
**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION**

Washington, D.C. 20549

FORM 10-Q

(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, 2021

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)

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

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

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 370,030,246 ordinary shares outstanding as of July 31, 2021.

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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 June 30,		Six Months Ended June 30,	
	2021	2020	2021	2020
Revenue				
Passenger ticket	\$ 1,584	\$ 13,835	\$ 1,750	\$ 854,626
Onboard and other	2,784	3,094	5,718	409,185
Total revenue	4,368	16,929	7,468	1,263,811
Cruise operating expense				
Commissions, transportation and other	6,564	34,601	15,597	366,969
Onboard and other	1,276	3,188	2,535	78,161
Payroll and related	86,647	128,744	168,785	375,891
Fuel	54,090	48,992	96,693	174,016
Food	4,334	6,997	10,642	56,213
Other	96,816	79,130	156,330	244,662
Total cruise operating expense	249,727	301,652	450,582	1,295,912
Other operating expense				
Marketing, general and administrative	185,483	131,436	388,678	402,125
Depreciation and amortization	174,262	179,252	344,578	377,449
Impairment loss	—	—	—	1,607,797
Total other operating expense	359,745	310,688	733,256	2,387,371
Operating loss	(605,104)	(595,411)	(1,176,370)	(2,419,472)
Non-operating income (expense)				
Interest expense, net	(137,259)	(114,537)	(961,700)	(183,444)
Other income (expense), net	25,501	(14,418)	52,744	(8,595)
Total non-operating income (expense)	(111,758)	(128,955)	(908,956)	(192,039)
Net loss before income taxes	(716,862)	(724,366)	(2,085,326)	(2,611,511)
Income tax benefit (expense)	(927)	9,123	(2,655)	15,296
Net loss	\$ (717,789)	\$ (715,243)	\$ (2,087,981)	\$ (2,596,215)
Weighted-average shares outstanding				
Basic	369,933,159	239,342,745	349,767,216	226,486,772
Diluted	369,933,159	239,342,745	349,767,216	226,486,772
Loss per share				
Basic	\$ (1.94)	\$ (2.99)	\$ (5.97)	\$ (11.46)
Diluted	\$ (1.94)	\$ (2.99)	\$ (5.97)	\$ (11.46)

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

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

	Three Months Ended		Six Months Ended	
	June 30,		June 30,	
	2021	2020	2021	2020
Net loss	<u>\$ (717,789)</u>	<u>\$ (715,243)</u>	<u>\$ (2,087,981)</u>	<u>\$ (2,596,215)</u>
Other comprehensive income (loss):				
Shipboard Retirement Plan	99	102	197	204
Cash flow hedges:				
Net unrealized gain (loss)	44,674	54,478	(28,363)	(251,382)
Amount realized and reclassified into earnings	13,542	28,782	35,380	50,781
Total other comprehensive income (loss)	<u>58,315</u>	<u>83,362</u>	<u>7,214</u>	<u>(200,397)</u>
Total comprehensive loss	<u>\$ (659,474)</u>	<u>\$ (631,881)</u>	<u>\$ (2,080,767)</u>	<u>\$ (2,796,612)</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)

	June 30, 2021	December 31, 2020
Assets		
Current assets:		
Cash and cash equivalents	\$ 2,750,140	\$ 3,300,482
Accounts receivable, net	422,598	20,578
Inventories	92,041	82,381
Prepaid expenses and other assets	200,671	154,103
Total current assets	<u>3,465,450</u>	<u>3,557,544</u>
Property and equipment, net	13,431,884	13,411,226
Goodwill	98,134	98,134
Trade names	500,525	500,525
Other long-term assets	1,030,586	831,888
Total assets	<u>\$ 18,526,579</u>	<u>\$ 18,399,317</u>
Liabilities and shareholders' equity		
Current liabilities:		
Current portion of long-term debt	\$ 361,233	\$ 124,885
Accounts payable	110,628	83,136
Accrued expenses and other liabilities	631,880	596,056
Advance ticket sales	1,076,826	1,109,826
Total current liabilities	<u>2,180,567</u>	<u>1,913,903</u>
Long-term debt	11,924,634	11,681,234
Other long-term liabilities	702,126	450,075
Total liabilities	<u>14,807,327</u>	<u>14,045,212</u>
Commitments and contingencies (Note 9)		
Shareholders' equity:		
Ordinary shares, \$0.001 par value; 980,000,000 shares authorized, 369,935,977 shares issued and outstanding at June 30, 2021 and 490,000,000 shares authorized, 315,636,032 shares issued and outstanding at December 31, 2020	370	316
Additional paid-in capital	6,329,585	4,889,355
Accumulated other comprehensive income (loss)	(232,903)	(240,117)
Retained earnings (deficit)	(2,377,800)	(295,449)
Total shareholders' equity	<u>3,719,252</u>	<u>4,354,105</u>
Total liabilities and shareholders' equity	<u>\$ 18,526,579</u>	<u>\$ 18,399,317</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)

	Six Months Ended June 30,	
	2021	2020
Cash flows from operating activities		
Net loss	\$ (2,087,981)	\$ (2,596,215)
Adjustments to reconcile net loss to net cash used in operating activities:		
Depreciation and amortization expense	372,445	379,375
Impairment loss	—	1,607,797
Deferred income taxes, net	12	(14,458)
(Gain) loss on derivatives	(22,534)	8,294
Loss on extinguishment of debt	601,539	5,014
Provision for bad debts and inventory obsolescence	7,211	10,359
Gain on involuntary conversion of assets	(1,817)	(1,403)
Share-based compensation expense	49,052	55,147
Net foreign currency adjustments	(3,767)	160
Changes in operating assets and liabilities:		
Accounts receivable, net	(408,120)	(2,108)
Inventories	(9,956)	11,996
Prepaid expenses and other assets	(242,642)	(115,066)
Accounts payable	26,205	369,519
Accrued expenses and other liabilities	46,689	(202,547)
Advance ticket sales	191,609	(844,244)
Net cash used in operating activities	<u>(1,482,055)</u>	<u>(1,328,380)</u>
Cash flows from investing activities		
Additions to property and equipment, net	(309,481)	(725,477)
Cash paid on settlement of derivatives	(8,559)	(28,606)
Other	2,825	2,519
Net cash used in investing activities	<u>(315,215)</u>	<u>(751,564)</u>
Cash flows from financing activities		
Repayments of long-term debt	(879,679)	(207,863)
Proceeds from long-term debt	1,223,110	3,962,655
Common share issuance proceeds, net	1,558,396	441,935
Proceeds from employee related plans	1,089	4,100
Net share settlement of restricted share units	(16,658)	(15,318)
Early redemption premium	(611,164)	—
Deferred financing fees	(28,166)	(94,559)
Net cash provided by financing activities	<u>1,246,928</u>	<u>4,090,950</u>
Effect of exchange rates on cash and cash equivalents	—	(3,933)
Net increase (decrease) in cash and cash equivalents	(550,342)	2,007,073
Cash and cash equivalents at beginning of period	<u>3,300,482</u>	<u>252,876</u>
Cash and cash equivalents at end of period	<u>\$ 2,750,140</u>	<u>\$ 2,259,949</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, 2021					Total Shareholders' Equity
	Ordinary Shares	Additional Paid-in Capital	Accumulated Other Comprehensive Income (Loss)	Retained Earnings (Deficit)	Treasury Shares	
Balance, March 31, 2021	\$ 370	\$ 6,328,120	\$ (291,218)	\$ (1,660,011)	\$ —	\$ 4,377,261
Share-based compensation	—	22,451	—	—	—	22,451
Common share issuance proceeds, net	—	(16)	—	—	—	(16)
Net share settlement of restricted share units	—	(615)	—	—	—	(615)
Other	—	(20,355)	—	—	—	(20,355)
Other comprehensive income, net	—	—	58,315	—	—	58,315
Net loss	—	—	—	(717,789)	—	(717,789)
Balance, June 30, 2021	<u>\$ 370</u>	<u>\$ 6,329,585</u>	<u>\$ (232,903)</u>	<u>\$ (2,377,800)</u>	<u>\$ —</u>	<u>\$ 3,719,252</u>
	Six Months Ended June 30, 2021					Total Shareholders' Equity
	Ordinary Shares	Additional Paid-in Capital	Accumulated Other Comprehensive Income (Loss)	Retained Earnings (Deficit)	Treasury Shares	
Balance, December 31, 2020	\$ 316	\$ 4,889,355	\$ (240,117)	\$ (295,449)	\$ —	\$ 4,354,105
Share-based compensation	—	49,052	—	—	—	49,052
Issuance of shares under employee related plans	—	1,089	—	—	—	1,089
Common share issuance proceeds, net	54	1,558,342	—	—	—	1,558,396
Net share settlement of restricted share units	—	(16,658)	—	—	—	(16,658)
Cumulative change in accounting policy	—	(131,240)	—	5,630	—	(125,610)
Other	—	(20,355)	—	—	—	(20,355)
Other comprehensive income, net	—	—	7,214	—	—	7,214
Net loss	—	—	—	(2,087,981)	—	(2,087,981)
Balance, June 30, 2021	<u>\$ 370</u>	<u>\$ 6,329,585</u>	<u>\$ (232,903)</u>	<u>\$ (2,377,800)</u>	<u>\$ —</u>	<u>\$ 3,719,252</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)

	Three Months Ended June 30, 2020					
	Ordinary Shares	Additional Paid-in Capital	Accumulated Other Comprehensive Income (Loss)	Retained Earnings (Deficit)	Treasury Shares	Total Shareholders' Equity
Balance, March 31, 2020	\$ 239	\$ 4,257,571	\$ (579,249)	\$ 1,950,019	\$ (1,253,926)	\$ 4,374,654
Share-based compensation	—	22,389	—	—	—	22,389
Common share issuance proceeds, net	42	440,924	—	—	—	440,966
Net share settlement of restricted share units	—	(343)	—	—	—	(343)
Beneficial conversion feature	—	131,240	—	—	—	131,240
Other comprehensive income, net	—	—	83,362	—	—	83,362
Net loss	—	—	—	(715,243)	—	(715,243)
Balance, June 30, 2020	<u>\$ 281</u>	<u>\$ 4,851,781</u>	<u>\$ (495,887)</u>	<u>\$ 1,234,776</u>	<u>\$ (1,253,926)</u>	<u>\$ 4,337,025</u>
	Six Months Ended June 30, 2020					
	Ordinary Shares	Additional Paid-in Capital	Accumulated Other Comprehensive Income (Loss)	Retained Earnings (Deficit)	Treasury Shares	Total Shareholders' Equity
Balance, December 31, 2019	\$ 237	\$ 4,235,690	\$ (295,490)	\$ 3,829,068	\$ (1,253,926)	\$ 6,515,579
Share-based compensation	—	55,147	—	—	—	55,147
Issuance of shares under employee related plans	2	4,098	—	—	—	4,100
Common share issuance proceeds, net	42	440,924	—	—	—	440,966
Net share settlement of restricted share units	—	(15,318)	—	—	—	(15,318)
Beneficial conversion feature	—	131,240	—	—	—	131,240
Cumulative change in accounting policy	—	—	—	1,923	—	1,923
Other comprehensive loss, net	—	—	(200,397)	—	—	(200,397)
Net loss	—	—	—	(2,596,215)	—	(2,596,215)
Balance, June 30, 2020	<u>\$ 281</u>	<u>\$ 4,851,781</u>	<u>\$ (495,887)</u>	<u>\$ 1,234,776</u>	<u>\$ (1,253,926)</u>	<u>\$ 4,337,025</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 (including Prestige (as defined below), (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, and (v) “Prestige” refers to Prestige Cruises International S. de R.L. (formerly Prestige Cruises International, Inc.), together with its consolidated subsidiaries, including Prestige Cruise Holdings S. de R.L. (formerly Prestige Cruise Holdings, Inc.), Prestige’s direct wholly-owned subsidiary, which in turn is the parent of Oceania Cruises S. de R.L. (formerly Oceania Cruises, Inc.) (“Oceania Cruises”) and Seven Seas Cruises S. de R.L. (“Regent”) (Oceania Cruises also refers to the brand by the same name and Regent also refers to the brand Regent Seven Seas Cruises).

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, 2021, we had 28 ships with approximately 59,150 Berths and had orders for nine additional ships to be delivered through 2027. Due to the novel coronavirus (“COVID-19”), we temporarily suspended all global cruise voyages from March 2020 through June 2021 and began resuming cruise voyages in July 2021 on a limited basis. We refer you to Note 2 – “Summary of Significant Accounting Policies” for further information.

We have one Explorer Class Ship on order for delivery in 2023. We have two Allura Class Ships on order for delivery in 2023 and 2025. Project Leonardo will introduce an additional six ships with expected delivery dates from 2022 through 2027. These additions to our fleet will increase our total Berths to approximately 83,000, which includes additional Berths we plan to add to our Project Leonardo ships, subject to certain conditions. The impacts of COVID-19 on the shipyards where our ships are under construction (or will be constructed) have resulted in some delays in expected ship deliveries, and the impacts of COVID-19 could result in additional delays in ship deliveries in the future, which may be prolonged.

2. Summary of Significant Accounting Policies

Liquidity and Management’s Plan

Due to the impact of COVID-19, ongoing travel restrictions and limited access to ports around the world, in March 2020, the Company implemented a voluntary suspension of all cruise voyages across its three brands. As of June 30, 2021, none of our ships were operating with guests on board; however, all of our brands have announced resumption of cruise voyages by September 30, 2021 as part of our phased return to service and two ships have currently commenced voyages. Significant events affecting travel, including COVID-19, typically have an impact on demand for cruise vacations, with the full extent of the impact generally determined by the length of time the event influences travel decisions. We believe the ongoing effects of COVID-19 on our operations and global bookings have had, and will continue to have, a significant impact on our financial results and liquidity, and such negative impact may continue well beyond the containment of the pandemic.

In January 2021, we amended our Senior Secured Credit Facility to further defer certain amortization payments due prior to June 30, 2022 and to waive certain financial and other covenants through December 31, 2022. In February 2021, we amended certain of our export-credit backed facilities to further defer amortization payments through March 31, 2022, and we amended all of our export-credit backed facilities to suspend certain financial covenants through December 31, 2022. In connection with such amendments of our Senior Secured Credit Facility and our export-credit backed facilities,

our minimum liquidity requirement was increased to \$200 million and such requirement applies through December 31, 2022. In March 2021, the Company received additional financing through various debt financings and an equity offering, collectively totaling approximately \$2.7 billion in gross proceeds. From the proceeds, approximately \$1.5 billion was used to extinguish debt. Refer to Note 6 – “Long-Term Debt” for further details of the above transactions.

In the second quarter of 2021, we announced a phased relaunch of certain cruise voyages beginning in July 2021 with our ships initially operating at reduced occupancy levels. The Company has announced its phased relaunch plans for all 28 ships across its three brands which began with Norwegian Jade on July 25, 2021 and continues through April 1, 2022. The first cruise to commence in the U.S. was on August 7, 2021 with Norwegian Encore sailing to Alaska from Seattle. The Company expects to have approximately 40% of capacity operating by September 30, 2021 and approximately 75% by December 31, 2021 with the full fleet expected to be back in operation by April 1, 2022. The timing for bringing our ships back to service and the percentage of our fleet in service will depend on a number of factors including, but not limited to, the duration and extent of the COVID-19 pandemic, further resurgences and new more contagious and/or vaccine-resistant variants of COVID-19, the availability, distribution, rate of public acceptance and efficacy of vaccines and therapeutics for COVID-19, our ability to comply with governmental regulations, port availability, travel restrictions, bans and advisories, and our ability to re-staff our ships and implement new health and safety protocols.

The estimation of our future cash flow projections includes numerous assumptions that are subject to various risks and uncertainties. Upon the relaunch of cruise voyages, our principal assumptions for future cash flow projections include:

- Expected gradual phased relaunch at reduced occupancy levels, increasing over time until we reach historical occupancy levels;
- Forecasted cash collections primarily upon completion of future voyages and the payment of cash refunds for any further cancellations, in accordance with the terms of our credit card processing agreements (see Note 9 - “Commitments and Contingencies”); and
- Expected incremental expenses for resumption of cruise voyages, including the maintenance of and compliance with additional health and safety protocols.

We cannot make assurances that our assumptions used to estimate our liquidity requirements will not change due to the unique and unpredictable nature of the pandemic, including its magnitude and duration. Accordingly, the full effect of the COVID-19 pandemic on our financial performance and financial condition cannot be quantified at this time. We have made reasonable estimates and judgments of the impact of COVID-19 within our financial statements and there may be material changes to those estimates in future periods. We will report a net loss for the three months ending September 30, 2021 and expect to report a net loss until we are able to resume regular voyages, including for the year ending December 31, 2021. We have taken actions to improve our liquidity, including completing various capital market transactions and making capital expenditure and operating expense reductions, and we expect to continue to pursue other opportunities to improve our liquidity and to refinance our debt to reduce interest expense and extend maturities.

Based on these actions and assumptions regarding the impact of COVID-19, and considering our available liquidity including cash and cash equivalents of \$2.8 billion as of June 30, 2021, we have concluded that we have sufficient liquidity to satisfy our obligations for at least the next twelve months.

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. The interim consolidated financial statements should be read in conjunction with the audited consolidated

financial statements for the year ended December 31, 2020, which are included in our most recent Annual Report on Form 10-K filed with the SEC on February 26, 2021.

Loss Per Share

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

	Three Months Ended June 30,		Six Months Ended June 30,	
	2021	2020	2021	2020
Net loss	\$ (717,789)	\$ (715,243)	\$ (2,087,981)	\$ (2,596,215)
Basic weighted-average shares outstanding	369,933,159	239,342,745	349,767,216	226,486,772
Dilutive effect of share awards	—	—	—	—
Diluted weighted-average shares outstanding	369,933,159	239,342,745	349,767,216	226,486,772
Basic loss per share	\$ (1.94)	\$ (2.99)	\$ (5.97)	\$ (11.46)
Diluted loss per share	\$ (1.94)	\$ (2.99)	\$ (5.97)	\$ (11.46)

For the three months ended June 30, 2021 and 2020, a total of 99.2 million and 59.2 million, respectively, and for the six months ended June 30, 2021 and 2020, a total of 110.0 million and 33.1 million, respectively, shares 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. Gains or losses resulting from transactions denominated in other currencies are recognized in our consolidated statements of operations within other income (expense), net. We recognized a gain of \$0.2 million and a loss of \$10.2 million for the three months ended June 30, 2021 and 2020, respectively, and gains of \$5.0 million and \$9.7 million for the six months ended June 30, 2021 and 2020, respectively, related to transactions denominated in other currencies.

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 includes \$400.7 million due from credit card processors as of June 30, 2021, which is expected to be collected within the next 12 months. Prior to the resumption of cruise operations, these amounts were classified in other long-term assets as a result of the uncertainty surrounding the timing of their collection.

Recently Issued Accounting Guidance

In March 2020, the Financial Accounting Standards Board (“FASB”) issued 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 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. Adoption of the provisions of ASU 2020-04 are optional and are effective from March 12, 2020 through December 31, 2022. As of June 30, 2021, we have not adopted any expedients and exceptions under ASU 2020-04. We will continue to evaluate the impact of ASU 2020-04 on our consolidated financial statements.

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, 2020	Six Months Ended June 30, 2020
North America	\$ 3,366	\$ 954,422
Europe	9,701	23,036
Asia-Pacific	—	150,921
South America	—	76,306
Other	3,862	59,126
Total revenue	<u>\$ 16,929</u>	<u>\$ 1,263,811</u>

Amounts for the three and six months ended June 30, 2021 were excluded as the information was not meaningful. 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 and similar 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 in the U.S. Revenue attributable to U.S.-sourced guests has historically approximated 75-85% of total revenue. 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, 2021 and December 31, 2020, our receivables from customers were \$0.9 million and \$1.0 million, respectively.

Beginning in March 2020, our brands launched new cancellation policies to permit our guests to cancel cruises which are not part of the Company's temporary suspension of voyages up to 15 days prior to departure. These programs are currently in place for cruises booked through specific time periods specified by brand, and for cruises scheduled to embark through October 31, 2021. Certain cruises booked for certain periods, will be permitted a 60-day cancellation window for refunds. Future cruise credits that have been issued are valid for any sailing through December 31, 2022, and we may extend this offer. 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 or other long-term liabilities as applicable.

Our contract liabilities are included within advance ticket sales. As of June 30, 2021 and December 31, 2020, our contract liabilities were \$50.5 million and \$23.1 million, respectively. Of the amounts included within advance ticket sales, the vast majority of deposits held 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, 2021, no revenue recognized was included in the contract liability balance at the beginning of the period.

The revenue recognized in the six months ended June 30, 2020 that was included in contract liabilities as of the beginning of the period was \$0.9 billion.

For cruise vacations that had been cancelled by us due to COVID-19, during the three months ended June 30, 2021 and 2020, approximately \$11.2 million and \$38.6 million, respectively, and during the six months ended June 30, 2021 and 2020, approximately \$26.0 million and \$130.6 million, respectively, in costs to obtain these contracts, consisting of protected commissions, including those paid to employees, and credit card fees, were recognized in earnings.

4. Leases

In April 2020, the FASB issued interpretive guidance relating to the accounting for lease concessions provided as a result of COVID-19. In this guidance, entities can elect not to apply lease modification accounting with respect to such lease concessions and instead, treat the concession as if it was a part of the existing contract. The Company has elected to not evaluate leases under the lease modification accounting framework for concessions that result from effects of the COVID-19 pandemic. In relation to our rights to use port facilities, we have elected the approach consistent with resolving a contingency, which allows us to remeasure the lease liability and recognize the amount of change in the lease liability as an adjustment to the carrying amount of the associated right-of-use asset. As the full amount of the concession will not be determinable until the force majeure period under the related arrangements have ended, periodic remeasurements will be required. During the contingency period, we are recognizing lease expense for these port facilities as incurred.

Lease balances were as follows (in thousands):

	Balance Sheet location	June 30, 2021	December 31, 2020
Operating leases			
Right-of-use assets	Other long-term assets	\$ 202,569	\$ 209,037
Current operating lease liabilities	Accrued expenses and other liabilities	22,450	17,700
Non-current operating lease liabilities	Other long-term liabilities	173,845	185,414
Finance leases			
Right-of-use assets	Property and equipment, net	10,960	11,948
Current finance lease liabilities	Current portion of long-term debt	5,267	5,143
Non-current finance lease liabilities	Long-term debt	2,718	4,648

5. Accumulated Other Comprehensive Income (Loss)

Accumulated other comprehensive income (loss) for the six months ended June 30, 2021 was as follows (in thousands):

	Six Months Ended June 30, 2021		
	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	\$ (240,117)	\$ (234,334)	\$ (5,783)
Current period other comprehensive loss before reclassifications	(28,363)	(28,363)	—
Amounts reclassified into earnings	35,577	35,380 (1)	197 (2)
Accumulated other comprehensive income (loss) at end of period	\$ (232,903)	\$ (227,317)(3)	\$ (5,586)

Accumulated other comprehensive income (loss) for the six months ended June 30, 2020 was as follows (in thousands):

	Six Months Ended June 30, 2020		
	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	\$ (295,490)	\$ (289,362)	\$ (6,128)
Current period other comprehensive loss before reclassifications	(251,382)	(251,382)	—
Amounts reclassified into earnings	50,985	50,781 (1)	204 (2)
Accumulated other comprehensive income (loss) at end of period	<u>\$ (495,887)</u>	<u>\$ (489,963)</u>	<u>\$ (5,924)</u>

- (1) We refer you to Note 7 – “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 \$25.7 million of loss expected to be reclassified into earnings in the next 12 months.

6. Long-Term Debt

Credit Facilities

In January 2021, NCLC entered into an amendment agreement (the “First Amendment”), which amends the Amended and Restated Credit Agreement, dated as of May 8, 2020 (the “Fifth ARCA” and, as amended by the First Amendment, the “Senior Secured Credit Facility”). The First Amendment provides that, among other things, (a) amortization payments due between the First Amendment effective date and prior to June 30, 2022 (the “First Amendment Deferral Period”) on the Legacy Term Loan A and Term Loan A-1 held by lenders that have consented to such deferral (the “First Amendment Deferring Lenders”) are deferred and such deferred principal amount constitutes a separate tranche of loans (the “Deferred Term Loan A-1”) and (b) the tranche of loans held by certain lenders (the “Fifth ARCA Deferring Lenders”) on which amortization payments due within the first year after effectiveness of the Fifth ARCA were deferred (the “Deferred Term Loan A”) of First Amendment Deferring Lenders were converted into Deferred Term Loan A-1 loans. The class of loans constituting the Term Loan A Facility (other than the Deferred Term Loan A) held by the Fifth ARCA Deferring Lenders (the “Term Loan A-1”) and the class of loans constituting the portion of the Term Loan A Facility that is held by lenders other than the Fifth ARCA Deferring Lenders (the “Legacy Term Loan A”) that were held by the First Amendment Deferring Lenders (other than amounts converted into the Deferred Term Loan A-1) constitute a separate tranche of loans (the “Term Loan A-2”), with the same terms as the Legacy Term Loan A and Term Loan A-1 under the Fifth ARCA, except that amortization payments on the Term Loan A-2 shall be deferred during the First Amendment Deferral Period and thereafter such Term Loan A-2 will amortize in an aggregate principal amount equal to approximately 5.88% per annum and the interest rate for Term Loan A-2 shall be modified as described below. The Deferred Term Loan A-1 will accrue interest (x) in the case of Eurocurrency loans, at a per annum rate based on LIBOR plus a margin of 2.50% or (y) in the case of base rate loans, at a per annum rate based on the base rate plus a margin of 1.50%. After the end of the First Amendment Deferral Period, the Deferred Term Loan A-1 will amortize in an aggregate principal amount equal to 25% per annum of the Deferred Term Loan A-1 outstanding immediately after the consummation of the First Amendment, in quarterly installments, and in the case of such payment due on the maturity date, an amount equal to the then unpaid principal amount of the Deferred Term Loan A-1 outstanding. The Legacy Term Loan A, Term Loan A-1 and Deferred Term Loan A that were held by lenders other than the First Amendment Deferring Lenders constitute separate classes of loans and were unchanged. The First Amendment resulted in deferred amortization payments aggregating approximately \$70 million prior to June 30, 2022.

The First Amendment provides that, (a) from the First Amendment effective date to and including December 31, 2022 (the “Covenant Relief Period”) the testing of the loan to value, debt to capitalization and EBITDA to debt service covenants under the Senior Secured Credit Facility will be suspended and the free liquidity test will be replaced by a covenant to maintain at least \$200 million in free liquidity, certified on a monthly basis. During the Covenant Relief

Period the interest rate for Term Loan A-2 and revolving loans held by Lenders that consented to the First Amendment will be LIBOR plus 2.00% (or base rate plus 1.00%) with decreases subject to a leverage-based pricing grid. The First Amendment also makes certain other changes to the Senior Secured Credit Facility, including tightening certain of the baskets applicable to our ability to make certain asset dispositions, investments and restricted payments.

Additionally, in February 2021, NCLC amended all of its export-credit backed facilities to defer amortization payments aggregating approximately \$680 million through March 31, 2022 and/or make certain changes in respect of covenants and undertakings contained therein.

The facilities that finance Norwegian Breakaway, Norwegian Getaway, Norwegian Escape, Norwegian Joy, Norwegian Bliss, Norwegian Encore, Seven Seas Explorer, Seven Seas Splendor, Riviera and Marina were amended to provide that, among other things, (a) amortization payments due from April 1, 2021 to March 31, 2022 (the "Second Deferral Period") on the loans will be deferred and (b) the principal amounts so deferred will constitute separate tranches of loans under the facilities. The separate tranches of loans will accrue interest at a floating rate per annum based on six-month LIBOR plus a margin as follows:

	Margin
€529.8 million Breakaway one loan (Norwegian Breakaway)	1.10 %
€529.8 million Breakaway two loan (Norwegian Getaway)	1.40 %
€590.5 million Breakaway three loan (Norwegian Escape)	1.50 %
€729.9 million Breakaway four loan (Norwegian Joy)	1.50 %
€710.8 million Seahawk 1 term loan (Norwegian Bliss)	1.20 %
€748.7 million Seahawk 2 term loan (Norwegian Encore)	1.20 %
Explorer newbuild loan	3.00 %
Splendor newbuild loan	1.95 %
Marina newbuild loan	0.75 %
Riviera newbuild loan	0.75 %

After the end of the Second Deferral Period, the deferred loans will amortize in an aggregate principal amount equal to 20% per annum of the deferred loans, in semiannual installments.

In addition, all of NCLC's export-credit backed facilities were amended to provide that, from the effective date of the amendments to and including December 31, 2022, certain of the financial covenants under such facilities will be suspended and the free liquidity test will be replaced by a covenant to maintain at least \$200 million in free liquidity. The amendments also made certain other changes to the facilities, including imposing further restrictions on NCLC's ability to incur debt, create security, issue equity and make dividends and other distributions.

In April 2021, an agreement was executed to defer certain newbuild related debt amortization to July 2022. The aggregate amount of debt amortization that was deferred was €31.2 million, or \$37.0 million based on the euro/U.S. dollar exchange rate as of June 30, 2021. The interest rate on the newbuild related debt was increased to 4.5% per annum.

The amendments of the agreements described above resulted in aggregate modification expenses of \$52.1 million for the six months ended June 30, 2021, which is recognized in interest expense, net.

In May 2021, NCLC entered into a €28.8 million loan facility for newbuild related payments. The facility bears interest at a rate of 4.5% per annum. As of June 30, 2021, €9.6 million, or \$11.4 million based on the euro/U.S. dollar exchange rate as of June 30, 2021, was drawn under this facility, which matures on July 1, 2022.

Unsecured Notes

In December 2020, NCLC conducted a private offering of \$850.0 million aggregate principal amount of 5.875% senior unsecured notes due March 15, 2026 (the "2026 Senior Unsecured Notes"). In March 2021, NCLC completed an add-on offering of \$575.0 million aggregate principal amount of additional 2026 Senior Unsecured Notes. The 2026 Senior Unsecured Notes pay interest at 5.875% per annum, semiannually on March 15 and September 15 of each year, to holders of record at the close of business on the immediately preceding March 1 and September 1, respectively. NCLC

may redeem the 2026 Senior Unsecured Notes, in whole or part, at any time prior to December 15, 2025, at a price equal to 100% of the principal amount of the notes redeemed plus accrued and unpaid interest to, but excluding, the redemption date and a “make-whole premium.” NCLC may redeem the 2026 Senior Unsecured Notes, in whole or in part, on or after December 15, 2025, at a price equal to 100% of the principal amount of the notes plus accrued and unpaid interest to, but excluding, the redemption date. At any time and from time to time prior to December 15, 2022, NCLC may choose to redeem up to 40% of the aggregate principal amount of the 2026 Senior Unsecured Notes with the net proceeds of certain equity offerings, subject to certain restrictions, at a redemption price equal to 105.875% of the principal amount of the 2026 Senior Unsecured 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 2026 Senior Unsecured Notes issued remains outstanding following such redemption. The proceeds from the March 2021 issuance were used to repay the \$230.0 million Pride of America Credit Facility and the remaining \$222.6 million of the Jewel Credit Facility. The repayment of these debt agreements resulted in losses on extinguishment of debt of \$1.1 million for the six months ended June 30, 2021, which is recognized in interest expense, net.

In March 2021, NCL Finance, Ltd., an indirect, wholly-owned subsidiary of NCLH and NCLC, additionally conducted a private offering of \$525.0 million aggregate principal amount of 6.125% senior unsecured notes due March 15, 2028 (the “2028 Senior Unsecured Notes”). The 2028 Senior Unsecured Notes pay interest at 6.125% per annum, semiannually on March 15 and September 15 of each year, commencing on September 15, 2021, to holders of record at the close of business on the immediately preceding March 1 and September 1, respectively. NCL Finance may redeem the 2028 Senior Unsecured Notes, in whole or part, at any time prior to December 15, 2027, at a price equal to 100% of the principal amount of the notes redeemed plus accrued and unpaid interest to, but excluding, the redemption date and a “make-whole premium.” NCL Finance may redeem the 2028 Senior Unsecured Notes, in whole or in part, on or after December 15, 2027, at a price equal to 100% of the principal amount of the notes plus accrued and unpaid interest to, but excluding, the redemption date. At any time and from time to time prior to March 15, 2024, NCL Finance may choose to redeem up to 40% of the aggregate principal amount of the 2028 Senior Unsecured Notes with the net proceeds of certain equity offerings, subject to certain restrictions, at a redemption price equal to 106.125% of the principal amount of the 2028 Senior Unsecured 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 Unsecured Notes issued remains outstanding following such redemption.

The indentures governing the 2026 Senior Unsecured Notes and 2028 Senior Unsecured Notes include 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.

Exchangeable Notes

In August 2020, the FASB issued ASU No. 2020-06, *Debt—Debt with Conversion and Other Options (Subtopic 470-20) and Derivatives and Hedging—Contracts in Entity’s Own Equity (Subtopic 815-40) Accounting for Convertible Instruments and Contracts in an Entity’s Own Equity* (“ASU 2020-06”), which reduces the number of accounting models for convertible debt instruments and enhances transparency in disclosures. One model which is being eliminated is the bifurcation of embedded conversion features that are not accounted for separately as derivatives. Each of the 2024 Exchangeable Notes, 2025 Exchangeable Notes, and Private Exchangeable Notes (as defined below) contain or contained conversion options that may be settled with NCLH’s ordinary shares. As the options will be both indexed to and settled in our ordinary shares, they are not accounted for separately as derivatives. The Private Exchangeable Notes contained a beneficial conversion feature, which was recognized within additional paid-in capital with an offsetting discount to the carrying amount of the debt. The discount was amortized to interest expense through December 31, 2020. On January 1, 2021, we early adopted ASU 2020-06 using a modified retrospective approach. As a result, the \$131.2 million beneficial conversion feature previously recognized was reclassified from additional paid-in capital to long-term debt, and the discount amortization of \$5.6 million was adjusted through retained earnings (deficit).

NCLC has outstanding \$862.5 million aggregate principal amount of 6.00% exchangeable senior notes due May 15, 2024 (the “2024 Exchangeable Notes”). The 2024 Exchangeable Notes are guaranteed by NCLH on a senior basis.

Holders may exchange their 2024 Exchangeable Notes at their option into redeemable preference shares of NCLC. Upon exchange, the preference shares will be immediately and automatically exchanged, for each \$1,000 principal amount of exchanged 2024 Exchangeable Notes, into a number of NCLH's ordinary shares based on the exchange rate. The exchange rate will initially be 72.7273 ordinary shares per \$1,000 principal amount of 2024 Exchangeable Notes (equivalent to an initial exchange price of approximately \$3.75 per ordinary share). The maximum exchange rate is 89.4454 and reflects potential adjustments to the initial exchange rate, which would only be made in the event of certain make-whole fundamental changes or tax redemption events. The exchange rate referred to above is also subject to adjustment for any stock split, stock dividend or similar transaction. The 2024 Exchangeable Notes pay interest at 6.00% per annum, semiannually on May 15 and November 15 of each year, to holders of record at the close of business on the immediately preceding May 1 and November 1, respectively.

NCLC also has outstanding \$450.0 million aggregate principal amount of 5.375% exchangeable senior notes due August 1, 2025 (the "2025 Exchangeable Notes"). The 2025 Exchangeable Notes are guaranteed by NCLH on a senior basis. Holders may exchange their 2025 Exchangeable Notes at their option into redeemable preference shares of NCLC. Upon exchange, the preference shares will be immediately and automatically exchanged, for each \$1,000 principal amount of exchanged 2025 Exchangeable Notes, into a number of NCLH's ordinary shares based on the exchange rate. The exchange rate will initially be 53.3333 ordinary shares per \$1,000 principal amount of 2025 Exchangeable Notes (equivalent to an initial exchange price of approximately \$18.75 per ordinary share). The maximum exchange rate is 66.6666 and reflects potential adjustments to the initial exchange rate, which would only be made in the event of certain make-whole fundamental changes or tax redemption events. The exchange rate referred to above is also subject to adjustment for any stock split, stock dividend or similar transaction. The 2025 Exchangeable Notes pay interest at 5.375% 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.

As of December 31, 2020, NCLC also had outstanding \$414.3 million aggregate principal amount of exchangeable senior notes due June 1, 2026 (the "Private Exchangeable Notes"), which amount included interest that had accreted to the principal amount, which were held by an affiliate of L Catterton (the "Private Investor"). The Private Exchangeable Notes accrued interest at a rate of 7.0% per annum for the first year post-issuance (which accreted to the principal amount). Holders were able to exchange their Private Exchangeable Notes at their option into redeemable preference shares of NCLC. Upon exchange, the preference shares would be immediately and automatically exchanged, for each \$1,000 principal amount of exchanged Private Exchangeable Notes, into a number of NCLH's ordinary shares based on the exchange rate. The exchange rate was initially approximately 82.6446 ordinary shares per \$1,000 principal amount of Private Exchangeable Notes (equivalent to an initial exchange price of \$12.10 per ordinary share). The maximum exchange rate was 90.9090 and reflected potential adjustments to the initial exchange rate, which would only be made in the event of certain make-whole fundamental changes or tax redemption events.

In March 2021, NCLH completed an equity offering that resulted in 52,577,947 ordinary shares being issued for gross proceeds of \$1.6 billion. Approximately \$1.0 billion of the cash proceeds from the offering were used to repurchase the Private Exchangeable Notes and extinguish the debt. The resulting loss on extinguishment, which is recognized in interest expense, net, was \$600.4 million for the six months ended June 30, 2021, of which \$(20.4) million was recognized during the three months ended June 30, 2021.

The following is a summary of NCLC's convertible debt instruments as of June 30, 2021 (in thousands):

	Principal Amount	Unamortized Deferred Financing Fees	Net Carrying Amount	Fair Value	
				Amount	Leveling
2024 Exchangeable Notes	\$ 862,500	\$ (24,115)	\$ 838,385	\$ 2,016,560	Level 2
2025 Exchangeable Notes	450,000	(9,691)	440,309	844,295	Level 2

The remaining period over which the unamortized deferred financing fees will be recognized as non-cash interest expense is 2.9 years and 4.1 years for the 2024 Exchangeable Notes and 2025 Exchangeable Notes, respectively.

The following is a summary of NCLC's convertible debt instruments as of December 31, 2020 (in thousands):

	Principal Amount	Unamortized Debt Discount, including Deferred Financing Fees		Net Carrying Amount	Fair Value	
					Amount	Leveling
2024 Exchangeable Notes	\$ 862,500	\$	(27,559)	\$ 834,941	\$ 1,812,975	Level 2
2025 Exchangeable Notes	450,000		(10,609)	439,391	772,412	Level 2
Private Exchangeable Notes	414,311		(136,163)	278,148	1,098,082	Level 2

In addition, as of December 31, 2020, we had recognized a \$19.3 million premium for payment-in-kind interest as additional paid-in capital for the Private Exchangeable Notes. As a result of the extinguishment of the Private Exchangeable Notes, we derecognized the amounts recorded as additional paid-in capital.

The following provides a summary of the interest expense of NCLC's convertible debt instruments (in thousands):

	Three Months Ended June 30, 2021	Six Months Ended June 30, 2021
Coupon interest	18,985	43,125
Amortization of deferred financing fees	2,316	5,209
Total	<u>\$ 21,301</u>	<u>\$ 48,334</u>

Prior to the adoption of ASU 2020-06, interest expense, including amortization of debt discounts and coupon interest, recognized related to the 2024 Exchangeable Notes and Private Exchangeable Notes was \$12.5 million for the three and six months ended June 30, 2020.

The effective interest rate is 7.07% and 5.97% for the 2024 Exchangeable Notes and 2025 Exchangeable Notes, respectively.

As of June 30, 2021, the if-converted value above par was \$82.3 million on available shares of 62.7 million and \$255.8 million on available shares of 24.0 million for the 2024 Exchangeable Notes and the 2025 Exchangeable Notes, respectively.

Debt Repayments

The following are scheduled principal repayments on our long-term debt including finance lease obligations as of June 30, 2021 for each of the following periods (in thousands):

Year	Amount
Remainder of 2021	\$ 18,271
2022	856,689
2023	924,216
2024	5,060,206
2025	1,054,008
Thereafter	4,579,284
Total	<u>\$ 12,492,674</u>

Debt Covenants

We have received certain financial and other debt covenant waivers through December 31, 2022 and added new free liquidity requirements. At June 30, 2021, taking into account such waivers, we were in compliance with all of our debt covenants. If we do not continue to remain in compliance with our covenants, including following the expiration of any

current waivers, we would have to seek additional amendments to our covenants. However, no assurances can be made that such amendments 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.

7. 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 regression analysis for this hedge relationship 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 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, 2021, we had fuel swaps which are used to mitigate the financial impact of volatility of fuel prices pertaining to approximately 366 thousand metric tons of our projected fuel purchases, maturing through December 31, 2023.

On January 1, 2021, our fuel swaps designated as hedges for marine gas oil maturing through December 31, 2021 were dedesignated as cash flow hedges. As of June 30, 2021, we had, in aggregate with previously dedesignated fuel swaps, approximately 206 thousand metric tons which were not designated as cash flow hedges maturing through December 31, 2022.

As of June 30, 2021, we had foreign currency forward contracts, matured foreign currency options and matured foreign currency collars 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 foreign currency forward contracts was €1.8 billion, or \$2.1 billion based on the euro/U.S. dollar exchange rate as of June 30, 2021.

As of June 30, 2021, we had interest rate swaps and collars, which are used to hedge our exposure to interest rate movements and manage our interest expense. The notional amount of our outstanding debt associated with the interest rate swaps and collars was \$0.6 billion as of June 30, 2021.

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, 2021	December 31, 2020	June 30, 2021	December 31, 2020
Derivative Contracts Designated as Hedging Instruments				
Fuel contracts				
Prepaid expenses and other assets	\$ 6,921	\$ —	\$ —	\$ —
Other long-term assets	17,054	—	—	—
Accrued expenses and other liabilities	—	—	—	35,973
Other long-term liabilities	—	—	—	28,947
Foreign currency contracts				
Prepaid expenses and other assets	1,702	5,779	—	—
Other long-term assets	25,389	43,250	—	—
Accrued expenses and other liabilities	—	—	74,084	14,778
Other long-term liabilities	2,466	6,821	30,563	44,938
Interest rate contracts				
Accrued expenses and other liabilities	—	—	2,919	6,776
Other long-term liabilities	—	—	—	452
Total derivatives designated as hedging instruments	\$ 53,532	\$ 55,850	\$ 107,566	\$ 131,864
Derivative Contracts Not Designated as Hedging Instruments				
Fuel contracts				
Prepaid expenses and other assets	\$ 6,206	\$ —	\$ 1,284	\$ —
Other long-term assets	2,452	—	—	—
Accrued expenses and other liabilities	—	546	—	6,732
Other long-term liabilities	—	—	—	3,534
Total derivatives not designated as hedging instruments	\$ 8,658	\$ 546	\$ 1,284	\$ 10,266
Total derivatives	\$ 62,190	\$ 56,396	\$ 108,850	\$ 142,130

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 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
June 30, 2021					
Assets	\$ 59,724	\$ (1,284)	\$ 58,440	\$ (27,091)	\$ 31,349
Liabilities	107,566	(2,466)	105,100	(94,781)	10,319
December 31, 2020					
Assets	\$ 49,029	\$ —	\$ 49,029	\$ (49,029)	\$ —
Liabilities	142,130	(7,367)	134,763	(57,351)	77,412

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, 2021	June 30, 2020		June 30, 2021	June 30, 2020
Fuel contracts	\$ 25,456	\$ 27,769	Fuel	\$ (8,652)	\$ (13,878)
Fuel contracts	—	—	Other income (expense), net	(1,538)	(11,964)
Foreign currency contracts	19,281	27,694	Depreciation and amortization	(1,266)	(1,266)
Interest rate contracts	(63)	(985)	Interest expense, net	(2,086)	(1,674)
Total gain (loss) recognized in other comprehensive loss	\$ 44,674	\$ 54,478		\$ (13,542)	\$ (28,782)

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, 2021	June 30, 2020		June 30, 2021	June 30, 2020
Fuel contracts	\$ 49,506	\$ (170,708)	Fuel	\$ (16,823)	\$ (20,095)
Fuel contracts	—	—	Other income (expense), net	(11,728)	(26,284)
Foreign currency contracts	(78,160)	(70,193)	Depreciation and amortization	(2,533)	(2,395)
Interest rate contracts	291	(10,481)	Interest expense, net	(4,296)	(2,007)
Total gain (loss) recognized in other comprehensive loss	\$ (28,363)	\$ (251,382)		\$ (35,380)	\$ (50,781)

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

	Three Months Ended June 30, 2021				Three Months Ended June 30, 2020			
	Fuel	Depreciation and Amortization	Interest Expense, net	Other Income (Expense), net	Fuel	Depreciation and Amortization	Interest Expense, net	Other Income (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	\$ 54,090	\$ 174,262	\$ 137,259	\$ 25,501	\$ 48,992	\$ 179,252	\$ 114,537	\$ (14,418)
Amount of gain (loss) reclassified from accumulated other comprehensive income (loss) into income (expense)								
Fuel contracts	(8,652)	—	—	—	(13,878)	—	—	—
Foreign currency contracts	—	(1,266)	—	—	—	(1,266)	—	—
Interest rate contracts	—	—	(2,086)	—	—	—	(1,674)	—
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	—	—	—	(1,538)	—	—	—	(11,964)

	Six Months Ended June 30, 2021				Six Months Ended June 30, 2020			
	Fuel	Depreciation and Amortization	Interest Expense, net	Other Income (Expense), net	Fuel	Depreciation and Amortization	Interest Expense, net	Other Income (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	\$ 96,693	\$ 344,578	\$ 961,700	\$ 52,744	\$ 174,016	\$ 377,449	\$ 183,444	\$ (8,595)
Amount of gain (loss) reclassified from accumulated other comprehensive income (loss) into income (expense)								
Fuel contracts	(16,823)	—	—	—	(20,095)	—	—	—
Foreign currency contracts	—	(2,533)	—	—	—	(2,395)	—	—
Interest rate contracts	—	—	(4,296)	—	—	—	(2,007)	—
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	—	—	—	(11,728)	—	—	—	(26,284)

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,	
		2021	2020	2021	2020
Derivatives not designated as hedging instruments					
Fuel contracts	Other income (expense), net	\$ 17,935	\$ 3,646	\$ 50,107	\$ 3,646

Long-Term Debt

As of June 30, 2021 and December 31, 2020, the fair value of our long-term debt, including the current portion, was \$4.2 billion, which was \$1.8 billion higher and \$2.2 billion higher, 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 as well as the beneficial conversion feature recognized on the Private Exchangeable Notes as of December 31, 2020. 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.

8. Employee Benefits and Compensation Plans

In January 2013, NCLH adopted the 2013 Performance Incentive Plan, which provided for the issuance of up to 5,035,106 of NCLH's ordinary shares pursuant to awards granted under the plan. In May 2016, the plan was amended and restated ("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 may be delivered pursuant to all awards granted under the plan was increased by an additional 12,430,000 shares to a new maximum aggregate limit of 27,465,106 shares. In May 2021, the Restated 2013 Plan was further amended and restated to increase the number of NCLH ordinary shares that may be delivered by 4,910,000 shares to 32,375,106 shares.

Share Option Awards

The following is a summary of option activity under NCLH's Restated 2013 Plan for the six months ended June 30, 2021:

	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, 2021	4,525,207	114,583	208,333	\$ 51.96	\$ 59.43	\$ 59.43	4.42	\$ —
Forfeited and cancelled	(26,833)	—	—	53.62	—	—	—	—
Outstanding as of June 30, 2021	4,498,374	114,583	208,333	51.95	59.43	59.43	3.93	—

Restricted Share Unit Awards

In June 2021, NCLH granted 3.1 million time-based restricted share unit awards to our employees, which primarily vest in substantially equal installments each March 1 over three years. Additionally, in June 2021, NCLH granted 0.7 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 2023 and the satisfaction of an additional time-based vesting requirement that generally requires continued employment through March 1, 2024.

The following is a summary of restricted share unit activity for the six months ended June 30, 2021:

	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, 2021	6,663,925	\$ 30.54	1,565,184	\$ 39.42	50,000	\$ 59.43
Granted	3,124,241	30.92	736,898	40.89	—	—
Vested	(1,743,479)	47.01	(460,969)	56.73	—	—
Forfeited or expired	(131,969)	26.48	—	—	—	—
Non-vested as of June 30, 2021	7,912,718	27.13	1,841,113	35.68	50,000	59.43

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

	Three Months Ended June 30,		Six Months Ended June 30,	
	2021	2020	2021	2020
Payroll and related expense	\$ 4,735	\$ 5,029	\$ 9,700	\$ 9,731
Marketing, general and administrative expense	17,716	17,360	39,352	45,416
Total share-based compensation expense	\$ 22,451	\$ 22,389	\$ 49,052	\$ 55,147

9. Commitments and Contingencies

Ship Construction Contracts

Project Leonardo will introduce an additional six ships, each ranging from approximately 140,000 to 156,300 Gross Tons with approximately 3,215 to 3,550 Berths, with expected delivery dates from 2022 through 2027. 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 orders for two Allura Class Ships to be delivered in 2023 and 2025. Each of the Allura Class Ships 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) have resulted in some delays in expected ship deliveries, and the impacts of COVID-19 could result in additional delays in ship deliveries in the future, which may be prolonged.

The combined contract prices of the nine ships on order for delivery as of June 30, 2021 was approximately €7.6 billion, or \$9.0 billion based on the euro/U.S. dollar exchange rate as of June 30, 2021. We have obtained export credit financing which is expected to fund approximately 80% of the contract price of each ship, 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.

In July 2021, we amended nine credit facilities for our newbuild agreements and increased the combined commitments under such credit facilities by approximately \$770 million to cover owner's supply (generally consists of provisions for the ship), modifications and financing premiums.

Litigation

Class Actions

On March 12, 2020, a class action complaint, Eric Douglas v. Norwegian Cruise Lines, Frank J. Del Rio and Mark A. Kempa, Case No. 1:20-CV-21107, was filed in the United States District Court for the Southern District of Florida, naming the Company, Frank J. Del Rio, the Company's President and Chief Executive Officer, and Mark A. Kempa, the Company's Executive Vice President and Chief Financial Officer, as defendants. Subsequently, two similar class action complaints were also filed in the United States District Court for the Southern District of Florida naming the same defendants. On July 31, 2020, a consolidated amended class action complaint was filed by lead plaintiff's counsel. The complaint asserted claims, purportedly brought on behalf of a class of shareholders, under Sections 10(b) and 20(a) of the Securities Exchange Act of 1934, and Rule 10b-5 promulgated thereunder, and alleged that the Company made false and misleading statements to the market and customers about COVID-19. The complaint sought unspecified damages and an award of costs and expenses, including reasonable attorneys' fees, on behalf of a purported class of purchasers of our ordinary shares between February 20, 2020 and March 10, 2020. On April 10, 2021, the case was dismissed and closed, and the plaintiffs no longer have the right to appeal.

In addition, 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 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 Havana Docks Corporation alleges it holds an interest in the Havana Cruise Port Terminal and the complaint filed by Javier Garcia-Bengochea alleges that he holds an interest in the Port of Santiago, Cuba, 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. The plaintiffs seek all available statutory remedies, including the value of the expropriated property, plus interest, treble damages, attorneys’ fees and costs. On January 7, 2020, the United States District Court for the Southern District of Florida dismissed the claim by Havana Docks Corporation. On April 14, 2020, the district court granted Havana Docks Corporation’s motion to reconsider and vacated its order dismissing the claim, allowing Havana Docks Corporation to file an amended complaint on April 16, 2020. On April 24, 2020, we filed a motion seeking permission to appeal the district court’s order which was subsequently denied. On September 1, 2020, the Court entered an order staying all case deadlines and administratively closed the Garcia-Bengochea matter pending the outcome of the appeal in a related case brought by the same plaintiff. We believe we have meritorious defenses to the claims and intend to vigorously defend these matters. As of June 30, 2021, we are unable to reasonably estimate any potential contingent loss from these matters due to a lack of legal precedent.

Other

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 contingent 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 \$1.2 billion at June 30, 2021 in advance ticket sales 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, 2021, we had a reserve of approximately \$800 million with a credit card processor recognized in accounts receivable, net or other long-term assets. Additionally, we are required to fund all refunds until further notice and 100% of incoming advance ticket sales deposits with this credit card processor will be withheld and are not expected to be released until the credit card processor’s exposure is fully collateralized. As of June 30, 2021, the exposure was approximately \$940 million. The reserve shortfall of approximately \$140 million will decrease as refunds are funded, cruises are provided and amounts withheld by the credit card processor are allocated to the reserve rather than remitted to the Company. We may be required to pledge additional collateral and/or post cash reserves or take other actions that may further reduce our liquidity.

