsibility for documentation*), Clause ~~26.14-27.14~~ 27.14 (*Exclusion of liability*), Clause ~~26.16-27.16~~ 27.16 (*Lenders' indemnity to the Security Trustee*), Clause ~~26.23-27.23~~ 27.23 (*Business with the Group*) and Clause ~~26.29-27.29~~ 27.29 (*Full freedom to enter into transactions*).

**27.2** ~~26.2~~ **Parallel Debt (Covenant to pay the Security Trustee)**

- (a) Each Obligor irrevocably and unconditionally undertakes to pay to the Security Trustee 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 purposes of this Clause ~~26.2-27.2~~ 27.2 (*Parallel Debt (Covenant to pay the Security Trustee)*), the Security Trustee:
    - (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 Secured 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,
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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 Trustee in connection with this Clause ~~26.2-27.2~~ 26.2-27.2 (*Parallel Debt (Covenant to pay the Security Trustee)*) to the extent permitted by applicable law, shall be applied in accordance with Clause ~~49-20~~ 49-20 (*Application of sums received*).
- (f) This Clause ~~26.2-27.2~~ 26.2-27.2 (*Parallel Debt (Covenant to pay the Security Trustee)*) shall apply, with any necessary modifications, to each Finance Document.

### 27.3 ~~26.3~~ **No independent power**

The Secured Parties shall not have any independent power to enforce, or have recourse to, any Security Interest created by any of the Finance Documents or to exercise any rights or powers arising under the Finance Documents creating the Security Interest except through the Security Trustee.

### 27.4 ~~26.4~~ **Application of receipts**

- (a) Except as expressly stated to the contrary in any Finance Document, any moneys which the Security Trustee receives or recovers and which are, or are attributable to, Security Property (for the purposes of this Clause ~~26-27~~ 26-27 (*The Security Trustee*), the "**Recoveries**") shall be transferred to the Agent for application in accordance with Clause ~~49-20~~ 49-20 (*Application of sums received*).
- (b) Paragraph (a) above is without prejudice to the rights of the Security Trustee, any receiver:
  - (i) under Clause ~~25.10-26.10~~ 25.10-26.10 (*Lenders' indemnity to the Agent*) to be indemnified out of the Charged Property; and
  - (ii) under any Finance Document to credit any moneys received or recovered by it to any suspense account.
- (c) Any transfer by the Security Trustee to the Agent in accordance with paragraph (a) above shall be a good discharge, to the extent of that payment, by the Security Trustee.
- (d) The Security Trustee is under no obligation to make the payments to the Agent under paragraph (a) of this Clause ~~26.4-27.4~~ 26.4-27.4 (*Application of receipts*) in the same currency as that in which the obligations and liabilities owing to the relevant Secured Party are denominated.

### 27.5 ~~26.5~~ **Deductions from receipts**

- (a) Before transferring any moneys to the Agent under Clause ~~26.4-27.4~~ 26.4-27.4 (*Application of receipts*), the Security Trustee may, in its discretion:
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- (i) deduct any sum then due and payable under this Agreement or any other Finance Documents to the Security Trustee or any receiver and retain that sum for itself or, as the case may require, pay it to another person to whom it is then due and payable;
  - (ii) set aside by way of reserve amounts required to meet, and to make and pay, any deductions and withholdings (on account of Taxes or otherwise) which it is or may be required by any applicable law to make from any distribution or payment made by it under this Agreement; and
  - (iii) pay all Taxes which may be assessed against it in respect of any of the Security Property, or as a consequence of performing its duties, or by virtue of its capacity as Security Trustee under any of the Finance Documents or otherwise (other than in connection with its remuneration for performing its duties under this Agreement).
- (b) For the purposes of paragraph (a)(i) above, if the Security Trustee 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.

**27.6 ~~26.6~~ Prospective liabilities**

Following acceleration of any Security Interest, the Security Trustee may, in its discretion, or at the request of the Agent, hold any Recoveries in an interest bearing suspense or impersonal account(s) in the name of the Security Trustee with such financial institution (including itself) and for so long as the Security Trustee shall think fit (the interest being credited to the relevant account) for later payment to the Agent for application in accordance with Clause ~~19-20~~ 19-20 (*Application of sums received*) in respect of:

- (a) any sum to the Security Trustee, any receiver; and
- (b) any part of the Secured Liabilities,

that the Security Trustee or, in the case of paragraph (b) only, the Agent, reasonably considers, in each case, might become due or owing at any time in the future.

**27.7 ~~26.7~~ Investment of proceeds**

Prior to the payment of the proceeds of the Recoveries to the Agent for application in accordance with Clause ~~19-20~~ 19-20 (*Application of sums received*) the Security Trustee 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 Trustee with such financial institution (including itself) and for so long as the Security Trustee shall think fit (the interest being credited to the relevant account) pending the payment from time to time of those moneys in the Security Trustee's discretion in accordance with the provisions of this Clause ~~26.7-27.7~~ 26.7-27.7 (*Investment of proceeds*).

**27.8 ~~26.8~~ Instructions to Security Trustee and exercise of discretion**

- (a) Subject to paragraph (d) below, the Security Trustee shall act in accordance with any instructions given to it by the Agent (acting on the instructions of SACE and the Majority Lenders or all the Lenders (as appropriate)) or, if so instructed by the Agent (acting on the instructions of SACE and the Majority Lenders or all the Lenders (as appropriate)), refrain from exercising any right, power, authority or discretion vested in it as Security Trustee and shall be entitled to assume that:
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- (i) any instructions received by it from the Agent (acting on the instructions of SACE and the Majority Lenders or all the Lenders (as appropriate)) are duly given in accordance with the terms of the Finance Documents; and
  - (ii) unless it has received actual notice of revocation, that those instructions or directions have not been revoked.
- (b) The Security Trustee shall be entitled to request instructions, or clarification of any direction, from the Agent (acting on the instructions of SACE and the Majority Lenders or all the Lenders (as appropriate)) as to whether, and in what manner, it should exercise or refrain from exercising any rights, powers, authorities and discretions and the Security Trustee may refrain from acting unless and until those instructions or clarification are received by it.
- (c) Any instructions given to the Security Trustee by the Agent (acting on the instructions of SACE and the Majority Lenders or all the Lenders (as appropriate)) shall override any conflicting instructions given by any other Party.
- (d) Paragraph (a) above shall not apply:
- (i) where a contrary indication appears in this Agreement;
  - (ii) where this Agreement requires the Security Trustee to act in a specified manner or to take a specified action;
  - (iii) in respect of any provision which protects the Security Trustee's own position in its personal capacity as opposed to its role of Security Trustee for the Secured Parties including, without limitation, the provisions set out in Clauses ~~26.10~~27.10 (*Security Trustee's discretions*) to Clause ~~26.29~~27.29 (*Full freedom to enter into transactions*); and
  - (iv) in respect of the exercise of the Security Trustee's discretion to exercise a right, power or authority under any of Clause ~~26.5~~27.5 (*Deductions from receipts*) and Clause ~~26.6~~27.6 (*Prospective liabilities*).

#### 27.9 ~~26.9~~ Security Trustee's Actions

Without prejudice to the provisions of Clause ~~26.4~~27.4 (*Application of receipts*), the Security Trustee may (but shall not be obliged to), in the absence of any instructions to the contrary, take such action in the exercise of any of its powers and duties under the Finance Documents as it considers in its discretion to be appropriate.

#### 27.10 ~~26.10~~ Security Trustee's discretions

- (a) The Security Trustee may:
- (i) assume (unless it has received actual notice to the contrary from the Agent) that (i) no Event of Default has occurred and no Obligor is in breach of or default under its obligations under any of the Finance Documents and (ii) any right, power, authority or discretion vested by any Finance Document in any person has not been exercised;
  - (ii) assume that any notice or request made by the Borrower (other than the Drawdown Notice) is made on behalf of and with the consent and knowledge of all the Obligors;
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- (iii) if it receives any instructions or directions to take any action in relation to a Security Interest under the Finance Documents, assume that all applicable conditions under the Finance Documents for taking that action have been satisfied;
  - (iv) engage, pay for and rely on the advice or services of any legal advisers, accountants, tax advisers, surveyors or other experts (whether obtained by the Security Trustee or by any other Secured Party) whose advice or services may at any time seem necessary, expedient or desirable;
  - (v) act in relation to the Finance Documents through its personnel and agents;
  - (vi) disclose to any other Party any information it reasonably believes it has received as Security Trustee under this Agreement;
  - (vii) rely upon any communication or document believed by it to be genuine and, as to any matters of fact which might reasonably be expected to be within the knowledge of a Secured Party or an Obligor, upon a certificate signed by or on behalf of that person; and
  - (viii) refrain from acting in accordance with the instructions of any Party (including bringing any legal action or proceeding arising out of or in connection with the Finance Documents) until it has received any indemnification and/or security that it may in its discretion require (whether by way of payment in advance or otherwise) for all costs, losses and liabilities which it may incur in so acting.
- (b) Notwithstanding any other provision of any Finance Document to the contrary, the Security Trustee 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.

**27.11 ~~26.41~~ Security Trustee's obligations**

The Security Trustee shall promptly:

- (a) copy to the Agent the contents of any notice or document received by it from any Obligor under any Finance Document;
- (b) forward to a Party the original or a copy of any document which is delivered to the Security Trustee for that Party by any other Party provided that, except where a Finance Document expressly provides otherwise, the Security Trustee is not obliged to review or check the adequacy, accuracy or completeness of any document it forwards to another Party; and
- (c) inform the Agent of the occurrence of any Event of Default or any default by an Obligor in the due performance of or compliance with its obligations under any Finance Document of which the Security Trustee has received notice from any other party to this Agreement.

**27.12 ~~26.42~~ Excluded obligations**

Notwithstanding anything to the contrary expressed or implied in the Finance Documents, the Security Trustee shall not:

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- (a) be bound to enquire as to (i) whether or not any Event of Default has occurred or (ii) the performance, default or any breach by an Obligor of its obligations under any of the Finance Documents;
- (b) 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;
- (c) be bound to disclose to any other person (including but not limited to any Secured Party) (i) any confidential information or (ii) any other information if disclosure would, or might in its reasonable opinion, constitute a breach of any law or be a breach of fiduciary duty;
- (d) have or be deemed to have any relationship of trust or agency with, any Obligor.

**27.13 ~~26.13~~ Responsibility for documentation**

None of the Security Trustee, any receiver shall accept responsibility or be liable for:

- (a) the adequacy, accuracy or completeness of any information (whether oral or written) supplied by the Security Trustee or any other person in or in connection with any Finance Document or the transactions contemplated in the Finance Documents, or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Finance Document;
- (b) the legality, validity, effectiveness, adequacy or enforceability of any Finance Document, the Security Property or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Finance Document or the Security Property;
- (c) any losses to any person or any liability arising as a result of taking or refraining from taking any action in relation to any of the Finance Documents, the Security Property or otherwise, whether in accordance with an instruction from the Agent or otherwise unless directly caused by its Gross Negligence or wilful misconduct;
- (d) the exercise of, or the failure to exercise, any judgment, discretion or power given to it by or in connection with any of the Finance Documents, the Security Property or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with, the Finance Documents or the Security Property; or
- (e) any shortfall which arises on the enforcement or realisation of the Security Property.

**27.14 ~~26.14~~ Exclusion of liability**

- (a) Without limiting Clause ~~26.15~~ 27.15 (*No proceedings*), none of the Security Trustee or any receiver will be liable for any action taken by it or not taken by it under or in connection with any Finance Document or any Security Interest, unless directly caused by its Gross Negligence or wilful misconduct.
  - (b) The Security Trustee 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 it if it 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 it for that purpose.
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- (c) Nothing in this Agreement shall oblige the Security Trustee to carry out any "know your customer" or other checks in relation to any person on behalf of any Lender and each Lender confirms to the Security Trustee 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 Trustee.

**27.15 ~~26.15~~ No proceedings**

No Party (other than the Security Trustee or that receiver) may take any proceedings against any officer, employee or agent of the Security Trustee or a receiver in respect of any claim it might have against the Security Trustee or a receiver in respect of any act or omission of any kind by that officer, employee or agent in relation to any Finance Document or any Security Property and any officer, employee or agent of the Security Trustee or a receiver may rely on this Clause subject to Clause ~~35.4~~ 36.4 (*Third party rights*) and the provisions of the Third Parties Rights Act.

**27.16 ~~26.16~~ Lenders' indemnity to the Security Trustee**

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 Trustee and every receiver within three Business Days of demand, against any cost, loss or liability incurred by any of them (otherwise than by reason of the relevant Security Trustee's or receiver's Gross Negligence or wilful misconduct) in acting as Security Trustee or receiver under the Finance Documents (unless the relevant Security Trustee or receiver has been reimbursed by an Obligor pursuant to a Finance Document).

**27.17 ~~26.17~~ Own responsibility**

Without affecting the responsibility of any Obligor for information supplied by it or on its behalf in connection with any Finance Document, each Creditor Party confirms to the Security Trustee that it has been, and will continue to be, solely responsible for making its own independent appraisal and investigation of all risks arising under or in connection with any Finance Document including but not limited to:

- (a) the financial condition, status and nature of each member of the Group;
  - (b) the legality, validity, effectiveness, adequacy and enforceability of any Finance Document, the Security Property and any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Finance Document or the Security Property;
  - (c) whether that Creditor Party has recourse, and the nature and extent of that recourse, against any Party or any of its respective assets under or in connection with any Finance Document, the Security Property, the transactions contemplated by the Finance Documents or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Finance Document or the Security Property;
  - (d) the adequacy, accuracy and/or completeness of any information provided by the Security Trustee or by any other person under or in connection with any Finance Document, the transactions contemplated by any Finance Document or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Finance Document; and
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- (e) the right or title of any person in or to, or the value or sufficiency of any part of the Charged Property, the priority of any of the Security Interests created by the Finance Documents or the existence of any Security Interest affecting the Charged Property,

and each Creditor Party warrants to the Security Trustee that it has not relied on and will not at any time rely on the Security Trustee in respect of any of these matters.

**27.18 ~~26.18~~ No responsibility to perfect Security Interests**

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

- (a) require the deposit with it of any deed or document certifying, representing or constituting the title of any Obligor to any of the Charged Property;
- (b) obtain any licence, consent or other authority for the execution, delivery, legality, validity, enforceability or admissibility in evidence of any of the Finance Documents or any Security Interest;
- (c) register, file or record or otherwise protect any Security Interests (or the priority of any of Security Interest) under any applicable laws in any jurisdiction or to give notice to any person of the execution of any of the Finance Documents or of any Security Interest;
- (d) take, or to require any of the Obligors to take, any steps to perfect its title to any of the Charged Property or to render any Security Interest effective or to secure the creation of any ancillary security under the laws of any jurisdiction; or
- (e) require any further assurances in relation to any of the Finance Documents creating the Security Interests.

**27.19 ~~26.19~~ Insurance by Security Trustee**

- (a) The Security Trustee shall not be under any obligation to insure any of the Charged Property, to require any other person to maintain any insurance or to verify any obligation to arrange or maintain insurance contained in the Finance Documents. The Security Trustee shall not be responsible for any loss which may be suffered by any person as a result of the lack of or inadequacy of any such insurance.
- (b) Where the Security Trustee is named on any insurance policy as an insured party, it shall not be responsible for any loss which may be suffered by reason of, directly or indirectly, 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 Agent shall have requested it to do so in writing and the Security Trustee shall have failed to do so within fourteen (14) days after receipt of that request.

**27.20 ~~26.20~~ Custodians and nominees**

The Security Trustee may appoint and pay any person to act as a custodian or nominee on any terms in relation to any assets of the trust as the Security Trustee 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 Trustee 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.

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**27.21 ~~26-21~~ Acceptance of title**

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

**27.22 ~~26-22~~ Refrain from illegality**

Notwithstanding anything to the contrary expressed or implied in the Finance Documents, the Security Trustee may refrain from doing anything which in its opinion will or may be contrary to any relevant law, directive or regulation of any jurisdiction and the Security Trustee may do anything which is, in its opinion, necessary to comply with any such law, directive or regulation.

**27.23 ~~26-23~~ Business with the Group**

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

**27.24 ~~26-24~~ Winding up of trust**

If the Security Trustee, with the approval of the Agent determines that (a) all of the Secured Liabilities and all other obligations secured by the Finance Documents creating the Security Interests have been fully and finally discharged and (b) none of the Secured Parties is under any commitment, obligation or liability (actual or contingent) to make advances or provide other financial accommodation to any Obligor pursuant to the Finance Documents:

- (a) the trusts set out in this Agreement shall be wound up and the Security Trustee shall release, without recourse or warranty, all of the Security Interests and the rights of the Security Trustee under each of the Finance Documents creating the Security Interests; and
- (b) any Retiring Security Trustee shall release, without recourse or warranty, all of its rights under each of the Finance Documents creating the Security Interests.

**27.25 ~~26-25~~ Perpetuity period**

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

**27.26 ~~26-26~~ Powers supplemental**

The rights, powers and discretions conferred upon the Security Trustee by this Agreement 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 Trustee by general law or otherwise.

**27.27 ~~26-27~~ Trustee division separate**

- (a) In acting as trustee for the Secured Parties, the Security Trustee shall be regarded as acting through its trustee division which shall be treated as a separate entity from any of its other divisions or departments.
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- (b) If information is received by another division or department of the Security Trustee, it may be treated as confidential to that division or department and the Security Trustee shall not be deemed to have notice of it nor shall it be obliged to disclose such information to any Party.

**27.28 ~~26.28~~ Disapplication**

In addition to its rights under or by virtue of this Agreement and the other Finance Documents, the Security Trustee shall have all the rights conferred on a trustee by the Trustee Act 1925, the Trustee Delegation Act 1999, the Trustee Act 2000 and by general law or otherwise, provided that:

- (a) section 1 of the Trustee Act 2000 shall not apply to the duties of the Security Trustee in relation to the trusts constituted by this Agreement and the other Finance Documents; and
- (b) 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 allowed by law, prevail and, in the case of any inconsistency with the Trustee Act 2000, such provisions shall constitute a restriction or exclusion for the purposes of the Trustee Act 2000.

**27.29 ~~26.29~~ Full freedom to enter into transactions**

Notwithstanding any rule of law or equity to the contrary, the Security Trustee shall be absolutely entitled:

- (a) to enter into and arrange banking, derivative, investment and/or other transactions of every kind with or affecting any 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 trustee for, and/or participating in, other facilities to such 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 Obligor or any other person; or
  - (ii) any options or other derivatives in connection with such securities; and
- (c) to provide advice or other services to the Borrower or any person who is a party to, or referred to in, a Finance Document,

and, in particular, each Servicing Party 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.

**27.30 ~~26.30~~ Resignation of the Security Trustee**

- (a) The Security Trustee may resign and appoint one of its affiliates as successor by giving notice to the Borrower and each Secured Party.
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- (b) Alternatively the Security Trustee may resign by giving notice to the other Parties in which case the Majority Lenders (with the prior consent of SACE) may appoint a successor Security Trustee.
- (c) If the Majority Lenders have not appointed a successor Security Trustee in accordance with paragraph (b) above within 30 days after the notice of resignation was given, the Security Trustee (after consultation with the Agent and SACE) may appoint a successor Security Trustee.
- (d) The retiring Security Trustee (the "**Retiring Security Trustee**") shall, at its own cost, make available to the successor Security Trustee such documents and records and provide such assistance as the successor Security Trustee may reasonably request for the purposes of performing its functions as Security Trustee under the Finance Documents.
- (e) The Security Trustee'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 of the Security Property to that successor.
- (f) Upon the appointment of a successor, the Retiring Security Trustee 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 ~~26.24~~ 27.24 (*Winding up of trust*) and under paragraph (d) above) but shall, in respect of any act or omission by it whilst it was the Security Trustee, remain entitled to the benefit of Clause ~~26.27~~ 27.5 (*The Security Trustee*), Clause ~~26.5~~ 27.5 (*Deductions from receipts*), Clause ~~26.16~~ 27.16 (*Lenders' indemnity to the Security Trustee*) and any other provisions of a Finance Document which are expressed to limit or exclude its liability in acting as Security Trustee. Its successor and each of the other Parties shall have the same rights and obligations amongst themselves as they would have had if that successor had been an original Party.
- (g) The Majority Lenders may, by notice to the Security Trustee, require it to resign in accordance with paragraph (b) above. In this event, the Security Trustee shall resign in accordance with paragraph (b) above but the cost referred to in paragraph (d) above shall be for the account of the Borrower.
- (h) The consent of the Borrower (or any other Obligor) is not required for an assignment or transfer of rights and/or obligations by the Security Trustee.
- (i) The appointment of a successor Security Trustee pursuant to this Clause ~~26.30~~ 27.30 (*Resignation of the Security Trustee*) shall be subject to compliance with all necessary "know your customer" requirements of the Lenders.

**27.31 ~~26.34~~ Delegation**

- (a) Each of the Security Trustee or any receiver may, at any time, delegate by power of attorney or otherwise to any person for any period, all or any of the rights, powers and discretions vested in it by any of the Finance Documents.
  - (b) That delegation may be made upon any terms and conditions and subject to any restrictions that the Security Trustee or that receiver (as the case may be) may, in its discretion, think fit in the interests of the Secured Parties and it shall not be bound to supervise, or be in any way responsible for any loss incurred by reason of any misconduct or default on the part of any such delegate.
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**27.32 ~~26-32~~ Additional Security Trustee**

- (a) The Security Trustee may at any time appoint (and subsequently remove) any person to act as a separate trustee or as a co-trustee jointly with it:
- (i) if it considers that appointment to be in the interests of the Secured Parties; or
  - (ii) for the purposes of conforming to any legal requirements, restrictions or conditions which the Security Trustee deems to be relevant; or
  - (iii) for obtaining or enforcing any judgment in any jurisdiction,
- and the Security Trustee shall give prior notice to the Borrower and the Agent of that appointment.
- (b) Any person so appointed shall have the rights, powers and discretions (not exceeding those conferred on the Security Trustee by this Agreement) and the duties and obligations that are conferred or imposed by the instrument of appointment.
- (c) The remuneration that the Security Trustee 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 Trustee.

**28 ~~27~~ CONDUCT OF BUSINESS BY THE CREDITOR PARTIES**

**28.1 ~~27-1~~ No provision of this Agreement will:**

- (a) interfere with the right of any Creditor Party to arrange its affairs (Tax or otherwise) in whatever manner it thinks fit;
- (b) oblige any Creditor 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 Creditor Party to disclose any information relating to its affairs (Tax or otherwise) or any computations in respect of Tax.

**29 ~~28~~ SHARING AMONG THE CREDITOR PARTIES**

**29.1 ~~28-1~~ Payments to Creditor Parties**

If a Creditor Party (a "**Recovering Creditor Party**") receives or recovers any amount from an Obligor other than in accordance with this Clause ~~28-29~~ 29 (*Sharing among the Creditor Parties*) and applies that amount to a payment due under the Finance Documents then:

- (a) the Recovering Creditor Party shall, within three (3) Business Days, notify details of the receipt or recovery to the Agent;
  - (b) the Agent shall determine whether the receipt or recovery is in excess of the amount the Recovering Creditor Party would have been paid had the receipt or recovery been received or made by the Agent and distributed in accordance with Clause ~~19-20~~ 20 (*Application of sums received*) and Clause ~~29-30~~ 30 (*Payment Mechanics*), without taking account of any Tax which would be imposed on the Agent in relation to the receipt, recovery or distribution; and
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- (c) the Recovering Creditor Party shall, within three (3) Business Days of demand by the Agent, pay to the Agent an amount (the "**Sharing Payment**") equal to such receipt or recovery less any amount which the Agent determines may be retained by the Recovering Creditor Party as its share of any payment to be made, in accordance with Clause ~~49-20~~ (*Application of sums received*) and Clause ~~29-30~~ (*Payment Mechanics*).

#### **29.2 ~~28-2~~ Redistribution of payments**

The Agent shall treat the Sharing Payment as if it had been paid by the relevant Obligor and distribute it between the Creditor Parties (other than the Recovering Creditor Party) in accordance with Clause ~~49-20~~ (*Application of sums received*) and Clause ~~29-30~~ (*Payment Mechanics*).

#### **29.3 ~~28-3~~ Recovering Creditor Party's rights**

- (a) On a distribution by the Agent under Clause ~~28-2-29.2~~ (*Redistribution of payments*), the Recovering Creditor Party will, if possible under the relevant applicable laws, be subrogated to the rights of the Creditor Parties which have shared in the redistribution.
- (b) If and to the extent that the Recovering Creditor Party is not able to rely on its rights under paragraph (a) of Clause ~~28-3-29.3~~ (*Recovering Creditor Party's rights*), the relevant Obligor shall be liable to the Recovering Creditor Party for a debt equal to the Sharing Payment which is immediately due and payable.

#### **29.4 ~~28-4~~ Reversal of redistribution**

If any part of the Sharing Payment received or recovered by a Recovering Creditor Party becomes repayable and is repaid by that Recovering Creditor Party, then:

- (a) each Lender which has received a share of the relevant Sharing Payment pursuant to Clause ~~28-2-29.2~~ (*Redistribution of payments*) shall, upon request of the Agent, pay to the Agent for account of that Recovering Creditor 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 Creditor Party for its proportion of any interest on the Sharing Payment which that Recovering Creditor Party is required to pay); and
- (b) that Recovering Creditor Party's rights of subrogation in respect of any reimbursement shall be cancelled and the relevant Obligor will be liable to the reimbursing Creditor Party for the amount so reimbursed.

#### **29.5 ~~28-5~~ Exceptions**

- (a) This Clause ~~28-29~~ (*Sharing among the Creditor Parties*) shall not apply to the extent that the Recovering Creditor Party would not, after making any payment pursuant to this Clause, have a valid and enforceable claim against the relevant Obligor.
- (b) A Recovering Creditor Party is not obliged to share with any other Creditor Party any amount which the Recovering Creditor Party has received or recovered as a result of taking legal or arbitration proceedings, if:
- (i) it notified that other Creditor Party of the legal or arbitration proceedings; and
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- (ii) that other Creditor 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.
- (c) Following full indemnification by SACE of the SACE Agent (on behalf of the Lenders) under the SACE Insurance Policy, the provisions relating to the sharing of proceeds among the Creditor Parties in this Clause ~~28-29~~ (*Sharing among the Creditor Parties*) shall not apply to any payment made to SACE by a Lender or the Borrower following a payment by SACE to any Lender under the SACE Insurance Policy.

## **30 ~~29~~PAYMENT MECHANICS**

### **30.1 ~~29-1~~Payments to the Agent**

- (a) On each date on which an Obligor or a Lender is required to make a payment under a Finance Document, that Obligor or Lender shall make the same available to the Agent (unless a contrary indication appears in a Finance Document) for value on the due date at the time and in such funds specified by the Agent as being customary at the time for settlement of transactions in the relevant currency in the place of payment.
- (b) Payment shall be made to such account in the principal financial centre of the country of that currency (or, in relation to Euro, in a principal financial centre in a Participating Member State or London) with such bank as the Agent specifies.
- (c) Payment shall be made before 11.00 a.m. New York time or 11.00 a.m. Paris time (in the case of a payment in Euro).
- (d) For each payment by the Borrower, it shall notify the Agent on the third Business Day prior to the due date for payment that it will issue to its bank (which shall be named in such notification) to make the payment.

### **30.2 ~~29-2~~Distributions by the Agent**

Each payment received by the Agent under the Finance Documents for another Party shall, subject to Clause ~~29-3~~ 30.3 (*Distributions to an Obligor*), Clause ~~29-4~~ 30.4 (*Clawback*) be made available by the Agent as soon as practicable after receipt to the Party entitled to receive payment in accordance with this Agreement (in the case of a Lender, for the account of its Facility Office), to such account as that Party may notify to the Agent by not less than five (5) Business Days' notice with a bank 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).

### **30.3 ~~29-3~~Distributions to an Obligor**

The Agent may in accordance with Clause ~~22-23~~ (*Set-Off*) apply any amount received by it for that Obligor in or towards payment (on the date and in the currency and funds of receipt) of any amount due from that Obligor under the Finance Documents or in or towards purchase of any amount of any currency to be so applied.

### **30.4 ~~29-4~~Clawback**

- (a) Where a sum is to be paid to the Agent under the Finance Documents for another Party, the Agent is not obliged to pay that sum to that other Party (or to enter into or perform any related
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exchange contract) until it has been able to establish to its satisfaction that it has actually received that sum.

- (b) If the Agent pays an amount to another Party and it proves to be the case that the Agent had not actually received that amount, then the Party to whom that amount (or the proceeds of any related exchange contract) was paid by the Agent shall on demand refund the same to the Agent together with interest on that amount from the date of payment to the date of receipt by the Agent, calculated by the Agent to reflect its cost of funds.

**30.5 29-5 No set-off by Obligors**

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

**30.6 29-6 Business Days**

- (a) Any payment which is due to be made on a day that is not a Business Day shall be made on the next Business Day in the same calendar month (if there is one) or the preceding Business Day (if there is not).
- (b) During any extension of the due date for payment of any principal or unpaid sum under this Agreement interest is payable on the principal or unpaid sum at the rate payable on the original due date.

**30.7 29-7 Currency of account**

- (a) Subject to paragraphs (b) and (c) of Clause ~~29-7~~ 30.7 (*Currency of account*) Dollars is the currency of account and payment for any sum from an Obligor under any Finance Document.
- (b) Each payment in respect of costs, expenses or Taxes shall be made in the currency in which the costs, expenses or taxes are incurred.
- (c) Any amount expressed to be payable in a currency other than Dollars shall be paid in that other currency.

**30.8 29-8 Change of currency**

- (a) Unless otherwise prohibited by law, if more than one currency or currency unit are at the same time recognised by the central bank of any country as the lawful currency of that country, then:
    - (i) any reference in the Finance Documents to, and any obligations arising under the Finance Documents in, the currency of that country shall be translated into, or paid in, the currency or currency unit of that country designated by the Agent (after consultation with the Lenders and the Borrower); and
    - (ii) any translation from one currency or currency unit to another shall be at the official rate of exchange recognised by the central bank for the conversion of that currency or currency unit into the other, rounded up or down by the Agent (acting reasonably).
  - (b) If a change in any currency of a country occurs, this Agreement will, to the extent the Agent (acting reasonably and after consultation with the Lenders and the Borrower) specifies to be necessary, be amended to comply with any generally accepted conventions and market practice in the Relevant ~~interbank~~ Market and otherwise to reflect the change in currency.
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### 30.9 ~~29.9~~ Distributions under the Interest Make-Up Agreement

Each payment received by the Agent under the Interest Make-Up Agreement for a Lender shall be made available by the Agent as soon as practicable after receipt to the Lender entitled to receive such payment in accordance with this Agreement (for the account of its Facility Office), to such account as that Lender may notify to the Agent by not less than five (5) Business Days' notice with a bank 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).

## 31 ~~30~~ VARIATIONS AND WAIVERS

### 31.1 ~~30.4~~ Variations, waivers etc. by Majority Lenders

Subject to Clause ~~30.2~~ 31.2 (*Variations, waivers etc. requiring agreement of all Lenders*), a document shall be effective to vary, waive, amend, 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 email, by the Borrower, by the Agent on behalf of the Majority Lenders, by the Agent and the Security Trustee in their own rights, and, if the document relates to a Finance Document to which an Obligor is party, by an Obligor (provided that no amendment or variation may be made to this Agreement or any other Finance Document without the consent of the Italian Authorities); provided, further, that no amendment or variation may be made before the date falling ten Business Days after the terms of that amendment or variation have been notified by the Agent to the Lenders. The Agent shall notify the Lenders reasonably promptly of any amendments or variations proposed by the Borrower.