10. Other Income (Expense), Net

For the three and six months ended June 30, 2021, other income (expense), net consisted of income of \$5.5 million and \$52.7 million, respectively, primarily due to gains on fuel swaps not designated as hedges. For the three months ended June 30, 2020, other income (expense), net consisted of an expense of \$14.4 million primarily due to losses from foreign currency exchange and losses on fuel hedges released into earnings as a result of the forecasted transactions no longer being probable. For the six months ended June 30, 2020, other income (expense), net consisted of expense of \$8.6 million primarily due to losses on fuel hedges released into earnings as a result of the forecasted transactions no longer being probable offset by gains from foreign currency exchange.

11. Supplemental Cash Flow Information

For the six months ended June 30, 2021 and 2020, we had non-cash investing activities consisting of changes in accruals related to property and equipment of \$49.1 million and \$7.2 million, respectively.

12. Related Party Disclosures

NCLC, as issuer, NCLH, as guarantor, and U.S. Bank National Association, as trustee, were all parties to an indenture, dated May 28, 2020 (the “Indenture”) related to the Private Exchangeable Notes, which were held by the Private Investor. The terms of the Private Exchangeable Notes are more fully described under Note 6 — “Long-Term Debt”. Based on the initial exchange rate for the Private Exchangeable Notes, the Private Investor beneficially owned approximately 10% of NCLH’s outstanding ordinary shares as of December 31, 2020. The initial exchange rate for the Private Exchangeable Notes could have been adjusted in the event of certain make-whole fundamental changes or tax redemption events (each, as described in the Indenture), but the maximum number of NCLH ordinary shares issuable upon an exchange in the event of such an adjustment would not have exceeded 46,577,947. The Private Exchangeable Notes also contained certain anti-dilution provisions that could have subjected the exchange rate to additional adjustment if certain events had occurred.

NCLH, NCLC and the Private Investor also entered into an investor rights agreement, dated May 28, 2020 (the “Investor Rights Agreement”), which provided that, among other things, the Private Investor was entitled to nominate one person for appointment to the board of directors of NCLH until the first date on which the Private Investor no longer beneficially owned in the aggregate at least 50% of the number of NCLH’s ordinary shares issuable upon exchange of the Private Exchangeable Notes beneficially owned by the Private Investor in the aggregate as of May 28, 2020 (subject to certain adjustments).

The Investor Rights Agreement also provided for customary registration rights for the Private Investor and its affiliates, including demand and piggyback registration rights, contained customary transfer restrictions and provided that the Private Investor and its affiliates were subject to a voting agreement with respect to certain matters during a specified period of time.

In a privately negotiated transaction among NCLH, NCLC and the Private Investor, NCLC agreed to repurchase all of the outstanding Private Exchangeable Notes for an aggregate repurchase price of approximately \$1.0 billion (the “Repurchase”). On March 9, 2021, in connection with the settlement of the Repurchase, the trustee cancelled the aggregate principal amount outstanding under the Private Exchangeable Notes and confirmed that NCLC had satisfied and discharged its obligations under the Indenture. In connection with the Repurchase, we and the Private Investor agreed to terminate the Investor Rights Agreement effective upon the consummation of the Repurchase. Notwithstanding the termination, we and the Private Investor agreed that certain provisions related to indemnification and expense reimbursement would survive in accordance with their terms.

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 suspension of certain cruise voyages, our ability to weather the impacts of the COVID-19 pandemic, our expectations regarding the resumption of cruise voyages and the timing for such resumption of cruise voyages, the implementation of and effectiveness of our health and safety protocols, operational position, demand for voyages, 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:

- the spread of epidemics, pandemics and viral outbreaks and specifically, the COVID-19 pandemic, including its effect on the ability or desire of people to travel (including on cruises), which are expected to continue to adversely impact our results, operations, outlook, plans, goals, growth, reputation, cash flows, liquidity, demand for voyages and share price;
- our ability to comply with the CDC’s Conditional Order and any additional or future regulatory restrictions on our operations and to otherwise develop enhanced health and safety protocols to adapt to the pandemic’s unique challenges once operations resume and to otherwise safely resume our operations when conditions allow;
- legislation prohibiting companies from verifying vaccination status;
- coordination and cooperation with the CDC, the federal government and global public health authorities to take precautions to protect the health, safety and security of guests, crew and the communities visited and the implementation of any such precautions;
- our ability to work with lenders and others or otherwise pursue options to defer, renegotiate or refinance 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, which may not be available on favorable terms, or at all, and may be dilutive to existing shareholders;
- our indebtedness and restrictions in the agreements governing our indebtedness that require us to maintain minimum levels of liquidity and otherwise limit our flexibility in operating our business, including the significant portion of assets that are collateral under these agreements;
- the accuracy of any appraisals of our assets as a result of the impact of the COVID-19 pandemic or otherwise;
- our success in reducing operating expenses and capital expenditures and the impact of any such reductions;

- our guests' election to take cash refunds in lieu of future cruise credits or the continuation of any trends relating to such election;
- trends in, or changes to, future bookings and our ability to take future reservations and receive deposits related thereto;
- the unavailability of ports of call;
- future increases in the price of, or major changes or reduction in, commercial airline services;
- adverse events impacting the security of travel, such as terrorist acts, armed conflict and threats thereof, acts of piracy, and other international events;
- adverse incidents involving cruise ships;
- adverse general economic and related factors, such as fluctuating or increasing levels of 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;
- any further impairment of our trademarks, trade names or goodwill;
- 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;
- fluctuations in foreign currency exchange rates;
- overcapacity in key markets or globally;
- our expansion into and investments in new markets;
- 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;
- our inability to recruit or retain qualified personnel or the loss of key personnel or employee relations issues;
- our reliance on third parties to provide hotel management services for certain ships and certain other services;
- our inability to keep pace with developments in technology;

- changes involving the tax and environmental regulatory regimes in which we operate; and
- other factors set forth under “Risk Factors” herein and in our Annual Report on Form 10-K for the year ended December 31, 2020, filed with the SEC on February 26, 2021 (“Annual Report on Form 10-K”).

Additionally, many of these risks and uncertainties are currently amplified by and will continue to be amplified by, or in the future may be amplified by, the COVID-19 pandemic. It is not possible to predict or identify all such risks. There may be additional risks that we consider immaterial or which are unknown.

The above examples are not exhaustive and new risks emerge from time to time. 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 Net Cruise Cost, Adjusted Net Cruise Cost Excluding Fuel, Adjusted EBITDA, Adjusted Net 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:

- *Acquisition of Prestige*. In November 2014, we acquired Prestige in a cash and stock transaction for total consideration of \$3.025 billion, including the assumption of debt.
- *Adjusted EBITDA*. EBITDA adjusted for other income (expense), net and other supplemental adjustments.
- *Adjusted EPS*. Adjusted Net Loss divided by the number of diluted weighted-average shares outstanding.
- *Adjusted Net Cruise Cost Excluding Fuel*. Net Cruise Cost Excluding Fuel adjusted for supplemental adjustments.
- *Adjusted Net Loss*. Net loss adjusted for supplemental adjustments.
- *Allura Class Ships*. Oceania Cruises’ two ships on order.
- *Berths*. Double occupancy capacity per cabin (single occupancy per studio cabin) even though many cabins can accommodate three or more passengers.
- *Breakaway Plus Class Ships*. Norwegian Escape, Norwegian Joy, Norwegian Bliss and Norwegian Encore.
- *Capacity Days*. Available Berths multiplied by the number of cruise days for the period.
- *CDC*. The U.S. Centers for Disease Control and Prevention.
- *Conditional Order*. The CDC’s Framework for Conditional Sailing Order issued on October 30, 2020 that introduced a phased approach for the resumption of passenger cruises. These phases include: a) the establishment of laboratory testing of crew onboard cruise ships in U.S. waters; b) simulated voyages designed to test a cruise ship operator’s ability to mitigate COVID-19 on cruise ships; c) a certification process; and d) a

return to passenger voyages in a manner that mitigates the risk of COVID-19 introduction, transmission or spread among passenger and crew onboard ships and ashore to communities. The Conditional Order replaced the CDC's previously issued No Sail Order that expired on October 31, 2020 and will remain in effect until the earlier of a) the expiration of the Secretary of Health and Human Services' declaration that COVID-19 constitutes a public health emergency, b) the CDC Director's rescission or modification of the Conditional Order based on specific public health or other considerations, or c) November 1, 2021. Effective as of July 23, 2021, for cruise ships arriving in, within, or departing from a port in Florida, the Conditional Order only persists as a non-binding recommendation.

- *Constant Currency*. A calculation whereby foreign currency-denominated revenue and expenses in a period are converted at the U.S. dollar exchange rate of a comparable period to eliminate the effects of foreign exchange fluctuations.
- *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*. Loss per share.
- *Explorer Class Ships*. Regent's Seven Seas Explorer, Seven Seas Splendor, and an additional ship on order.
- *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.
- *Jewel Credit Facility*. The Credit Agreement, dated as of May 15, 2019 (as amended by Amendment No. 1 to the Credit Agreement, dated as of May 1, 2020, and as further amended by Amendment No. 2 to the Credit Agreement dated as of January 29, 2021), among NCLC, as borrower, the lenders party thereto, Bank of America, N.A., as administrative agent and collateral agent, Bank of America, N.A., Truist Bank (formerly known as Branch Banking and Trust Company), Fifth Third Bank and Mizuho Bank, Ltd., as joint bookrunners and arrangers, and Bank of America, N.A., Truist Bank (formerly known as Branch Banking and Trust Company), Fifth Third Bank and Mizuho Bank, Ltd., as co-documentation agents, providing for a \$260.0 million senior secured credit facility.
- *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.
- *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.
- *Pride of America Credit Facility*. The Credit Agreement, dated as of January 10, 2019 (as amended by Amendment No. 1 to the Credit Agreement, dated as of April 28, 2020, and as further amended by Amendment No. 2 to the Credit Agreement, dated as of January 29, 2021), among NCLC, as borrower, the lenders party

thereto, Nordea Bank Abp, New York Branch, as administrative agent and collateral agent, and Nordea Bank Abp, New York Branch, Mizuho Bank, Ltd., MUFG Bank, Ltd., and Skandinaviska Enskilda Banken AB (Publ), as joint bookrunners, arrangers and co-documentation agents, providing for a \$230.0 million senior secured credit facility.

- *Project Leonardo*. The next generation of ships for our Norwegian brand.
- *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 and March 25, 2021, 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 \$1.5 billion as of June 30, 2021.

Non-GAAP Financial Measures

We use certain non-GAAP financial measures, such as Net Cruise Cost, Adjusted Net Cruise Cost Excluding Fuel, Adjusted EBITDA, Adjusted Net 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 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 Net Cruise Cost and Adjusted Net Cruise Cost Excluding Fuel to be the most relevant indicators of our performance. As a result of our voluntary suspension of sailings from March 2020 through June 2021, we did not have any Capacity Days during the suspension period. Accordingly, we have not presented herein per Capacity Day data for the three or six months ended June 30, 2021 or June 30, 2020.

As our business includes the sourcing of passengers and deployment of vessels outside of the U.S., a portion of our revenue and expenses are denominated in foreign currencies, particularly British pound, Canadian dollar, Euro and Australian dollar which are subject to fluctuations in currency exchange rates versus our reporting currency, the U.S. dollar. In order to monitor results excluding these fluctuations, we calculate certain non-GAAP measures on a Constant Currency basis, whereby current period revenue and expenses denominated in foreign currencies are converted to U.S. dollars using currency exchange rates of the comparable period. We believe that presenting these non-GAAP measures on both a reported and Constant Currency basis is useful in providing a more comprehensive view of trends in our business.

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. 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 Loss and Adjusted EPS are non-GAAP financial measures that exclude certain amounts and are used to supplement GAAP net loss and EPS. We use Adjusted Net 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 Loss and Adjusted EPS may not be indicative of future adjustments or results. For example, for the six months ended June 30, 2020, we incurred \$1.6 billion related to impairment losses. We included this as an adjustment in the reconciliation of Adjusted Net Loss since the expenses are not representative of our day-to-day operations; however, this adjustment did not occur and is not included in the comparative period presented within this Form 10-Q.

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. Passenger ticket revenue primarily consists of revenue for accommodations, meals in certain restaurants on the ship, certain onboard entertainment, 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 gaming, beverage sales, shore excursions, specialty dining, retail sales, spa services and photo 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 agent commissions, air and land transportation expenses, related credit card fees, certain port expenses 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. The cost of crew repatriation, including charters, housing, testing and other costs related to COVID-19 are also included.
- 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.

Update Regarding COVID-19 Pandemic

Suspension of Cruise Voyages

Due to the continued spread of COVID-19, ongoing travel restrictions and limited access to ports around the world, in March 2020, we implemented a voluntary suspension of all cruise voyages across our three brands. The Company has announced its phased relaunch plans for all 28 ships across its three brands which began with Norwegian Jade on July 25, 2021 and continues through April 1, 2022. The first cruise to commence in the U.S. was on August 7, 2021 with Norwegian Encore sailing to Alaska from Seattle. The Company expects to have approximately 40% of capacity operating by September 30, 2021 and approximately 75% by December 31, 2021 with the full fleet expected to be back in operation by April 1, 2022. Certain sailings have been or may be cancelled in conjunction with the new voyage resumption plans for each vessel. As a result of the unprecedented circumstances caused by the pandemic, we are not able to predict the full impact of the pandemic on our Company. Refer to “Item 1A. Risk Factors” for further details regarding the significant impact the COVID-19 pandemic has had, and is expected to continue to have, on our financial condition and operations.

Preparation for the Safe Resumption of Operations

We have developed SailSAFE™, a comprehensive and multi-faceted health and safety strategy to enhance our already rigorous protocols and address the unique public health challenges posed by COVID-19. In July 2020, we announced a collaboration with Royal Caribbean Group to form a group of experts called the “Healthy Sail Panel” to guide the industry in the development of new and enhanced cruise health and safety standards. The panel is co-chaired by Dr. Scott Gottlieb, former commissioner of the U.S. Food and Drug Administration, and Governor Mike Leavitt, former Secretary of the U.S. Department of Health and Human Services, and consists of globally recognized experts from various disciplines, including public health, infectious disease, biosecurity, hospitality and maritime operations. On September 21, 2020, the expert panel published a report, which included detailed best practices across five key areas of focus to protect the public health and safety of guests, crew and the communities where our cruise ships visit. The panel also submitted its recommendations to the CDC, in response to a CDC request for public comment to inform future public health guidance and preventative measures relating to travel on cruise ships. The panel’s recommendations have informed new detailed health and safety protocols for our return-to-service plan.

The Company also further extended its depth and breadth of experts with the formation of its SailSAFE Global Health and Wellness Council, comprised of six experts at the forefront of their fields and led by Chairman Dr. Scott Gottlieb. The Council’s work complements the Healthy Sail Panel initiative and focuses on the implementation, compliance with and continuous improvement of health and safety protocols across the Company’s operations. The Company continues to work with its expert advisors, the Healthy Sail Panel, and global public health authorities and government agencies to refine its comprehensive and multi-layered health and safety strategy to enhance its already rigorous health and safety standards in response to COVID-19.

Pursuant to the Conditional Order, the CDC has issued and may continue to issue additional requirements through technical instructions or orders as needed and the phases of the Conditional Order may be subject to change based on public health considerations, including the trajectory of the pandemic and the ability of cruise ship operators to successfully employ measures that mitigate the risk of COVID-19. We have received conditional sailing certificates for

certain ships and are in the process of seeking certifications for the remaining ships in our fleet that will be operating out of the U.S. Additionally, in the U.S., certain states have enacted legislation prohibiting companies from verifying the vaccination status of guests. We challenged such a prohibition in Florida in court and received a preliminary injunction allowing us to operate as planned. As a result of these and other regulatory requirements and other logistical challenges, the timeline for our ability to return our entire fleet to cruises both in and outside of the U.S. is fluid. Nevertheless, we continue to work with other federal agencies, public health authorities and national and local governments in areas where we operate to take all necessary measures to protect our guests, crew and the communities visited as we begin to resume operations.

We began a phased relaunch of cruise voyages in July 2021. Initially, ship occupancy will be limited to generally between 60% to 80% of capacity. During the first two months of a ship's return to service, occupancy is expected to be incrementally increased until the ship reaches full capacity. By the end of 2021, we are planning for all ships to be ready to sail at full capacity. We plan to continue gradually launching ships from each brand through April 1, 2022. Refer to "Item 1A. Risk Factors" for further details regarding the uncertainties of returning to sailing at full fleet capacity.

Modified Policies

Our brands have launched new cancellation policies for certain sailings booked during certain time periods to permit our guests to cancel cruises which were not part of our temporary suspension of voyages up to 15 days prior to embarkation and receive a refund in the form of a credit to be applied toward a future cruise. These programs are currently in place for cruises booked through specific time periods specified by brand, and for cruises scheduled to embark through October 31, 2021. Certain cruises booked for certain periods, will be permitted a 60-day cancellation window for refunds. The future cruise credits issued under these programs are valid for any sailing through December 31, 2022, and we may extend the length of time these future cruise credits may be redeemed. The use of such credits may prevent us from garnering certain future cash collections as staterooms booked by guests with such credits will not be available for sale, resulting in less cash collected from bookings to new guests. We may incur incremental commission expense for the use of these future cruise credits. In addition, to provide more flexibility to our guests, we have also extended our modified final payment schedule for all voyages on Regent Seven Seas Cruises through September 30, 2021, on Oceania Cruises through October 31, 2021 and for specified future voyages, and for the majority of voyages on Norwegian Cruise Line through March 31, 2022, which now requires payment 60 days prior to embarkation versus the standard 120 days. Our brands currently expect to provide cash refunds for cash bookings for future sailings we may cancel.

Update on Bookings

Bookings continue to be strong for future periods despite reduced sales and marketing investments and a travel agency industry that has not been at full strength since the start of the pandemic. 2022 booking and pricing trends continue to be very positive driven by strong pent-up demand. The Company is experiencing robust future demand across all brands with the overall cumulative booked position for full year 2022 meaningfully ahead of 2019's record levels at higher pricing even when including the dilutive impact of future cruise credits. Our operations may be suspended beyond our announced suspensions and as a result, current booking data may not be informative. In addition, because of our updated cancellation policies, bookings may not be representative of actual cruise revenues.

There are remaining uncertainties about when our full fleet will be back in service at historical occupancy levels and, accordingly, we cannot estimate the impact on our business, financial condition or near- or longer-term financial or operational results with certainty; however, we will report a net loss for the three months ending September 30, 2021 and expect to report a net loss until we are able to resume regular voyages, including for the year ending December 31, 2021. Refer to "Item 1A. Risk Factors" for further details regarding the significant impact the COVID-19 pandemic has had, and is expected to continue to have, on our financial condition and operations.

Financing Transactions and Cost Containment Measures

In 2021, we have continued to take actions to bolster our financial condition while our global cruise voyages are disrupted. In March 2021, we received additional financing through various debt financings and an equity offering.

collectively totaling \$2.7 billion in gross proceeds. From the proceeds, approximately \$1.5 billion was used to extinguish debt. Refer to Note 6 – “Long-Term Debt” for further details about the above transactions.

We undertook several proactive cost reduction and cash conservation measures to mitigate the financial and operational impacts of the COVID-19 pandemic, including the reduction of capital expenditures and deferral of debt amortization as well as a reduction in operating expenses, including ship operating expenses and selling, general and administrative expenses. Cost savings initiatives to reduce selling, general and administrative expenses, which had already been implemented at the beginning of 2021, included the significant reduction or deferral of marketing expenditures, the implementation of hiring freezes, a 20% salary or hours reduction for certain shoreside team members, a pause in our 401(k) matching contributions, corporate travel freezes for shoreside employees, and employee furloughs. Some of these cost savings initiatives have been discontinued as we begin our resumption of cruise voyages.

See “—Liquidity and Capital Resources” below for more information.

Quarterly Overview

Three months ended June 30, 2021 (“2021”) compared to three months ended June 30, 2020 (“2020”)

- Total revenue decreased 74.2% to \$4.4 million compared to \$16.9 million.
- Net loss and diluted EPS were \$(717.8) million and \$(1.94), respectively, compared to \$(715.2) million and \$(2.99), respectively.
- Operating loss was \$(605.1) million compared to \$(595.4) million.
- Adjusted Net Loss and Adjusted EPS were \$(714.7) million and \$(1.93), respectively, in 2021, which included \$3.1 million of net adjustments. Adjusted Net Loss and Adjusted EPS were \$(666.4) million and \$(2.78), respectively, in 2020, which included \$48.8 million of adjustments primarily consisting of share-based compensation and losses on extinguishment and modifications of debt.
- Adjusted EBITDA decreased 3.7% to \$(407.5) million compared to \$(393.1) million.

We refer you to our “Results of Operations” below for a calculation of Adjusted Net 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,	
	2021	2020	2021	2020
Passengers carried	—	—	—	499,729
Passenger Cruise Days	—	—	—	4,278,602
Capacity Days	—	—	—	4,123,858
Occupancy Percentage				103.8 %

Gross Cruise Cost, Net Cruise Cost, Net Cruise Cost Excluding Fuel and Adjusted Net Cruise Cost Excluding Fuel were calculated as follows (in thousands):

	Three Months Ended June 30,			Six Months Ended June 30,		
	2021			2021		
	2021	Constant Currency	2020	2021	Constant Currency	2020
Total cruise operating expense	\$ 249,727	\$ 246,884	\$ 301,652	\$ 450,582	\$ 446,491	\$ 1,295,912
Marketing, general and administrative expense	185,483	183,823	131,436	388,678	385,327	402,125
Gross Cruise Cost	435,210	430,707	433,088	839,260	831,818	1,698,037
Less:						
Commissions, transportation and other expense	6,564	6,374	34,601	15,597	15,355	366,969
Onboard and other expense	1,276	1,276	3,188	2,535	2,535	78,161
Net Cruise Cost	427,370	423,057	395,299	821,128	813,928	1,252,907
Less: Fuel expense	54,090	54,090	48,992	96,693	96,693	174,016
Net Cruise Cost Excluding Fuel	373,280	368,967	346,307	724,435	717,235	1,078,891
Less Non-GAAP Adjustments:						
Non-cash deferred compensation (1)	905	905	666	1,810	1,810	1,332
Non-cash share-based compensation (2)	22,451	22,451	22,389	49,052	49,052	55,147
Adjusted Net Cruise Cost Excluding Fuel	\$ 349,924	\$ 345,611	\$ 323,252	\$ 673,573	\$ 666,373	\$ 1,022,412

- (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.

Adjusted Net 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,	
	2021	2020	2021	2020
Net loss	\$ (717,789)	\$ (715,243)	\$ (2,087,981)	\$ (2,596,215)
Non-GAAP Adjustments:				
Non-cash deferred compensation (1)	1,004	992	2,007	1,983
Non-cash share-based compensation (2)	22,451	22,389	49,052	55,147
Extinguishment and modification of debt (3)	(20,355)	21,159	653,664	21,159
Amortization of intangible assets (4)	—	2,773	—	5,547
Impairment loss (5)	—	175	—	1,633,337
Non-cash interest on beneficial conversion feature (6)	—	1,344	—	1,344
Adjusted Net Loss	<u>\$ (714,689)</u>	<u>\$ (666,411)</u>	<u>\$ (1,383,258)</u>	<u>\$ (877,698)</u>
Diluted weighted-average shares outstanding - Net loss and Adjusted Net Loss	<u>369,933,159</u>	<u>239,342,745</u>	<u>349,767,216</u>	<u>226,486,772</u>
Diluted loss per share	<u>\$ (1.94)</u>	<u>\$ (2.99)</u>	<u>\$ (5.97)</u>	<u>\$ (11.46)</u>
Adjusted EPS	<u>\$ (1.93)</u>	<u>\$ (2.78)</u>	<u>\$ (3.95)</u>	<u>\$ (3.88)</u>

- (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.
- (4) Amortization of intangible assets related to the Acquisition of Prestige, which are included in depreciation and amortization expense.
- (5) Impairment loss consists of goodwill, trade name and property and equipment impairments. The impairments of goodwill and trade names are included in impairment loss and the impairment of property and equipment is included in depreciation and amortization expense.
- (6) Non-cash interest expense related to a beneficial conversion feature recognized on our exchangeable notes, which is recognized in interest expense, net.

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

	Three Months Ended June 30,		Six Months Ended June 30,	
	2021	2020	2021	2020
Net loss	\$ (717,789)	\$ (715,243)	\$ (2,087,981)	\$ (2,596,215)
Interest expense, net	137,259	114,537	961,700	183,444
Income tax (benefit) expense	927	(9,123)	2,655	(15,296)
Depreciation and amortization expense	174,262	179,252	344,578	377,449
EBITDA	<u>(405,341)</u>	<u>(430,577)</u>	<u>(779,048)</u>	<u>(2,050,618)</u>
Other (income) expense, net (1)	(25,501)	14,418	(52,744)	8,595
Other Non-GAAP Adjustments:				
Non-cash deferred compensation (2)	905	666	1,810	1,332
Non-cash share-based compensation (3)	22,451	22,389	49,052	55,147
Impairment loss (4)	—	—	—	1,607,797
Adjusted EBITDA	<u>\$ (407,486)</u>	<u>\$ (393,104)</u>	<u>\$ (780,930)</u>	<u>\$ (377,747)</u>

- (1) Primarily consists of gains and losses, net for fuel swaps not designated as hedges or hedges released into earnings as a result of the forecasted transactions no longer being probable and foreign currency exchanges.
- (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.
- (4) Impairment loss consists of goodwill and trade name impairments.

Three months ended June 30, 2021 (“2021”) compared to three months ended June 30, 2020 (“2020”)

Revenue

Total revenue decreased 74.2% to \$4.4 million in 2021 compared to \$16.9 million in 2020. In 2021 and 2020, our total revenue was insignificant. The adverse impact on revenue was due to the cancellation of sailings beginning March 13, 2020 as a result of the COVID-19 pandemic.

Expense

Total cruise operating expense decreased 17.2% in 2021 compared to 2020. In 2021, our cruise operating expenses were primarily related to crew costs, including salaries, food and other travel costs; fuel; and other ongoing costs such as insurance and ship maintenance. Additionally, in 2020, our cruise operating expenses were increased due to costs associated with the suspension of cruise voyages, including the cost of crew repatriation and the continued payment of protected commissions. Gross Cruise Cost increased 0.5% in 2021 compared to 2020 primarily related to the decrease in costs described above offset by an increase in marketing, general and administrative expenses as we prepare to return to sailing. Total other operating expense increased 15.8% in 2021 compared to 2020 primarily due to the increase in marketing, general and administrative costs as a result of increased advertising costs as well as an increase in salaries and benefits as we return to a more normalized cost structure.

Interest expense, net was \$137.3 million in 2021 compared to \$114.5 million in 2020. The increase in interest expense reflects additional debt outstanding at higher interest rates, partially offset by lower LIBOR. Also, included in 2020 were losses on extinguishment of debt and debt modification costs of \$21.2 million.

Other income (expense), net was income of \$25.5 million in 2021 compared to expense of \$14.4 million in 2020. In 2021, the income primarily related to gains on fuel swaps not designated as hedges. In 2020, the expense was primarily related to losses on foreign currency exchange and losses on fuel hedges released into earnings as a result of the forecasted transactions no longer being probable.

Six months ended June 30, 2021 (“2021”) compared to six months ended June 30, 2020 (“2020”)

Revenue

Total revenue decreased 99.4% to \$7.5 million in 2021 compared to \$1.3 billion in 2020. In 2020, voyages were cancelled beginning March 13, 2020. In 2021, our total revenue was insignificant. The adverse impact on revenue was due to the cancellation of sailings in 2021 as a result of the COVID-19 pandemic.

Expense

Total cruise operating expense decreased 65.2% in 2021 compared to 2020. In 2021, our cruise operating expenses were primarily related to crew costs, including salaries, food and other travel costs; fuel; and other ongoing costs such as insurance and ship maintenance. In 2020, our cruise operating expenses subsequent to the suspension of cruise voyages on March 13, 2020 primarily included the cost of protected commissions and crew costs, including salaries, food and other repatriation costs. Gross Cruise Cost decreased 50.6% in 2021 compared to 2020 primarily related to the change in costs described above in addition to a decrease in marketing, general and administrative expenses from cost savings initiatives in connection with the COVID-19 pandemic and as described under “Update Regarding COVID-19 Pandemic—Financing Transactions and Cost Containment Measures.” Total other operating expense decreased 69.3% in 2021 compared to 2020 primarily due to the impairment of goodwill and trade names triggered by the COVID-19 pandemic in 2020. Depreciation and amortization expense decreased primarily due to a \$25.5 million impairment loss recognized in 2020.

Interest expense, net was \$961.7 million in 2021 compared to \$183.4 million in 2020. The increase in interest expense reflects losses on extinguishment of debt and debt modification costs of \$653.7 million primarily related to the repurchase of the Private Exchangeable Notes as well as additional debt outstanding at higher interest rates, partially offset by lower LIBOR.

Other income (expense), net was income of \$52.7 million in 2021 compared to expense of \$8.6 million in 2020. In 2021, the income primarily related to gains on fuel swaps not designated as hedges. In 2020, the expense was primarily related to losses on fuel hedges released into earnings as a result of the forecasted transactions no longer being probable offset by gains from foreign currency exchange.

Liquidity and Capital Resources

General

As of June 30, 2021, our liquidity was \$2.8 billion consisting of cash and cash equivalents.

In January 2021, we amended our Senior Secured Credit Facility to further defer certain amortization payments due prior to June 30, 2022 and to waive certain financial and other covenants through December 31, 2022. In connection with such amendment, our minimum liquidity requirement was increased to \$200 million and such requirement applies through December 31, 2022.

In addition, in February 2021, we amended certain of our export-credit backed facilities to defer amortization payments aggregating approximately \$680 million through March 31, 2022. We also amended all of our export-credit backed facilities to provide that, from the effective date of the amendments to and including December 31, 2022, certain of the financial covenants under such facilities will be suspended and the free liquidity test will be replaced by a covenant to maintain at least \$200 million in free liquidity. The amendments also made certain other changes to the facilities, including imposing further restrictions on NCLC’s ability to incur debt, create security, issue equity and make dividends and other distributions.

In March 2021, the Company received additional financing through various debt financings and an equity offering, collectively totaling \$2.7 billion in gross proceeds. The Pride of America Credit Facility and Jewel Credit Facility were extinguished from proceeds of the debt financings. We also extinguished the Private Exchangeable Notes in March

2021 by using approximately \$1.0 billion of cash proceeds from an equity offering completed in March 2021 to repurchase the notes. See Note 6 – “Long-Term Debt” for further information.

In July 2021, we amended nine credit facilities for our newbuild agreements and increased the combined commitments under such credit facilities by approximately \$770 million to cover owner’s supply (generally consists of provisions for the ship), modifications and financing premiums.

The Company has also undertaken several proactive cost reduction and cash conservation measures to mitigate the financial and operational impacts of the COVID-19 pandemic, through the reduction of capital expenditures and operating expenses, including food, fuel, insurance, port charges and reduced crew manning of vessels during the suspension, resulting in lower crew payroll expense. See “Update Regarding COVID-19 Pandemic—Financing Transactions and Cost Containment Measures” above for further information.

The Company's monthly average cash burn for the second quarter 2021 was approximately \$200 million, higher than prior guidance of approximately \$190 million and above the prior quarter, as it prepared for a return to service this summer. Return to service expenses are primarily related to repositioning, provisioning and staffing of vessels, implementing new health and safety protocols and a measured ramp up of demand generating marketing investments. Looking ahead, we expect third quarter 2021 monthly average cash burn to increase to approximately \$285 million driven by the continued phased relaunch of additional vessels.

Cash burn rates include ongoing ship operating expenses, administrative operating expenses, interest expense, taxes, debt deferral fees and expected non-newbuild capital expenditures and exclude cash refunds of customer deposits as well as cash inflows from new and existing bookings, newbuild related capital expenditures and other working capital changes. Future cash burn rate estimates also exclude unforeseen expenses. The second quarter 2021 cash burn rate and third quarter estimate also reflect the deferral of debt amortization and newbuild related payments.

We continue to expect a gradual phased relaunch of our ships, with our ships initially operating at reduced occupancy levels as described in “Update Regarding COVID-19 Pandemic—Preparation for the Safe Resumption of Operations.” Refer to “Item 1A. Risk Factors” for further details regarding the significant impact the COVID-19 pandemic has had, and is expected to continue to have, on our financial condition and operations. 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 and management’s plan.

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 unknown magnitude and duration of the COVID-19 global pandemic. 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 twelve months. Nonetheless, we anticipate that we will need additional equity and/or debt financing to fund our operations in the future if we are unable to resume our cruise voyages on the schedule expected, and particularly if a substantial portion of our fleet continues to have suspended cruise voyages for a prolonged period.

We have received certain financial and other debt covenant waivers through December 31, 2022 and added new free liquidity requirements. At June 30, 2021, taking into account such waivers, 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 to amend the covenants. However, no assurances can be made that such amendments 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.

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 \$1.5 billion Term Loan A Facility to BB-, our issue-level rating on our \$675 million 2024 Senior Secured Notes and \$750 million 2026 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 significant capacity to incur additional indebtedness under our debt agreements. On May 20, 2021, NCLH's shareholders authorized a 490,000,000 increase in the number of ordinary shares available for issuance. 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, 2021, we had advance ticket sales of \$1.4 billion, including the long-term portion, which included approximately \$0.8 billion of future cruise credits. We also have agreements with our credit card processors that, as of June 30, 2021, governed approximately \$1.2 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, 2021, we had a reserve of approximately \$800 million with a credit card processor recognized in accounts receivable, net or other long-term assets. Additionally, we are required to fund all refunds until further notice and 100% of incoming advance ticket sales deposits with this credit card processor will be withheld and are not expected to be released until the credit card processor's exposure is fully collateralized. As of June 30, 2021, the exposure was approximately \$940 million. The reserve shortfall of approximately \$140 million will decrease as refunds are funded, cruises are provided and amounts withheld by the credit card processor are allocated to the reserve rather than remitted to the Company. We may be required to pledge additional collateral and/or post cash reserves or take other actions that may further reduce our liquidity.

Sources and Uses of Cash

In this section, references to "2021" refer to the six months ended June 30, 2021 and references to "2020" refer to the six months ended June 30, 2020.

Net cash used in operating activities was \$1.5 billion in 2021 as compared to net cash used in operating activities of \$1.3 billion in 2020. The net cash used in operating activities included timing differences in cash receipts and payments relating to operating assets and liabilities. Advance ticket sales increased by \$191.6 million in 2021 compared to a decrease of \$844.2 million in 2020 while our accounts receivable, net and prepaid expenses and other assets, which contain our reserves with credit card processors, decreased cash by \$408.1 million and \$242.6 million, respectively, compared to a decrease of \$2.1 million and \$115.1 million, respectively, in 2020.

Net cash used in investing activities was \$315.2 million in 2021 and \$751.6 million in 2020, primarily related to newbuild payments in 2021 and payments for Seven Seas Splendor and ship improvement projects in 2020.

Net cash provided by financing activities was \$1.2 billion in 2021 primarily due to the proceeds of \$2.7 billion from our various note and equity offerings partially offset by debt repayments and a related redemption premium associated with extinguishment of the Private Exchangeable Notes. Net cash provided by financing activities was \$4.1 billion in 2020 primarily due to the proceeds of \$4.0 billion from our revolving credit facilities, various notes, and newbuild loans partially offset by debt repayments. Additionally, we received net proceeds of \$441.9 million from an equity offering.

Future Capital Commitments

Future capital commitments consist of contracted commitments, including ship construction contracts. Anticipated expenditures related to ship construction contracts were \$0.3 billion for the remainder of 2021 and \$1.6 billion and \$2.5 billion for the years ending December 31, 2022 and 2023, respectively. The Company has export credit financing in place for the anticipated expenditures related to ship construction contracts of \$0.2 billion for the remainder of 2021 and \$1.0 billion and \$2.0 billion for the years ending December 31, 2022 and 2023, respectively. Future expected capital expenditures will significantly increase our depreciation and amortization expense.

Project Leonardo will introduce an additional six ships, each ranging from approximately 140,000 to 156,300 Gross Tons with approximately 3,215 to 3,550 Berths, with expected delivery dates from 2022 through 2027. 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 orders for two Allura Class Ships to be delivered in 2023 and 2025. Each of the Allura Class Ships 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) have resulted in some delays in expected ship deliveries, and the impacts of COVID-19 could result in additional delays in ship deliveries in the future, which may be prolonged.

The combined contract prices of the nine ships on order for delivery was approximately €7.6 billion, or \$9.0 billion based on the euro/U.S. dollar exchange rate as of June 30, 2021. We have obtained export credit financing which is expected to fund approximately 80% of the contract price of each ship, 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, 2021 and 2020 was \$9.9 million and \$5.6 million, respectively, and for the six months ended June 30, 2021 and 2020 was \$18.0 million and \$11.3 million, respectively, primarily associated with the construction of our newbuild ships.

Off-Balance Sheet Arrangements

None.

Contractual Obligations

As of June 30, 2021, our contractual obligations with initial or remaining terms in excess of one year, including interest payments on long-term debt obligations, included the following (in thousands):

	Total	Less than 1 year	1-3 years	3-5 years	More than 5 years
Long-term debt (1)	\$ 12,492,674	\$ 361,189	\$ 5,559,953	\$ 4,448,294	\$ 2,123,238
Operating leases (2)	225,414	29,674	63,837	62,971	68,932
Ship construction contracts (3)	8,749,304	221,170	3,888,840	2,826,579	1,812,715
Port facilities (4)	2,031,604	72,203	142,445	139,686	1,677,270
Interest (5)	2,429,143	565,867	1,042,441	578,552	242,283
Other (6)	1,028,162	279,624	437,996	307,960	2,582
Total	\$ 26,956,301	\$ 1,529,727	\$ 11,135,512	\$ 8,364,042	\$ 5,927,020

- (1) Long-term debt excludes discounts, premiums, and deferred financing fees, which are a direct addition or deduction from the carrying value of the related debt liability in the consolidated balance sheets.
- (2) Operating leases are primarily for port facilities and offices.
- (3) Ship construction contracts are for our newbuild ships based on the euro/U.S. dollar exchange rate as of June 30, 2021. Export credit financing is in place from syndicates of banks. Approximately \$196.2 million of the ship construction contracts due in less than one year are financed under export credit or other newbuild related financing.
- (4) Port facilities represent our usage of certain port facilities. Our port facilities agreements include force majeure provisions that may alleviate an unspecified amount of obligations under minimum guarantees during the COVID-19 pandemic. In March 2020, the Company provided the required notice that such provisions were being enacted. Customary practice is to prorate these obligations for the annual period impacted. A portion of our port fees may be waived as a result of these provisions, including those ports that are presented within operating leases in the table above.
- (5) Interest includes fixed and variable rates with LIBOR held constant as of June 30, 2021.
- (6) Other includes future commitments for service, maintenance and other business enhancement capital expenditures contracts. Certain contracts contain provisions which provide for reduced obligations in the case of a ship(s) removed from operations. As a result, we may only be required to cover reasonable costs during the time period whereby our operations have temporarily been suspended. These reasonable costs are subject to ongoing negotiations.

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 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.

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 and restrict our ability to pay dividends. Substantially all of our ships and other property and equipment are pledged as collateral for certain of our debt. We have received certain financial and other debt covenant waivers through December 31, 2022 and added new free liquidity requirements. At June 30, 2021, taking into account such waivers, we were in compliance with all of our debt covenants.

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.

In light of the measures described under "Update Regarding COVID-19 Pandemic—Financing Transactions and Cost Containment Measures", we believe our cash on hand, 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. Certain debt covenant waivers were received in 2021 to enable the Company to maintain this compliance. Refer to "—Liquidity and Capital Resources" for further information regarding the debt covenant waivers. There is no assurance that cash flows from operations and additional financings will be available in the future to fund our future obligations. Furthermore, we anticipate that we will need additional equity and/or debt financing to fund our operations in the future if we are unable to resume our cruise voyages on the schedule expected, and particularly if a substantial portion of our fleet continues to have suspended cruise voyages for a prolonged period.

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, 2021, we had interest rate swap and collar agreements to hedge our exposure to interest rate movements and to manage our interest expense. As of June 30, 2021, 76% of our debt was fixed and 24% was variable, which includes the effects of the interest rate swaps and collars. The notional amount of outstanding debt associated with the interest rate derivative agreements as of June 30, 2021 was \$0.6 billion. As of December 31, 2020, 74% of our debt was fixed and 26% was variable, which includes the effects of the interest rate swaps. The notional amount of our outstanding debt associated with the interest rate swap agreements was \$0.7 billion as of December 31, 2020. The change in our fixed rate percentage from December 31, 2020 to June 30, 2021 was primarily due to the addition of fixed rate debt, which was partially used to repay variable rate debt. Based on our June 30, 2021 outstanding variable rate debt balance, a one percentage point increase in annual LIBOR interest rates would increase our annual interest expense by approximately \$30.4 million excluding the effects of capitalization of interest.

Foreign Currency Exchange Rate Risk

As of June 30, 2021, 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 €5.5 billion, or \$6.5 billion based on the euro/U.S. dollar exchange rate as of June 30, 2021. As of December 31, 2020, the payments not hedged aggregated €5.0 billion, or \$6.1 billion, based on the euro/U.S. dollar exchange rate as of December 31, 2020. The change from December 31, 2020 to June 30, 2021 was due to modifications of our ship construction contracts. We estimate that a 10% change in the euro as of June 30, 2021 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 21.7% and 16.2% for the three months ended June 30, 2021 and 2020, respectively, and 21.5% and 13.4% for the six months ended June 30, 2021 and 2020, respectively. We use fuel derivative agreements to mitigate the financial impact of fluctuations in fuel prices and as of June 30, 2021, excluding fuel swaps for transactions that are no longer probable of occurrence, we had hedged approximately 43%, 37% and 14% of our remaining 2021, 2022 and 2023 projected metric tons of fuel purchases, respectively. As of December 31, 2020, we had hedged approximately 59%, 37% and 15% of our 2021, 2022 and 2023 projected metric tons of fuel purchases, respectively. The percentage of fuel purchases hedged changed between December 31, 2020 and June 30, 2021 primarily due to changes in forecasted purchases and the termination of certain fuel swaps.

We estimate that a 10% increase in our weighted-average fuel price would increase our anticipated 2021 fuel expense by \$15.1 million. This increase would be offset by an increase in the fair value of all our fuel swap agreements of \$7.6 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, 2021. 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, 2021 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, 2021 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

See the section titled “Litigation” in “Item 1—Financial Statements—Notes to Consolidated Financial Statements—Note 9 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 wish to 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. COVID-19 has 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.

Other than updates to the risk factors set forth below, there have been no material changes in our risk factors from those disclosed in our Annual Report on Form 10-K.

COVID-19 has had, and is expected to continue to have, a significant impact on our financial condition and operations. The current, and uncertain future, impact of the COVID-19 pandemic, including its effect on the ability or desire of people to travel (including on cruises), is expected to continue to impact our results, operations, outlook, plans, goals, growth, reputation, cash flows, liquidity, demand for voyages and share price.

The spread of COVID-19 and the developments surrounding the global pandemic are having significant negative impacts on all aspects of our business. In March 2020, we implemented a voluntary suspension of all cruise voyages across our three brands, which was subsequently extended through June 2021. We began resuming cruises voyages in July 2021 on a limited basis. We expect the remaining ships in our fleet will continue incrementally resuming voyage operations through April 1, 2022, but due to the uncertainties surrounding the COVID-19 pandemic, it may take us longer than expected to return our entire fleet to cruise voyage operations and/or the suspension could potentially be reinstated after we have begun sailing, and the total length of time the majority of our fleet is out of cruise voyage operations may be prolonged. In addition, we have been, and will continue to be, further negatively impacted by related developments, including heightened governmental regulations and travel advisories, including recommendations and orders by the U.S. Department of State, the CDC and the Department of Homeland Security, and travel bans and restrictions, each of which has impacted, and is expected to continue to significantly impact, global guest sourcing and our access to various ports of call around the globe. On October 30, 2020, the CDC issued a Conditional Order that introduces a phased approach for the resumption of passenger cruises in the U.S. depending on a cruise line’s ability to implement certain protocols and procedures. We have received conditional sailing certificates for certain ships and are in the process of seeking certifications for the remaining ships in our fleet that will be operating out of the U.S., but our ability to comply with the Conditional Order in the future is unknown. As a result of these and other regulatory requirements and other logistical challenges, the timeline for our ability to return our entire fleet to cruises both in and outside of the U.S. is fluid. Additionally, in the U.S., certain states have enacted legislation prohibiting companies from verifying the vaccination status of guests, which in some instances we have challenged in court. Compliance with the Conditional Order and other regulations may involve significant costs and could create significant uncertainties about our ability to continue to operate our cruise voyages in the U.S. We will continue to incur COVID-19 related costs as we implement additional health-related protocols on our ships, such as controlled capacity and testing, which may have a significant effect on our operations. In addition, the industry will be subject to enhanced health and safety requirements which may be costly and take a significant amount of time to implement across our fleet. There is no guarantee that the health and safety protocols we implement will be successful in preventing the spread of COVID-19 onboard our ships and among our passengers and crew.

To date, the COVID-19 pandemic has resulted in significant costs and lost revenue as a result of the suspension of cruise voyages, implementation of additional health and safety measures, reduced demand for cruise vacations, guest compensation, itinerary modifications, redeployments and cancellations, travel restrictions and advisories, the unavailability of ports and/or destinations, costs to return our passengers to their home destinations and expenses to transport our crew to and from our ships and to assist some of our crew that were unable to return home in an optimal time frame with food and housing.

Our ability to transport crew to and from our ships is dependent on a number of factors, including the ability to transport crew members to and from their home countries due to the limited number of commercial flights and charter options available, and governmental restrictions and regulations with respect to disembarking crew members and travel generally. Additionally, our policy that crew members must be fully vaccinated may create logistical challenges due to potential limitations on vaccine supplies, logistical complexities relating to vaccinating crew members who reside in different countries around the world and vaccine hesitancy. Such restrictions on crew travel and challenges in making sure our crew members have been vaccinated could impact our ability to staff our ships as operations continue to resume.

Between March 12, 2020 and April 30, 2020, three class action lawsuits were filed against us under Sections 10(b) and 20(a) of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), and Rule 10b-5 promulgated thereunder, alleging that we made false and misleading statements to the market and customers about COVID-19, which were combined and later dismissed in April 2021. In addition, in March 2020 the Florida Attorney General announced an investigation related to our marketing during the COVID-19 pandemic. Following the announcement of the investigation by the Florida Attorney General, we received notifications from other attorneys general and governmental agencies that they are conducting similar investigations. We may be the subject of additional lawsuits and investigations stemming from COVID-19. We cannot predict the number or outcome of any such proceedings and the impact that they will have on our financial results, but any such impact may be material.

We have nine newbuilds on order, scheduled to be delivered through 2027. The impacts of COVID-19 on the shipyards where our ships are under construction or will be constructed, have resulted in some delays in expected ship deliveries, and the impacts of COVID-19 could result in additional delays in ship deliveries in the future, which may be prolonged.

Due to the unknown duration and extent of the COVID-19 pandemic, travel restrictions, bans and advisories, uncertainties around our ability to comply with the Conditional Order and or any additional or future regulatory restrictions on our operations, the potential unavailability of ports and/or destinations, unknown cancellations and timing of redeployments and a general impact on consumer sentiment regarding cruise travel, there are continuing uncertainties about when our full fleet will be back in service at historical occupancy levels. Moreover, demand for cruises may remain weak for a significant length of time and we cannot predict if and when each brand will return to pre-pandemic demand or pricing levels. Due to the discretionary nature of leisure travel spending and the competitive nature of the cruise industry, our revenues are heavily influenced by the condition of the U.S. economy and economies in other regions of the world. Unfavorable conditions in these broader economies have resulted, and may result in the future, in decreased demand for cruise vacations, changes in booking practices and related reactions by our competitors, all of which in turn have had, and may continue to have in the future, a strong negative effect on our business. In particular, our bookings may be negatively impacted by enhanced health and safety protocols, including vaccination requirements, concerns that cruises are susceptible to the spread of infectious diseases as well as adverse changes in the perceived or actual economic climate, including higher unemployment rates, declines in income levels and loss of personal wealth resulting from the impact of COVID-19. The ongoing COVID-19 pandemic and associated decline in economic activity and increase in unemployment levels are expected to have a severe and prolonged effect on the global economy generally and, in turn, is expected to depress demand for cruise vacations into the foreseeable future. Due to the uncertainty surrounding the duration and severity of this pandemic, we can provide no assurance as to when and at what pace demand for cruise vacations will return to pre-pandemic levels, if at all. Accordingly, we cannot predict the full impact of COVID-19 on our business, financial condition and results of operations. In addition, we cannot predict the impact COVID-19 will have on our partners, such as travel agencies, suppliers and other vendors. We may be adversely impacted by any adverse impact our partners suffer.

As a result of these unprecedented circumstances we are not able to predict the full impact of the COVID-19 pandemic on our Company. In particular, we cannot predict the impact on our financial performance and our cash flows required for cash refunds of fares for cancelled sailings as a result of the effects of the COVID-19 pandemic and the public's concern regarding the health and safety of travel, including by cruise ship, and related decreases in demand for travel and cruising. Depending on the timing for bringing our full fleet back in service and number of cancellations, we may be required to provide cash refunds for a substantial portion of the balance of our advanced ticket sales.

Moreover, our ability to attract and retain guests and crew depends, in part, upon the perception and reputation of our Company and our brands and the public's concerns regarding the health and safety of travel generally, as well as regarding the cruise industry and our ships. Actual or perceived risk of infection could have an adverse effect on the public's perception of the Company, which could harm our reputation and business. Additionally, some of our protocols, such as our requirement that all guests and crew must be vaccinated for our initial voyages, may attract negative publicity.

As a result of the impacts of COVID-19, provisions in our credit card processing and other commercial agreements have and may continue to adversely affect our liquidity. We have agreements with several credit card companies to process the sale of tickets and provide other services. Under these agreements, the credit card companies could, under certain circumstances and upon written notice, require us to maintain a reserve, which reserve would be funded by the credit card companies withholding or offsetting our credit card receivables, or our posting of cash or other collateral. As a result of the impacts of COVID-19, we have seen an increase in demand from consumers for refunds on their tickets, and we anticipate this will continue to be the case for the near future. As of June 30, 2021, we had a reserve of approximately \$800 million with a credit card processor recognized in accounts receivable, net or other long-term assets. Additionally, we are required to fund all refunds until further notice and 100% of incoming advance ticket sales deposits with this credit card processor will be withheld and are not expected to be released until the credit card processor's exposure is fully collateralized. As of June 30, 2021, the exposure was approximately \$940 million. The reserve shortfall of approximately \$140 million will decrease as refunds are funded, cruises are provided and amounts withheld by the credit card processor are allocated to the reserve rather than remitted to the Company. We may be required to pledge additional collateral and/or post cash reserves or take other actions that may further reduce our liquidity. As a consequence, our financial position and liquidity could be further materially impacted.

As a result of all of the foregoing, we will report a net loss for the three months ending September 30, 2021 and expect to report a net loss until we are able to resume regular voyages, including for the year ending December 31, 2021. Our ability to forecast our cash inflows and additional capital needs is hampered, and we could be required to raise additional capital in the future. Our access to and cost of financing will depend on, among other things, global economic conditions, conditions in the global financing markets, the availability of sufficient amounts of financing, the terms and conditions of our existing debt agreements and any agreements governing future indebtedness, our prospects and our credit ratings. 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 \$1.5 billion Term Loan A Facility to BB-, our issue-level rating on our \$675 million 2024 Senior Secured Notes and \$750 million 2026 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. Accordingly, 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.

The agreements governing our indebtedness contain, and any instruments governing future indebtedness of ours may contain, covenants that impose significant operating and financial restrictions on us, including restrictions or prohibitions on our ability to, among other things: incur or guarantee additional debt or issue certain preference shares; pay dividends on or make distributions in respect of our share capital or make other restricted payments, including the ability of our subsidiaries to pay dividends or make distributions to us; repurchase or redeem capital stock or subordinated indebtedness; make certain investments or acquisitions; transfer, sell or create liens on certain assets; and consolidate or merge with, or sell or otherwise dispose of all or substantially all of our assets to other companies. As a result of these covenants, we are limited in the manner in which we conduct our business, and we may be unable to engage in favorable

business activities or finance future operations or capital needs. The terms of any instruments governing future indebtedness may also require us to provide incremental collateral, which may further restrict our business operations.

In addition, the COVID-19 pandemic has significantly increased economic and demand uncertainty. The current pandemic and continued spread of COVID-19 has caused a global recession, which could have a further adverse impact on our financial condition and operations, and this impact could exist for an extended period of time.

The extent of the effects of the pandemic on our business and the cruise industry at large is highly uncertain and will ultimately depend on future developments, many of which are outside of our control, including, but not limited to, the duration, spread, severity and any recurrence of the pandemic, the severity and transmission rates of new more contagious and/or vaccine-resistant variants of COVID-19, the availability, distribution, rate of public acceptance and efficacy of vaccines and therapeutics for COVID-19, the duration and scope of related federal, state and local government orders and restrictions, the extent of the impact of COVID-19 on overall demand for cruise vacations and the length of time it takes for demand and pricing to return and normal economic and operating conditions to resume, all of which are highly uncertain and cannot be predicted. COVID-19 has also had the effect of heightening many of the other risks described herein, 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.

Additionally, epidemics, pandemics and viral outbreaks or other wide-ranging health scares in the future would likely also adversely affect our business, financial condition and results of operations.

Item 6. Exhibits

- 3.1 [Memorandum of Increase of Share Capital of Norwegian Cruise Line Holdings Ltd. \(incorporated herein by reference to Exhibit 3.1 to Norwegian Cruise Line Holdings Ltd.'s Form 8-K filed on May 21, 2021 \(File No. 001-35784\)\)](#)
- 10.1* [Amendment and Restatement Agreement, dated as of June 17, 2021, but effective as of July 5, 2021, 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., KfW IPEX-Bank GmbH, 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#](#)
- 10.2* [Amendment and Restatement Agreement, dated as of June 17, 2021, but effective as of July 5, 2021, 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#](#)
- 10.3* [Amendment and Restatement Agreement, dated as of June 17, 2021, but effective as of July 6, 2021, 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#](#)
- 10.4* [Amendment and Restatement Agreement, dated as of June 17, 2021, but effective as of July 6, 2021, 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#](#)
- 10.5* [Amendment and Restatement Agreement, dated as of June 17, 2021, but effective as of July 5, 2021, 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](#)

- 10.6* [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#](#)
[Amendment and Restatement Agreement, dated as of June 17, 2021, but effective as of July 5, 2021, 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#](#)
- 10.7* [Amendment and Restatement Agreement, dated as of June 17, 2021, but effective as of July 5, 2021, 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#](#)
- 10.8* [Amendment and Restatement Agreement, dated as of June 17, 2021, but effective as of July 5, 2021, 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#](#)
- 10.9* [Amendment and Restatement Agreement, dated as of June 17, 2021, but effective as of July 5, 2021, 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#](#)
- 10.10* [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 May 21, 2021 \(File No. 001-35784\)\)†](#)
- 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, 2021, formatted in Inline XBRL:
- (i) the Consolidated Statements of Operations for the three and six months ended June 30, 2021 and 2020;
 - (ii) the Consolidated Statements of Comprehensive Loss for the three and six months ended June 30, 2021 and 2020;
 - (iii) the Consolidated Balance Sheets as of June 30, 2021 and December 31, 2020;
 - (iv) the Consolidated Statements of Cash Flows for the six months ended June 30, 2021 and 2020;
 - (v) the Consolidated Statements of Changes in Shareholders' Equity for the three and six months ended June 30, 2021 and 2020; 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, 2021, formatted in Inline XBRL and included in the interactive data files submitted as Exhibit 101.

* Filed herewith.

** Furnished herewith.

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

† Management contract or compensatory plan.

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/ FRANK J. DEL RIO
Name: Frank J. Del Rio
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 9, 2021

[*]: 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 17 June 2021

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 and restated by an amendment and restatement agreement dated 21 November 2017, as amended by a supplemental agreement dated 4 June 2020 and as amended and restated by an amendment and restatement agreement dated 17 February 2021)

in respect of the part financing of the 3,300 passenger cruise ship newbuilding presently designated as Hull No. [*] at Fincantieri S.p.A

WATSON FARLEY
&
WILLIAMS

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Appendices

[Form of Amended and Restated Facility Agreement \(marked to indicate amendments\)](#)

THIS AGREEMENT is made on 17 June 2021

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.** 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** 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** Palmengartenstraße, 5-9 60325, Frankfurt, Germany and **CASSA DEPOSITI E PRESTITI S.P.A.** Via Goito, 4 – 00185, Roma, Italy as mandated lead arrangers (the "**Mandated Lead Arrangers**")
- (7) **CRÉDIT AGRICOLE CORPORATE AND INVESTMENT BANK** 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** 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**") and amended and restated pursuant to an amendment and restatement agreement dated 17 February 2021 (the "**February 2021 Amendment and Restatement Agreement** ") pursuant to which the parties agreed to the temporary suspension 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, providing 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 and (iii) financing an amount to be applied towards the Tranche B Premium.

OPERATIVE PROVISIONS

1 DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Agreement:

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

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

"**Facility Agreement** " means the Original Facility Agreement, as amended by the 2020 Amendment Agreement and as amended and restated by the February 2021 Amendment and Restatement Agreement.

"**June 2021 Fee Letters**" means any letter between the Agent and any Obligor which sets out the fees payable in connection with the arrangements contemplated by this Agreement.

"**June 2021 Finance Documents**" means this Agreement, each June 2021 Fee Letter and the Supplemental Pre-delivery Security.

"**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.

"**Seventh Addendum**" means a seventh addendum to the Original Shipbuilding Contract, entered into in order to include the option of a new allowance of two hundred and thirty-two million Euros (€232,000,000) for Upsize Allowance in the Original Shipbuilding Contract.

"**Shipbuilding Contract**" means a shipbuilding contract dated 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, 10 April 2017 and as amended by the Sixth Addendum and the Seventh Addendum.

"**Supplemental Pre-delivery Security**" means a deed to be entered into pursuant to this Agreement between the Borrower and the Security Trustee, supplemental to the Pre-delivery Security, creating security over the Pre-delivery Contracts.

"**Total Tranche B Commitments**" means the aggregate of the Tranche B Commitments (as set out in further detail in Part B of Schedule 1 (*The Tranche B Lenders*)), being two hundred fifty-eight million, seven hundred forty-four thousand, four hundred forty-four Dollars and forty-four Cents (\$258,744,444.44) as at the date of this Agreement.

"**Total Tranche C Commitments**" means the aggregate of the Tranche C Commitments (as set out in further detail in Part C of Schedule 1 (*The Tranche C Lenders*)), being sixteen million, eight hundred and sixty thousand, one hundred and fifty-six Dollars and thirty-two Cents (\$16,860,156.32) as at the date of this Agreement.

"**Tranche B Premium**" means an additional premium to be paid by the Borrower to SACE through the SACE Agent regarding the financing of the Upsize Allowance and, with effect from the Effective Date, as further defined in paragraph (a) of clause 8.6 (*Tranche B Premium*) of the Amended and Restated Facility Agreement.

"**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.

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 AND CONDITIONS SUBSEQUENT

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 Within the time periods set out in Schedule 3 (*Conditions Subsequent*), the Agent shall have received (or on the instructions of all the Lenders, waived receipt of) all of the documents and other evidence listed therein in form and substance satisfactory to the Agent.

2.3 Upon fulfilment or waiver of the conditions set out in Clause 2.1 above, the Agent shall provide the Borrower and the Creditor Parties, SACE and SIMEST with a copy of the executed certificate in the form set out in Schedule 4 (*Form of Effective Date Certificate*) confirming that the Effective Date has occurred and such certificate shall be binding on all Parties.

- 2.4 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, 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, 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 Confirmation of Guarantee

With effect on and from the Effective Date 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 original terms and the amendments to the Finance Documents as amended, restated and/or supplemented by this Agreement.

4.3 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.

4.4 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) the Facility Agreement and the applicable provisions of this Agreement will be read and construed as one document; and
- (c) 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

- 6.1 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.
- 6.2 The Borrower shall pay to each of (i) the Agent for its own account and (ii) the Agent (for the account of each Lender) such fees in the amount and at the times specified in the relevant June 2021 Fee Letters.

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.

EXECUTION PAGES

BORROWER

SIGNED by) /s/ Daniel S. Farkas
duly authorised) Daniel Farkas
for and on behalf of)
LEONARDO ONE, LTD.)

GUARANTOR

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

SHAREHOLDER

SIGNED by) /s/ Daniel S. Farkas
for and on behalf of) Daniel Farkas
NCL INTERNATIONAL, LTD.)
as its duly appointed attorney-in-fact)
in the presence of:) /s/ Jared G. Silberhorn
) Jared G. Silberhorn
) 7665 Corporate Center Drive
) Miami, FL 33126 USA
)

HOLDING

SIGNED by) /s/ Daniel S. Farkas
for and on behalf of) Daniel Farkas
NORWEGIAN CRUISE LINE)
HOLDINGS LTD.)
as its duly appointed attorney-in-fact)
in the presence of:) /s/ Jared G. Silberhorn
) Jared G. Silberhorn
) 7665 Corporate Center Drive
) Miami, FL 33126 USA
)

LENDERS

SIGNED by) /s/ Cosmo Fisher
duly authorised) Cosmo Fisher
for and on behalf of) Attorney-in-Fact
CRÉDIT AGRICOLE CORPORATE)
AND INVESTMENT BANK)

SIGNED by) /s/ Bruno Cloquet
duly authorised) Bruno Cloquet
for and on behalf of) Global Head of Exporters and ECAs Originations
BNP PARIBAS FORTIS S.A./N.V)
) /s/ Michel Froidebise
) Michel Froidebise
) Head of Export Finance Nordic Origination

SIGNED by) /s/ Maria Gazi
duly authorised) Maria Gazi
for and on behalf of) Attorney-in-Fact
KFW IPEX-BANK GMBH)

SIGNED by) /s/ Alessandro Mazzi
duly authorised) Alessandro Mazzi
for and on behalf of) MD — Head of Export and Asset Finance, Italy
HSBC CONTINENTAL EUROPE, ITALY)

SIGNED by) /s/ Enrico Semprebene
duly authorised) Enrico Semprebene
for and on behalf of)
CASSA DEPOSITI E PRESTITI S.P.A.)

MANDATED LEAD ARRANGERS

SIGNED by) /s/ Cosmo Fisher
duly authorised) Cosmo Fisher
for and on behalf of) Attorney-in-Fact
CRÉDIT AGRICOLE CORPORATE)
AND INVESTMENT BANK)

SIGNED by) /s/ Bruno Cloquet
duly authorised) Bruno Cloquet
for and on behalf of) Global Head of Exporters and ECAs Origination
BNP PARIBAS FORTIS S.A./N.V)
) /s/ Michel Froidebise
) Michel Froidebise
) Head of Export Finance Nordic Origination

SIGNED by) /s/ Varsha Sharan
duly authorised)
for and on behalf of) Varsha Sharan
HSBC BANK PLC) Director

SIGNED by) /s/ Maria Gazi
duly authorised)
for and on behalf of) Maria Gazi
KFW IPEX-BANK GMBH) Attorney-in-Fact

SIGNED by) /s/ Enrico Semprebene
duly authorised)
for and on behalf of) Enrico Semprebene
CASSA DEPOSITI E PRESTITI S.P.A.)

AGENT

SIGNED by) /s/ Cosmo Fisher
duly authorised)
for and on behalf of) Cosmo Fisher
CRÉDIT AGRICOLE CORPORATE AND)
INVESTMENT BANK) Attorney-in-Fact

SACE AGENT

SIGNED by) /s/ Cosmo Fisher
duly authorised)
for and on behalf of) Cosmo Fisher
CRÉDIT AGRICOLE CORPORATE AND)
INVESTMENT BANK) Attorney-in-Fact

SECURITY TRUSTEE

SIGNED by) /s/ Cosmo Fisher
duly authorised)
for and on behalf of) Cosmo Fisher
CRÉDIT AGRICOLE CORPORATE AND)
INVESTMENT BANK) Attorney-in-Fact

APPENDIX

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 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 ~~pursuant to~~ by an amendment and restatement agreement dated _____-February_____ 2021)

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.

WATSON FARLEY
&
WILLIAMS

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EUROPE/67815195v7

THIS AGREEMENT originally made on 12 April 2017 (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 ~~pursuant to by~~ an amendment and restatement agreement dated ~~_____ February _____~~ 2021)

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 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.** 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 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 and 21 November 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 [*], being [*], 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**");
 - (ii) as to [*], being [*], 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 [*], being [*], on the later of keel laying in dry-dock and the date falling 18 months prior to the Intended Delivery Date;
- (iv) as to [*], being [*], on the later of launching and the date falling 12 months prior to the Intended Delivery Date; and
- (v) as to [*], being [*], 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**) ~~(the Original Shipbuilding Contract as amended pursuant to the Sixth Addendum, the "Shipbuilding Contract")~~.
- (G) 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 ([as defined therein](#)), the Secured Parties ~~(as defined below)~~ 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:
 - (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 ~~offered by SACE~~ (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**") ~~-(the Original Facility Agreement as amended pursuant to the 2017 Amending and Restating Agreement and the 2020 Amendment Agreement, the "Facility 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 Facility Agreement [\(as defined below\)](#) for a further period from 1 April 2021 to 31 December 2022 (the "**Second Borrower Request**").
- (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](#) ~~dated _____~~ [\(as amended and restated by the 2017 Amending and Restating Agreement and as amended by the 2020 Amendment Agreement\) 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 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 an amendment and restatement agreement dated _____ June 2021 and made between, amongst others, the Borrower, the 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**").
- (~~N~~ P) This Agreement sets out the terms and conditions of the Facility Agreement as amended and restated by the June 2021 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 G.

"**2020 Amendment Agreement**" has the meaning given to such term in Recital J.

~~"**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.

~~"**2021 Amendment and Restatement Agreement**" has the meaning given to such term in Recital M.~~

"**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.

"**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 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 (*Additional 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 (*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 \(Tranche B Premium\).](#)

[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 \(Additional Premium\), 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.

"**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.

"**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 [*] 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.

"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.

"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).

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

~~the aggregate of the Commitments of all the Lenders)~~ [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 (*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.

"**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.

"**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.

"**Delivery Advance**" means, subject to the provisions of Clause 8.4 *Refund* and paragraphs (e) and (f) of Clause 8.6 (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.

"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.

"**Event of Default**" means any of the events or circumstances described in Clause 18.1 (*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.

"**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 Amendment and Restatement Agreement" has the meaning given to such term in Recital \(M\).](#)

"**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 (*Fees*).

"**Finance Documents**" means:

- (a) the 2017 Amending and Restating Agreement;
- (b) the 2020 Amendment Agreement;
- (c) the [February 2021 Amendment and Restatement Agreement](#);
- (d) the ~~Deferral Fee Letters~~ [June 2021 Amendment and Restatement Agreement](#);
- (e) this Agreement;
- (f) any Fee Letter;
- (g) [the Deferral Fee Letters](#);
- (h) [the June 2021 Fee Letters](#);
- (~~g~~) the Guarantee;
- (~~h~~) the Pre-delivery Security;
- (k) [the Supplemental Pre-Delivery Security](#);
- (~~i~~) the General Assignment;
- (~~j~~) the Mortgage;
- (~~k~~) the Post-Delivery Assignment;



- ([f](#)[o](#)) any Subordinated Debt Security;
- ([m](#)[p](#)) the Shares Security Deed;
- ([n](#)[g](#)) the Approved Manager's Undertaking;
- ([e](#)[t](#)) any Transfer Certificate;
- ([p](#)[s](#)) any Compliance Certificate;
- ([d](#)[t](#)) any Drawdown Notice;
- ([r](#)[u](#)) 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
- ([s](#)[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 (*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 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) the applicable Margin;
and
- (b) LIBOR for the relevant
period.

"**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);
- (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 (*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, 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 HM 11, Bermuda.

"Holding" means 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.

"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 ~~3.12~~ 3.13 (No later than sixty (60) days before the Intended Delivery Date) or paragraph (b) of Clause ~~3.14~~ 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*) ~~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 (*Interest Periods*).

"Interpolated Screen Rate" means, in relation to the Loan or any part of the Loan, the rate which results from interpolating on a linear basis between:

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

each as of the Specified Time for Dollars.

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

"**ISPS Code**" means the International Ship and Port Facility Security (ISPS) Code 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 ~~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.~~ Tranche A Lender, a Tranche B Lender or a Tranche C Lender.

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

- (a) the applicable Screen Rate as of the Specified Time for Dollars and for a period equal in length to the Interest Period of the Loan or that part of the Loan; or
- (b) as otherwise determined pursuant to Clause 6.6 (*Unavailability of Screen Rate*).

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

"**Loan**" means the aggregate principal amount outstanding for the time being ~~outstanding under this Agreement 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.

"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.

"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
- (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.

~~**"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 8.15 (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).~~

"**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>).

"**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 8.1SACE 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 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 (*Unavailability of Screen Rate*),

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 (*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 12.14 (*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 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 [*] 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 *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 [*] 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 (*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 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).

"**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:

(i a) if:

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

(B 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.

"**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 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:

- (i a) formally designated, nominated or recommended as the replacement for a Screen Rate by:
 - (A 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
 - (B 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 (B 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 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).

"**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 (*Role of the Agent and the Joint Mandated Lead Arranger*).

"**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 8.8.1 (~~SACE Premium and Italian Authorities~~), ~~in addition to the Additional SACE Premium (provided for the avoidance of doubt, that the Additional SACE Premium shall not be financed)~~.

"**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
- (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 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~~

(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

(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.

"**Second Instalment**" means the second instalment of the SACE Premium as more particularly described in paragraph (b) of Clause 8.1 (*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 19 (*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 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 (*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 (*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 (*Security Value Maintenance*).

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

"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 ~~in~~ [the agreed form](#).

"**Shareholder**" means NCL International Ltd., a Bermuda company with its registered office at Park Place 55, 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 (F 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.

"**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 (*Calculation of Reference Bank Rate*), noon on the Quotation Day.

"**Subordinated Debt Security**" has the meaning given in paragraph (b)(ii) of Clause 12.14 (*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.](#)

"**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).

"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:

- (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 (\$ 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 (\$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 (\$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.

"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 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
- (ii) 100% of the Tranche B Premium to be paid in accordance with paragraph (a) of Clause 8. (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.

"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 (Additional 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.

"**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).

"**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 Arrange", 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.

"**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.

"**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;

"**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 (*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 (*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**

~~(a)~~ The undertakings and covenants given under paragraph (d) of Clause 12.2 (*Information*), Clause 12.4 (*Illicit Payments*), Clause 12.5 (*Prohibited Payments*), Clause 12.25 (*Compliance with laws etc.*) or provisions contained in Clause 20.3 (*Miscellaneous indemnities*) or Clause 21.1 (*Illegality and Sanctions*) and the representations and warranties given under paragraphs (u), (v), (y), (z) and (jj) of Clause 11.2 (*Continuing representations and warranties*) and paragraph (j) of Clause 11.3 (*Representations on the Delivery Data*) 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 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 (*Representations and Warranties*), Clause 12 (*General Undertakings*), Clause 20 (*Indemnities*), Clause 21 (*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

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 ~~the Maximum Loan Amount~~, in aggregate, the Total Tranche A Commitments intended to be applied as follows:

- (~~a~~) (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;
- (~~b~~) (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 8.1 (*SACE Premium*); and
- (~~c~~) (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 8.1 (*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 (*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 (*Additional 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.](#)

2.3 Purpose of Loan

The Borrower undertakes with each Secured Party to use ~~each Advance only to pay for:~~

- (a) [each Advance under Tranche A only to pay for:](#)

- (~~a~~ i) goods and services of Italian origin incorporated in the design, construction or delivery of the Ship;
- (~~b~~ 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;
- (~~c~~ iii) reimbursement to the Borrower of all or part of eighty per cent. (80%) of the First Shipbuilding Contract Instalment;
- (~~d~~ 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 8.1 (*SACE Premium*); and
- (~~e~~ v) the Second Instalment of the SACE Premium payable in accordance with paragraph (b) of Clause 8.1 (*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 \(*Tranche B Premium*\); 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 \(*Additional Premium*\).](#)

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
- (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 Obligor 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 Obligor's 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 Obligor (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 Obligor 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;

- (i) payment of [*] per cent. ([*]%) of the Joint Mandated Lead Arranger structuring fee payable in accordance with paragraph (a)(i) of Clause 9 (*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 6.1 (*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;
- (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

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.

3.8.3.9 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.

3.9.3.10 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

- (a.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;
- (b.ii) as regards any previous Advance, in the event the Refund Guarantee issued in respect of such previous Advance cannot be renewed or extended:
 - (i.A) evidence that an Acceptable Deposit has accordingly been transferred to the Account pursuant to the terms of the Shipbuilding Contract; and
 - (ii.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 required by the Secured Parties in respect of the execution and/or the validity and enforceability of the Account Pledge;

(~~e~~ iii) a copy of the relevant invoice from the Builder in respect of the instalment under the Shipbuilding Contract to which the Advance relates;

(~~e~~ 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)

(~~e~~ 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;](#)

(~~f~~ vi) a copy of a duly executed Qualifying Certificate;

(~~g~~ vii) a certificate confirming that:

(~~i~~ A) the Shipbuilding Contract continues to be in full force and effect; and,

(~~ii~~ 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 ~~;~~

(~~iii~~ 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; ~~and~~

(~~h~~ viii) a certificate of confirmation confirming that:

- (~~i~~A) no default or mandatory prepayment event pursuant to Clause 16 (*Cancellation, Prepayment and Mandatory Prepayment*) is continuing or would result from the proposed Advance;
- (~~ii~~B) the repeating representations and, in relation to the first Advance and first Drawdown Notice, all of the other representations set out in Clause 11 (*Representations and Warranties*) (except the representations to be made on the Delivery Date pursuant to paragraph (b) of Clause 11.1 (*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.

~~3.10~~ **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 (*Fees*).

~~3.11~~ **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.

~~3.12~~ **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 (*Refund*) and in paragraph (f) of Clause 8.6 (*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.

~~3.13~~ **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.

~~3.14~~ **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.

~~3.15~~ **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:

- (~~a~~ i) if applicable, a duly executed original of the Subordinated Debt Security;
- (~~b~~ 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;
- (~~c~~ 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;
- (~~d~~ 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;
- (~~e~~ v) evidence of payment of all amounts which are due and payable hereunder by the Borrower on or prior to the Delivery Date;
- (~~f~~ vi) a certificate from the Borrower, signed by an authorised representative of the Borrower, confirming that the representations and warranties contained in Clause 11 (*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;
- (~~g~~ vii) a certificate of confirmation confirming that:
 - (~~i~~ A) the Shipbuilding Contract continues to be in full force and effect;
 - (~~ii~~ B) no default or mandatory prepayment event pursuant to Clause 16 (*Cancellation, Prepayment and Mandatory Prepayment*) is continuing or would result from the Delivery Advance Advances;

- (~~iii~~ C) the repeating representations as set out in Clause 11 (*Representations and Warranties*) are true; and
 - (~~iv~~ D) the representations to be made on the Delivery Date pursuant to ~~paragraph (b) of~~ Clause ~~11 11.3~~ (*Representations and Warranties on the Delivery Date*) are true;
 - (~~h~~ 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; ~~and~~
- (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 the 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 ~~the advance of the Delivery Advance 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~~).

3.16 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 ~~3.17~~ [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 ~~3.17~~ [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 11.3 (*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 (*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 ~~3.16~~ [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 ~~9 Cloak Lane~~ [107 Cheapside](#), London ~~EC4R 2RU~~, 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.

~~3.17~~ [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 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 (*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*).

3.18 3.19 Notification of satisfaction of conditions precedent

The Agent shall notify the [Tranche A Lenders](#) ~~and SACE~~, [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*).

3.19 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.

3.20 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

(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 **Finance 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 **Finance Creditor** Party of 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).

3.21 3.22 No claim against the **Finance Creditor Parties**

The Borrower agrees that the **Finance Creditor** Parties may act on the instructions of the Italian Authorities in relation to this Agreement.

3.22 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.

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. ~~For the avoidance of doubt, the amount of the Loan shall not exceed the Maximum Loan Amount 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 (Additional 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 Schedule Schedules~~):
- (a) 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) instalments ~~Advances~~ in accordance with Schedule 6 (~~Drawdown Schedule Schedules~~);
 - (b) 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
 - (c) 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~~ (~~Additional Premium~~).
- (g) Payment to the Builder of the amounts drawn under paragraph (a) 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 (e)(i) 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 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 ~~paragraph (a)~~ 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 ~~paragraph (a)~~ 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 (~~b~~ d)(ii), (d)(iii), (e)(ii)) and (~~e~~ 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 (~~a~~ 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 ~~five (5) Advances under this Agreement.~~ :
- (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.
- (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 (*Additional 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
- (~~e~~ iv) the ~~aggregate amount of the~~ Advances under all Tranches cannot exceed ~~the Maximum Loan Amount~~ Total Commitments.
- (~~f~~ j) 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:

- (a) in the case of the amount referred to in paragraph ~~(a 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; ~~and~~
- (b) in the case of an amount referred to in paragraph ~~(b 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 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
- (~~e g~~) in the case of an amount referred to in paragraph ~~(e 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 ~~Contribution~~ 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.

6 INTEREST

6.1 Fixed 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.

6.2 Fixed Interest Rate

If the Borrower has specified a Fixed Interest Rate pursuant to Clause 6.1~~(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.

6.3 Floating Interest Rate

If:

- (a) the Borrower has specified a Floating Interest Rate pursuant to Clause 6.1~~(Fixed or Floating Interest Rate)~~; or
- (b) the Borrower has specified a Fixed Interest Rate pursuant to Clause 6.1~~(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 (*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).

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.

6.5 Notification of Interest Periods and Floating Interest Rate

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.

6.6 Unavailability of Screen Rate

(a) *Interpolated Screen Rate:* If no Screen Rate is available for LIBOR for the Interest Period of the Loan or any part of the Loan, the applicable LIBOR shall be the Interpolated Screen Rate for a period equal in length to the Interest Period of the Loan or that part of the Loan.

(b) *Reference Bank Rate* If no Screen Rate is available for LIBOR for:

- (i) Dollars;
- (ii) the Interest Period of the Loan or any part of the Loan and it is not possible to calculate the Interpolated Screen Rate,

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

(c) *Cost of funds:* If paragraph (b) above applies but no Reference Bank Rate is available for Dollars or the relevant Interest Period there shall be no LIBOR for the Loan or that part of the Loan (as applicable) and Clause 6.9 (*Cost of funds*) shall apply to the Loan or that part of the Loan for that Interest Period.

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.

6.8 Market Disruption

If before close of business in London on the Quotation Day for the relevant Interest Period the Agent receives notification from a Lender or Lenders (whose participations in the Loan or the relevant part of the Loan 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.

6.9 Cost of funds

(a) If this Clause 6.9 (*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 participation in the Loan or that part of the Loan from whatever source it may reasonably select.

(b) If this Clause 6.9 (*Cost of funds*) applies and the Agent or the Borrower so ~~requires~~ require, 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 (*Replacement of Screen Rate*), any substitute or alternative basis agreed pursuant to paragraph (b) above shall, with the prior consent of all the Lenders and the Borrower, be binding on all Parties.

(d) If paragraph (e) below does not apply and any rate notified to the 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 (*Cost of funds*) applies pursuant to Clause 6.8 (*Market disruption*) and:

(i) a Lender's Funding Rate is less than LIBOR;
or

(ii) a Lender does not supply a quotation by the time specified in sub-paragraph (ii) of paragraph (a) above,

the cost to that Lender of funding its participation in the Loan or the relevant part of the Loan for that Interest Period shall be deemed, for the purposes of paragraph (a) above, to be LIBOR.

(f) If this Clause 6.9 (*Cost of funds*) applies but any Lender does not supply a quotation by the time specified in sub-paragraph (ii) of paragraph (a) above, the rate of interest shall be calculated on the basis of the quotations of the remaining Lenders.

6.10 Replacement of Screen Rate

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

(a) providing for the use of a Replacement Benchmark;
and

(b)

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

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

- (c) If, as at 30 September ~~2021~~ [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 ~~the Majority~~ [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 ~~2021~~ [2022](#), unless the Borrower and the Agent (acting on the instructions of ~~the Majority~~ [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.
- (d) If an amendment is required as contemplated in this Clause 6.10 ~~Replacement of Screen Rate~~, 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.

6.11 Notice of prepayment

If no agreement is reached with the Borrower under Clause 6.10 ~~Replacement of Screen Rate~~, the Borrower may give the Agent not less than 15 Business Days', or, if the Fixed Interest Rate has been selected pursuant to Clause 6.1 (*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.

6.12 Prepayment; termination of Commitments

A notice under Clause 6.11 (*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 (*Breakage costs and SIMEST arrangement*)) 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 6.1 (*Fixed or Floating Interest Rate*)).

6.13 Application of prepayment

The provisions of Clause 16 (*Cancellation, Prepayment and Mandatory Prepayment*) shall apply in relation to the prepayment.

6.14 Certain Circumstances

Notwithstanding anything to the contrary in this Agreement:

- (a) in the event of any circumstances falling within Clause 6.8 (*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 (*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 (*Unavailability of Screen Rate*), 6.7 (*Calculation of Reference Bank Rate*), 6.8 (*Market Disruption*), 6.9 (*Cost of funds*) and 6.10 (*Replacement of Screen Rate*) 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 (*Market Disruption*) (the "**Availability-Related Relevant Circumstances**") occurring before the Loan is made and notwithstanding the provisions of Clause 6.6 (*Unavailability of Screen Rate*), 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.

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.
- (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 (*Floating Interest Rate*) shall apply.

7 INTEREST PERIODS

7.1 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.

7.2 Duration of Interest Periods

Subject to Clause 7.3 (*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 ~~Advance~~ Advances.

7.3 Duration of Interest Periods for Repayment Instalments

Any Interest Period that includes a Repayment Date shall expire on such Repayment Date.

8 SACE PREMIUM AND ITALIAN AUTHORITIES

8.1 SACE Premium

The estimated SACE Premium for a maximum amount of[*] (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[*] (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[*] (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.

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 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 8.1 (*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 (~~e~~ 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 (~~e~~ 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 (~~b~~ 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.

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.

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 ~~Schedule 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 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 Advancesunder Tranche A drawn by the Borrower together with the amount notified by the Borrower pursuant to paragraph (a) ~~and (a)(i)~~ above (being the amount set out in Part A of Schedule 6 (Drawdown ~~Schedule 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 [*] 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.

8.5 Additional 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 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 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 8.1 (*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 Additional SACE Premium is not financed.~~

(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 (Additional 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 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 (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 (Additional Premium) and the relevant provision of the SACE Insurance Policy, the SACE Insurance Policy shall prevail.

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
- (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.
- (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.

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 (*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 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 16.1 (*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) [*] payable on the date of the Original Facility Agreement and on or before each anniversary date thereof until the Delivery Date; and
 - (ii) [*] 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.

10 TAXES, INCREASED COSTS, COSTS AND RELATED CHARGES

10.1 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 10.2 (*Tax gross-up*) or a payment under Clause 10.3 (*Tax indemnity*).

- (b) Unless a contrary indication appears, in this Clause 10 (~~Taxes, Increased Costs, Costs and Related Charge~~) reference to "**determines**" or "**determined**" means a determination made in the absolute discretion of the person making the determination.

10.2 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 10.7 (*Lender Status*) at least 30 Business Days prior to such payment date) complied with its obligations under Clause 10.7 (*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.

10.3 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 10.2 (*Tax gross-up*) or would have been compensated for by an increased payment under Clause 10.2 (*Tax gross-up*) but was not so compensated solely because an exclusion in paragraph (d) of Clause 10.2 (*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 (*tax indemnity*), notify the Agent.

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.

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.

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 (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.

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 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.

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.

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 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 becomes a Lender at the date of this Agreement, the date of this Agreement and (ii) where the relevant Lender is a Transferee Lender, the effective date of a Transfer Certificate under Clause 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.
- (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.

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 10.10 (*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 10.3 (*Tax indemnity*) (or would have been compensated for under Clause 10.3 (*Tax indemnity*) but was not compensated solely because any of the exclusions in paragraph (b) of Clause 10.3 (*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 10.10 (*Increased Costs*), a reference to a "Tax Deduction" has the same meaning given to the term in Clause 10.1 (*Definitions*).

- (c) A Lender affected by any provision of this Clause 10.10 (*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 10.10 (*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.

10.11 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 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.

10.12 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.

10.13 SACE

obligations

To the extent that this Clause 10 (~~Taxes, Increased Costs, Costs and Related Charge~~) 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.

11 REPRESENTATIONS AND WARRANTIES

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 (*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 (*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 11.3 (*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.

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;
- (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 11.1 (*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 (*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 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 (*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 10.7 (*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 11.2 (*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;
- (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.

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 (*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;
- (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~~ [Clause 13.2 \(Management and employment\)](#), 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.

12 GENERAL UNDERTAKINGS

12.1 General

The Borrower undertakes with each Secured Party to comply with the following undertakings during the Security Period:

12.2 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;
- (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 12.2 (*Information*) shall be prepared in accordance with GAAP and shall fairly represent the financial condition of the relevant company.

**12.3 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.

**12.4 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.

**12.5 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.

**12.6 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.

**12.7 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.

**12.8 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.

12.9 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 16.3 (*Mandatory prepayment – Sale and Total Loss*) and except for charters and other arrangements complying with Clause 13.1 (*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.

12.10 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.

12.11 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.

12.12 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.

12.13 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.

12.14 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.

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.

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.

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;
- (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.

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 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.

12.18 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 12.15 (*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.

12.19 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.

12.20 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.

12.21 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 ~~paragraph (a)~~ paragraphs (b)(i), (d)(i) and (e)(i) of Clause 4.1 (*Borrower's irrevocable payment instructions*) only), the Agent, SACE and the Lenders.

12.22 "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 [b\)\(iii\)](#) of Clause 12.22 ("*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 12.22 ("*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.

12.23 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
 - (iii) modify ~~the~~ [any](#) Refund Guarantee, once issued, without the prior written consent of the Lenders and the form of ~~the~~ [any](#) Refund Guarantee to be issued will not be materially different from the agreed form Refund Guarantee attached to the Sixth Addendum⁷ 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 (*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.

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
- (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.

12.25 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.

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 (*Continuing representations and warranties*) and Clause 18.6 (*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, 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 (*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 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.

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.

- (b) The restrictions in paragraph (a) of Clause 12.27 (*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: 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 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 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 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;
 - (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 paragraph (~~2~~(b)(viii)(B) of Clause 12.27

(*New capital raises or financing*) does not exceed [*] (\$[*]) 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
- (xii) without prejudice to Clauses 12.11 (*Mergers*) and 12.15 (*Investments*) and clause 11.13 (*No merger*) of the Guarantee, the issuance of share capital by any Group member to another Group member.

12.28 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.

13 SHIP UNDERTAKINGS

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 (*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 [*]; 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 [*] **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.

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.

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.

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 (*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 (*Valuation of the Ship*), the Agent shall be entitled to procure a valuation of the Ship on the same basis.

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.

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. 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 (*Valuation of the Ship*).

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.

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.

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.

**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.

**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.

**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 [*];
- (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.

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 [*] 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 [*] 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.

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.

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 [*] 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)).

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.

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.

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.

13.19 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.

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.

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 (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.

14 INSURANCE UNDERTAKINGS

14.1 General

The undertakings in this Clause 14 (*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.

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 (*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.

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).

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 (*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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

15 SECURITY VALUE MAINTENANCE

15.1 Security Shortfall

If, upon receipt of a valuation of the Ship in accordance with Clause 13.4 (*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 (*Costs*) and 15.4 (*Documents and evidence*) and paragraph (c) of Clause 16.2 (*Voluntary prepayment*) shall apply to prepayments under paragraph (a) of Clause 15.1 (*Security Shortfall*).

15.2 Costs

All costs in connection with the Agent obtaining any valuation of the Ship referred to in Clause 13.4 (*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 15.1 (*Security Shortfall*) shall be borne by the Borrower.

15.3 Valuation of additional security

For the purpose of this Clause 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 Documents and evidence

In connection with any additional security provided in accordance with this Clause 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 Valuations binding

Any valuation under this Clause 15 ~~§security Value Maintenance~~ shall be binding and conclusive as regards the Borrower.

15.6 Provision of information

- (a) The Borrower shall promptly provide the Agent and any shipbroker acting under this Clause 15 ~~§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 CANCELLATION, PREPAYMENT AND MANDATORY PREPAYMENT

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 (*Cancellation*) shall reduce the remaining Commitments [under that Tranche](#) of the [relevant](#) Lenders rateably.

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 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 ~~§breakage costs and SIMEST arrangement~~ 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 (*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 (*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 [the 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 [the 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 6.1 (*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 (*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 (*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 20.1 (*Indemnities regarding borrowing and repayment of Loan*) and 20.2 (*Breakage costs and SIMEST arrangements*).
- (c) If the Borrower has selected the Fixed Interest Rate pursuant to Clause 6.1 (*Fixed or Floating Interest Rate*), the SACE Agent shall give SIMEST thirty (30) days written notice of the intended date of prepayment.

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.

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) the events described in paragraph (a) of Clause 16.4 (*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 (*Mandatory prepayment – SACE Insurance Policy*).

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 (*Dividends and dividend restriction*) and Clause 12.27 (*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 contract*) 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 (*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 (*New capital raises or financing*), if at any time after the 2021 Deferral Effective Date:
- (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; ~~for~~
 - (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.

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.

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 (Additional 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.

~~16.7~~ 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 (*Voluntary prepayment*)).

~~16.8~~ 16.9 **Application of partial prepayment**

Amounts prepaid shall be applied in accordance with paragraph (b) of Clause 19.1 (*Receipts*).

~~16.9~~ 16.10 **No reborrowing**

Amounts prepaid may not be reborrowed.

17 **INTEREST ON LATE PAYMENTS**

17.1 **Default rate of interest**

Without prejudice to the provisions of Clause 18 (*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) 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) 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.

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.

18 EVENTS OF DEFAULT

18.1 Events of Default

An Event of Default occurs if any of the events or circumstances described in Clauses 18.2 (*non-payment*) to 18.20 (*Material Adverse Change*) occur.

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.

18.3 Non-remediable breaches

The Borrower fails to comply with the provisions of Clauses 12.8 (*Negative pledge*), 12.9 (*Disposals*), 12.11 (*Mergers*) or 12.18 (*Loans and guarantees by the Borrower*).

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 (*Non-payment*) to 18.20 (*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~~ 12.28 (*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.

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.

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; ~~and~~
- (e) No Event of Default will occur, or be deemed to have occurred, under this Clause 18.6(~~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 (*Mandatory prepayment – sale and total loss*) or Clause 16.4 (*Mandatory prepayment – SACE insurance policy*) has occurred.

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.

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.

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.

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 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.

18.11 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.

18.12 Analogous events

Anything analogous to or having a substantially similar effect to any of the events specified in Clauses 18.7 (*Winding-up*) to 18.11 (*Legal process*) shall occur under the laws of any applicable jurisdiction.

18.13 Cessation of business

Any Obligor ceases to carry on all or a substantial part of its business.

18.14 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 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.

18.15 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.

18.16 Insurances

The Borrower fails to insure the Ship in the manner specified in Clause 14(*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.

18.17 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.

18.18 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.

**18.19 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.

**18.20 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 ~~12.27~~ 12.28 (*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.

**18.21 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
- (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.

**18.22 Termination of
Commitments**

On the service of a notice under paragraph (a) of Clause 18.21 ~~Actions following an Event of Default~~, the Commitments and all other obligations of each Lender to the Borrower under this Agreement shall terminate.

**18.23 Acceleration of
Loan**

On the service of a notice under paragraph (b) of Clause 18.21 ~~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.

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 (*Voluntary prepayment*).

18.25 Multiple notices; action without notice

The Agent may serve notices under paragraphs (a) and (b) of Clause 18.21 (*Actions following an Event of Default*) simultaneously or on different dates and it may take any action referred to in paragraph (c) of Clause 18.21 (*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.

18.26 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 18.21 (*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.

18.27 Lender's rights unimpaired

Nothing in this Clause 18 (*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*).

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.

19 APPLICATION OF SUMS RECEIVED

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 (*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 (*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.

20 INDEMNITIES

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;
- (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 (*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 (*Events of Default*).

20.2 Breakage costs and SIMEST arrangements

Without limiting its generality, Clause 20.1 (*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 Contributions](#) and/or any overdue amount (or an aggregate amount which includes its [Contribution Contributions](#) or any overdue amount);
- (b) if the Borrower has selected the Fixed Interest Rate in accordance with Clause 6.1 (*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 ~~*Breakage costs and SIMEST arrangement*~~ "**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.

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 (*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 11.2 (*Continuing representations and warranties*) and/or of Clause ~~12.27~~ [12.28](#) (*Code of Ethics and Model*).

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 (*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 (*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.

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 (*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.

20.6 Sums deemed due to a Lender

For the purposes of this Clause 20 (*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.

20.7 SACE obligations

To the extent that this Clause 20 (*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.

21 ILLEGALITY, ETC.

21.1 Illegality and Sanctions

This Clause 21 (*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").

21.2 Notification of illegality

- (a) The Agent shall promptly notify the Borrower, the Obligors and the other Lenders of the notice under Clause 21 (*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 21.3 (*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 6.1 (*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.

21.3 Prepayment; termination of Commitment

- (a) After notification under paragraph (c) of Clause 21.2 (*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 6.1 (*Fixed or Floating Interest Rate*)) after notification under paragraph (a) of Clause 21.2 (*Notification of illegality*) and subject to Clause 21.4 (*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 (*Breakage costs and SIMEST arrangement*) and any indemnity payable under paragraph (c) of Clause 20.2 (*Breakage costs and SIMEST arrangement*) in respect of the Interest Make-Up Agreement;
- (b) On the Agent notifying the Borrower under paragraph (c) of Clause 21.2 (*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 (*Illegality and Sanctions*) as the date on which the notified event would become effective the Borrower shall prepay the Notifying Lender's ~~Contribution~~ Contributions and shall pay compensation to the Notifying Lender calculated in accordance with Clause 16.2 (*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 6.1 (*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.

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 21.1 (*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.

22 SET-OFF

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.

22.2 Existing rights unaffected

No Creditor Party shall be obliged to exercise any of its rights under Clause 22.1 (*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).

22.3 Sums deemed due to a Lender

For the purposes of this Clause 22 (*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.

22.4 No Security Interest

This Clause 22 (*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.

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.

24 CHANGES TO THE LENDERS

24.1 Transfer by a Lender

Subject to Clause 24.5 (*No transfer without Transfer Certificate*), Clause 24.17 (*Assignment or transfer to SACE*) and Clause 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~~ 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

(*Role of the Agent and the Joint Mandated Lead Arrangers*) and 27 (*The Security Trustee*) respectively.

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(*No transfer without Transfer Certificate*) and 24.17 (*Assignment or transfer to SAC#*)) 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 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 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 (*Transfer Certificate, delivery and notification*) on or before that date.

24.5 No transfer without Transfer Certificate

Except as provided in Clause 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 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~~ [Contributions](#) as were held by the predecessor Lender.

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 ~~Contribution~~ [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 Majority Lenders and those under Clause 6.8 (*Market Disruption*) and Clause 9 (*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 Maintenance of register of Lenders

During the Security Period the Agent shall maintain a register in which it shall record the name, Commitment, ~~Contribution~~ [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 (*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 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 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 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 (*Transfer by a Lender*).

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.

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.

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 10 (*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 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 Security over Lenders' rights

In addition to the other rights provided to Lenders under this Clause 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, 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.

24.17 Assignment or transfer to SACE

- (a) Notwithstanding the above provisions of this Clause 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 10 (~~Taxes, Increased Costs, Costs and Related Charges~~) or 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 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 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.

24.20 Definition of Affiliate

For the purposes of this Clause 24 (~~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.

25 CHANGES TO THE OBLIGORS

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.

26 ROLE OF THE AGENT AND THE JOINT MANDATED LEAD ARRANGERS

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.

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.

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.

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.

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.

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.

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.

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.

26.9 Exclusion of liability

- (a) Without limiting paragraph (b) of Clause 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 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 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 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 (*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 (*Role of the Agent and the Joint Mandated Lead Arranger*). 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 26.11 (*Resignation of the Agent*). In this event, the Agent shall resign in accordance with paragraph (b) of Clause 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 26.11 (*Resignation of the Agent*) shall be subject to compliance with all necessary "know your customer" requirements of the Lenders.

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.

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.

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.

26.15 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 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 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 Resignation of the Agent in relation to FATCA

The Agent shall resign in accordance with Clause 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 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 10.9 ~~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 ~~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.

27 THE SECURITY TRUSTEE

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 (*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 27.1 (*Trust*) and as excluded or limited by this Clause 27 (*The Security Trustee*) including in particular Clause 27.8 (*Instructions to Security Trustee and exercise of discretion*), Clause 27.13 (*Responsibility for documentation*), Clause 27.14 (*Exclusion of liability*), Clause 27.16 (*Lenders' indemnity to the Security Trustee*), Clause 27.23 (*Business with the Group*) and Clause 27.28 (*Full freedom to enter into transactions*).

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 (*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 (*Parallel Debt (Covenant to pay the Security Trustee)*) to the extent permitted by applicable law, shall be applied in accordance with Clause 19 (*Application of sums received*).
- (f) This Clause 27.2 (*Parallel Debt (Covenant to pay the Security Trustee)*) shall apply, with any necessary modifications, to each Finance Document.

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.

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 (*The Security Trustee*), the "**Recoveries**") shall be transferred to the Agent for application in accordance with Clause 19 (*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 (*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 (*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 Deductions from receipts

- (a) Before transferring any moneys to the Agent under Clause 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 (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 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 (*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 Investment of proceeds

Prior to the payment of the proceeds of the Recoveries to the Agent for application in accordance with Clause 19 (*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 (*Investment of proceeds*).

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 (*Security Trustee's discretions*) to Clause 27.28 (*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 (*Deductions from receipts*) and Clause 27.6 (*Prospective liabilities*).

27.9 Security Trustee's Actions

Without prejudice to the provisions of Clause 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 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 Obligor;
 - (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 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 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 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 Exclusion of liability

- (a) Without limiting Clause 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 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 (*Third party rights*) and the provisions of the Third Parties Rights Act.

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).

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.

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.

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.

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.

27.21 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 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 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 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 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.

27.26 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.

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.

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.

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 (*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 (*The Security Trustee*), Clause 27.5 (*Deductions from receipts*), Clause 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 27.29 ~~Resignation of the Security Trustee~~ shall be subject to compliance with all necessary "know your customer" requirements of the Lenders.

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.

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.

28 CONDUCT OF BUSINESS BY THE CREDITOR PARTIES

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.

29 SHARING AMONG THE CREDITOR PARTIES

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 (*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 (*Application of sums received*) and Clause 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 (~~Application of sums received~~) and Clause 30 (*Payment Mechanics*).

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 19 (*Application of sums received*) and Clause 30 (*Payment Mechanics*).

29.3 Recovering Creditor Party's rights

- (a) On a distribution by the Agent under Clause 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 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 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 (*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 Exceptions

- (a) This Clause 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
 - (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 (*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 PAYMENT
MECHANICS**

**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.

**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 (*Distributions to an Obligor*), Clause 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 Distributions to an
Obligor**

The Agent may in accordance with Clause 22 (*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 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 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 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 Currency of
account**

- (a) Subject to paragraphs (b) and (c) of Clause 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 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 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 VARIATIONS AND WAIVERS

31.1 Variations, waivers etc. by Majority Lenders

Subject to Clause 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 Variations, waivers etc. requiring agreement of all Lenders

However, as regards the following, Clause 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 [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 (*Changes to the Lenders*) or this Clause 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 Exclusion of other or implied variations

Except for a document which satisfies the requirements of Clauses 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.

32 NOTICES

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.

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.

32.3 Effective date of notices

Subject to Clauses 32.4 (*Service outside business hours*) and 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 Service outside business hours

However, if under Clause 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 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 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 Illegible notices

Clauses 32.3 (*Effective date of notices*) and 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 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 English language

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

32.9 Meaning of "notice"

In this Clause 32 (*Notices*), "notice" includes any demand, consent, authorisation, approval, instruction, waiver or other communication.

33 CONFIDENTIALITY

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 (*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 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;
- (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 (*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;
- (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 Entire agreement

This Clause 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 Disclosure to information services

- (a) Any **Finance 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 **Finance 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 (*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.

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.

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 (*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 (*Confidentiality*).

33.7 Continuing obligations

The obligations in this Clause 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.

33.8 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.

**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).

**34 LEGAL INDEPENDENCE AND UNCONDITIONAL OBLIGATIONS OF THE
BORROWER**

**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.

**35 SACE SUBROGATION AND
REIMBURSEMENT**

**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.

35.2 Reimbursement

- (a) Without prejudice to Clause 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 *Default rate of interest*) of this Agreement).

- (c) Each Obligor further agrees that its obligations under this Clause 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 35.2 (*Reimbursement*).
- (e) Each amount that is payable by the Obligors pursuant to Clause 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 Obligations Absolute

The obligations of the Obligors under this Clause 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 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 SUPPLEMENTAL

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.

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.

36.3 Counterparts

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

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 (~~SACE Subrogation and Reimbursement~~), Clause 17 (~~Interest on Late Payment~~), Clause 8 (~~SACE Premium and Italian Authorities~~), Clause 10.2 (~~Tax gross-up~~), Clause 10.3 (~~Tax indemnity~~), Clause 10.11 (~~Transaction Costs~~), Clause 20.1 (~~Indemnities regarding borrowing and repayment of Loan~~), Clause 20.3 (~~Miscellaneous indemnities~~), Clause 20.4 (~~Currency indemnity~~), Clause 22 (~~Set-Off~~), Clause 27 (~~The Security Trustee~~), Clause 10.6 (VAT), Clause 10.13 (~~SACE obligation~~), Clauses 33.8 (~~Disclosure by SACE~~) and 33.9 (~~Press release~~) and Clause 38 (~~Enforcement~~).
- (d) Any amendment or waiver which relates to the rights of SACE under this Agreement, including under Clause 35 (~~SACE Subrogation and Reimbursement~~), Clause 17 (~~Interest on Late Payment~~), Clause 8 (~~SACE Premium and Italian Authorities~~), Clause 10.2 (~~Tax gross-up~~), Clause 10.3 (~~Tax indemnity~~), Clause 20.4 (~~Currency indemnity~~), Clause 22 (~~Set-Off~~), Clause 27 (~~The Security Trustee~~), Clause 20.3 (~~Miscellaneous indemnities~~), Clause 10.6 (VAT), Clause 10.11 (~~Transaction Costs~~), Clause 20.1 (~~Indemnities regarding borrowing and repayment of Loan~~), Clauses 33.8 (~~Disclosure by SACE~~) and 33.9 (~~Press release~~) and Clause 38 (~~Enforcement~~) may not be effected without the consent of SACE.

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.

**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.

**37 GOVERNING
LAW**

37.1 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 ENFORCEMENT

**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.

**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 ~~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 CONFIDENTIALITY OF FUNDING RATES AND REFERENCE BANK
QUOTATIONS**

**39.1 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 6.5 (*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 ~~*Confidentiality of Funding Rates and Reference Bank Quotation*~~ relating to Reference Bank Quotations are without prejudice to its obligations to make notifications under Clause 6.5 ~~*(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.

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 (*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 (*Confidentiality of Funding Rates and Reference Bank Quotation*).

39.3 No Event of Default

No Event of Default will occur under Clause 18.4 (*Breach of other obligations*) by reason only of an Obligor's failure to comply with this Clause 39 (*Confidentiality of Funding Rates and Reference Bank Quotation*).

This Agreement has been entered into and amended and restated on the date stated at the

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)
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)
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:)

~~JOINT MANDATED LEAD ARRANGERS~~

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)
in the presence of:)

SIGNED by)
)
for and on behalf of)
HSBC ~~BANK PLC~~ 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 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: _____)

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: _____)

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)
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:)

[*]: 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 17 June 2021

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

relating to a facility agreement originally dated 12 April 2017
(as amended and restated by an amendment and restatement agreement dated 21 November 2017,

WATSON FARLEY
&
WILLIAMS

as amended by a supplemental agreement dated 4 June 2020 and as amended and restated by an amendment and
restatement agreement dated 17 February 2021)
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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Schedules

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Execution

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Appendices

Form of Amended and Restated Facility Agreement (marked to indicate amendments)	
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THIS AGREEMENT is made on 17 June 2021

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.** Via Goito, 4 – 00185, Roma, Italy 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 (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**") and
-

amended and restated pursuant to an amendment and restatement agreement dated 17 February 2021 (the "**February 2021 Amendment and Restatement Agreement**") pursuant to which the parties agreed to the temporary suspension 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, providing 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 and (iii) financing an amount to be applied towards the Tranche B Premium.

OPERATIVE PROVISIONS

1 DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Agreement:

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

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

"**Facility Agreement**" means the Original Facility Agreement, as amended by the 2020 Amendment Agreement and as amended and restated by the February 2021 Amendment and Restatement Agreement.