### 31.2 ~~30.2~~ Variations, waivers etc. requiring agreement of all Lenders

However, as regards the following, Clause ~~30.4~~ 31.1 (*Variations, waivers etc. by Majority Lenders*) applies as if the words "by the Agent on behalf of the Majority Lenders" were replaced by the words "by or on behalf of every Lender":

- (a) a reduction in the Margin;
  - (b) a postponement to the date for, or a reduction in the amount of, any payment of principal, interest, fees, commission or other sum payable under this Agreement;
  - (c) an increase in or extension of any Lender's Commitment or any requirement that a cancellation of Commitments reduces the Commitments rateably under the Loan;
  - (d) a change to the definition of "**Majority Lenders**";
  - (e) a change to Clause 2 (*Facility*), Clause 6 (*Interest*), Clause ~~23~~ 24 (*Changes to the Lenders*) or this Clause ~~30~~ 31 (*Variations and Waivers*);
  - (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.
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### 31.3 ~~30.3~~ Exclusion of other or implied variations

Except for a document which satisfies the requirements of Clauses ~~30.1~~31.1 (*Variations, waivers etc. by Majority Lenders*) and ~~30.2~~31.2 (*Variations, waivers etc. requiring agreement of all Lenders*), no document, and no act, course of conduct, failure or neglect to act, delay or acquiescence on the part of the Creditor Parties or any of them (or any person acting on behalf of any of them) shall result in the Creditor Parties or any of them (or any person acting on behalf of any of them) being taken to have varied, waived, suspended or limited, or being precluded (permanently or temporarily) from enforcing, relying on or exercising:

- (a) a provision of this Agreement or another Finance Document; or
- (b) an Event of Default; or
- (c) a breach by the Borrower or an Obligor 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.

## 32 ~~34~~ NOTICES

### 32.1 ~~34.1~~ General

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

### 32.2 ~~34.2~~ Addresses for communications

A notice shall be sent:

- (a) to the Borrower:                   7665 Corporate Center Drive  
Miami FL33126, USA  
Attention: Chief Financial Officer and General Counsel  
Email: [\*] / [\*]
  - (b) to a Lender:                        At the address below its name in Schedule 1 (*Lenders and Commitments*) or (as the case may require) in the relevant Transfer Certificate.
  - (c) to the Agent or the SACE Agent                   12 Place des États-Unis  
CS 70052  
92547 Montrouge Cedex, France  
Fax No. (33) 1 41 89 19 34  
Attn: Shipping Middle Office – Ms Clémentine Costil and Romy Roussel
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or to such other address as the relevant party may notify the Agent or, if the relevant party is the Agent, the Borrower and the Lenders.

**32.3 ~~31.3~~ Effective date of notices**

Subject to Clauses ~~31.4~~-32.4 (*Service outside business hours*) and ~~31.5~~-32.5 (*Electronic communication*), 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.

**32.4 ~~31.4~~ Service outside business hours**

However, if under Clause ~~31.3~~-32.3 (*Effective date of notices*) a notice would be deemed to be served:

- (a) on a day which is not a business day in the place of receipt; or
- (b) on such a business day, but after 6 p.m. local time;

the notice shall (subject to Clause ~~31.5~~-32.5 (*Electronic communication*)) be deemed to be served, and shall take effect, at 9 a.m. on the next day which is such a business day.

**32.5 ~~31.5~~ 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, 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 and if those two Parties:
  - (i) notify each other in writing of their electronic mail address and/or any other information required to enable the sending and receipt of information by that means; and
  - (ii) notify each other of any change to their address or any other such information supplied by them by not less than five Business Days' notice.
- (b) Any electronic communication made between those two Parties will be effective only when actually received in readable form and in the case of any electronic communication made by a Party to the Agent only if it is addressed in such a manner as the Agent shall specify for this purpose.
- (c) Any electronic communication which becomes effective, in accordance with paragraph (b) above, after 5.00 p.m. in the place of receipt shall be deemed only to become effective on the following day.

**32.6 ~~31.6~~ Illegible notices**

Clauses ~~31.3~~-32.3 (*Effective date of notices*) and ~~31.4~~-32.4 (*Service outside business hours*) do not apply if the recipient of a notice notifies the sender within 1 hour after the time at which the notice would otherwise be deemed to be served that the notice has been received in a form which is illegible in a material respect.

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**32.7 ~~31.7~~ 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.

**32.8 ~~31.8~~ English language**

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

**32.9 ~~31.9~~ Meaning of "notice"**

In this Clause ~~31-32~~ (*Notices*), "notice" includes any demand, consent, authorisation, approval, instruction, waiver or other communication.

**33 ~~32~~ CONFIDENTIALITY**

**33.1 ~~32.4~~ Confidential Information**

Each Creditor Party agrees to keep all Confidential Information confidential and not to disclose it to anyone, save to the extent permitted by Clause ~~32.2-33.2~~ (*Disclosure of Confidential Information*) 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.

**33.2 ~~32.2~~ Disclosure of Confidential Information**

Any Creditor Party may disclose:

- (a) to the Italian Authorities, to any of its Affiliates 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 and to any of that person's Affiliates, Representatives and professional advisers;
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- (ii) with (or through) whom it enters into (or may potentially enter into), whether directly or indirectly, any sub-participation in relation to, or any other transaction under which payments are to be made or may be made by reference to, one or more Finance Documents and/or one or more Obligors and to any of that person's Affiliates, 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, arbitrations, administrative or other investigations, proceedings or disputes;
- (vii) which is a classification society or other entity which a Lender has engaged to make the calculations necessary to enable that Lender to comply with its reporting obligations under the Poseidon Principles;
- (viii) who is a Party, a member of the Group or any related entity of an 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; or
- (xi) any employee, officer, director or Representative of any Italian Authorities to whom information is required to be disclosed in the course of such person's employment or duties;
- (xii) to whom or for whose benefit that Creditor Party charges, assigns or otherwise creates a Security Interest (or may do so) pursuant to Clause ~~23.16~~ 24.16 (*Security over Lenders' rights*).

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;
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- (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)(xii) 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 in to a confidentiality agreement substantially in the form of the LMA Master Confidentiality Undertaking for Use With Administration/Settlement Service Providers or such other form of confidentiality undertaking agreed between the Borrower and the relevant Creditor Party;
  - (d) to any rating agency (including its professional advisers) such Confidential Information as may be required to be disclosed to enable such rating agency to carry out its normal rating activities in relation to the Finance Documents and/or the 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.

### **33.3 ~~32-3~~ Entire agreement**

This Clause ~~32-33~~ 33.3 (*Confidentiality*) constitutes the entire agreement between the Parties in relation to the obligations of the Creditor Parties under the Finance Documents regarding Confidential Information and supersedes any previous agreement, whether express or implied, regarding Confidential Information.

### **33.4 ~~32-4~~ 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.

### **33.5 ~~32-5~~ Notification of disclosure**

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

- (a) of the circumstances of any disclosure of Confidential Information made pursuant to paragraph (b)(v) of Clause ~~32-2~~ 33.2 (*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 ~~32-33~~ 33 (*Confidentiality*).

### 33.6 ~~32-6~~ **Continuing obligations**

The obligations in this Clause ~~32-33~~ 33 (*Confidentiality*) 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 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 Creditor Party otherwise ceases to be a Creditor Party.

### 33.7 ~~32-7~~ **Disclosure by SACE**

Notwithstanding any other provision of this Agreement to the contrary, SACE may disclose any Confidential Information:

- (a) to its ultimate shareholder, holding, subsidiary, parent and affiliate companies;
- (b) to the Ministry of Economy and Finance of the Republic of Italy and its departments, other Italian Ministries (including any of their department), Interministerial committees of the Italian Government and any other Italian authority, committee, agency or governmental entity;
- (c) to providers of reinsurance/counter guarantee or any form of risk enhancement (including their agents, brokers and consultants) subject to such persons undertaking confidentiality obligations with SACE, unless they are subject to professional duties of confidentiality;
- (d) for the purposes of the State guarantee in favour of SACE pursuant to article 32 of law decree n. 91/2014 converted into law 116/2014 and for the purposes of article 2 of law decree 23/2020 converted into law 40/2020; or
- (e) following any payment due under the SACE Insurance Policy; or
- (f) with the consent of the Borrower, such consent not to be unreasonably withheld.

### 33.8 ~~32-8~~ **Press release**

Neither SACE nor the Borrower will issue any press release or make any public announcement in relation to the SACE Insurance Policy without the prior consent of the other party (such consent not to be unreasonably withheld).

## 34 ~~33~~ **LEGAL INDEPENDENCE**

### 34.1 ~~33-1~~ **Legal independence**

This Agreement is legally independent from the Shipbuilding Contract. The Borrower, in carrying out and fulfilling this Agreement, is not allowed to raise any defences or objections emanating from the Shipbuilding Contract, in particular if, but not limited thereto, the

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Shipbuilding Contract and/or any dispute in relation to the Shipbuilding Contract or the Ship is prematurely terminated or otherwise ends, from its business relations with the Builder and/or any other third party, or the insolvency or dissolution of either party to the Shipbuilding Contract or the destruction, non-completion or non-functioning of the Ship.

## **35 ~~34~~SACE SUBROGATION AND REIMBURSEMENT**

### **35.1 ~~34.1~~Acknowledgement of Subrogation**

Each Obligor and each Creditor Party acknowledges that, immediately upon any payment being made by SACE of any amount under the SACE Insurance Policy, SACE will be subrogated to the rights of the Lenders in the amount of such payment under the Finance Documents in accordance with the SACE Insurance Policy.

### **35.2 ~~34.2~~Reimbursement**

- (a) Without prejudice to Clause ~~34.1~~35.1 (*Acknowledgement* of Subrogation), each Obligor, jointly and severally undertakes to pay to SACE, and keep SACE indemnified from and against, each and every amount paid (whether by direct payment or set-off) by SACE to the Creditor Parties or any person on any of their behalf under the SACE Insurance Policy;
- (b) Each Obligor undertakes to pay SACE an amount in Dollars equal to:
  - (i) for each payment made by SACE to any of the Creditor Parties or any person on any of their behalf under the SACE Insurance Policy, the amount of such payment; and
  - (ii) for each deduction or withholding imposed, levied, collected, withheld or assessed on any payment by SACE to any of the Creditor Parties or any person on any of their behalf under the SACE Insurance Policy, the amount of such deduction or withholding,

in each case together with interest thereon (calculated in accordance with Clause ~~17.1~~18.1 (*Default rate of interest*) of this Agreement).

- (c) Each Obligor further agrees that its obligations under this Clause ~~34.2~~35.2 (*Reimbursement*) are separate from and in no way conditional upon the Obligor's obligations under this Agreement or any of the other Finance Documents and will not be affected or discharged by any matter relating thereto including, but not limited to, whether or not the Obligor is itself liable to make payment, or is disputing its liability to make payment, under this Agreement or any of the other Finance Documents.
- (d) SACE will promptly inform the Obligors of any amounts to be reimbursed and indemnified under this Clause ~~34.2~~35.2 (*Reimbursement*).
- (e) Each amount that is payable by the Obligors pursuant to Clause ~~34.2~~35.2 (*Reimbursement*) is due and payable to SACE in dollars within five (5) Business Days of demand by SACE to the Obligors.

### **35.3 ~~34.3~~Obligations Absolute**

The obligations of the Obligors under this Clause ~~34.2~~35.2 (*Reimbursement*), to the extent permitted by applicable law:

- (a) are absolute and unconditional;
-

- (b) are to be discharged and/or performed strictly in accordance with this Agreement under all circumstances;
  - (c) are continuing obligations and will extend to the ultimate balance of sums payable by SACE to any Creditor Party or any person on any of their behalf under the SACE Insurance Policy, regardless of any intermediate payment or discharge in whole or in part;
  - (d) will not be affected by an act, omission, matter or thing which, but for this Clause, would reduce, release or prejudice any of its obligations under Clause ~~34.2~~ 35.2 (*Reimbursement*) (without limitation and whether or not known to it or any Creditor Party) including:
    - (i) any time, waiver or consent granted to, or composition with any Obligor;
    - (ii) any lack of validity or enforceability of, or any amendment or other modifications of, or waiver with respect to, any of the Finance Documents;
    - (iii) any reduction or release of any other obligations under this Agreement;
    - (iv) the release of any Obligor or any other person under the terms of any composition or arrangement;
    - (v) the taking, variation, compromise, exchange, renewal, discharge, substitution or release of, or refusal or neglect to perfect, take up, realise or enforce, any rights against, or security over assets of, any Obligor 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;
    - (vi) any incapacity or lack of power, authority or legal personality of or dissolution or change in the members or status of any Obligor, any Creditor Party or any other person;
    - (vii) any amendment (however fundamental) or replacement of a Finance Document, the SACE Insurance Policy or any other document or security;
    - (viii) any unenforceability, illegality or invalidity of any obligation of any person under any Finance Document, the SACE Insurance Policy or any other document or security;
    - (ix) any insolvency or similar proceedings;
    - (x) the existence of any claim, set-off, defence, reduction, abatement or other right which any Obligor may have at any time against SACE;
    - (xi) any document presented in connection with the SACE Insurance Policy proving to be forged, fraudulent, invalid or insufficient in any respect or any statement therein being untrue or inaccurate in any respect;
    - (xii) any payment by SACE against presentation of a demand for payment substantially, on its face, in the form of a claim under the SACE Insurance Policy where any certificate or other document required to be provided with such claim in accordance with the terms of the SACE Insurance Policy either is not provided or does not comply with the terms of the SACE Insurance Policy; and
-

- (xiii) any other circumstances which might otherwise constitute a defence available to, or discharge of any Obligor.

**36 ~~35~~SUPPLEMENTAL**

**36.1 ~~35.1~~Rights cumulative, non-exclusive**

The rights and remedies which the Finance Documents give to each Secured 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.

**36.2 ~~35.2~~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.

**36.3 ~~35.3~~Counterparts**

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

**36.4 ~~35.4~~Third party rights**

- (a) Except for SACE and its successors, transferees and assignees or as otherwise provided 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 Party Act**") to enforce or to enjoy the benefit of any term of this Agreement.
  - (b) Notwithstanding any provision of any Finance Document, the consent of any person (other than SACE or its successors, transferees and assignees) who is not a party to a Finance Document is not required to rescind, vary or terminate any Finance Document at any time.
  - (c) Subject to the provisions of the Third Party Act, SACE has the right to enforce and to enjoy the benefit of Clause ~~34-35~~ (*SACE Subrogation and Reimbursement*), Clause ~~47-18~~ (*Interest on Late Payments*), Clause ~~40.2-11.2~~ (*Tax gross-up*), Clause ~~40.3-11.3~~ (*Tax indemnity*), Clause ~~40.41-11.11~~ (*Transaction Costs*), Clause ~~20.3-21.3~~ (*Miscellaneous indemnities*), Clause ~~20.4-21.4~~ (*Currency indemnity*), Clause ~~40.6-11.6~~ (*VAT*), Clause ~~40.13-11.13~~ (*SACE obligations*), Clauses ~~32.7-33.7~~ (*Disclosure by SACE*) and ~~32.8-33.8~~ (*Press release*) and Clause ~~37-38~~ (*Enforcement*),
  - (d) Any amendment or waiver which relates to the rights of SACE under this Agreement, including under Clause ~~34-35~~ (*SACE Subrogation and Reimbursement*), Clause ~~47-18~~ (*Interest on Late Payments*), Clause ~~40.2-11.2~~ (*Tax gross-up*), Clause ~~40.3-11.3~~ (*Tax indemnity*), Clause ~~20.4-21.4~~ (*Currency indemnity*), Clause ~~20.3-21.3~~ (*Miscellaneous indemnities*), Clause ~~40.6-11.6~~ (*VAT*), Clause ~~40.41-11.11~~ (*Transaction Costs*), Clauses ~~32.7-33.7~~ (*Disclosure by SACE*) and ~~32.8-33.8~~ (*Press release*) and Clause ~~37-38~~ (*Enforcement*) may not be effected without the consent of SACE.
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**36.5 ~~35.5~~No waiver**

No failure or delay on the part of a Secured Party in exercising any right, power or privilege hereunder shall operate as a waiver thereof; nor shall any single or partial exercise thereof preclude any other or further exercise thereof by the Secured Parties or the exercise by the Secured Parties of any other right, power or privilege. The rights and remedies of the Secured Parties herein provided are cumulative and not exclusive of any rights or remedies provided by law.

**36.6 ~~35.6~~Writing required**

This Agreement shall not be capable of being modified otherwise than by an express modification in writing signed by the Borrower, the Agent and the Lenders.

**37 ~~36~~GOVERNING LAW**

**37.1 ~~36.1~~Law**

This Agreement and any non-contractual obligations arising out of or in connection with it are governed by and construed in accordance with English law.

**38 ~~37~~ENFORCEMENT**

**38.1 ~~37.1~~Jurisdiction of English Courts**

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) (a "**Dispute**"). Each Party agrees that the courts of England are the most appropriate and convenient courts to settle Disputes and accordingly no Party will argue to the contrary.

**38.2 ~~37.2~~Service of process**

Without prejudice to any other mode of service allowed under any relevant law, the Borrower:

- (a) irrevocably appoints Hannaford Turner LLP, currently of ~~9 Cloak Lane~~[107 Cheapside](#), London ~~EC4R 2RU~~[UK, EC2V 6DN](#), as its agent for service of process in relation to any proceedings before the English courts in connection with any Finance Document; and
- (b) agrees that failure by a process agent to notify the Borrower of the process will not invalidate the proceedings concerned.

If any person appointed as an agent for service of process is unable for any reason to act as agent for service of process, the Borrower (on behalf of all the Obligors) must immediately (and in any event within 15 days of such event taking place) appoint another agent on terms acceptable to the Agent. Failing this, the Agent may appoint another agent for this purpose.

**39 ~~38~~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

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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.

#### **40 39 CONFIDENTIALITY OF FUNDING RATES AND REFERENCE BANK QUOTATIONS**

##### **40.1 39.4 Confidentiality and disclosure**

- (a) The Agent and each Obligor agree to keep each Funding Rate (and, in the case of the 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 Agent may disclose:
    - (i) any Funding Rate (but not, for the avoidance of doubt, any Reference Bank Quotation) to the Borrower pursuant to Clause ~~6-6~~ 7.6 (*Notification of Interest Periods and Floating Interest Rate*);
    - (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 Agent and the relevant Lender or Reference Bank, as the case may be.
  - (c) The 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
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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 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 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 Agent's obligations in this Clause ~~39-40~~ (*Confidentiality of Funding Rates and Reference Bank Quotations*) relating to Reference Bank Quotations are without prejudice to its obligations to make notifications under Clause ~~6-6-7.6~~ (*Notification of Interest Periods and Floating Interest Rate*) **provided that** (other than pursuant to sub-paragraph (i) of paragraph (b) above) the Agent shall not include the details of any individual Reference Bank Quotation as part of any such notification.

#### 40.2 ~~39.2~~ Related obligations

- (a) The Agent and each Obligor acknowledge that each Funding Rate (and, in the case of the 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 Agent and each Obligor undertake not to use any Funding Rate or, in the case of the Agent, any Reference Bank Quotation for any unlawful purpose.
- (b) The 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 (c) of Clause ~~39.1-40.1~~ (*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 ~~39-40~~ (*Confidentiality of Funding Rates and Reference Bank Quotations*).

#### 40.3 ~~39.3~~ No Event of Default

No Event of Default will occur under Clause ~~18.4-19.4~~ (*Breach of other obligations*) by reason only of an Obligor's failure to comply with this Clause ~~39-40~~ (*Confidentiality of Funding Rates and Reference Bank Quotations*).

**This Agreement has been entered into and amended and restated on the date stated at the beginning of this Agreement.**

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EXECUTION PAGES

**BORROWER**

SIGNED by )  
 )  
for and on behalf of )  
**EXPLORER II NEW BUILD, LLC** )  
in the presence of: )

**LENDERS**

SIGNED by )  
 )  
for and on behalf of )  
**CRÉDIT AGRICOLE CORPORATE AND** )  
**INVESTMENT BANK** )  
in the presence of: )

SIGNED by )  
 )  
for and on behalf of )  
KFW IPEX-BANK GMBH )  
in the presence of: )

SIGNED by )  
 )  
for and on behalf of )  
HSBC BANK PLC )  
in the presence of: )

SIGNED by )  
 )  
for and on behalf of )  
**SOCIÉTÉ GÉNÉRALE** )  
in the presence of: )

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**JOINT MANDATED LEAD ARRANGERS**

**SIGNED** by \_\_\_\_\_ )  
\_\_\_\_\_) )  
for and on behalf of \_\_\_\_\_ )  
**CRÉDIT AGRICOLE CORPORATE AND** )  
**INVESTMENT BANK** \_\_\_\_\_ )  
in the presence of: \_\_\_\_\_ )

**SIGNED** by \_\_\_\_\_ )  
\_\_\_\_\_) )  
for and on behalf of \_\_\_\_\_ )  
**SOCIETE GENERALE** \_\_\_\_\_ )  
in the presence of: \_\_\_\_\_ )

**SIGNED** by \_\_\_\_\_ )  
\_\_\_\_\_) )  
for and on behalf of \_\_\_\_\_ )  
**KFW IPEX-BANK GMBH** \_\_\_\_\_ )  
in the presence of: \_\_\_\_\_ )

**SIGNED** by \_\_\_\_\_ )  
\_\_\_\_\_) )  
for and on behalf of \_\_\_\_\_ )  
**HSBC BANK PLC** \_\_\_\_\_ )  
in the presence of: \_\_\_\_\_ )

**AGENT**

**SIGNED** by \_\_\_\_\_ )  
\_\_\_\_\_) )  
for and on behalf of \_\_\_\_\_ )  
**CRÉDIT AGRICOLE CORPORATE AND** )  
**INVESTMENT BANK** \_\_\_\_\_ )  
in the presence of: \_\_\_\_\_ )



**SECURITY TRUSTEE**

**SIGNED** by )  
 )  
for and on behalf of )  
**CRÉDIT AGRICOLE CORPORATE AND** )  
**INVESTMENT BANK** )  
in the presence of: )

**SACE AGENT**

**SIGNED** by )  
 )  
for and on behalf of )  
**CRÉDIT AGRICOLE CORPORATE AND** )  
**INVESTMENT BANK** )  
in the presence of: )

**JOINT MANDATED LEAD ARRANGERS**

**SIGNED** by }  
 }  
for and on behalf of }  
**GRÉDIT AGRICOLE CORPORATE AND** }  
**INVESTMENT BANK** }  
in the presence of: }

**SIGNED** by }  
 }  
for and on behalf of }  
**SOCIETE GENERALE** }  
in the presence of: }  
**SIGNED** by }  
 }  
for and on behalf of }  
**KFW IPEX BANK GMBH** }  
in the presence of: }



**SIGNED** by

)

for and on behalf of

)

**HSBC BANK PLC**

)

in the presence of:

)

)



## APPENDIX 2

### FORM OF AMENDED AND RESTATED GUARANTEE (MARKED TO INDICATE AMENDMENTS)

Amendments are indicated as follows:

- 1 additions are indicated by underlined text in blue; and
  - 2 deletions are shown by strike-through text in red.
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Originally dated 30 March 2016 (as amended from time to time, including by a supplemental agreement dated 4 June 2020 ~~and~~, as further amended and restated by an amendment and restatement agreement dated ~~February 2021~~ 17 February 2021, as further amended by a supplemental agreement dated 23 December 2021, as further amended by a supplemental agreement dated 16 December 2022 and as further amended and restated by an amendment and restatement agreement dated 2023)

**NCL CORPORATION LTD.**

as Guarantor

and

**CRÉDIT AGRICOLE CORPORATE AND INVESTMENT BANK**

as Security Trustee

and

**NORWEGIAN CRUISE LINE HOLDINGS LTD.**

as Holding

**AMENDED AND RESTATED GUARANTEE**

relating to

a loan agreement dated 30 March 2016 (as previously amended from time to time, including by a supplemental agreement dated 4 June 2020 ~~and~~, as further amended and restated by an amendment and restatement agreement dated ~~February 2021~~ 17 February 2021, as further amended by a supplemental agreement dated 23 December 2021, as further amended by a supplemental agreement dated 16 December 2022 and as further amended and restated by an amendment and restatement agreement dated 2023) in respect of the passenger cruise ship m.v. "SEVEN SEAS SPLENDOR"

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**THIS GUARANTEE** is originally made on 30 March 2016 (as amended from time to time, including by a supplemental agreement dated 4 June 2020 ~~and~~, as further amended and restated by an amendment and restatement agreement dated ~~February 2021~~ February 2021, as further amended by a supplemental agreement dated 23 December 2021, as further amended by a supplemental agreement dated 16 December 2022 and as further amended and restated by an amendment and restatement agreement dated 2023)

## **PARTIES**

- (1) **NCL CORPORATION LTD.**, a company incorporated under the laws of Bermuda with its registered office at Park Place ~~55~~, 55 Par-la-Ville Road, Hamilton HM 11, Bermuda (the "**Guarantor**")
- (2) **CRÉDIT AGRICOLE CORPORATE AND INVESTMENT BANK** a *société anonyme*, having a share capital of EUR 7,851,636,342.00 and its registered office located at 12, Place des États-Unis, CS 70052 92547, Montrouge Cedex, France registered under the no. Siren 304 187 701 at the Registre du Commerce et des Sociétés of Nanterre as security trustee on behalf of the Secured Parties (the "**Security Trustee**", which expression includes its successors, transferees and assigns)
- (3) **NORWEGIAN CRUISE LINE HOLDINGS LTD.**, a company incorporated under the laws of Bermuda with its registered office at Park Place ~~55~~, 55 Par-la-Ville Road, Hamilton HM 11, Bermuda (the "**Holder**")

## **BACKGROUND**

- (A) By a shipbuilding contract dated 22 December 2015 (as amended from time to time, the "**Shipbuilding Contract**") entered into between (i) Fincantieri S.p.A, a company incorporated in Italy with registered office in Trieste, via Genova, 1, and having fiscal code 00397130584 (the "**Builder**") and (ii) Explorer II New Build, LLC (the "**Borrower**"), the Builder agreed to design, construct and deliver, and the Borrower agreed to purchase, a 754 passenger cruise ship currently having hull number [\*] as more particularly described in the Shipbuilding Contract, which was delivered on [\*] in accordance with the Shipbuilding Contract.
- (B) By a loan agreement dated 30 March 2016 (the "**Original Loan Agreement**") and made between (i) the Borrower, (ii) the Lenders, (iii) the Joint Mandated Lead Arrangers, (iv) the Agent and SACE Agent and (v) the Security Trustee, it was agreed that the Lenders would make available to the Borrower a loan facility of the Dollar Equivalent of up to EUR 360,222,680.41 (not to exceed USD 498,187,967.01) for the purpose of assisting the Borrower in financing (a) payment or reimbursement under the Shipbuilding Contract of all or part of 80% of the Final Contract Price up to the Eligible Amount, (b) payment to SACE of 100% of the SACE Premium (as defined therein).
- (C) The execution and delivery to the Security Trustee of a guarantee by the Guarantor, which was executed on 30 March 2016 (the "**Original Guarantee**"), was one of the conditions precedent to the availability of the facility under the Original Loan Agreement.
- (D) Due to the unprecedented and extraordinary impacts of the Covid-19 pandemic on the cruise sector and cruise operators, SACE informed the cruise operators of its availability to evaluate certain measures (the "**Temporary Measures**") applicable in relation to certain qualifying loan agreements in order to assist companies which are financially sound but dealing with the impact of the temporary but unprecedented Covid-19 pandemic; the possibility to access to

such measures was subject, amongst other things, to certain principles dated 15 April 2020 for cruise lines offered by SACE (the "**Original Principles**").

- (E) Pursuant to the consent request letter dated 18 April 2020, the Borrower and the Guarantor notified the Agent and the SACE Agent of their wish to benefit from the Temporary Measures in relation to certain loan agreements listed therein, including the Original Loan Agreement, and requested, amongst other things, the deferral of repayments of principal under the Original Loan Agreement for a period of one year from 1 April 2020 to 31 March 2021 (the "**First Borrower Request**").
- (F) On 25 May 2020, the Agent (for and on behalf of the Lenders) provided its consent to part of the First Borrower Request in accordance with and subject to certain conditions as set out in an amendment to the Original Loan Agreement dated 4 June 2020 between, amongst others, the Borrower, the Agent and the SACE Agent (the "**2020 Amendment Agreement**") ~~(the Original Loan Agreement as amended pursuant to the 2020 Amendment Agreement, the "**Amended Loan Agreement**").~~
- (G) Due to the continued impacts of the Covid-19 pandemic on the cruise sector and cruise operators, SACE confirmed on 31 December 2020 its availability to evaluate an extension of the Temporary Measures (the "**Extended Temporary Measures**"), again subject to certain principles dated 26 November 2020 for cruise lines offered by SACE (together with the Original Principles, the "**Principles**").
- (H) Pursuant to the consent request letter dated 3 December 2020, the Borrower and the Guarantor notified the Agent and the SACE Agent of their wish to benefit from the Extended Temporary Measures in relation to certain loan agreements listed therein, including the ~~Amended-Original~~ Loan Agreement (as amended by the 2020 Amendment Agreement), and requested, amongst other things, the deferral of repayments of principal under the ~~Amended-Original~~ Loan Agreement (as amended by the 2020 Amendment Agreement) for a period of one year from 1 April 2021 to 31 March 2022 (the "**Second Borrower Request**").
- (I) On 25 January 2021, the Agent (for and on behalf of the Lenders) provided its consent to part of the Second Borrower Request in accordance with and subject to certain conditions as set out in an amendment and restatement agreement to the ~~Amended-Original~~ Loan Agreement (as amended by the 2020 Amendment Agreement) and to the Original Guarantee (as amended ~~pursuant to by~~ the 2020 Amendment Agreement, ~~the "**Amended Guarantee**"~~) dated ~~\_\_\_\_\_~~ 17 February 2021 between, amongst others, the Borrower, the Guarantor, the Agent and the SACE Agent (the "**February 2021 Amendment and Restatement Agreement**", ~~and the Amended Loan Agreement as amended and restated by the 2021 Amendment and Restatement Agreement, the "**Loan Agreement**").~~);
- (J) By a supplemental agreement dated 23 December 2021 and made between, amongst others, the Borrower, the Agent and the SACE Agent (the "**December 2021 Amendment Agreement**"), the Parties agreed to, *inter alia*, amend certain financial covenants and certain other provisions under the Original Loan Agreement (as amended by the 2020 Amendment Agreement and as amended and restated by the February 2021 Amendment and Restatement Agreement) and the Original Guarantee (as amended by the 2020 Amendment Agreement and as amended and restated by the February 2021 Amendment and Restatement Agreement).
- (K) By a supplemental agreement dated 16 December 2022 and made between, amongst others, the Borrower, the Agent and the SACE Agent (the "**December 2022 Amendment Agreement**"), the Parties agreed to, *inter alia*, amend certain financial covenants and certain other provisions

under the Original Loan Agreement (as amended by the 2020 Amendment Agreement, as amended and restated by the February 2021 Amendment and Restatement Agreement and as amended by the December 2021 Amendment Agreement) and the Original Guarantee (as amended by the 2020 Amendment Agreement, as amended and restated by the February 2021 Amendment and Restatement Agreement and as amended by the December 2021 Amendment Agreement).

(L) The Parties have agreed to enter into an amendment and restatement agreement to the Original Loan Agreement (as amended by the 2020 Amendment Agreement, as amended and restated by the February 2021 Amendment and Restatement Agreement, as amended by the December 2021 Amendment Agreement and as amended by the December 2022 Amendment Agreement, the "Amended Loan Agreement") and to the Original Guarantee (as amended by the 2020 Amendment Agreement, as amended and restated by the February 2021 Amendment and Restatement Agreement, as amended by the December 2021 Amendment Agreement and as amended by the December 2022 Amendment Agreement, the "Amended Guarantee") dated 2023 to, *inter alia*, incorporate certain amendments including the switch from LIBOR to SOFR (as defined therein) (the "2023 Amendment and Restatement Agreement" and the Amended Loan Agreement as amended and restated by the 2023 Amendment and Restatement Agreement, the "Loan Agreement").

(M) ~~(J)~~ This Guarantee sets out the terms and conditions of the Amended Guarantee as amended and restated by the ~~2024~~-2023 Amendment and Restatement Agreement.

## OPERATIVE PROVISIONS

~~IT IS AGREED~~ as follows:

### 1 INTERPRETATION

#### 1.1 Defined expressions

Words and expressions defined in the Loan Agreement shall have the same meanings when used in this Guarantee unless the context otherwise requires.