"**June 2021 Fee Letters**" means any letter between the Agent and any Obligor which sets out the fees payable in connection with the arrangements contemplated by this Agreement.

"**June 2021 Finance Documents**" means this Agreement, each June 2021 Fee Letter and the Supplemental Pre-delivery Security.

"**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.

"**Seventh Addendum**" means a seventh addendum to the Original Shipbuilding Contract, entered into in order to include the option of a new allowance of two hundred and thirty-two million Euros (€232,000,000) for Upsize Allowance in the Original Shipbuilding Contract.

"**Shipbuilding Contract**" means a shipbuilding contract dated 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, 10 April 2017 and as amended by the Sixth Addendum and the Seventh Addendum.

"**Supplemental Pre-delivery Security**" means a deed to be entered into pursuant to this Agreement between the Borrower and the Security Trustee, supplemental to the Pre-delivery Security, creating security over the Pre-delivery Contracts.

"**Total Tranche B Commitments**" means the aggregate of the Tranche B Commitments (as set out in further detail in Part B of Schedule 1 (*The Tranche B Lenders*)), being two hundred fifty-eight million, seven hundred forty-four thousand, four hundred forty-four Dollars and forty-four Cent (\$258,744,444.44) as at the date of this Agreement.

"**Total Tranche C Commitments**" means the aggregate of the Tranche C Commitments (as set out in further detail in Part C of Schedule 1 (*The Tranche C Lenders*)), being nineteen million, six hundred twenty-four thousand, eleven Dollars and nine Cent (\$19,624,011.09) as at the date of this Agreement.

"**Tranche B Premium**" means an additional premium to be paid by the Borrower to SACE through the SACE Agent regarding the financing of the Upsize Allowance and, with effect from the Effective Date, as further defined in paragraph (a) of clause 8.6 (*Tranche B Premium*) of the Amended and Restated Facility Agreement.

"**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.

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 AND CONDITIONS SUBSEQUENT

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 Within the time periods set out in Schedule 3 (*Conditions Subsequent*), the Agent shall have received (or on the instructions of all the Lenders, waived receipt of) all of the documents and other evidence listed therein in form and substance satisfactory to the Agent.

2.3 Upon fulfilment or waiver of the conditions set out in Clause 2.1 above, the Agent shall provide the Borrower and the Creditor Parties, SACE and SIMEST with a copy of the executed certificate in the form set out in Schedule 4 (*Form of Effective Date Certificate*) confirming that the Effective Date has occurred and such certificate shall be binding on all Parties.

- 2.4 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, 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, 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 Confirmation of Guarantee

With effect on and from the Effective Date 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 original terms and the amendments to the Finance Documents as amended, restated and/or supplemented by this Agreement.

4.3 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.

4.4 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) the Facility Agreement and the applicable provisions of this Agreement will be read and construed as one document; and
- (c) 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

- 6.1 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.
- 6.2 The Borrower shall pay to each of (i) the Agent for its own account and (ii) the Agent (for the account of each Lender) such fees in the amount and at the times specified in the relevant June 2021 Fee Letters.

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.

EXECUTION PAGES

BORROWER

SIGNED by) /s/ Daniel S. Farkas
duly authorised) Daniel S. Farkas
for and on behalf of)
LEONARDO TWO, LTD.)

GUARANTOR

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

SHAREHOLDER

SIGNED by) /s/ Daniel S. Farkas
for and on behalf of) Daniel S. Farkas
NCL INTERNATIONAL, LTD.)
as its duly appointed attorney-in-fact)
in the presence of:)
) /s/ Jared G. Silberhorn
) Jared G. Silberhorn
) 7665 Corporate Center Drive
) Miami, FL 33126 USA
)

HOLDING

SIGNED by) /s/ Daniel S. Farkas
for and on behalf of) Daniel S. Farkas
NORWEGIAN CRUISE LINE)
HOLDINGS LTD.)
as its duly appointed attorney-in-fact)
in the presence of:)
) /s/ Jared G. Silberhorn
) Jared G. Silberhorn
) 7665 Corporate Center Drive
) Miami, FL 33126 USA
)

LENDERS

SIGNED by) /s/ Cosmo Fisher
duly authorised) Cosmo Fisher
for and on behalf of) Attorney-in-Fact
CRÉDIT AGRICOLE CORPORATE)
AND INVESTMENT BANK)

SIGNED by) /s/ Bruno Cloquet
duly authorised) Bruno Cloquet
for and on behalf of) Global Head of Exporters and ECAs Origination
BNP PARIBAS FORTIS S.A./N.V)
) /s/ Michel Froidebise
) Michel Froidebise
) Head of Export Finance Nordic Origination

SIGNED by) /s/ Alessandro Mazzi
duly authorised) Alessandro Mazzi
for and on behalf of) MD — Head of Export and Asset Finance, Italy
HSBC CONTINENTAL EUROPE, ITALY)

SIGNED by) /s/ Isabella Roberts
duly authorised) Isabella Roberts
for and on behalf of) Attorney-in-Fact
DEKABANK DEUTSCHE GIROZENTRALE)

SIGNED by) /s/ Enrico Semprebene
duly authorised) Enrico Semprebene
for and on behalf of)
CASSA DEPOSITI E PRESTITI S.P.A.)

SIGNED by) /s/ Luca Geronimi
duly authorised) Luca Geronimi
for and on behalf of) Attorney
BANCO BPM S.P.A.)
) /s/ Roberta Zanaboni
) Roberta Zanaboni
) Attorney
)

MANDATED LEAD ARRANGERS

SIGNED by) /s/ Cosmo Fisher
duly authorised) Cosmo Fisher
for and on behalf of) Attorney-in-Fact
CRÉDIT AGRICOLE CORPORATE)

AND INVESTMENT BANK) /s/ Bruno Cloquet
SIGNED by) Bruno Cloquet
duly authorised) Global Head of Exporters and ECAs Origination
for and on behalf of)
BNP PARIBAS FORTIS S.A./N.V) /s/ Michel Froidebise
) Michel Froidebise
) Head of Export Finance Nordic Origination
)

SIGNED by) /s/ Varsha Sharan
duly authorised) Varsha Sharan
for and on behalf of) Director
HSBC BANK PLC)

SIGNED by) /s/ Enrico Semprebene
duly authorised) Enrico Semprebene
for and on behalf of)
CASSA DEPOSITI E PRESTITI S.P.A.)

AGENT

SIGNED by) /s/ Cosmo Fisher
duly authorised) Cosmo Fisher
for and on behalf of) Attorney-in-Fact
CRÉDIT AGRICOLE CORPORATE AND)
INVESTMENT BANK)

SACE AGENT

SIGNED by) /s/ Cosmo Fisher
duly authorised) Cosmo Fisher
for and on behalf of) Attorney-in-Fact
CRÉDIT AGRICOLE CORPORATE AND)
INVESTMENT BANK)

SECURITY TRUSTEE

SIGNED by) /s/ Cosmo Fisher
duly authorised) Cosmo Fisher
for and on behalf of) Attorney-in-Fact
CRÉDIT AGRICOLE CORPORATE AND)
INVESTMENT BANK)

APPENDIX

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 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 pursuant to by an amendment and restatement agreement dated _____-February_____ 2021)

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.

WATSON FARLEY
&
WILLIAMS

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THIS AGREEMENT originally made on 12 April 2017 (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 ~~pursuant to~~ [by](#) an amendment and restatement agreement dated ~~_____ February _____~~ 2021)

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 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.** 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 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 and 21 November 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 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 [*], being [*], 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**");
 - (ii) as to [*], being [*], 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 [*], being [*], on the later of keel laying in dry-dock and the date falling 18 months prior to the Intended Delivery Date;

(iv) as to [*], being [*], on the later of launching and the date falling 12 months prior to the Intended Delivery Date; and

(v) as to [*], being [*], 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**) ~~(the Original Shipbuilding Contract as amended pursuant to the Sixth Addendum, the "Shipbuilding Contract").~~
- (G) 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 ([as defined therein](#)), the Secured Parties ~~(as defined below)~~ 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:
- (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 ~~offered by SACE~~ (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**") ~~-(the Original Facility Agreement as amended pursuant to the 2017 Amending and Restating Agreement and the 2020 Amendment Agreement, the "Facility 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 Facility Agreement [\(as defined below\)](#) for a further period from 1 April 2021 to 31 December 2022 (the "**Second Borrower Request**").
- (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](#) ~~dated _____~~ [\(as amended and restated by the 2017 Amending and Restating Agreement and as amended by the 2020 Amendment Agreement\) 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 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 an amendment and restatement agreement dated _____ June 2021 and made between, amongst others, the Borrower, the 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**").
- (~~N~~ P) This Agreement sets out the terms and conditions of the Facility Agreement as amended and restated by the June 2021 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 G.

"**2020 Amendment Agreement**" has the meaning given to such term in Recital J.

~~"**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.

~~"**2021 Amendment and Restatement Agreement**" has the meaning given to such term in Recital M.~~

"**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.

"**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 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 (*Additional 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 (*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 \(Tranche B Premium\).](#)

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 (Additional 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.

"**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~~ 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.

"**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 [*] 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.

"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.

"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).

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

~~the aggregate of the Commitments of all the Lenders~~ [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 (*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.

"**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.

"**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.

"**Delivery Advance**" means, subject to the provisions of Clause 8.4 (*Refund*) [and paragraphs \(e\) and \(f\) of Clause 8.6 \(Tranche B Premium\)](#), 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.

"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.

"**Event of Default**" means any of the events or circumstances described in Clause 18.1 (*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.

"**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 Amendment and Restatement Agreement" has the meaning given to such term in Recital \(M\).](#)

"**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 (*Fees*).

"**Finance Documents**" means:

- (a) the 2017 Amending and Restating Agreement;
- (b) the 2020 Amendment Agreement;
- (c) the [February 2021 Amendment and Restatement Agreement](#);
- (d) the ~~Deferral Fee Letters~~ [June 2021 Amendment and Restatement Agreement](#);
- (e) this Agreement;
- (f) any Fee Letter;
- (g) [the Deferral Fee Letters](#);
- (h) [the June 2021 Fee Letters](#);
- (~~g~~) the Guarantee;
- (~~h~~) the Pre-delivery Security;
- (k) [the Supplemental Pre-Delivery Security](#);
- (~~i~~) the General Assignment;
- (~~j~~) the Mortgage;
- (~~k~~) the Post-Delivery Assignment;



- ([t](#)[o](#)) any Subordinated Debt Security;
- ([m](#)[p](#)) the Shares Security Deed;
- ([n](#)[g](#)) the Approved Manager's Undertaking;
- ([e](#)[t](#)) any Transfer Certificate;
- ([p](#)[s](#)) any Compliance Certificate;
- ([d](#)[t](#)) any Drawdown Notice;
- ([r](#)[u](#)) 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
- ([s](#)[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 (*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 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) the applicable Margin;
and
- (b) LIBOR for the relevant
period.

"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);
- (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 (*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, 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 HM 11, Bermuda.

" **Holding**" means 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.

" **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 ~~3.12~~ [3.13](#) (*No later than sixty (60) days before the Intended Delivery Date*) or paragraph (b) of Clause ~~3.14~~ [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*) ~~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 (*Interest Periods*).

"**Interpolated Screen Rate**" means, in relation to the Loan or any part of the Loan, the rate which results from interpolating on a linear basis between:

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

- (b) the applicable Screen Rate for the shortest period (for which that Screen Rate is available) which exceeds the Interest Period of the Loan or that part of the Loan,

each as of the Specified Time for Dollars.

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

"**ISPS Code**" means the International Ship and Port Facility Security (ISPS) Code 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 ~~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.~~ Tranche A Lender, a Tranche B Lender or a Tranche C Lender.

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

- (a) the applicable Screen Rate as of the Specified Time for Dollars and for a period equal in length to the Interest Period of the Loan or that part of the Loan; or
- (b) as otherwise determined pursuant to Clause 6.6 (*Unavailability of Screen Rate*).

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

"**Loan**" means the aggregate principal amount outstanding for the time being ~~outstanding under this Agreement 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.

"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.

"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
- (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.

~~**"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 8.1 (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).~~

"**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>).

"**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 8.1 (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 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 (*Unavailability of Screen Rate*),

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 (*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 12.14 (*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 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 [*] 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 (*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 [*] 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 (*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 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).

"**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:

(~~i~~ a) if:

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

(~~B~~ 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

(~~ii~~ 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.

"**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 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:

- (i a) formally designated, nominated or recommended as the replacement for a Screen Rate by:
 - (A 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
 - (B 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 (B ii) above;

- (ii 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
- (iii 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 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).

"**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 (*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 (SACE Premium and Italian Authorities), in addition to the Additional SACE Premium (provided for the avoidance of doubt, that the Additional SACE Premium shall not be financed)~~.

"**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
- (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 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~~
- (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

- (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.

"**Second Instalment**" means the second instalment of the SACE Premium as more particularly described in paragraph (b) of Clause 8.1 (*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 19 (*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 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 (*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 (*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 (*Security Value Maintenance*).

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

"**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 ~~in~~ [the agreed form](#).

"**Shareholder**" means NCL International Ltd., a Bermuda company with its registered office at Park Place 55, 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 (F 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.

"**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 (*Calculation of Reference Bank Rate*), noon on the Quotation Day.

"**Subordinated Debt Security**" has the meaning given in paragraph (b) (ii) of Clause 12.14 (*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.

"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).

"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:

- (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 eight thousand, one hundred eight Dollars and eleven Cent (\$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 forty-four thousand, four hundred forty-four Dollars and forty-four Cent (\$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 twenty-four thousand, eleven Dollars and nine Cent (\$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.

"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 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
- (ii) 100% of the Tranche B Premium to be paid in accordance with paragraph (a) of Clause 8. (*Tranche 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.

"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 (Additional 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.

"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).

"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;
- (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.

"**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.

"**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;

"**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 (*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 (*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 12.2 (*Information*), Clause 12.4 (*Illicit Payments*), Clause 12.5 (*Prohibited Payments*), Clause 12.25 (*Compliance with laws etc.*) or provisions contained in Clause 20.3 (*Miscellaneous indemnities*) or Clause 21.1 (*Illegality and Sanctions*) and the representations and warranties given under paragraphs (u), (v), (y), (z) and (jj) of Clause 11.2 (*Continuing representations and warranties*) and paragraph (j) of Clause 11.3 (*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 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 (*Representations and Warranties*), Clause 12 (*General Undertakings*), Clause 20 (*Indemnities*), Clause 21 (*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

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 ~~the Maximum Loan Amount~~, in aggregate, the Total Tranche A Commitments intended to be applied as follows:

- (~~a~~) 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;
- (~~b~~) 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 8.1 (*SACE Premium*); and
- (~~c~~) 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 8.1 (*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 (*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 (Additional 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.

2.3 Purpose of Loan

The Borrower undertakes with each Secured Party to use ~~each Advance only to pay for:~~

- (a) each Advance under Tranche A 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 all or part of eighty per cent. (80%) of the First Shipbuilding Contract Instalment;
 - (~~d~~) 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 8.1 (SACE Premium); and
 - (~~e~~) the Second Instalment of the SACE Premium payable in accordance with paragraph(b) of Clause 8.1 (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 (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 (Additional 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
- (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 TheSt 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;
- (i) payment of [*] per cent. ([*]%) of the Joint Mandated Lead Arranger structuring fee payable in accordance with paragraph (a) (i) of Clause 9 (*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 6.1 (*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;
- (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

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.

3.8.3.9 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.

3.9 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](#)

- (a.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;
- (b.ii) as regards any previous Advance, in the event the Refund Guarantee issued in respect of such previous Advance cannot be renewed or extended:
 - (i.A) evidence that an Acceptable Deposit has accordingly been transferred to the Account pursuant to the terms of the Shipbuilding Contract; and
 - (ii.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 required by the Secured Parties in respect of the execution and/or the validity and enforceability of the Account Pledge;
- (c.iii) a copy of the relevant invoice from the Builder in respect of the instalment under the Shipbuilding Contract to which the Advance relates;
- (d.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)
 - (e.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;

- (~~f~~ vi) a copy of a duly executed Qualifying Certificate;
- (~~g~~ vii) a certificate confirming that:
 - (~~i~~ A) the Shipbuilding Contract continues to be in full force and effect; and,
 - (~~ii~~ 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 ~~;~~
 - (~~iii~~ 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; ~~and~~
- (~~h~~ viii) a certificate of confirmation confirming that:
 - (~~i~~ A) no default or mandatory prepayment event pursuant to Clause 16 (*Cancellation, Prepayment and Mandatory Prepayment*) is continuing or would result from the proposed Advance;
 - (~~ii~~ B) the repeating representations and, in relation to the first Advance and first Drawdown Notice, all of the other representations set out in Clause 11 (*Representations and Warranties*) (except the representations to be made on the Delivery Date pursuant to paragraph (b) of Clause 11.1 (*Timing and repetition*)) are true;
- (~~i~~ 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;
- (~~j~~ x) if applicable, a duly executed original of the Subordinated Debt Security; and
- (~~k~~ 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.

~~3.10~~ 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 (*Fees*).

~~3.11~~ 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.

3-12 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 (*Refund*) and in paragraph (f) of Clause 8.6 (*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.

3-13 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.

3-14 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.

3-15 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:

- (~~a~~) i) if applicable, a duly executed original of the Subordinated Debt Security;
- (~~b~~) 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;
- (~~c~~) 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;
- (~~d~~) 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;

- (e.v) evidence of payment of all amounts which are due and payable hereunder by the Borrower on or prior to the Delivery Date;
 - (f.vi) a certificate from the Borrower, signed by an authorised representative of the Borrower, confirming that the representations and warranties contained in Clause 11 (*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;
 - (g.vii) a certificate of confirmation confirming that:
 - (i.A) the Shipbuilding Contract continues to be in full force and effect;
 - (ii.B) no default or mandatory prepayment event pursuant to Clause 16 (*Cancellation, Prepayment and Mandatory Prepayment*) is continuing or would result from the Delivery ~~Advance~~ Advances;
 - (iii.C) the repeating representations as set out in Clause 11 (*Representations and Warranties*) are true; and
 - (iv.D) the representations to be made on the Delivery Date pursuant to ~~paragraph (b) of~~ Clause ~~11~~ 11.3 (*Representations and Warranties on the Delivery Date*) are true;
 - (h.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; ~~and~~
- (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 Clause3.16 (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 Clause3.16 (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 ~~the such~~ the 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 ~~the advance of the Delivery~~ Advance 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*).

3.16 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 ~~3.17~~ 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 ~~3.17~~ 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 11.3 (*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 (*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 ~~3.16~~ 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 ~~9 Cloak Lane~~ 107 Cheapside, London ~~EC4R 2RU~~, 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.

3.17 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 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 (*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*).

3.18 3.19 Notification of satisfaction of conditions precedent

The Agent shall notify the [Tranche A Lenders](#) ~~and SACE~~, [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*).

~~3.19~~ 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.

~~3.20~~ 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
 - (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).

~~3.21~~ 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.

~~3.22~~ 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.

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 ~~For the avoidance of doubt, the amount of the Loan shall not exceed the Maximum Loan Amount~~ [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 (Additional 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 Schedule Schedules):

(a 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) instalments Advances in accordance with Schedule 6 (Drawdown Schedule Schedules);

(b 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

(c 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:

(i) 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

(j) 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 (Additional Premium).

(g) Payment to the Builder of the amounts drawn under paragraph (a)(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 (e)(i) 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 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 ~~paragraph (a)~~ 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 ~~paragraph (a)~~ 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 ~~(b)(ii), (d)(iii), (e)(ii)~~ (b)(ii), (d)(iii), (e)(ii) and ~~(e)(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 (a)(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 ~~five (5) Advances under this Agreement.~~
- (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 (*Additional 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

(~~e iv~~) the ~~aggregate amount of the~~ Advances under all Tranches cannot exceed ~~the Maximum Loan Amount~~ Total Commitments.

(~~f 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:

- (a) in the case of the amount referred to in paragraph(~~a 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; ~~and~~
- (b) in the case of an amount referred to in paragraph(~~b 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 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
- (~~e g~~) in the case of an amount referred to in paragraph (~~e 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 [Contribution 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.

6 INTEREST

6.1 Fixed 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.

6.2 Fixed Interest Rate

If the Borrower has specified a Fixed Interest Rate pursuant to Clause 6.1 (*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.

6.3 Floating Interest Rate

If:

- (a) the Borrower has specified a Floating Interest Rate pursuant to Clause 6.1 (*Fixed or Floating Interest Rate*); or

- (b) the Borrower has specified a Fixed Interest Rate pursuant to Clause 6.1 (*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 (*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).

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.

6.5 Notification of Interest Periods and Floating Interest Rate

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.

6.6 Unavailability of Screen Rate

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

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

- (c) *Cost of funds*: If paragraph (b) above applies but no Reference Bank Rate is available for Dollars or the relevant Interest Period there shall be no LIBOR for the Loan or that part of the Loan (as applicable) and Clause 6.9 (*Cost of funds*) shall apply to the Loan or that part of the Loan for that Interest Period.

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.

6.8 Market

Disruption

If before close of business in London on the Quotation Day for the relevant Interest Period the Agent receives notification from a Lender or Lenders (whose participations in the Loan or the relevant part of the Loan 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.

6.9 Cost of

funds

- (a) If this Clause 6.9 (*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 participation in the Loan or that part of the Loan from whatever source it may reasonably select.
- (b) If this Clause 6.9 (*Cost of funds*) applies and the Agent or the Borrower ~~requires~~ require, 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 (*Replacement of Screen Rate*), any substitute or alternative basis agreed pursuant to paragraph (b) above shall, with the prior consent of all the Lenders and the Borrower, be binding on all Parties.
- (d) If paragraph (e) below does not apply and any rate notified to the 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 (*Cost of funds*) applies pursuant to Clause 6.8 (*Market disruption*) and:
 - (i) a Lender's Funding Rate is less than LIBOR;
or
 - (ii) a Lender does not supply a quotation by the time specified in sub-paragraph (ii) of paragraph (a) above,

the cost to that Lender of funding its participation in the Loan or the relevant part of the Loan for that Interest Period shall be deemed, for the purposes of paragraph (a) above, to be LIBOR.

- (f) If this Clause 6.9 (*Cost of funds*) applies but any Lender does not supply a quotation by the time specified in sub-paragraph (ii) of paragraph (a) above, the rate of interest shall be calculated on the basis of the quotations of the remaining Lenders.

6.10 Replacement of Screen Rate

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

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

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

- (c) If, as at 30 September ~~2021~~ [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 ~~the Majority~~ [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 ~~2021~~ [2022](#), unless the Borrower and the Agent (acting on the instructions of ~~the Majority~~ [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.

- (d) If an amendment is required as contemplated in this Clause 6.10 (*Replacement of Screen Rate*), 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.

6.11 Notice of prepayment

If no agreement is reached with the Borrower under Clause 6.10 (*Replacement of Screen Rate*), the Borrower may give the Agent not less than 15 Business Days', or, if the Fixed Interest Rate has been selected pursuant to Clause 6.1 (*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.

6.12 Prepayment; termination of Commitments

A notice under Clause 6.11 (*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 (*Breakage costs and SIMEST arrangement*)) 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 6.1 (*Fixed or Floating Interest Rate*)).

6.13 Application of prepayment

The provisions of Clause 16 (*Cancellation, Prepayment and Mandatory Prepayment*) shall apply in relation to the prepayment.

6.14 Certain Circumstances

Notwithstanding anything to the contrary in this Agreement:

- (a) in the event of any circumstances falling within Clause 6.8 (*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 (*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 (*Unavailability of Screen Rate*) 6.7 (*Calculation of*

Reference Bank Rate), 6.8 (Market Disruption), 6.9 (Cost of funds) and 6.10 (Replacement of Screen Rate) 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 (Market Disruption) (the " **Availability-Related Relevant Circumstances**") occurring before the Loan is made and notwithstanding the provisions of Clause 6.6 (Unavailability of Screen Rate), 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.

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.
- (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 (Floating Interest Rate) shall apply.

7 INTEREST PERIODS

7.1 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.

7.2 Duration of Interest Periods

Subject to Clause 7.3 (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 ~~Advance~~ Advances.

7.3 Duration of Interest Periods for Repayment Instalments

Any Interest Period that includes a Repayment Date shall expire on such Repayment Date.

8 SACE PREMIUM AND ITALIAN AUTHORITIES

8.1 SACE Premium

The estimated SACE Premium for a maximum amount of[*] (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[*] (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[*] (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.

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 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 8.1 (*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 (c 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 (c 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 (b 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.

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.

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 Schedule 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 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) ~~and (a)(i)~~ above (being the amount set out in Part A of Schedule 6 (Drawdown Schedule 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 [*] 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.

8.5 Additional 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 2021 Deferral Effective Date (the "**Additional SACE Premium**"). The Additional SACE Premium is payable, in accordance with the SACE Insurance Policy, ~~payable~~ 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 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 8.1 (*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	[*]%
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- ~~(b) The Additional SACE Premium is not financed.~~
- (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 (Additional 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 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 (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 (*Additional Premium*) and the relevant provision of the SACE Insurance Policy, the SACE Insurance Policy shall prevail.

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
- (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 paragraph (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.
- (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.](#)

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 (*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 the Delivery Date, or the date of receipt by the Agent of the written cancellation notice sent by the Borrower as described in Clause 16.1 (*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) [*] payable on the date of the Original Facility Agreement and on or before each anniversary date thereof until the Delivery Date; and
- (ii) [*] 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.

10 TAXES, INCREASED COSTS, COSTS AND RELATED CHARGES

10.1 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 10.2 (*Tax gross-up*) or a payment under Clause 10.3 (*Tax indemnity*).

- (b) Unless a contrary indication appears, in this Clause 10 (*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.

10.2 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 10.7 (*Lender Status*)) at least 30 Business Days prior to such payment date) complied with its obligations under Clause 10.7 (*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.

10.3 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 10.2 (*Tax gross-up*) or would have been compensated for by an increased payment under Clause 10.2 (*Tax gross-up*) but was not so compensated solely because an exclusion in paragraph (d) of Clause 10.2 (*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 Clause10.3 (*Tax indemnity*), notify the Agent.

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.

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.

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 (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.

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 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.

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.

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 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 becomes a Lender at the date of this Agreement, the date of this Agreement and (ii) where the relevant Lender is a Transferee Lender, the effective date of a Transfer Certificate under Clause 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.
- (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.

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 10.10 (*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 10.3 (*Tax indemnity*) (or would have been compensated for under Clause 10.3 (*Tax indemnity*) but was not compensated solely because any of the exclusions in paragraph (b) of Clause 10.3 (*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 10.10 (*Increased Costs*), a reference to a "Tax Deduction" has the same meaning given to the term in Clause 10.1 (*Definitions*).

- (c) A Lender affected by any provision of this Clause 10.10 (*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 10.10 (*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.

10.11 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 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.

10.12 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.

10.13 SACE obligations

To the extent that this Clause 10 (~~Taxes, Increased Costs, Costs and Related Charge~~) 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.

11 REPRESENTATIONS AND WARRANTIES

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 (*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 (*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 11.3 (*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.

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;
- (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 11.1 (*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 (*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 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 (*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 10.7 (*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 11.2 (*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;
- (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.

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 (*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;
- (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 (*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.

12 GENERAL UNDERTAKINGS

12.1 General

The Borrower undertakes with each Secured Party to comply with the following undertakings during the Security Period:

12.2 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;
- (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 12.2 (*Information*) shall be prepared in accordance with GAAP and shall fairly represent the financial condition of the relevant company.

**12.3 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.

**12.4 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.

**12.5 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.

**12.6 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.

**12.7 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.

12.8 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.

12.9 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 16.3 (*Mandatory prepayment – Sale and Total Loss*) and except for charters and other arrangements complying with Clause 13.1 (*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.

12.10 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.

12.11 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.

12.12 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.

12.13 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.

12.14 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.

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.

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.

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;
- (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.

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 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.

12.18 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 12.15 (*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.

12.19 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.

**12.20 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.

**12.21 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 ~~paragraph (a)~~ paragraphs (b)(i), (d)(i) and (e)(i) of Clause 4.1 (*Borrower's irrevocable payment instructions*) only), the Agent, SACE and the Lenders.

**12.22 "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 12.22 (*"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 12.22 (*"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.

12.23 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
 - (iii) modify ~~the~~ [any](#) Refund Guarantee, once issued, without the prior written consent of the Lenders and the form of ~~the~~ [any](#) Refund Guarantee to be issued will not be materially different from the agreed form Refund Guarantee attached to the Sixth Addendum⁷ 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 (*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.

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
- (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.

12.25 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.

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 (*Continuing representations and warranties*) and Clause 18.6 (*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, 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 (*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 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.

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.

(b) The restrictions in paragraph (a) of Clause 12.27 (*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: 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 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 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 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;
 - (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 paragraph ~~(2)~~ (b) (viii) (B) of Clause 12.27 (*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
- (xii) without prejudice to Clauses 12.11 (*Mergers*) and 12.15 (*Investments*) and clause 11.13 (*No merger*) of the Guarantee, the issuance of share capital by any Group member to another Group member.

12.28 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.

**13 SHIP
UNDERTAKINGS**

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 (*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 [*]; 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 [*] **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.

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.

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.

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 (*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 (*Valuation of the Ship*), the Agent shall be entitled to procure a valuation of the Ship on the same basis.

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.

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. 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 (*Valuation of the Ship*).

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.

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.

**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.

**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.

**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.

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 [*];
- (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.

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 [*] 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 [*] 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.

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.

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 [*] 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)).

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.

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.

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.

13.19 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.

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.

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 (*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.

14 INSURANCE

UNDERTAKINGS

14.1 General

The undertakings in this Clause 14 (*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.

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 (*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.

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).

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 (*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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

15 SECURITY VALUE MAINTENANCE

15.1 Security Shortfall

If, upon receipt of a valuation of the Ship in accordance with Clause 13.4 (*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 (*Costs*) and 15.4 (*Documents and evidence*) and paragraph (c) of Clause 16.2 (*Voluntary prepayment*) shall apply to prepayments under paragraph (a) of Clause 15.1 (*Security Shortfall*).

15.2 Costs

All costs in connection with the Agent obtaining any valuation of the Ship referred to in Clause 13.4 (*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 15.1 (*Security Shortfall*) shall be borne by the Borrower.

15.3 Valuation of additional security

For the purpose of this Clause 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 Documents and evidence

In connection with any additional security provided in accordance with this Clause 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 Valuations binding

Any valuation under this Clause 15 (*Security Value Maintenance*) shall be binding and conclusive as regards the Borrower.

15.6 Provision of information

- (a) The Borrower shall promptly provide the Agent and any shipbroker acting under this Clause 15 (*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 CANCELLATION, PREPAYMENT AND MANDATORY PREPAYMENT

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 (*Cancellation*) shall reduce the remaining Commitments [under that Tranche](#) of the [relevant](#) Lenders rateably.

**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 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 (*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 (*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 (*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 ~~the~~ [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 ~~the~~ [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 6.1 (*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 (*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 (*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 20.1 (*Indemnities regarding borrowing and repayment of Loan*) and 20.2 (*Breakage costs and SIMEST arrangements*).
- (c) If the Borrower has selected the Fixed Interest Rate pursuant to Clause 6.1 (*Fixed or Floating Interest Rate*), the SACE Agent shall give SIMEST thirty (30) days written notice of the intended date of prepayment.

**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.

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) the events described in paragraph (a) of Clause 16.4 (*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 (*Mandatory prepayment – SACE Insurance Policy*).

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 (*Dividends and dividend restriction*) and Clause 12.27 (*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 contract*) 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 (*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 (*New capital raises or financing*), if at any time after the 2021 Deferral Effective Date:
 - (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 *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; ~~for~~

- (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.

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.

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 (Additional 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.

16.7 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 (*Voluntary prepayment*)).

16.8 16.9 Application of partial prepayment

Amounts prepaid shall be applied in accordance with paragraph (b) of Clause 19.1 (*Receipts*).

16.9 16.10 No reborrowing

Amounts prepaid may not be reborrowed.

17 INTEREST ON LATE PAYMENTS

17.1 Default rate of interest

Without prejudice to the provisions of Clause 18 (*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) 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) 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.

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.

18 EVENTS OF DEFAULT

18.1 Events of Default

An Event of Default occurs if any of the events or circumstances described in Clauses 18.2 (*Non-payment*) to 18.20 (*Material Adverse Change*) occur.

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.

18.3 Non-remediable breaches

The Borrower fails to comply with the provisions of Clauses 12.8 (*Negative pledge*), 12.9 (*Disposals*), 12.11 (*Mergers*) or 12.18 (*Loans and guarantees by the Borrower*).

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 (*Non-payment*) to 18.20 (*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~~ 12.28 (*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.

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.

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 (*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 Covenant*) 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 (*Mandatory prepayment – sale and total loss*) or Clause 16.4 (*Mandatory prepayment – SACE insurance policy*) has occurred.

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.

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.

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.

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 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.

18.11 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.

18.12 Analogous events

Anything analogous to or having a substantially similar effect to any of the events specified in Clauses 18.7 (*Winding-up*) to 18.11 (*Legal process*) shall occur under the laws of any applicable jurisdiction.

18.13 Cessation of business

Any Obligor ceases to carry on all or a substantial part of its business.

18.14 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 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.

18.15 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.

18.16 Insurances

The Borrower fails to insure the Ship in the manner specified in Clause14 (*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.

18.17 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.

18.18 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.

18.19 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.

18.20 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 ~~12.27~~ 12.28 (*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.

18.21 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
- (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.

18.22 Termination of Commitments

On the service of a notice under paragraph (a) of Clause 18.21 (*Actions following an Event of Default*), the Commitments and all other obligations of each Lender to the Borrower under this Agreement shall terminate.

18.23 Acceleration of Loan

On the service of a notice under paragraph (b) of Clause 18.21 (*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.

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 (*Voluntary prepayment*).

18.25 Multiple notices; action without notice

The Agent may serve notices under paragraphs (a) and (b) of Clause 18.21 (*Actions following an Event of Default*) simultaneously or on different dates and it may take any action referred to in paragraph(c) of Clause 18.21 (*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.

18.26 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 18.21 (*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.

18.27 Lender's rights unimpaired

Nothing in this Clause 18 (*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*).

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.

19 APPLICATION OF SUMS RECEIVED

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 (*Interest on Late Payment*), 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 (*Breakage costs and SIMEST arrangement*) 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.

20 INDEMNITIES

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;
- (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 (*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 (*Events of Default*).

20.2 Breakage costs and SIMEST arrangements

Without limiting its generality, Clause 20.1 (*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~~ [Contributions](#) and/or any overdue amount (or an aggregate amount which includes its ~~Contribution~~ [Contributions](#) or any overdue amount);
- (b) if the Borrower has selected the Fixed Interest Rate in accordance with Clause 6.1 (*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 (*Breakage costs and SIMEST arrangement*) "**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.

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 (*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 11.2 (*Continuing representations and warranties*) and/or of Clause ~~12.27~~ [12.28](#) (*Code of Ethics and Model*).

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 (*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 (*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.

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 (*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.

20.6 Sums deemed due to a Lender

For the purposes of this Clause 20 (*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.

20.7 SACE obligations

To the extent that this Clause 20 (*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.

21 ILLEGALITY, ETC.

21.1 Illegality and Sanctions

This Clause 21 (*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**").

21.2 Notification of illegality

- (a) The Agent shall promptly notify the Borrower, the Obligors and the other Lenders of the notice under Clause 21 (*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 21.3 (*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 6.1 (*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.

21.3 Prepayment; termination of Commitment

- (a) After notification under paragraph (c) of Clause 21.2 (*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 6.1 (*Fixed or Floating Interest Rate*)) after notification under paragraph (a) of Clause 21.2 (*Notification of illegality*) and subject to Clause 21.4 (*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 (*Breakage costs and SIMEST arrangement*) and any indemnity payable under paragraph (c) of Clause 20.2 (*Breakage costs and SIMEST arrangement*) in respect of the Interest Make-Up Agreement;
- (b) On the Agent notifying the Borrower under paragraph(c) of Clause 21.2 (*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 (*Illegality and Sanctions*) as the date on which the notified event would become effective the Borrower shall prepay the Notifying Lender's ~~Contribution~~ [Contributions](#) and shall pay compensation to the Notifying Lender calculated in accordance with Clause 16.2 (*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 6.1 (*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.

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 21.1 (*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.

22 SET-OFF

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.

22.2 Existing rights unaffected

No Creditor Party shall be obliged to exercise any of its rights under Clause 22.1 (*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).

22.3 Sums deemed due to a Lender

For the purposes of this Clause 22 (*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.

22.4 No Security Interest

This Clause 22 (*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.

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.

24 CHANGES TO THE LENDERS

24.1 Transfer by a Lender

Subject to Clause 24.5 (*No transfer without Transfer Certificate*), Clause 24.17 (*Assignment or transfer to SACE*) and Clause 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~~ 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 (*Role of the Agent and the Joint Mandated Lead Arrangers*) and 27 (*The Security Trustee*) respectively.

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 (*No transfer without Transfer Certificate*) and 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 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 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 (*Transfer Certificate, delivery and notification*) on or before that date.

24.5 No transfer without Transfer Certificate

Except as provided in Clause 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 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~~ [Contributions](#) as were held by the predecessor Lender.

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 ~~Contribution~~ [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 Majority Lenders and those under Clause 6.8 (*Market Disruption*) and Clause 9 (*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 Maintenance of register of Lenders

During the Security Period the Agent shall maintain a register in which it shall record the name, Commitment, ~~Contribution~~ 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 (*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 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 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 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 (*Transfer by a Lender*).

**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.

**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.

**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 10 (*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 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 Security over Lenders'
rights**

In addition to the other rights provided to Lenders under this Clause24 (*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.

24.17 Assignment or transfer to SACE

- (a) Notwithstanding the above provisions of this Clause 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 10 (*Taxes, Increased Costs, Costs and Related Charge*) or 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 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 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.

24.20 Definition of Affiliate

For the purposes of this Clause 24 (*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.

25 CHANGES TO THE OBLIGORS

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.

26 ROLE OF THE AGENT AND THE JOINT MANDATED LEAD ARRANGERS

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.

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.

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.

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.

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.

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.

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.

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.

26.9 Exclusion of liability

- (a) Without limiting paragraph (b) of Clause 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 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 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 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 (*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 (*Role of the Agent and the Joint Mandated Lead Arranger*). 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 26.11 (*Resignation of the Agent*). In this event, the Agent shall resign in accordance with paragraph (b) of Clause 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 26.11 (*Resignation of the Agent*) shall be subject to compliance with all necessary "know your customer" requirements of the Lenders.

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.

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.

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.

26.15 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 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 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 Resignation of the Agent in relation to FATCA

The Agent shall resign in accordance with Clause 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 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 10.9 (*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 (*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.

27 THE SECURITY TRUSTEE

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 (*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 27.1 (*Trust*) and as excluded or limited by this Clause 27 (*The Security Trustee*) including in particular Clause 27.8 (*Instructions to Security Trustee and exercise of discretion*), Clause 27.13 (*Responsibility for documentation*), Clause

27.14 (*Exclusion of liability*), Clause 27.16 (*Lenders' indemnity to the Security Trustee*), Clause 27.23 (*Business with the Group*) and Clause 27.28 (*Full freedom to enter into transactions*).

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 (*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 (*Parallel Debt (Covenant to pay the Security Trustee)*) to the extent permitted by applicable law, shall be applied in accordance with Clause 19 (*Application of sums received*).
- (f) This Clause 27.2 (*Parallel Debt (Covenant to pay the Security Trustee)*) shall apply, with any necessary modifications, to each Finance Document.

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.

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 (*The Security Trustee*), the "**Recoveries**") shall be transferred to the Agent for application in accordance with Clause 19 (*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 (*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 (*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 Deductions from receipts

- (a) Before transferring any moneys to the Agent under Clause 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 (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 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 (*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 Investment of proceeds

Prior to the payment of the proceeds of the Recoveries to the Agent for application in accordance with Clause 19 (*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 (*Investment of proceeds*).

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 (*Security Trustee's discretions*) to Clause 27.28 (*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 (*Deductions from receipts*) and Clause 27.6 (*Prospective liabilities*).

27.9 Security Trustee's Actions

Without prejudice to the provisions of Clause 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 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 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 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 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 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 Exclusion of liability

- (a) Without limiting Clause 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 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 (*Third party rights*) and the provisions of the Third Parties Rights Act.

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).

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.

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.

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.

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.

27.21 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 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 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 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 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.

27.26 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.

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.

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.

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 (*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 (*The Security Trustee*), Clause 27.5 (*Deductions from receipts*), Clause 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 27.29 (*Resignation of the Security Trustee*) shall be subject to compliance with all necessary "know your customer" requirements of the Lenders.

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.

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.

28 CONDUCT OF BUSINESS BY THE CREDITOR PARTIES

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.

29 SHARING AMONG THE CREDITOR PARTIES

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 (*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 (*Application of sums received*) and Clause 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 (*Application of sums received*) and Clause 30 (*Payment Mechanics*).

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 19 (*Application of sums received*) and Clause 30 (*Payment Mechanics*).

29.3 Recovering Creditor Party's rights

- (a) On a distribution by the Agent under Clause 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 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 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 (*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 Exceptions

- (a) This Clause 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
- (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 (*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 PAYMENT MECHANICS

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.

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 (*Distributions to an Obligor*), Clause 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 Distributions to an Obligor

The Agent may in accordance with Clause 22 (*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 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 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 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 Currency of account

- (a) Subject to paragraphs (b) and (c) of Clause 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 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 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 VARIATIONS AND WAIVERS

31.1 Variations, waivers etc. by Majority Lenders

Subject to Clause 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 Variations, waivers etc. requiring agreement of all Lenders

However, as regards the following, Clause 31.1 (*Variations, waivers etc. by Majority Lender*) 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 (*Changes to the Lenders*) or this Clause 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 Exclusion of other or implied variations

Except for a document which satisfies the requirements of Clauses 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.

32 NOTICES

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.

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.

32.3 Effective date of notices

Subject to Clauses 32.4 (*Service outside business hours*) and 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 Service outside business hours

However, if under Clause 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 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 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 Illegible notices

Clauses 32.3 (*Effective date of notices*) and 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 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 English language

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

32.9 Meaning of "notice"

In this Clause 32 (*Notices*), "notice" includes any demand, consent, authorisation, approval, instruction, waiver or other communication.

33 CONFIDENTIALITY

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 (*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 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;
- (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 (*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;

- (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 Entire agreement

This Clause 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 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 (*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.

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.

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 (*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 (*Confidentiality*).

33.7 Continuing obligations

The obligations in this Clause 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.

33.8 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.

**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).

**34 LEGAL INDEPENDENCE AND UNCONDITIONAL OBLIGATIONS OF THE
BORROWER**

**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.

**35 SACE SUBROGATION AND
REIMBURSEMENT**

**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.

35.2 Reimbursement

- (a) Without prejudice to Clause 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 (*Default rate of interest*) of this Agreement).

- (c) Each Obligor further agrees that its obligations under this Clause 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 35.2 (*Reimbursement*).
- (e) Each amount that is payable by the Obligors pursuant to Clause 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 Obligations Absolute

The obligations of the Obligors under this Clause 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 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 SUPPLEMENTAL

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.

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.

36.3 Counterparts

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

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 paragraph (a) and (b) above, SACE has the right to enforce and to enjoy the benefit of Clause 35 (*SACE Subrogation and Reimbursement*), Clause 17 (*Interest on Late Payment*), Clause 8 (*SACE Premium and Italian Authorities*), Clause 10.2 (*Tax gross-up*), Clause 10.3 (*Tax indemnity*), Clause 10.11 (*Transaction Costs*), Clause 20.1 (*Indemnities regarding borrowing and repayment of Loan*), Clause 20.3 (*Miscellaneous indemnities*), Clause 20.4 (*Currency indemnity*), Clause 22 (*Set-Off*), Clause 27 (*The Security Trustee*), Clause 10.6 (*VAT*), Clause 10.13 (*SACE obligations*), Clauses 33.8 (*Disclosure by SACE*) and 33.9 (*Press release*) and Clause 38 (*Enforcement*).
- (d) Any amendment or waiver which relates to the rights of SACE under this Agreement, including under Clause 35 (*SACE Subrogation and Reimbursement*), Clause 17 (*Interest on Late Payment*), Clause 8 (*SACE Premium and Italian Authorities*), Clause 10.2 (*Tax gross-up*), Clause 10.3 (*Tax indemnity*), Clause 20.4 (*Currency indemnity*), Clause 22 (*Set-Off*), Clause 27 (*The Security Trustee*), Clause 20.3 (*Miscellaneous indemnities*), Clause 10.6 (*VAT*), Clause 10.11 (*Transaction Costs*), Clause 20.1 (*Indemnities regarding borrowing and repayment of Loan*), Clauses 33.8 (*Disclosure by SACE*) and 33.9 (*Press release*) and Clause 38 (*Enforcement*) may not be effected without the consent of SACE.

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.

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.

37 GOVERNING

LAW

37.1 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 ENFORCEMENT

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.

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 ~~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 CONFIDENTIALITY OF FUNDING RATES AND REFERENCE BANK QUOTATIONS

39.1 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 6.5 (*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 (*Confidentiality of Funding Rates and Reference Bank Quotation*) relating to Reference Bank Quotations are without prejudice to its obligations to make notifications under Clause 6.5 (*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.

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 (*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 (*Confidentiality of Funding Rates and Reference Bank Quotation*).

39.3 No Event of Default

No Event of Default will occur under Clause 18.4 (*Breach of other obligation*) by reason only of an Obligor's failure to comply with this Clause 39 (*Confidentiality of Funding Rates and Reference Bank Quotation*).

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 TWO, LTD.)
in the presence of:)

TRANCHE A 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)
HSBC CONTINENTAL EUROPE, ITALY)
in the presence of:)

SIGNED by)
duly authorised)
for and on behalf of)
DEKABANK DEUTSCHE GIROZENTRALE)

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.)

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)
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.)

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:)

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)
BNP PARIBAS FORTIS S.A./N.V.)
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:)



[*]: 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 17 June 2021

LEONARDO THREE, 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

HSBC BANK PLC

BNP PARIBAS FORTIS S.A./N.V.

KFW IPEX-BANK GMBH

CASSA DEPOSITI E PRESTITI S.P.A.

as Joint Mandated Lead Arrangers

and

BNP PARIBAS S.A.

as Agent

and SACE Agent

and

BNP PARIBAS S.A.

as Security Trustee

AMENDMENT AND RESTATEMENT AGREEMENT

relating to a facility agreement originally dated 12 April 2017

(as amended and restated by an amendment and restatement agreement dated 21 November 2017 and as further amended and restated by an amendment and restatement agreement dated 17 February 2021)

in respect of the part financing of the 3,300 passenger cruise ship newbuilding presently designated as Hull No. [*] at Fincantieri S.p.A

WATSON FARLEY
&
WILLIAMS

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Appendices

Form of Amended and Restated Facility Agreement (marked to indicate amendments)	
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THIS AGREEMENT is made on 17 June 2021

PARTIES

- (1) **LEONARDO THREE, 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) **HSBC BANK PLC** of Level 2, 8 Canada Square, London, E14 5HQ, United Kingdom, **BNP PARIBAS FORTIS S.A./N.V.** of 3, Montagne du Parc, 1 KA1E, 1000 Brussels, Belgium, **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) **BNP PARIBAS S.A.** French *société anonyme*, registered with the Registre du Commerce et des Sociétés of Paris under number 662 042 449 with its registered office at 16 Boulevard des Italiens, 75009 Paris, France, as agent and SACE agent (the "**Agent**" and the "**SACE Agent**")
- (8) **BNP PARIBAS S.A.** French *société anonyme*, registered with the Registre du Commerce et des Sociétés of Paris under number 662 042 449 with its registered office at 16 Boulevard des Italiens, 75009 Paris, 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) up to €640,000,000 and the amount of the SACE Premium (but not exceeding €665,280,665.28) 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 (as defined below) was amended and restated pursuant to an amendment and restatement agreement dated 17 February 2021 (the "**February 2021 Amendment and Restatement Agreement**") pursuant to which the parties agreed to the temporary suspension 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, providing for an increase of the Facility for the purpose of financing an amount to be applied towards the second instalment of the Additional SACE Premium.

OPERATIVE PROVISIONS

1 DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Agreement:

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

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

"Facility Agreement" means the Original Facility Agreement, as amended and restated by the February 2021 Amendment and Restatement Agreement.

"June 2021 Fee Letters" means any letter between the Agent and any Obligor which sets out the fees payable in connection with the arrangements contemplated by this Agreement.

"June 2021 Finance Documents" means this Agreement, each June 2021 Fee Letter and the Supplemental Pre-delivery Security.

"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.

"Supplemental Pre-delivery Security" means a deed to be entered into pursuant to this Agreement between the Borrower and the Security Trustee, supplemental to the Pre-delivery Security, creating security over the Pre-delivery Contracts.

"Total Tranche B Commitments" means the aggregate of the Tranche B Commitments (as set out in further detail in Part B of Schedule 1 (*The Tranche B Lender*)), being fourteen million, nine hundred and sixty-four thousand and eighty-four Euros and seven Cents (€14,964,084.07) as at the date of this Agreement.

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 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 AND CONDITIONS SUBSEQUENT

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 Within the time periods set out in Schedule 3 (*Conditions Subsequent*), the Agent shall have received (or on the instruction of all the Lenders, waived receipt of) all the documents and other evidence listed therein in form and substance satisfactory to the Agent.
- 2.3 Upon fulfilment or waiver of the conditions set out in Clause 2.1 above, the Agent shall provide the Borrower, the Creditor Parties, SACE and SIMEST with a copy of the executed certificate in the form set out in Schedule 4 (*Form of Effective Date Certificate*) confirming that the Effective Date has occurred and such certificate shall be binding on all Parties.
- 2.4 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, 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, 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 Confirmation of Guarantee

With effect on and from the Effective Date, 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 Obligor 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 original terms and the amendments to the Finance Documents as amended, restated and/or supplemented by this Agreement.

4.3 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 Obligor under the Finance Documents as amended, restated and/or supplemented by this Agreement;
- (b) the obligations of the relevant Obligor 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.

4.4 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) the Facility Agreement and the applicable provisions of this Agreement will be read and construed as one document; and
- (c) 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

- 6.1 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.
-

- 6.2 The Borrower shall pay to each of (i) the Agent for its own account and (ii) the Agent (for the account of each Lender) such fees in the amount and at the times specified in the relevant June 2021 Fee Letters.

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.

EXECUTION PAGES

BORROWER

SIGNED by) /s/ Daniel S. Farkas
duly authorised) Daniel S. Farkas
for and on behalf of)
LEONARDO THREE, LTD.)

GUARANTOR

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

SHAREHOLDER

SIGNED by) /s/ Daniel S. Farkas
for and on behalf of) Daniel S. Farkas
NCL INTERNATIONAL, LTD.)
as its duly appointed attorney-in-fact)
in the presence of:) /s/ Jared G. Silberhorn
) Jared G. Silberhorn
) 7665 Corporate Center Drive
) Miami, FL 33126 USA

HOLDING

SIGNED by) /s/ Daniel S. Farkas
for and on behalf of) Daniel S. Farkas
NORWEGIAN CRUISE LINE)
HOLDINGS LTD.)
as its duly appointed attorney-in-fact)
in the presence of:) /s/ Jared G. Silberhorn
) Jared G. Silberhorn
) 7665 Corporate Center Drive
) Miami, FL 33126 USA

LENDERS

SIGNED by) /s/ Alessandro Mazzi
duly authorised) Alessandro Mazzi
for and on behalf of) MD — Head of Export and Asset Finance, Italy
HSBC CONTINENTAL EUROPE, ITALY)

SIGNED by) /s/ Bruno Cloquet
duly authorised) Bruno Cloquet
for and on behalf of) Global Head of Exporters and ECAs Origination
BNP PARIBAS FORTIS S.A./N.V)
) /s/ Michel Froidebise
) Michel Froidebise
) Head of Export Finance Nordic Origination

SIGNED by) /s/ Maria Gazi
duly authorised) Maria Gazi
for and on behalf of) Attorney-in-Fact
KFW IPEX-BANK GMBH)

SIGNED by) /s/ Enrico Semprebene
duly authorised) Enrico Semprebene
for and on behalf of)
CASSA DEPOSITI E PRESTITI S.P.A.)

SIGNED by) /s/ Isabella Roberts
duly authorised) Isabella Roberts
for and on behalf of) Attorney-in-Fact
AKA AUSFUHRKREDIT-GESELLSCHAFT)
MIT BESCHRAENKTER HAFTUNG)

MANDATED LEAD ARRANGERS

SIGNED by) /s/ Varsha Sharan
duly authorised) Varsha Sharan
for and on behalf of) Director
HSBC BANK PLC)

SIGNED by) /s/ Bruno Cloquet
duly authorised) Bruno Cloquet
for and on behalf of) Global Head of Exporters and ECAs Origination
BNP PARIBAS FORTIS S.A./N.V)
) /s/ Michel Froidebise
) Michel Froidebise
) Head of Export Finance Nordic Origination

SIGNED by) /s/ Maria Gazi
duly authorised) Maria Gazi
for and on behalf of) Attorney-in-Fact
KFW IPEX-BANK GMBH)

SIGNED by) /s/ Enrico Semprebene
duly authorised) Enrico Semprebene
for and on behalf of)
CASSA DEPOSITI E PRESTITI S.P.A.)

AGENT

SIGNED by) /s/ Philippe Laude
duly authorised) Philippe Laude
for and on behalf of)
BNP PARIBAS S.A.) /s/ Georges Curey
Georges Curey
Head of Structured Export Finance

SACE AGENT

SIGNED by) /s/ Philippe Laude
duly authorised) Philippe Laude
for and on behalf of)
BNP PARIBAS S.A.) /s/ Georges Curey
Georges Curey
Head of Structured Export Finance

SECURITY TRUSTEE

SIGNED by) /s/ Philippe Laude
duly authorised) Philippe Laude
for and on behalf of)
BNP PARIBAS S.A.) /s/ Georges Curey
Georges Curey
Head of Structured Export Finance

APPENDIX

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 and restated by an amendment and restatement agreement dated 21 November 2017, [as amended and restated by an amendment and restatement agreement dated 17 February 2021](#) and as further amended and restated pursuant to an amendment and restatement agreement dated ~~February~~ [February](#) [●] 2021)

TERM LOAN FACILITY

LEONARDO THREE, LTD.

as Borrower

and

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

as Lenders

and

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

BNP PARIBAS S.A.

as Agent and SACE Agent

and

BNP PARIBAS S.A.

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.

WATSON FARLEY
&
WILLIAMS

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EUROPE/67837575v2

THIS AGREEMENTs originally made on 12 April 2017 (as amended and restated by an amendment and restatement agreement dated 21 November 2017, [as amended and restated by an amendment and restatement agreement dated 17 February 2021](#) and as further amended and restated pursuant to an amendment and restatement agreement dated ~~_____~~ February __, 2021).

PARTIES

- (1) **LEONARDO THREE, LTD.** an exempted company incorporated under the laws of Bermuda whose registered office is at Park Place 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) **BNP PARIBAS FORTIS S.A./N.V., KFW IPEX-BANK GMBH, BBK BANK PLC and CASSA DEPOSITI E PRESTITI S.P.A.** as joint mandated lead arrangers (the "**Joint Mandated Lead Arrangers**")
- (4) **BNP PARIBAS S.A.** as agent (the "**Agent**") and SACE agent (the "**SACE Agent**")
- (5) **BNP PARIBAS S.A.**, as security trustee (the "**Security Trustee**")

BACKGROUND

- (A) By a shipbuilding contract 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 currently having hull number [*] as more particularly described in the Shipbuilding Contract (as defined below) to be delivered 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**");
 - (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 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 Euro loan facility for the purpose of assisting the Borrower in financing 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 (such Addendum having been dated 21 November 2017) 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"**) (the Original Shipbuilding Contract as amended pursuant to the Sixth Addendum, the **"Shipbuilding Contract"**).
- (G) 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 [\(as defined therein\)](#), the Secured Parties [\(as defined below\)](#) 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:
- (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 ~~offered by SACE~~ (the "**Original Principles**").

- (I) 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**").
- (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 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**").
- (K) On 25 January 2021, the 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 _____~~ [\(as amended and restated by the 2017 Amending and Restating Agreement\) dated 17](#) February 2021 between, amongst others, the Borrower, the Agent and the SACE Agent (the "**February 2021 Amendment and Restatement Agreement**") [\(the Original Facility Agreement, as amended and restated by the 2017 Amending and Restating Agreement and as amended and restated by the February 2021 Amendment and Restatement Agreement, the "Facility Agreement"\)](#).
- (L) [The Parties have agreed to amend and restate the Facility Agreement as set out in an amendment and restatement agreement dated \[●\] June 2021 and made between, amongst others, the Borrower, the Agent, the SACE Agent and the Security Trustee in order to, inter alia, provide for an increase of the Facility for the purpose of financing an amount to be applied towards the second instalment of the Additional SACE Premium \(as defined below\) \(the "June 2021 Amendment and Restatement Agreement"\)](#).
- (~~L~~M) This Agreement sets out the terms and conditions of the ~~Original~~ Facility Agreement as amended and restated by the [June](#) 2021 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 (G).

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

"**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, 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.

"**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 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 BNP PARIBAS S.A. 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 (*Additional 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 BNP Paribas S.A., a French *société anonyme*, having a share capital of two billion, four hundred ninety-nine million, five hundred ninety-seven thousand and one hundred 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 Commerce et des Sociétés* of Paris or any successor of it appointed under Clause 26 (*Role of the Agent and the Joint Mandated Lead Arranger*).

["Aggregate SACE Premium" means, together, the SACE Premium and the Additional SACE 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; and](#)

(b) [the second instalment of the Additional SACE Premium, calculated in accordance with paragraph \(a\)\(ii\) of Clause 8.5 \(Additional Premium\), financed or to be financed pursuant to Tranche B, provided that such amount shall not, at any time, exceed the Total Tranche B 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.

"**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, the period commencing on the date of this Agreement,](#) [and](#) ending on:

- (a) the earlier to occur of (i) the Delivery Date and (ii) 23 February 2025 (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.

"**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.

"**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 New York, Milan and Rome and which is a TARGET Day; 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 New York, Frankfurt, Rome, Brussels and Paris and which is a TARGET Day and, in relation to any payment to be made to the Builder, Milan.

"**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.

"**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 zero point sixty-three per cent. (0.63%) per annum or any other CIRR rate being the fixed rate for medium and long term export credits in Euros 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).

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

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

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

"Creditor Party" means the 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.

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

"Delivery Advance" means, subject to the provisions of Clause 8.4 (*Refund*), 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.

"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) eight hundred million Euros (€800,000,000);
and
- (b) 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.

"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.

"€STR" means the euro short term rate administered by the European Central Bank (or any other person which takes over the administration of that rate) for the relevant period displayed (before any correction, recalculation or republication by the administrator) on the relevant page 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.

"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.

"EURIBOR" means, in relation to the Loan or any part of the Loan:

- (a) the applicable Screen Rate as of the Specified Time for euro and for a period equal in length to the Interest Period of the Loan or that part of the Loan; or
- (b) as otherwise determined pursuant to Clause 6.6 (*Unavailability of Screen Rate*),

and if, in either case, that rate is less than zero, EURIBOR shall be deemed to be zero (except with respect to the Interest Make-Up Agreement).

"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 *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](#) 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 and Tranche B, made or to be made](#) available under this Agreement as described in Clause 2.1 (*Amount of facility*).

"Facility Agreement" ~~means the Original Facility Agreement as amended and restated by the 2021 Amendment and Restatement Agreement~~ [has the meaning given to the term in Recital \(K\)](#)

"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.

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

"**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 (*Fees*).

"**Finance Documents**" means:

- (a) the 2017 Amending and Restating Agreement;
- (b) the 2021 Deferral Fee Letters;
- (~~b~~c) the February 2021 Amendment and Restatement Agreement;
- (d) the June 2021 Amendment and Restatement Agreement;
- (~~e~~e) the June 2021 ~~Deferral~~Fee Letters;
- (~~f~~f) this Agreement;
- (~~e~~g) any Fee Letter;
- (~~f~~h) the Guarantee;
- (~~g~~i) the Pre-delivery Security;
- (j) the Supplemental Pre-delivery Security;
- (~~h~~k) the General Assignment;
- (i) the Mortgage;
- (~~j~~m) the Post-Delivery Assignment;
- (~~k~~n) any Subordinated Debt Security;
- (~~l~~o) the Shares Security Deed;
- (~~m~~p) the Approved Manager's Undertaking;
- (~~n~~q) any Transfer Certificate;
- (~~o~~r) any Compliance Certificate;

([P](#)) any Drawdown
Notice;

- ([¶ 1](#)) 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
- ([¶ 2](#)) 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 (*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 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) the applicable Margin;
and
- (b) EURIBOR for the relevant
period.

"**Funding Rate**" means any individual rate notified by a Lender to the Agent pursuant to sub-paragraph (i) of paragraph (e) of Clause 6.9 (*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 and restated pursuant to the [February 2021 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 HM 11, Bermuda.

"Holding" means 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.

"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 [*] (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 3.12 (*No later than sixty (60) days before the Intended Delivery Date*) or paragraph (b) of Clause 3.14 (*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 EURIBOR plus the Margin (as described in paragraph (b) of the definition of Margin).

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

"**Interpolated Screen Rate**" means, in relation to the Loan or any part of the Loan, the rate which results from interpolating on a linear basis between:

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

each as of the Specified Time for Euros.

"**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 the term in Recital (L).

"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 ~~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~~Tranche A Lender or a Tranche B Lender.

"**Loan**" means the aggregate principal amount outstanding for the time being ~~outstanding under this Agreement of the borrowings under the Facility and "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 fifty-nine per cent. (0.59%) per annum; and
- (b) in relation to the Floating Interest Rate one point twenty-two per cent. (1.22%) per annum.

"**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.

"**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

- (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.

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

~~(a) six hundred and forty million Euros (€640,000,000);
and~~

~~(b) one hundred per cent. (100%) of the SACE Premium to be paid in accordance with Clause 8.15 (ACE Premium);~~

~~provided that such amount shall not, at any time, exceed six hundred and sixty five million, two hundred and eighty thousand, six hundred and sixty five Euros and twenty eight Cents (€665,280,665.28);~~

"**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>).

"**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) six hundred and forty million Euros (€640,000,000);
and~~

~~(b) one hundred per cent. (100%) of the SACE Premium to be paid in accordance with Clause 8.15 (ACE Premium);~~

provided that such amount shall not, at any time, exceed six hundred and sixty five million, two hundred and eighty thousand, six hundred and sixty five Euros and twenty eight Cents (€665,280,665.28).

"**Original Principles**" has the meaning given in Recital (H).

"**Parallel Debt**" means any amount which an Obligor owes to the Security Trustee under Clause 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 12.14 (*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 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 [*] 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 *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 [*] 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 *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 to such term in Recital (I).

"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 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 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).

"**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 Euros 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 European Interbank Market.

"**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 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 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).

"**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 BNP Paribas S.A., a French *société anonyme*, having a share capital of two billion, four hundred and ninety-nine million, five hundred ninety-seven thousand and one hundred 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 Commerce et des Sociétés* of Paris or any successor of it appointed under Clause 26 (*Role of the Agent and the Joint Mandated Lead Arranger*).

"**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 ~~8.8.1 (SACE Premium and Italian Authorities), in addition to the Additional SACE Premium (provided, for the avoidance of doubt, that the Additional SACE Premium shall not be financed).~~

"**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:

- (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 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 euro interbank offered rate administered by the European Money Markets Institute (or any other person which takes over the administration of that rate) for the relevant period displayed (before any correction, recalculation or republication by the administrator) on page EURIBOR 01 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~~
 - (v) in the case of a Screen Rate for EURIBOR, 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

(v vi) 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:

(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 Screen Rate is calculated in accordance with any such policy or arrangement for a period no less than the Screen Rate Contingency Period; or

(v vii) 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 8.1 (*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 19 (*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 Euros (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 BNP Paribas S.A., a French *société anonyme*, having a share capital of two billion, four hundred ninety-nine million, five hundred ninety-seven thousand and one

hundred 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 Commerce et des Sociétés* of Paris or any successor of it appointed under Clause 27 (*The Security Trustee*).

"**Security Value**" means the amount in Euros (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 (*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 (*Security Value Maintenance*).

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

"**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 ~~in~~ [the agreed form](#).

"**Shareholder**" means NCL International Ltd., a Bermuda company with its registered office at Park Place 55, Par-la-Ville Road, Hamilton HM 11, Bermuda.

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

- (a) if EURIBOR is fixed, the Quotation Day as of 11:00 am Brussels time;
and
- (b) in relation to a Reference Bank Rate calculated by reference to the available quotations in accordance with Clause 6.7 (*Calculation of Reference Bank Rate*), 11.30 am Brussels time on the Quotation Day.

"**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 (F).

"**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.

"**Subordinated Debt Security**" has the meaning given in paragraph (b)(ii) of Clause 12.14 (*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.

"TARGET2" means the Trans-European Automated Real-time Gross Settlement Express Transfer payment system which utilises a single shared platform and which was launched on 19 November 2007.

"TARGET Day" means any day on which TARGET2 is open for the settlement of payment in Euros.

"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).

"Total Commitments" means the aggregate of the Total Tranche A Commitments and the Total Tranche B 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:

- (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 six hundred and sixty five million, two hundred and eighty thousand, six hundred and sixty five Euros and twenty eight Cents (€665,280,665.28) as at the date of the Original Facility Agreement.

"Total Tranche B Commitments" means the aggregate of the Tranche B Commitments, being fourteen million, nine hundred and sixty-four thousand and eighty-four Euros and seven Cents (€14,964,084.07) as at the date of this Agreement.

"Tranche" means Tranche A or Tranche B.

"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, being six hundred and forty million Euros (€640,000,000), 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 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.

"Tranche B" means the part of the Facility to be made available by the Tranche B 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 (Additional 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.

"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.

"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 Arrange", the "Security Trustee", any "Creditor Party", any "Secured Party", any "Lender", any "[Tranche A Lender](#)", any "[Tranche B 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.

"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.

"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.

"**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 (*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 (*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 12.2 (*Information*), Clause 12.4 (*Illicit Payments*), Clause 12.5 (*Prohibited Payments*), Clause 12.24 (*Compliance with laws etc.*) or provisions contained in Clause 20.3 (*Miscellaneous indemnities*) or Clause 21.1 (*Illegality and Sanctions*) and the representations and warranties given under paragraphs (u), (v), (y), (z) and (jj) of Clause 11.2 (*Continuing representations and warranties*) and paragraph (j) of Clause 11.3 (*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 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 (*Representations and Warranties*), Clause 12 (*General Undertakings*), Clause 20 (*Indemnities*), Clause 21 (*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) references to Dollar amounts in Clause 10.11 (*Transaction Costs*), Clause 12 (*General Undertakings*), Clause 13 (*Ship Undertakings*), Clause 14 (*Insurance Undertakings*) and Clause 18 (*Events of Default*) shall be a reference to Dollars (or the equivalent amount in any other currency);
- (f) 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;
- (g) words denoting the singular number shall include the plural and vice versa;
and
- (h) 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

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 ~~the Maximum Loan Amount, in aggregate, the Total Tranche A Commitments~~ intended to be applied as follows:
 - (~~a~~) 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;
 - (~~b~~) 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 8.1 (*SACE Premium*); and
 - (~~c~~) 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 8.1 (*SACE Premium*) ~~;~~ and

- (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 the Total Tranche B 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 \(Additional Premium\).](#)

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; and
- (b) [each Tranche B Lender shall participate in the 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.](#)

2.3 Purpose of Loan

The Borrower undertakes with each Secured Party to use ~~each Advance only to pay for:~~

- (a) [each Advance under Tranche A only to pay for:](#)
- (a.i) goods and services of Italian origin incorporated in the design, construction or delivery of the Ship;
 - (b.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;
 - (c.iii) reimbursement to the Borrower of all or part of eighty per cent. (80%) of the First Shipbuilding Contract Instalment;
 - (d.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 8.1 (*SACE Premium*); and
 - (e.v) the Second Instalment of the SACE Premium payable in accordance with paragraph (b) of Clause 8.1 (*SACE Premium*).
- (b) [the Advance under Tranche B 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 \(Additional Premium\).](#)

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
- (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 Obligor 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 Obligor's 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 Obligor (whether in Bermuda or elsewhere), concerning the transfer of funds abroad and acquisitions of Euros 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 Obligor 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;

- (i) payment of [*] per cent. ([*]%) of the Joint Mandated Lead Arranger structuring fee payable in accordance with paragraph (a)(i) of Clause 9 (*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 6.1 (*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;
- (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 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.

3.9 No later than the Drawdown Date in respect of each Advance under Tranche A other than 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 the Delivery Advance under Tranche A:

- (a) 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;
- (b) as regards any previous Advance, in the event the Refund Guarantee issued in respect of such previous Advance cannot be renewed or extended:
 - (i) evidence that an Acceptable Deposit has accordingly been transferred to the Account pursuant to the terms of the Shipbuilding Contract; and
 - (ii) 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 required by the Secured Parties in respect of the execution and/or the validity and enforceability of the Account Pledge;
- (c) a copy of the relevant invoice from the Builder in respect of the instalment under the Shipbuilding Contract to which the Advance relates;
- (d) 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;
- (e) 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;
- (f) a copy of a duly executed Qualifying Certificate;
- (g) a certificate confirming that:

- (i) the Shipbuilding Contract continues to be in full force and effect; and,
 - (ii) 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
 - (iii) 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; ~~and~~
- (h) a certificate of confirmation confirming that:
- (i) no default or mandatory prepayment event pursuant to Clause 16 (~~Cancellation, Prepayment and Mandatory Prepayment~~) is continuing or would result from the proposed Advance;
 - (ii) the repeating representations and, in relation to the first Advance and first Drawdown Notice, all of the other representations set out in Clause 11 (*Representations and Warranties*) (except the representations to be made on the Delivery Date pursuant to paragraph (b) of Clause 11.1 (*Timing and repetition*)) are true;
- (i) 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;
- (j) if applicable, a duly executed original of the Subordinated Debt Security; and
- (k) 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.

3.10 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 (*Fees*).

3.11 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.

3.12 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 (*Refund*); 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.

3.13 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.

3.14 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.

3.15 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:

- (a.i) if applicable, a duly executed original of the Subordinated Debt Security;
- (a.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;
- (a.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;
- (a.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;
- (a.v) evidence of payment of all amounts which are due and payable hereunder by the Borrower on or prior to the Delivery Date;
- (a.vi) a certificate from the Borrower, signed by an authorised representative of the Borrower, confirming that the representations and warranties contained in Clause 11 (*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:
 - (~~i~~ A) the Shipbuilding Contract continues to be in full force and effect;
 - (~~ii~~ B) no default or mandatory prepayment event pursuant to Clause 16 (~~Cancellation, Prepayment and Mandatory Prepayment~~) is continuing or would result from the Delivery ~~Advance~~ Advances;
 - (~~iii~~ C) the repeating representations as set out in Clause 11 (~~Representations and Warranties~~) are true; and
 - (~~iv~~ D) the representations to be made on the Delivery Date pursuant to ~~paragraph (b) of~~ Clause 11 (~~Representations and Warranties~~) are true;
- (~~h~~ 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; ~~and~~

(b) In respect of the Advance to be made by the Tranche B 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 3.15 (No later than the Delivery Date).

provided always that, in relation to paragraphs (a) and (b) above, the obligations of the relevant Lenders to make ~~the such~~ Advance under each of Tranche A and Tranche B, 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 ~~the advance of the Delivery Advance~~ 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~~).

3.16 **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 3.17 (~~Immediately following Delivery~~), in draft form immediately prior to the delivery of the Ship, and the

documents mentioned in paragraph (e) of Clause 3.17 (*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 11.3 (*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 (*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 3.16 (*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 ~~9 Cloak Lane~~ [107 Cheapside](#), London [UK](#), EC ~~4R~~ [2 RUV 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.

3.17 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 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 (*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*).

3.18 Notification of satisfaction of conditions precedent

The Agent shall notify the [Tranche A Lenders](#) ~~and SACE~~, [the Tranche B 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*).

3.19 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.

3.20 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
 - (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 **Finance 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 **Finance 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).

3.21 No claim against the **Finance Creditor Parties**

The Borrower agrees that the **Finance Creditor** Parties may act on the instructions of the Italian Authorities in relation to this Agreement.

3.22 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.

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. ~~For the avoidance of doubt, the amount of the loan shall not exceed the Maximum Loan Amount~~ [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 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 Additional Premium\).](#)
- (c) 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 Schedule*):
- (~~a~~) 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) ~~instalments~~ [Advances](#) in accordance with Schedule 6 (*Drawdown Schedule*);
- (~~b~~) 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
- (~~c~~) 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.
- (d) [If applicable, the Borrower hereby instructs the Tranche B Lenders in accordance with this Clause 4.1 \(Borrower's irrevocable payment instructions\) to pay the Agent on behalf of the Tranche B 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 \(Additional Premium\).](#)

- (e) Payment to the Builder of the amounts drawn under paragraph (a c)(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*).
- (f) Save as contemplated in Clause 4.2 (*Modification of payment terms*) below, the payment instruction contained in this Clause 4.1 (*Borrower's irrevocable payment instructions*) is irrevocable.

4.2 **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 c)(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 (b c) ~~and (ii)~~, (c) (iii) ~~and (d)~~ of Clause 4.1 (*Borrower's irrevocable payment instructions*).

4.3 **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 ~~five (5) Advances under this Agreement.~~ :
- (i) [five \(5\) Advances under Tranche A;](#)
[and](#)
- (ii) [one \(1\) Advance under Tranche B.](#)
- (c) The amount of the first Advance [under Tranche A](#) shall not exceed the aggregate of (i) 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 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 Advance under Tranche B shall not exceed the lower of \(i\) the amount calculated pursuant to the provisions of paragraph \(a\)\(ii\) of Clause 8.5 \(Additional Premium\) and \(ii\) the Total Tranche B Commitments.](#)
- (f) [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;](#)
[and](#)
- (e iii) the ~~aggregate amount of the~~ Advances [under all Tranches](#) cannot exceed the ~~Maximum Loan Amount~~ [Total Commitments](#).

- (f.g) 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.

4.4 Notification to Lenders of receipt of a Drawdown Notice

The Agent shall promptly notify the [Tranche A Lenders](#) and [the Tranche B 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.

4.5 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.

4.6 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 4.5 (*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 c)(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; and
- (b) in the case of an amount referred to in paragraph ~~(b c)(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 (c)(iii) of Clause 4.1 (*Borrower's irrevocable payment instructions*) to the account of SACE which the SACE Agent shall specify; ~~and~~
- ~~(d) in the case of an amount referred to in paragraph (d) of Clause 4.1 (*Borrower's irrevocable payment instructions*) to the account of SACE which the SACE Agent shall specify.~~

4.7 Disbursement of Advance to third party

The payment by the Agent under Clause 4.6 (*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 ~~Contribution~~ [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.

6 INTEREST

6.1 Fixed 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.

6.2 Fixed Interest Rate

If the Borrower has specified a Fixed Interest Rate pursuant to Clause 6.1 ~~(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.

6.3 Floating Interest Rate

If:

- (a) the Borrower has specified a Floating Interest Rate pursuant to Clause 6.1 ~~(Fixed or Floating Interest Rate)~~; or
- (b) the Borrower has specified a Fixed Interest Rate pursuant to Clause 6.1 ~~(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 (*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).

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.

6.5 Notification of Interest Periods and Floating Interest Rate

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.

6.6 Unavailability of Screen Rate

(a) *Interpolated Screen Rate* If no Screen Rate is available for EURIBOR for the Interest Period of the Loan or any part of the Loan, the applicable EURIBOR shall be the Interpolated Screen Rate for a period equal in length to the Interest Period of the Loan or that part of the Loan.

(b) *Reference Bank Rate* If no Screen Rate is available for EURIBOR for:

- (i) Euro;
- (ii) the Interest Period of the Loan or any part of the Loan and it is not possible to calculate the Interpolated Screen Rate,
- (iii) the applicable EURIBOR shall be the Reference Bank Rate as of the Specified Time and for a period equal in length to the Interest Period of the Loan or that part of the Loan.

(c) *Cost of funds*. If paragraph (b) above applies but no Reference Bank Rate is available for Euro or the relevant Interest Period there shall be no EURIBOR for the Loan or that part of the Loan (as applicable) and Clause 6.9 (*Cost of funds*) shall apply to the Loan or that part of the Loan for that Interest Period.

6.7 Calculation of Reference Bank Rate

(a) Subject to paragraph (b) below, if EURIBOR 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.

6.8 Market Disruption

If before close of business in London on the Quotation Day for the relevant Interest Period the Agent receives notification from a Lender or Lenders (whose participations in the Loan or the relevant part of the Loan 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 EURIBOR 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.

6.9 Cost of funds

- (a) If this Clause 6.9 (*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 participation in the Loan or that part of the Loan from whatever source it may reasonably select.
- (b) If this Clause 6.9 (*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 6.10 (*Replacement of Screen Rate*), any substitute or alternative basis agreed pursuant to paragraph (b) above shall, with the prior consent of all the Lenders and the Borrower, be binding on all Parties.
- (d) If paragraph (e) below does not apply and any rate notified to the 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 (*Cost of funds*) applies pursuant to Clause 6.8 (*Market disruption*) and:
- (i) a Lender's Funding Rate is less than EURIBOR;
or
 - (ii) a Lender does not supply a quotation by the time specified in sub-paragraph (ii) of paragraph (a) above,

the cost to that Lender of funding its participation in the Loan or the relevant part of the Loan for that Interest Period shall be deemed, for the purposes of paragraph (a) above, to be EURIBOR.
- (f) If this Clause 6.9 (*Cost of funds*) applies but any Lender does not supply a quotation by the time specified in sub-paragraph (ii) of paragraph (a) above, the rate of interest shall be calculated on the basis of the quotations of the remaining Lenders.

6.10 Replacement of Screen Rate

- (a) If a Screen Rate Replacement Event has occurred in relation to the Screen Rate for Euro, any amendment or waiver which relates to:
- (i) providing for the use of a Replacement Benchmark;
and
 - (ii)

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

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

- (b) If an amendment is required as contemplated in this Clause 6.10 ~~(Replacement of Screen Rate)~~, 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.

6.11 Notice of prepayment

If no agreement is reached with the Borrower under Clause 6.10 ~~(Replacement of Screen Rate)~~, the Borrower may give the Agent not less than 15 Business Days', or, if the Fixed Interest Rate has been selected pursuant to Clause 6.1 ~~(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.

6.12 Prepayment; termination of Commitments

A notice under Clause 6.11 ~~(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 ~~(Breakage costs and SIMEST arrangement)~~) 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 6.1 ~~(Fixed or Floating Interest Rate)~~).

6.13 Application of prepayment

The provisions of Clause 16 (~~Cancellation, Prepayment and Mandatory Prepayment~~) shall apply in relation to the prepayment.

6.14 Certain Circumstances

Notwithstanding anything to the contrary in this Agreement:

- (a) in the event of any circumstances falling within Clause 6.8 (~~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 (~~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 (~~Unavailability of Screen Rate~~), 6.7 (~~Calculation of Reference Bank Rate~~), 6.8 (~~Market Disruption~~), 6.9 (~~Cost of funds~~) and 6.10 (~~Replacement of Screen Rate~~) 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 Advance but also before the making of the Advance.
- (c) in the event of any Relevant Circumstances falling within Clause 6.8 (~~Market disruption~~) (the "**Availability-Related Relevant Circumstances**") occurring before the Loan is made, 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 Euros (or, if unavailable in Euros, then in any available currency). Such discussions shall be without obligation on the Lenders provided that during such discussion period, such circumstances continue.

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 (~~Floating Interest Rate~~) 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 6.3 (~~Floating Interest Rate~~) shall apply.

7 INTEREST PERIODS

7.1 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.

7.2 Duration of Interest Periods

Subject to Clause 7.3 (*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 ~~Advance~~ [Advances](#).

7.3 Duration of Interest Periods for Repayment Instalments

Any Interest Period that includes a Repayment Date shall expire on such Repayment Date.

8 SACE PREMIUM AND ITALIAN AUTHORITIES

8.1 SACE Premium

The estimated SACE Premium for a maximum amount of [*] (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 [*] (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 [*] (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.

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 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 8.1 (*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 (c) [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 (c) [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 (b) [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.

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.

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 Schedule 6 (*Drawdown Schedule*) under the column entitled "Advance to be drawn under this Agreement" to be drawn on the Delivery Date less (i) any amount cancelled 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) ~~and (a)(i)~~ above (being the amount set out in [Part A of Schedule 6 \(Drawdown Schedule\)](#) under the column entitled "Advance to be drawn under this Agreement" to be drawn on the Delivery Date, less any amount cancelled) 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 [*] Euros (€[*]) or more than [*] Euros (€[*]), calculated by SACE 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.

8.5 **Additional Premium**

- (a) The Borrower shall pay to SACE (through the SACE Agent) an additional SACE premium in relation to the changes made to the Facility Agreement following the 2021 Deferral Effective Date (the "**Additional SACE Premium**"). The Additional SACE Premium is payable, in accordance with the SACE Insurance Policy, ~~payable~~ 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 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) €627,199,999.98 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 8.1 (*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	[*]%
B- / Ba3	[*]%

- (b) The Additional SACE Premium is non-refundable ~~and not~~ **financed**.
- (c) The Borrower has requested, and the Tranche B 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 Clause 8.5 (*Additional 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.
- (d) Consequently, the Borrower hereby irrevocably instructs the Agent on behalf of the Tranche B Lenders to pay the amount of the second instalment of the Additional SACE Premium to SACE on the Delivery Date in accordance with paragraph (b) of Clause 2.1 (*Amount of facility*) of this Agreement.
- (e) The second instalment of the Additional SACE Premium financed by 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.

For avoidance of doubt, in case of discrepancy between this Clause 8.5 (*Additional premium*) and the relevant provision of the SACE Insurance Policy, the SACE Insurance Policy shall prevail.

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 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 Euros 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 (*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 January 2022, [*] per cent. ([*]%) per annum; and
 - (iv) from 1 February 2022 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 the Delivery Date, or the date of receipt by the Agent of the written cancellation notice sent by the Borrower as described in Clause 16.1 (*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 six hundred and sixty five million, two hundred and eighty thousand, six hundred and sixty five Euros and twenty eight Cents (€665,280,665.28) [and the Amended Maximum Loan Amount is assumed to be six hundred and eighty million, two hundred and forty-four thousand, seven hundred and forty-nine Euros and thirty-five Cents \(€680,244,749.35\)](#);

- (c) for the Agent, an agency fee of:
- (i) [*] payable on the date of the Original Facility Agreement and on or before each anniversary date thereof until the Delivery Date; and
 - (ii) [*] 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.

10 TAXES, INCREASED COSTS, COSTS AND RELATED CHARGES

10.1 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 10.2 (*Tax gross-up*) or a payment under Clause 10.3 (*Tax indemnity*).

- (b) Unless a contrary indication appears, in this Clause 10 ~~Taxes, Increased Costs, Costs and Related Charge~~ reference to "**determines**" or "**determined**" means a determination made in the absolute discretion of the person making the determination.

10.2 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 10.7 (*Lender Status*) at least 30 Business Days prior to such payment date) complied with its obligations under Clause 10.7 (*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.

**10.3 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 10.2 (*Tax gross-up*) or would have been compensated for by an increased payment under Clause 10.2 (*Tax gross-up*) but was not so compensated solely because an exclusion in paragraph (d) of Clause 10.2 (*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 (*Tax indemnity*), notify the Agent.

**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.

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.

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 ~~(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.

**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 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.

**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.

**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 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 ~~and~~, (ii) where the relevant Lender becomes a Lender at the date of this Agreement, the date of this Agreement and (ii) where the relevant Lender is a Transferee Lender, the effective date of a Transfer Certificate under Clause 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.

- (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.

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 10.10 (*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 10.3 (*Tax indemnity*) (or would have been compensated for under Clause 10.3 (*Tax indemnity*) but was not compensated solely because any of the exclusions in paragraph (b) of Clause 10.3 (*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 10.10 (*Increased Costs*), a reference to a "Tax Deduction" has the same meaning given to the term in Clause 10.1 (*Definitions*).

- (c) A Lender affected by any provision of this Clause 10.10 (*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 10.10 (*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.

10.11 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 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.

10.12 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.

10.13 SACE

obligations

To the extent that this Clause 10 (~~Taxes, Increased Costs, Costs and Related Charge~~) 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.

11 REPRESENTATIONS AND WARRANTIES

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 (*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 (*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 11.3 (~~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.

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 Interest (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;
- (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 11.1 (*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 (*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 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 (*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 10.7 (*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 11.2 (*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 Refund Guarantor respectively;
- (mm) neither the Borrower, the Builder or the 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.

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 (*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;
- (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 (*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.

**12 GENERAL
UNDERTAKINGS**

12.1 General

The Borrower undertakes with each Secured Party to comply with the following undertakings during the Security Period:

12.2 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;
- (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 (\$20,000,000) 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 12.2 (*Information*) shall be prepared in accordance with GAAP and shall fairly represent the financial condition of the relevant company.

**12.3 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.

**12.4 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.

**12.5 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.

**12.6 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.

**12.7 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.

**12.8 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 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 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.

12.9 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 16.3 (*Mandatory prepayment – Sale and Total Loss*) and except for charters and other arrangements complying with Clause 13.1 (*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.

12.10 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.

12.11 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.

12.12 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.

12.13 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.

12.14 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.

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.

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.

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;
- (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.

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,

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.

12.18 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 12.15 (*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.

12.19 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.

12.20 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.

12.21 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 paragraph (a)(i) of Clause 4.1 (*Borrower's irrevocable payment instructions*) only), the Agent, SACE and the Lenders.

12.22 "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 (iii) of Clause 12.22 "*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 12.22 ("*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.

12.23 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 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
 - (iii) modify the Refund Guarantee, once issued, without the prior written consent of the Lenders and the form of the 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 16.5 (*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.

12.24 Compliance with laws etc.

The Borrower shall:

- (a) comply, or procure compliance with:
 - (i) in all material respects, all laws and regulations relating to 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** **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 manner contrary to any law or regulation including but not limited to the ISM Code, the ISPS Code, all Environmental Laws and all Sanctions.

12.25 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 (*Continuing representations and warranties*) and Clause 18.6 (*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, 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 (*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 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.

12.26 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.

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.

(b) The restrictions in paragraph (a) of Clause 12.27 (*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: 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 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 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 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;
 - (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 paragraph (~~2~~(b)(viii)(B) of [this](#) Clause 12.27 (*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;
- (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
- (xii) without prejudice to Clauses 12.11 (*Mergers*) and 12.15 (*Investments*) and clause 11.13 (*No merger*) of the Guarantee, the issuance of share capital by any Group member to another Group member.

13 SHIP

UNDERTAKINGS

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 (*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 [*]; 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 [*] **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.

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.

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.

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 (*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 (*Valuation of the Ship*), the Agent shall be entitled to procure a valuation of the Ship on the same basis.

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.

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. 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 (*Valuation of the Ship*).

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.

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.

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.

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.

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.

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 [*];
- (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.

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 [*] 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 [*] 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.

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.

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 [*] 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)).

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.

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.

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.

13.19 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.

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.

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 (*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.

14 INSURANCE UNDERTAKINGS

14.1 General

The undertakings in this Clause 14 (*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.

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 (*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.

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).

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 (*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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

15 SECURITY VALUE MAINTENANCE

15.1 Security Shortfall

If, upon receipt of a valuation of the Ship in accordance with Clause 13.4 (*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 Euros 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 (*Costs*) and 15.4 (*Documents and evidence*) and paragraph (c) of Clause 16.2 (*Voluntary prepayment*) shall apply to prepayments under paragraph (a) of Clause 15.1 (*Security Shortfall*).

15.2 Costs

All costs in connection with the Agent obtaining any valuation of the Ship referred to in Clause 13.4 (*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 15.1 (*Security Shortfall*) shall be borne by the Borrower.

15.3 Valuation of additional security

For the purpose of this Clause 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 Documents and evidence

In connection with any additional security provided in accordance with this Clause 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 Valuations binding

Any valuation under this Clause 15 ~~§security Value Maintenance~~ shall be binding and conclusive as regards the Borrower.

15.6 Provision of information

- (a) The Borrower shall promptly provide the Agent and any shipbroker acting under this Clause 15 ~~§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 CANCELLATION, PREPAYMENT AND MANDATORY PREPAYMENT

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 (*Cancellation*) shall reduce the remaining Commitments [under that Tranche](#) of the [relevant](#) Lenders rateably.

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 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 ~~§breakage costs and SIMEST arrangement~~ 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 (*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 (*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 [the 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 [the 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 6.1 (*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 (*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 (*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 20.1 (*Indemnities regarding borrowing and repayment of Loan*) and 20.2 (*Breakage costs and SIMEST arrangements*).
- (c) If the Borrower has selected the Fixed Interest Rate pursuant to Clause 6.1 (*Fixed or Floating Interest Rate*), the SACE Agent shall give SIMEST thirty (30) days written notice of the intended date of prepayment.

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.

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 (*Mandatory prepayment – SACE Insurance Policy*) the events described in paragraph (a) of Clause 16.4 (*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 (*Mandatory prepayment – SACE Insurance Policy*).

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 (Dividends and dividend restriction) and Clause 12.27 (New capital raises or financing) or the provisions of clause 11.3(f) (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 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 (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 (*New capital raises or financing*), if at any time after the 2021 Deferral Effective Date:
- (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; ~~for~~
- (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.

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.

16.7 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 16.2 (*Voluntary prepayment*)).

16.8 Application of partial prepayment

Amounts prepaid shall be applied in accordance with paragraph (b) of Clause 19.1 (*Receipts*).

16.9 No reborrowing

Amounts prepaid may not be reborrowed.

17 INTEREST ON LATE PAYMENTS

17.1 Default rate of interest

Without prejudice to the provisions of Clause 18 (*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) where the Floating Interest Rate is applicable, the aggregate of:
 - (i) €STR;
 - (ii) the applicable Margin;
 and

and if that percentage rate is less than zero, the rate of interest shall be deemed to be zero; plus

- (iii) [*] per cent. ([*]%) per annum;
or
- (b) where the Fixed Interest Rate is applicable, the higher of:
 - (i) the Fixed Interest Rate plus [*] per cent. ([*]%) per annum;
and
 - (ii) €STR plus the applicable Margin (and if that percentage rate is less than zero, the rate of interest shall be deemed to be zero) plus [*] per cent. ([*]%) per annum.

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.

18 EVENTS OF DEFAULT

18.1 Events of Default

An Event of Default occurs if any of the events or circumstances described in Clauses 18.2 (*Non-payment*) to 18.20 (*Material Adverse Change*) occur.

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.

18.3 Non-remediable breaches

The Borrower fails to comply with the provisions of Clauses 12.8 (*Negative pledge*), 12.9 (*Disposals*), 12.11 (*Mergers*) or 12.18 (*Loans and guarantees by the Borrower*).

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 (*Non-payment*) to 18.20 (*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 12.26 (*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; or

- (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.

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.

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; [or](#)
- (e) No Event of Default will occur, or be deemed to have occurred, under this Clause 18.6 (~~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 (*Mandatory prepayment – sale and total loss*) or Clause 16.4 (*Mandatory prepayment – SACE insurance policy*) has occurred.

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.

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.

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.

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 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.

18.11 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.

18.12 Analogous events

Anything analogous to or having a substantially similar effect to any of the events specified in Clauses 18.7 (*Winding-up*) to 18.11 (*Legal process*) shall occur under the laws of any applicable jurisdiction.

18.13 Cessation of business

Any Obligor ceases to carry on all or a substantial part of its business.

18.14 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 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.

18.15 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.

18.16 Insurances

The Borrower fails to insure the Ship in the manner specified in Clause 14(*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.

18.17 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.

18.18 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.

18.19 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.

18.20 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 12.26 (*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.

18.21 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 and the financed second instalment of the Additional 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.

18.22 Termination of Commitments

On the service of a notice under paragraph (a) of Clause 18.21 *Actions following an Event of Default*, the Commitments and all other obligations of each Lender to the Borrower under this Agreement shall terminate.

18.23 Acceleration of Loan

On the service of a notice under paragraph (b) of Clause 18.21 *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.

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 (*Voluntary prepayment*).

18.25 Multiple notices; action without notice

The Agent may serve notices under paragraphs (a) and (b) of Clause 18.21 (*Actions following an Event of Default*) simultaneously or on different dates and it may take any action referred to in paragraph (c) of Clause 18.21 (*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.

18.26 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 18.21 (*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.

18.27 Lender's rights unimpaired

Nothing in this Clause 18 (*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 severally*).

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.

19 APPLICATION OF SUMS RECEIVED

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 (*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 (*Breakage costs and SIMEST arrangement*) 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.

20 INDEMNITIES

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;
- (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 (*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 (*Events of Default*).

20.2 Breakage costs and SIMEST arrangements

Without limiting its generality, Clause 20.1 (*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 Contributions](#) and/or any overdue amount (or an aggregate amount which includes its [Contribution Contributions](#) or any overdue amount);
- (b) if the Borrower has selected the Fixed Interest Rate in accordance with Clause 6.1 (*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 *Breakage costs and SIMEST arrangement* "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.

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 (*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 11.2 (*Continuing representations and warranties*) and/or of Clause 12.26 (*Code of Ethics and Model*).

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 (*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 (*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.

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 (*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.

20.6 Sums deemed due to a Lender

For the purposes of this Clause 20 (*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.

20.7 SACE obligations

To the extent that this Clause 20 (*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.

21 ILLEGALITY, ETC.

21.1 Illegality and Sanctions

This Clause 21 (*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**").

**21.2 Notification of
illegality**

- (a) The Agent shall promptly notify the Borrower, the Obligors and the other Lenders of the notice under Clause 21 (*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 21.3 (*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 6.1 (*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.

**21.3 Prepayment; termination of
Commitment**

- (a) After notification under paragraph (c) of Clause 21.2 (*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 Clause 6.1 (*Fixed or Floating Interest Rate*) after notification under paragraph (a) of Clause 21.2 (*Notification of illegality*) and subject to Clause 21.4 (*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 (*Breakage costs and SIMEST arrangement*) and any indemnity payable under paragraph (c) of Clause 20.2 (*Breakage costs and SIMEST arrangement*) in respect of the Interest Make-Up Agreement;
- (b) On the Agent notifying the Borrower under paragraph (c) of Clause 21.2 (*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 (*Illegality and Sanctions*) as the date on which the notified event would become effective the Borrower shall prepay the Notifying Lender's ~~Contribution~~ [Contributions](#) and shall pay compensation to the Notifying Lender calculated in accordance with Clause 16.2 (*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 6.1 (*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.

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 21.1 (*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.

22 SET-OFF

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 Euros;
 - (iii) enter into any other transaction or make any entry with regard to the credit balance which the Creditor Party concerned considers appropriate.

22.2 Existing rights unaffected

No Creditor Party shall be obliged to exercise any of its rights under Clause 22.1 (*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).

22.3 Sums deemed due to a Lender

For the purposes of this Clause 22 (*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.

22.4 No Security Interest

This Clause 22 (*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.

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.

24 CHANGES TO THE LENDERS

24.1 Transfer by a Lender

Subject to Clause 24.5 (*No transfer without Transfer Certificate*), Clause 24.17 (*Assignment or transfer to SACE*) and Clause 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~~ 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 (*Role of the Agent and the Joint Mandated Lead Arrangers*) and 27 (*The Security Trustee*) respectively.

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 (*No transfer without Transfer Certificate*) and 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[*] Euros (€[*]) or, if less, the Existing Lender's full Commitment.

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.

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 (*Transfer Certificate, delivery and notification*) on or before that date.

24.5 No transfer without Transfer Certificate

Except as provided in Clause 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 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~~ Contributions as were held by the predecessor Lender.

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 ~~Contribution~~ 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 Majority Lenders and those under Clause 6.8 (*Market disruption*) and Clause 9 (*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 Maintenance of register of Lenders

During the Security Period the Agent shall maintain a register in which it shall record the name, Commitment, ~~Contribution~~ 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 (*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 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 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 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 (*Transfer by a Lender*).

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.

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.

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 10 (*Taxes, Increased Costs, Costs and Related Charge*), 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 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 Security over Lenders' rights

In addition to the other rights provided to Lenders under this Clause 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, 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.

24.17 Assignment or transfer to SACE

- (a) Notwithstanding the above provisions of this Clause 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 10 (*Taxes, Increased Costs, Costs and Related Charge*) or 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 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 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 CHANGES TO THE OBLIGORS

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.

26 ROLE OF THE AGENT AND THE JOINT MANDATED LEAD ARRANGERS

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.

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.

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.

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.

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.

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.

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.

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.

26.9 Exclusion of liability

- (a) Without limiting paragraph (b) of Clause 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 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 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 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 (*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 (~~Role of the Agent and the Joint Mandated Lead Arranger~~). 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 26.11 (*Resignation of the Agent*). In this event, the Agent shall resign in accordance with paragraph (b) of Clause 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 26.11 (~~Resignation of the Agent~~) shall be subject to compliance with all necessary "know your customer" requirements of the Lenders.

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.

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.

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.

26.15 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 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 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 Resignation of the Agent in relation to FATCA

The Agent shall resign in accordance with Clause 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 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 10.9 ~~(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 ~~(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.

27 THE SECURITY TRUSTEE

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 ~~(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 27.1 ~~(Trust)~~ and as excluded or limited by this Clause 27 ~~(The Security Trustee)~~ including in particular Clause 27.8 ~~(Instructions to Security Trustee and exercise of discretion)~~, Clause 27.13 ~~(Responsibility for documentation)~~, Clause

27.14 (*Exclusion of liability*), Clause 27.16 (*Lenders' indemnity to the Security Trustee*), Clause 27.23 (*Business with the Group*) and Clause 27.28 (*Full freedom to enter into transactions*).

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 (*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 (*Parallel Debt (Covenant to pay the Security Trustee)*) to the extent permitted by applicable law, shall be applied in accordance with Clause 19 (*Application of sums received*).
- (f) This Clause 27.2 (*Parallel Debt (Covenant to pay the Security Trustee)*) shall apply, with any necessary modifications, to each Finance Document.

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.

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 (*The Security Trustee*), the "**Recoveries**") shall be transferred to the Agent for application in accordance with Clause 19 (*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 (*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 (*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 Deductions from receipts

- (a) Before transferring any moneys to the Agent under Clause 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 (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 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 (*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 Investment of proceeds

Prior to the payment of the proceeds of the Recoveries to the Agent for application in accordance with Clause 19 (*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 (*Investment of proceeds*).

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 (*Security Trustee's discretions*) to Clause 27.28 (*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 (*Deductions from receipts*) and Clause 27.6 (*Prospective liabilities*).

27.9 Security Trustee's Actions

Without prejudice to the provisions of Clause 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 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 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 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 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 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 Exclusion of liability

- (a) Without limiting Clause 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 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 (*Third party rights*) and the provisions of the Third Parties Rights Act.

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).

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.

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 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.

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.

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.

27.21 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 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 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 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 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.

27.26 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.

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.

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.

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 *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 (*The Security Trustee*), Clause 27.5 (*Deductions from receipts*), Clause 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 27.29 (*Resignation of the Security Trustee*) shall be subject to compliance with all necessary "know your customer" requirements of the Lenders.

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.

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.

28 CONDUCT OF BUSINESS BY THE CREDITOR PARTIES

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.

29 SHARING AMONG THE CREDITOR PARTIES

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 (*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 (*Application of sums received*) and Clause 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 (*Application of sums received*) and Clause 30 (*Payment Mechanics*).

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 19 (*Application of sums received*) and Clause 30 (*Payment Mechanics*).

29.3 Recovering Creditor Party's rights

- (a) On a distribution by the Agent under Clause 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 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 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 (*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 Exceptions

- (a) This Clause 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
- (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 (~~*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 PAYMENT MECHANICS

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) with such bank as the Agent specifies.
- (c) Payment shall be made before 11.00 a.m. Paris time.
- (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 Distributions by the Agent

Each payment received by the Agent under the Finance Documents for another Party shall, subject to Clause 30.3 (*Distributions to an Obligor*), Clause 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 Distributions to an Obligor

The Agent may in accordance with Clause 22 (*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 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 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 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 Currency of account

- (a) Subject to paragraphs (b) and (c) of Clause 30.7 *Currency of account*) Euros or Dollars, as applicable, 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 Euros or Dollars, as applicable, shall be paid in that other currency.

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.

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).

31 VARIATIONS AND WAIVERS

31.1 Variations, waivers etc. by Majority Lenders

Subject to Clause 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 Variations, waivers etc. requiring agreement of all Lenders

However, as regards the following, Clause 31.1 (*Variations, waivers etc. by Majority Lender*) 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 (*Changes to the Lenders*) or this Clause 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 Exclusion of other or implied variations

Except for a document which satisfies the requirements of Clauses 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.

32 NOTICES

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.

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: ~~CIB- COO-Office- TMEF~~

~~Millénaire-4~~

~~CIB- ITO Global Banking Operations
Credit Transaction Management-Export Finance~~

~~35 9 Rue de la gare du Débarcadère~~

~~Immeuble Océanie ACI: CPE02A1~~

~~75019-Paris 93500 Pantin~~

~~Fax No. (33) 1 43 16 81 84~~

~~Attn Attention: S. CASET-CARRICABURU/ -B A. Sohier SARANT~~

~~Email: [*] / [*]~~

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 Effective date of notices

Subject to Clauses 32.4 (*Service outside business hours*) and 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 Service outside business hours

However, if under Clause 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 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 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 Illegible notices

Clauses 32.3 (*Effective date of notices*) and 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 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 English language

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

32.9 Meaning of "notice"

In this Clause 32 (*Notices*), "notice" includes any demand, consent, authorisation, approval, instruction, waiver or other communication.

33 CONFIDENTIALITY

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 (*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 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;
- (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 (*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;
- (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 Entire agreement

This Clause 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 Disclosure to information services

- (a) Any **Finance 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 **Finance 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 (*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.

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.

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 (*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 (*Confidentiality*).

33.7 Continuing obligations

The obligations in this Clause 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.

33.8 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.

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).

34 LEGAL INDEPENDENCE AND UNCONDITIONAL OBLIGATIONS OF THE BORROWER

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.

35 SACE SUBROGATION AND REIMBURSEMENT

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.

35.2 Reimbursement

- (a) Without prejudice to Clause 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 Euros 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 *Default rate of interest*) of this Agreement).

- (c) Each Obligor further agrees that its obligations under this Clause 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 35.2 *Reimbursement*).
- (e) Each amount that is payable by the Obligors pursuant to Clause 35.2 *Reimbursement*) is due and payable to SACE in Euros within five (5) Business Days of demand by SACE to the Obligors.

35.3 Obligations Absolute

The obligations of the Obligors under this Clause 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 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 SUPPLEMENTAL

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.

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.

36.3 Counterparts

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

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 (*SACE Subrogation and Reimbursement*), Clause 17 (*Interest on Late Payment*), Clause 8 (*SACE Premium and Italian Authorities*), Clause 10.2 (*Tax gross-up*), Clause 10.3 (*Tax indemnity*), Clause 10.11 (*Transaction Costs*), Clause 20.1 (*Indemnities regarding borrowing and repayment of Loan*), Clause 20.3 (*Miscellaneous indemnities*), Clause 20.4 (*Currency indemnity*), Clause 22 (*Set-Off*), Clause 27 (*The Security Trustee*), Clause 10.6 (*VAT*), Clause 10.13 (*SACE obligations*), Clauses 33.8 (*Disclosure by SACE*) and 33.9 (*Press release*) and Clause 38 (*Enforcement*).
- (d) Any amendment or waiver which relates to the rights of SACE under this Agreement, including under Clause 35 (*SACE Subrogation and Reimbursement*), Clause 17 (*Interest on Late Payment*), Clause 8 (*SACE Premium and Italian Authorities*), Clause 10.2 (*Tax gross-up*), Clause 10.3 (*Tax indemnity*), Clause 20.4 (*Currency indemnity*), Clause 22 (*Set-Off*), Clause 27 (*The Security Trustee*), Clause 20.3 (*Miscellaneous indemnities*), Clause 10.6 (*VAT*), Clause 10.11 (*Transaction Costs*), Clause 20.1 (*Indemnities regarding borrowing and repayment of Loan*), Clauses 33.8 (*Disclosure by SACE*) and 33.9 (*Press release*) and Clause 38 (*Enforcement*) may not be effected without the consent of SACE.

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.

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.

37 GOVERNING

LAW

37.1 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 ENFORCEMENT

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.

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 ~~9-Cloak Lane~~ [107 Cheapside](#), London [UK](#), EC ~~4R~~ [2 RH V 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 CONFIDENTIALITY OF FUNDING RATES AND REFERENCE BANK QUOTATIONS

39.1 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 6.5 (*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 ~~*Confidentiality of Funding Rates and Reference Bank Quotation*~~ relating to Reference Bank Quotations are without prejudice to its obligations to make notifications under Clause 6.5 ~~*(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.

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 (*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 (*Confidentiality of Funding Rates and Reference Bank Quotation*).

39.3 No Event of Default

No Event of Default will occur under Clause 18.4 (*Breach of other obligations*) by reason only of an Obligor's failure to comply with this Clause 39 (*Confidentiality of Funding Rates and Reference Bank Quotation*).