#### 1.2 Construction of certain terms

In this Guarantee:

"**Bankruptcy**" includes a liquidation, receivership or administration and any form of suspension of payments, arrangement with creditors or reorganisation under any corporate or insolvency law of any country.

"**Capital Stock**" means:

- (a) in the case of a corporation or company, corporate stock or shares;
- (b) in the case of an association or business entity, any and all shares, interests, participations, rights or other equivalents (however designated) of corporate stock;
- (c) in the case of a partnership or limited liability company, partnership or membership interests (whether general or limited); and
- (d) any other interest or participation that confers on a person the right to receive a share of the profits and losses of, or distributions of assets of, the issuing person.

"**First Financial Quarter**" means the financial quarter ending immediately prior to or on the date falling 90 days before the Intended Delivery Date.

"**Loan Agreement**" has the meaning given to such term in Recital ~~4~~(L).

~~"**Management**" means the employees of the Guarantor and its subsidiaries or their dependants or any trust for which such persons are the intended beneficiary.~~

### **1.3 Application of construction and interpretation provisions of Loan Agreement**

Clauses 1.2 (*Construction of certain terms*) to ~~1.5~~ 1.6 (*General Interpretation*) of the Loan Agreement apply, with any necessary modifications, to this Guarantee.

### **1.4 Inconsistency between Loan Agreement provisions and this Guarantee**

This Guarantee shall be read together with the Loan Agreement, but in case of any conflict between the Loan Agreement and this Guarantee, unless expressly provided to the contrary in this Guarantee, the provisions of the Loan Agreement shall prevail.

## **2 GUARANTEE**

### **2.1 Guarantee and indemnity**

The Guarantor unconditionally and irrevocably:

- (a) guarantees to the Security Trustee punctual performance by the Borrower of all the Borrower's obligations under or in connection with the Loan Agreement and every other Finance Document;
- (b) undertakes to the Security Trustee that whenever the Borrower does not pay any amount when due under or in connection with the Loan Agreement and the other Finance Documents, the Guarantor shall immediately on demand pay that amount as if it was the principal obligor;
- (c) agrees that if any obligation guaranteed by it is or becomes unenforceable, invalid or illegal, it will, as an independent and primary obligation, indemnify the Security Trustee and each other Secured Party immediately on demand by the Security Trustee against any cost, loss or liability it incurs as a result of the Borrower not paying any amount which would, but for such unenforceability, invalidity or illegality, have been payable by it under the Loan Agreement or any other Finance Document on the date when it would have been due. Any such demand for indemnification shall be made through the Security Trustee, for itself or on behalf of the Secured Parties. The amount payable by the Guarantor under this indemnity will not exceed the amount it would have had to pay under this Clause 2.1 (*Guarantee and indemnity*) if the amount claimed had been recoverable on the basis of a guarantee.

### **2.2 No limit on number of demands**

The Security Trustee may serve any number of demands under Clause 2.1 (*Guarantee and indemnity*).

### **3 LIABILITY AS PRINCIPAL AND INDEPENDENT DEBTOR**

#### **3.1 Principal and independent debtor**

The Guarantor shall be liable under this Guarantee as a principal and independent debtor and accordingly it shall not have, as regards this Guarantee, any of the rights or defences of a surety.

#### **3.2 Waiver of rights and defences**

Without limiting the generality of Clause 3.1 (*Principal and independent debtor*), the obligations of the Guarantor under this Guarantee will not be affected or discharged by an act, omission, matter or thing which, but for this Clause, would reduce, release or prejudice any of its obligations under this Guarantee (without limitation and whether or not known to it or any Secured Party) including:

- (a) any time, waiver or consent granted to, or composition with, the Borrower or other person;
- (b) the release of the Borrower or any other person under the terms of any composition or arrangement with any creditor of any affiliate of the Borrower;
- (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, the Borrower or other person or any non-presentation or non-observance of any formality or other requirement in respect of any instrument or any failure to realise the full value of any security;
- (d) any incapacity or lack of power, authority or legal personality of or dissolution or change in the members or status of the Borrower or any other person;
- (e) any amendment, novation, supplement, extension, restatement (however fundamental and whether or not more onerous) or replacement of any Finance Document or any other document or security including without limitation any change in the purpose of, any extension of or any increase in any facility or the addition of any new facility under any Finance Document or other document or security;
- (f) any insolvency or similar proceedings;
- (g) any arrangement or concession (including a rescheduling or acceptance of partial payments) relating to, or affecting, the Finance Documents;
- (h) any release or loss whatsoever of any guarantee, right or Security Interest created by the Finance Documents;
- (i) any failure whatsoever promptly or properly to exercise or enforce any such right or Security Interest, including a failure to realise for its full market value an asset covered by such a Security Interest;
- (j) any other Finance Document or any Security Interest now being or later becoming void, unenforceable, illegal or invalid or otherwise defective for any reason, including a neglect to register it; or

- (k) any unenforceability, illegality or invalidity of any obligation of any person under any Finance Document or any other document or security.

#### **4 EXPENSES**

##### **4.1 Costs of preservation of rights, enforcement etc**

The Guarantor shall pay to the Security Trustee on its demand the amount of all expenses incurred by the Security Trustee or any other Secured Party in connection with any matter arising out of this Guarantee or any Security Interest connected with it, including any advice, claim or proceedings relating to this Guarantee or such a Security Interest.

##### **4.2 Fees and expenses payable under Loan Agreement**

Clause 4.1 (*Costs of preservation of rights, enforcement etc*) is without prejudice to the Guarantor's liabilities in respect of the Borrower's obligations under clauses 9 (*Fees*) and 10 (*Taxes, Increased Costs, Costs and Related Charges*) of the Loan Agreement and under similar provisions of other Finance Documents.

#### **5 ADJUSTMENT OF TRANSACTIONS**

##### **5.1 Reinstatement of obligation to pay**

The Guarantor shall pay to the Security Trustee on its demand any amount which any Secured Party is required, or agrees, to pay pursuant to any claim by, or settlement with, a trustee in **bankruptcy** [Bankruptcy](#) of the Borrower or of any other Obligor (or similar person) on the ground that the Loan Agreement or any other Finance Document, or a payment by the Borrower or of such other Obligor, was invalid or on any similar ground.

#### **6 PAYMENTS**

##### **6.1 Method of payments**

Any amount due under this Guarantee shall be paid:

- (a) in immediately available funds;
- (b) to such account as the Security Trustee may from time to time notify to the Guarantor;
- (c) without any form of set-off, cross-claim or condition; and
- (d) free and clear of any tax deduction except a tax deduction which the Guarantor is required by law to make.

##### **6.2 Grossing-up for taxes**

If the Guarantor is required by law to make a tax deduction, the amount due to the Security Trustee shall be increased by the amount necessary to ensure that the Security Trustee and (if the payment is not due to the Security Trustee for its own account) the Secured Party beneficially interested in the payment receives and retains a net amount which, after the tax deduction, is equal to the full amount that it would otherwise have received.



### **6.3 Tax Credits**

If an additional payment is made by the Guarantor under this Clause and any Secured Party determines that it has received or been granted a credit against or relief of or calculated with reference to the deduction giving rise to such additional payment, such Secured Party shall, to the extent that it can do so without prejudice to the retention of the amount of such credit, relief, remission or repayment and provided that it has received the cash benefit of such credit, relief or remission, pay to the Guarantor such amount as such Secured Party shall in its reasonable opinion have concluded to be attributable to the relevant deduction. Any such payment shall be conclusive evidence of the amount due to the Guarantor hereunder and shall be accepted by the Guarantor in full and final settlement of its rights of reimbursement hereunder in respect of such deduction. Nothing herein contained shall interfere with the right of each Secured Party to arrange its tax affairs in whatever manner it thinks fit.

- 6.4 To the extent that this Clause 6 (*Payments*) imposes obligations or restrictions on a Secured Party, such obligations or restrictions shall not apply to SACE and SACE shall have no obligations hereunder nor be constrained by such restrictions.

## **7 INTEREST**

### **7.1 Accrual of interest**

Any amount due under this Guarantee shall carry interest after the date on which the Security Trustee demands payment of it until it is actually paid, unless interest on that same amount also accrues under the Loan Agreement.

### **7.2 Calculation of interest**

Interest on sums payable under this Guarantee shall be calculated and accrue in the same way as interest under clause 6 (*Interest*) of the Loan Agreement.

### **7.3 Guarantee extends to interest payable under Loan Agreement**

For the avoidance of doubt, it is confirmed that this Guarantee covers all interest payable under the Loan Agreement, including that payable under clause 17 (*Interest on Late Payments*) of the Loan Agreement.

## **8 SUBORDINATION**

### **8.1 Subordination of rights of Guarantor**

Until all amounts which may be or become payable by the Obligors under or in connection with the Finance Documents have been irrevocably paid in full and unless the Agent otherwise directs, all rights which the Guarantor at any time has (whether in respect of this Guarantee or any other transaction) against the Borrower, any other Obligor or their respective assets shall be fully subordinated to the rights of the Secured Parties under the Finance Documents; and in particular, the Guarantor shall not:

- (a) claim, or in a ~~bankruptcy~~ Bankruptcy of the Borrower or any other Obligor prove for, any amount payable to the Guarantor by the Borrower or any other Obligor, whether in respect of this Guarantee or any other transaction;
- (b) take or enforce any Security Interest for any such amount;

- (c) exercise any right to be indemnified by an Obligor;
- (d) bring legal or other proceedings for an order requiring the Borrower or any other Obligor to make any payment, or perform any obligation, in respect of which ~~any~~ the Guarantor has given a guarantee, undertaking or indemnity under this Guarantee;
- (e) claim to set-off any such amount against any amount payable by the Guarantor to the Borrower or any other Obligor; or
- (f) claim any subrogation or right of contribution or other right in respect of any Finance Document or any sum received or recovered by any Secured Party under a Finance Document.

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 Secured Parties by the Obligors under or in connection with the Finance Documents to be repaid in full on trust for the Secured Parties and shall promptly pay or transfer the same to the Security Trustee or as the Security Trustee may direct for application in accordance with the Loan Agreement and the Finance Documents.

## **9 ENFORCEMENT**

### **9.1 No requirement to commence proceedings against Borrower**

The Guarantor waives any right it may have of first requiring the Security Trustee or any other Secured Party to proceed against or enforce any other rights or security or claim payment from any person before claiming from ~~that~~ the Guarantor under this Guarantee. Neither the Security Trustee nor any other Secured Party will need to make any demand under, commence any proceedings under, or enforce any guarantee or any Security Interest contained in or created by, the Loan Agreement or any other Finance Document before claiming or commencing proceedings under this Guarantee. This waiver applies irrespective of any law or any provision of a Finance Document to the contrary.

### **9.2 Conclusive evidence of certain matters**

However, as against the Guarantor:

- (a) any judgment or order of a court in England or the jurisdiction of the Approved Flag or Bermuda or the United States of America in connection with the Loan Agreement; and
  - (b) any statement or admission by the Borrower in connection with the Loan Agreement,
- shall be binding and conclusive as to all matters of fact and law to which it relates.

### **9.3 Suspense account**

Until all amounts which may be or become payable by the Obligors under or in connection with the Finance Documents have been irrevocably paid in full, the Security Trustee and any Secured Party may:

- (a) refrain from applying or enforcing any other moneys, security or rights held or received by it (or any trustee or agent on its behalf which, in the case of a Secured Party, shall include the Agent and the Security Trustee) 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 ~~any~~ the Guarantor or on account of ~~any~~ the Guarantor's liability under this Guarantee.

## **10 REPRESENTATIONS AND WARRANTIES**

### **10.1 General**

The Guarantor represents and warrants to the Security Trustee as follows on the date of this Guarantee, which representations and warranties shall be deemed to be repeated, with reference mutatis mutandis to the facts and circumstances subsisting, as if made on each day from the date of this Guarantee to the end of the Security Period.

### **10.2 Status**

The Guarantor is duly incorporated and validly existing and in good standing under the laws of Bermuda as an exempted company.

### **10.3 Corporate power**

The Guarantor has the corporate capacity, and has taken all corporate action and obtained all consents necessary for it:

- (a) to execute this Guarantee; and
- (b) to make all the payments contemplated by, and to comply with, this Guarantee.

### **10.4 Consents in force**

All the consents referred to in Clause 10.3 (*Corporate power*) remain in force and nothing has occurred which makes any of them liable to revocation.

### **10.5 Legal validity**

This Guarantee constitutes the Guarantor's legal, valid and binding obligations enforceable against the Guarantor in accordance with its terms subject to any relevant insolvency laws affecting creditors' rights generally.

### **10.6 No conflicts**

The execution by the Guarantor of this Guarantee and its compliance with this Guarantee will not involve or lead to a contravention of:

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

## **10.7 No withholding taxes**

All payments which the Guarantor is liable to make under this Guarantee may be made without deduction or withholding for or on account of any tax payable under any law of Bermuda or the United States of America.

To the knowledge of the Guarantor, no Event of Default has occurred which is continuing.

## **10.9 Information**

All information which has been provided in writing by or on behalf of the Guarantor to the Security Trustee or any other Secured Party in connection with any Finance Document satisfied the requirements of Clause 11.2 (*Information provided to be accurate*); all audited and unaudited accounts which have been so provided satisfied the requirements of Clause 11.4 (*Form of financial statements*); and there has been no material adverse change in the financial position or state of affairs of the Guarantor from that disclosed in the latest of those accounts.

## **10.10 No litigation**

No legal or administrative action involving the Guarantor has been commenced or taken or, to the Guarantor's knowledge, is likely to be commenced or taken which, in either case, would be likely to have a material adverse effect on the Guarantor's financial position or profitability.

## **10.11 No Security Interests**

None of the assets or rights of the Guarantor is subject to any Security Interest except any Security Interest which (i) qualifies as a Permitted Security Interest with respect to the Guarantor or (ii) is permitted by Clause 11.11 (*Negative pledge*).

# **11 UNDERTAKINGS**

## **11.1 General**

The Guarantor undertakes with the Security Trustee to comply with the following provisions of this Clause 11 (*Undertakings*) at all times from the date of this Guarantee to the end of the Security Period, except as the Security Trustee may otherwise permit.

## **11.2 Information provided to be accurate**

All financial and other information which is provided in writing by or on behalf of the Guarantor under or in connection with this Guarantee will be true and not misleading and will not omit any material fact or consideration.

## **11.3 Provision of financial statements**

The Guarantor will send to the Security Trustee:

- (a) as soon as practicable, but in no event later than 120 days after the end of each financial year of the Guarantor beginning with the year ending 31 December 2016, the audited consolidated accounts of the Guarantor and its subsidiaries;
- (b) as soon as practicable (and in any event within forty-five (45) days of the end of the contemplated quarter in respect of the first three quarters of each fiscal year and 90 days in

- respect of the final quarter) a copy of the unaudited consolidated quarterly management accounts of the Guarantor certified as to their correctness by the chief financial officer of the Guarantor (it being understood that the delivery by the Guarantor of quarterly or annual reports as filed with the Securities and Exchange Commission in respect of the Guarantor and its consolidated subsidiaries shall satisfy all the requirements of this paragraph (b));
- (c) a compliance certificate in the form set out in Schedule 1 (*Form of Compliance Certificate*) to this Guarantee or in such other form as the Security Trustee may reasonably require (each a "**Compliance Certificate**") at the same time as there is delivered to the Security Trustee, and together with, each set of unaudited consolidated quarterly management accounts under paragraph (b) and, if applicable, audited consolidated accounts under paragraph (a), duly signed by the chief financial officer of the Guarantor and certifying whether or not the requirements of Clause 11.15 (*Financial Covenants*) are then complied with;
  - (d) such additional financial or other relevant information regarding the Guarantor and the Group as the Security Trustee may reasonably request; and
  - (e) as soon as practicable (and in any event not later than 31 January of each fiscal year):
    - (i) updated financial projections of the Group for at least the next five years (including an income statement, balance sheet statement and cash flow statement and quarterly break downs for the first of those five years); and
    - (ii) an outline of the assumptions supporting such budget and financial projections including but without limitation any scheduled drydockings.
  - (f) **Additional financial reporting**

In addition to the information to be provided in accordance with clause 12.2 (*Information*) of the Loan Agreement and this Clause 11.3 (*Provision of financial statements*), the Guarantor undertakes to provide to the Agent a written report (in form and substance satisfactory to SACE) from the 2021 Deferral Effective Date until the 2021 Deferral Final Repayment Date, covering the information requested in the document entitled "Debt Deferral Extension - Regular Monitoring Requirements", the form of which is included in Schedule 2 (*Debt Deferral Extension – Regular Monitoring Requirements*), within the timelines specified therein.
  - (g) For the avoidance of doubt, subject to the provisions of the Loan Agreement, paragraph (h) below and Clause 11.21 (*Breach of new covenants or the Principles*), the financial covenants contained in Clause 11.15 (*Financial Covenants*) will continue to be tested and the reporting obligations shall continue to apply in accordance with this Clause 11.3 (*Provision of financial statements*) until 31 December 2022.
  - (h) Any breach of the financial covenants contained in paragraphs (b) and (c) of Clause 11.15 (*Financial Covenants*) arising on a testing date between the 2021 Deferral Effective Date and 31 December 2022, by reference to the financial position of the Group (on a consolidated basis), shall not (without prejudice to the rights of the Lenders in respect of any further breach of such financial covenants that may occur after 31 December 2022, and subject further to no (a) Event of Default under ~~clause~~ clauses 18.7 (*Winding-up*) to clause 18.13 (*Cessation of business*) (inclusive) of the Loan Agreement having occurred and being continuing or (b) Deferral Prepayment Event having occurred) result in an Event of Default.
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#### **11.4 Form of financial statements**

All accounts (audited and unaudited) delivered under Clause 11.3 (*Provision of financial statements*) will:

- (a) be prepared in accordance with GAAP;
- (b) when required to be audited, be audited by the auditors which are the Guarantor's auditors at the date of this Guarantee or other auditors approved by the Security Trustee, provided that, such approval by the Security Trustee shall not be unreasonably withheld or delayed;
- (c) give a true and fair view of the state of affairs of the Guarantor and its subsidiaries at the date of those accounts and of their profit for the period to which those accounts relate; and
- (d) fully disclose or provide for all significant liabilities of the Guarantor and its subsidiaries.

#### **11.5 Shareholder and creditor notices**

The Guarantor will send the Security Trustee, at the same time as they are despatched, copies of all communications which are despatched to the Guarantor's shareholders or creditors generally or any class of them.

#### **11.6 Consents**

The Guarantor will maintain in force and promptly obtain or renew, and will promptly send certified copies to the Security Trustee of, all consents required:

- (a) for the Guarantor to perform its obligations under this Guarantee;
  - (b) for the validity or enforceability of this Guarantee;
- and the Guarantor will comply with the terms of all such consents.

#### **11.7 Notification of litigation**

The Guarantor will provide the Security Trustee with details of any material legal or administrative action involving the Guarantor as soon as such action is instituted or it becomes apparent to the Guarantor that it is likely to be instituted (and for this purpose proceedings shall be deemed to be material if they involve a claim in an amount exceeding ~~ten~~ twenty million Dollars (\$20,000,000) or the equivalent in another currency).

#### **11.8 Domicile and principal place of business**

The Guarantor:

- (a) will maintain its domicile and registered office at the address stated at the commencement of this Guarantee or at such other address in Bermuda as is notified beforehand to the Security Trustee;
- (b) will maintain its principal place of business and keep its corporate documents and records in the United States of America at 7665 Corporate Center Drive, Miami, 33126, Florida or at such other address in the United States of America as is notified beforehand to the Security Trustee; and

- (c) will not move its domicile out of Bermuda nor its principal place of business out of the United States of America without the prior agreement of the Security Trustee, acting with the authorisation of the Secured Parties, such agreement not to be unreasonably withheld.

#### **11.9 Notification of default**

The Guarantor will notify the Security Trustee as soon as the Guarantor becomes aware of the occurrence of an Event of Default and will thereafter keep the Security Trustee fully up-to-date with all developments.

#### **11.10 Maintenance of status**

The Guarantor will maintain its separate corporate existence and remain in good standing under the laws of Bermuda.

#### **11.11 Negative pledge**

The Guarantor shall not, and shall procure that the Borrower will not, create or permit to arise any Security Interest over any asset present or future except Security Interests created or permitted by the Finance Documents and except for the following:

- (a) Security Interests created with the prior consent of the Security Trustee or otherwise permitted by the Finance Documents;
- (b) in the case of the Guarantor, Security Interests which qualify as Permitted Security Interests with respect to the Guarantor;
- (c) in the case of the Borrower, Security Interests permitted under clause 12.7 (*Negative pledge*) of the Loan Agreement;
- (d) Security Interests provided in favour of lenders under and in connection with any refinancing of the Existing Indebtedness or any financing arrangements entered into by any member of the Group for the acquisition of additional or replacement ship(s) (including any refinancing of any such arrangement) but limited to:
  - (i) pledges of the share capital of the relevant ship owning subsidiary(/ies); and/or
  - (ii) ship mortgages and other securities over the financed ship(s).

#### **11.12 No disposal of assets, change of business**

The Guarantor will:

- (a) not, and shall procure that its subsidiaries, as a group, shall not, transfer all or substantially all of the cruise vessels owned by them and shall procure that any cruise vessels which are disposed of in compliance with the foregoing shall be disposed on a willing seller willing buyer basis at or about market rate and at arm's length subject always to the provisions of any pertinent loan documentation, and
- (b) continue to be a holding company for a group of companies whose main business is the operation of cruise vessels as well as the marketing of cruises on board such vessels and the Guarantor will not change its main line of business so as to affect any Obligor's ability to perform its obligations under the Finance Documents or to imperil, in the opinion of the

Security Trustee, the security created by any of the Finance Documents or the SACE Insurance Policy.

#### 11.13 No merger etc

The Guarantor shall not enter into any form of merger, sub-division, amalgamation, restructuring, consolidation, winding-up, dissolution or anything analogous thereto or acquire any entity, share capital or obligations of any corporation or other entity (each of the foregoing being a "**Transaction**") unless:

- (a) the Guarantor has notified the Security Trustee in writing of the agreed terms of the relevant Transaction promptly after such terms have been agreed as heads of terms (or similar) and thereafter notified the Security Trustee in writing of any significant amendments to such terms during the course of the negotiation of the relevant Transaction; and
- (b) the relevant Transaction does not require or involve or result in any dissolution of the Guarantor so that at all times the Guarantor remains in existence; and
- (c) each notice delivered to the Security Trustee pursuant to paragraph (a) above is accompanied by a certificate signed by the chief financial officer of the Guarantor whereby the Guarantor represents and warrants to the Security Trustee that the relevant Transaction will not:
  - (i) adversely affect the ability of any Obligor to perform its obligations under the Finance Documents;
  - (ii) imperil the security created by any of the Finance Documents or the SACE Insurance Policy; or
  - (iii) affect the ability of the Guarantor to comply with the financial covenants contained in Clause 11.15 (*Financial Covenants*); and
- (d) if the merger or analogous transaction involves the Guarantor or the Borrower, all the necessary "Know your customer requirements" have been complied with.

#### 11.14 Maintenance of ownership of Seven Seas and Borrower

- (a) The Guarantor shall remain the direct or indirect beneficial owner of the entire issued and allotted share capital of Seven Seas, free from any Security Interest and Seven Seas shall remain the legal holder and direct beneficial owner of all membership interest in the Borrower, free from any Security Interest, except that created in favour of the Security Trustee; or
- (b) no person or "group" (within the meaning of Rules 13d-3 and 13d-5 under the Securities Exchange Act of 1934 (15 USC §78a et seq.) (the "**Exchange Act**") as in effect on the Delivery Date) shall acquire beneficial ownership of 35% or more on a fully diluted basis of the voting interest in the Guarantor's equity interests.

#### 11.15 Financial Covenants

- (a) The Guarantor will not permit the Free Liquidity to be less than fifty million Dollars (\$50,000,000) at any time, save that until ~~31 December 2022~~ 30 September 2026, this amount shall be increased to ~~\$200,000,000~~ two hundred and fifty million Dollars (\$250,000,000).



- (b) The Guarantor will not permit the ratio of Total Net Funded Debt to Total Capitalization to be greater than 0.70:1.00 at any time, save that from 1 January 2023 until 30 September 2026, this ratio shall be computed in accordance with the table below.
- (c) The Guarantor will not permit the ratio of Consolidated EBITDA to Consolidated Debt Service for the Group at the end of any fiscal quarter, computed for the period of the four consecutive fiscal quarters ending as at the end of the relevant fiscal quarter, to be less than 1.25:1.00 unless the Free Liquidity of the Group at all times during such period of four consecutive fiscal quarters ending as at the end of such fiscal quarter was equal to or greater than one hundred million Dollars (\$100,000,000-), save that from 1 January 2023 until 30 September 2026, this amount shall be increased to three hundred million Dollars (\$300,000,000).

	<u>1Q</u> <u>2023</u>	<u>2Q</u> <u>2023</u>	<u>3Q</u> <u>2023</u>	<u>4Q</u> <u>2023</u>	<u>1Q</u> <u>2024</u>	<u>2Q</u> <u>2024</u>	<u>3Q</u> <u>2024</u>	<u>4Q</u> <u>2024</u>	<u>1Q</u> <u>2025</u>	<u>2Q</u> <u>2025</u>	<u>3Q</u> <u>2025</u>	<u>4Q</u> <u>2025</u>	<u>1Q</u> <u>2026</u>	<u>2Q</u> <u>2026</u>	<u>3Q</u> <u>2026</u>
<u>Total Net Funded Debt to Total Capitalization</u>	<u>0.93</u>	<u>0.92</u>	<u>0.91</u>	<u>0.91</u>	<u>0.91</u>	<u>0.90</u>	<u>0.88</u>	<u>0.87</u>	<u>0.87</u>	<u>0.85</u>	<u>0.82</u>	<u>0.79</u>	<u>0.79</u>	<u>0.76</u>	<u>0.73</u>

## 11.16 Financial definitions

For the purposes of Clause 11.15 (*Financial Covenants*):

"**Cash Balance**" shall mean, at any date of determination, the unencumbered and otherwise unrestricted cash and Cash Equivalents of the Group.

"Cash Equivalents" shall mean:

- (i) ~~"Cash Equivalents" shall mean (i) securities issued or directly and fully guaranteed or insured by the United States or any agency or instrumentality thereof (provided that the full faith and credit of the United States is pledged in support thereof) having maturities of not more than one year from the date of acquisition, (ii) time deposits and certificates of deposit of any commercial bank having, or which is the principal banking subsidiary of a bank holding company having capital, surplus and undivided profits aggregating in excess of \$200,000,000, with maturities of not more than one year from the date of acquisition by any person, (iii) repurchase obligations with a term of not more than 90 days for underlying securities of the types described in paragraph (i) above entered into with any bank meeting the qualifications specified in paragraph (ii) above, (iv) commercial paper issued by any person incorporated in the United States rated at least A-1 or the equivalent thereof by S&P or at least B-1 or the equivalent thereof by Moody's and in each case maturing not more than one year after the date of acquisition by any other person, and (v)~~
- (ii) time deposits and certificates of deposit of any commercial bank having, or which is the principal banking subsidiary of a bank holding company having capital, surplus and undivided profits aggregating in excess of \$200,000,000, with maturities of not more than one year from the date of acquisition by any person.

- (iii) repurchase obligations with a term of not more than 90 days for underlying securities of the types described in paragraph (i) above entered into with any bank meeting the qualifications specified in paragraph (ii) above,
- (iv) commercial paper issued by any person incorporated in the United States rated at least A-1 or the equivalent thereof by S&P or at least B-1 or the equivalent thereof by Moody's and in each case maturing not more than one year after the date of acquisition by any other person, and
- (v) investments in money market funds substantially all of whose assets are comprised of securities of the types described in paragraphs (i) through (iv) above.

"**Consolidated Debt Service**" shall mean, for any relevant period, the sum (without double counting), determined in accordance with GAAP, of:

- (a) the aggregate principal payable or paid during such period on any Indebtedness for Borrowed Money of any member of the Group, other than:
  - (i) principal of any such Indebtedness for Borrowed Money prepaid at the option of the relevant member of the Group or by virtue of "cash sweep" or "special liquidity" cash sweep provisions (or analogous provisions) in any debt facility of the Group;
  - (ii) principal of any such Indebtedness for Borrowed Money prepaid upon a sale or a Total Loss of any ship (as if references in that definition were to all ships and not just the Ship) owned or leased under a capital lease by any member of the Group; and
  - (iii) balloon payments of any such Indebtedness for Borrowed Money payable during such period (and for the purpose of this sub-paragraph (iii) a "balloon payment" shall not include any scheduled repayment instalment of such Indebtedness for Borrowed Money which forms part of the balloon);
- (b) Consolidated Interest Expense for such period;
- (c) the aggregate amount of any dividend or distribution of present or future assets, undertakings, rights or revenues to any shareholder of any member of the Group (other than the Guarantor, or one of its wholly owned Subsidiaries) or any dividends or distributions other than tax distributions in each case paid during such period; and
- (d) all rent under any capital lease obligations by which the Guarantor or any consolidated Subsidiary is bound which are payable or paid during such period and the portion of any debt discount that must be amortized in such period;

as calculated in accordance with GAAP and derived from the then latest accounts delivered under Clause 11.3 (*Provision of financial statements*).

"**Consolidated EBITDA**" shall mean, for any relevant period, the aggregate of:

- (a) Consolidated Net Income from the Guarantor's operations for such period; and

- (b) the aggregate amounts deducted in determining Consolidated Net Income for such period in respect of gains and losses from the sale of assets or reserves relating thereto, Consolidated Interest Expense, depreciation and amortization, impairment charges and any other non-cash charges and deferred income tax expense for such period.

**"Consolidated Interest Expense"** shall mean, for any relevant period, the consolidated interest expense (excluding capitalized interest) of the Group for such period.

**"Consolidated Net Income"** shall mean, for any relevant period, the consolidated net income (or loss) of the Group for such period as determined in accordance with GAAP.

**"Free Liquidity"** shall mean, at any date of determination, the aggregate of the Cash Balance or any other amounts available for drawing under other revolving or other credit facilities of the Group, which remain undrawn, could be drawn for general working capital purposes or other general corporate purposes and would not, if drawn, be repayable within six months.

**"Indebtedness"** shall mean any obligation for the payment or repayment of money, whether as principal or as surety and whether present or future, actual or contingent including, without limitation, pursuant to an Interest Rate Protection Agreement or Other Hedging Agreement.

**"Indebtedness for Borrowed Money"** shall mean Indebtedness (whether present or future, actual or contingent, long-term or short-term, secured or unsecured) in respect of:

- (a) moneys borrowed or raised;
- (b) the advance or extension of credit (including interest and other charges on or in respect of any of the foregoing);
- (c) the amount of any liability in respect of leases which, in accordance with GAAP, are capital leases;
- (d) the amount of any liability in respect of the purchase price for assets or services payment of which is deferred for a period in excess of 180 days;
- (e) all reimbursement obligations whether contingent or not in respect of amounts paid under a letter of credit or similar instrument; and
- (f) (without double counting) any guarantee of Indebtedness falling within paragraphs (a) to (e) above;

~~PROVIDED THAT~~ Provided that the following shall not constitute Indebtedness for Borrowed Money:

- (i) loans and advances made by other members of the Group which are subordinated to the rights of the Secured Parties;
- (ii) loans and advances made by any shareholder of the Guarantor which are subordinated to the rights of the Secured Parties on terms reasonably satisfactory to the Agent; and

- (iii) any liabilities of the Guarantor or any other member of the Group under any Interest Rate Protection Agreement or any Other Hedging Agreement or other derivative transactions of a non-speculative nature.

**"Interest Rate Protection Agreement"** shall mean any interest rate swap agreement, interest rate cap agreement, interest collar agreement, interest rate hedging agreement, interest rate floor agreement or other similar agreement or arrangement entered into between a Lender or its Affiliate, or a Joint Mandated Lead Arranger or its Affiliate, and the Guarantor and/or the Borrower in relation to the Secured Liabilities of the Borrower under the Loan Agreement.

**"Other Hedging Agreement"** shall mean any foreign exchange contracts, currency swap agreements, commodity agreements or other similar agreements or arrangements entered into between a Lender or its Affiliate, or a Joint Mandated Lead Arranger or its Affiliates, and the Guarantor and/or the Borrower in relation to the Secured Liabilities of the Borrower under the Loan Agreement and designed to protect against the fluctuations in currency or commodity values.