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 THREE, LTD.)
in the presence of:)

TRANCHE A LENDERS

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:)

SIGNED by)
duly authorised)
for and on behalf of)
AKA AUSFUHRKREDIT-GESELLSCHAFT)
MIT BESCHRAENKTER HAFTUNG)
in the presence of:)

TRANCHE B LENDERS

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)
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:)

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)
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:)

AGENT

SIGNED by)
)
for and on behalf of)
BNP PARIBAS S.A.)
in the presence of:)

SACE AGENT

SIGNED by)
)
for and on behalf of)
BNP PARIBAS S.A.)
in the presence of:)

SECURITY TRUSTEE

SIGNED by)
)
for and on behalf of)
BNP PARIBAS S.A.)
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 17 June 2021

LEONARDO FOUR, 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

THE LENDERS

as Lenders

and

HSBC BANK PLC

BNP PARIBAS FORTIS S.A./N.V.

KFW IPEX-BANK GMBH

CASSA DEPOSITI E PRESTITI S.P.A.

as Joint Mandated Lead Arrangers

and

BNP PARIBAS S.A.

as Agent

and SACE Agent

and

BNP PARIBAS S.A.

as Security Trustee

AMENDMENT AND RESTATEMENT AGREEMENT

relating to a facility agreement originally dated 12 April 2017

(as amended and restated by an amendment and restatement agreement dated 21 November 2017 and as further amended and restated by an amendment and restatement agreement dated 17 February 2021)

in respect of the part financing of the 3,300 passenger cruise ship newbuilding presently designated as Hull No. [*] at Fincantieri S.p.A

WATSON FARLEY
&
WILLIAMS

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Form of Amended and Restated Facility Agreement (marked to indicate amendments)	
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THIS AGREEMENT is made on June 17 2021

PARTIES

- (1) **LEONARDO FOUR, 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**, 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) **HSBC BANK PLC** of Level 2, 8 Canada Square, London, E14 5HQ, United Kingdom, **BNP PARIBAS FORTIS S.A./N.V.** of 3, Montagne du Parc, 1 KA1E, 1000 Brussels, Belgium, **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) **BNP PARIBAS S.A.** French *société anonyme*, registered with the Registre du Commerce et des Sociétés of Paris under number 662 042 449 with its registered office at 16 Boulevard des Italiens, 75009 Paris, France, as agent and SACE agent (the "**Agent**" and the "**SACE Agent**")
- (8) **BNP PARIBAS S.A.** French *société anonyme*, registered with the Registre du Commerce et des Sociétés of Paris under number 662 042 449 with its registered office at 16 Boulevard des Italiens, 75009 Paris, 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) up to €640,000,000 and the amount of the SACE Premium (but not exceeding €665,280,665.28) 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 (as defined below) was amended and restated pursuant to an amendment and restatement agreement dated 17 February 2021 (the "**February 2021 Amendment and Restatement Agreement**") pursuant to which the parties agreed to the temporary suspension 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, providing for an increase of the Facility for the purpose of financing an amount to be applied towards the second instalment of the Additional SACE Premium.

OPERATIVE PROVISIONS

1 DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Agreement:

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

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

"Facility Agreement" means the Original Facility Agreement, as amended and restated by the February 2021 Amendment and Restatement Agreement.

"June 2021 Fee Letters" means any letter between the Agent and any Obligor which sets out the fees payable in connection with the arrangements contemplated by this Agreement.

"June 2021 Finance Documents" means this Agreement, each June 2021 Fee Letter and the Supplemental Pre-delivery Security.

"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.

"Supplemental Pre-delivery Security" means a deed to be entered into pursuant to this Agreement between the Borrower and the Security Trustee, supplemental to the Pre-delivery Security, creating security over the Pre-delivery Contracts.

"Total Tranche B Commitments" means the aggregate of the Tranche B Commitments (as set out in further detail in Part B of Schedule 1 (*The Tranche B Lender*)), being fourteen million, nine hundred and sixty-four thousand and eighty-four Euros and seven Cents (€14,964,084.07) as at the date of this Agreement.

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 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 AND CONDITIONS SUBSEQUENT

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 Within the time periods set out in Schedule 3 (*Conditions Subsequent*), the Agent shall have received (or on the instruction of all the Lenders, waived receipt of) all the documents and other evidence listed therein in form and substance satisfactory to the Agent.
- 2.3 Upon fulfilment or waiver of the conditions set out in Clause 2.1 above, the Agent shall provide the Borrower, the Creditor Parties, SACE and SIMEST with a copy of the executed certificate in the form set out in Schedule 4 (*Form of Effective Date Certificate*) confirming that the Effective Date has occurred and such certificate shall be binding on all Parties.
- 2.4 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, 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, 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 Confirmation of Guarantee

With effect on and from the Effective Date, 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 original terms and the amendments to the Finance Documents as amended, restated and/or supplemented by this Agreement.

4.3 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.

4.4 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) the Facility Agreement and the applicable provisions of this Agreement will be read and construed as one document; and
- (c) 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

- 6.1 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.

- 6.2 The Borrower shall pay to each of (i) the Agent for its own account and (ii) the Agent (for the account of each Lender) such fees in the amount and at the times specified in the relevant June 2021 Fee Letters.

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.

EXECUTION PAGES

BORROWER

SIGNED by) /s/ Daniel S. Farkas
duly authorised) Daniel S. Farkas
for and on behalf of)
LEONARDO FOUR, LTD.)

GUARANTOR

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

SHAREHOLDER

SIGNED by) /s/ Daniel S. Farkas
for and on behalf of) Daniel S. Farkas
NCL INTERNATIONAL, LTD.)
as its duly appointed attorney-in-fact)
in the presence of:) /s/ Jared G. Silberhorn
) Jared G. Silberhorn
) 7665 Corporate Center Drive
) Miami, FL 33126 USA

HOLDING

SIGNED by) /s/ Daniel S. Farkas
for and on behalf of) Daniel S. Farkas
NORWEGIAN CRUISE LINE)
HOLDINGS LTD.)
as its duly appointed attorney-in-fact)
in the presence of:) /s/ Jared G. Silberhorn
) Jared G. Silberhorn
) 7665 Corporate Center Drive
) Miami, FL 33126 USA

LENDERS

SIGNED by) /s/ Alessandro Mazzi
duly authorised)
for and on behalf of) Alessandro Mazzi
HSBC CONTINENTAL EUROPE, ITALY) MD — Head of Export Finance, Italy

SIGNED by) /s/ Bruno Cloquet
duly authorised) Bruno Cloquet
for and on behalf of) Global Head of Exporters and ECAs Origination
BNP PARIBAS FORTIS S.A./N.V)
) /s/ Michel Froidebise
) Michel Froidebise
) Head of Export Finance Nordic Origination

SIGNED by) /s/ Maria Gazi
duly authorised) Maria Gazi
for and on behalf of) Attorney-in-fact
KFW IPEX-BANK GMBH)

SIGNED by) /s/ Enrico Semprebene
duly authorised) Enrico Semprebene
for and on behalf of)
CASSA DEPOSITI E PRESTITI S.P.A.)

MANDATED LEAD ARRANGERS

SIGNED by) /s/ Varsha Sharan
duly authorised) Varsha Sharan
for and on behalf of) Director
HSBC BANK PLC)

SIGNED by) /s/ Bruno Cloquet
duly authorised) Bruno Cloquet
for and on behalf of) Global Head of Exporters and ECAs Origination
BNP PARIBAS FORTIS S.A./N.V)
) /s/ Michel Froidebise
) Michel Froidebise
) Head of Export Finance Nordic Origination

SIGNED by) /s/ Maria Gazi
duly authorised) Maria Gazi
for and on behalf of) Attorney-in-fact
KFW IPEX-BANK GMBH)

SIGNED by) /s/ Enrico Semprebene
duly authorised) Enrico Semprebene
for and on behalf of)
CASSA DEPOSITI E PRESTITI S.P.A.)

AGENT

SIGNED by) /s/ Philippe Laude
duly authorised) Philippe Laude
for and on behalf of)
BNP PARIBAS S.A.) /s/ Georges Curey
) Georges Curey
) Head of Structured Export Finance

SACE AGENT

SIGNED by) /s/ Philippe Laude
duly authorised) Philippe Laude
for and on behalf of)
BNP PARIBAS S.A.) /s/ Georges Curey
) Georges Curey
) Head of Structured Export Finance

SECURITY TRUSTEE

SIGNED by) /s/ Philippe Laude
duly authorised) Philippe Laude
for and on behalf of)
BNP PARIBAS S.A.) /s/ Georges Curey
) Georges Curey
) Head of Structured Export Finance

APPENDIX

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 and restated by an amendment and restatement agreement dated 21 November 2017 [as amended and restated by an amendment and restatement agreement dated 17 February 2021](#) and as further amended and restated pursuant to an amendment and restatement agreement dated ~~_____~~ **February** 2021)

TERM LOAN FACILITY

LEONARDO FOUR, LTD.

as Borrower

and

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

as Lenders

and

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

BNP PARIBAS S.A.

as Agent and SACE Agent

and

BNP PARIBAS S.A.

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.

WATSON FARLEY
&
WILLIAMS

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THIS AGREEMENT originally made on 12 April 2017 (as amended and restated by an amendment and restatement agreement dated 21 November 2017, [as amended and restated by an amendment and restatement agreement dated 17 February 2021](#) and as further amended and restated pursuant to an amendment and restatement agreement dated ~~_____~~ February [●] 2021).

PARTIES

- (1) **LEONARDO FOUR, LTD.**, an exempted company incorporated under the laws of Bermuda whose registered office is at Park Place 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) **BNP PARIBAS FORTIS S.A./N.V., KFW IPEX-BANK GMBH, BBK BANK PLG and CASSA DEPOSITI E PRESTITI S.P.A.** as joint mandated lead arrangers (the "**Joint Mandated Lead Arrangers**")
- (4) **BNP PARIBAS S.A.** as agent (the "**Agent**") and SACE agent (the "**SACE Agent**")
- (5) **BNP PARIBAS S.A.**, as security trustee (the "**Security Trustee**")

BACKGROUND

- (A) By a shipbuilding contract 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 currently having hull number [*] as more particularly described in the Shipbuilding Contract (as defined below) to be delivered 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 [*], being [*], 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**");
 - (ii) as to [*], being [*], 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 [*], being [*], on the later of keel laying in dry-dock and the date falling 18 months prior to the Intended Delivery Date;
 - (iv) as to [*], being [*], on the later of launching and the date falling 12 months prior to the Intended Delivery Date; and
 - (v) as to [*], being [*], on delivery of the Ship on the Delivery Date,as each such event is described in the 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 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 Euro loan facility for the purpose of assisting the Borrower in financing 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 (such Addendum having been dated 21 November 2017) 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**") (the Original Shipbuilding Contract as amended pursuant to the Sixth Addendum, the "**Shipbuilding Contract**").
- (G) 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 ([as defined therein](#)), the Secured Parties (~~as defined below~~) 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:
- (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 ~~offered by SACE~~ (the "**Original Principles**").

- (I) 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**").
- (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 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**").
- (K) On 25 January 2021, the 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 _____~~ (as amended and restated by the 2017 Amending and Restating 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 and as amended and restated by the February 2021 Amendment and Restatement Agreement, the "Facility Agreement").
- (L) The Parties have agreed to amend and restate the Facility Agreement as set out in an amendment and restatement agreement dated [●] June 2021 and made between, amongst others, the Borrower, the Agent, the SACE Agent and the Security Trustee in order to, inter alia, provide for an increase of the Facility for the purpose of financing an amount to be applied towards the second instalment of the Additional SACE Premium (as defined below) (the "**June 2021 Amendment and Restatement Agreement**").
- (~~T~~ M) This Agreement sets out the terms and conditions of the ~~Original~~ Facility Agreement as amended and restated by the June 2021 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 (G).

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

"**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, 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.

"**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 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 BNP PARIBAS S.A. 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 (*Additional 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 BNP Paribas S.A., a French *société anonyme*, having a share capital of two billion, four hundred ninety-nine million, five hundred ninety-seven thousand and one hundred 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 Commerce et des Sociétés* of Paris or any successor of it appointed under Clause 26 (*Role of the Agent and the Joint Mandated Lead Arrangers*).

"**Aggregate SACE Premium**" means, together, the SACE Premium and the Additional SACE 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; and
- (b) the second instalment of the Additional SACE Premium, calculated in accordance with paragraph (a)(ii) of Clause 8.5 (*Additional Premium*), financed or to be financed pursuant to Tranche B, provided that such amount shall not, at any time, exceed the Total Tranche B 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.

"**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, 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 2026 (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.

"**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.

"**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 New York, Milan and Rome and which is a TARGET Day; 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 New York, Frankfurt, Rome, Brussels and Paris and which is a TARGET Day and, in relation to any payment to be made to the Builder, Milan.

"**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.

"**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 zero point sixty-three per cent. (0.63%) per annum or any other CIRR rate being the fixed rate for medium and long term export credits in Euros 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).

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

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

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

"**Creditor Party**" means the 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.

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

"**Delivery Advance**" means, subject to the provisions of Clause 8.4 (*Refund*), 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.

"**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) eight hundred million Euros (€800,000,000);
and
- (b) 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.

"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.

"€STR" means the euro short term rate administered by the European Central Bank (or any other person which takes over the administration of that rate) for the relevant period displayed (before any correction, recalculation or republication by the administrator) on the relevant page 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.

"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.

"EURIBOR" means, in relation to the Loan or any part of the Loan:

- (a) the applicable Screen Rate as of the Specified Time for euro and for a period equal in length to the Interest Period of the Loan or that part of the Loan; or
- (b) as otherwise determined pursuant to Clause 6.6 (*Unavailability of Screen Rate*),

and if, in either case, that rate is less than zero, EURIBOR shall be deemed to be zero (except with respect to the Interest Make-Up Agreement).

"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 (*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](#) 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 and Tranche B, made or to be made](#) available under this Agreement as described in Clause 2.1 (*Amount of facility*).

"**Facility Agreement**" ~~means the Original Facility Agreement as amended and restated by the 2021 Amendment and Restatement Agreement~~ [has the meaning given to the term in Recital \(K\)](#)

"**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.

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

"**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 (*Fees*).

"**Finance Documents**" means:

- (a) the 2017 Amending and Restating Agreement;
- (b) the 2021 Deferral Fee Letters;
- (~~b~~c) the February 2021 Amendment and Restatement Agreement;
- (d) the June 2021 Amendment and Restatement Agreement;
- (~~e~~e) the June 2021 ~~Deferral~~Fee Letters;
- (~~f~~f) this Agreement;
- (~~e~~g) any Fee Letter;
- (~~f~~h) the Guarantee;
- (~~g~~i) the Pre-delivery Security;
- (j) the Supplemental Pre-delivery Security;
- (~~h~~k) the General Assignment;
- (~~i~~l) the Mortgage;
- (~~j~~m) the Post-Delivery Assignment;
- (~~k~~n) any Subordinated Debt Security;
- (~~l~~o) the Shares Security Deed;
- (~~m~~p) the Approved Manager's Undertaking;
- (~~n~~q) any Transfer Certificate;
- (~~o~~r) any Compliance Certificate;
- (~~p~~s) any Drawdown Notice;

- (¶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

- (¶u) 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 (*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 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) the applicable Margin;
and
- (b) EURIBOR for the relevant period.

"**Funding Rate**" means any individual rate notified by a Lender to the Agent pursuant to sub-paragraph (i) of paragraph (e) of Clause 6.9 (*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 and restated pursuant to the [February 2021 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 HM 11, Bermuda.

"**Holding**" means 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.

"**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 [*] (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 3.12 (*No later than sixty (60) days before the Intended Delivery Date*) or paragraph (b) of Clause 3.14 (*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 EURIBOR plus the Margin (as described in paragraph (b) of the definition of Margin).

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

"**Interpolated Screen Rate**" means, in relation to the Loan or any part of the Loan, the rate which results from interpolating on a linear basis between:

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

each as of the Specified Time for Euros.

"**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 the term in Recital (L).

["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 ~~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~~ [Tranche A Lender or a Tranche B Lender](#).

"**Loan**" means the [aggregate](#) principal amount [outstanding](#) for the time being ~~outstanding under this Agreement of the borrowings under the Facility and "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 sixty-eight per cent. (0.68%) per annum; and
- (b) in relation to the Floating Interest Rate one point thirty-one per cent. (1.31%) per annum.

"**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.

"**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
- (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.

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

(a) ~~six hundred and forty million Euros (€640,000,000);~~
and

(b) ~~one hundred per cent. (100%) of the SACE Premium to be paid in accordance with Clause 8.15 (ACE Premium);~~

~~provided that such amount shall not, at any time, exceed six hundred and sixty five million, two hundred and eighty thousand, six hundred and sixty five Euros and twenty eight Cents (€665,280,665.28).~~

"**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 one million 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).

"**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) six hundred and forty million Euros (€640,000,000);
and

(b) one hundred per cent. (100%) of the SACE Premium to be paid in accordance with Clause 8.15 (ACE Premium);

provided that such amount shall not, at any time, exceed six hundred and sixty five million, two hundred and eighty thousand, six hundred and sixty five Euros and twenty eight Cents (€665,280,665.28).

"Original Principles" has the meaning given in Recital (H).

"Parallel Debt" means any amount which an Obligor owes to the Security Trustee under Clause 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 12.14 (*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 paragraph (b)(ii)(A) of paragraph (b)~~ below; and
 - (ii) any of the Security Interests referred to in ~~sub-paragraphs paragraphs (b)(ii)(B), (b)(ii)(C), (b)(ii)(E), (b)(ii)(H) and (b)(ii)(I) of paragraph (b)~~ 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 ~~sub-paragraph paragraphs (b)(ii)(C) or (b)(ii)(E) of paragraph (b)~~ or incurred by the Borrower in the case of ~~sub-paragraph paragraphs (b)(ii)(B), (b)(ii)(H) or (b)(ii)(I) of paragraph (b)~~; and
- (b) in the case of the Guarantor:
 - (i) any of the Security Interests referred to in ~~sub-paragraph paragraphs (b)(ii)(A), (b)(ii)(D), (b)(ii)(F) and (b)(ii)(G) of paragraph (b)~~ below; and
 - (ii) any of the Security Interests referred to in ~~sub-paragraphs 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 ~~sub-paragraphs paragraphs (C) or (E)~~ or incurred by the Guarantor in the case of ~~sub-paragraphs 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 [*] 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 [*] 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 *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 [*] 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 *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 to such term in Recital (I).

"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 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 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).

"**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 Euros 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 European Interbank Market.

"**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 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 ~~sub-paragraph~~ [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 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).

"**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 BNP Paribas S.A., a French *société anonyme*, having a share capital of two billion, four hundred and ninety-nine million, five hundred ninety-seven thousand and one hundred 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 Commerce et des Sociétés* of Paris or any successor of it appointed under Clause 26 (*Role of the Agent and the Joint Mandated Lead Arranger*).

"**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 8.8.1 (~~SACE Premium and Italian Authorities~~), ~~in addition to the Additional SACE Premium (provided, for the avoidance of doubt, that the Additional SACE Premium shall not be financed)~~.

"**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:

- (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 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 euro interbank offered rate administered by the European Money Markets Institute (or any other person which takes over the administration of that rate) for the relevant period displayed (before any correction, recalculation or republication by the administrator) on page EURIBOR 01 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~~

(v) in the case of a Screen Rate for EURIBOR, 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

(v vi) 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:

(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 Screen Rate is calculated in accordance with any such policy or arrangement for a period no less than the Screen Rate Contingency Period; or

(v vii) 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 8.1 (*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 19 (*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 Euros (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 BNP Paribas S.A., a French *société anonyme*, having a share capital of two billion, four hundred ninety-nine million, five hundred ninety-seven thousand and one

hundred 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 Commerce et des Sociétés* of Paris or any successor of it appointed under Clause 27 (*The Security Trustee*).

"**Security Value**" means the amount in Euros (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 (*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 (*Security Value Maintenance*).

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

"**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 ~~in~~ [the agreed form](#).

"**Shareholder**" means NCL International Ltd., a Bermuda company with its registered office at Park Place 55, Par-la-Ville Road, Hamilton HM 11, Bermuda.

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

- (a) if EURIBOR is fixed, the Quotation Day as of 11:00 am Brussels time;
and
- (b) in relation to a Reference Bank Rate calculated by reference to the available quotations in accordance with Clause 6.7 (*Calculation of Reference Bank Rate*), 11.30 am Brussels time on the Quotation Day.

"**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 (F).

"**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.

"**Subordinated Debt Security**" has the meaning given in paragraph (b)(ii) of Clause 12.14 (*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.

"TARGET2" means the Trans-European Automated Real-time Gross Settlement Express Transfer payment system which utilises a single shared platform and which was launched on 19 November 2007.

"TARGET Day" means any day on which TARGET2 is open for the settlement of payment in Euros.

"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).

"Total Commitments" means the aggregate of the Total Tranche A Commitments and the Total Tranche B 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:

- (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 six hundred and sixty five million, two hundred and eighty thousand, six hundred and sixty five Euros and twenty eight Cents (€665,280,665.28) as at the date of the Original Facility Agreement.

"Total Tranche B Commitments" means the aggregate of the Tranche B Commitments, being fourteen million, nine hundred and sixty-four thousand and eighty-four Euros and seven Cents (€14,964,084.07) as at the date of this Agreement.

"Tranche" means Tranche A or Tranche B.

"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, being six hundred and forty million Euros (€640,000,000), 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 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.

"Tranche B" means the part of the Facility to be made available by the Tranche B 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 (Additional 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.

"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.

"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 Arrange", the "Security Trustee", any "Creditor Party", any "Secured Party", any "Lender", any "[Tranche A Lender](#)", any "[Tranche B 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.

"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.

"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.

"**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 (*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 (*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 12.2 (*Information*), Clause 12.4 (*Illicit Payments*), Clause 12.5 (*Prohibited Payments*), Clause 12.24 (*Compliance with laws etc.*) or provisions contained in Clause 20.3 (*Miscellaneous indemnities*) or Clause 21.1 (*Illegality and Sanctions*) and the representations and warranties given under paragraphs (u), (v), (y), (z) and (jj) of Clause 11.2 (*Continuing representations and warranties*) and paragraph (j) of Clause 11.3 (*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 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 (*Representations and Warranties*), Clause 12 (*General Undertakings*), Clause 20 (*Indemnities*), Clause 21 (*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) references to Dollar amounts in Clause 10.11 (*Transaction Costs*), Clause 12 (*General Undertakings*), Clause 13 (*Ship Undertakings*), Clause 14 (*Insurance Undertakings*) and Clause 18 (*Events of Default*) shall be a reference to Dollars (or the equivalent amount in any other currency);
- (f) 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;
- (g) words denoting the singular number shall include the plural and vice versa;
and
- (h) 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

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 ~~the Maximum Loan Amount, in aggregate, the Total Tranche A Commitments~~ intended to be applied as follows:

- (~~a~~) (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;
- (~~b~~) (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 8.1 (*SACE Premium*); and
- (~~c~~) (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 8.1 (*SACE Premium*) ~~;~~ and

(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 the Total Tranche B 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 \(Additional Premium\).](#)

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; ~~;~~ [and](#)

(b) [each Tranche B Lender shall participate in the 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.](#)

2.3 Purpose of Loan

The Borrower undertakes with each Secured Party to use ~~each Advance only to pay for:~~

(a) [each Advance under Tranche A only to pay for:](#)

(~~a~~ i) goods and services of Italian origin incorporated in the design, construction or delivery of the Ship;

(~~b~~ 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;

(~~c~~ iii) reimbursement to the Borrower of all or part of eighty per cent. (80%) of the First Shipbuilding Contract Instalment;

(~~d~~ 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 8.1 (*SACE Premium*); and

(~~e~~ v) the Second Instalment of the SACE Premium payable in accordance with paragraph (b) of Clause 8.1 (*SACE Premium*) ~~;~~ [and](#)

(b) [the Advance under Tranche B 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 \(Additional Premium\).](#)

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
- (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 Euros 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;

- (i) payment of [*] ([*]) of the Joint Mandated Lead Arranger structuring fee payable in accordance with paragraph (a)(i) of Clause 9 (*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 6.1 (*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;
- (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 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.

3.9 No later than the Drawdown Date in respect of each Advance under Tranche A other than 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 the Delivery Advance under Tranche A:

- (a) 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;
- (b) as regards any previous Advance, in the event the Refund Guarantee issued in respect of such previous Advance cannot be renewed or extended:
 - (i) evidence that an Acceptable Deposit has accordingly been transferred to the Account pursuant to the terms of the Shipbuilding Contract; and
 - (ii) 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 required by the Secured Parties in respect of the execution and/or the validity and enforceability of the Account Pledge;
- (c) a copy of the relevant invoice from the Builder in respect of the instalment under the Shipbuilding Contract to which the Advance relates;
- (d) 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;
- (e) 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;
- (f) a copy of a duly executed Qualifying Certificate;
- (g) a certificate confirming that:

- (i) the Shipbuilding Contract continues to be in full force and effect; and,
 - (ii) 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
 - (iii) 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; ~~and~~
- (h) a certificate of confirmation confirming that:
- (i) no default or mandatory prepayment event pursuant to Clause 16 (~~Cancellation, Prepayment and Mandatory Prepayment~~) is continuing or would result from the proposed Advance;
 - (ii) the repeating representations and, in relation to the first Advance and first Drawdown Notice, all of the other representations set out in Clause 11 (*Representations and Warranties*) (except the representations to be made on the Delivery Date pursuant to paragraph (b) of Clause 11.1 (*Timing and repetition*)) are true;
- (i) 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;
- (j) if applicable, a duly executed original of the Subordinated Debt Security; and
- (k) 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.

3.10 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 (*Fees*).

3.11 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.

3.12 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 ~~(Refund)~~; 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.

3.13 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.

3.14 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.

3.15 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:

- (a i) if applicable, a duly executed original of the Subordinated Debt Security;
- (a 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;
- (a 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;
- (a 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;
- (a v) evidence of payment of all amounts which are due and payable hereunder by the Borrower on or prior to the Delivery Date;
- (a vi) a certificate from the Borrower, signed by an authorised representative of the Borrower, confirming that the representations and warranties contained in Clause 11 (*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;

(~~g~~ vii) a certificate of confirmation confirming that:

- (~~i~~ A) the Shipbuilding Contract continues to be in full force and effect;
- (~~ii~~ B) no default or mandatory prepayment event pursuant to Clause 16 (~~Cancellation, Prepayment and Mandatory Prepayment~~) is continuing or would result from the Delivery ~~Advance~~ Advances;
- (~~iii~~ C) the repeating representations as set out in Clause 11 (~~Representations and Warranties~~) are true; and
- (~~iv~~ D) the representations to be made on the Delivery Date pursuant to ~~paragraph (b) of~~ Clause 11 (~~Representations and Warranties~~) are true;

(~~h~~ 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; ~~and~~

(b) In respect of the Advance to be made by the Tranche B 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 3.15 (No later than the Delivery Date).

provided always that, in relation to paragraphs (a) and (b) above, the obligations of the relevant Lenders to make ~~the such~~ Advance under each of Tranche A and Tranche B, 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 ~~the advance of the Delivery Advances~~ 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~~).

3.16 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 3.17 (~~immediately following Delivery~~), in draft form immediately prior to the delivery of the Ship, and the

documents mentioned in paragraph (e) of Clause 3.17 (*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 11.3 (*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 (*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 3.16 (*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 ~~9 Cloak Lane~~ [107 Cheapside](#), London ~~UK~~, EC ~~4R~~ ~~2 RH~~ ~~V 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.

3.17 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 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 (*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*).

3.18 Notification of satisfaction of conditions precedent

The Agent shall notify the [Tranche A Lenders](#) ~~and SACE~~, [the Tranche B 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*).

3.19 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.

3.20 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
 - (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 **Finance 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 **Finance 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).

3.21 No claim against the **Finance Creditor Parties**

The Borrower agrees that the **Finance Creditor** Parties may act on the instructions of the Italian Authorities in relation to this Agreement.

3.22 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.

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. ~~For the avoidance of doubt, the amount of the Loan shall not exceed the Maximum Loan Amount~~ [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 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 \(Additional Premium\).](#)
- (c) 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 Schedule*):
- (~~a~~ 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) ~~instalments~~ [Advances](#) in accordance with Schedule 6 (*Drawdown Schedule*);
 - (~~b~~ 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
 - (~~c~~ 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.
- (d) [If applicable, the Borrower hereby instructs the Tranche B Lenders in accordance with this Clause 4.1 \(Borrower's irrevocable payment instructions\) to pay the Agent on behalf of the Tranche B 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 \(Additional Premium\).](#)

- (e) Payment to the Builder of the amounts drawn under paragraph (a c)(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*).
- (f) Save as contemplated in Clause 4.2 (*Modification of payment terms*) below, the payment instruction contained in this Clause 4.1 (*Borrower's irrevocable payment instructions*) is irrevocable.

4.2 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 c)(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 (b c) ~~and (ii)~~, (c) (iii) ~~and (d)~~ of Clause 4.1 (*Borrower's irrevocable payment instructions*).

4.3 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 ~~five (5) Advances under this Agreement.~~ :
- (i) [five \(5\) Advances under Tranche A;](#)
[and](#)
- (ii) [one \(1\) Advance under Tranche B.](#)
- (c) The amount of the first Advance [under Tranche A](#) shall not exceed the aggregate of (i) 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 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 Advance under Tranche B shall not exceed the lower of \(i\) the amount calculated pursuant to the provisions of paragraph \(a\)\(ii\) of Clause 8.5 \(Additional Premium\) and \(ii\) the Total Tranche B Commitments.](#)
- (f) [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;](#)
[and](#)
- (e iii) the ~~aggregate amount of the~~ Advances [under all Tranches](#) cannot exceed the ~~Maximum Loan Amount~~ [Total Commitments](#).

- (f.g) 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.

4.4 Notification to Lenders of receipt of a Drawdown Notice

The Agent shall promptly notify the [Tranche A Lenders](#) and [the Tranche B 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.

4.5 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.

4.6 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 4.5 (*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 c)(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; and
- (b) in the case of an amount referred to in paragraph ~~(b c)(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 (c)(iii) of Clause 4.1 (*Borrower's irrevocable payment instructions*) to the account of SACE which the SACE Agent shall specify; ~~and~~
- ~~(d) in the case of an amount referred to in paragraph (d) of Clause 4.1 (*Borrower's irrevocable payment instructions*) to the account of SACE which the SACE Agent shall specify.~~

4.7 Disbursement of Advance to third party

The payment by the Agent under Clause 4.6 (*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 ~~Contribution~~ [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.

6 INTEREST

6.1 Fixed 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.

6.2 Fixed Interest Rate

If the Borrower has specified a Fixed Interest Rate pursuant to Clause 6.1~~(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.

6.3 Floating Interest Rate

If:

- (a) the Borrower has specified a Floating Interest Rate pursuant to Clause 6.1~~(Fixed or Floating Interest Rate)~~; or
- (b) the Borrower has specified a Fixed Interest Rate pursuant to Clause 6.1~~(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 (*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).

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.

6.5 Notification of Interest Periods and Floating Interest Rate

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.

6.6 Unavailability of Screen Rate

(a) *Interpolated Screen Rate* If no Screen Rate is available for EURIBOR for the Interest Period of the Loan or any part of the Loan, the applicable EURIBOR shall be the Interpolated Screen Rate for a period equal in length to the Interest Period of the Loan or that part of the Loan.

(b) *Reference Bank Rate* If no Screen Rate is available for EURIBOR for:

(i) Euro;

(ii) the Interest Period of the Loan or any part of the Loan and it is not possible to calculate the Interpolated Screen Rate,

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

(c) *Cost of funds*. If paragraph (b) above applies but no Reference Bank Rate is available for Euro or the relevant Interest Period there shall be no EURIBOR for the Loan or that part of the Loan (as applicable) and Clause 6.9 (*Cost of funds*) shall apply to the Loan or that part of the Loan for that Interest Period.

6.7 Calculation of Reference Bank Rate

(a) Subject to paragraph (b) below, if EURIBOR 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.

6.8 Market Disruption

If before close of business in London on the Quotation Day for the relevant Interest Period the Agent receives notification from a Lender or Lenders (whose participations in the Loan or the relevant part of the Loan 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 EURIBOR 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.

6.9 Cost of funds

- (a) If this Clause 6.9 (*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 participation in the Loan or that part of the Loan from whatever source it may reasonably select.
- (b) If this Clause 6.9 (*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 6.10 (*Replacement of Screen Rate*), any substitute or alternative basis agreed pursuant to paragraph (b) above shall, with the prior consent of all the Lenders and the Borrower, be binding on all Parties.
- (d) If paragraph (e) below does not apply and any rate notified to the 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 (*Cost of funds*) applies pursuant to Clause 6.8 (*Market disruption*) and:
- (i) a Lender's Funding Rate is less than EURIBOR;
or
 - (ii) a Lender does not supply a quotation by the time specified in sub-paragraph (ii) of paragraph (a) above,

the cost to that Lender of funding its participation in the Loan or the relevant part of the Loan for that Interest Period shall be deemed, for the purposes of paragraph (a) above, to be EURIBOR.
- (f) If this Clause 6.9 (*Cost of funds*) applies but any Lender does not supply a quotation by the time specified in sub-paragraph (ii) of paragraph (a) above, the rate of interest shall be calculated on the basis of the quotations of the remaining Lenders.

6.10 Replacement of Screen Rate

- (a) If a Screen Rate Replacement Event has occurred in relation to the Screen Rate for Euro, any amendment or waiver which relates to:
- (i) providing for the use of a Replacement Benchmark;
and
 - (ii)

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

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

- (b) If an amendment is required as contemplated in this Clause 6.10 *Replacement of Screen Rate*, 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.

6.11 Notice of prepayment

If no agreement is reached with the Borrower under Clause 6.10 *Replacement of Screen Rate*, the Borrower may give the Agent not less than 15 Business Days', or, if the Fixed Interest Rate has been selected pursuant to Clause 6.1 *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.

6.12 Prepayment; termination of Commitments

A notice under Clause 6.11 *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 *Breakage costs and SIMEST arrangement*) 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 6.1 *Fixed or Floating Interest Rate*)).

6.13 Application of prepayment

The provisions of Clause 16 (~~Cancellation, Prepayment and Mandatory Prepayment~~) shall apply in relation to the prepayment.

6.14 Certain Circumstances

Notwithstanding anything to the contrary in this Agreement:

- (a) in the event of any circumstances falling within Clause 6.8 (*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 (*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 (*Unavailability of Screen Rate*), 6.7 (*Calculation of Reference Bank Rate*), 6.8 (*Market Disruption*), 6.9 (*Cost of funds*) and 6.10 (*Replacement of Screen Rate*) 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 Advance but also before the making of the Advance.
- (c) in the event of any Relevant Circumstances falling within Clause 6.8 (*Market disruption*) (the "**Availability-Related Relevant Circumstances**") occurring before the Loan is made, 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 Euros (or, if unavailable in Euros, then in any available currency). Such discussions shall be without obligation on the Lenders provided that during such discussion period, such circumstances continue.

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 (*Floating Interest Rate*) 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 6.3 (*Floating Interest Rate*) shall apply.

7 INTEREST PERIODS

7.1 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.

7.2 Duration of Interest Periods

Subject to Clause 7.3 (*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 ~~Advance~~ [Advances](#).

7.3 Duration of Interest Periods for Repayment Instalments

Any Interest Period that includes a Repayment Date shall expire on such Repayment Date.

8 SACE PREMIUM AND ITALIAN AUTHORITIES

8.1 SACE Premium

The estimated SACE Premium for a maximum amount of[*] (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[*] (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 [*] (calculated as being [*] per cent. ([*]%) of [*]. ([*]%) 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.

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 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 8.1 (*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 (c) [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 (c) [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 (b) [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.

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.

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 Schedule 6 (*Drawdown Schedule*) under the column entitled "Advance to be drawn under this Agreement" to be drawn on the Delivery Date less (i) any amount cancelled 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) ~~and (a)(i)~~ above (being the amount set out in [Part A of Schedule 6 \(Drawdown Schedule\)](#) under the column entitled "Advance to be drawn under this Agreement" to be drawn on the Delivery Date, less any amount cancelled) 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 [*] Euros (€[*]) or more than [*] Euros (€[*]), calculated by SACE 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.

8.5 Additional 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 Facility Agreement following the 2021 Deferral Effective Date (the **"Additional SACE Premium"**). The Additional SACE Premium is payable, in accordance with the SACE Insurance Policy, ~~payable~~ 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 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) €627,199,999.98 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 8.1 (*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 Additional SACE Premium is non-refundable ~~and not~~ **financed**.
- (c) The Borrower has requested, and the Tranche B 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 Clause 8.5 (*Additional 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.
- (d) Consequently, the Borrower hereby irrevocably instructs the Agent on behalf of the Tranche B Lenders to pay the amount of the second instalment of the Additional SACE Premium to SACE on the Delivery Date in accordance with paragraph (b) of Clause 2.1 (*Amount of facility*) of this Agreement.
- (e) The second instalment of the Additional SACE Premium financed by 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.

For avoidance of doubt, in case of discrepancy between this Clause 8.5 (*Additional premium*) and the relevant provision of the SACE Insurance Policy, the SACE Insurance Policy shall prevail.

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 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 Euros 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 (*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 2022, [*] per cent. ([*]%) per annum; and
 - (iv) from 1 October 2022 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 the Delivery Date, or the date of receipt by the Agent of the written cancellation notice sent by the Borrower as described in Clause 16.1 (*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 six hundred and sixty five million, two hundred and eighty thousand, six hundred and sixty five Euros and twenty eight Cents (€665,280,665.28) [and the Amended Maximum Loan Amount is assumed to be six hundred and eighty million, two hundred and forty-four thousand, seven hundred and forty-nine Euros and thirty-five Cents. \(€680,244,749.35\);](#)
- (c) for the Agent, an agency fee of:
- (i) [*] payable on the date of the Original Facility Agreement and on or before each anniversary date thereof until the Delivery Date; and
 - (ii) [*] 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.

10 TAXES, INCREASED COSTS, COSTS AND RELATED CHARGES

10.1 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 10.2 (*Tax gross-up*) or a payment under Clause 10.3 (*Tax indemnity*).

- (b) Unless a contrary indication appears, in this Clause 10 (*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.

10.2 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 10.7 (*Lender Status*) at least 30 Business Days prior to such payment date) complied with its obligations under Clause 10.7 (*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.

10.3 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 10.2 (*Tax gross-up*) or would have been compensated for by an increased payment under Clause 10.2 (*Tax gross-up*) but was not so compensated solely because an exclusion in paragraph (d) of Clause 10.2 (*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~~ [paragraph \(b\)\(i\)\(B\)](#) of ~~paragraph (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 (~~tax indemnity~~), notify the Agent.

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.

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.

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 ~~sub-paragraph~~ 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 (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.

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 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.

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.

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~~ [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 ~~sub-paragraph (iii) of~~ 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 ~~sub-paragraph~~ [paragraph](#) (a)(i) or (~~a(ii)~~ [\(ii\)](#)) ~~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 ~~and~~ [\(ii\)](#) ~~where the relevant Lender becomes a Lender at the date of this Agreement, the date of this Agreement and~~ [\(ii\)](#) where the relevant Lender is a Transferee Lender, the effective date of a Transfer Certificate under Clause 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.

- (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.

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 10.10 (*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 10.3 (*Tax indemnity*) (or would have been compensated for under Clause 10.3 (*Tax indemnity*) but was not compensated solely because any of the exclusions in paragraph (b) of Clause 10.3 (*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 10.10 (*Increased Costs*), a reference to a "Tax Deduction" has the same meaning given to the term in Clause 10.1 (*Definitions*).

- (c) A Lender affected by any provision of this Clause 10.10 (*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 10.10 (*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.

10.11 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 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.

10.12 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.

10.13 SACE obligations

To the extent that this Clause 10 (~~Taxes, Increased Costs, Costs and Related Charge~~) 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.

11 REPRESENTATIONS AND WARRANTIES

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 (*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 (*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 11.3 (*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.

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 Interest (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;
- (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 11.1 (*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 (*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 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 (*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 10.7 (*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 11.2 (*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 Refund Guarantor respectively;
- (mm) neither the Borrower, the Builder or the 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.

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 (*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;
- (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 (*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.

12 GENERAL UNDERTAKINGS

12.1 General

The Borrower undertakes with each Secured Party to comply with the following undertakings during the Security Period:

12.2 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;
- (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 (\$20,000,000) 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 12.2 (*Information*) shall be prepared in accordance with GAAP and shall fairly represent the financial condition of the relevant company.

**12.3 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.

**12.4 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.

**12.5 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.

**12.6 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.

**12.7 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.

**12.8 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 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 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.

12.9 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 16.3 (*Mandatory prepayment – Sale and Total Loss*) and except for charters and other arrangements complying with Clause 13.1 (*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.

12.10 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.

12.11 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.

12.12 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.

12.13 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.

12.14 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.

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.

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.

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;
- (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.

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,

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.

12.18 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 12.15 (*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.

12.19 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.

12.20 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.

12.21 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 paragraph (a)(i) of Clause 4.1 (*Borrower's irrevocable payment instructions*) only), the Agent, SACE and the Lenders.

12.22 "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 [sub-paragraph paragraph \(iii\)](#) of Clause 12.22 (*"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 [sub-paragraph paragraph \(iii\)](#) of Clause 12.22 (*"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.

12.23 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 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
 - (iii) modify the Refund Guarantee, once issued, without the prior written consent of the Lenders and the form of the 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 16.5 (*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.

12.24 Compliance with laws etc.

The Borrower shall:

- (a) comply, or procure compliance with:
 - (i) in all material respects, all laws and regulations relating to 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** **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 manner contrary to any law or regulation including but not limited to the ISM Code, the ISPS Code, all Environmental Laws and all Sanctions.

12.25 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 (*Continuing representations and warranties*) and Clause 18.6 (*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, 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 (*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 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.

12.26 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 ~~sub-paragraph~~ [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.

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.

(b) The restrictions in paragraph (a) of Clause 12.27 (*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: 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 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 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 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;
 - (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 paragraph (b)(viii)(B) ~~(2)~~ of [this](#) Clause 12.27 (*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;
- (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
- (xii) without prejudice to Clauses 12.11 (*Mergers*) and 12.15 (*Investments*) and clause 11.13 (*No merger*) of the Guarantee, the issuance of share capital by any Group member to another Group member.

13 SHIP UNDERTAKINGS

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 (*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 [*]; 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 [*] **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.

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.

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.

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 (*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 (*Valuation of the Ship*), the Agent shall be entitled to procure a valuation of the Ship on the same basis.

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.

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. 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 (*Valuation of the Ship*).

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.

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.

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.

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.

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.

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 [*];
- (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.

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 [*] 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 [*] 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.

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.

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 [*] 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)).

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.

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.

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.

13.19 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.

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.

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 (*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.

14INSURANCE UNDERTAKINGS

14.1 General

The undertakings in this Clause 14 (*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.

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 (*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.

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).

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 (*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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

**15 SECURITY VALUE
MAINTENANCE**

**15.1 Security
Shortfall**

If, upon receipt of a valuation of the Ship in accordance with Clause 13.4 (*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 Euros 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 (*Costs*) and 15.4 (*Documents and evidence*) and paragraph (c) of Clause 16.2 (*Voluntary prepayment*) shall apply to prepayments under paragraph (a) of Clause 15.1 (*Security Shortfall*).

15.2 Costs

All costs in connection with the Agent obtaining any valuation of the Ship referred to in Clause 13.4 (*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 15.1 (*Security Shortfall*) shall be borne by the Borrower.

**15.3 Valuation of additional
security**

For the purpose of this Clause 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 Documents and
evidence**

In connection with any additional security provided in accordance with this Clause 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 Valuations binding

Any valuation under this Clause 15 (*Security Value Maintenance*) shall be binding and conclusive as regards the Borrower.

15.6 Provision of information

- (a) The Borrower shall promptly provide the Agent and any shipbroker acting under this Clause 15 (*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 CANCELLATION, PREPAYMENT AND MANDATORY PREPAYMENT

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 (*Cancellation*) shall reduce the remaining Commitments [under that Tranche](#) of the [relevant](#) Lenders rateably.

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 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 (*Breakage costs and SIMEST arrangement*) 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 (*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 (*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 [the 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 ~~the~~ 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 6.1 (*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 (*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 (*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 20.1 (*Indemnities regarding borrowing and repayment of Loan*) and 20.2 (*Breakage costs and SIMEST arrangements*).
- (c) If the Borrower has selected the Fixed Interest Rate pursuant to Clause 6.1 (*Fixed or Floating Interest Rate*), the SACE Agent shall give SIMEST thirty (30) days written notice of the intended date of prepayment.

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.

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 (*Mandatory prepayment – SACE Insurance Policy*) the events described in paragraph (a) of Clause 16.4 (*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 (*Mandatory prepayment – SACE Insurance Policy*).

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 (Dividends and dividend restriction) and Clause 12.27 (New capital raises or financing) or the provisions of ~~paragraph (f) of clause 11.3(f)~~ (Additional financial reporting), ~~paragraph clause 11.17(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 (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 (*New capital raises or financing*), if at any time after the 2021 Deferral Effective Date:
- (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 *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; 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 *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.

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.

16.7 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 16.2 (*Voluntary prepayment*)).

16.8 Application of partial prepayment

Amounts prepaid shall be applied in accordance with paragraph (b) of Clause 19.1 (*Receipts*).

16.9 No reborrowing

Amounts prepaid may not be reborrowed.

17 INTEREST ON LATE PAYMENTS

17.1 Default rate of interest

Without prejudice to the provisions of Clause 18 (*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) where the Floating Interest Rate is applicable, the aggregate of:

- (i) €STR;
- (ii) the applicable Margin;
and

and if that percentage rate is less than zero, the rate of interest shall be deemed to be zero; plus

- (iii) [*] per cent. ([*]%) per annum;
or

- (b) where the Fixed Interest Rate is applicable, the higher of:

- (i) the Fixed Interest Rate plus [*] per cent. ([*]%) per annum;
and

- (ii) €STR plus the applicable Margin (and if that percentage rate is less than zero, the rate of interest shall be deemed to be zero) plus [*] per cent. ([*]%) per annum.

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.

18 EVENTS OF DEFAULT

18.1 Events of Default

An Event of Default occurs if any of the events or circumstances described in Clauses 18.2 (*Non-payment*) to 18.20 (*Material Adverse Change*) occur.

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.

18.3 Non-remediable breaches

The Borrower fails to comply with the provisions of Clauses 12.8 (*Negative pledge*), 12.9 (*Disposals*), 12.11 (*Mergers*) or 12.18 (*Loans and guarantees by the Borrower*).

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 (*Non-payment*) to 18.20 (*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 12.26 (*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; or

- (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.

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.

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; [or](#)
- (e) No Event of Default will occur, or be deemed to have occurred, under this Clause 18.6 (*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 (*Mandatory prepayment – sale and total loss*) or Clause 16.4 (*Mandatory prepayment – SACE insurance policy*) has occurred.

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.

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.

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.

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 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.

18.11 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.

18.12 Analogous events

Anything analogous to or having a substantially similar effect to any of the events specified in Clauses 18.7 (*Winding-up*) to 18.11 (*Legal process*) shall occur under the laws of any applicable jurisdiction.

18.13 Cessation of business

Any Obligor ceases to carry on all or a substantial part of its business.

18.14 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 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.

18.15 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.

18.16 Insurances

The Borrower fails to insure the Ship in the manner specified in Clause 14 (*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.

18.17 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.

18.18 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.

18.19 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.

18.20 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 12.26 (*Code of Ethics and Mode*)), 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.

18.21 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 and the financed second instalment of the Additional 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.

18.22 Termination of Commitments

On the service of a notice under paragraph (a) of Clause 18.21 *Actions following an Event of Default*, the Commitments and all other obligations of each Lender to the Borrower under this Agreement shall terminate.

18.23 Acceleration of Loan

On the service of a notice under paragraph (b) of Clause 18.21 *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.

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 (*Voluntary prepayment*).

18.25 Multiple notices; action without notice

The Agent may serve notices under paragraphs (a) and (b) of Clause 18.21 *Actions following an Event of Default* simultaneously or on different dates and it may take any action referred to in paragraph (c) of Clause 18.21 (*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.

18.26 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 18.21 (*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.

**18.27 Lender's rights
unimpaired**

Nothing in this Clause 18 (*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*).

**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.

**19 APPLICATION OF SUMS
RECEIVED**

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 (*Interest on Late Payment*), 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 (*Breakage costs and SIMEST arrangement*) 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.

20 INDEMNITIES

**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;
- (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 (*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 (*Events of Default*).

20.2 Breakage costs and SIMEST arrangements

Without limiting its generality, Clause 20.1 (*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~~ Contributions and/or any overdue amount (or an aggregate amount which includes its ~~Contribution~~ Contributions or any overdue amount);
- (b) if the Borrower has selected the Fixed Interest Rate in accordance with Clause 6.1 (*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 ~~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.

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 (*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 11.2 (*Continuing representations and warranties*) and/or of Clause 12.26 (*Code of Ethics and Model*).

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 (*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 (*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.

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 (*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.

20.6 Sums deemed due to a Lender

For the purposes of this Clause 20 (*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.

20.7 SACE obligations

To the extent that this Clause 20 (*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.

21 ILLEGALITY, ETC.

21.1 Illegality and Sanctions

This Clause 21 (*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**").

21.2 Notification of illegality

- (a) The Agent shall promptly notify the Borrower, the Obligors and the other Lenders of the notice under Clause 21 (*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 21.3 (*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 6.1 (*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.

21.3 Prepayment; termination of Commitment

- (a) After notification under paragraph (c) of Clause 21.2 (*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 Clause 6.1 (*Fixed or Floating Interest Rate*) after notification under paragraph (a) of Clause 21.2 (*Notification of illegality*) and subject to Clause 21.4 (*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 (*Breakage costs and SIMEST arrangement*) and any indemnity payable under paragraph (c) of Clause 20.2 (*Breakage costs and SIMEST arrangement*) in respect of the Interest Make-Up Agreement;
- (b) On the Agent notifying the Borrower under paragraph (c) of Clause 21.2 (*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 (*Illegality and Sanctions*) as the date on which the notified event would become effective the Borrower shall prepay the Notifying Lender's ~~Contribution~~ Contributions and shall pay compensation to the Notifying Lender calculated in accordance with Clause 16.2 (*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 6.1 (*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.

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 21.1 (*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.

22 SET-OFF

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 Euros;
 - (iii) enter into any other transaction or make any entry with regard to the credit balance which the Creditor Party concerned considers appropriate.

22.2 Existing rights unaffected

No Creditor Party shall be obliged to exercise any of its rights under Clause 22.1 (*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).

22.3 Sums deemed due to a Lender

For the purposes of this Clause 22 (*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.

22.4 No Security Interest

This Clause 22 (*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.

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.

24 CHANGES TO THE LENDERS

24.1 Transfer by a Lender

Subject to Clause 24.5 (*No transfer without Transfer Certificate*), Clause 24.17 (*Assignment or transfer to SACE*) and Clause 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~~ 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 (*Role of the Agent and the Joint Mandated Lead Arrangers*) and 27 (*The Security Trustee*) respectively.

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 (*No transfer without Transfer Certificate*) and 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 [*] Euros (€[*]) or, if less, the Existing Lender's full Commitment.

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.

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 (*Transfer Certificate, delivery and notification*) on or before that date.

24.5 No transfer without Transfer Certificate

Except as provided in Clause 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 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 Contributions** as were held by the predecessor Lender.

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 ~~Contribution~~ 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 Majority Lenders and those under Clause 6.8 (*Market disruption*) and Clause 9 (*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 Maintenance of register of Lenders

During the Security Period the Agent shall maintain a register in which it shall record the name, Commitment, ~~Contribution~~ 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 (*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 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 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 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 (*Transfer by a Lender*).

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.

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.

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 10 (*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 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 Security over Lenders' rights

In addition to the other rights provided to Lenders under this Clause 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, 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.

24.17 Assignment or transfer to SACE

- (a) Notwithstanding the above provisions of this Clause 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 10 (*Taxes, Increased Costs, Costs and Related Charges*) or 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 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 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 CHANGES TO THE OBLIGORS

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.

26 ROLE OF THE AGENT AND THE JOINT MANDATED LEAD ARRANGERS

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.

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.

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.

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.

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.

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.

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.

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.

26.9 Exclusion of liability

- (a) Without limiting paragraph (b) of Clause 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 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 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 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 (*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 (*Role of the Agent and the Joint Mandated Lead Arranger*). 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 26.11 (*Resignation of the Agent*). In this event, the Agent shall resign in accordance with paragraph (b) of Clause 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 26.11 (*Resignation of the Agent*) shall be subject to compliance with all necessary "know your customer" requirements of the Lenders.

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.

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.

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.