**"Total Capitalization"** means, at any date of determination, the Total Net Funded Debt **plus** the consolidated stockholders' equity of the Group at such date determined in accordance with GAAP and derived from the then latest accounts delivered under Clause 11.3 (*Provision of financial statements*); **provided** it is understood that the effect of any impairment of intangible assets [and, in relation to exchangeable or convertible notes or other debt instruments containing similar equity mechanisms, any non-cash loss, charge or expense](#) shall be added back to stockholders' equity.

**"Total Net Funded Debt"** shall mean, as at any relevant date:

- (a) Indebtedness for Borrowed Money of the Group on a consolidated basis; and
- (b) the amount of any Indebtedness for Borrowed Money of any person which is not a member of the Group but which is guaranteed by a member of the Group as at such date;

less an amount equal to any Cash Balance as at such date; provided that any Commitments and other amounts available for drawing under other revolving or other credit facilities of the Group which remain undrawn shall not be counted as cash or indebtedness for the purposes of this Guarantee.

#### **11.17 Negative Undertakings**

- (a) The Guarantor may, subject to the provisions of paragraph (c) below:
  - (i) at any time prior to the end of the First Financial Quarter, declare or pay dividends or make other distributions or payment in respect of Financial Indebtedness owed to its shareholders without the prior written consent of the Security Trustee;
  - (ii) at any time after the end of the First Financial Quarter, declare or pay dividends or make other distributions or payment in respect of Financial Indebtedness owed to its shareholders without the prior written consent of the Security Trustee, subject to it on each such occasion satisfying the Security Trustee acting on behalf of the Secured Parties that it will continue to meet all the requirements of Clause 11.15 (*Financial Covenants*), if such covenants were to be tested immediately following the payment of any such dividend; and

- (iii) pay dividends (x) to persons responsible for paying the tax liability in respect of consolidated, combined, unitary or affiliated tax returns for each relevant jurisdiction of the Group, or (y) to holders of the Guarantor's Capital Stock with respect to income taxable as a result of a member of the Group being taxed as a pass-through entity for U.S. Federal, state and local income tax purposes or attributable to any member of the Group,

provided that the actions in sub-paragraphs (ii) and (iii) above shall only be permitted if there is no Event of Default which is continuing under the Loan Agreement and no Event of Default would arise from the payment of such dividend.

- (b) ~~Subject to the restrictions set out in~~ Save as permitted by Clause 11.19 (*New capital raises or financing*), the Guarantor shall not, and shall procure that none of its subsidiaries shall:

- (i) make loans to any person that is not the Guarantor or a direct or indirect subsidiary of the Guarantor; or
- (ii) issue or enter into one or more guarantees covering the obligations of any person which is not the Guarantor or a direct or indirect subsidiary of the Guarantor,

except if such loan is granted to a non-subsiary or such guarantee is issued in the ordinary course of business covering the obligations of a non-subsiary and the aggregate amount of all such loans and guarantees made or issued by the Guarantor and its subsidiaries does not exceed USD [\*] Dollars (\$[\*]), or is otherwise approved by the Security Trustee which approval shall not be unreasonably withheld if such loan or guarantee in respect of a non-subsiary would neither:

- (A) affect the ability of any Obligor to perform its obligations under the Finance Documents; nor
- (B) imperil the security created by any of the Finance Documents or the SACE Insurance Policy; nor
- (C) affect the ability of the Guarantor to comply with the financial covenants contained in Clause 11.15 (*Financial Covenants*) if such covenants were to be tested immediately following the grant of such loan or the issuance of such guarantee, as demonstrated by evidence satisfactory to the Security Trustee.

**(c) Dividend restriction**

During the period up to and including the 2021 Deferral Final Repayment Date, neither the Guarantor nor the Holding shall, and the Guarantor shall procure that none of its subsidiaries shall:

- (i) declare, make or pay any dividend or other distribution (or interest on any unpaid dividend or other distribution) (whether in cash or in kind) on or in respect of its share capital (or any class of its share capital);
- (ii) repay or distribute any dividend or share premium reserve;
- (iii) make any repayment of any kind under any shareholder loan; or

- (iv) redeem, repurchase (whether by way of share buy-back program or otherwise), defease, retire or repay any of its share capital or resolve to do so,

except that (A) any Obligor other than the Guarantor may pay dividends and other distributions, directly or indirectly, to the Guarantor for the purpose of providing liquidity to the Guarantor to enable the Guarantor to satisfy payment obligations for which the Guarantor is an obligor, (B) any Obligor may pay dividends in respect of the Tax liability to each relevant jurisdiction in respect of consolidated, combined, unitary or affiliated Tax returns for each relevant jurisdiction of the Group or the Holding or holder of the Guarantor's ~~capital stock~~ Capital Stock with respect to income taxable as a result of any member of the Group or the Holding being taxed as a pass-through entity for U.S. Federal, state and local income Tax purposes or attributable to any member of the Group, (C) the Guarantor and the Holding may pay dividends and other distributions (x) in respect of a conversion, exchange, or repurchase of convertible or exchangeable notes and any conversion of preference shares to ordinary shares in connection therewith, provided that the cash portion of a repurchase of convertible or exchangeable notes is limited to the amount of interest that would otherwise be payable through maturity on the amount of such convertible or exchangeable notes being repurchased plus any amount in lieu of fractional shares, and (y) to the extent contractually owed to holders of equity in the Guarantor or the Holding and (D) the Guarantor may pay dividends and other distributions to the Holding for the purposes of providing cash to the Holding for the payment of any Tax payable in connection with the Holding's equity plan,

provided that the actions in paragraphs (B) and (C) above shall only be permitted if there is no Event of Default which is continuing under the Loan Agreement and no Event of Default would arise from the payment of such dividend.

- (d) For the avoidance of doubt, the Holding gives no guarantee of any kind nor undertakes any obligations under this Guarantee other than the undertaking as expressly specified in paragraph (c) above.

#### **11.18 Most favoured nations**

- (a) The Guarantor undertakes that if at any time after the date of this Guarantee it enters into any financial contract or financial document relating to any Financial Indebtedness with or which has the support of any export credit agency and which contains *pari passu* provisions or cross default provisions which are more favourable to the lenders than those contained in paragraph (l) of clause 11.2 (*Continuing representations and warranties*) of the Loan Agreement and clause 18.6 (*Cross default*) of the Loan Agreement respectively, the Guarantor shall immediately notify the Borrower and the Agent of such provisions and the relevant provisions contained in the Loan Agreement shall be deemed amended so that such more favourable *pari passu* provisions or cross default provisions are granted to the Creditor Parties pursuant to the Loan Agreement.
- (b) The Guarantor undertakes that if at any time after the date of this Guarantee and until the occurrence of a Reinstatement Event, it or any other member of the Group is required to grant additional security in relation to a financial contract or financial document relating to any existing Financial Indebtedness:
  - (i) with the support of any export credit agency (excluding any extensions, increases or changes to the terms and conditions thereof), such security shall be granted on a *pari passu* basis to the Lenders (and the Security Trustee agrees to enter and/or procure the entry by the relevant Secured Parties into such intercreditor documentation to

reflect such pari passu ranking (in form and substance reasonably satisfactory to the Secured Parties) as may be required in connection with such arrangements); or

- (ii) without the support of any export credit agency (excluding any extensions, increases or changes to the terms and conditions thereof), such security shall (without prejudice to any of the Obligors' other obligations under the Finance Documents), subject to the provisions of Clause 11.11 (*Negative pledge*) of this Guarantee and clause 12.7 (*Negative pledge*) of the Loan Agreement, be permitted provided that it shall not have an adverse effect on any Security Interests or other rights granted to the Secured Parties under the Finance Documents.
- (c) ~~In~~ Until the occurrence of a Reinstatement Event, in respect of any new Financial Indebtedness (other than Permitted Financial Indebtedness), or any extensions, increases or changes to the terms and conditions of any existing Financial Indebtedness, in each case with or which has the support of any export credit agency, the Guarantor shall enter into good faith negotiations with the Security Trustee to grant additional security for the purpose of further securing the Loan, provided that any failure to reach agreement under this paragraph (c) following such good faith negotiations shall not constitute an Event of Default.

#### 11.19 New capital raises or financing

- (a) Save as provided below, during the period up to and including the 2021 Deferral Final Repayment Date:
  - (i) no new debt ~~or equity issuance~~ shall be raised and no new Financial Indebtedness shall be incurred by the Group (including, for the avoidance of doubt, inter-company loans);
  - (ii) no non-arm's length disposals of any asset relating to the Group fleet shall be made; and
  - (iii) no additional Security Interests securing existing Financial Indebtedness will be created or permitted to subsist by any Obligor (unless the Lenders benefit from this new security on a *pari passu* basis).
- (b) The restrictions in paragraph (a) above shall not apply in relation to:
  - (i) any refinancing of any bond issuance of, or loan entered into by, the Group (A) which matures during such period or (B) where not maturing during such period, which shall be on terms ~~which include any of the following (evidence of which shall be provided to the Agent by the Guarantor)~~ resulting, when taken as a whole, in an improvement of the ability of the Obligors to meet their obligations under the Finance Documents, which terms include any of the following: an extension of the repayment terms; a decrease in the interest rate; or the conversion of such Financial Indebtedness from secured to unsecured or first to second priority;
  - (ii) any debt ~~or equity issuance~~ provided prior to 31 December ~~2022~~ 2023 to provide the Group with crisis and/or recovery related funding in respect of the impact of the Covid-19 pandemic;
  - (iii) any debt ~~or equity issuance~~ being raised on or after 31 December ~~2022~~ 2023 to support the Group with the impact of the Covid-19 pandemic, made with the prior written consent of SACE;

- (iv) any debt ~~or equity issuance~~ being raised to finance any instalment of a cruise vessel already contracted for or contracted for during such period or any refurbishment, maintenance, upgrade or lengthening of a cruise ship during such period (including without limitation any costs incurred by the owner of a cruise ship in connection therewith);
- (v) any debt ~~or equity issuance~~ being raised to finance capital expenditure for projects which are already contracted for but in respect of which committed financing has not yet been obtained, and which, in each case has been (or will be) listed in the Information Package submitted to the Agent prior to the February 2021 Deferral Effective Date;
- (vi) any extension or renewal of revolving credit facilities, and made with the prior written consent of SACE if any additional security is to be granted;
- (vii) any new debt ~~or equity issuance~~ otherwise agreed by SACE;
- (viii) any inter-company loan or operating arrangement which from an accounting perspective has the effect of an intercompany loan (an "intercompany arrangement") which:
  - (A) is existing as at the date of the 2021 Amendment and Restatement Agreement; or
  - (B) is made among any Group members or any Group member with the Holding provided that:
    - (1) any inter-company arrangement is made solely for the purpose of regulatory or Tax purposes carried out in the ordinary course of business and on an arm's length basis; and
    - (2) the aggregate principal amount of any inter-company arrangements pursuant to ~~this sub-paragraph (B)~~ sub-paragraph (b)(viii)(B) of this Clause 11.19 (B) ~~New capital raises or financing~~ does not exceed [\*] Dollars (\$[\*]) at any time; or
  - (C) has been approved with the prior written consent of SACE;
- (ix) any Permitted Security Interest;
- (x) any Security Interest otherwise approved with the prior written consent of SACE;
- (xi) any Financial Indebtedness incurred in the ordinary course of business which in the aggregate does not exceed USD [\*] during any twelve-month period; ~~or, it being provided that:~~
  - (A) prior to 31 December 2022, this amount shall be increased to USD [\*] for any Financial Indebtedness incurred to finance capital expenditure for Approved Projects; and
  - (B) if any part of such Financial Indebtedness allocated to an Approved Project remains unused throughout the twelve-month period of year 2022, the surplus may be carried over to increase the relevant Financial Indebtedness



throughout the twelve-month period of year 2023 for that Approved Project only;

- (xii) without prejudice to clauses 12.10 (*Mergers*) and 12.14 (*Investments*) of the Loan Agreement and Clause 11.13 (*No merger*), the issuance of share capital by any Group member to another Group member; and

(xiii) any extension, renewal, replacement or upsizing in respect of the Term and Revolving Credit Facilities (including the granting of additional Security Interests);

and, for the avoidance of doubt, no debt or equity issuance shall be raised in respect of any form of merger, sub-division, amalgamation, restructuring, consolidation, winding-up, dissolution or anything analogous thereto or acquisition of any entity, share capital or obligations of any corporation or other entity.

## **11.20 Payments under the Shipbuilding Contracts**

Until the 2021 Deferral Final Repayment Date:

- (a) the Guarantor shall and the Guarantor shall procure that any member of the Group that has entered into a shipbuilding contract with a shipbuilder or enters into any such shipbuilding contract, in each case which is financed with the support of SACE (the "**Covered Shipbuilding Contracts**") shall continue to perform all of their respective obligations as set out in any Covered Shipbuilding Contract (including without limitation the payment of any instalments due under any Covered Shipbuilding Contract (as the same may have been amended prior to the 2021 Deferral Effective Date), and subject to any amendment agreed pursuant to paragraph (b) below). The Guarantor shall and the Guarantor shall procure that any member of the Group shall promptly notify the Agent and SACE of any failure by it to comply with any due and owing obligations under a Covered Shipbuilding Contract; and
- (b) the Guarantor shall and the Guarantor shall procure that any member of the Group further undertakes to consult with the Agent and SACE in respect of any proposed amendment to a Covered Shipbuilding Contract insofar as any such proposed amendment relates to a payment instalment or (save as expressly permitted by the Loan Agreement) a delivery date or any other substantial amendment which may affect the related financing and to obtain the Agent and SACE's approval prior to executing any such amendment.

## **11.21 Breach of new covenants or the Principles**

- (a) Failure to comply, until the 2021 Deferral Final Repayment Date, with the provisions of paragraph (f) of Clause 11.3 (*Provision of financial statements*), paragraph (c) of Clause 11.17 (*Negative Undertakings*), Clause 11.19 (*New capital raises or financing*) Clause 11.20 (*Payments under the Shipbuilding ~~contacts~~Contracts*), or to otherwise duly perform and observe the other requirements and obligations set out in the Principles shall, in each case, not constitute an Event of Default under the Loan Agreement but (in the case of any failure that is capable of remedy (in the opinion of the Agent, at its sole discretion), including any failure to comply with Clause 11.20 (*Payments under the Shipbuilding ~~contacts~~Contracts*) or paragraph (f) of Clause 11.3 (*Provision of financial statements*), only if such failure is not remedied within the Relevant Period pursuant to clause 18.4 (*Breach of other obligations*) of the Loan Agreement from the date of such failure to comply) shall have the following consequences:

- (i) the Agent shall reinstate from the date of such breach the requirement to comply with the covenant granted pursuant to clause 15 (*Security Value Maintenance*) of the Loan Agreement and the financial covenants set out in paragraphs (b) and (c) of Clause 11.15 (*Financial covenants*~~Covenants~~) which was otherwise suspended by operation of the Loan Agreement and this Guarantee;
  - (ii) in respect of paragraph (c) of Clause 11.17 (*Negative Undertakings*) and Clause 11.19 (*New capital raises or financing*), as well as a failure to perform and observe the other requirements and obligations set out in the Principles (including but not limited to any Obligor (a) commencing, or having commenced against it, any case, proceeding or other action seeking (i) to adjudicate it as bankrupt or insolvent, (ii) reorganization, arrangement, winding-up, liquidation, dissolution, or other relief with respect to it or its debts, (iii) the appointment of a receiver, trustee, or custodian or other similar official for it or for all or a substantial part of its assets, (b) making a general assignment for the benefit of its creditors, (c) being unable to, or admitting in writing its inability to, pay its debts as they become due, or (d) taking any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the acts set forth in (a), (b) or (c) hereof):
    - (A) the Deferral Commitments and the availability of the Deferral Tranches will be immediately cancelled;
    - (B) all or part of the Deferral Tranches, together with accrued interest, deferred costs pursuant to clause 6.4 (*Deferred Costs*) of the Loan Agreement and all other amounts accrued or outstanding under the Loan Agreement in connection with the Deferral Tranches will be immediately due and payable, (including, for the avoidance of doubt, any breakage costs pursuant to clause 20.2 (*Breakage costs and SIMEST arrangements*) of the Loan Agreement); and
  - (iii) in respect of Clause 11.20 (*Payments under the Shipbuilding Contracts*) and paragraph (f) of Clause 11.3 (*Provision of financial statements*), shall entitle the Agent, (acting on the instructions of the Lenders), by notice to the Guarantor and the Borrower to:
    - (A) cancel the Deferral Commitments and the availability of the Deferral Tranches whereupon they shall immediately be cancelled; and
    - (B) declare that all or part of the Deferral Tranches, together with accrued interest, deferred costs pursuant to clause 6.4 (*Deferred Costs*) of the Loan Agreement and all other amounts accrued or outstanding under the Loan Agreement in connection with the Deferral Tranches be immediately due and payable, whereupon they shall become immediately due and payable (including, for the avoidance of doubt, any breakage costs pursuant to clause 20.2 (*Breakage costs sand SIMEST arrangements*) of the Loan Agreement).
- (b) Save as permitted by Clause 11.19 (*New capital raises or financing*), if at any time after the February 2021 ~~Deferral~~ Effective Date and until the occurrence of a Reinstatement Event:
- (i) the Guarantor or any other Group member enters into any financial contract or financial document relating to any Financial Indebtedness and which contains any debt

deferral or covenant waivers of existing debt, or the raising of any new debt intended to reimburse existing debt that benefits from additional security or more favourable terms than those available to the Lenders (unless they are granted to the Lenders on a *pari passu* basis);

- (A) the requirement to comply with the covenant granted pursuant to clause 15 (*Security Value Maintenance*) of the Loan Agreement and the financial covenants set out in paragraphs (b) and (c) of Clause 11.15 (*Financial Covenants*) which was otherwise suspended until 31 December 2022 shall be reinstated;
- (B) the Deferral Commitments and the availability of the Deferral Tranches will be immediately cancelled; and
- (C) all or part of the Deferral Tranches, together with accrued interest, deferred costs pursuant to clause 6.4 (*Deferred Costs*) of the Loan Agreement and all other amounts accrued or outstanding under the Loan Agreement in connection with the Deferral Tranches will be immediately due and payable, (including, for the avoidance of doubt, any breakage costs pursuant to clause 20.2 (*Breakage costs and SIMEST arrangements*) of the Loan Agreement);

it being provided that such covenants in sub-paragraph (A) above shall not be reinstated and such provisions in sub-paragraphs (B) and (C) above shall not be triggered in case of such financial contract or financial document relating to the Term and Revolving Credit Facilities;

- (ii) the Guarantor or any other Group member makes a prepayment (save for any mandatory prepayment necessary to avoid an event of default (however defined)) of any Financial Indebtedness (unless this is done on a *pari passu* basis with the obligations owed to the Lenders hereunder):

- (A) the requirement to comply with the covenant granted pursuant to clause 15 (*Security Value Maintenance*) of the Loan Agreement and the financial covenants set out in paragraphs (b) and (c) of Clause 11.15 (*Financial Covenants*) which was otherwise suspended until 31 December 2022 shall be reinstated;
- (B) the Agent shall be entitled (acting on the instructions of the Lenders) to:
  - (1) cancel the Deferral Commitments and the availability of the Deferral Tranches whereupon they shall immediately be cancelled; and
  - (2) declare that all or part of the Deferral Tranches, together with accrued interest, deferred costs pursuant to clause 6.4 (*Deferred Costs*) of the Loan Agreement and all other amounts accrued or outstanding under the Loan Agreement in connection with the Deferral Tranches will be immediately due and payable (including, for the avoidance of doubt, any breakage costs pursuant to clause 20.2 (*Breakage costs and SIMEST arrangements*) of the Loan Agreement);

it being provided that such covenants in sub-paragraph (A) above shall not be reinstated and such provision in sub-paragraph (B) above shall not be triggered

[in case of a prepayment relating to the revolving tranche of the Term and Revolving Credit Facilities within the ordinary course of business.](#)

## **12 JUDGMENTS AND CURRENCY INDEMNITY**

### **12.1 Judgments relating to Loan Agreement**

This Guarantee shall cover any amount payable by the Borrower under or in connection with any judgment relating to the Loan Agreement.

### **12.2 Currency indemnity**

In addition, clause 20.4 (*Currency indemnity*) of the Loan Agreement shall apply, with any necessary adaptations, in relation to this Guarantee.

## **13 SET-OFF**

### **13.1 Application of credit balances**

Each Secured 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 the Guarantor at any office in any country of that Secured Party in or towards satisfaction of any sum then due from the Guarantor to that Secured Party under this Guarantee; and
- (b) for that purpose:
  - (i) break, or alter the maturity of, all or any part of a deposit of the Guarantor;
  - (ii) convert or translate all or any part of a deposit or other credit balance into Dollars;
  - (iii) enter into any other transaction or make any entry with regard to the credit balance which the Secured Party concerned considers appropriate.

### **13.2 Existing rights unaffected**

No Secured Party shall be obliged to exercise any of its rights under Clause 13.1 (*Application of credit balances*); and those rights shall be without prejudice and in addition to any right of set-off, combination of accounts, charge, lien or other right or remedy to which a Secured Party is entitled (whether under the general law or any document).

### **13.3 Sums deemed due to a Lender**

For the purposes of this Clause 13 (*Set-Off*), a sum payable by the Guarantor to 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 that Lender.

## **14 SUPPLEMENTAL**

### **14.1 Continuing guarantee**

This Guarantee shall remain in force as a continuing security at all times during the Security Period, regardless of any intermediate payment or discharge in whole or in part.

### **14.2 Rights cumulative, non-exclusive**

The Security Trustee's rights under and in connection with this Guarantee are cumulative, may be exercised as often as appears expedient and shall not be taken to exclude or limit any right or remedy conferred by law.

### **14.3 No impairment of rights under Guarantee**

If the Security Trustee omits to exercise, delays in exercising or invalidly exercises any of its rights under this Guarantee, that shall not impair that or any other right of the Security Trustee under this Guarantee.

### **14.4 Severability of provisions**

If any provision of this Guarantee is or subsequently becomes void, illegal, unenforceable or otherwise invalid, that shall not affect the validity, legality or enforceability of its other provisions.

### **14.5 Guarantee not affected by other security**

This Guarantee is in addition to and shall not impair, nor be impaired by, any other guarantee, any Security Interest or any right of set-off or netting or to combine accounts which the Security Trustee or any Secured Party may now or later hold in connection with the Loan Agreement.

### **14.6 Guarantor bound by Loan Agreement**

- (a) The Guarantor is fully familiar with, and agrees to all the provisions of, the Loan Agreement and the other Finance Documents to which it is not a party.
- (b) The Guarantor agrees with the Security Trustee:
  - (i) to be bound by all provisions of the Loan Agreement which are applicable to the Obligors in the same way as if those provisions had been set out (with any necessary modifications) in this Guarantee; and
  - (ii) that any provision of the Loan Agreement which, by its terms, applies or relates to the Finance Documents generally applies to this Guarantee.
- (c) Clause 38 (*Bail-In*) of the Loan Agreement shall apply to this Guarantee as if it was expressly incorporated in this Guarantee with any necessary modifications.

### **14.7 Applicability of provisions of Guarantee to other Security Interests**

Any Security Interest which the Guarantor creates (whether at the time at which it signs this Guarantee or at any later time) to secure any liability under this Guarantee shall be a principal and independent security, and Clauses 3 (*Liability as Principal and Independent Debtor*) and 17

*(Invalidity of Loan Agreement)* shall, with any necessary modifications, apply to it, notwithstanding that the document creating the Security Interest neither describes it as a principal or independent security nor includes provisions similar to Clauses 3 (*Liability as Principal and Independent Debtor*) and 17 (*Invalidity of Loan Agreement*).

#### **14.8 Applicability of provisions of Guarantee to other rights**

Clauses 3 (*Liability as Principal and Independent Debtor*) and 17 (*Invalidity of Loan Agreement*) shall also apply to any right of set-off or netting or to combine accounts which the Guarantor creates by an agreement entered into at the time of this Guarantee or at any later time (notwithstanding that the agreement does not include provisions similar to Clauses 3 (*Liability as Principal and Independent Debtor*) and 17 (*Invalidity of Loan Agreement*)), being an agreement referring to this Guarantee.

#### **14.9 Third party rights**

Other than a Secured Party or the Italian Authorities, no person who is not a party to this Guarantee has any right under the Contracts (Rights of Third Parties) Act 1999 to enforce or to enjoy the benefit of any term of this Guarantee.

#### **14.10 Waiver of rights against SACE**

Nothing in this Guarantee or any of the Finance Documents is intended to grant to the Guarantor or any other person any right of contribution from or any other right or claim against SACE and the Guarantor hereby waives irrevocably any right of contribution or other right or claim as between itself and SACE.

#### **14.11 Reinstatement**

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

#### **14.12 Guarantor intent**

Without prejudice to the generality of Clause 1.3 (*Application of construction and interpretation provisions of the Loan Agreement*) and Clause 3.2 (*Waiver of rights and defences*), the Guarantor expressly confirms that it intends that this Guarantee and any Security Interest created by it under 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.

## **15 ASSIGNMENT AND TRANSFER**

### **15.1 Assignment and transfer by Security Trustee**

- (a) The Security Trustee may assign or transfer its rights under and in connection with this Guarantee to the same extent as it may assign or transfer its rights under the Loan Agreement.
- (b) The Guarantor may not assign or transfer its rights under and in connection with this Guarantee.

## **16 NOTICES**

### **16.1 Notices to Guarantor**

Any notice or demand to the Guarantor under or in connection with this Guarantee shall be given by letter or email at:

NCL Corporation Ltd.  
7665 Corporate Center Drive  
Miami  
Florida, 33126  
Attention: Chief Financial Officer and General Counsel

Email: [\*] / [\*]

or to such other address which the Guarantor may notify to the Security Trustee.

### **16.2 Application of certain provisions of Loan Agreement**

Clauses 31.3 (*Effective date of notices*) to 31.9 (*Meaning of "notice"*) of the Loan Agreement apply to any notice or demand under or in connection with this Guarantee.

### **16.3 Validity of demands**

A demand under this Guarantee shall be valid notwithstanding that it is served:

- (a) on the date on which the amount to which it relates is payable by the Borrower under the Loan Agreement;
- (b) at the same time as the service of a notice under clause 18.21 (*Actions following an Event of Default*) of the Loan Agreement,

and a demand under this Guarantee may refer to all amounts payable under or in connection with the Loan Agreement without specifying a particular sum or aggregate sum.

### **16.4 Notices to Security Trustee**

Any notice to the Security Trustee under or in connection with this Guarantee shall be sent to the same address and in the same manner as notices to the Security Trustee under the Loan Agreement.

## **17 INVALIDITY OF LOAN AGREEMENT**

### **17.1 Invalidity of Loan Agreement**

In the event of:

- (a) the Loan Agreement or any provision thereof now being or later becoming, with immediate or retrospective effect, void, illegal, unenforceable or otherwise invalid for any reason whatsoever; or
- (b) without limiting the scope of paragraph (a), a ~~bankruptcy~~ Bankruptcy of the Borrower, the introduction of any law or any other matter resulting in the Borrower being discharged from liability under the Loan Agreement, or the Loan Agreement ceasing to operate (for example, by interest ceasing to accrue);

this Guarantee shall cover any amount which would have been or become payable under or in connection with the Loan Agreement if the Loan Agreement had been and remained entirely valid, legal and enforceable, or the Borrower had not suffered ~~bankruptcy~~ Bankruptcy, or any combination of such events or circumstances, as the case may be, and the Borrower had remained fully liable under it for liabilities whether invalidly incurred or validly incurred but subsequently retrospectively invalidated; and references in this Guarantee to amounts payable by the Borrower under or in connection with the Loan Agreement shall include references to any amount which would have so been or become payable as aforesaid.

### **17.2 Invalidity of Finance Documents**

Clause 17.1 (*Invalidity of Loan Agreement*) also applies to each of the other Finance Documents to which the Borrower is a party.

## **18 GOVERNING LAW AND JURISDICTION**

### **18.1 English law**

This Guarantee and any non-contractual obligations arising out of or in connection with it shall be governed by, and construed in accordance with, English law.

### **18.2 Exclusive English jurisdiction**

The courts of England shall have exclusive jurisdiction to settle any Dispute.

### **18.3 Process agent**

The Guarantor irrevocably appoints Hannaford Turner LLP, currently of ~~9 Cleak Lane~~ 107 Cheapside, London ~~EC4R 2RU~~, EC2V 6DN, United Kingdom, 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.

### **18.4 Secured Parties' rights unaffected**

Nothing in this Clause 18 (*Governing Law and Jurisdiction*) shall exclude or limit any right which any Secured 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.

**18.5 Meaning of "proceedings"**

In this Clause 18 (*Governing Law and Jurisdiction*), "**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 Guarantee (including a dispute relating to the existence, validity or termination of this Guarantee) or any non-contractual obligation arising out of or in connection with this Guarantee.

~~THIS AMENDED AND RESTATED GUARANTEE~~ This Amended and Restated Guarantee has been entered into on the date stated at the beginning of this Guarantee.

**EXECUTION PAGE**

**GUARANTOR**

**SIGNED** by )  
duly authorised )  
for and on behalf of )  
**NCL CORPORATION LTD.** ) )  
as its duly appointed attorney-in-fact )  
in the presence of: )

**SECURITY TRUSTEE**

**SIGNED** by )  
for and on behalf of )  
**CRÉDIT AGRICOLE CORPORATE** ) )  
**AND INVESTMENT BANK** ) )  
as its duly appointed attorney-in-fact )  
in the presence of: )

**HOLDING**

**SIGNED** by )  
for and on behalf of )  
**NORWEGIAN CRUISE LINE HOLDINGS LTD.** ) )  
as its duly appointed attorney-in-fact )  
in the presence of: )

**EMPLOYMENT AGREEMENT**

**THIS EMPLOYMENT AGREEMENT** (this “Agreement”) is made and entered into this 17<sup>th</sup> day of July 2023, by and between Prestige Cruise Services LLC, a company organized under the laws of Delaware (the “Company”), and Andrea DeMarco (the “Executive”).

**RECITALS**

**THE PARTIES ENTER THIS AGREEMENT** on the basis of the following facts, understandings and intentions:

**A.** The Company desires to offer the Executive the benefits set forth in this Agreement and provide for the services of the Executive on the terms and conditions set forth in this Agreement.

**B.** The Executive desires to be employed by the Company on the terms and conditions set forth in this Agreement.

**C.** This Agreement shall govern the employment relationship between the Executive and the Company and all of its affiliates effective as of the Effective Date (as defined below), and supersedes and negates any previous agreements with respect to such relationship effective as of the Effective Date.

**AGREEMENT**

**NOW, THEREFORE**, in consideration of the above recitals incorporated herein and the mutual covenants and promises contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby expressly acknowledged, the parties agree as follows:

**1. Retention and Duties.**

**1.1 Retention.** The Company does hereby agree to employ the Executive for the Period of Employment (as such term is defined in Section 2) on the terms and conditions expressly set forth in this Agreement. The Executive does hereby accept and agree to such employment, on the terms and conditions expressly set forth in this Agreement.

**1.2 Duties.** During the Period of Employment, the Executive shall serve the Company as its President, Regent Seven Seas Cruises. The Executive shall have duties and obligations generally consistent with that position as the Company may assign from time to time. The Executive shall comply with the corporate policies of the Company as they are in effect from time to time throughout the Period of Employment (including, without limitation, the Company’s Code of Ethical Business Conduct policy, as it may change from time to time). During the Period of Employment, the Executive shall report directly to the President and Chief

Executive Officer of Norwegian Cruise Line Holdings Ltd., or his/her designee. During the Period of Employment, the Executive shall perform services for Norwegian Cruise Line Holdings Ltd., a company organized under the laws of Bermuda (the "Parent"), and the Parent's other subsidiaries, but shall not be entitled to any additional compensation with respect to such services.

**1.3 No Other Employment; Minimum Time Commitment.** During the Period of Employment, the Executive shall (i) devote substantially all of the Executive's business time, energy and skill to the performance of the Executive's duties for the Company, (ii) perform such duties in a faithful, effective and efficient manner to the best of Executive's abilities, and (iii) hold no other employment. The Executive's service on the boards of directors (or similar body) of other business entities is subject to the approval of the Board of Directors of the Parent (the "Board"), provided that the Executive shall be permitted to serve on one board of directors (or similar bodies) during the Period of Employment, subject to the Company's rights to require the Executive's resignation pursuant to the following sentence. The Company shall have the right to require the Executive to resign from any board or similar body (including, without limitation, any association, corporate, civic or charitable board or similar body) which she may then serve if the Board reasonably determines that the Executive's service on such board or body materially interferes with the effective discharge of the Executive's duties and responsibilities or that any business related to such service is then in competition with any business of the Company or any of its Affiliates (as such term is defined in Section 5.5), successors or assigns.

**1.4 No Breach of Contract.** The Executive hereby represents to the Company that: (i) the execution and delivery of this Agreement by the Executive and the Company and the performance by the Executive of the Executive's duties hereunder do not and shall not constitute a breach of, conflict with, or otherwise contravene or cause a default under, the terms of any other agreement or policy to which the Executive is a party or otherwise bound or any judgment, order or decree to which the Executive is subject; (ii) that the Executive has no information (including, without limitation, confidential information and trade secrets) relating to any other Person (as such term is defined in Section 5.5) which would prevent, or be violated by, the Executive entering into this Agreement or carrying out Executive's duties hereunder; (iii) the Executive is not bound by any employment, consulting, non-compete, confidentiality, trade secret or similar agreement (other than this Agreement) with any other Person; and (iv) the Executive understands the Company will rely upon the accuracy and truth of the representations and warranties of the Executive set forth herein and the Executive consents to such reliance.

**1.5 Location.** During the Period of Employment, the Executive's principal place of employment shall be the Company's principal executive office as it may be located from time to time. The Executive agrees that she will be regularly present at the Company's principal executive office. The Executive acknowledges

that she will be required to travel from time to time in the course of performing Executive's duties for the Company.

2. **Period of Employment.** The "Period of Employment" shall be a period commencing on July 17, 2023 (the "Effective Date") and ending at the close of business on the first December 31st following the third anniversary of the Effective Date (the "Termination Date"); provided, however, that this Agreement shall be automatically renewed, and the Period of Employment shall be automatically extended for one (1) additional year on the Termination Date and each anniversary of the Termination Date thereafter, unless either party gives written notice at least sixty (60) days prior to the expiration of the Period of Employment (including any renewal thereof) of such party's desire to terminate the Period of Employment (such notice to be delivered in accordance with Section 18). The term "Period of Employment" shall include any extension thereof pursuant to the preceding sentence. Notwithstanding the foregoing, the Period of Employment is subject to earlier termination as provided below in this Agreement.

3. **Compensation.**

3.1 **Base Salary.** During the Period of Employment, the Company shall pay the Executive a base salary (the "Base Salary"), which shall be paid biweekly or in such other installments as shall be consistent with the Company's regular payroll practices in effect from time to time. The Executive's Base Salary shall be at an annualized rate of Five Hundred Thousand dollars (\$500,000.00). The Compensation Committee of the Board (the "Compensation Committee") will review the Executive's rate of Base Salary on an annual basis and may, in its sole discretion, increase (but not decrease) the rate then in effect.

3.2 **Incentive Bonus.** The Executive shall be eligible to receive an incentive bonus for each fiscal year of the Company that occurs during the Period of Employment ("Incentive Bonus"); provided that, except as provided in Section 5.3, the Executive must be employed by the Company at the time the Company pays the Incentive Bonus with respect to any such fiscal year in order to be eligible for an Incentive Bonus with respect to that fiscal year (and, if the Executive is not so employed at such time, in no event shall she have been considered to have "earned" any Incentive Bonus with respect to the fiscal year in question). The Executive's actual Incentive Bonus amount for a particular fiscal year shall be determined by the Compensation Committee in its sole discretion, based on performance objectives (which may include corporate, business unit or division, financial, strategic, individual or other objectives) established with respect to that particular fiscal year by the Compensation Committee. Any Incentive Bonus becoming payable for a particular fiscal year shall be paid in the following fiscal year following the close of the audit and generally by March 31.

3.3 **Equity Award.** The Executive shall be eligible to participate in the Parent's 2013 Performance Incentive Plan (together with any successor equity incentive plan, the "Parent Equity Plan") and to receive grants of equity awards under the Parent Equity Plan as may be approved from time to time by the Compensation Committee in its sole discretion.

4. **Benefits.**

**4.1 Retirement, Welfare and Fringe Benefits.** During the Period of Employment, the Executive shall be entitled to participate, on a basis generally consistent with other similarly situated executives, in all employee pension and welfare benefit plans and programs, all fringe benefit plans and programs and all other benefit plans and programs (including those providing for perquisites or similar benefits) that are made available by the Company to the Company's other similarly situated executives generally, in accordance with the eligibility and participation provisions of such plans and as such plans or programs may be in effect from time to time. The Executive's participation in the foregoing plans and programs is subject to the eligibility and participation provisions of such plans, and the Company's right to amend or terminate such plans from time to time in accordance with their terms.

**4.2 Medical Executive Reimbursement Plan.** During the Period of Employment, the Company will provide the Executive, and the Executive's spouse and dependent children, with a Medical Executive Reimbursement Plan (the "MERP"), subject to the terms and conditions of such plan.

**4.3 Company Automobile.** During the Period of Employment, the Company shall provide the Executive with a monthly cash car allowance of up to One Thousand Five Hundred dollars (\$1,500.00) per month, in accordance with the Company's policy as in effect from time to time.

**4.4 Reimbursement of Business Expenses.** The Executive is authorized to incur reasonable expenses in carrying out the Executive's duties for the Company under this Agreement and shall be entitled to reimbursement for all reasonable business expenses the Executive incurs during the Period of Employment in connection with carrying out the Executive's duties for the Company, subject to the Company's expense reimbursement policies and any pre-approval policies in effect from time to time.

**4.5 Vacation and Other Leave.** During the Period of Employment, the Executive's annual rate of vacation accrual shall be four (4) weeks per year; provided that such vacation shall accrue on a bi-weekly basis in accordance with the Company's regular payroll cycle and be subject to the Company's vacation policies in effect from time to time. The Executive shall also be entitled to all other holiday and leave pay generally available to other similarly situated executives of the Company.

5. **Termination.**

**5.1 Termination by the Company.** The Executive's employment by the Company, and the Period of Employment, may be terminated at any time by the Company: (i) with Cause (as such term is defined in Section 5.5), or (ii) without Cause, or (iii) in the event of the Executive's death, or (iv) in the event that the

Board determines in good faith that the Executive has a Disability (as such term is defined in Section 5.5).

**5.2 Termination by the Executive.** The Executive's employment by the Company, and the Period of Employment, may be terminated by the Executive with or without Good Reason (as such term is defined in Section 5.5) upon written notice to the Company (such notice to be delivered in accordance with Section 18).

**5.3 Benefits Upon Termination.** If the Executive's employment by the Company is terminated during the Period of Employment for any reason by the Company or by the Executive, or upon or following the expiration of the Period of Employment (in any case, the date that the Executive's employment by the Company terminates is referred to as the "Severance Date"), the Company shall have no further obligation to make or provide to the Executive, and the Executive shall have no further right to receive or obtain from the Company, any payments or benefits except as follows:

- (a) The Company shall pay the Executive (or, in the event of Executive's death, the Executive's estate) any Accrued Obligations (as such term is defined in Section 5.5);
- (b) Unless the provisions of Section 5.3(c) or (d) below apply, if, during the Period of Employment, the Executive's employment with the Company is terminated (1) by the Company without Cause (and other than due to the Executive's death or in connection with a good faith determination by the Board that the Executive has a Disability), (2) by the Executive for Good Reason, or (3) as a result of the Company's provision of notice to the Executive that this Agreement shall not be extended or further extended, the Executive shall be entitled to the following benefits:
  - (i) The Company shall pay the Executive (in addition to the Accrued Obligations), subject to tax withholding and other authorized deductions, an amount equal to two times Executive's Base Salary at the annualized rate in effect on the Severance Date. Such amount is referred to hereinafter as the "Severance Benefit." Subject to Section 5.7(a), the Company shall pay the Severance Benefit to the Executive in substantially equal installments in accordance with the Company's standard payroll practices over a period of twelve (12) consecutive months, with the first installment payable in the month following the month in which the Executive's Separation from Service (as such term is defined in Section 5.5) occurs. (For purposes of clarity, each such installment shall equal the applicable fraction of the aggregate Severance Benefit.)
  - (ii) Subject to the Executive's continued payment of the same percentage of the applicable premiums as she was paying on the

Severance Date, the Company will pay or reimburse the Executive for Executive's premiums charged to continue medical and dental coverage pursuant to the Consolidated Omnibus Budget Reconciliation Act ("COBRA"), and the Executive shall also be entitled to continued participation in the MERP, at the same or reasonably equivalent medical coverage for the Executive (and, if applicable, the Executive's eligible dependents) as in effect immediately prior to the Severance Date, to the extent that the Executive elects such continued coverage (the "COBRA Benefit"); provided that the Company's obligation to make any payment or reimbursement pursuant to this clause (ii) shall, subject to Section 5.7(a), commence with continuation coverage for the month following the month in which the Executive's Separation from Service occurs and shall cease with continuation coverage for the eighteenth month following the month in which the Executive's Separation from Service occurs (or, if earlier, shall cease upon the first to occur of the Executive's death, the date the Executive becomes eligible for coverage under the health plan of a future employer, or the date the Company ceases to offer group medical coverage or the MERP to its active executive employees or the Company is otherwise under no obligation to offer COBRA continuation coverage to the Executive). To the extent the Executive elects COBRA coverage, she shall notify the Company in writing of such election prior to such coverage taking effect and complete any other continuation coverage enrollment procedures the Company may then have in place.

- (iii) The Company shall pay to the Executive, subject to tax withholding and other authorized deductions, any Incentive Bonus that would otherwise be paid to the Executive had his or her employment with the Company not terminated with respect to any fiscal year that ended before the Severance Date, to the extent not theretofore paid (the "Prior-Year Bonus"). Any Prior-Year Bonus that becomes payable will be paid if and when the Incentive Bonus for active employees is paid (following the completion of the audit for the relevant year).
- (iv) The Company shall pay the Executive, subject to tax withholding and other authorized deductions, a pro-rata portion of the Incentive Bonus for the fiscal year in which the Executive's employment terminates (the "Pro-Rata Bonus"). The Pro-Rata Bonus shall equal the Incentive Bonus for the fiscal year of termination multiplied by a fraction, the numerator of which is the number of days in the current fiscal year through the Severance Date and the denominator is 365. Any Pro-Rata Bonus that becomes payable will be paid if and when the Incentive Bonus for active employees



is paid (following the completion of the audit in the following calendar year).

- (c) If, during the Period of Employment and within three months prior to a Change in Control or twenty-four months following a Change in Control, the Executive's employment with the Company is terminated (1) by the Company without Cause (and other than due to the Executive's death or in connection with a good faith determination by the Board that the Executive has a Disability), or (2) by the Executive for Good Reason, or (3) as a result of the Company's provision of notice to the Executive that this Agreement shall not be extended or further extended, the Executive shall be entitled to the following benefits in lieu of the benefits described under Section 5.3(b):
- (i) The Company shall pay the Executive (in addition to the Accrued Obligations), subject to tax withholding and other authorized deductions, an amount equal to two times Executive's Base Salary at the annualized rate in effect on the Severance Date. Such amount is referred to hereinafter as the "Change in Control Severance Benefit." Subject to Section 5.7(a), the Company shall pay the Change in Control Severance Benefit to the Executive in substantially equal installments in accordance with the Company's standard payroll practices over a period of twelve (12) consecutive months, with the first installment payable in the month following the month in which the Executive's Separation from Service (as such term is defined in Section 5.5) occurs. (For purposes of clarity, each such installment shall equal the applicable fraction of the aggregate Change in Control Severance Benefit.)
  - (ii) The Company shall provide the COBRA Benefit described in Section 5.3(b)(ii) above on the terms and conditions specified in that section until the eighteenth month following the month in which the Executive's Separation from Service occurs.
  - (iii) The Company shall pay the Executive, subject to tax withholding and other authorized deductions, the Prior-Year Bonus and Pro-Rata Bonus, as described in Section 5.3(b)(iii) and (iv) above.
  - (iv) At the Severance Date, all then outstanding and unvested equity awards granted under the Parent Equity Plan or any predecessor equity incentive plan shall receive full accelerated vesting.
- (d) If the Executive meets the Retirement Qualifications during the Period of Employment and wishes to receive the benefits described in 5.3(d)(i)-(v) below, Executive must provide at least six months of notice to the Company requesting a retirement date. Executive and the Company must agree to a retirement date (the "Retirement Date"), not later than one year

from the date that notice is provided, by written agreement. If Executive satisfies the Retirement Qualifications and remains employed through the Retirement Date, upon the Retirement Date, Executive shall be entitled to the following benefits:

- (i) All then outstanding and unvested equity awards granted after the Effective Date that are subject to vesting requirements based on continued employment but not performance-based vesting requirements, including any awards originally subject to performance-based vesting conditions that have been satisfied and remain outstanding subject to only time-based vesting conditions (“Time-Based Awards”) shall receive full accelerated vesting if they were granted one or more years before the Retirement Date and pro-rata vesting if they were granted less than one year from the Retirement Date. The pro-rata vesting will be calculated as follows: (number of shares subject to the award ÷ number of days from award date to original vesting date specified in the award agreement (including both beginning and end date)) x number of days from the award date to the Retirement Date. Any partial shares will be rounded down to the nearest whole share.
  - (ii) All then-outstanding and unvested equity awards granted after the Effective Date that are not Time-Based Awards shall, subject to compliance with the requirements of Section 409A and 457A of the Code and any potential changes needed to address these provisions, remain outstanding and will be paid (subject to the applicable performance conditions) as though the Executive’s employment had not terminated (with any time-based vesting conditions that would otherwise extend beyond the end of the applicable performance period deemed satisfied as of the end of the applicable performance period).
  - (iii) The Company shall pay the Executive, subject to tax withholding and other authorized deductions, the Prior-Year Bonus and Pro-Rata Bonus, as described in Section 5.3(b)(iii) and (iv) above.
  - (iv) Executive will be entitled to continue to participate in the employee cruise benefits available to active employees at the President level following the Retirement Date.
  - (v) The Company shall provide the COBRA Benefit described in Section 5.3(b)(ii) above on the terms and conditions specified in that section until the eighteenth month following the month in which the Executive’s Separation from Service occurs.
- (e) Notwithstanding the foregoing provisions of this Section 5.3, if the Executive breaches Executive’s obligations under Section 6 of this

Agreement at any time, from and after the date of such breach and not in any way in limitation of any right or remedy otherwise available to the Company, the Executive will no longer be entitled to, and the Company will no longer be obligated to pay, any remaining unpaid portion of the Severance Benefit or Change in Control Severance Benefit, the Prior-Year Bonus or the Pro-Rata Bonus, equity acceleration for any outstanding and unvested equity awards that remain outstanding at the time of the breach, continued cruise benefits, or the COBRA Benefit; provided that, if the Executive provides the release contemplated by Section 5.4, in no event shall the Executive be entitled to a Severance Benefit or Change in Control Severance Benefit payment of less than \$5,000, which amount the parties agree is good and adequate consideration, in and of itself, for the Executive's release contemplated by Section 5.4.

- (f) The foregoing provisions of this Section 5.3 shall not affect: (i) the Executive's receipt of benefits otherwise due terminated employees under group insurance coverage consistent with the terms of the applicable Company welfare benefit plan; or (ii) the Executive's rights under COBRA to continue participation in medical, dental, hospitalization and life insurance coverage.

**5.4 Release; Exclusive Remedy.**

- (a) This Section 5.4 shall apply notwithstanding anything else contained in this Agreement or any stock option or other equity-based award agreement to the contrary. As a condition precedent to any Company obligation to the Executive pursuant to Sections 5.3(b), (c) or (d), the Executive shall, upon or promptly following her last day of employment with the Company (and in any event within twenty-one (21) days following the Executive's last day of employment), execute a general release agreement in substantially the form of Exhibit A (with such amendments that may be necessary to ensure the release is enforceable to the fullest extent permissible under then applicable law), and such release agreement shall have not been revoked by the Executive pursuant to any revocation rights afforded by applicable law.
- (b) The Executive agrees that the payments and benefits contemplated by Section 5.3 (and any applicable acceleration of vesting of an equity-based award in accordance with the terms of such award in connection with the termination of the Executive's employment) shall constitute the exclusive and sole remedy for any termination of Executive's employment and the Executive covenants not to assert or pursue any other remedies, at law or in equity, with respect to any termination of employment. The Company and the Executive acknowledge and agree that there is no duty of the Executive to mitigate damages under this Agreement. All amounts paid to the Executive pursuant to Section 5.3 shall be paid without regard to whether the Executive has taken or takes actions to mitigate damages. The

Executive agrees to resign, on the Severance Date, as an officer and director of the Company and any Affiliate of the Company, and as a fiduciary of any benefit plan of the Company or any Affiliate of the Company, and to promptly execute and provide to the Company any further documentation, as requested by the Company, to confirm such resignation.

**5.5 Certain Defined Terms.**

- (a) As used herein, “Accrued Obligations” means:
- (i) any Base Salary that had accrued but had not been paid on or before the Severance Date (including accrued and unpaid vacation time of up to 80 hours in accordance with the Company’s policy in effect at the applicable time); and
  - (ii) any reimbursement due to the Executive pursuant to Section 4.4 for expenses reasonably incurred by the Executive on or before the Severance Date and documented and pre-approved, to the extent applicable, in accordance with the Company’s expense reimbursement policies in effect at the applicable time.
- (b) As used herein, “Affiliate” of the Company means a Person that directly or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, the Company. As used in this definition, the term “control,” including the correlative terms “controlling,” “controlled by” and “under common control with,” means the possession, directly or indirectly, of the power to direct or cause the direction of management or policies (whether through ownership of securities or any partnership or other ownership interest, by contract or otherwise) of a Person.
- (c) As used herein, “Cause” shall mean, as reasonably determined by the Chief Executive Officer of the Parent based on the information then known to him, that one or more of the following has occurred:
- (i) the Executive has committed a felony (under the laws of the United States or any relevant state, or a similar crime or offense under the applicable laws of any relevant foreign jurisdiction), other than through vicarious liability not related to the Company or any of its Affiliates;
  - (ii) the Executive has engaged in acts of fraud, dishonesty or other acts of willful misconduct;
  - (iii) the Executive willfully fails to perform or uphold Executive’s duties under this Agreement and/or willfully fails to comply with reasonable directives of the Board and/or Chief Executive Officer

of the Parent, in either case after there has been delivered to the Executive a written demand for performance from the Company and the Executive fails to remedy such condition(s) within ten (10) days of receiving such written notice thereof; or

- (iv) any breach by the Executive of the provisions of Section 6, or any material breach by the Executive of any other contract she is a party to with the Company or any of its Affiliates.
- (d) As used herein, “Change in Control” shall mean the following:
- (i) The consummation by the Parent of a merger, consolidation, reorganization, or business combination, other than a transaction:
    - (A) Which results in the Parent’s voting securities outstanding immediately before the transaction continuing to represent (either by remaining outstanding or by being converted into voting securities of the Parent or the Person that, as a result of the transaction, controls, directly or indirectly, the Parent or owns, directly or indirectly, all or substantially all of the Parent’s assets or otherwise succeeds to the business of the Parent (the Parent or such person, the “Successor Entity”)) directly or indirectly, at least a majority of the combined voting power of the Successor Entity’s outstanding voting securities immediately after the transaction, and;
    - (B) After which no person or group (as such terms are used in Sections 13(d) and 14(d)(2) of the Securities Exchange Act of 1934, as amended (the “Exchange Act”)) beneficially owns (within the meaning of Rule 13d-3 under the Exchange Act) voting securities representing 50% or more of the combined voting power of the Successor Entity; provided, however, that no person or group shall be treated for purposes of this Section 5.5(d)(i) (B) as beneficially owning 50% or more of combined voting power of the Successor Entity solely as a result of the voting power held in the Parent prior to the consummation of the transaction; or
  - (ii) A sale or other disposition of all or substantially all of the Parent’s assets in any single transaction or series of related transactions; or
  - (iii) A transaction or series of transactions (other than an offering of stock to the general public through a registration statement filed with the Securities and Exchange Commission) whereby any person or group (as such terms are used in Sections 13(d) and 14(d)(2) of the Exchange Act) (other than the Parent, any of its

subsidiaries, an employee benefit plan maintained by the Parent or any of its subsidiaries or a person or group that, prior to such transaction, directly or indirectly controls, is controlled by, or is under common control with, the Parent) directly or indirectly acquires beneficial ownership (within the meaning of Rule 13d-3 under the Exchange Act) of securities of the Parent and immediately after such acquisition possesses more than 50% of the total combined voting power of the Parent's securities outstanding immediately after such acquisition; or

- (iv) Individuals who, on the Effective Date, constitute the Board together with any new director(s) whose election by the Board was not in connection with an actual or threatened proxy contest, cease for any reason to constitute a majority thereof.
- (e) As used herein, "Disability" shall mean a physical or mental impairment which, as reasonably determined by the Board, renders the Executive unable to perform the essential functions of Executive's employment with the Company, even with reasonable accommodation that does not impose an undue hardship on the Company, for more than 90 days in any 180-day period, unless a longer period is required by federal or state law, in which case that longer period would apply.
- (f) As used herein, "Good Reason" shall mean that the Executive has complied with the "Good Reason Process" following the occurrence of any of the following events (referred to individually as a "Good Reason Event" and collectively as "Good Reason Events"): (A) any substantial adverse change, not consented to by the Executive in a writing signed by the Executive, in the nature or scope of the Executive's responsibilities, authorities, powers, functions, or duties; (B) an involuntary reduction in the Executive's Base Salary; (C) a breach by the Company of any of its material obligations under this Agreement; or (D) the requirement that the Executive be relocated from the Company's primary offices at which the Executive is principally employed to a location more than sixty (60) miles from the Company's current principal offices, or the requirement by the Company for the Executive to be based anywhere other than the Company's principal offices at such current location (or more than sixty (60) miles therefrom) on an extended basis, except for required travel on the Company's business to an extent substantially consistent with the Executive's current business travel obligations.
- (g) As used herein, "Good Reason Process" shall mean that (i) the Executive reasonably determines in good faith that a Good Reason Event has occurred; (ii) the Executive notifies the Company in writing (such notice to be delivered in accordance with Section 18) of the occurrence of the Good Reason Event within 10 days thereof and the Executive's intent to terminate employment as a result thereof; and (iii) one or more of the

Good Reason Events continues to exist for a period of more than thirty (30) days following such notice and has not been modified or cured in a manner acceptable to the Executive, in which case the Executive's employment shall automatically terminate on the thirty-first (31<sup>st</sup>) day after the date such notice is given.

- (h) As used herein, the term "Person" shall be construed broadly and shall include, without limitation, an individual, a partnership, a limited liability company, a corporation, an association, a joint stock company, a trust, a joint venture, an unincorporated organization and a governmental entity or any department, agency or political subdivision thereof.
- (i) As used herein, "Retirement Qualifications" means that, as of the agreed Retirement Date, Executive: (i) is 55 years or older, (ii) has been employed by the Company or one of its Affiliates for ten or more years and (iii) the Executive's age plus the number of years the Executive has been employed with the Company or its Affiliates is greater than or equal to 70.
- (j) As used herein, a "Separation from Service" occurs when the Executive dies, retires, or otherwise has a termination of employment with the Company that constitutes a "separation from service" within the meaning of Treasury Regulation Section 1.409A-1(h)(1), without regard to the optional alternative definitions available thereunder.

**5.6 Notice of Termination.** Any termination of the Executive's employment under this Agreement shall be communicated by written notice of termination from the terminating party to the other party. This notice of termination must be delivered in accordance with Section 18 and must indicate the specific provision(s) of this Agreement relied upon in effecting the termination and the basis of any termination by the Company for Cause or by the Executive for Good Reason.

**5.7 Section 409A and 457A.**

- (a) If the Executive is a "specified employee" within the meaning of Treasury Regulation Section 1.409A-1(i) as of the date of the Executive's Separation from Service, the Executive shall not be entitled to any payment or benefit pursuant to Sections 5.3(b), (c) or (d) until the earlier of (i) the date which is six (6) months after Executive's Separation from Service for any reason other than death, or (ii) the date of the Executive's death. The provisions of this paragraph shall only apply if, and to the extent, required to avoid the imputation of any tax, penalty or interest pursuant to Section 409A of the Code. For purposes of clarity, the six (6) month delay shall not apply in the case of any short-term deferral as contemplated by Treasury Regulation Section 1.409A-1(b)(4) or severance pay contemplated by Treasury Regulation Section 1.409A-1(b)(9)(iii) to

the extent of the limits set forth therein. Any amounts otherwise payable to the Executive upon or in the six (6) month period following the Executive's Separation from Service that are not so paid by reason of this Section 5.7(a) shall be paid (without interest) as soon as practicable (and in all events within thirty (30) days) after the date that is six (6) months after the Executive's Separation from Service (or, if earlier, as soon as practicable, and in all events within thirty (30) days, after the date of the Executive's death).

- (b) To the extent that any benefits pursuant to Sections 5.3(b)(ii), (c)(ii) or (d)(v) or reimbursements pursuant to Section 4 are taxable to the Executive, any reimbursement payment due to the Executive pursuant to any such provision shall be paid to the Executive on or before the last day of the Executive's taxable year following the taxable year in which the related expense was incurred. The benefits and reimbursements pursuant to Sections 5.3(b)(ii), (c)(ii) and (d)(v) and Section 4 are not subject to liquidation or exchange for another benefit and the amount of such benefits and reimbursements that the Executive receives in one taxable year shall not affect the amount of such benefits or reimbursements that the Executive receives in any other taxable year.
- (c) Any installment payments provided for in this Agreement shall be treated as separate payments for purposes of Section 409A of the Code. To the extent required to avoid the imputation of any tax, penalty or interest pursuant to Section 409A of the Code, the definition of Change in Control will be interpreted to mean a change in the ownership, effective control or ownership of a substantial portion of assets of Parent within the meaning of Section 409A of the Code. This Agreement is intended to comply with the requirements of Section 409A and 457A of the Code and shall be interpreted consistent with this intent so as to avoid the imputation of any tax, penalty or interest pursuant to Section 409A and 457A of the Code.

**5.8 Possible Limitation of Benefits in Connection with a Change in Control.**

Notwithstanding anything contained in this Agreement to the contrary, if following a change in ownership or effective control or in the ownership of a substantial portion of assets (in each case, within the meaning of Section 280G of the Code), the tax imposed by Section 4999 of the Code or any similar or successor tax (the "Excise Tax") applies to any payments, benefits and/or amounts received by the Executive pursuant to this Agreement or otherwise, including, without limitation, any acceleration of the vesting of outstanding stock options or other equity awards (collectively, the "Total Payments"), then the Total Payments shall be reduced (but not below zero) so that the maximum amount of the Total Payments (after reduction) shall be one dollar (\$1.00) less than the amount which would cause the Total Payments to be subject to the Excise Tax; provided that such reduction to the Total Payments shall be made only if the total after-tax benefit to the Executive is greater after giving effect to such reduction than if no such reduction had been made. If such a reduction is required, the



Company shall reduce or eliminate the Total Payments by first reducing or eliminating any cash payments under this Agreement, then by reducing or eliminating any accelerated vesting of stock options, then by reducing or eliminating any accelerated vesting of other equity awards, then by reducing or eliminating any other remaining Total Payments, in each case in reverse order beginning with the payments which are to be paid the farthest in time from the date of the transaction triggering the Excise Tax. The provisions of this Section 5.8 shall take precedence over the provisions of any other plan, arrangement or agreement governing the Executive's rights and entitlements to any benefits or compensation.

**6. Protective Covenants.**

**6.1 Confidential Information; Inventions.**

- (a) The Executive shall not disclose or use at any time, either during the Period of Employment or thereafter, any Confidential Information (as defined below) of which the Executive is or becomes aware, whether or not such information is developed by Executive, except to the extent that such disclosure or use is directly related to and required by the Executive's performance in good faith of duties for the Company. The Executive will take all appropriate steps to safeguard Confidential Information in Executive's possession and to protect it against disclosure, misuse, espionage, loss and theft. The Executive shall deliver to the Company at the termination of the Period of Employment, or at any time the Company may request, all memoranda, notes, plans, records, reports, computer tapes and software and other documents and data (and copies thereof) relating to the Confidential Information or the Work Product (as hereinafter defined) of the business of the Company or any of its Affiliates which the Executive may then possess or have under Executive's control. Notwithstanding the foregoing, the Executive may truthfully respond to a lawful and valid subpoena or other legal process, but shall give the Company the earliest possible notice thereof, shall, as much in advance of the return date as possible, make available to the Company and its counsel the documents and other information sought, and shall assist the Company and such counsel in resisting or otherwise responding to such process. Nothing in this Agreement prohibits Executive from reporting possible violations of federal law or regulation to any governmental agency or entity, or making other disclosures that are protected under the whistleblower provisions of federal law or regulation. Executive does not need the prior authorization to make any such reports or disclosures and is not required to notify the Employer of such reports or disclosures. Pursuant to the Defend Trade Secrets Act of 2016, the Executive acknowledges that he may not be held criminally or civilly liable under any federal or state trade secret law for the disclosure of confidential information that: (a) is made in confidence to a federal, state, or local government official, either directly or indirectly, or to an attorney solely

for the purpose of reporting or investigating a suspected violation of law; or (b) is made in a complaint or other document that is filed in a lawsuit or other proceeding, provided that such filing is made under seal. Further, the Executive understands that the Company will not retaliate against him in any way for any such disclosure made in accordance with the law. In the event a disclosure is made, and the Executive files any type of proceeding against the Company alleging that the Company retaliated against the Executive because of his disclosure, the Executive may disclose the relevant confidential information to his attorney and may use the confidential information in the proceeding if (x) the Executive files any document containing the confidential information under seal, and (y) the Executive does not otherwise disclose the confidential information except pursuant to court order.

- (b) As used in this Agreement, the term “Confidential Information” means information that is not generally known to the public and that is used, developed or obtained by the Company or its Affiliates in connection with their businesses, including, but not limited to, information, observations and data obtained by the Executive while employed by the Company or any predecessors thereof (including those obtained prior to the Effective Date) concerning (i) the business or affairs of the Company (or such predecessors), (ii) products or services, (iii) fees, costs and pricing structures, (iv) designs, (v) analyses, (vi) drawings, photographs and reports, (vii) computer software, including operating systems, applications and program listings, (viii) flow charts, manuals and documentation, (ix) data bases, (x) accounting and business methods, (xi) inventions, devices, new developments, methods and processes, whether patentable or unpatentable and whether or not reduced to practice, (xii) customers and clients and customer or client lists, (xiii) other copyrightable works, (xiv) all production methods, processes, technology and trade secrets, and (xv) all similar and related information in whatever form. Confidential Information will not include any information that has been published (other than a disclosure by the Executive in breach of this Agreement) in a form generally available to the public prior to the date the Executive proposes to disclose or use such information. Confidential Information will not be deemed to have been published merely because individual portions of the information have been separately published, but only if all material features comprising such information have been published in combination.
- (c) As used in this Agreement, the term “Work Product” means all inventions, innovations, improvements, technical information, systems, software developments, methods, designs, analyses, drawings, reports, service marks, trademarks, trade names, logos and all similar or related information (whether patentable or unpatentable, copyrightable, registerable as a trademark, reduced to writing, or otherwise) which relates to the Company’s or any of its Affiliates’ actual or anticipated business,

research and development or existing or future products or services and which are conceived, developed or made by the Executive (whether or not during usual business hours, whether or not by the use of the facilities of the Company or any of its Affiliates, and whether or not alone or in conjunction with any other person) while employed by the Company (including those conceived, developed or made prior to the Effective Date) together with all patent applications, letters patent, trademark, trade name and service mark applications or registrations, copyrights and reissues thereof that may be granted for or upon any of the foregoing. All Work Product that the Executive may have discovered, invented or originated during Executive's employment by the Company or any of its Affiliates prior to the Effective Date or that she may discover, invent or originate during the Period of Employment or at any time prior to the Severance Date, shall be the exclusive property of the Company and its Affiliates, as applicable, and Executive hereby assigns all of Executive's right, title and interest in and to such Work Product to the Company or its applicable Affiliate, including all intellectual property rights therein. Executive shall promptly disclose all Work Product to the Company, shall execute at the request of the Company any assignments or other documents the Company may deem necessary to protect or perfect its (or any of its Affiliates', as applicable) rights therein, and shall assist the Company, at the Company's expense, in obtaining, defending and enforcing the Company's (or any of its Affiliates', as applicable) rights therein. The Executive hereby appoints the Company as Executive's attorney-in-fact to execute on Executive's behalf any assignments or other documents deemed necessary by the Company to protect or perfect the Company's (and any of its Affiliates', as applicable) rights to any Work Product.