26.15 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 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 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 Resignation of the Agent in relation to FATCA

The Agent shall resign in accordance with Clause 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 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 10.9 ~~(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 ~~(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.

27 THE SECURITY TRUSTEE

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 ~~(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 27.1 ~~(Trust)~~ and as excluded or limited by this Clause 27 ~~(The Security Trustee)~~ including in particular Clause 27.8 ~~(Instructions to Security Trustee and exercise of discretion)~~, Clause 27.13 ~~(Responsibility for documentation)~~, Clause 27.14 ~~(Exclusion of liability)~~, Clause 27.16 ~~(Lenders' indemnity to the Security Trustee)~~, Clause 27.23 ~~(Business with the Group)~~ and Clause 27.28 ~~(Full freedom to enter into transactions)~~.

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 (~~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 (~~Parallel Debt (Covenant to pay the Security Trustee)~~) to the extent permitted by applicable law, shall be applied in accordance with Clause 19 (*Application of sums received*).
- (f) This Clause 27.2 (~~Parallel Debt (Covenant to pay the Security Trustee)~~) shall apply, with any necessary modifications, to each Finance Document.

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.

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 (~~The Security Trustee~~), the "Recoveries") shall be transferred to the Agent for application in accordance with Clause 19 (*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 (*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 (*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 Deductions from receipts

- (a) Before transferring any moneys to the Agent under Clause 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 (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 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 (*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 Investment of proceeds

Prior to the payment of the proceeds of the Recoveries to the Agent for application in accordance with Clause 19 (*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 (*Investment of proceeds*).

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 (*Security Trustee's discretions*) to Clause 27.28 (*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 (*Deductions from receipts*) and Clause 27.6 (*Prospective liabilities*).

27.9 Security Trustee's Actions

Without prejudice to the provisions of Clause 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 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 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 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 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 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 Exclusion of liability

- (a) Without limiting Clause 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 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 (*Third party rights*) and the provisions of the Third Parties Rights Act.

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).

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.

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 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.

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.

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.

27.21 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 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 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 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 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.

27.26 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.

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.

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.

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 (*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 (*The Security Trustee*), Clause 27.5 (*Deductions from receipts*), Clause 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 27.29 (*Resignation of the Security Trustee*) shall be subject to compliance with all necessary "know your customer" requirements of the Lenders.

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.

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.

28 CONDUCT OF BUSINESS BY THE CREDITOR PARTIES

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.

29 SHARING AMONG THE CREDITOR PARTIES

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 (*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 (*Application of sums received*) and Clause 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 (*Application of sums received*) and Clause 30 (*Payment Mechanics*).

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 19 (*Application of sums received*) and Clause 30 (*Payment Mechanics*).

29.3 Recovering Creditor Party's rights

- (a) On a distribution by the Agent under Clause 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 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 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 (*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 Exceptions

- (a) This Clause 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
 - (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 (*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 PAYMENT MECHANICS

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) with such bank as the Agent specifies.
- (c) Payment shall be made before 11.00 a.m. Paris time.
- (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 Distributions by the Agent

Each payment received by the Agent under the Finance Documents for another Party shall, subject to Clause 30.3 (*Distributions to an Obligor*), Clause 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 Distributions to an Obligor

The Agent may in accordance with Clause 22 *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 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 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 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 Currency of account

- (a) Subject to paragraphs (b) and (c) of Clause 30.7 *Currency of account*) Euros or Dollars, as applicable, 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 Euros or Dollars, as applicable, shall be paid in that other currency.

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.

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).

31 VARIATIONS AND WAIVERS

31.1 Variations, waivers etc. by Majority Lenders

Subject to Clause 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 Variations, waivers etc. requiring agreement of all Lenders

However, as regards the following, Clause 31.1 (*Variations, waivers etc. by Majority Lender*) 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 (*Changes to the Lenders*) or this Clause 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 Exclusion of other or implied variations

Except for a document which satisfies the requirements of Clauses 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.

32 NOTICES

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.

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: ~~CIB-COO Office-
TMEF~~

~~Millénaire-4~~
~~CIB- ITO Global Banking Operations~~
~~Credit Transaction Management-Export Finance~~
~~35 9 Rue de la gare du Débarcadère~~
~~Immeuble Océanie ACI: CPE02A1~~
~~75019 Paris 93500 Pantin~~
~~Fax No. (33) 1 43 16 81 84~~
~~Attn Attention: S. CASET-CARRICABURU / B.A. Sohier SARANT~~

[Email: \[*\]/\[*\]](mailto:[*]/[*])

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 Effective date of notices

Subject to Clauses 32.4 (*Service outside business hours*) and 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 Service outside business hours

However, if under Clause 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 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 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 Illegible notices

Clauses 32.3 (*Effective date of notices*) and 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 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 English language

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

32.9 Meaning of "notice"

In this Clause 32 (*Notices*), "notice" includes any demand, consent, authorisation, approval, instruction, waiver or other communication.

33 CONFIDENTIALITY

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 (*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 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;
- (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 (*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;
- (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 Entire agreement

This Clause 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 Disclosure to information services

- (a) Any **Finance 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 **Finance 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 (*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.

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.

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 (*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 (*Confidentiality*).

33.7 Continuing obligations

The obligations in this Clause 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.

33.8 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.

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).

34 LEGAL INDEPENDENCE AND UNCONDITIONAL OBLIGATIONS OF THE BORROWER

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.

35 SACE SUBROGATION AND REIMBURSEMENT

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.

35.2 Reimbursement

- (a) Without prejudice to Clause 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 Euros 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 ~~Default rate of interest~~) of this Agreement).

- (c) Each Obligor further agrees that its obligations under this Clause 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 35.2 (~~Reimbursement~~).
- (e) Each amount that is payable by the Obligors pursuant to Clause 35.2 (~~Reimbursement~~) is due and payable to SACE in Euros within five (5) Business Days of demand by SACE to the Obligors.

35.3 Obligations Absolute

The obligations of the Obligors under this Clause 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 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 SUPPLEMENTAL

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.

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.

36.3 Counterparts

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

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 (~~SACE Subrogation and Reimbursement~~), Clause 17 (~~Interest on Late Payment~~), Clause 8 (~~SACE Premium and Italian Authorities~~), Clause 10.2 (~~Tax gross-up~~), Clause 10.3 (~~Tax indemnity~~), Clause 10.11 (~~Transaction Costs~~), Clause 20.1 (~~Indemnities regarding borrowing and repayment of Loan~~), Clause 20.3 (~~Miscellaneous indemnities~~), Clause 20.4 (~~Currency indemnity~~), Clause 22 (~~Set-Off~~), Clause 27 (~~The Security Trustee~~), Clause 10.6 (VAT), Clause 10.13 (~~SACE obligation~~), Clauses 33.8 (~~Disclosure by SACE~~) and 33.9 (~~Press release~~) and Clause 38 (~~Enforcement~~).
- (d) Any amendment or waiver which relates to the rights of SACE under this Agreement, including under Clause 35 (~~SACE Subrogation and Reimbursement~~), Clause 17 (~~Interest on Late Payment~~), Clause 8 (~~SACE Premium and Italian Authorities~~), Clause 10.2 (~~Tax gross-up~~), Clause 10.3 (~~Tax indemnity~~), Clause 20.4 (~~Currency indemnity~~), Clause 22 (~~Set-Off~~), Clause 27 (~~The Security Trustee~~), Clause 20.3 (~~Miscellaneous indemnities~~), Clause 10.6 (VAT), Clause 10.11 (~~Transaction Costs~~), Clause 20.1 (~~Indemnities regarding borrowing and repayment of Loan~~), Clauses 33.8 (~~Disclosure by SACE~~) and 33.9 (~~Press release~~) and Clause 38 (~~Enforcement~~) may not be effected without the consent of SACE.

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.

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.

37 GOVERNING LAW

37.1 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 ENFORCEMENT

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.

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 ~~9 Cloak Lane~~ [107 Cheapside](#), London [UK, EC 4R 2 RU V 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 CONFIDENTIALITY OF FUNDING RATES AND REFERENCE BANK QUOTATIONS

39.1 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 6.5 (*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 ~~*Confidentiality of Funding Rates and Reference Bank Quotation*~~ relating to Reference Bank Quotations are without prejudice to its obligations to

make notifications under Clause 6.5 (*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.

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 (*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 (*Confidentiality of Funding Rates and Reference Bank Quotations*).

39.3 No Event of Default

No Event of Default will occur under Clause 18.4 (*Breach of other obligations*) by reason only of an Obligor's failure to comply with this Clause 39 (*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.

BORROWER

SIGNED by)
)
for and on behalf of)
LEONARDO FOUR, LTD.)
in the presence of:)

TRANCHE A LENDERS

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

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: _____)

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)
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:)

AGENT

SIGNED by)
)
for and on behalf of)
BNP PARIBAS S.A.)
in the presence of:)

SACE AGENT

SIGNED by)
)
for and on behalf of)
BNP PARIBAS S.A.)
in the presence of:)

SECURITY TRUSTEE

SIGNED by)
)
for and on behalf of)
BNP PARIBAS S.A.)
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 17 JUNE 2021

LEONARDO FIVE, 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.

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 and restated by an amendment and restatement agreement dated 17 February 2021)

in respect of the part financing of the 3,300 passenger cruise ship newbuilding presently designated as Hull No. [*] at Fincantieri S.p.A

WATSON FARLEY
&
WILLIAMS

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Appendices

Form of Amended and Restated Facility Agreement (marked to indicate amendments)	
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THIS AGREEMENT is made on 17 June 2021

PARTIES

- (1) **LEONARDO FIVE, 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** 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 and SOCIÉTÉ GÉNÉRALE** 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 (as defined below), the Lenders agreed to make available to the Borrower a facility of (originally) up to the Dollar Equivalent of €640,000,000 and the amount of the SACE Premium (but not exceeding \$954,854,771.78) 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**") pursuant to which the parties agreed to the temporary suspension 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, providing for an increase of the Facility for the purpose of financing an amount to be applied towards the second instalment of the Additional SACE Premium.

OPERATIVE PROVISIONS

1 DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Agreement:

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

"Effective Date" means the date on which the Facility Agent notifies the Borrower, the other Creditor Parties, SACE and SIMEST 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.

"June 2021 Fee Letters" means any letter between the Facility Agent and any Obligor which sets out the fees payable in connection with the arrangements contemplated by this Agreement.

"June 2021 Finance Documents" means this Agreement and each June 2021 Fee Letter.

"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.

"Total Tranche B Commitments" means the aggregate of the Tranche B Commitments (as set out in further detail in Part B of Schedule 1 (*The Tranche B Lender*)), being twenty-six million, two hundred seventy-seven thousand, two hundred and seventy-six Dollars and eighty-seven cents (\$26,277,276.87) as at the date of this Agreement.

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 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 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, SACE and SIMEST 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, 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, 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 Confirmation of Guarantee

With effect on and from the Effective Date, 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 original terms and the amendments to the Finance Documents as amended, restated and/or supplemented by this Agreement.

4.3 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 Obligor under the Finance Documents as amended, restated and/or supplemented by this Agreement;
- (b) the obligations of the relevant Obligor 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.

4.4 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) the Facility Agreement and the applicable provisions of this Agreement will be read and construed as one document; and
- (c) 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

- 6.1 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.
- 6.2 The Borrower shall pay to each of (i) the Facility Agent for its own account and (ii) the Facility Agent (for the account of each Lender) such fees in the amount and at the times specified in the relevant June 2021 Fee Letters.

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 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) /s/ Daniel S. Farkas
duly authorised) Daniel S. Farkas
for and on behalf of)
LEONARDO FIVE, LTD.)

GUARANTOR

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

SHAREHOLDER

SIGNED by) /s/ Daniel S. Farkas
for and on behalf of) Daniel S. Farkas
NCL INTERNATIONAL, LTD.)

as its duly appointed attorney-in-fact)
in the presence of:) /s/ Jared G. Silberhorn
) Jared G. Silberhorn
) 7665 Corporate Center Drive
) Miami, FL 33126 USA

HOLDING

SIGNED by) /s/ Daniel S. Farkas
for and on behalf of) Daniel S. Farkas
NORWEGIAN CRUISE LINE)
HOLDINGS LTD.)

as its duly appointed attorney-in-fact)
in the presence of:) /s/ Jared G. Silberhorn
) Jared G. Silberhorn
) 7665 Corporate Center Drive
) Miami, FL 33126 USA

LENDERS

SIGNED by) /s/ Cosmo Fisher
duly authorised) Cosmo Fisher
for and on behalf of) Attorney-in-fact
CRÉDIT AGRICOLE CORPORATE)
AND INVESTMENT BANK)

SIGNED by) /s/ Bruno Cloquet
duly authorised) Bruno Cloquet
for and on behalf of) Global Head of Exporters and ECAs Origination
BNP PARIBAS FORTIS S.A./N.V.)
) /s/ Michel Froidebise
) Michel Froidebise
) Head of Export Finance Nordic Origination

SIGNED by) /s/ Varsha Sharan
duly authorised) Varsha Sharan
for and on behalf of) Director
HSBC BANK PLC)

SIGNED by) /s/ Maria Gazi
duly authorised) Maria Gazi
for and on behalf of) Attorney-in-fact
KFW IPEX-BANK GMBH)

SIGNED by) /s/ Enrico Semprebene
duly authorised) Enrico Semprebene
for and on behalf of)
CASSA DEPOSITI E PRESTITI S.P.A.)

SIGNED by) /s/ Juana González Damen
duly authorised) Juana González Damen
for and on behalf of)
BANCO SANTANDER S.A.) /s/ Natalia San Miguel Aguado
) Natalia San Miguel Aguado

SIGNED by) /s/ Isabella Roberts
duly authorised) Isabella Roberts
for and on behalf of) Attorney-in-fact
SOCIETE GENERALE)

SIGNED by) /s/ Isabella Roberts
duly authorised) Isabella Roberts
for and on behalf of) Attorney-in-Fact
SEA BRIDGE FINANCE LIMITED)

MANDATED LEAD ARRANGERS

SIGNED by) /s/ Cosmo Fisher
duly authorised) Cosmo Fisher
for and on behalf of) Attorney-in-fact
CRÉDIT AGRICOLE CORPORATE)
AND INVESTMENT BANK)

SIGNED by) /s/ Bruno Cloquet
duly authorised) Bruno Cloquet
for and on behalf of) Global Head of Exporters and ECAs Origination
BNP PARIBAS FORTIS S.A./N.V.)
) /s/ Michel Froidebise
) Michel Froidebise
) Head of Export Finance Nordic Origination

SIGNED by) /s/ Varsha Sharan
duly authorised) Varsha Sharan
for and on behalf of) Director
HSBC BANK PLC)

SIGNED by) /s/ Maria Gazi
duly authorised) Maria Gazi
for and on behalf of) Attorney-in-fact
KFW IPEX-BANK GMBH)

SIGNED by) /s/ Enrico Semprebene
duly authorised) Enrico Semprebene
for and on behalf of)
CASSA DEPOSITI E PRESTITI S.P.A.)

SIGNED by) /s/ Juana González Damen
duly authorised) Juana González Damen
for and on behalf of)
BANCO SANTANDER S.A.) /s/ Natalia San Miguel Aguado
) Natalia San Miguel Aguado

SIGNED by) /s/ Isabella Roberts
duly authorised) Isabella Roberts
for and on behalf of) Attorney-in-Fact
SOCIETE GENERALE)

FACILITY AGENT

SIGNED by) /s/ Philippe Laude
duly authorised) Philippe Laude
for and on behalf of)
BNP PARIBAS) /s/ Georges Curey
) Georges Curey
) Head of Structured Export Finance

SACE AGENT

SIGNED by) /s/ Cosmo Fisher
duly authorised) Cosmo Fisher
for and on behalf of) Attorney-in-fact
CRÉDIT AGRICOLE CORPORATE)
AND INVESTMENT BANK)

SECURITY TRUSTEE

SIGNED by) /s/ Daisuke Takekawa
duly authorised) Daisuke Takekawa
for and on behalf of)
HSBC CORPORATE TRUSTEE)
COMPANY (UK) LIMITED)

APPENDIX

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 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)

TERM LOAN FACILITY

LEONARDO FIVE, 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.

SOCIÉTÉ GÉNÉRALE

BANCO SANTANDER, S.A.

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 3,300 passenger cruise ship
newbuilding presently designated as

Hull No. [*] at Fincantieri S.p.A.

WATSON FARLEY
&
WILLIAMS

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THIS AGREEMENT originally made on 19 December 2018 (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)

PARTIES

- (1) **LEONARDO FIVE, LTD** an exempted company incorporated under the laws of Bermuda whose registered office is at Park Place 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 PL**, **CASSA DEPOSITI E PRESTITI S.P.A.**, **SOCIÉTÉ GÉNÉRALE** and **BANCO SANTANDER** as joint mandated lead arrangers (the "**Joint Mandated Lead Arrangers**")
- (4) **CRÉDIT AGRICOLE CORPORATE AND INVESTMENT BANK** **SACE** agent (the "**SACE Agent**")
- (5) **BNP PARIBAS** as facility agent (the "**Facility Agent**")
- (6) **HSBC CORPORATE TRUSTEE COMPANY (UK) LIMITED**, security trustee (the "**Security Trustee**")

BACKGROUND

- (A) By a shipbuilding contract dated as of 21 October 2016 (as amended or supplemented from time to time, including on 26 July 2018, 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) the Borrower, the Builder agreed to design, construct and deliver, and the Borrower 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 or about [*] 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**"). The Initial Contract Price is payable on the following terms and:
 - (i) as to [*], being [*], 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**);
 - (ii) as to [*], being [*], 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 [*], being [*], on the later of keel laying in dry-dock and the date falling 18 months prior to the Intended Delivery Date;
 - (iv) as to [*], being [*], on the later of launching and the date falling 12 months prior to the Intended Delivery Date; and
-

(v) as to [*], being [*], on delivery of the Ship on the Delivery Date,

as each such event is described in the 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 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 the Original Facility Agreement (as defined below), the Lenders have 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 ~~offered by SACE~~ (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) [The Parties have agreed to amend and restate the Facility Agreement as set out in an amendment and restatement agreement dated \[●\] 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 financing an amount to be applied towards the second instalment of the Additional SACE Premium \(as defined below\) \(the "June 2021 Amendment and Restatement Agreement"\).](#)

- (†J) This Agreement sets out the terms and conditions of the ~~Original~~ Facility Agreement as amended and restated by the [June](#) 2021 Amendment and Restatement Agreement.

OPERATIVE PROVISIONS

1 INTERPRETATION

1.1 Definitions

Subject to Clause 1.5 (*General Interpretation*), in this Agreement:

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

"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.

"Additional SACE Premium" has the meaning given to such term in Clause 8.5 (*Additional Premium*).

["Advance"](#) means the principal amount of each borrowing 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 and the Additional SACE 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; and](#)
- (b) [the second instalment of the Additional SACE Premium, calculated in accordance with paragraph \(a\)\(ii\) of Clause 8.5 \(Additional Premium\), financed or to be financed pursuant to Tranche B, provided that such amount shall not, at any time, exceed the Total Tranche B Commitments.](#)

[provided that such aggregated 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. 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, 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.

"**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, 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 March 2027 (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.

"**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 ~~[*] Dollars or any other rate communicated by SACE being the Euro/USD spot rate as at the date of the SACE board approval plus [*] per cent subject to the approval of all Lenders and the Borrower~~ [\[*\] Dollars](#).

"**Bermuda Obligors**" means the Borrower, the Shareholder and the Guarantor.

"**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 New York, Milan, Frankfurt, Brussels, Madrid, Paris, Rome and London; and

"**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.

"**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 close-out of any hedging arrangement entered into by SIMEST in relation to this Agreement, (iii) default interest and penalties (*inaggiorazioni*) 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.

"**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).

"**Commitment**" means ~~, in relation to a Lender, the amount equal to the percentage of the Maximum Loan Amount set opposite its name in Schedule 1 (Lenders and Commitments), or, as the case may require, the amount specified in the relevant Transfer Certificate, in each case 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);~~ [a Tranche A Commitment or a Tranche B 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 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) is or becomes public information other than as a direct or indirect result of any breach by that Creditor Party of Clause 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; or
- (iv) 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.

"**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.

" **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.

"**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

"**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 ~~the Loan~~ 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 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 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 eight hundred million euros (€800,000,000);
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.

"**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 (*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](#) 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 and Tranche B, 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 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 Commerce et des Sociétés* of Paris or any successor of it appointed under Clause 26 (*Role of the Facility Agent and the Joint Mandated Lead Arrangers*).

"**Facility Agreement**" ~~means the Original Facility Agreement as amended and restated by the 2021 Amendment and Restatement Agreement~~ [has the meaning given to such term in Recital \(H\)](#)

"**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.

"**FATCA**" means:

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

"FATCA Application Date" means:

- (a) in relation to a "withholdable payment" described in section 1473(1)(A)(i) of the Code (which relates to payments of interest and certain other payments from sources within the US), 1 July 2014;
- (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).

"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 9.1 (*Fees*);
- (b) the Facility Agent and the Borrower setting out the fees referred to in paragraph (c) of Clause 9.1 (*Fees*);
- (c) the SACE Agent and the Borrower setting out the fees referred to in paragraph (d) of Clause 9.1 (*Fees*);
- (d) the Security Trustee and the Borrower setting out the fees referred to in paragraph (e) of Clause 9.1 (*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) [the 2021 Deferral Fee Letters](#);



- (~~b~~c) t h e February 2021 Amendment and Restatement Agreement;
- (d) the June 2021 Amendment and Restatement Agreement;
- (~~e~~e) t h e June 2021 ~~Deferral~~Fee Letters;
- (~~d~~f) any Fee Letter;
- (~~e~~g) the Guarantee;
- (~~f~~h) the General Assignment;
- (~~g~~i) the Mortgage;
- (~~h~~i) the Post-Delivery Assignment;
- (~~i~~k) any Subordinated Debt Security;
- (~~j~~l) the Shares Security Deed;
- (~~k~~m) the Approved Manager's Undertaking;
- (~~l~~n) any Transfer Certificate;
- (~~m~~o) any Compliance Certificate;
- (~~n~~p) a n y Drawdown Notice;
- (~~o~~q) 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
- (~~p~~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;
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- (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 (*SACE Premium*).

"**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) the applicable Margin;
and
- (b) LIBOR for the relevant period.

"**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.
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"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 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 (ii) of paragraph (a) of Clause 6.9 (*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 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.

"**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 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 HM 11, Bermuda.

"**Holding**" means 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.

"**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 [*] (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 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*) ~~to be~~ 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 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 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 Agreement.

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

"**Interpolated Screen Rate**" means, in relation to the Loan or any part of the Loan, the rate which results from interpolating on a linear basis between:

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

each as of the Specified Time for Dollars.

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

"**ISPS Code**" means the International Ship and Port Facility Security (ISPS) Code 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 such term in Recital (I).

["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 ~~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~~ [Tranche A Lender or a Tranche B Lender](#).

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

- (a) the applicable Screen Rates of the Specified Time for Dollars and for a period equal in length to the Interest Period of the Loan or that part of the Loan; or
- (b) as otherwise determined pursuant to Clause 6.6 (*Unavailability of Screen Rate*).

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).

" **Loan**" means the [aggregate](#) principal amount [outstanding](#) for the time being ~~outstanding under this Agreement of the borrowings under the Facility and "part of the Loan"~~ [means an Advance, a Tranche or a part of a Tranche](#).

" **Majority Lenders**" means:

- (a) before ~~the Loan~~ [an Advance under any Tranche](#) has been made, Lenders whose Commitments total [*] per cent. of the Total Commitments; and
- (b) after ~~the Loan~~ [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.

" **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.

" **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;
 - (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 six hundred and forty million Euros (€640,000,000);
and~~

~~(b) one hundred per cent. (100%) of the SACE Premium to be paid in accordance with Clause 8.15(ACE Premium);~~

~~provided that such amount shall not, at any time, exceed nine hundred fifty-four million eight hundred fifty-four thousand seven hundred seventy-one Dollars and seventy-eight cents (\$954,854,771.78); provided further that the \$954,854,771.78 figure shall be adjusted to the extent the Base Rate is not exactly [*] upon the final determination of such Base Rate subject to all Lenders' approval.~~

"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).

"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" 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, (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 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);
and

(b) one hundred per cent. (100%) of the SACE Premium to be paid in accordance with Clause 8.15(ACE Premium).

provided that such amount shall not, at any time, exceed nine hundred fifty-four million eight hundred fifty-four thousand seven hundred seventy-one Dollars and seventy-eight cents (\$954,854,771.78) .

"**Original Principles**" has the meaning given in Recital (E).

"**Overnight LIBOR**" means, in relation to the Loan or any part of the 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 (*Unavailability of Screen Rate*),

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 27.4 (*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 12.14 (*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 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)(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 (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 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 [*] 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 [*] 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 12.14 *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 [*] 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 12 (*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 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.

"Prohibited Jurisdiction" means any country or territory which is, or whose government is, the target of country-wide or territory-wide Sanctions.

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

"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 Bribery of Foreign Public Officials in International Business Transactions of 17 December 1997.
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"**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 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.

"**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),

"**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*).

"**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, the rate at which the relevant Reference Bank could fund itself in the relevant currency 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.

"**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 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 (*Non-applicable provisions between the Obligors, German Lenders and any Creditor Party subject to the EU Blocking Regulation*).

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

"**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 *Role of the Facility Agent, the Joint Mandated Lead Arrangers, 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 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 (*SACE Premium and Italian Authorities*). ~~in addition to the Additional SACE Premium (provided, for the avoidance of doubt, that the Additional SACE Premium shall not be financed)~~.

"**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:

- (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):

- (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 Contingency Period**" means fifteen (15) Business Days.

"**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 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

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

(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](#)

- (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.

"**Second Instalment**" means the second instalment of the SACE Premium as more particularly described in paragraph (b) of Clause 8.1 (*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
- (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 19 (*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 of 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 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 (*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 *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 15 (*Security Value Maintenance*).

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

"**Shares Security Deed**" means a [Bermudian law](#) document [dated 19 December 2018, executed by the Shareholder in favour of the Security Trustee and](#) creating security over the share capital in the Borrower ~~in the agreed form~~.

"**Shareholder**" means NCL International Ltd., a Bermuda company with its registered office at Park Place 55, 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 (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.

"**SIMEST Margin Contribution**" means the margin contribution approved and granted by SIMEST to the Lenders under the Interest Make-Up Agreement as communicated by the SACE Agent to the Creditor Parties and the Borrower following the date of this Agreement as soon as the SACE Agent is made aware of it.

"**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 (*Calculation of Reference Bank Rate*), noon on the Quotation Day.

"**Structuring Fee**" has the meaning given in paragraph (a) of Clause 9.1 *Fees*.

"**Subordinated Debt Security**" has the meaning given in paragraph (b)(ii) of Clause 12.14 *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.

"**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).

"**Third Party Act**" means the Contracts (Rights of Third Parties) Act 1999.

"**Total Commitments**" means the aggregate of the Total Tranche A Commitments and the Total Tranche B Commitments, being nine hundred and eighty-one million, one hundred and thirty-two thousand, forty-eight Dollars and sixty-five cents (\$981,132,048.65) as at the date of this Agreement.

" **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 (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 nine hundred fifty-four million eight hundred fifty-four thousand seven hundred seventy-one Dollars and seventy-eight cents (\$954,854,771.78) as at the date of this Agreement.

"Total Tranche B Commitments" means the aggregate of the Tranche B Commitments, being twenty-six million, two hundred seventy-seven thousand, two hundred and seventy-six Dollars and eighty-seven cents (\$26,277,276.87) as at the date of this Agreement.

"Tranche" means Tranche A or Tranche B.

"Tranche A" means the part of the Facility to be made available by the Tranche A Lenders to the Borrower to finance (i) up to the Eligible Amount, being the Dollar Equivalent of six hundred and forty million Euros (€640,000,000), 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 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.

"Tranche B" means the part of the Facility to be made available by the Tranche B 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 (Additional 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.

"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.

"US" means the United States of America.

"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.
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1.2 Construction of certain terms

In this Agreement:

"**Facility Agent**", the "**SACE Agent**", the "**Joint Mandated Lead Arrange**", the "**Security Trustee**", "**SACE**", any "**Creditor Party**", any "**Secured Party**", any "**Lender**", any "**Tranche A Lender**", any "**Tranche B 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 ~~_____~~ February [●] 2021.

"**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.

"**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 (*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.

"**obligatory insurances**" means all insurances effected, or which the Borrower is obliged to effect, under Clause 14 (*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 11 (*Representations and Warranties*), Clause 12 (*General Undertakings*), Clause 20 (*Indemnities*), Clause 21 (*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 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 ~~the Maximum Loan Amount~~, in aggregate, the Total Tranche A Commitments intended to be applied as follows:

(~~a~~ 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;

(~~b~~ 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 8.1 (*SACE Premium*); and

(~~c~~ 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 8.1 (*SACE Premium*) ~~;~~ and

(b) the Tranche B Lenders agreed to make available to the Borrower a loan in relation to Tranche B in one (1) Advance not exceeding the Total Tranche B 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 (Additional Premium).

2.2 Lenders' participations in Loan

Subject to the other provisions of this Agreement:

(a) each Tranche A Lender shall participate in the Advance under Tranche A in the proportion which, as at the Drawdown Date, its Tranche A Commitment bears to the Total Tranche A Commitments; and

(b) each Tranche B Lender shall participate in the ~~Loan~~ Advance under Tranche B in the proportion which, as at the Drawdown Date, its Tranche B Commitment bears to the Total Tranche B Commitments.

2.3 Purpose of Loan

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

(a) the Advance under Tranche A only to pay for:

(~~a~~ i) goods and services of Italian origin incorporated in the design, construction or delivery of the Ship;

(~~b~~ 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;

- (c ~~iii~~) all or part of eighty per cent. (80%) of the Final Contract Price;
- (d ~~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 8.1 (*SACE Premium*); and
- (e ~~v~~) the Second Instalment of the SACE Premium payable in accordance with paragraph (b) of Clause 8.1 (*SACE Premium*).

(b) the Advance under Tranche B 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 (*Additional 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
 - (b) any Obligor or any other Lender being discharged (in whole or in part) from its obligations under any Finance Document,
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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 ~~the Loan~~ [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 Bermuda law in form and substance satisfactory to the Facility Agent and the Secured Parties in respect of the Bermuda Obligors' 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 validity and enforceability of the Shares Security Deed;
 - (d) a Certified Copy of the executed Shipbuilding Contract;
 - (e) 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;
 - (f) a confirmation from Hannaford Turner LLP currently of ~~9 Cloak Lane~~ [107 Cheapside](#), London [UK, EC 4R](#), ~~United Kingdom~~ [2V 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;
 - (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 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;
 - (i) payment of the initial portion of the Structuring Fee as set out in and payable in accordance with the relevant Fee Letter; and
 - (j) 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
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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 four (4) years before the Intended Delivery Date

The Facility Agent shall have received no later than four (4) 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 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 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:

- (a) notification of the Intended Delivery Date;
- (b) a notice from the Borrower as described in paragraph (a) of Clause 8.4 ~~Refund~~); and
- (c) a Bermuda tax opinion from legal counsel to the Secured Parties in respect of the tax treatment of the entry by the Bermuda 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 clause 11.3(c) 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 ~~the~~ [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:

- (a i) if applicable, a duly executed original of the Subordinated Debt Security;
 - (b 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;
 - (c iii) evidence of payment to and receipt by the Builder of:
 - (i A) the four (4) pre-delivery instalments of the Final Contract Price; and
 - (ii B) any other part of the Final Contract Price as at the Delivery Date not being financed hereunder;
 - (d 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
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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;

- (e.v) evidence of payment of all amounts which are due and payable hereunder by the Borrower on or prior to the Delivery Date;
- (f.vi) a certificate from the Borrower, signed by an authorised representative of the Borrower, confirming that:
 - (i.A) the representations and warranties contained in Clause 11 (~~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
 - (ii.B) no mandatory prepayment event pursuant to Clause 16 (~~Cancellation, Prepayment and Mandatory Prepayment~~) is continuing or would result from the ~~Loan~~ Advance;
- (g.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; and

(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.

~~(h)~~ provided always that , in relation to paragraphs (a) and (b) above, the obligations of the relevant Lenders to make ~~the Loan~~ such Advance under each of Tranche A and Tranche B, 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 ~~the advance of the Loan~~ 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
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- (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 11.3 (*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 (*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 3.11 (*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 ~~9 Cloak Lane~~ [107 Cheapside](#), London [UK, EC 4R](#), ~~United Kingdom~~ [2V 6DN](#) (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
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- (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 Bermuda 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, 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 (*Pooling of earnings and charters*); and
- (e) 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](#) ~~and SACE~~, [the Tranche B 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 Loan 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 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
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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:
- (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 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, the Facility Agent and the SACE Agent to ensure compliance with the terms of the SACE Insurance Policy or the Interest 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).
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- (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.
- (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 ~~the Loan 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. ~~For the avoidance of doubt, the amount of the Loan shall not exceed the Maximum Loan Amount.~~
 - (b) The Tranche B Lenders shall not be obliged to fulfil their obligation to make an Advance available under Tranche B 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 (Additional Premium).
 - (c) The Borrower hereby instructs the Tranche A Lenders in accordance with this Clause 4.1 *(Borrower's irrevocable payment instructions)*:
 - (~~a~~) i) to pay to the Builder, up to the Eligible Amount, all or part of eighty per cent. (80%) of the Final Contract Price;
 - (~~b~~) 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 8.1 (*SACE Premium*); and
 - (~~c~~) 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.
 - (d) If applicable, the Borrower hereby instructs the Tranche B Lenders in accordance with this Clause 4.1 (Borrower's irrevocable payment instructions) to pay the Facility Agent on behalf of the Tranche B 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 (Additional Premium).
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(e) 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 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*).

(f) 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 Facility 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, the Facility 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 Facility 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 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 (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 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 ~~the Loan~~ no Advance shall ~~not~~ be available) after the expiry of the Availability Period.

(b) ~~There will be only one drawing~~ Under this Agreement: there will be no more than:

(i) one (1) Advance under Tranche A;
and

(ii) one (1) Advance under Tranche B.

it being provided that the Advances in relation to Tranche A and Tranche B shall occur on the same date.

- (c) The amount of the Advance under Tranche B shall not exceed the lower of (i) the amount calculated pursuant to the provisions of paragraph (a)(ii) of Clause 8.5 (Additional Premium) and (ii) the Total Tranche B Commitments.
- (d) The aggregate amount of:
 - (i) the Tranche A Advance cannot exceed the Total Tranche A Commitments;
 - (ii) the Tranche B Advance cannot exceed the Total Tranche B Commitments;
and
 - (ciii) the ~~aggregate amount of the Loan Advances under all Tranches~~ cannot exceed the ~~Maximum Loan Amount~~ 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 and the Tranche B Lenders that it has received a Drawdown Notice in relation to a Tranche and shall inform each relevant Lender of:

- (a) the amount of the ~~Loan Advance~~ and the Drawdown Date;
- (b) the amount of that Lender's participation in the ~~Loan 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, make available to the Facility Agent the amount due from that Lender under Clause 2.2 (~~Lenders' participations in Loan~~).

4.7 Disbursement of ~~Loan 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 (~~a~~ c)(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 (~~b~~ c)(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 (c)(iii) of Clause 4.1 (*Borrower's irrevocable payment instructions*) to the account of SACE which the SACE Agent shall specify; ~~and~~
 - (d) in the case of an amount referred to in paragraph (d) of Clause 4.1 (*Borrower's irrevocable payment instructions*) to the account of SACE which the SACE Agent shall specify.
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4.8 Disbursement of ~~Loan~~ Advance to third party

The payment by the Facility Agent under Clause 4.7 *Disbursement of ~~Loan~~ Advance* shall constitute the making of the ~~Loan~~ 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 ~~Contribution~~ 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 INTEREST

6.1 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.

6.2 Fixed Interest Rate

If the Borrower has specified a Fixed Interest Rate pursuant to Clause 6.1 *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.

6.3 Floating Interest Rate

If:

- (a) the Borrower has specified a Floating Interest Rate pursuant to Clause 6.1 *Fixed or Floating Interest Rate*;
- or
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- (b) the Borrower has specified a Fixed Interest Rate pursuant to Clause 6.1 (*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 (*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).

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.

6.5 Notification of Interest Periods and Floating Interest Rate

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.

6.6 Unavailability of Screen Rate

- (a) *Interpolated Screen Rate*: If no Screen Rate is available for LIBOR for the Interest Period of the Loan or any part of the Loan, the applicable LIBOR shall be the Interpolated Screen Rate for a period equal in length to the Interest Period of the Loan or that part of the Loan.
- (b) *Reference Bank Rate* If no Screen Rate is available for LIBOR for:
 - (i) Dollars;
 - (ii) the Interest Period of the Loan or any part of the 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 Loan.
- (c) *Cost of funds*: If paragraph (b) above applies but no Reference Bank Rate is available for Dollars or the relevant Interest Period there shall be no LIBOR for the Loan or that part of the Loan (as applicable) and Clause 6.9 (*Cost of funds*) shall apply to the Loan or that part of the Loan for that Interest Period.

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.

6.8 Market disruption

If before close of business in London on the Quotation Day for the relevant Interest Period the Facility Agent receives notification from a Lender or Lenders (whose participations in the Loan or the relevant part of the Loan 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.

6.9 Costs of funds

- (a) If this Clause 6.9 (*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 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 participation in the Loan or that part of the Loan from whatever source it may reasonably select.

- (b) If this Clause 6.9 (*Cost of funds*) applies and the Facility Agent or the Borrower so requires, the Facility Agent and the Borrower shall enter into negotiations (for a period of not more than 30 days) with a view to agreeing a substitute basis for determining the rate of interest or (as the case may be) an alternative basis for funding.

- (c) Subject to Clause 6.10 (*Replacement of Screen Rate*), any substitute or alternative basis agreed pursuant to paragraph (b) above shall, with the prior consent of all the Lenders and the Borrower, be binding on all Parties.

- (d) If paragraph (e) below does not apply and any rate notified to the Facility Agent under sub-paragraph (ii) of paragraph (a) above is less than zero, the relevant rate shall be deemed to be zero.

- (e) If this Clause 6.9 (*Cost of funds*) applies pursuant to Clause 6.8 (*Market disruption*) and:

- (i) a Lender's Funding Rate is less than LIBOR;
or

- (ii) a Lender does not supply a quotation by the time specified in sub-paragraph (ii) of paragraph (a) above,

the cost to that Lender of funding its participation in the Loan or the relevant part of the Loan for that Interest Period shall be deemed, for the purposes of paragraph (a) above, to be LIBOR.

- (f) If this Clause 6.9 (*Cost of funds*) applies but any Lender does not supply a quotation by the time specified in sub-paragraph (ii) of paragraph (a) above, the rate of interest shall be calculated on the basis of the quotations of the remaining Lenders.

6.10 Replacement of Screen Rate

- (a) If a Screen Rate Replacement Event has occurred in relation to the Screen Rate for Dollars, any amendment or waiver which relates to:
- (i) providing for the use of a Replacement Benchmark;
and
 - (ii)
 - (A) aligning any provision of any Finance Document to the use of that Replacement Benchmark;
 - (B) enabling that Replacement Benchmark to be used for the calculation of interest under this Agreement (including, without limitation, any consequential changes required to enable that Replacement Benchmark to be used for the purposes of this Agreement);
 - (C) implementing market conventions applicable to that Replacement Benchmark;
 - (D) providing for appropriate fallback (and market disruption) provisions for that Replacement Benchmark; or
 - (E) adjusting the pricing to reduce or eliminate, to the extent reasonably practicable, any transfer of economic value from one Party to another as a result of the application of that Replacement Benchmark (and if any adjustment or method for calculating any adjustment has been formally designated, nominated or recommended by the Relevant Nominating Body, the adjustment shall be determined on the basis of that designation, nomination or recommendation),

may be made with the consent of the Facility Agent (acting on the instructions of ~~the Majority~~ [all](#) Lenders), SACE and SIMEST (if applicable) and the Borrower.

- (b) If, as at 30 September ~~2021~~ [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 ~~the Majority~~ [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 ~~2021~~ [2022](#), unless the Borrower and the [Facility](#) Agent (acting on the instructions of ~~the Majority~~ [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.
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- (c) If an amendment is required as contemplated in this Clause 6.10 ~~Replacement of Screen Rate~~, 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.

6.11 Notice of prepayment

If no agreement is reached with the Borrower under Clause 6.10 ~~Replacement of Screen Rate~~, 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 6.1 (*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.

6.12 Prepayment; termination of Commitments

A notice under Clause 6.11 (~~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 6.6(b)(i);
- (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 (*Breakage costs and SIMEST arrangement*)) 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 6.1 (*Fixed or Floating Interest Rate*)).

6.13 Application of prepayment

The provisions of Clause 16 (~~Cancellation, Prepayment and Mandatory Prepayment~~) shall apply in relation to the prepayment.

6.14 Certain Circumstances

Notwithstanding anything to the contrary in this Agreement:

- (a) in the event of any circumstances falling within Clause 6.8 (*Market Disruption*) which might affect the advance of ~~the Loan~~ [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 (*Market Disruption*) (the "**Pricing-Related Relevant Circumstances**") occurring before ~~the Loan~~ [an Advance](#) is made available, each Lender will fund its respective Contributions by reference to the agreed
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alternative rate of interest in accordance with Clauses 6.6 *Unavailability of Screen Rate*) 6.7 *(Calculation of Reference Bank Rate)*, 6.8 *(Market Disruption)*, 6.9 *(Cost of funds)* and 6.10 *(Replacement of Screen Rate)* (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 ~~Loan Advance~~ but also before the making of the ~~Loan Advance~~);

- (c) in the event of any Relevant Circumstances falling within Clause 6.8 *(Market Disruption)* (the " **Availability-Related Relevant Circumstances**") occurring before the Loan is made, 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.

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 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 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 *(Floating Interest Rate)* shall apply.

7 INTEREST PERIODS

7.1 Commencement of Interest Periods

The first Interest Period applicable to ~~the Loan an Advance~~ shall commence on the Drawdown Date and each subsequent Interest Period shall commence on the expiry of the preceding Interest Period.

7.2 Duration of Interest Periods

Subject to Clause 7.3 *(Duration of Interest Periods for Repayment Instalments)*, each Interest Period shall be 6 months.

7.3 Duration of Interest Periods for Repayment Instalments

Any Interest Period that includes a Repayment Date shall expire on such Repayment Date.

8 SACE PREMIUM AND ITALIAN AUTHORITIES

8.1 SACE Premium

The estimated SACE Premium for an amount equal to[*] (being [*] per cent. ([*]%) of the Original Maximum Loan Amount) ~~; or any other amount communicated by SACE subject to the approval of all Lenders and the Borrower~~, is due and payable in two instalments as follows:

- (a) the first instalment of the SACE Premium being an amount of[*] 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) 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[*] 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.

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 (*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 (~~e~~ a)(iii) of Clause 2.1 (*Amount of facility*) of this Agreement.

Consequently, the Borrower hereby irrevocably instructs the Facility Agent on behalf of the Lenders to pay the Second Instalment to SACE on the Drawdown Date in accordance with paragraph (~~e~~ 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 (~~b~~ 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.

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.
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- (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 Agreement.

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 ~~Loan 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 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 ~~Loan 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.
- (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 [*] 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 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.

8.5 Additional Premium

- (a) The Borrower shall pay to SACE (through the SACE Agent) an additional SACE premium in relation to the changes made to the Original Facility Agreement following the 2021 Deferral Effective Date (the 'Additional SACE Premium'). The Additional SACE Premium is payable, in accordance with the SACE Insurance Policy, ~~payable~~ 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) \$954,854,771.78 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 on 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 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 Additional SACE Premium is non-refundable ~~and not~~ **financed**.
 - (c) The Borrower has requested, and the Tranche B 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 Clause 8.5 (Additional 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.
 - (d) Consequently, the Borrower hereby irrevocably instructs the Facility Agent on behalf of the Tranche B Lenders to pay the amount of the second instalment of the Additional SACE Premium to SACE on the Delivery Date in accordance with paragraph (b) of Clause 2.1 (Amount of facility) of this Agreement.
 - (e) The second instalment of the Additional SACE Premium financed by Tranche B will be repayable in any event by the Borrower to the Tranche B Lenders in the manner specified in
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[Clause 5 \(Repayment\) and under any and all circumstances including but without limitation in the event of prepayment or acceleration of the Loan.](#)

For avoidance of doubt, in case of discrepancy between this Clause 8.5 ~~Additional premium~~) and the relevant provision of the SACE Insurance Policy, the SACE Insurance Policy shall prevail.

9 FEES

9.1 Fees

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 paragraph (a) of Clause 16.1 (*Cancellation*)) or written termination notice (as described in paragraph (b) of Clause 16.1 (*Cancellation*)) (as applicable) sent by the Borrower, whichever is the earliest, computed at the rate of:
 - (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 31 January 2024, [*] per cent. ([*]% p.a.) per annum;
and
 - (iv) from 1 February 2024 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 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 16.1 (*Cancellation*)) or written termination notice (as described in paragraph (b) of Clause 16.1 (*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 nine hundred fifty-four million eight hundred fifty-four thousand seven hundred seventy-one Dollars and seventy-eight cents (\$954,854,771.78) ~~provided that the \$954,854,771.78 figure shall be adjusted to the extent the Base Rate is not exactly [*] upon the final determination of such Base Rate subject to all Lenders' approval;~~ [and the Amended Maximum Loan Amount is assumed to be nine hundred eighty-one million, one hundred and thirty-two thousand, forty-eight Dollars and sixty-five cents \(\\$981,132,048.65\);](#)

- (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.

10 TAXES, INCREASED COSTS, COSTS AND RELATED CHARGES

10.1 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 10.2 (*Tax gross-up*) or a payment under Clause 10.3 (*Tax indemnity*).

- (b) Unless a contrary indication appears, in this Clause 10 ~~(*Taxes, Increased Costs, Costs and related Charge*)~~ reference to "**determines**" or "**determined**" means a determination made in the absolute discretion of the person making the determination.

10.2 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 10.7 (*Lender Status*) at least 30
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Business Days prior to such payment date) complied with its obligations under Clause 10.7 (~~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.

10.3 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 10.2 (~~Tax gross-up~~) or would have been compensated for by an increased payment under Clause 10.2 (~~Tax gross-up~~) but was not so compensated solely because an exclusion in paragraph (d) of Clause 10.2 (~~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 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 10.3 (~~Tax indemnity~~), notify the Facility Agent.

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.

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.

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,
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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 (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.

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 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 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.

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.

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 (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 (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 ~~and~~, (ii) where the relevant Lender becomes a Lender at the date of this Agreement, the date of this Agreement and (ii) where the relevant Lender is a Transferee Lender, the effective date of a Transfer Certificate under Clause 24.4 (~~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.
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- (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.

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 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 10.10 (*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 10.3 (*Tax indemnity*) (or would have been compensated for under Clause 10.3 (*Tax indemnity*) but was not compensated solely because any of the exclusions in paragraph (b) of Clause 10.3 (*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 10.10 (*Increased Costs*), a reference to a "Tax Deduction" has the same meaning given to the term in Clause 10.1 (*Definitions*).

- (c) A Lender affected by any provision of this Clause 10.10 (*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 10.10 (*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 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.

10.11 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
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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.

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.

10.13 SACE obligations

To the extent that this Clause 10 (~~Taxes, Increased Costs, Costs and related Charge~~) 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.

11 REPRESENTATIONS AND WARRANTIES

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 (*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 (*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 (*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.

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 Interest (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) 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;
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- (ii) the recording of the Mortgage in the office of the Bahamas Maritime Authority 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) it is disregarded as an entity separate from its owner for U.S. federal Tax purposes;
 - (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) 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) 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 11.1 (*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, 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;
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- (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 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 12.23 (*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) 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) 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:
 - (i) nor to its knowledge, any director, 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
 - (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 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) 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) 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) no investments made and no payments made, received or to be made by the Borrower, the Shareholder 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,
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the Shareholder 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) no Prohibited Payment has been or will be received, made or provided, directly or indirectly, by (or on behalf of) the Borrower, the Shareholder or the Guarantor (with respect to the Shareholder and the Guarantor, to the best of the Borrower's knowledge), any of its affiliates or its 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, of any authority or public or government entity) in connection with the Ship, this Agreement and/or the Finance Documents;
 - (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 (*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 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) 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 10.7 (*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 11.2 (*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;
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- (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 the Borrower complies 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) the Borrower has read and acknowledged the principles provided under the Code of Ethics and Model;
- (mm) the Borrower has implemented adequate internal procedures aimed at preventing commission of crimes provided under Legislative Decree 231/01;
- (nn) no litigation is pending against the Borrower in relation to administrative liability provided under Legislative Decree 231/01;
- (oo) 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) neither the Borrower nor any of its assets are subject to any precautionary measure provided under Legislative Decree 231/01.

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;
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- (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 (*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 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 (*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.

12 GENERAL UNDERTAKINGS

12.1 General

The Borrower undertakes with each Secured Party to comply with the following undertakings during the Security Period:

12.2 Information

The Borrower will provide to the Facility 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 2018 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 Facility 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 (\$20,000,000) 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 12.2 (*information*) shall be prepared in accordance with GAAP and shall fairly represent the financial condition of the relevant company.

12.3 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.

12.4 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 Shareholder, 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 Shareholder, 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.
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12.5 Prohibited Payments

No Prohibited Payment shall be received, 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 public or government entity (or any official, officer, director, 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.

12.6 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.

12.7 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 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.

12.8 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 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.

12.9 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 16.3 (*Mandatory prepayment – Sale and Total Loss*) and except for charters and other arrangements complying with Clause 13.1 (*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.

12.10 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.

12.11 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.

12.12 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.

12.13 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.

12.14 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
 - (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 (*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.

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;
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- (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.

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;
- (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.

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;
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- (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.

12.18 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 12.15 (*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.

12.19 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.

12.20 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 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.

12.21 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 paragraph (a) ~~c~~(i) of Clause 4.1 (*Borrower's irrevocable payment instructions*) only), the Facility Agent, SACE and the Lenders.

12.22 "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 Facility Agent or any Lender (or, in the case of paragraph (a)(iii) of Clause 12.22 (~~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 paragraph (a)(iii) of Clause 12.22 (*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.

12.23 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.
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- (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 (d) and (e) above.

12.24 FOREX
Contracts

The Borrower shall:

- (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.

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.
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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 (*Continuing representations and warranties*) and Clause 18.6 (*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, 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 (*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 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.

12.27 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.
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- (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.

12.28 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);
 - (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.
 - (b) The restrictions in paragraph (a) of Clause 12.28 (*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: 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 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 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 Facility Agent prior to the 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;
 - (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 paragraph (b)(viii)(B)(2) of [this](#) Clause 12.28 (*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
- (xii) without prejudice to Clauses 12.11 (*Mergers*) and 12.15 (*Investments*) and clause 11.13 (*No merger*) of the Guarantee, the issuance of share capital by any Group member to another Group member.

13 SHIP UNDERTAKINGS

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 (*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
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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, 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 (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 [*]; 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 [*] **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;
 - (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.

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.

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.

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 (*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 (*Valuation of the Ship*), the Facility Agent shall be entitled to procure a valuation of the Ship on the same basis.

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.

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. 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 (*Valuation of the Ship*).

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 [*], such inspections shall be limited to one a year and shall all be at reasonable times.

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 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.

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.

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.

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.

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 [*];
 - (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;
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- (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.

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 [*] 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 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 (*Payment of liabilities*):
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- (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 (*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 (*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 [*] 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.

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.

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 [*] 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)).

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.

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.

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.

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.

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.

13.21 Poseidon Principles

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 (*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.

**14INSURANCE
UNDERTAKINGS**

14.1 General

The undertakings in this Clause 14 (*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.

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 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 (*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);
- (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.

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).

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 (*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;
- (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.

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 Facility Agent.
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- (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.

14.6 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.

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 Facility Agent.

14.8 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.

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.

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.

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.

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.

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.

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.

**15 SECURITY VALUE
MAINTENANCE**

15.1 Security Shortfall

If, upon receipt of a valuation of the Ship in accordance with Clause 13.4 *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
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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 (*Costs*) and 15.4 (*Documents and evidence*) and paragraph (c) of Clause 16.2 (*Voluntary prepayment*) shall apply to prepayments under paragraph (a) of Clause 15.1 (*Security Shortfall*).

15.2 Costs

All costs in connection with the Facility Agent obtaining any valuation of the Ship referred to in Clause 13.4 (*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 15.1 (*Security Shortfall*) shall be borne by the Borrower.

15.3 Valuation of additional security

For the purpose of this Clause 15 (*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.

15.4 Documents and evidence

In connection with any additional security provided in accordance with this Clause 15 (*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.

15.5 Valuations binding

Any valuation under this Clause 15 (*Security Value Maintenance*) shall be binding and conclusive as regards the Borrower.