**6.2 Restriction on Competition.** The Executive acknowledges that, in the course of Executive's employment with the Company and/or its Affiliates, she has become familiar, or will become familiar, with the Company's and its Affiliates' and their predecessors' trade secrets and with other Confidential Information concerning the Company, its Affiliates and their respective predecessors and that Executive's services have been and will be of special, unique and extraordinary value to the Company and its Affiliates. The Executive agrees that if the Executive were to become employed by, or substantially involved in, the business of a competitor of the Company or any of its Affiliates following the Severance Date, it would be very difficult for the Executive not to rely on or use the Company's and its Affiliates' trade secrets and Confidential Information. Thus, to avoid the inevitable disclosure of the Company's and its Affiliates' trade secrets and Confidential Information, and to protect such trade secrets and Confidential Information and the Company's and its Affiliates' relationships and goodwill with customers, during the Period of Employment and for a period of twenty-four months after the Severance Date, the Executive will not directly or indirectly through any other Person engage in, enter the employ of, render any services to, have any ownership interest in, nor participate in the financing, operation, management or control of, any Competing Business. For purposes of this

Agreement, the phrase “directly or indirectly through any other Person engage in” shall include, without limitation, any direct or indirect ownership or profit participation interest in such enterprise, whether as an owner, stockholder, member, partner, joint venturer or otherwise, and shall include any direct or indirect participation in such enterprise as an employee, consultant, director, officer, licensor of technology or otherwise. For purposes of this Agreement, “Competing Business” means a Person anywhere in the continental United States and elsewhere in the world where the Company and its Affiliates engage in business, or reasonably anticipate engaging in business, on the Severance Date (the “Restricted Area”) that at any time during the Period of Employment has competed, or at any time during the twelve month period following the Severance Date competes, with the Company or any of its Affiliates in the passenger cruise ship industry (the “Business”). Nothing herein shall prohibit the Executive from being a passive owner of not more than 2% of the outstanding stock of any class of a corporation which is publicly traded, so long as the Executive has no active participation in the business of such corporation. Notwithstanding the foregoing, the Executive and the Company may agree that the Company shall waive all or a portion of the non-competition restrictions provided for in this Section 6.2 in exchange for the Executive’s agreement to forfeit all or a portion of the Severance Benefit payable under Section 5.3(b), the Change in Control Severance Benefit payable under Section 5.3(c) or retirement benefits in Section 5.3(d). Any such agreement between the Executive and the Company shall be documented in the general release agreement provided for in Section 5.4 or in such other written agreement between the Executive and the Company determined by the Company.

**6.3 Non-Solicitation of Employees and Consultants.** During the Period of Employment and for a period of twenty-four months after the Severance Date, the Executive will not directly or indirectly through any other Person (i) induce or attempt to induce any employee or independent contractor of the Company or any Affiliate of the Company to leave the employ or service, as applicable, of the Company or such Affiliate, or in any way interfere with the relationship between the Company or any such Affiliate, on the one hand, and any employee or independent contractor thereof, on the other hand, or (ii) hire any person who was an employee of the Company or any Affiliate of the Company until twelve months after such individual’s employment relationship with the Company or such Affiliate has been terminated.

**6.4 Non-Solicitation of Customers.** During the Period of Employment and for a period of twenty-four months after the Severance Date, the Executive will not directly or indirectly through any other Person influence or attempt to influence customers, vendors, suppliers, licensors, lessors, joint venturers, associates, consultants, agents, or partners of the Company or any Affiliate of the Company to divert their business away from the Company or such Affiliate, and the Executive will not otherwise interfere with, disrupt or attempt to disrupt the business relationships, contractual or otherwise, between the Company or any Affiliate of the Company, on the one hand, and any of its or their customers, suppliers, vendors, lessors, licensors, joint venturers, associates, officers,

employees, consultants, managers, partners, members or investors, on the other hand.

**6.5 Understanding of Covenants.** The Executive represents that she (i) is familiar with and has carefully considered the foregoing covenants set forth in this Section 6 (together, the “Restrictive Covenants”), (ii) is fully aware of Executive’s obligations hereunder, (iii) agrees to the reasonableness of the length of time, scope and geographic coverage, as applicable, of the Restrictive Covenants, (iv) agrees that the Company and its Affiliates currently conduct business throughout the continental United States and the rest of the world, (v) agrees that the Restrictive Covenants are necessary to protect the Company’s and its Affiliates’ confidential and proprietary information, good will, stable workforce, and customer relations, and (vi) agrees that the Restrictive Covenants will continue in effect for the applicable periods set forth above in this Section 6 regardless of whether the Executive is then entitled to receive severance pay or benefits from the Company. The Executive understands that the Restrictive Covenants may limit Executive’s ability to earn a livelihood in a business similar to the Business of the Company and any of its Affiliates, but she nevertheless believes that she has received and will receive sufficient consideration and other benefits as an employee of the Company and as otherwise provided hereunder or as described in the recitals hereto to clearly justify such restrictions which, in any event (given Executive’s education, skills and ability), the Executive does not believe would prevent Executive from otherwise earning a living. The Executive agrees that the Restrictive Covenants do not confer a benefit upon the Company disproportionate to the detriment of the Executive.

**6.6 Cooperation.** Following the Executive’s last day of employment by the Company, the Executive shall reasonably cooperate with the Company and its Affiliates in connection with: (a) any ongoing Company matter, internal or governmental investigation or administrative, regulatory, arbitral or judicial proceeding involving the Company and any Affiliates with respect to matters relating to the Executive’s employment with, or service as a member of the board of directors of, the Company or any Affiliate (collectively, “Litigation”); or (b) any audit of the financial statements of the Company or any Affiliate with respect to the period of time when the Executive was employed by the Company or any Affiliate (“Audit”). The Executive acknowledges that such cooperation may include, but shall not be limited to, the Executive making himself or herself available to the Company or any Affiliate (or their respective attorneys or auditors) upon reasonable notice for: (i) interviews, factual investigations, and providing declarations or affidavits that provide truthful information in connection with any Litigation or Audit; (ii) appearing at the request of the Company or any Affiliate to give testimony without requiring service of a subpoena or other legal process; (iii) volunteering to the Company or any Affiliate pertinent information related to any Litigation or Audit; and (iv) turning over to the Company or any Affiliate any documents relevant to any Litigation or Audit that are or may come into the Executive’s possession. The Company shall reimburse the Executive for reasonable travel expenses incurred in connection

with providing the services under this Section 6.6, including lodging and meals, upon the Executive's submission of receipts. If, due to an actual or potential conflict of interest, it is necessary for the Executive to retain separate counsel in connection with providing the services under this Section 6.6, and such counsel is not otherwise supplied by and at the expense of the Company (pursuant to indemnification rights of the Executive or otherwise), the Company shall further reimburse the Executive for the reasonable fees and expenses of such separate counsel.

**6.7 Enforcement.** The Executive agrees that the Executive's services are unique and that she has access to Confidential Information and Work Product. Accordingly, without limiting the generality of Section 17, the Executive agrees that a breach by the Executive of any of the covenants in this Section 6 would cause immediate and irreparable harm to the Company that would be difficult or impossible to measure, and that damages to the Company for any such injury would therefore be an inadequate remedy for any such breach. Therefore, the Executive agrees that in the event of any breach or threatened breach of any provision of this Section 6, the Company shall be entitled, in addition to and without limitation upon all other remedies the Company may have under this Agreement, at law or otherwise, to obtain specific performance, injunctive relief and/or other appropriate relief (without posting any bond or deposit) in order to enforce or prevent any violations of the provisions of this Section 6. The Executive further agrees that the applicable period of time any Restrictive Covenant is in effect following the Severance Date, as determined pursuant to the foregoing provisions of this Section 6, shall be extended by the same amount of time that Executive is in breach of any Restrictive Covenant.

7. **Withholding Taxes.** Notwithstanding anything else herein to the contrary, the Company may withhold (or cause there to be withheld, as the case may be) from any amounts otherwise due or payable under or pursuant to this Agreement such federal, state and local income, employment, or other taxes as may be required to be withheld pursuant to any applicable law or regulation.

**8. Successors and Assigns.**

- (a) This Agreement is personal to the Executive and without the prior written consent of the Company shall not be assignable by the Executive otherwise than by will or the laws of descent and distribution. This Agreement shall inure to the benefit of and be enforceable by the Executive's legal representatives.
- (b) This Agreement shall inure to the benefit of and be binding upon the Company and its successors and assigns. Without limiting the generality of the preceding sentence, the Company will require any successor (whether direct or indirect, by purchase, merger, consolidation or otherwise) to all or substantially all of the business and/or assets of the Company to assume expressly and agree to perform this Agreement in the

same manner and to the same extent that the Company would be required to perform it if no such succession had taken place. As used in this Agreement, "Company" shall mean the Company as hereinbefore defined and any successor or assignee, as applicable, which assumes and agrees to perform this Agreement by operation of law or otherwise.

**9. Number and Gender; Examples.** Where the context requires, the singular shall include the plural, the plural shall include the singular, and any gender shall include all other genders. Where specific language is used to clarify by example a general statement contained herein, such specific language shall not be deemed to modify, limit or restrict in any manner the construction of the general statement to which it relates.

**10. Section Headings.** The section headings of, and titles of paragraphs and subparagraphs contained in, this Agreement are for the purpose of convenience only, and they neither form a part of this Agreement nor are they to be used in the construction or interpretation thereof.

**11. Governing Law.** THIS AGREEMENT WILL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF FLORIDA, WITHOUT GIVING EFFECT TO ANY CHOICE OF LAW OR CONFLICTING PROVISION OR RULE (WHETHER OF THE STATE OF FLORIDA OR ANY OTHER JURISDICTION) THAT WOULD CAUSE THE LAWS OF ANY JURISDICTION OTHER THAN THE STATE OF FLORIDA TO BE APPLIED. IN FURTHERANCE OF THE FOREGOING, THE INTERNAL LAW OF THE STATE OF FLORIDA WILL CONTROL THE INTERPRETATION AND CONSTRUCTION OF THIS AGREEMENT, EVEN IF UNDER SUCH JURISDICTION'S CHOICE OF LAW OR CONFLICT OF LAW ANALYSIS, THE SUBSTANTIVE LAW OF SOME OTHER JURISDICTION WOULD ORDINARILY APPLY.

**12. Severability.** It is the desire and intent of the parties hereto that the provisions of this Agreement be enforced to the fullest extent permissible under the laws and public policies applied in each jurisdiction in which enforcement is sought. Accordingly, if any particular provision of this Agreement shall be adjudicated by a court of competent jurisdiction to be invalid, prohibited or unenforceable under any present or future law, and if the rights and obligations of any party under this Agreement will not be materially and adversely affected thereby, such provision, as to such jurisdiction, shall be ineffective, without invalidating the remaining provisions of this Agreement or affecting the validity or enforceability of such provision in any other jurisdiction, and to this end the provisions of this Agreement are declared to be severable; furthermore, in lieu of such invalid or unenforceable provision there will be added automatically as a part of this Agreement, a legal, valid and enforceable provision as similar in terms to such invalid or unenforceable provision as may be possible. Notwithstanding the foregoing, if such provision could be more narrowly drawn (as to geographic scope, period of duration or otherwise) so as not to be invalid, prohibited or unenforceable in such jurisdiction, it shall, as to such jurisdiction, be so narrowly drawn, without invalidating the remaining provisions of this Agreement or affecting the validity or enforceability of such provision in any other jurisdiction.

**13. Entire Agreement; Legal Effect.** This Agreement embodies the entire agreement of the parties hereto respecting the matters within its scope. As of the Effective Date, this Agreement supersedes all prior and contemporaneous agreements of the parties hereto that directly or indirectly bear upon the subject matter hereof. Any prior negotiations, correspondence, agreements, proposals or understandings relating to the subject matter hereof shall be deemed to have been merged into this Agreement, and to the extent inconsistent herewith, such negotiations, correspondence, agreements, proposals, or understandings shall be deemed to be of no force or effect. There are no representations, warranties, or agreements, whether express or implied, or oral or written, with respect to the subject matter hereof, except as expressly set forth herein.

**14. Modifications.** This Agreement may not be amended, modified or changed (in whole or in part), except by a formal, definitive written agreement expressly referring to this Agreement, which agreement is executed by both of the parties hereto.

**15. Waiver.** Neither the failure nor any delay on the part of a party to exercise any right, remedy, power or privilege under this Agreement shall operate as a waiver thereof, nor shall any single or partial exercise of any right, remedy, power or privilege preclude any other or further exercise of the same or of any right, remedy, power or privilege, nor shall any waiver of any right, remedy, power or privilege with respect to any occurrence be construed as a waiver of such right, remedy, power or privilege with respect to any other occurrence. No waiver shall be effective unless it is in writing and is signed by the party asserted to have granted such waiver.

**16. Waiver of Jury Trial.** EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY WAIVES ALL RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM ARISING OUT OF OR RELATING TO THIS AGREEMENT.

**17. Remedies.** Each of the parties to this Agreement and any such person or entity granted rights hereunder whether or not such person or entity is a signatory hereto shall be entitled to enforce its rights under this Agreement specifically to recover damages and costs for any breach of any provision of this Agreement and to exercise all other rights existing in its favor. The parties hereto agree and acknowledge that money damages may not be an adequate remedy for any breach of the provisions of this Agreement and that each party may in its sole discretion apply to any court of law or equity of competent jurisdiction for specific performance, injunctive relief and/or other appropriate equitable relief (without posting any bond or deposit) in order to enforce or prevent any violations of the provisions of this Agreement. Each party shall be responsible for paying its own attorneys' fees, costs and other expenses pertaining to any such legal proceeding and enforcement regardless of whether an award or finding or any judgment or verdict thereon is entered against either party.

**18. Notices.** Any notice provided for in this Agreement must be in writing and must be either personally delivered, mailed by first class mail (postage prepaid and return receipt requested) or sent by reputable overnight courier service (charges prepaid) to the recipient at the address below indicated or at such other address or to the attention of such other person as the recipient party has specified by prior written notice to the sending party. Notices will be deemed



to have been given hereunder and received when delivered personally, five days after deposit in the U.S. mail and one day after deposit with a reputable overnight courier service.

if to the Company:

Prestige Cruise Services LLC  
7665 Corporate Center Drive  
Miami, FL 33126  
Attn: Executive Vice President and Chief Talent Officer

with a copy to:

Prestige Cruise Services LLC  
7665 Corporate Center Drive  
Miami, FL 33126  
Attn: Executive Vice President and General Counsel

if to the Executive, to the address most recently on file in the payroll records of the Company.

**19. Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be deemed an original as against any party whose signature appears thereon, and all of which together shall constitute one and the same instrument. This Agreement shall become binding when one or more counterparts hereof, individually or taken together, shall bear the signatures of all of the parties reflected hereon as the signatories. Photographic or other electronic copies of such signed counterparts may be used in lieu of the originals for any purpose.

**20. Legal Counsel; Mutual Drafting.** Each party recognizes that this is a legally binding contract and acknowledges and agrees that they have had the opportunity to consult with legal counsel of their choice. Each party has cooperated in the drafting, negotiation and preparation of this Agreement. Hence, in any construction to be made of this Agreement, the same shall not be construed against either party on the basis of that party being the drafter of such language. The Executive agrees and acknowledges that she has read and understands this Agreement, is entering into it freely and voluntarily, and has been advised to seek counsel prior to entering into this Agreement and has had ample opportunity to do so.

**21. Indemnification.** The Company agrees to indemnify and hold the Executive harmless against all costs, charges and expenses whatsoever incurred or sustained by the Executive in connection with any action, suit or proceeding to which he may be made a party by reason of his being or having been a director, officer or employee of Parent, the Company or any of their Affiliates to the fullest extent permitted by applicable laws and the Company's (or Parent's, as applicable) governing documents, in each case as in effect at the time of the subject act or omission; provided, however, that in no event shall the Executive's indemnification rights and the rights to advancement of fees and expenses at any time be less favorable than the

indemnification rights and rights to advancement of fees and expenses generally available to officers or directors of the Company or Parent.

**22. Clawback.** All bonuses and equity awards granted under this Agreement, the Parent Equity Plan or any other incentive plan are subject to the terms of the Company's or Parent's recoupment, clawback or similar policy as it may be in effect from time to time, as well as any similar provisions of applicable law, any of which could in certain circumstances require repayment or forfeiture of bonuses or awards or any shares or other cash or property received with respect to the bonuses or awards (including any value received from a disposition of the shares acquired upon payment of the bonuses or equity awards).

*(Signature Page to Follow)*

**IN WITNESS WHEREOF**, the Company and the Executive have executed this Agreement as of the date hereof.

**“COMPANY”**

Prestige Cruise Services LLC  
a company organized under the laws of Delaware

By: /s/Lynn White  
Name: Lynn White  
Title: Executive Vice President, Chief Talent Officer

**“EXECUTIVE”**

/s/Andrea DeMarco  
Andrea DeMarco

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**FORM OF RELEASE AGREEMENT**

This Release Agreement (this "Release Agreement") is entered into this \_\_\_ day of \_\_\_\_\_, 20\_\_\_, by and between [\_\_\_\_], an individual ("Executive"), and Prestige Cruise Services LLC, a company organized under the laws of Delaware (the "Company").

**WHEREAS**, Executive has been employed by the Company or one of its subsidiaries; and

**WHEREAS**, Executive's employment by the Company or one of its subsidiaries has terminated and, in connection with the Executive's Employment Agreement with the Company, dated as of [\_\_\_\_] (the "Employment Agreement"), the Company and Executive desire to enter into this Release Agreement upon the terms set forth herein;

**NOW, THEREFORE**, in consideration of the covenants undertaken and the releases contained in this Release Agreement, and in consideration of the obligations of the Company to pay severance and other benefits (conditioned upon this Release Agreement) under and pursuant to the Employment Agreement, Executive and the Company agree as follows:

1. Termination of Employment. Executive's employment with the Company terminated on [\_\_\_\_, \_\_\_\_] (the "Separation Date"). Executive waives any right or claim to reinstatement as an employee of the Company and each of its affiliates. Executive hereby confirms that Executive does not hold any position as an officer, director or employee with the Company and each of its affiliates. Executive acknowledges and agrees that Executive has received all amounts owed for Executive's regular and usual salary (including, but not limited to, any overtime, bonus, accrued vacation, commissions, or other wages), reimbursement of expenses, sick pay and usual benefits.

2. Release. Executive, on behalf of Executive, Executive's descendants, dependents, heirs, executors, administrators, assigns, and successors, and each of them, hereby covenants not to sue and fully releases and discharges the Company and each of its parents, subsidiaries and affiliates, past and present, as well as its and their trustees, directors, officers, members, managers, partners, agents, attorneys, insurers, employees, stockholders, representatives, assigns, and successors, past and present, and each of them, hereinafter together and collectively referred to as the "Releasees," with respect to and from any and all claims, wages, demands, rights, liens, agreements or contracts (written or oral), covenants, actions, suits, causes of action, obligations, debts, costs, expenses, attorneys' fees, damages, judgments, orders and liabilities of whatever kind or nature in law, equity or otherwise, whether now known or unknown, suspected or unsuspected, and whether or not concealed or hidden (each, a "Claim"), which she now owns or holds or she has at any time heretofore owned or held or may in the future hold as against any of said Releasees (including, without limitation, any Claim arising out of or in any way connected with Executive's service as an officer, director, employee, member or manager of any Releasee, Executive's separation from Executive's position as an officer, director, employee, manager and/or member, as applicable, of any Releasee, or any other transactions, occurrences, acts or omissions or any loss, damage or injury whatever), whether known or unknown, suspected or



unsuspected, resulting from any act or omission by or on the part of said Releasees, or any of them, committed or omitted prior to the date of this Release Agreement including, without limiting the generality of the foregoing, any Claim under Title VII of the Civil Rights Act of 1964, the Age Discrimination in Employment Act of 1967, the Americans with Disabilities Act, the Family and Medical Leave Act of 1993, or any other federal, state or local law, regulation, or ordinance, or any Claim for severance pay, equity compensation, bonus, sick leave, holiday pay, vacation pay, life insurance, health or medical insurance or any other fringe benefit, workers' compensation or disability (the "Release"); provided, however, that the foregoing Release does not apply to any obligation of the Company to Executive pursuant to any of the following: (1) any equity-based awards previously granted by the Company or its affiliates to Executive, to the extent that such awards continue after the termination of Executive's employment with the Company in accordance with the applicable terms of such awards (and subject to any limited period in which to exercise such awards following such termination of employment); (2) any right to indemnification that Executive may have pursuant to the Employment Agreement, Bylaws of the Company, its Articles of Incorporation or under any written indemnification agreement with the Company (or any corresponding provision of any subsidiary or affiliate of the Company) or applicable state law with respect to any loss, damages or expenses (including but not limited to attorneys' fees to the extent otherwise provided) that Executive may in the future incur with respect to Executive's service as an employee, officer or director of the Company or any of its subsidiaries or affiliates; (3) with respect to any rights that Executive may have to insurance coverage for such losses, damages or expenses under any Company (or subsidiary or affiliate) directors and officers liability insurance policy; (4) any rights to continued medical or dental coverage that Executive may have under COBRA (or similar applicable state law); (5) any rights to the severance and other benefits payable under Section 5.3 of the Employment Agreement in accordance with the terms of the Employment Agreement; or (6) any rights to payment of benefits that Executive may have under a retirement plan sponsored or maintained by the Company or its affiliates that is intended to qualify under Section 401(a) of the Internal Revenue Code of 1986, as amended. In addition, this Release does not cover any Claim that cannot be so released as a matter of applicable law. Executive acknowledges and agrees that she has received any and all leave and other benefits that she has been and is entitled to pursuant to the Family and Medical Leave Act of 1993.

3. ADEA Waiver. Executive expressly acknowledges and agrees that by entering into this Release Agreement, Executive is waiving any and all rights or Claims that she may have arising under the Age Discrimination in Employment Act of 1967, as amended (the "ADEA"), which have arisen on or before the date of execution of this Release Agreement. Executive further expressly acknowledges and agrees that:

- A. In return for this Release Agreement, the Executive will receive consideration beyond that which the Executive was already entitled to receive before entering into this Release Agreement;
  - B. Executive is hereby advised in writing by this Release Agreement to consult with an attorney before signing this Release Agreement;
  - C. Executive has voluntarily chosen to enter into this Release Agreement and has not been forced or pressured in any way to sign it;
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D. Executive was given a copy of this Release Agreement on [\_\_\_\_\_, 20\_\_] and informed that she had twenty one (21) days within which to consider this Release Agreement and that if she wished to execute this Release Agreement prior to expiration of such 21-day period, she should execute the Endorsement attached hereto;

E. Executive was informed that she had seven (7) days following the date of execution of this Release Agreement in which to revoke this Release Agreement, and this Release Agreement will become null and void if Executive elects revocation during that time. Any revocation must be in writing and must be received by the Company during the seven-day revocation period. In the event that Executive exercises Executive's right of revocation, neither the Company nor Executive will have any obligations under this Release Agreement;

F. Nothing in this Release Agreement prevents or precludes Executive from challenging or seeking a determination in good faith of the validity of this waiver under the ADEA, nor does it impose any condition precedent, penalties or costs from doing so, unless specifically authorized by federal law.

4. Non-Disparagement. Executive agrees not to make, directly or indirectly, whether verbal or in writing, any damaging or disparaging statements, representations or remarks about or concerning Employer or any of the Releasees.

5. No Transferred Claims. Executive warrants and represents that the Executive has not heretofore assigned or transferred to any person not a party to this Release Agreement any released matter or any part or portion thereof and she shall defend, indemnify and hold the Company and each of its affiliates harmless from and against any claim (including the payment of attorneys' fees and costs actually incurred whether or not litigation is commenced) based on or in connection with or arising out of any such assignment or transfer made, purported or claimed.

6. Severability. It is the desire and intent of the parties hereto that the provisions of this Release Agreement be enforced to the fullest extent permissible under the laws and public policies applied in each jurisdiction in which enforcement is sought. Accordingly, if any particular provision of this Release Agreement shall be adjudicated by a court of competent jurisdiction to be invalid, prohibited or unenforceable under any present or future law, such provision, as to such jurisdiction, shall be ineffective, without invalidating the remaining provisions of this Release Agreement or affecting the validity or enforceability of such provision in any other jurisdiction; furthermore, in lieu of such invalid or unenforceable provision there will be added automatically as a part of this Release Agreement, a legal, valid and enforceable provision as similar in terms to such invalid or unenforceable provision as may be possible. Notwithstanding the foregoing, if such provision could be more narrowly drawn so as not to be invalid, prohibited or unenforceable in such jurisdiction, it shall, as to such jurisdiction, be so narrowly drawn, without invalidating the remaining provisions of this Release Agreement or affecting the validity or enforceability of such provision in any other jurisdiction.

7. Counterparts. This Release Agreement may be executed in separate counterparts, each of which is deemed to be an original and all of which taken together constitute one and the

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same agreement. This Release Agreement shall become binding when one or more counterparts hereof, individually or taken together, shall bear the signatures of all of the parties reflected hereon as the signatories. Photographic or other electronic copies of such signed counterparts may be used in lieu of the originals for any purpose.

8. Successors. This Release Agreement is personal to Executive and shall not, without the prior written consent of the Company, be assignable by Executive. This Release Agreement shall inure to the benefit of and be binding upon the Company and its respective successors and assigns and any such successor or assignee shall be deemed substituted for the Company under the terms of this Release Agreement for all purposes. As used herein, “successor” and “assignee” shall include any person, firm, corporation or other business entity which at any time, whether by purchase, merger, acquisition of assets, or otherwise, directly or indirectly acquires the ownership of the Company, acquires all or substantially all of the Company’s assets, or to which the Company assigns this Release Agreement by operation of law or otherwise.

9. Governing Law. THIS RELEASE AGREEMENT WILL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH UNITED STATES FEDERAL LAW AND, TO THE EXTENT NOT PREEMPTED BY UNITED STATES FEDERAL LAW, THE LAWS OF THE STATE OF FLORIDA, WITHOUT GIVING EFFECT TO ANY CHOICE OF LAW OR CONFLICTING PROVISION OR RULE (WHETHER OF THE STATE OF FLORIDA OR ANY OTHER JURISDICTION) THAT WOULD CAUSE THE LAWS OF ANY JURISDICTION OTHER THAN UNITED STATES FEDERAL LAW AND THE LAW OF THE STATE OF FLORIDA TO BE APPLIED. IN FURTHERANCE OF THE FOREGOING, APPLICABLE FEDERAL LAW AND, TO THE EXTENT NOT PREEMPTED BY APPLICABLE FEDERAL LAW, THE INTERNAL LAW OF THE STATE OF FLORIDA, WILL CONTROL THE INTERPRETATION AND CONSTRUCTION OF THIS RELEASE AGREEMENT, EVEN IF UNDER SUCH JURISDICTION’S CHOICE OF LAW OR CONFLICT OF LAW ANALYSIS, THE SUBSTANTIVE LAW OF SOME OTHER JURISDICTION WOULD ORDINARILY APPLY.

10. Amendment and Waiver. The provisions of this Release Agreement may be amended and waived only with the prior written consent of the Company and Executive, and no course of conduct or failure or delay in enforcing the provisions of this Release Agreement shall be construed as a waiver of such provisions or affect the validity, binding effect or enforceability of this Release Agreement or any provision hereof.

11. Descriptive Headings. The descriptive headings of this Release Agreement are inserted for convenience only and do not constitute a part of this Release Agreement.

12. Construction. Where specific language is used to clarify by example a general statement contained herein, such specific language shall not be deemed to modify, limit or restrict in any manner the construction of the general statement to which it relates. The language used in this Release Agreement shall be deemed to be the language chosen by the parties to express their mutual intent, and no rule of strict construction shall be applied against any party.

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13. Nouns and Pronouns. Whenever the context may require, any pronouns used herein shall include the corresponding masculine, feminine or neuter forms, and the singular form of nouns and pronouns shall include the plural and vice-versa.

14. Legal Counsel. Each party recognizes that this is a legally binding contract and acknowledges and agrees that they have had the opportunity to consult with legal counsel of their choice. Executive acknowledges and agrees that she has read and understands this Release Agreement completely, is entering into it freely and voluntarily, and has been advised to seek counsel prior to entering into this Release Agreement and she has had ample opportunity to do so.

The undersigned have read and understand the consequences of this Release Agreement and voluntarily sign it. The undersigned declare under penalty of perjury under the laws of the State of Florida that the foregoing is true and correct.

EXECUTED this \_\_\_\_ day of \_\_\_\_\_ 20\_\_, at \_\_\_\_\_

“Executive”

\_\_\_\_\_

Print Name: \_\_\_\_\_

Prestige Cruise Services LLC,  
a company organized under the laws of Delaware,

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

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**ENDORSEMENT**

I, \_\_\_\_\_, hereby acknowledge that I was given 21 days to consider the foregoing Release Agreement and voluntarily chose to sign the Release Agreement prior to the expiration of the 21-day period.

I declare under penalty of perjury under the laws of the United States and the State of Florida that the foregoing is true and correct.

EXECUTED this [\_\_\_\_] day of [\_\_\_\_] 20\_\_.

\_\_\_\_\_  
Print Name: \_\_\_\_\_

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**EMPLOYMENT AGREEMENT**

**THIS EMPLOYMENT AGREEMENT** (this "Agreement") is made and entered into this 17<sup>th</sup> day of July 2023, by and between Prestige Cruise Services LLC, a company organized under the laws of Delaware (the "Company"), and Frank A. Del Rio (the "Executive").

**RECITALS**

**THE PARTIES ENTER THIS AGREEMENT** on the basis of the following facts, understandings and intentions:

**A.** The Company desires to offer the Executive the benefits set forth in this Agreement and provide for the services of the Executive on the terms and conditions set forth in this Agreement.

**B.** The Executive desires to be employed by the Company on the terms and conditions set forth in this Agreement.

**C.** This Agreement shall govern the employment relationship between the Executive and the Company and all of its affiliates effective as of the Effective Date (as defined below), and supersedes and negates any previous agreements with respect to such relationship effective as of the Effective Date.

**AGREEMENT**

**NOW, THEREFORE**, in consideration of the above recitals incorporated herein and the mutual covenants and promises contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby expressly acknowledged, the parties agree as follows:

**1. Retention and Duties.**

**1.1 Retention.** The Company does hereby agree to employ the Executive for the Period of Employment (as such term is defined in Section 2) on the terms and conditions expressly set forth in this Agreement. The Executive does hereby accept and agree to such employment, on the terms and conditions expressly set forth in this Agreement.

**1.2 Duties.** During the Period of Employment, the Executive shall serve the Company as its President, Oceania Cruises. The Executive shall have duties and obligations generally consistent with that position as the Company may assign from time to time. The Executive shall comply with the corporate policies of the Company as they are in effect from time to time throughout the Period of Employment (including, without limitation, the Company's Code of Ethical Business Conduct policy, as it may change from time to time). During the Period of Employment, the Executive shall report directly to the President and Chief

Executive Officer of Norwegian Cruise Line Holdings Ltd., or his/her designee. During the Period of Employment, the Executive shall perform services for Norwegian Cruise Line Holdings Ltd., a company organized under the laws of Bermuda (the "Parent"), and the Parent's other subsidiaries, but shall not be entitled to any additional compensation with respect to such services.

**1.3 No Other Employment; Minimum Time Commitment.** During the Period of Employment, the Executive shall (i) devote substantially all of the Executive's business time, energy and skill to the performance of the Executive's duties for the Company, (ii) perform such duties in a faithful, effective and efficient manner to the best of Executive's abilities, and (iii) hold no other employment. The Executive's service on the boards of directors (or similar body) of other business entities is subject to the approval of the Board of Directors of the Parent (the "Board"), provided that the Executive shall be permitted to serve on one board of directors (or similar bodies) during the Period of Employment, subject to the Company's rights to require the Executive's resignation pursuant to the following sentence. The Company shall have the right to require the Executive to resign from any board or similar body (including, without limitation, any association, corporate, civic or charitable board or similar body) which he may then serve if the Board reasonably determines that the Executive's service on such board or body materially interferes with the effective discharge of the Executive's duties and responsibilities or that any business related to such service is then in competition with any business of the Company or any of its Affiliates (as such term is defined in Section 5.5), successors or assigns.

**1.4 No Breach of Contract.** The Executive hereby represents to the Company that: (i) the execution and delivery of this Agreement by the Executive and the Company and the performance by the Executive of the Executive's duties hereunder do not and shall not constitute a breach of, conflict with, or otherwise contravene or cause a default under, the terms of any other agreement or policy to which the Executive is a party or otherwise bound or any judgment, order or decree to which the Executive is subject; (ii) that the Executive has no information (including, without limitation, confidential information and trade secrets) relating to any other Person (as such term is defined in Section 5.5) which would prevent, or be violated by, the Executive entering into this Agreement or carrying out Executive's duties hereunder; (iii) the Executive is not bound by any employment, consulting, non-compete, confidentiality, trade secret or similar agreement (other than this Agreement) with any other Person; and (iv) the Executive understands the Company will rely upon the accuracy and truth of the representations and warranties of the Executive set forth herein and the Executive consents to such reliance.

**1.5 Location.** During the Period of Employment, the Executive's principal place of employment shall be the Company's principal executive office as it may be located from time to time. The Executive agrees that he will be regularly present at the Company's principal executive office. The Executive acknowledges

that he will be required to travel from time to time in the course of performing Executive's duties for the Company.

2. **Period of Employment.** The "Period of Employment" shall be a period commencing on July 17, 2023 (the "Effective Date") and ending at the close of business on the first December 31st following the third anniversary of the Effective Date (the "Termination Date"); provided, however, that this Agreement shall be automatically renewed, and the Period of Employment shall be automatically extended for one (1) additional year on the Termination Date and each anniversary of the Termination Date thereafter, unless either party gives written notice at least sixty (60) days prior to the expiration of the Period of Employment (including any renewal thereof) of such party's desire to terminate the Period of Employment (such notice to be delivered in accordance with Section 18). The term "Period of Employment" shall include any extension thereof pursuant to the preceding sentence. Notwithstanding the foregoing, the Period of Employment is subject to earlier termination as provided below in this Agreement.

3. **Compensation.**

3.1 **Base Salary.** During the Period of Employment, the Company shall pay the Executive a base salary (the "Base Salary"), which shall be paid biweekly or in such other installments as shall be consistent with the Company's regular payroll practices in effect from time to time. The Executive's Base Salary shall be at an annualized rate of Five Hundred Thousand dollars (\$500,000.00). The Compensation Committee of the Board (the "Compensation Committee") will review the Executive's rate of Base Salary on an annual basis and may, in its sole discretion, increase (but not decrease) the rate then in effect.

3.2 **Incentive Bonus.** The Executive shall be eligible to receive an incentive bonus for each fiscal year of the Company that occurs during the Period of Employment ("Incentive Bonus"); provided that, except as provided in Section 5.3, the Executive must be employed by the Company at the time the Company pays the Incentive Bonus with respect to any such fiscal year in order to be eligible for an Incentive Bonus with respect to that fiscal year (and, if the Executive is not so employed at such time, in no event shall he have been considered to have "earned" any Incentive Bonus with respect to the fiscal year in question). The Executive's actual Incentive Bonus amount for a particular fiscal year shall be determined by the Compensation Committee in its sole discretion, based on performance objectives (which may include corporate, business unit or division, financial, strategic, individual or other objectives) established with respect to that particular fiscal year by the Compensation Committee. Any Incentive Bonus becoming payable for a particular fiscal year shall be paid in the following fiscal year following the close of the audit and generally by March 31.

3.3 **Equity Award.** The Executive shall be eligible to participate in the Parent's 2013 Performance Incentive Plan (together with any successor equity incentive plan, the "Parent Equity Plan") and to receive grants of equity awards under the Parent Equity Plan as may be approved from time to time by the Compensation Committee in its sole discretion.

4. **Benefits.**

**4.1 Retirement, Welfare and Fringe Benefits.** During the Period of Employment, the Executive shall be entitled to participate, on a basis generally consistent with other similarly situated executives, in all employee pension and welfare benefit plans and programs, all fringe benefit plans and programs and all other benefit plans and programs (including those providing for perquisites or similar benefits) that are made available by the Company to the Company's other similarly situated executives generally, in accordance with the eligibility and participation provisions of such plans and as such plans or programs may be in effect from time to time. The Executive's participation in the foregoing plans and programs is subject to the eligibility and participation provisions of such plans, and the Company's right to amend or terminate such plans from time to time in accordance with their terms.

**4.2 Medical Executive Reimbursement Plan.** During the Period of Employment, the Company will provide the Executive, and the Executive's spouse and dependent children, with a Medical Executive Reimbursement Plan (the "MERP"), subject to the terms and conditions of such plan.

**4.3 Company Automobile.** During the Period of Employment, the Company shall provide the Executive with a monthly cash car allowance of up to One Thousand Five Hundred dollars (\$1,500.00) per month, in accordance with the Company's policy as in effect from time to time.

**4.4 Reimbursement of Business Expenses.** The Executive is authorized to incur reasonable expenses in carrying out the Executive's duties for the Company under this Agreement and shall be entitled to reimbursement for all reasonable business expenses the Executive incurs during the Period of Employment in connection with carrying out the Executive's duties for the Company, subject to the Company's expense reimbursement policies and any pre-approval policies in effect from time to time.

**4.5 Vacation and Other Leave.** During the Period of Employment, the Executive's annual rate of vacation accrual shall be four (4) weeks per year; provided that such vacation shall accrue on a bi-weekly basis in accordance with the Company's regular payroll cycle and be subject to the Company's vacation policies in effect from time to time. The Executive shall also be entitled to all other holiday and leave pay generally available to other similarly situated executives of the Company.

5. **Termination.**

**5.1 Termination by the Company.** The Executive's employment by the Company, and the Period of Employment, may be terminated at any time by the Company: (i) with Cause (as such term is defined in Section 5.5), or (ii) without Cause, or (iii) in the event of the Executive's death, or (iv) in the event that the

Board determines in good faith that the Executive has a Disability (as such term is defined in Section 5.5).

**5.2 Termination by the Executive.** The Executive's employment by the Company, and the Period of Employment, may be terminated by the Executive with or without Good Reason (as such term is defined in Section 5.5) upon written notice to the Company (such notice to be delivered in accordance with Section 18).

**5.3 Benefits Upon Termination.** If the Executive's employment by the Company is terminated during the Period of Employment for any reason by the Company or by the Executive, or upon or following the expiration of the Period of Employment (in any case, the date that the Executive's employment by the Company terminates is referred to as the "Severance Date"), the Company shall have no further obligation to make or provide to the Executive, and the Executive shall have no further right to receive or obtain from the Company, any payments or benefits except as follows:

- (a) The Company shall pay the Executive (or, in the event of Executive's death, the Executive's estate) any Accrued Obligations (as such term is defined in Section 5.5);
- (b) Unless the provisions of Section 5.3(c) or (d) below apply, if, during the Period of Employment, the Executive's employment with the Company is terminated (1) by the Company without Cause (and other than due to the Executive's death or in connection with a good faith determination by the Board that the Executive has a Disability), (2) by the Executive for Good Reason, or (3) as a result of the Company's provision of notice to the Executive that this Agreement shall not be extended or further extended, the Executive shall be entitled to the following benefits:
  - (i) The Company shall pay the Executive (in addition to the Accrued Obligations), subject to tax withholding and other authorized deductions, an amount equal to two times Executive's Base Salary at the annualized rate in effect on the Severance Date. Such amount is referred to hereinafter as the "Severance Benefit." Subject to Section 5.7(a), the Company shall pay the Severance Benefit to the Executive in substantially equal installments in accordance with the Company's standard payroll practices over a period of twelve (12) consecutive months, with the first installment payable in the month following the month in which the Executive's Separation from Service (as such term is defined in Section 5.5) occurs. (For purposes of clarity, each such installment shall equal the applicable fraction of the aggregate Severance Benefit.)
  - (ii) Subject to the Executive's continued payment of the same percentage of the applicable premiums as he was paying on the

Severance Date, the Company will pay or reimburse the Executive for Executive's premiums charged to continue medical and dental coverage pursuant to the Consolidated Omnibus Budget Reconciliation Act ("COBRA"), and the Executive shall also be entitled to continued participation in the MERP, at the same or reasonably equivalent medical coverage for the Executive (and, if applicable, the Executive's eligible dependents) as in effect immediately prior to the Severance Date, to the extent that the Executive elects such continued coverage (the "COBRA Benefit"); provided that the Company's obligation to make any payment or reimbursement pursuant to this clause (ii) shall, subject to Section 5.7(a), commence with continuation coverage for the month following the month in which the Executive's Separation from Service occurs and shall cease with continuation coverage for the eighteenth month following the month in which the Executive's Separation from Service occurs (or, if earlier, shall cease upon the first to occur of the Executive's death, the date the Executive becomes eligible for coverage under the health plan of a future employer, or the date the Company ceases to offer group medical coverage or the MERP to its active executive employees or the Company is otherwise under no obligation to offer COBRA continuation coverage to the Executive). To the extent the Executive elects COBRA coverage, he shall notify the Company in writing of such election prior to such coverage taking effect and complete any other continuation coverage enrollment procedures the Company may then have in place.

- (iii) The Company shall pay to the Executive, subject to tax withholding and other authorized deductions, any Incentive Bonus that would otherwise be paid to the Executive had his or her employment with the Company not terminated with respect to any fiscal year that ended before the Severance Date, to the extent not theretofore paid (the "Prior-Year Bonus"). Any Prior-Year Bonus that becomes payable will be paid if and when the Incentive Bonus for active employees is paid (following the completion of the audit for the relevant year).
- (iv) The Company shall pay the Executive, subject to tax withholding and other authorized deductions, a pro-rata portion of the Incentive Bonus for the fiscal year in which the Executive's employment terminates (the "Pro-Rata Bonus"). The Pro-Rata Bonus shall equal the Incentive Bonus for the fiscal year of termination multiplied by a fraction, the numerator of which is the number of days in the current fiscal year through the Severance Date and the denominator is 365. Any Pro-Rata Bonus that becomes payable will be paid if and when the Incentive Bonus for active employees

is paid (following the completion of the audit in the following calendar year).

- (c) If, during the Period of Employment and within three months prior to a Change in Control or twenty-four months following a Change in Control, the Executive's employment with the Company is terminated (1) by the Company without Cause (and other than due to the Executive's death or in connection with a good faith determination by the Board that the Executive has a Disability), or (2) by the Executive for Good Reason, or (3) as a result of the Company's provision of notice to the Executive that this Agreement shall not be extended or further extended, the Executive shall be entitled to the following benefits in lieu of the benefits described under Section 5.3(b):
- (i) The Company shall pay the Executive (in addition to the Accrued Obligations), subject to tax withholding and other authorized deductions, an amount equal to two times Executive's Base Salary at the annualized rate in effect on the Severance Date. Such amount is referred to hereinafter as the "Change in Control Severance Benefit." Subject to Section 5.7(a), the Company shall pay the Change in Control Severance Benefit to the Executive in substantially equal installments in accordance with the Company's standard payroll practices over a period of twelve (12) consecutive months, with the first installment payable in the month following the month in which the Executive's Separation from Service (as such term is defined in Section 5.5) occurs. (For purposes of clarity, each such installment shall equal the applicable fraction of the aggregate Change in Control Severance Benefit.)
  - (ii) The Company shall provide the COBRA Benefit described in Section 5.3(b)(ii) above on the terms and conditions specified in that section until the eighteenth month following the month in which the Executive's Separation from Service occurs.
  - (iii) The Company shall pay the Executive, subject to tax withholding and other authorized deductions, the Prior-Year Bonus and Pro-Rata Bonus, as described in Section 5.3(b)(iii) and (iv) above.
  - (iv) At the Severance Date, all then outstanding and unvested equity awards granted under the Parent Equity Plan or any predecessor equity incentive plan shall receive full accelerated vesting.
- (d) If the Executive meets the Retirement Qualifications during the Period of Employment and wishes to receive the benefits described in 5.3(d)(i)-(v) below, Executive must provide at least six months of notice to the Company requesting a retirement date. Executive and the Company must agree to a retirement date (the "Retirement Date"), not later than one year



from the date that notice is provided, by written agreement. If Executive satisfies the Retirement Qualifications and remains employed through the Retirement Date, upon the Retirement Date, Executive shall be entitled to the following benefits:

- (i) All then outstanding and unvested equity awards granted after the Effective Date that are subject to vesting requirements based on continued employment but not performance-based vesting requirements, including any awards originally subject to performance-based vesting conditions that have been satisfied and remain outstanding subject to only time-based vesting conditions (“Time-Based Awards”) shall receive full accelerated vesting if they were granted one or more years before the Retirement Date and pro-rata vesting if they were granted less than one year from the Retirement Date. The pro-rata vesting will be calculated as follows: (number of shares subject to the award ÷ number of days from award date to original vesting date specified in the award agreement (including both beginning and end date)) x number of days from the award date to the Retirement Date. Any partial shares will be rounded down to the nearest whole share.
  - (ii) All then-outstanding and unvested equity awards granted after the Effective Date that are not Time-Based Awards shall, subject to compliance with the requirements of Section 409A and 457A of the Code and any potential changes needed to address these provisions, remain outstanding and will be paid (subject to the applicable performance conditions) as though the Executive’s employment had not terminated (with any time-based vesting conditions that would otherwise extend beyond the end of the applicable performance period deemed satisfied as of the end of the applicable performance period).
  - (iii) The Company shall pay the Executive, subject to tax withholding and other authorized deductions, the Prior-Year Bonus and Pro-Rata Bonus, as described in Section 5.3(b)(iii) and (iv) above.
  - (iv) Executive will be entitled to continue to participate in the employee cruise benefits available to active employees at the President level following the Retirement Date.
  - (v) The Company shall provide the COBRA Benefit described in Section 5.3(b)(ii) above on the terms and conditions specified in that section until the eighteenth month following the month in which the Executive’s Separation from Service occurs.
- (e) Notwithstanding the foregoing provisions of this Section 5.3, if the Executive breaches Executive’s obligations under Section 6 of this

Agreement at any time, from and after the date of such breach and not in any way in limitation of any right or remedy otherwise available to the Company, the Executive will no longer be entitled to, and the Company will no longer be obligated to pay, any remaining unpaid portion of the Severance Benefit or Change in Control Severance Benefit, the Prior-Year Bonus or the Pro-Rata Bonus, equity acceleration for any outstanding and unvested equity awards that remain outstanding at the time of the breach, continued cruise benefits, or the COBRA Benefit; provided that, if the Executive provides the release contemplated by Section 5.4, in no event shall the Executive be entitled to a Severance Benefit or Change in Control Severance Benefit payment of less than \$5,000, which amount the parties agree is good and adequate consideration, in and of itself, for the Executive's release contemplated by Section 5.4.

- (f) The foregoing provisions of this Section 5.3 shall not affect: (i) the Executive's receipt of benefits otherwise due terminated employees under group insurance coverage consistent with the terms of the applicable Company welfare benefit plan; or (ii) the Executive's rights under COBRA to continue participation in medical, dental, hospitalization and life insurance coverage.

**5.4 Release; Exclusive Remedy.**

- (a) This Section 5.4 shall apply notwithstanding anything else contained in this Agreement or any stock option or other equity-based award agreement to the contrary. As a condition precedent to any Company obligation to the Executive pursuant to Sections 5.3(b), (c) or (d), the Executive shall, upon or promptly following his last day of employment with the Company (and in any event within twenty-one (21) days following the Executive's last day of employment), execute a general release agreement in substantially the form of Exhibit A (with such amendments that may be necessary to ensure the release is enforceable to the fullest extent permissible under then applicable law), and such release agreement shall have not been revoked by the Executive pursuant to any revocation rights afforded by applicable law.
- (b) The Executive agrees that the payments and benefits contemplated by Section 5.3 (and any applicable acceleration of vesting of an equity-based award in accordance with the terms of such award in connection with the termination of the Executive's employment) shall constitute the exclusive and sole remedy for any termination of Executive's employment and the Executive covenants not to assert or pursue any other remedies, at law or in equity, with respect to any termination of employment. The Company and the Executive acknowledge and agree that there is no duty of the Executive to mitigate damages under this Agreement. All amounts paid to the Executive pursuant to Section 5.3 shall be paid without regard to whether the Executive has taken or takes actions to mitigate damages. The

Executive agrees to resign, on the Severance Date, as an officer and director of the Company and any Affiliate of the Company, and as a fiduciary of any benefit plan of the Company or any Affiliate of the Company, and to promptly execute and provide to the Company any further documentation, as requested by the Company, to confirm such resignation.

**5.5 Certain Defined Terms.**

- (a) As used herein, “Accrued Obligations” means:
- (i) any Base Salary that had accrued but had not been paid on or before the Severance Date (including accrued and unpaid vacation time of up to 80 hours in accordance with the Company’s policy in effect at the applicable time); and
  - (ii) any reimbursement due to the Executive pursuant to Section 4.4 for expenses reasonably incurred by the Executive on or before the Severance Date and documented and pre-approved, to the extent applicable, in accordance with the Company’s expense reimbursement policies in effect at the applicable time.
- (b) As used herein, “Affiliate” of the Company means a Person that directly or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, the Company. As used in this definition, the term “control,” including the correlative terms “controlling,” “controlled by” and “under common control with,” means the possession, directly or indirectly, of the power to direct or cause the direction of management or policies (whether through ownership of securities or any partnership or other ownership interest, by contract or otherwise) of a Person.
- (c) As used herein, “Cause” shall mean, as reasonably determined by the Chief Executive Officer of the Parent based on the information then known to him, that one or more of the following has occurred:
- (i) the Executive has committed a felony (under the laws of the United States or any relevant state, or a similar crime or offense under the applicable laws of any relevant foreign jurisdiction), other than through vicarious liability not related to the Company or any of its Affiliates;
  - (ii) the Executive has engaged in acts of fraud, dishonesty or other acts of willful misconduct;
  - (iii) the Executive willfully fails to perform or uphold Executive’s duties under this Agreement and/or willfully fails to comply with reasonable directives of the Board and/or Chief Executive Officer

of the Parent, in either case after there has been delivered to the Executive a written demand for performance from the Company and the Executive fails to remedy such condition(s) within ten (10) days of receiving such written notice thereof; or

- (iv) any breach by the Executive of the provisions of Section 6, or any material breach by the Executive of any other contract he is a party to with the Company or any of its Affiliates.
- (d) As used herein, “Change in Control” shall mean the following:
- (i) The consummation by the Parent of a merger, consolidation, reorganization, or business combination, other than a transaction:
    - (A) Which results in the Parent’s voting securities outstanding immediately before the transaction continuing to represent (either by remaining outstanding or by being converted into voting securities of the Parent or the Person that, as a result of the transaction, controls, directly or indirectly, the Parent or owns, directly or indirectly, all or substantially all of the Parent’s assets or otherwise succeeds to the business of the Parent (the Parent or such person, the “Successor Entity”)) directly or indirectly, at least a majority of the combined voting power of the Successor Entity’s outstanding voting securities immediately after the transaction, and;
    - (B) After which no person or group (as such terms are used in Sections 13(d) and 14(d)(2) of the Securities Exchange Act of 1934, as amended (the “Exchange Act”)) beneficially owns (within the meaning of Rule 13d-3 under the Exchange Act) voting securities representing 50% or more of the combined voting power of the Successor Entity; provided, however, that no person or group shall be treated for purposes of this Section 5.5(d)(i) (B) as beneficially owning 50% or more of combined voting power of the Successor Entity solely as a result of the voting power held in the Parent prior to the consummation of the transaction; or
  - (ii) A sale or other disposition of all or substantially all of the Parent’s assets in any single transaction or series of related transactions; or
  - (iii) A transaction or series of transactions (other than an offering of stock to the general public through a registration statement filed with the Securities and Exchange Commission) whereby any person or group (as such terms are used in Sections 13(d) and 14(d)(2) of the Exchange Act) (other than the Parent, any of its
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subsidiaries, an employee benefit plan maintained by the Parent or any of its subsidiaries or a person or group that, prior to such transaction, directly or indirectly controls, is controlled by, or is under common control with, the Parent) directly or indirectly acquires beneficial ownership (within the meaning of Rule 13d-3 under the Exchange Act) of securities of the Parent and immediately after such acquisition possesses more than 50% of the total combined voting power of the Parent's securities outstanding immediately after such acquisition; or

- (iv) Individuals who, on the Effective Date, constitute the Board together with any new director(s) whose election by the Board was not in connection with an actual or threatened proxy contest, cease for any reason to constitute a majority thereof.
- (e) As used herein, "Disability" shall mean a physical or mental impairment which, as reasonably determined by the Board, renders the Executive unable to perform the essential functions of Executive's employment with the Company, even with reasonable accommodation that does not impose an undue hardship on the Company, for more than 90 days in any 180-day period, unless a longer period is required by federal or state law, in which case that longer period would apply.
- (f) As used herein, "Good Reason" shall mean that the Executive has complied with the "Good Reason Process" following the occurrence of any of the following events (referred to individually as a "Good Reason Event" and collectively as "Good Reason Events"): (A) any substantial adverse change, not consented to by the Executive in a writing signed by the Executive, in the nature or scope of the Executive's responsibilities, authorities, powers, functions, or duties; (B) an involuntary reduction in the Executive's Base Salary; (C) a breach by the Company of any of its material obligations under this Agreement; or (D) the requirement that the Executive be relocated from the Company's primary offices at which the Executive is principally employed to a location more than sixty (60) miles from the Company's current principal offices, or the requirement by the Company for the Executive to be based anywhere other than the Company's principal offices at such current location (or more than sixty (60) miles therefrom) on an extended basis, except for required travel on the Company's business to an extent substantially consistent with the Executive's current business travel obligations.
- (g) As used herein, "Good Reason Process" shall mean that (i) the Executive reasonably determines in good faith that a Good Reason Event has occurred; (ii) the Executive notifies the Company in writing (such notice to be delivered in accordance with Section 18) of the occurrence of the Good Reason Event within 10 days thereof and the Executive's intent to terminate employment as a result thereof; and (iii) one or more of the

Good Reason Events continues to exist for a period of more than thirty (30) days following such notice and has not been modified or cured in a manner acceptable to the Executive, in which case the Executive's employment shall automatically terminate on the thirty-first (31<sup>st</sup>) day after the date such notice is given.

- (h) As used herein, the term "Person" shall be construed broadly and shall include, without limitation, an individual, a partnership, a limited liability company, a corporation, an association, a joint stock company, a trust, a joint venture, an unincorporated organization and a governmental entity or any department, agency or political subdivision thereof.
- (i) As used herein, "Retirement Qualifications" means that, as of the agreed Retirement Date, Executive: (i) is 55 years or older, (ii) has been employed by the Company or one of its Affiliates for ten or more years and (iii) the Executive's age plus the number of years the Executive has been employed with the Company or its Affiliates is greater than or equal to 70.
- (j) As used herein, a "Separation from Service" occurs when the Executive dies, retires, or otherwise has a termination of employment with the Company that constitutes a "separation from service" within the meaning of Treasury Regulation Section 1.409A-1(h)(1), without regard to the optional alternative definitions available thereunder.

**5.6 Notice of Termination.** Any termination of the Executive's employment under this Agreement shall be communicated by written notice of termination from the terminating party to the other party. This notice of termination must be delivered in accordance with Section 18 and must indicate the specific provision(s) of this Agreement relied upon in effecting the termination and the basis of any termination by the Company for Cause or by the Executive for Good Reason.

**5.7 Section 409A and 457A.**

- (a) If the Executive is a "specified employee" within the meaning of Treasury Regulation Section 1.409A-1(i) as of the date of the Executive's Separation from Service, the Executive shall not be entitled to any payment or benefit pursuant to Sections 5.3(b), (c) or (d) until the earlier of (i) the date which is six (6) months after Executive's Separation from Service for any reason other than death, or (ii) the date of the Executive's death. The provisions of this paragraph shall only apply if, and to the extent, required to avoid the imputation of any tax, penalty or interest pursuant to Section 409A of the Code. For purposes of clarity, the six (6) month delay shall not apply in the case of any short-term deferral as contemplated by Treasury Regulation Section 1.409A-1(b)(4) or severance pay contemplated by Treasury Regulation Section 1.409A-1(b)(9)(iii) to

the extent of the limits set forth therein. Any amounts otherwise payable to the Executive upon or in the six (6) month period following the Executive's Separation from Service that are not so paid by reason of this Section 5.7(a) shall be paid (without interest) as soon as practicable (and in all events within thirty (30) days) after the date that is six (6) months after the Executive's Separation from Service (or, if earlier, as soon as practicable, and in all events within thirty (30) days, after the date of the Executive's death).

- (b) To the extent that any benefits pursuant to Sections 5.3(b)(ii), (c)(ii) or (d)(v) or reimbursements pursuant to Section 4 are taxable to the Executive, any reimbursement payment due to the Executive pursuant to any such provision shall be paid to the Executive on or before the last day of the Executive's taxable year following the taxable year in which the related expense was incurred. The benefits and reimbursements pursuant to Sections 5.3(b)(ii), (c)(ii) and (d)(v) and Section 4 are not subject to liquidation or exchange for another benefit and the amount of such benefits and reimbursements that the Executive receives in one taxable year shall not affect the amount of such benefits or reimbursements that the Executive receives in any other taxable year.
- (c) Any installment payments provided for in this Agreement shall be treated as separate payments for purposes of Section 409A of the Code. To the extent required to avoid the imputation of any tax, penalty or interest pursuant to Section 409A of the Code, the definition of Change in Control will be interpreted to mean a change in the ownership, effective control or ownership of a substantial portion of assets of Parent within the meaning of Section 409A of the Code. This Agreement is intended to comply with the requirements of Section 409A and 457A of the Code and shall be interpreted consistent with this intent so as to avoid the imputation of any tax, penalty or interest pursuant to Section 409A and 457A of the Code.

**5.8 Possible Limitation of Benefits in Connection with a Change in Control.**

Notwithstanding anything contained in this Agreement to the contrary, if following a change in ownership or effective control or in the ownership of a substantial portion of assets (in each case, within the meaning of Section 280G of the Code), the tax imposed by Section 4999 of the Code or any similar or successor tax (the "Excise Tax") applies to any payments, benefits and/or amounts received by the Executive pursuant to this Agreement or otherwise, including, without limitation, any acceleration of the vesting of outstanding stock options or other equity awards (collectively, the "Total Payments"), then the Total Payments shall be reduced (but not below zero) so that the maximum amount of the Total Payments (after reduction) shall be one dollar (\$1.00) less than the amount which would cause the Total Payments to be subject to the Excise Tax; provided that such reduction to the Total Payments shall be made only if the total after-tax benefit to the Executive is greater after giving effect to such reduction than if no such reduction had been made. If such a reduction is required, the

Company shall reduce or eliminate the Total Payments by first reducing or eliminating any cash payments under this Agreement, then by reducing or eliminating any accelerated vesting of stock options, then by reducing or eliminating any accelerated vesting of other equity awards, then by reducing or eliminating any other remaining Total Payments, in each case in reverse order beginning with the payments which are to be paid the farthest in time from the date of the transaction triggering the Excise Tax. The provisions of this Section 5.8 shall take precedence over the provisions of any other plan, arrangement or agreement governing the Executive's rights and entitlements to any benefits or compensation.

**6. Protective Covenants.**

**6.1 Confidential Information; Inventions.**

- (a) The Executive shall not disclose or use at any time, either during the Period of Employment or thereafter, any Confidential Information (as defined below) of which the Executive is or becomes aware, whether or not such information is developed by Executive, except to the extent that such disclosure or use is directly related to and required by the Executive's performance in good faith of duties for the Company. The Executive will take all appropriate steps to safeguard Confidential Information in Executive's possession and to protect it against disclosure, misuse, espionage, loss and theft. The Executive shall deliver to the Company at the termination of the Period of Employment, or at any time the Company may request, all memoranda, notes, plans, records, reports, computer tapes and software and other documents and data (and copies thereof) relating to the Confidential Information or the Work Product (as hereinafter defined) of the business of the Company or any of its Affiliates which the Executive may then possess or have under Executive's control. Notwithstanding the foregoing, the Executive may truthfully respond to a lawful and valid subpoena or other legal process, but shall give the Company the earliest possible notice thereof, shall, as much in advance of the return date as possible, make available to the Company and its counsel the documents and other information sought, and shall assist the Company and such counsel in resisting or otherwise responding to such process. Nothing in this Agreement prohibits Executive from reporting possible violations of federal law or regulation to any governmental agency or entity, or making other disclosures that are protected under the whistleblower provisions of federal law or regulation. Executive does not need the prior authorization to make any such reports or disclosures and is not required to notify the Employer of such reports or disclosures. Pursuant to the Defend Trade Secrets Act of 2016, the Executive acknowledges that he may not be held criminally or civilly liable under any federal or state trade secret law for the disclosure of confidential information that: (a) is made in confidence to a federal, state, or local government official, either directly or indirectly, or to an attorney solely



for the purpose of reporting or investigating a suspected violation of law; or (b) is made in a complaint or other document that is filed in a lawsuit or other proceeding, provided that such filing is made under seal. Further, the Executive understands that the Company will not retaliate against him in any way for any such disclosure made in accordance with the law. In the event a disclosure is made, and the Executive files any type of proceeding against the Company alleging that the Company retaliated against the Executive because of his disclosure, the Executive may disclose the relevant confidential information to his attorney and may use the confidential information in the proceeding if (x) the Executive files any document containing the confidential information under seal, and (y) the Executive does not otherwise disclose the confidential information except pursuant to court order.

- (b) As used in this Agreement, the term “Confidential Information” means information that is not generally known to the public and that is used, developed or obtained by the Company or its Affiliates in connection with their businesses, including, but not limited to, information, observations and data obtained by the Executive while employed by the Company or any predecessors thereof (including those obtained prior to the Effective Date) concerning (i) the business or affairs of the Company (or such predecessors), (ii) products or services, (iii) fees, costs and pricing structures, (iv) designs, (v) analyses, (vi) drawings, photographs and reports, (vii) computer software, including operating systems, applications and program listings, (viii) flow charts, manuals and documentation, (ix) data bases, (x) accounting and business methods, (xi) inventions, devices, new developments, methods and processes, whether patentable or unpatentable and whether or not reduced to practice, (xii) customers and clients and customer or client lists, (xiii) other copyrightable works, (xiv) all production methods, processes, technology and trade secrets, and (xv) all similar and related information in whatever form. Confidential Information will not include any information that has been published (other than a disclosure by the Executive in breach of this Agreement) in a form generally available to the public prior to the date the Executive proposes to disclose or use such information. Confidential Information will not be deemed to have been published merely because individual portions of the information have been separately published, but only if all material features comprising such information have been published in combination.
- (c) As used in this Agreement, the term “Work Product” means all inventions, innovations, improvements, technical information, systems, software developments, methods, designs, analyses, drawings, reports, service marks, trademarks, trade names, logos and all similar or related information (whether patentable or unpatentable, copyrightable, registerable as a trademark, reduced to writing, or otherwise) which relates to the Company’s or any of its Affiliates’ actual or anticipated business,

research and development or existing or future products or services and which are conceived, developed or made by the Executive (whether or not during usual business hours, whether or not by the use of the facilities of the Company or any of its Affiliates, and whether or not alone or in conjunction with any other person) while employed by the Company (including those conceived, developed or made prior to the Effective Date) together with all patent applications, letters patent, trademark, trade name and service mark applications or registrations, copyrights and reissues thereof that may be granted for or upon any of the foregoing. All Work Product that the Executive may have discovered, invented or originated during Executive's employment by the Company or any of its Affiliates prior to the Effective Date or that he may discover, invent or originate during the Period of Employment or at any time prior to the Severance Date, shall be the exclusive property of the Company and its Affiliates, as applicable, and Executive hereby assigns all of Executive's right, title and interest in and to such Work Product to the Company or its applicable Affiliate, including all intellectual property rights therein. Executive shall promptly disclose all Work Product to the Company, shall execute at the request of the Company any assignments or other documents the Company may deem necessary to protect or perfect its (or any of its Affiliates', as applicable) rights therein, and shall assist the Company, at the Company's expense, in obtaining, defending and enforcing the Company's (or any of its Affiliates', as applicable) rights therein. The Executive hereby appoints the Company as Executive's attorney-in-fact to execute on Executive's behalf any assignments or other documents deemed necessary by the Company to protect or perfect the Company's (and any of its Affiliates', as applicable) rights to any Work Product.

**6.2 Restriction on Competition.** The Executive acknowledges that, in the course of Executive's employment with the Company and/or its Affiliates, he has become familiar, or will become familiar, with the Company's and its Affiliates' and their predecessors' trade secrets and with other Confidential Information concerning the Company, its Affiliates and their respective predecessors and that Executive's services have been and will be of special, unique and extraordinary value to the Company and its Affiliates. The Executive agrees that if the Executive were to become employed by, or substantially involved in, the business of a competitor of the Company or any of its Affiliates following the Severance Date, it would be very difficult for the Executive not to rely on or use the Company's and its Affiliates' trade secrets and Confidential Information. Thus, to avoid the inevitable disclosure of the Company's and its Affiliates' trade secrets and Confidential Information, and to protect such trade secrets and Confidential Information and the Company's and its Affiliates' relationships and goodwill with customers, during the Period of Employment and for a period of twenty-four months after the Severance Date, the Executive will not directly or indirectly through any other Person engage in, enter the employ of, render any services to, have any ownership interest in, nor participate in the financing, operation, management or control of, any Competing Business. For purposes of this

Agreement, the phrase “directly or indirectly through any other Person engage in” shall include, without limitation, any direct or indirect ownership or profit participation interest in such enterprise, whether as an owner, stockholder, member, partner, joint venturer or otherwise, and shall include any direct or indirect participation in such enterprise as an employee, consultant, director, officer, licensor of technology or otherwise. For purposes of this Agreement, “Competing Business” means a Person anywhere in the continental United States and elsewhere in the world where the Company and its Affiliates engage in business, or reasonably anticipate engaging in business, on the Severance Date (the “Restricted Area”) that at any time during the Period of Employment has competed, or at any time during the twelve month period following the Severance Date competes, with the Company or any of its Affiliates in the passenger cruise ship industry (the “Business”). Nothing herein shall prohibit the Executive from being a passive owner of not more than 2% of the outstanding stock of any class of a corporation which is publicly traded, so long as the Executive has no active participation in the business of such corporation. Notwithstanding the foregoing, the Executive and the Company may agree that the Company shall waive all or a portion of the non-competition restrictions provided for in this Section 6.2 in exchange for the Executive’s agreement to forfeit all or a portion of the Severance Benefit payable under Section 5.3(b), the Change in Control Severance Benefit payable under Section 5.3(c) or retirement benefits in Section 5.3(d). Any such agreement between the Executive and the Company shall be documented in the general release agreement provided for in Section 5.4 or in such other written agreement between the Executive and the Company determined by the Company.

**6.3 Non-Solicitation of Employees and Consultants.** During the Period of Employment and for a period of twenty-four months after the Severance Date, the Executive will not directly or indirectly through any other Person (i) induce or attempt to induce any employee or independent contractor of the Company or any Affiliate of the Company to leave the employ or service, as applicable, of the Company or such Affiliate, or in any way interfere with the relationship between the Company or any such Affiliate, on the one hand, and any employee or independent contractor thereof, on the other hand, or (ii) hire any person who was an employee of the Company or any Affiliate of the Company until twelve months after such individual’s employment relationship with the Company or such Affiliate has been terminated.

**6.4 Non-Solicitation of Customers.** During the Period of Employment and for a period of twenty-four months after the Severance Date, the Executive will not directly or indirectly through any other Person influence or attempt to influence customers, vendors, suppliers, licensors, lessors, joint venturers, associates, consultants, agents, or partners of the Company or any Affiliate of the Company to divert their business away from the Company or such Affiliate, and the Executive will not otherwise interfere with, disrupt or attempt to disrupt the business relationships, contractual or otherwise, between the Company or any Affiliate of the Company, on the one hand, and any of its or their customers, suppliers, vendors, lessors, licensors, joint venturers, associates, officers,

employees, consultants, managers, partners, members or investors, on the other hand.

**6.5 Understanding of Covenants.** The Executive represents that he (i) is familiar with and has carefully considered the foregoing covenants set forth in this Section 6 (together, the “Restrictive Covenants”), (ii) is fully aware of Executive’s obligations hereunder, (iii) agrees to the reasonableness of the length of time, scope and geographic coverage, as applicable, of the Restrictive Covenants, (iv) agrees that the Company and its Affiliates currently conduct business throughout the continental United States and the rest of the world, (v) agrees that the Restrictive Covenants are necessary to protect the Company’s and its Affiliates’ confidential and proprietary information, good will, stable workforce, and customer relations, and (vi) agrees that the Restrictive Covenants will continue in effect for the applicable periods set forth above in this Section 6 regardless of whether the Executive is then entitled to receive severance pay or benefits from the Company. The Executive understands that the Restrictive Covenants may limit Executive’s ability to earn a livelihood in a business similar to the Business of the Company and any of its Affiliates, but he nevertheless believes that he has received and will receive sufficient consideration and other benefits as an employee of the Company and as otherwise provided hereunder or as described in the recitals hereto to clearly justify such restrictions which, in any event (given Executive’s education, skills and ability), the Executive does not believe would prevent Executive from otherwise earning a living. The Executive agrees that the Restrictive Covenants do not confer a benefit upon the Company disproportionate to the detriment of the Executive.

**6.6 Cooperation.** Following the Executive’s last day of employment by the Company, the Executive shall reasonably cooperate with the Company and its Affiliates in connection with: (a) any ongoing Company matter, internal or governmental investigation or administrative, regulatory, arbitral or judicial proceeding involving the Company and any Affiliates with respect to matters relating to the Executive’s employment with, or service as a member of the board of directors of, the Company or any Affiliate (collectively, “Litigation”); or (b) any audit of the financial statements of the Company or any Affiliate with respect to the period of time when the Executive was employed by the Company or any Affiliate (“Audit”). The Executive acknowledges that such cooperation may include, but shall not be limited to, the Executive making himself or herself available to the Company or any Affiliate (or their respective attorneys or auditors) upon reasonable notice for: (i) interviews, factual investigations, and providing declarations or affidavits that provide truthful information in connection with any Litigation or Audit; (ii) appearing at the request of the Company or any Affiliate to give testimony without requiring service of a subpoena or other legal process; (iii) volunteering to the Company or any Affiliate pertinent information related to any Litigation or Audit; and (iv) turning over to the Company or any Affiliate any documents relevant to any Litigation or Audit that are or may come into the Executive’s possession. The Company shall reimburse the Executive for reasonable travel expenses incurred in connection

with providing the services under this Section 6.6, including lodging and meals, upon the Executive's submission of receipts. If, due to an actual or potential conflict of interest, it is necessary for the Executive to retain separate counsel in connection with providing the services under this Section 6.6, and such counsel is not otherwise supplied by and at the expense of the Company (pursuant to indemnification rights of the Executive or otherwise), the Company shall further reimburse the Executive for the reasonable fees and expenses of such separate counsel.

**6.7 Enforcement.** The Executive agrees that the Executive's services are unique and that he has access to Confidential Information and Work Product. Accordingly, without limiting the generality of Section 17, the Executive agrees that a breach by the Executive of any of the covenants in this Section 6 would cause immediate and irreparable harm to the Company that would be difficult or impossible to measure, and that damages to the Company for any such injury would therefore be an inadequate remedy for any such breach. Therefore, the Executive agrees that in the event of any breach or threatened breach of any provision of this Section 6, the Company shall be entitled, in addition to and without limitation upon all other remedies the Company may have under this Agreement, at law or otherwise, to obtain specific performance, injunctive relief and/or other appropriate relief (without posting any bond or deposit) in order to enforce or prevent any violations of the provisions of this Section 6. The Executive further agrees that the applicable period of time any Restrictive Covenant is in effect following the Severance Date, as determined pursuant to the foregoing provisions of this Section 6, shall be extended by the same amount of time that Executive is in breach of any Restrictive Covenant.

7. **Withholding Taxes.** Notwithstanding anything else herein to the contrary, the Company may withhold (or cause there to be withheld, as the case may be) from any amounts otherwise due or payable under or pursuant to this Agreement such federal, state and local income, employment, or other taxes as may be required to be withheld pursuant to any applicable law or regulation.

**8. Successors and Assigns.**

- (a) This Agreement is personal to the Executive and without the prior written consent of the Company shall not be assignable by the Executive otherwise than by will or the laws of descent and distribution. This Agreement shall inure to the benefit of and be enforceable by the Executive's legal representatives.
- (b) This Agreement shall inure to the benefit of and be binding upon the Company and its successors and assigns. Without limiting the generality of the preceding sentence, the Company will require any successor (whether direct or indirect, by purchase, merger, consolidation or otherwise) to all or substantially all of the business and/or assets of the Company to assume expressly and agree to perform this Agreement in the

same manner and to the same extent that the Company would be required to perform it if no such succession had taken place. As used in this Agreement, "Company" shall mean the Company as hereinbefore defined and any successor or assignee, as applicable, which assumes and agrees to perform this Agreement by operation of law or otherwise.

**9. Number and Gender; Examples.** Where the context requires, the singular shall include the plural, the plural shall include the singular, and any gender shall include all other genders. Where specific language is used to clarify by example a general statement contained herein, such specific language shall not be deemed to modify, limit or restrict in any manner the construction of the general statement to which it relates.

**10. Section Headings.** The section headings of, and titles of paragraphs and subparagraphs contained in, this Agreement are for the purpose of convenience only, and they neither form a part of this Agreement nor are they to be used in the construction or interpretation thereof.

**11. Governing Law.** THIS AGREEMENT WILL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF FLORIDA, WITHOUT GIVING EFFECT TO ANY CHOICE OF LAW OR CONFLICTING PROVISION OR RULE (WHETHER OF THE STATE OF FLORIDA OR ANY OTHER JURISDICTION) THAT WOULD CAUSE THE LAWS OF ANY JURISDICTION OTHER THAN THE STATE OF FLORIDA TO BE APPLIED. IN FURTHERANCE OF THE FOREGOING, THE INTERNAL LAW OF THE STATE OF FLORIDA WILL CONTROL THE INTERPRETATION AND CONSTRUCTION OF THIS AGREEMENT, EVEN IF UNDER SUCH JURISDICTION'S CHOICE OF LAW OR CONFLICT OF LAW ANALYSIS, THE SUBSTANTIVE LAW OF SOME OTHER JURISDICTION WOULD ORDINARILY APPLY.

**12. Severability.** It is the desire and intent of the parties hereto that the provisions of this Agreement be enforced to the fullest extent permissible under the laws and public policies applied in each jurisdiction in which enforcement is sought. Accordingly, if any particular provision of this Agreement shall be adjudicated by a court of competent jurisdiction to be invalid, prohibited or unenforceable under any present or future law, and if the rights and obligations of any party under this Agreement will not be materially and adversely affected thereby, such provision, as to such jurisdiction, shall be ineffective, without invalidating the remaining provisions of this Agreement or affecting the validity or enforceability of such provision in any other jurisdiction, and to this end the provisions of this Agreement are declared to be severable; furthermore, in lieu of such invalid or unenforceable provision there will be added automatically as a part of this Agreement, a legal, valid and enforceable provision as similar in terms to such invalid or unenforceable provision as may be possible. Notwithstanding the foregoing, if such provision could be more narrowly drawn (as to geographic scope, period of duration or otherwise) so as not to be invalid, prohibited or unenforceable in such jurisdiction, it shall, as to such jurisdiction, be so narrowly drawn, without invalidating the remaining provisions of this Agreement or affecting the validity or enforceability of such provision in any other jurisdiction.

**13. Entire Agreement; Legal Effect.** This Agreement embodies the entire agreement of the parties hereto respecting the matters within its scope. As of the Effective Date, this Agreement supersedes all prior and contemporaneous agreements of the parties hereto that directly or indirectly bear upon the subject matter hereof. Any prior negotiations, correspondence, agreements, proposals or understandings relating to the subject matter hereof shall be deemed to have been merged into this Agreement, and to the extent inconsistent herewith, such negotiations, correspondence, agreements, proposals, or understandings shall be deemed to be of no force or effect. There are no representations, warranties, or agreements, whether express or implied, or oral or written, with respect to the subject matter hereof, except as expressly set forth herein.

**14. Modifications.** This Agreement may not be amended, modified or changed (in whole or in part), except by a formal, definitive written agreement expressly referring to this Agreement, which agreement is executed by both of the parties hereto.

**15. Waiver.** Neither the failure nor any delay on the part of a party to exercise any right, remedy, power or privilege under this Agreement shall operate as a waiver thereof, nor shall any single or partial exercise of any right, remedy, power or privilege preclude any other or further exercise of the same or of any right, remedy, power or privilege, nor shall any waiver of any right, remedy, power or privilege with respect to any occurrence be construed as a waiver of such right, remedy, power or privilege with respect to any other occurrence. No waiver shall be effective unless it is in writing and is signed by the party asserted to have granted such waiver.

**16. Waiver of Jury Trial.** EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY WAIVES ALL RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM ARISING OUT OF OR RELATING TO THIS AGREEMENT.

**17. Remedies.** Each of the parties to this Agreement and any such person or entity granted rights hereunder whether or not such person or entity is a signatory hereto shall be entitled to enforce its rights under this Agreement specifically to recover damages and costs for any breach of any provision of this Agreement and to exercise all other rights existing in its favor. The parties hereto agree and acknowledge that money damages may not be an adequate remedy for any breach of the provisions of this Agreement and that each party may in its sole discretion apply to any court of law or equity of competent jurisdiction for specific performance, injunctive relief and/or other appropriate equitable relief (without posting any bond or deposit) in order to enforce or prevent any violations of the provisions of this Agreement. Each party shall be responsible for paying its own attorneys' fees, costs and other expenses pertaining to any such legal proceeding and enforcement regardless of whether an award or finding or any judgment or verdict thereon is entered against either party.

**18. Notices.** Any notice provided for in this Agreement must be in writing and must be either personally delivered, mailed by first class mail (postage prepaid and return receipt requested) or sent by reputable overnight courier service (charges prepaid) to the recipient at the address below indicated or at such other address or to the attention of such other person as the recipient party has specified by prior written notice to the sending party. Notices will be deemed

to have been given hereunder and received when delivered personally, five days after deposit in the U.S. mail and one day after deposit with a reputable overnight courier service.

if to the Company:

Prestige Cruise Services LLC  
7665 Corporate Center Drive  
Miami, FL 33126  
Attn: Executive Vice President and Chief Talent Officer

with a copy to:

Prestige Cruise Services LLC  
7665 Corporate Center Drive  
Miami, FL 33126  
Attn: Executive Vice President and General Counsel

if to the Executive, to the address most recently on file in the payroll records of the Company.

**19. Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be deemed an original as against any party whose signature appears thereon, and all of which together shall constitute one and the same instrument. This Agreement shall become binding when one or more counterparts hereof, individually or taken together, shall bear the signatures of all of the parties reflected hereon as the signatories. Photographic or other electronic copies of such signed counterparts may be used in lieu of the originals for any purpose.

**20. Legal Counsel; Mutual Drafting.** Each party recognizes that this is a legally binding contract and acknowledges and agrees that they have had the opportunity to consult with legal counsel of their choice. Each party has cooperated in the drafting, negotiation and preparation of this Agreement. Hence, in any construction to be made of this Agreement, the same shall not be construed against either party on the basis of that party being the drafter of such language. The Executive agrees and acknowledges that he has read and understands this Agreement, is entering into it freely and voluntarily, and has been advised to seek counsel prior to entering into this Agreement and has had ample opportunity to do so.

**21. Indemnification.** The Company agrees to indemnify and hold the Executive harmless against all costs, charges and expenses whatsoever incurred or sustained by the Executive in connection with any action, suit or proceeding to which he may be made a party by reason of his being or having been a director, officer or employee of Parent, the Company or any of their Affiliates to the fullest extent permitted by applicable laws and the Company's (or Parent's, as applicable) governing documents, in each case as in effect at the time of the subject act or omission; provided, however, that in no event shall the Executive's indemnification rights and the rights to advancement of fees and expenses at any time be less favorable than the



indemnification rights and rights to advancement of fees and expenses generally available to officers or directors of the Company or Parent.

**22. Clawback.** All bonuses and equity awards granted under this Agreement, the Parent Equity Plan or any other incentive plan are subject to the terms of the Company's or Parent's recoupment, clawback or similar policy as it may be in effect from time to time, as well as any similar provisions of applicable law, any of which could in certain circumstances require repayment or forfeiture of bonuses or awards or any shares or other cash or property received with respect to the bonuses or awards (including any value received from a disposition of the shares acquired upon payment of the bonuses or equity awards).

*(Signature Page to Follow)*

**IN WITNESS WHEREOF**, the Company and the Executive have executed this Agreement as of the date hereof.

**“COMPANY”**

Prestige Cruise Services LLC  
a company organized under the laws of Delaware

By: /s/Lynn White  
Name: Lynn White  
Title: Executive Vice President, Chief Talent Officer

**“EXECUTIVE”**

/s/Frank A. Del Rio  
Frank A. Del Rio

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**FORM OF RELEASE AGREEMENT**

This Release Agreement (this "Release Agreement") is entered into this \_\_\_ day of \_\_\_\_\_, 20\_\_\_, by and between [\_\_\_\_], an individual ("Executive"), and Prestige Cruise Services LLC, a company organized under the laws of Delaware (the "Company").

**WHEREAS**, Executive has been employed by the Company or one of its subsidiaries; and

**WHEREAS**, Executive's employment by the Company or one of its subsidiaries has terminated and, in connection with the Executive's Employment Agreement with the Company, dated as of [\_\_\_\_] (the "Employment Agreement"), the Company and Executive desire to enter into this Release Agreement upon the terms set forth herein;

**NOW, THEREFORE**, in consideration of the covenants undertaken and the releases contained in this Release Agreement, and in consideration of the obligations of the Company to pay severance and other benefits (conditioned upon this Release Agreement) under and pursuant to the Employment Agreement, Executive and the Company agree as follows:

1. Termination of Employment. Executive's employment with the Company terminated on [\_\_\_\_, \_\_\_\_\_] (the "Separation Date"). Executive waives any right or claim to reinstatement as an employee of the Company and each of its affiliates. Executive hereby confirms that Executive does not hold any position as an officer, director or employee with the Company and each of its affiliates. Executive acknowledges and agrees that Executive has received all amounts owed for Executive's regular and usual salary (including, but not limited to, any overtime, bonus, accrued vacation, commissions, or other wages), reimbursement of expenses, sick pay and usual benefits.

2. Release. Executive, on behalf of Executive, Executive's descendants, dependents, heirs, executors, administrators, assigns, and successors, and each of them, hereby covenants not to sue and fully releases and discharges the Company and each of its parents, subsidiaries and affiliates, past and present, as well as its and their trustees, directors, officers, members, managers, partners, agents, attorneys, insurers, employees, stockholders, representatives, assigns, and successors, past and present, and each of them, hereinafter together and collectively referred to as the "Releasees," with respect to and from any and all claims, wages, demands, rights, liens, agreements or contracts (written or oral), covenants, actions, suits, causes of action, obligations, debts, costs, expenses, attorneys' fees, damages, judgments, orders and liabilities of whatever kind or nature in law, equity or otherwise, whether now known or unknown, suspected or unsuspected, and whether or not concealed or hidden (each, a "Claim"), which he now owns or holds or he has at any time heretofore owned or held or may in the future hold as against any of said Releasees (including, without limitation, any Claim arising out of or in any way connected with Executive's service as an officer, director, employee, member or manager of any Releasee, Executive's separation from Executive's position as an officer, director, employee, manager and/or member, as applicable, of any Releasee, or any other transactions, occurrences, acts or omissions or any loss, damage or injury whatever), whether known or unknown, suspected or



unsuspected, resulting from any act or omission by or on the part of said Releasees, or any of them, committed or omitted prior to the date of this Release Agreement including, without limiting the generality of the foregoing, any Claim under Title VII of the Civil Rights Act of 1964, the Age Discrimination in Employment Act of 1967, the Americans with Disabilities Act, the Family and Medical Leave Act of 1993, or any other federal, state or local law, regulation, or ordinance, or any Claim for severance pay, equity compensation, bonus, sick leave, holiday pay, vacation pay, life insurance, health or medical insurance or any other fringe benefit, workers' compensation or disability (the "Release"); provided, however, that the foregoing Release does not apply to any obligation of the Company to Executive pursuant to any of the following: (1) any equity-based awards previously granted by the Company or its affiliates to Executive, to the extent that such awards continue after the termination of Executive's employment with the Company in accordance with the applicable terms of such awards (and subject to any limited period in which to exercise such awards following such termination of employment); (2) any right to indemnification that Executive may have pursuant to the Employment Agreement, Bylaws of the Company, its Articles of Incorporation or under any written indemnification agreement with the Company (or any corresponding provision of any subsidiary or affiliate of the Company) or applicable state law with respect to any loss, damages or expenses (including but not limited to attorneys' fees to the extent otherwise provided) that Executive may in the future incur with respect to Executive's service as an employee, officer or director of the Company or any of its subsidiaries or affiliates; (3) with respect to any rights that Executive may have to insurance coverage for such losses, damages or expenses under any Company (or subsidiary or affiliate) directors and officers liability insurance policy; (4) any rights to continued medical or dental coverage that Executive may have under COBRA (or similar applicable state law); (5) any rights to the severance and other benefits payable under Section 5.3 of the Employment Agreement in accordance with the terms of the Employment Agreement; or (6) any rights to payment of benefits that Executive may have under a retirement plan sponsored or maintained by the Company or its affiliates that is intended to qualify under Section 401(a) of the Internal Revenue Code of 1986, as amended. In addition, this Release does not cover any Claim that cannot be so released as a matter of applicable law. Executive acknowledges and agrees that he has received any and all leave and other benefits that he has been and is entitled to pursuant to the Family and Medical Leave Act of 1993.

3. ADEA Waiver. Executive expressly acknowledges and agrees that by entering into this Release Agreement, Executive is waiving any and all rights or Claims that he may have arising under the Age Discrimination in Employment Act of 1967, as amended (the "ADEA"), which have arisen on or before the date of execution of this Release Agreement. Executive further expressly acknowledges and agrees that:

- A. In return for this Release Agreement, the Executive will receive consideration beyond that which the Executive was already entitled to receive before entering into this Release Agreement;
  - B. Executive is hereby advised in writing by this Release Agreement to consult with an attorney before signing this Release Agreement;
  - C. Executive has voluntarily chosen to enter into this Release Agreement and has not been forced or pressured in any way to sign it;
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D. Executive was given a copy of this Release Agreement on [\_\_\_\_\_, 20\_\_] and informed that he had twenty one (21) days within which to consider this Release Agreement and that if he wished to execute this Release Agreement prior to expiration of such 21-day period, he should execute the Endorsement attached hereto;

E. Executive was informed that he had seven (7) days following the date of execution of this Release Agreement in which to revoke this Release Agreement, and this Release Agreement will become null and void if Executive elects revocation during that time. Any revocation must be in writing and must be received by the Company during the seven-day revocation period. In the event that Executive exercises Executive's right of revocation, neither the Company nor Executive will have any obligations under this Release Agreement;

F. Nothing in this Release Agreement prevents or precludes Executive from challenging or seeking a determination in good faith of the validity of this waiver under the ADEA, nor does it impose any condition precedent, penalties or costs from doing so, unless specifically authorized by federal law.

4. Non-Disparagement. Executive agrees not to make, directly or indirectly, whether verbal or in writing, any damaging or disparaging statements, representations or remarks about or concerning Employer or any of the Releasees.

5. No Transferred Claims. Executive warrants and represents that the Executive has not heretofore assigned or transferred to any person not a party to this Release Agreement any released matter or any part or portion thereof and he shall defend, indemnify and hold the Company and each of its affiliates harmless from and against any claim (including the payment of attorneys' fees and costs actually incurred whether or not litigation is commenced) based on or in connection with or arising out of any such assignment or transfer made, purported or claimed.

6. Severability. It is the desire and intent of the parties hereto that the provisions of this Release Agreement be enforced to the fullest extent permissible under the laws and public policies applied in each jurisdiction in which enforcement is sought. Accordingly, if any particular provision of this Release Agreement shall be adjudicated by a court of competent jurisdiction to be invalid, prohibited or unenforceable under any present or future law, such provision, as to such jurisdiction, shall be ineffective, without invalidating the remaining provisions of this Release Agreement or affecting the validity or enforceability of such provision in any other jurisdiction; furthermore, in lieu of such invalid or unenforceable provision there will be added automatically as a part of this Release Agreement, a legal, valid and enforceable provision as similar in terms to such invalid or unenforceable provision as may be possible. Notwithstanding the foregoing, if such provision could be more narrowly drawn so as not to be invalid, prohibited or unenforceable in such jurisdiction, it shall, as to such jurisdiction, be so narrowly drawn, without invalidating the remaining provisions of this Release Agreement or affecting the validity or enforceability of such provision in any other jurisdiction.

7. Counterparts. This Release Agreement may be executed in separate counterparts, each of which is deemed to be an original and all of which taken together constitute one and the

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same agreement. This Release Agreement shall become binding when one or more counterparts hereof, individually or taken together, shall bear the signatures of all of the parties reflected hereon as the signatories. Photographic or other electronic copies of such signed counterparts may be used in lieu of the originals for any purpose.

8. Successors. This Release Agreement is personal to Executive and shall not, without the prior written consent of the Company, be assignable by Executive. This Release Agreement shall inure to the benefit of and be binding upon the Company and its respective successors and assigns and any such successor or assignee shall be deemed substituted for the Company under the terms of this Release Agreement for all purposes. As used herein, “successor” and “assignee” shall include any person, firm, corporation or other business entity which at any time, whether by purchase, merger, acquisition of assets, or otherwise, directly or indirectly acquires the ownership of the Company, acquires all or substantially all of the Company’s assets, or to which the Company assigns this Release Agreement by operation of law or otherwise.

9. Governing Law. THIS RELEASE AGREEMENT WILL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH UNITED STATES FEDERAL LAW AND, TO THE EXTENT NOT PREEMPTED BY UNITED STATES FEDERAL LAW, THE LAWS OF THE STATE OF FLORIDA, WITHOUT GIVING EFFECT TO ANY CHOICE OF LAW OR CONFLICTING PROVISION OR RULE (WHETHER OF THE STATE OF FLORIDA OR ANY OTHER JURISDICTION) THAT WOULD CAUSE THE LAWS OF ANY JURISDICTION OTHER THAN UNITED STATES FEDERAL LAW AND THE LAW OF THE STATE OF FLORIDA TO BE APPLIED. IN FURTHERANCE OF THE FOREGOING, APPLICABLE FEDERAL LAW AND, TO THE EXTENT NOT PREEMPTED BY APPLICABLE FEDERAL LAW, THE INTERNAL LAW OF THE STATE OF FLORIDA, WILL CONTROL THE INTERPRETATION AND CONSTRUCTION OF THIS RELEASE AGREEMENT, EVEN IF UNDER SUCH JURISDICTION’S CHOICE OF LAW OR CONFLICT OF LAW ANALYSIS, THE SUBSTANTIVE LAW OF SOME OTHER JURISDICTION WOULD ORDINARILY APPLY.

10. Amendment and Waiver. The provisions of this Release Agreement may be amended and waived only with the prior written consent of the Company and Executive, and no course of conduct or failure or delay in enforcing the provisions of this Release Agreement shall be construed as a waiver of such provisions or affect the validity, binding effect or enforceability of this Release Agreement or any provision hereof.

11. Descriptive Headings. The descriptive headings of this Release Agreement are inserted for convenience only and do not constitute a part of this Release Agreement.

12. Construction. Where specific language is used to clarify by example a general statement contained herein, such specific language shall not be deemed to modify, limit or restrict in any manner the construction of the general statement to which it relates. The language used in this Release Agreement shall be deemed to be the language chosen by the parties to express their mutual intent, and no rule of strict construction shall be applied against any party.

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13. Nouns and Pronouns. Whenever the context may require, any pronouns used herein shall include the corresponding masculine, feminine or neuter forms, and the singular form of nouns and pronouns shall include the plural and vice-versa.

14. Legal Counsel. Each party recognizes that this is a legally binding contract and acknowledges and agrees that they have had the opportunity to consult with legal counsel of their choice. Executive acknowledges and agrees that he has read and understands this Release Agreement completely, is entering into it freely and voluntarily, and has been advised to seek counsel prior to entering into this Release Agreement and he has had ample opportunity to do so.

The undersigned have read and understand the consequences of this Release Agreement and voluntarily sign it. The undersigned declare under penalty of perjury under the laws of the State of Florida that the foregoing is true and correct.

EXECUTED this \_\_\_\_ day of \_\_\_\_\_ 20\_\_, at \_\_\_\_\_

“Executive”

\_\_\_\_\_

Print Name: \_\_\_\_\_

Prestige Cruise Services LLC,  
a company organized under the laws of Delaware,

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

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**ENDORSEMENT**

I, \_\_\_\_\_, hereby acknowledge that I was given 21 days to consider the foregoing Release Agreement and voluntarily chose to sign the Release Agreement prior to the expiration of the 21-day period.

I declare under penalty of perjury under the laws of the United States and the State of Florida that the foregoing is true and correct.

EXECUTED this [\_\_\_\_] day of [\_\_\_\_] 20\_\_.

\_\_\_\_\_  
Print Name: \_\_\_\_\_

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## CERTIFICATION

I, Harry Sommer, certify that:

1. I have reviewed this quarterly report on Form 10-Q of Norwegian Cruise Line Holdings Ltd.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
  - a. Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - b. Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
  - c. Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation;
  - d. Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
  - a. All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
  - b. Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Dated: August 8, 2023

/s/ Harry Sommer

\_\_\_\_\_  
Name: Harry Sommer

Title: President and Chief Executive Officer

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## CERTIFICATION

I, Mark A. Kempa, certify that:

1. I have reviewed this quarterly report on Form 10-Q of Norwegian Cruise Line Holdings Ltd.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
  - a. Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - b. Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
  - c. Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation;
  - d. Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
  - a. All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
  - b. Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Dated: August 8, 2023

/s/ Mark A. Kempa

Name: Mark A. Kempa

Title: Executive Vice President and Chief Financial Officer

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**CERTIFICATIONS OF CHIEF EXECUTIVE OFFICER AND CHIEF FINANCIAL OFFICER PURSUANT TO 18 U.S.C.  
SECTION 1350 AS ADOPTED PURSUANT TO SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002**

Pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, each of Harry Sommer, the President and Chief Executive Officer, and Mark A. Kempa, the Executive Vice President and Chief Financial Officer of Norwegian Cruise Line Holdings Ltd. (the "Company"), does hereby certify, that, to such officer's knowledge:

The Quarterly Report on Form 10-Q of the Company, for the quarter ended June 30, 2023 (the "Form 10-Q"), fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934 and information contained in the Form 10-Q fairly presents, in all material respects, the financial condition and results of operations of the Company.

Dated: August 8, 2023

By: /s/ Harry Sommer

Name: Harry Sommer

Title: President and Chief Executive Officer

By: /s/ Mark A. Kempa

Name: Mark A. Kempa

Title: Executive Vice President and Chief  
Financial Officer

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