15.6 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 15 (*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.

16 CANCELLATION, PREPAYMENT AND MANDATORY PREPAYMENT

16.1 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](#)
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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 16.1 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 Shareholder and the Guarantor) to the Facility Agent, terminate this Agreement and the other Finance Documents and, except for this Clause, Clause 10.11 (~~Transaction Costs~~), Clause 33 (*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.

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 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 ~~Breakage costs and SIMEST arrangement~~ 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 16.2 (*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 (~~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 the [relevant](#) Lenders of the funding for the ~~Loan~~ [relevant Advance or Advances under a Tranche](#) and the rate of interest for the monies to be invested by ~~the 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 6.1 (~~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 (*Indemnities*).
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- (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 (*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 20.1 (*Indemnities regarding borrowing and repayment of Loan*) and 20.2 (*Breakage costs and SIMEST arrangements*).
- (c) If the Borrower has selected the Fixed Interest Rate pursuant to Clause 6.1(~~Fixed or Floating Interest Rate~~), the SACE Agent shall give SIMEST thirty (30) days written notice of the intended date of prepayment.

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 (*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.

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 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) of Clause 16.4 (*Mandatory prepayment – SACE Insurance Policy*) the events described in paragraph (a) of Clause 16.4 (*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 (*Mandatory prepayment – SACE Insurance Policy*).

16.5 Breach of new covenants or the Principles

- (a) Failure to comply, until the end of the Deferral Period, with the provisions of Clauses 12.17(~~Dividends and dividend restriction~~), 12.28 (*New capital raises or financing*), or the provisions of clause 11.3(f) (~~Additional financial reporting~~), clause 11.17(c) (*Dividend restriction*), clause
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11.19 (*New capital raises or financing*) and clause 11.20 (*Payments under the Shipbuilding contract*) 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 (*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 (*New capital raises or financing*), if at any time after the 2021 Deferral Effective Date:

- (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; 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.

16.6 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 16.2 (*Voluntary prepayment*)).

16.7 Application of partial prepayment

Amounts prepaid shall be applied in accordance with paragraph (b) of Clause 19.1 (*Receipts*).

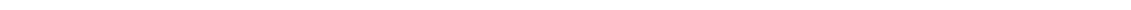
16.8 No reborrowing

Amounts prepaid may not be reborrowed.

17 INTEREST ON LATE PAYMENTS

17.1 Default rate of interest

Without prejudice to the provisions of Clause 18 (*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) 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) 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.

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.

18 EVENTS OF DEFAULT

18.1 Events of Default

An Event of Default occurs if any of the events or circumstances described in Clauses 18.2 (~~Non-payment~~) to 18.20 (*Material Adverse Change*) occur.

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.

18.3 Non-remediable breaches

The Borrower fails to comply with the provisions of Clauses 12.4 (*Sanctions and illicit payments*), 12.5 (*Prohibited payments*) 12.8 (*Negative pledge*), 12.9 (*Disposals*), 12.11 (*Mergers*) or 12.18 (*Loans and guarantees by the Borrower*).

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 (*Non-payment*) to 18.20 (*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 (*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 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.

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.

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 ~~(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 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 (*Mandatory prepayment – sale and total loss*) or Clause 16.4 (*Mandatory prepayment – SACE insurance policy*) has occurred.

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.

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.

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.

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 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.

18.11 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.

18.12 Analogous
events

Anything analogous to or having a substantially similar effect to any of the events specified in Clauses 18.7 (*Winding-up*) to 18.11 (*Legal process*) shall occur under the laws of any applicable jurisdiction.

18.13 Cessation of
business

Any Obligor ceases to carry on all or a substantial part of its business.

18.14 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.

18.15 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.

18.16 Insurances

The Borrower fails to insure the Ship in the manner specified in Clause 14 (*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.

18.17 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.

18.18 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.

18.19 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 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.

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 (*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.

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 and the financed second instalment of the Additional 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 Facility Agent and/or the Lenders are entitled to take under any Finance Document or any applicable law.

18.22 Termination of
Commitments

On the service of a notice under paragraph (a) of Clause 18.21 ~~Actions following an Event of Default~~, the Commitments and all other obligations of each Lender to the Borrower under this Agreement shall terminate.

18.23 Acceleration of
Loan

On the service of a notice under paragraph (b) of Clause 18.21 ~~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.

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 (*Voluntary prepayment*).

18.25 Multiple notices; action without
notice

The Facility Agent may serve notices under paragraphs (a) and (b) of Clause 18.21 *(Actions following an Event of Default)* simultaneously or on different dates and it may take any action referred to in paragraph (c) of Clause 18.21 *(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.

18.26 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 18.21 *(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.

18.27 Lender's rights unimpaired

Nothing in this Clause 18 *(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 severally)*.

18.28 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.

19 APPLICATION OF SUMS RECEIVED

19.1 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:
 - (A) first, to interest payable pursuant to Clause 17 *(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 (*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 paragraphs (a)(ii)(A) to (a)(ii)(E) 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 paragraphs (a)(ii)(A) to (a)(ii)(D) above.
- (d) Paragraphs (a), (b) and (c) above will override any appropriation made by an Obligor.

20 INDEMNITIES

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 17 (*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 18 (*Events of Default*);
 - (v) the taking, holding, protection or enforcement of a Security Interest;
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- (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 20.1 (*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.

20.2 Breakage costs and SIMEST arrangements

Without limiting its generality, Clause 20.1 (*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~~ Contributions and/or any overdue amount (or an aggregate amount which includes its ~~Contribution~~ Contributions or any overdue amount);
- (b) if the Borrower has selected the Fixed Interest Rate in accordance with Clause 6.1 (*Fixed or Floating Interest Rate*), the CIRR Break Costs; and
- (c) any other costs whatsoever or howsoever arising under or in respect of the Interest 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.

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,

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 (*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 (*Continuing representations and warranties*) and/or of Clause 12.27 (*Code of Ethics and Model*).

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 (*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 (*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.

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 (*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.

20.6 Sums deemed due to a Lender

For the purposes of this Clause 20 (*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.

20.7 SACE obligations

To the extent that this Clause 20 (*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.

**21 ILLEGALITY,
ETC.**

**21.1 Illegality and
Sanctions**

This Clause 21 (*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**").

**21.2 Notification of
illegality**

The Borrower shall promptly notify the Facility Agent of the occurrence of an event under paragraph (b) of Clause 21.1 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 21.1 which the Facility Agent receives from the Notifying Lender.

**21.3 Prepayment; termination of
Commitment**

- (a) Upon the Facility Agent notifying the Borrower of an event under paragraph (a)(i) of Clause 21.1 (*Illegality and Sanctions*) above, the Notifying Lender's Commitment will be immediately suspended and that Lender shall act in accordance with Clause 21.4 (*Mitigation*). To the extent no alternative arrangements have been agreed in accordance with Clause 21.4 (*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 paragraph (a)(ii) of Clause 21.1 (*Illegality and Sanctions*) above, the Notifying Lender shall act in accordance with Clause 21.4 (*Mitigation*). To the extent no alternative arrangements have been agreed in accordance with Clause 21.4 (*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
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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 21.1 (*Illegality and Sanctions*) above, the Lenders shall act in accordance with Clause 21.4 (*Mitigation*). To the extent no alternative arrangements have been agreed in accordance with Clause 21.4 (*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 (*Notification of illegality*) above; or
 - (ii) the last day of the current Interest Period for the [Loan relevant Advance 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.

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 21.1 (*Illegality and Sanctions*) or Clause 10 (*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.

22 SET-OFF

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;
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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.

22.2 Existing rights unaffected

No Creditor Party shall be obliged to exercise any of its rights under Clause 22.1 (*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).

22.3 Sums deemed due to a Lender

For the purposes of this Clause 22 (*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.

22.4 No Security Interest

This Clause 22 (*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.

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.

24 CHANGES TO THE LENDERS

24.1 Transfer by a Lender

Subject to Clause 24.2 (*Conditions of assignment or transfer*), Clause 24.5 (*No transfer without Transfer Certificate*), Clause 24.17 (*Assignment or transfer to SAC*) and Clause 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~~ 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 (*Role of the Facility Agent, the Joint Mandated Lead Arrangers, the SACE Agent and the Reference Bank*) and 27 (*The Security Trustee*) respectively.

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 (*No transfer without Transfer Certificate*) and 24.17 (*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.

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 Obligor, 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 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.

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 (*Transfer Certificate, delivery and notification*) on or before that date.

24.5 No transfer without Transfer Certificate

Except as provided in Clause 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 Facility Agent or the Security Trustee unless it is effected, evidenced or perfected by a Transfer Certificate.

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 **Contribution Contributions** as were held by the predecessor Lender.

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 **Contribution 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 Lender's title and any rights or equities of the Borrower or any Obligor against the Transferor Lender had not existed;
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- (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 (*Market Disruption*) and Clause 9 (*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 Maintenance of register of Lenders

During the Security Period the Facility Agent shall maintain a register in which it shall record the name, Commitment, **Contribution 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 (*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.

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.

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.

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
 - (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 24.1 (*Transfer by a Lender*).
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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.

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.

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 (*Taxes, Increased Costs, Costs and Related Charge*), 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 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.

24.16 Security over Lenders'
rights

In addition to the other rights provided to Lenders under this Clause 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, central bank or a multilateral development bank (including the European Investment Bank and the European Investment Fund);
and
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- (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 (*Conditions of assignment or transfer*) and 24.3 (*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 (*Security over Lenders' rights*).

24.17 Assignment or transfer to SACE or as directed by SACE

- (a) Notwithstanding the above provisions of this Clause 24 (~~*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.

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);
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(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.

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 (*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.

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 (*Assignment or transfer to SACE or as directed by SACE*) or Clause 24.18 (*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.

24.21 Definition of Affiliate

For the purposes of this Clause 24 (*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.
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25 CHANGES TO THE OBLIGORS

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.

26 ROLE OF THE FACILITY AGENT, THE JOINT MANDATED LEAD ARRANGERS, THE SACE AGENT AND THE REFERENCE BANKS

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.

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.

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.

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.
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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.

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, 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.

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:
- (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
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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/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.

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 Agreement.

26.9 Exclusion of liability

- (a) Without limiting paragraph (b) of Clause 26.9 ~~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 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
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Agreement and any officer, employee or agent of the Facility Agent may rely on this Clause subject to Clause 36.4 (*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.

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).

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 (*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.
 - (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 (*Role of the Facility Agent, the Joint Mandated Lead Arrangers, the SACE Agent and the Reference Banks*). Its successor and each of the other Parties shall have the same rights
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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 (*Resignation of the Facility Agent*). In this event, the Facility Agent shall resign in accordance with paragraph (b) of Clause 26.11 (*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 (*Resignation of the Facility Agent*) shall be subject to compliance with all necessary "know your customer" requirements of the Lenders.

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.

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.

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;
 - (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;
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- (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.

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.

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.

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 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 Agreement.

26.18 Resignation of the Facility Agent in relation to FATCA

The Facility Agent shall resign in accordance with Clause 26.11 *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 (*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 *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 *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.

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.

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.
 - (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
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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.

26.21 Application of certain Clauses

The provisions of Clauses 26.2 (*Duties of the Facility Agent*), 26.4 (*No fiduciary duties*), 26.6 (*Rights and discretions of the Facility Agent*), 26.7 (*Lenders' and SACE's instruction*), 26.8 (*Responsibility for documentation*), 26.9 (*Exclusion of liability*), 26.10 (*Lenders' indemnity to the Facility Agent*), 26.11 (*Resignation of the Facility Agent*), 26.12 (*Confidentiality*), 26.13 (*Relationship with the Lenders*), 26.14 (*Credit appraisal by the Lender*), 26.16 (*Full freedom to enter into transactions*), 26.19 (*No duty to monitor*) and 27.23 (*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 (*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 40 (*Confidentiality of Funding Rates and Reference Bank Quotation*) subject to Clause 36.4 (*Third party rights*) and the provisions of the Third Parties Act.

27 THE SECURITY TRUSTEE

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 (*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).
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- (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 27.1 (*Trust*) and as excluded or limited by this Clause 27 (*The Security Trustee*) including in particular Clause 27.8 (*Instructions to Security Trustee and exercise of discretion*), Clause 27.13 (*Responsibility for documentation*), Clause 27.14 (*Exclusion of liability*), Clause 27.16 (*Lenders' indemnity to the Security Trustee*), Clause 27.23 (*Business with the Group*) and Clause 27.28 (*Full freedom to enter into transactions*).

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 (*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 (*Parallel Debt (Covenant to pay the Security Trustee)*) to the extent permitted by applicable law, shall be applied in accordance with Clause 19 (*Application of sums received*).
- (f) This Clause 27.2 (*Parallel Debt (Covenant to pay the Security Trustee)*) shall apply, with any necessary modifications, to each Finance Document.

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.

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 (*The Security Trustee*), the "**Recoveries**") shall be transferred to the Facility Agent for application in accordance with Clause 19 (*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 (*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 (*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 Deductions from receipts

- (a) Before transferring any moneys to the Facility Agent under Clause 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
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- (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 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 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 (*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.

27.7 Investment of proceeds

Prior to the payment of the proceeds of the Recoveries to the Facility Agent for application in accordance with Clause 27.4 (*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 (*Investment of proceeds*).

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
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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 (*Security Trustee's discretions*) to Clause 27.28 (*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 (*Deductions from receipts*) and Clause 27.6 (*Prospective liabilities*).

27.9 Security Trustee's
Actions

Without prejudice to the provisions of Clause 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 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;
 - (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;
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- (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.

27.11 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.

27.12 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;
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- (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.

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.

27.14 Exclusion of liability

- (a) Without limiting Clause 27.15 (*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
 - (iv) without prejudice to the generality of 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,
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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.

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 (*Third party rights*) and the provisions of the Third Party Act.

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 Finance Documents (unless the relevant Security Trustee, Receiver or Delegate has been reimbursed by an Obligor pursuant to a Finance Document).

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.

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 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.
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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.

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.

27.21 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 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.

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.

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.

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.

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.

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.

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.

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:
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- (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.

27.29 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 (*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 (*The Security Trustee*), Clause 27.5 (*Deductions from receipts*), Clause 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.
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- (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 (*Resignation of the Security Trustee*) shall be subject to compliance with all necessary "know your customer" requirements of the Lenders.

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.

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 functions pursuant to that appointment shall, for the purposes of this Agreement, be treated as costs and expenses incurred by the Security Trustee.

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.
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- (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.

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.

29 SHARING AMONG THE CREDITOR PARTIES

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 Clause 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 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 19 (*Application of sums received*) and Clause 30 (*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 Recovering Creditor Party as its share of any payment to be made, in accordance with Clause 19 (*Application of sums received*) and Clause 30 (*Payment Mechanics*).

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 (*Application of sums received*) and Clause 30 (*Payment Mechanics*).

29.3 Recovering Creditor Party's rights

- (a) On a distribution by the Facility Agent under Clause 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 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 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 (*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.

29.5 Exceptions

- (a) This Clause 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
 - (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 (*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 PAYMENT MECHANICS

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
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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.

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 (*Distributions to an Obligor*), Clause 30.4 (*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.

30.3 Distributions to an Obligor

The Facility Agent may in accordance with Clause 22 (*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 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.
- (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.

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.

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.

30.7 Currency of account

- (a) Subject to paragraphs (b) and (c) of Clause 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 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.

30.9 Distributions under the Interest Make-Up Agreement

Each payment received by the Facility Agent under the Interest 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).

31 VARIATIONS AND WAIVERS

31.1 Variations, waivers etc. by Majority Lenders

Subject to Clause 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 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.

31.2 Variations, waivers etc. requiring agreement of all Lenders

However, as regards the following, Clause 31.1 (*Variations, waivers etc. by Majority Lender*) 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 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 8.1 (*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 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 (*Changes to the Lenders*) or this Clause 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 Exclusion of other or implied variations

Except for a document which satisfies the requirements of Clauses 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
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- (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 NOTICES

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.

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 <i>Lenders and Commitments</i> or (as the case may require) in the relevant Transfer Certificate.
(c) to the Facility Agent:	CIB-COO Office-TMEF CIB- ITO Global Banking Operations Credit Transaction Management-Export Finance 9 Rue du Débarcadère Immeuble Océanie ACI: CPE02A1 Millénaire 4 93500 Pantin 35 rue de la gare 75019 Paris Fax No. (33) 1 43 16 81 84 Email: [*];[*] Attn: Attention: S. CASET-CARRICABURU/B. SOHIER
(d) to the SACE Agent:	12, place des Etats-Unis CS 70052 92547 Montrouge cedex Paris Fax No. (33) 1 41 89 19 34

	Email: [*];[*] Attn: Shipping Middle Office – Ms Clémentine Costil and Romy Roussel
(e) to the Security Trustee:	8 Canada Square London E14 5HQ Fax: +44 20 7991 4350 Email: [*] 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.

32.3 Effective date of notices

Subject to Clauses 32.4 (*Service outside business hours*) and 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 Service outside business hours

However, if under Clause 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 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 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.

32.6 Illegible notices

Clauses 32.3 (*Effective date of notices*) and 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 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 English language

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

32.9 Meaning of "notice"

In this Clause 32 (*Notices*), "**notice**" includes any demand, consent, authorisation, approval, instruction, waiver or other communication.

33CONFIDENTIALITY

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 (*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 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
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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 Obligor and to any of that person's Affiliates, Representatives and professional advisers;
 - (iv) 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;
 - (v) 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;
 - (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) 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;
 - (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 (*Security over Lenders' rights*);
 - (xiii) 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.
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in each case, such Confidential Information as that Creditor Party shall consider appropriate if:

- (A) in relation to paragraphs (b)(i), (b)(ii), (b)(iii) and (b)(iv) 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)(v) 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)(vi), (b)(vii) 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 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.

33.3 Entire agreement

This Clause 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 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;
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- (ii) country of domicile of Obligors;
- (iii) place of incorporation of Obligors;
- (iv) date of the Original Facility Agreement and Effective Date;
- (v) Clause 37 (*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.

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.

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)(vi) of Clause 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 33 (*Confidentiality*).

33.7 Continuing obligations

The obligations in this Clause 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.

33.8 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.

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:

- (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.

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).

34 LEGAL INDEPENDENCE AND UNCONDITIONAL OBLIGATIONS OF THE BORROWER

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.

35 SACE SUBROGATION AND REIMBURSEMENT

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.

35.2 Reimbursement

- (a) Without prejudice to Clause 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,
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in each case together with interest thereon (calculated in accordance with Clause 17.1 *Default rate of interest* of this Agreement).

- (c) Each Obligor further agrees that its obligations under this Clause 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 35.2 *Reimbursement*).
- (e) Each amount that is payable by the Obligors pursuant to Clause 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 Obligations
Absolute

The obligations of the Obligors under this Clause 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 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;
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- (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 SUPPLEMENTAL

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.

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.

36.3 Counterparts

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

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 (*SACE Subrogation and Reimbursement*), Clause 17 (*Interest on Late Payment*), Clause 8 (*SACE Premium and Italian Authorities*), Clause 10.2 (*Tax gross-up*), Clause 10.3 (*Tax indemnity*), Clause 10.11 (*Transaction Costs*), Clause 20.1 (*Indemnities regarding borrowing and repayment of Loan*), Clause 20.2 (*Breakage costs and SIMEST arrangement*), Clause 20.3 (*Miscellaneous indemnities*), Clause 20.4 (*Currency indemnity*), Clause 22 (*Set-Off*), Clause 27 (*The Security Trustee*), Clause 10.6 (*VAT*), Clause 10.13 (*SACE obligations*), Clauses 33.8 (*Disclosure by SACE*), Clause 33.9 (*Disclosure by SIMEST*), 33.10 (*Press release*), Clause 38 (*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 (*SACE Subrogation and Reimbursement*), Clause 17 (*Interest on Late Payments*), Clause 8 (*SACE Premium and Italian Authorities*), Clause 10.2 (*Tax gross-up*), Clause 10.3 (*Tax indemnity*), Clause 20.4 (*Currency indemnity*), Clause 22 (*Set-Off*), Clause 27 (*The Security Trustee*), Clause 20.3 (*Miscellaneous indemnities*), Clause 10.6 (*VAT*), Clause 10.11 (*Transaction Costs*), Clause 20.1 (*Indemnities regarding borrowing and repayment of Loan*), Clauses 33.8 (*Disclosure by SACE*), Clause 33.9 (*Disclosure by SIMEST*), 33.10 (*Press release*), Clause 38 (*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).

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.

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.

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 (d) of Clause 12.2 (*Information*), Clause 12.4 (*Sanctions and Illicit Payments*), Clause 12.5 (*Prohibited Payments*), Clause 12.25 (*Compliance with laws etc.*) or provisions contained in Clause 20.3 (*Miscellaneous indemnities*) or Clause 21.1 (*Illegality and Sanctions*) and the representations and warranties given under paragraphs (u), (v), (y), (z)
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and (jj) of Clause 11.2 (*Continuing representations and warranties*) and paragraph (j) of Clause 11.3 (*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.

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.

38 ENFORCEMENT

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.

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 ~~9 Cloak Lane~~ [107 Cheapside](#), London [UK](#), EC ~~4R-2 RU~~, ~~United Kingdom~~ [V 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.

39 WAIVER OF IMMUNITY

- 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.

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.

40 CONFIDENTIALITY OF FUNDING RATES AND REFERENCE BANK QUOTATIONS

40.1 Confidentiality and disclosure

- (a) The Facility Agent and the each Obligor agree to keep each Funding Rate (and, in 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 (*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
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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 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 (*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.

40.2 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:
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- (i) of the circumstances of any disclosure made pursuant to sub-paragraph (ii) of paragraph (c) of Clause 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 40 (*Confidentiality of Funding Rates and Reference Bank Quotations*).

40.3 No event of Default

No Event of Default will occur under Clause 18.4 (*Breach of other obligations*) by reason only of an Obligor's failure to comply with this Clause 40 (*Confidentiality of Funding Rates and Reference Bank Quotations*).

41 **EFFECTIVE DATE**

This Agreement is effective from the 2021 Deferral 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 FIVE, LTD.)
in the presence of:)

TRANCHE A 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)
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:)

SIGNED by)
)
for and on behalf of)
BANCO SANTANDER S.A.)
in the presence of:)

SIGNED by)
)
for and on behalf of)
SEA BRIDGE FINANCE LIMITED)
in the presence of:)

JOINT MANDATED LEAD ARRANGERS

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)
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:)

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)
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:)

SIGNED by)
)
for and on behalf of)
BANCO SANTANDER S.A.)
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

SIGNED by)
)
for and on behalf of)
HSBC CORPORATE TRUSTEE)
COMPANY (UK) LIMITED)
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 17 JUNE 2021

LEONARDO SIX, 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.

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 and restated by an amendment and restatement agreement dated 17 February 2021)

in respect of the part financing of the 3,300 passenger cruise ship newbuilding presently designated as Hull No. [*] at Fincantieri S.p.A

WATSON FARLEY
&
WILLIAMS

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Appendices

[Form of Amended and Restated Facility Agreement \(marked to indicate amendments\)](#)

THIS AGREEMENT is made on 17 June 2021

PARTIES

- (1) **LEONARDO SIX, 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** 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 and SOCIÉTÉ GÉNÉRALE** 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) up to €663,900,414.94 and the amount of the SACE Premium 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 (as further defined below) was amended and restated pursuant to an amendment and restatement agreement dated 17 February 2021 (the "**February 2021 Amendment and Restatement Agreement**") pursuant to which the parties agreed to the temporary suspension 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, providing for an increase of the Facility for the
-

purpose of financing an amount to be applied towards the second instalment of the Additional SACE Premium.

OPERATIVE PROVISIONS

1 DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Agreement:

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

"**Effective Date**" means the date on which the Facility Agent notifies the Borrower, the other Creditor Parties, SACE and SIMEST 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.

"**June 2021 Fee Letters**" means any letter between the Facility Agent and any Obligor which sets out the fees payable in connection with the arrangements contemplated by this Agreement.

"**June 2021 Finance Documents**" means this Agreement and each June 2021 Fee Letter.

"**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.

"**Total Tranche B Commitments**" means the aggregate of the Tranche B Commitments (as set out in further detail in Part B of Schedule 1 (*The Tranche B Lender*)), being eighteen million, two hundred and seventy thousand and three hundred and twelve Euros and forty-four Cents (€18,270,312.44) as at the date of this Agreement.

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 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, SACE and SIMEST 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, 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, 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 Confirmation of Guarantee

With effect on and from the Effective Date, 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 original terms and the amendments to the Finance Documents as amended, restated and/or supplemented by this Agreement.

4.3 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.

4.4 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) the Facility Agreement and the applicable provisions of this Agreement will be read and construed as one document; and
- (c) 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

- 6.1 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.
- 6.2 The Borrower shall pay to each of (i) the Facility Agent for its own account and (ii) the Facility Agent (for the account of each Lender) such fees in the amount and at the times specified in the relevant June 2021 Fee Letters.

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 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) /s/ Daniel S. Farkas
duly authorised) Daniel S. Farkas
for and on behalf of)
LEONARDO SIX, LTD.)

GUARANTOR

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

SHAREHOLDER

SIGNED by) /s/ Daniel S. Farkas
for and on behalf of) Daniel S. Farkas
NCL INTERNATIONAL, LTD.)
as its duly appointed attorney-in-fact)
in the presence of:)
) /s/ Jared G. Silberhorn
) Jared G. Silberhorn
) 7665 Corporate Center Drive
) Miami, FL 33126 USA

HOLDING

SIGNED by) /s/ Daniel S. Farkas
for and on behalf of) Daniel S. Farkas
NORWEGIAN CRUISE LINE)
HOLDINGS LTD.)
as its duly appointed attorney-in-fact) /s/ Jared G. Silberhorn
in the presence of:) Jared G. Silberhorn
) 7665 Corporate Center Drive
) Miami, FL 33126 USA

LENDERS

SIGNED by) /s/ Cosmo Fisher
duly authorised) Cosmo Fisher
for and on behalf of) Attorney-in-fact
CRÉDIT AGRICOLE CORPORATE)
AND INVESTMENT BANK)

SIGNED by) /s/ Bruno Cloquet
duly authorised) Bruno Cloquet
for and on behalf of) Global Head of Exporters and ECAs Origination
BNP PARIBAS FORTIS S.A./N.V.)
) /s/ Michel Froidebise
) Michel Froidebise
) Head of Export Finance Nordic Origination

SIGNED by) /s/ Varsha Sharan
duly authorised) Varsha Sharan
for and on behalf of) Director
HSBC BANK PLC)

SIGNED by) /s/ Maria Gazi
duly authorised) Maria Gazi
for and on behalf of) Attorney-in-fact
KFW IPEX-BANK GMBH)

SIGNED by) /s/ Enrico Semprebene
duly authorised) Enrico Semprebene
for and on behalf of)
CASSA DEPOSITI E PRESTITI S.P.A.)

SIGNED by) /s/ Juana González Damen
duly authorised) Juana González Damen
for and on behalf of)
BANCO SANTANDER S.A.) /s/ Natalia San Miguel Aguado
) Natalia San Miguel Aguado

SIGNED by) /s/ Isabella Roberts
duly authorised) Isabella Roberts
for and on behalf of) Attorney-in-fact
SOCIETE GENERALE)

MANDATED LEAD ARRANGERS

SIGNED by) /s/ Cosmo Fisher
duly authorised) Cosmo Fisher
for and on behalf of) Attorney-in-fact
CRÉDIT AGRICOLE CORPORATE)
AND INVESTMENT BANK)

SIGNED by) /s/ Bruno Cloquet
duly authorised) Bruno Cloquet
for and on behalf of) Global Head of Exporters and ECAs Origination
BNP PARIBAS FORTIS S.A./N.V.)
) /s/ Michel Froidebise
) Michel Froidebise
) Head of Export Finance Nordic Origination

SIGNED by) /s/ Varsha Sharan
duly authorised) Varsha Sharan
for and on behalf of) Director
HSBC BANK PLC)

SIGNED by) /s/ Maria Gazi
duly authorised) Maria Gazi
for and on behalf of) Attorney-in-fact
KFW IPEX-BANK GMBH)

SIGNED by) /s/ Enrico Semprebene
duly authorised) Enrico Semprebene
for and on behalf of)
CASSA DEPOSITI E PRESTITI S.P.A.)

SIGNED by) /s/ Juana González Damen
duly authorised) Juana González Damen
for and on behalf of)
BANCO SANTANDER S.A.) /s/ Natalia San Miguel Aguado
) Natalia San Miguel Aguado

SIGNED by) /s/ Isabella Roberts
duly authorised) Isabella Roberts
for and on behalf of) Attorney-in-fact
SOCIETE GENERALE)

FACILITY AGENT

SIGNED by) /s/ Philippe Laude
duly authorised) Philippe Laude
for and on behalf of)
BNP PARIBAS) /s/ Georges Curey
) Georges Curey
) Head of Structured Export Finance
)

SACE AGENT

SIGNED by) /s/ Cosmo Fisher
duly authorised) Cosmo Fisher
for and on behalf of) Attorney-in-fact
CRÉDIT AGRICOLE CORPORATE)
AND INVESTMENT BANK)

SECURITY TRUSTEE

SIGNED by) /s/ Daisuke Takekawa
duly authorised) Daisuke Takekawa
for and on behalf of)
HSBC CORPORATE TRUSTEE)
COMPANY (UK) LIMITED)

APPENDIX

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 and restated by an amendment and restatement agreement dated ~~17~~ 17 February 2021 and as further amended and restated by an amendment and restatement agreement dated 2021)

TERM LOAN FACILITY

LEONARDO SIX, 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.

SOCIÉTÉ GÉNÉRALE

BANCO SANTANDER, S.A.

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 3,300 passenger cruise ship
newbuilding presently designated as

Hull No. [*] at Fincantieri S.p.A.

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THIS AGREEMENT originally made on 19 December 2018 (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)

PARTIES

- (1) **LEONARDO SIX, LTD** an exempted company incorporated under the laws of Bermuda whose registered office is at Park Place 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 PLCCASSA DEPOSITI E PRESTITI S.P.A.**, **SOCIÉTÉ GÉNÉRALE** and **BANCO SANTANDER** as joint mandated lead arrangers (the "**Joint Mandated Lead Arrangers**")
- (4) **CRÉDIT AGRICOLE CORPORATE AND INVESTMENT BANK** **SACE** agent (the "**SACE Agent**")
- (5) **BNP PARIBAS** as facility agent (the "**Facility Agent**")
- (6) **HSBC CORPORATE TRUSTEE COMPANY (UK) LIMITED**, security trustee (the "**Security Trustee**")

BACKGROUND

- (A) By a shipbuilding contract dated as of 21 October 2016 (as amended or supplemented from time to time, including on 26 July 2018, 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) the Borrower, the Builder agreed to design, construct and deliver, and the Borrower 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 or about [*] 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**"). The Initial Contract Price is payable on the following terms and:
 - (i) as to [*], being [*], 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 [*], 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 [*], being [*], on the later of keel laying in dry-dock and the date falling 18 months prior to the Intended Delivery Date;
 - (iv) as to [*], being [*], on the later of launching and the date falling 12 months prior to the Intended Delivery Date; and

(v) as to [*], being [*], on delivery of the Ship on the Delivery Date,

as each such event is described in the 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 Shipbuilding Contract 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 the Original Facility Agreement (as defined below), the Lenders have agreed to make available to the Borrower a Euro loan facility for the purpose of assisting the Borrower in financing, 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 ~~offered by SACE~~ (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) [The Parties have agreed to amend and restate the Facility Agreement as set out in an amendment and restatement agreement dated \[●\] 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 financing an amount to be applied towards the second instalment of the Additional SACE Premium \(as defined below\) \(the 'June 2021 Amendment and Restatement Agreement'\).](#)

- (†J) This Agreement sets out the terms and conditions of the ~~Original~~ Facility Agreement as amended and restated by the [June](#) 2021 Amendment and Restatement Agreement.

OPERATIVE PROVISIONS

1 INTERPRETATION

1.1 Definitions

Subject to Clause 1.5 (*General Interpretation*), in this Agreement:

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

"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.

"Additional SACE Premium" has the meaning given to such term in Clause 8.5 (*Additional Premium*).

~~"Advance"~~ means the principal amount of each borrowing 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 and the Additional SACE 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; and~~
- (b) ~~the second instalment of the Additional SACE Premium, calculated in accordance with paragraph (a)(ii) of Clause 8.5 (*Additional Premium*), financed or to be financed pursuant to Tranche B, provided that such amount shall not, at any time, exceed the Total Tranche B Commitments,~~

~~provided that such aggregated 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. 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, 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.

"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, 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 2028 (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.

"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.

"Bermuda Obligors" means the Borrower, the Shareholder and the Guarantor.

"**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 New York, Milan, Frankfurt, Brussels, Madrid, Paris, Rome and (in relation to any payment or purchase of Euros) which is a TARGET Day; and

"**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.

"**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 one point zero six per cent. (1.06% 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 close-out of any hedging arrangement entered into by SIMEST in relation to this Agreement, (iii) default interest and penalties (*naggiorazioni*) 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.

"**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).

"**Commitment**" means ~~in relation to a Lender, the amount equal to the percentage of the Maximum Loan Amount set opposite its name in Schedule 1 (Lenders and Commitments), or, as the case may require, the amount specified in the relevant Transfer Certificate, in each case 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).~~ a Tranche A Commitment or Tranche B 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 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) is or becomes public information other than as a direct or indirect result of any breach by that Creditor Party of Clause 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; or
- (iv) 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.

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

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

"**Creditor Party**" means 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.

"**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

"**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.

"**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 ~~the Loan~~ 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 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 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) eight hundred million Euros (€800,000,000);
and
- (b) 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.

"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.

"€STR" means the euro short term rate administered by the European Central Bank (or any other person which takes over the administration of that rate) for the relevant period displayed (before any correction, recalculation or republication by the administrator) on the relevant page 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.

"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.

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

- (a) the applicable Screen Rate as of the Quotation Day for Euros and for a period equal in length to the Interest Period of the Loan or that part of the Loan; or
- (b) as otherwise determined pursuant to Clause 6.6 (*Unavailability of Screen Rate*).

and if in either case, that rate is less than zero, EURIBOR shall be deemed to be zero (except with respect to the Interest Make-up Agreement).

"**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 (*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](#) 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 and Tranche B, 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 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 Commerce et des Sociétés* of Paris or any successor of it appointed under Clause 26 (*Role of the Facility Agent ~~and~~ the Joint Mandated Lead Arrangers, the SACE Agent and the Reference Banks*).

"**Facility Agreement**" ~~means the Original Facility Agreement as amended and restated by the 2021 Amendment and Restatement Agreement~~ [has the meaning given to such term in Recital \(H\)](#)

"**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.

"**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).

"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 9.1 (*Fees*);
- (b) the Facility Agent and the Borrower setting out the fees referred to in paragraph (c) of Clause 9.1 (*Fees*);
- (c) the SACE Agent and the Borrower setting out the fees referred to in paragraph (d) of Clause 9.1 (*Fees*);
- (d) the Security Trustee and the Borrower setting out the fees referred to in paragraph (e) of Clause 9.1 (*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) [the 2021 Deferral Fee Letters](#);

- (~~b~~c) t h e February 2021 Amendment and Restatement Agreement;
- (d) the June 2021 Amendment and Restatement Agreement;
- (~~c~~e) t h e June 2021 ~~Deferral~~Fee Letters;
- (~~d~~f) any Fee Letter;
- (~~e~~g) the Guarantee;
- (~~f~~h) the General Assignment;
- (~~g~~i) the Mortgage;
- (~~h~~j) the Post-Delivery Assignment;
- (~~i~~k) any Subordinated Debt Security;
- (~~j~~l) the Shares Security Deed;
- (~~k~~m) the Approved Manager's Undertaking;
- (~~l~~n) any Transfer Certificate;
- (~~m~~o) any Compliance Certificate;
- (~~n~~p) a n y Drawdown Notice;
- (~~o~~q) 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
- (~~p~~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 8.1 (*SACE Premium*).

"**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) the applicable Margin;
and
- (b) EURIBOR for the relevant period.

"**Floating Rate Margin**" means one point twenty per cent. (1.20%).

"**Funding Rate**" means any individual rate notified by a Lender to the Facility Agent pursuant to sub-paragraph (ii) of paragraph (a) of Clause 6.9 (*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 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.

"**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 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 HM 11, Bermuda.

"**Holding**" means 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.

"**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 [*] (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 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*) ~~to be~~ 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 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 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 Agreement.

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

"**Interpolated Screen Rate**" means, in relation to the Loan or any part of the Loan, the rate which results from interpolating on a linear basis between:

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

each as of the Specified Time for Euros.

"**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 such term in Recital (I).

["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 ~~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~~ Tranche A Lender or Tranche B Lender.

"**Loan**" means the aggregate principal amount outstanding for the time being ~~outstanding under this Agreement of the borrowings under the Facility and "part of the Loan"~~ means an Advance, a Tranche or part of a Tranche.

" **Majority Lenders**" means:

- (a) before ~~the Loan~~ an Advance under any Tranche has been made, Lenders whose Commitments total [*] per cent. of the Total Commitments; and
- (b) after ~~the Loan~~ 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.

"**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.

"**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;
- (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) six hundred and forty million Euros (€640,000,000);
and~~

~~(b) one hundred per cent. (100%) of the SACE Premium to be paid in accordance with Clause 8.15(ACE Premium);~~

~~provided that such amount shall not, at any time, exceed six hundred and sixty three million, nine hundred thousand, four hundred and fourteen Euros and ninety four Cents (€663,900,414.94);~~

"**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).

"**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**" 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 as at the date of this Agreement.

["Original Maximum Loan Amount"](#) means the aggregate of:

~~(a) six hundred and forty million Euros (€640,000,000);
and~~

~~(b) one hundred per cent. (100%) of the SACE Premium to be paid in accordance with Clause 8.15(ACE Premium);~~

~~provided that such amount shall not, at any time, exceed six hundred and sixty three million, nine hundred thousand, four hundred and fourteen Euros and ninety four Cents (€663,900,414.94).~~

"**Original Principles**" has the meaning given in Recital (E).

"**Parallel Debt**" means any amount which an Obligor owes to the Security Trustee under Clause 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 12.14 (*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 (ii)(A) of paragraph (b) below;
and
 - (ii) any of the Security Interests referred to in sub-paragraphs (ii)(B), (ii)(C), (ii)(E), (ii)(H) and (ii)(I) of paragraph (b) 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 sub-paragraph (ii)(C) or (ii)(E) of paragraph (b) or incurred by the Borrower in the case of sub-paragraphs (ii)(B), (ii)(H) or (ii)(I) of paragraph (b); and
- (b) in the case of the Guarantor:
 - (i) any of the Security Interests referred to in sub-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 Facility Agent pursuant to the provisions of this Agreement, 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[*] 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 [*] 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 12.14 *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 [*] 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 *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 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 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, 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 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 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.

"Quotation Day" means in relation to any period for which an interest rate is to be determined, two TARGET 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),

"**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*).

"**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:

- (a) (other than where paragraph (b) below applies) as the rate at which the relevant Reference Bank believes one prime bank is quoting to another prime bank for interbank term deposits in euro within the Participating Member States for the relevant period; or
- (b) if different, as the rate (if any and applied to the relevant Reference Bank and the relevant period) which contributors to the Screen Rate are asked to submit to the relevant administrator.

"**Reference Banks**" means such entities as may be appointed by the Facility Agent in consultation with the Borrower.

"**Relevant Interbank Market**" means the European Interbank Market.

"**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 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 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 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 (*Non-applicable provisions between the Obligors, German Lenders and any Creditor Party subject to the EU Blocking Regulation*).

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

"**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 (*Role of the Facility Agent, the Joint Mandated Lead Arrangers, 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 (*SACE Premium and Italian Authorities*). ~~In addition to~~

~~the Additional SACE Premium (provided, for the avoidance of doubt, that the Additional SACE Premium shall not be financed);~~

"**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](#):

- (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):

- (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 Contingency Period**" means fifteen (15) Business Days.

"**Screen Rate**" means the euro interbank offered rate administered by the European Money Markets Institute (or any other person which takes over the administration of that rate) for spot value for the relevant period displayed (before any correction, recalculation or republication by the administrator) on page EURIBOR01 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 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
- (iv) the administrator of that Screen Rate or its supervisor announces that that Screen Rate may no longer be used; ~~or~~

(v) in the case of a Screen Rate for EURIBOR, 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

- (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.

" **Second Instalment**" means the second instalment of the SACE Premium as more particularly described in paragraph (b) of Clause 8.1 (*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
- (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 19 (*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
- (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 Euros (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 (*The Security Trustee*).

"Security Value" means the amount in Euros (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 (*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 15 (*Security Value Maintenance*).

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

"Shares Security Deed" means a [Bermudian law](#) document [dated 19 December 2018, executed by the Shareholder in favour of the Security Trustee and](#) creating security over the share capital in the Borrower ~~in the agreed form~~.

"Shareholder" means NCL International Ltd., a Bermuda company with its registered office at Park Place 55, 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 (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.

"**SIMEST Margin Contribution**" means the margin contribution approved and granted by SIMEST to the Lenders under the Interest Make-Up Agreement as communicated by the SACE Agent to the Creditor Parties and the Borrower following the date of this Agreement as soon as the SACE Agent is made aware of it.

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

- (a) if EURIBOR 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 (*Calculation of Reference Bank Rate*), noon on the Quotation Day.

"**Structuring Fee**" has the meaning given in paragraph (a) of Clause 9.1 (*Fees*).

"**Subordinated Debt Security**" has the meaning given in sub-paragraph (ii) of paragraph (b) of Clause 12.14 (*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.

"**TARGET2**" means the Trans-European Automated Real-time Gross Settlement Express Transfer payment system which utilises a single shared platform and which was launched on 19 November 2007.

"**TARGET Day**" means any day on which TARGET2 is open for the settlement of payment in Euros.

"**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).

"Third Party Act" means the Contracts (Rights of Third Parties) Act 1999.

"Total Commitments" means the aggregate of the Total Tranche A Commitments and the Total Tranche B Commitments, being six hundred and eighty-two million, one hundred and seventy thousand, seven hundred and twenty-seven Euros and thirty-eight Cents (€682,170,727.38) as at the date of this Agreement.

" 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 (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 hundred and sixty three million, nine hundred thousand, four hundred and fourteen Euros and ninety four Cents (€663,900,414.94) as at the date of this Agreement.

"Total Tranche B Commitments" means the aggregate of the Tranche B Commitments, being eighteen million, two hundred and seventy thousand and three hundred and twelve Euros and forty-four Cents (€18,270,312.44) as at the date of this Agreement.

"Tranche" means Tranche A or Tranche B.

"Tranche A" means the part of the Facility to be made available by the Tranche A Lenders to the Borrower to finance (i) up to the Eligible Amount , being six hundred and forty million Euros

(€640,000,000) , 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 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.

"Tranche B" means the part of the Facility to be made available by the Tranche B 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 (Additional 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.

"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.

"US" means the United States of America.

"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:

" **Facility Agent**", the " **SACE Agent**", the " **Joint Mandated Lead Arrange**r", the " **Security Trustee**", " **SACE**", any " **Creditor Party**", any " **Secured Party**", any " **Lender**", any " **Tranche A Lender**", any " **Tranche B 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 ~~_____~~ February [●] 2021.

"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.

"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 (*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.

"**obligatory insurances**" means all insurances effected, or which the Borrower is obliged to effect, under Clause 14 (*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 11 (*Representations and Warranties*), Clause 12 (*General Undertakings*), Clause 20 (*Indemnities*), Clause 21 (*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 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) references to Dollar amounts in Clause 10.11 (*Transaction Costs*), Clause 12 (*General Undertakings*), Clause 13 (*Ship Undertakings*), Clause 14 (*Insurance Undertakings*) and Clause 18 (*Events of Default*) shall be a reference to Dollars (or the equivalent amount in any other currency);
- (f) 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;
- (g) words denoting the singular number shall include the plural and vice versa;
and
- (h) 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 ~~the Maximum Loan Amount~~, in aggregate, the Total Tranche A Commitments intended to be applied as follows:

- (a 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;
- (b 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 8.1 (*SACE Premium*); and
- (c 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 8.1 (*SACE Premium*) ~~;~~ and

(b) the Tranche B Lenders agreed to make available to the Borrower a loan in relation to Tranche B in one (1) Advance not exceeding the Total Tranche B 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 (Additional Premium).

2.2 Lenders' participations in Loan

Subject to the other provisions of this Agreement:

(a) each Tranche A Lender shall participate in the Advance under Tranche A in the proportion which, as at the Drawdown Date, its Tranche A Commitment bears to the Total Tranche A Commitments; and

(b) each Tranche B Lender shall participate in the ~~loan~~ Advance under Tranche B in the proportion which, as at the Drawdown Date, its Tranche B Commitment bears to the Total Tranche B Commitments.

2.3 Purpose of Loan

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

(a) the Advance under Tranche A only to pay for:

- (a i) goods and services of Italian origin incorporated in the design, construction or delivery of the Ship;
- (b 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;

- (e iii) all or part of eighty per cent. (80%) of the Final Contract Price;
- (d 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 8.1 (*SACE Premium*); and
- (e v) the Second Instalment of the SACE Premium payable in accordance with paragraph (b) of Clause 8.1 (*SACE Premium*).

(b) the Advance under Tranche B 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 (*Additional 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
- (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 ~~the Loan~~ [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 Bermuda law in form and substance satisfactory to the Facility Agent and the Secured Parties in respect of the Bermuda Obligors' 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 validity and enforceability of the Shares Security Deed;
- (d) a Certified Copy of the executed Shipbuilding Contract;
- (e) 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;
- (f) a confirmation from Hannaford Turner LLP, currently of ~~9 Cloak Lane~~ [107 Cheapside](#), London ~~UK, EC 4R-2 RU;~~ ~~United Kingdom~~ [V 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;
- (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 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;
- (i) payment of the initial portion of the Structuring Fee as set out in and payable in accordance with the relevant Fee Letter; and
- (j) 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 four (4) years before the Intended Delivery Date

The Facility Agent shall have received no later than four (4) 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 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 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:

- (a) notification of the Intended Delivery Date;
- (b) a notice from the Borrower as described in paragraph (a) of Clause 8.4 ~~Refund~~;
and
- (c) a Bermuda tax opinion from legal counsel to the Secured Parties in respect of the tax treatment of the entry by the Bermuda 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 clause 11.3(c) 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 ~~the~~ [*] 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 ~~the~~ 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:

- (~~a~~ i) if applicable, a duly executed original of the Subordinated Debt Security;
- (~~b~~ 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;
- (~~c~~ iii) evidence of payment to and receipt by the Builder of:
 - (~~i~~ A) the four (4) pre-delivery instalments of the Final Contract Price;
and
 - (~~ii~~ B) any other part of the Final Contract Price as at the Delivery Date not being financed hereunder;
- (~~d~~ 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;

- (~~e~~v) evidence of payment of all amounts which are due and payable hereunder by the Borrower on or prior to the Delivery Date;
- (~~f~~vi) a certificate from the Borrower, signed by an authorised representative of the Borrower, confirming that:
 - (~~i~~A) the representations and warranties contained in Clause 11 (*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
 - (~~ii~~B) no mandatory prepayment event pursuant to Clause 16 (*Cancellation, Prepayment and Mandatory Prepayment*) is continuing or would result from the ~~Loan~~ Advance;
- (~~g~~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; and

(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).

(~~h~~) provided always that, in relation to paragraphs (a) and (b) above, the obligations of the relevant Lenders to make ~~the Loan~~ such Advance under each of Tranche A and Tranche B, 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 the advance of ~~the Loan~~ 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 11.3 (*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 (*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 3.11 (*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 ~~9 Cloak Lane 107 Cheapside~~, London ~~UK~~, EC ~~4R-2 RU~~, ~~United Kingdom~~ V6DN (or any replacement process agent satisfactory to the Facility Agent acting reasonably) that it will act for each of the relevant Obligor 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 Bermuda 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, 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 (*Pooling of earnings and charters*); and
- (e) 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](#) ~~and SACE~~, [the Tranche B 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 Loan~~ [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 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:
- (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 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, the Facility Agent and the SACE Agent to ensure compliance with the terms of the SACE Insurance Policy or the Interest 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.

- (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 ~~the Loan 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. ~~For the avoidance of doubt, the amount of the Loan shall not exceed the Maximum Loan Amount.~~
- (b) The Tranche B Lenders shall not be obliged to fulfil their obligation to make an Advance available under Tranche B 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 (Additional Premium).
- (c) The Borrower hereby instructs the Tranche A Lenders in accordance with this Clause 4.1 ~~Borrower's irrevocable payment instructions~~:
 - (~~a~~ i) to pay to the Builder, up to the Eligible Amount, all or part of eighty per cent. (80%) of the Final Contract Price;
 - (~~b~~ 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 8.1 (*SACE Premium*); and
 - (~~c~~ 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.
- (d) If applicable, the Borrower hereby instructs the Tranche B Lenders in accordance with this Clause 4.1 (Borrower's irrevocable payment instructions) to pay the Facility Agent on behalf of the Tranche B 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 (Additional Premium).
- (e) Payment to the Builder of the amount drawn under paragraph (~~a~~ c)(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*).

- (f) Save as contemplated in Clause 4.2 (*Modification of payment terms*) below, the payment instruction contained in this Clause 4.1 (*Borrower's irrevocable payment instructions*) is irrevocable.

4.2 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 paragraph (~~a~~ c)(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 (~~b~~ c)(ii) and (c) (iii) of Clause 4.1 (*Borrower's irrevocable payment instructions*).

4.3 Availability and conditions

- (a) Drawing may not be made under this Agreement (and ~~the Loan no Advance~~ shall ~~not~~ be available) after the expiry of the Availability Period.

- (b) ~~There will be only one drawing~~ Under this Agreement: there will be no more than:

(i) one (1) Advance under Tranche A;
and

(ii) one (1) Advance under Tranche B.

it being provided that the Advances in relation to Tranche A and Tranche B shall occur on the same date.

- (c) The amount of the Advance under Tranche B shall not exceed the lower of (i) the amount calculated pursuant to the provisions of paragraph (a)(ii) of Clause 8.5 (*Additional Premium*) and (ii) the Total Tranche B Commitments.

- (d) The aggregate amount of:

(i) the Tranche A Advance cannot exceed the Total Tranche A Commitments;

(ii) the Tranche B Advance cannot exceed the Total Tranche B Commitments;
and

- (~~e~~ iii) ~~the aggregate amount of the Loan Advances under all Tranches~~ cannot exceed the ~~Maximum Loan Amount~~ Total Commitments.

4.4 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 and the Tranche B Lenders that it has received a Drawdown Notice in relation to a Tranche and shall inform each relevant Lender of:

- (a) the amount of the ~~Loan~~ Advance and the Drawdown Date;

- (b) the amount of that Lender's participation in the ~~Loan~~ [Advance](#); and
- (c) the duration of the first Interest Period.

4.5 Lenders to make available Contributions

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

4.6 Disbursement of ~~Loan~~ [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 4.5 (~~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 (a ~~c~~(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 (b ~~c~~(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 (c)(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 (d) of Clause 4.1 (*Borrower's irrevocable payment instructions*) to the account of SACE which the SACE Agent shall specify.

4.7 Disbursement of ~~Loan~~ [Advance](#) to third party

The payment by the Facility Agent under Clause 4.6 (*Disbursement of ~~Loan~~ Advance*) shall constitute the making of the ~~Loan~~ [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 ~~Contribution~~ [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 INTEREST

6.1 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.

6.2 Fixed Interest
Rate

If the Borrower has specified a Fixed Interest Rate pursuant to Clause 6.1 ~~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.

6.3 Floating Interest
Rate

If:

- (a) the Borrower has specified a Floating Interest Rate pursuant to Clause 6.1 ~~Fixed or Floating Interest Rate~~;
- or
- (b) the Borrower has specified a Fixed Interest Rate pursuant to Clause 6.1 ~~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 (*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).

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.

6.5 Notification of Interest Periods and Floating Interest Rate

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.

6.6 Unavailability of Screen Rate

- (a) *Interpolated Screen Rate* If no Screen Rate is available for EURIBOR for the Interest Period of the Loan or any part of the Loan, the applicable EURIBOR shall be the Interpolated Screen Rate for a period equal in length to the Interest Period of the Loan or that part of the Loan.
- (b) *Reference Bank Rate* If no Screen Rate is available for EURIBOR for:
 - (i) Euro;
 - (ii) the Interest Period of the Loan or any part of the Loan and it is not possible to calculate the Interpolated Screen Rate,
 - (iii) the applicable EURIBOR shall be the Reference Bank Rate as of the Specified Time and for a period equal in length to the Interest Period of the Loan or that part of the Loan.
- (c) *Cost of funds.* If paragraph (b) above applies but no Reference Bank Rate is available for Euro or the relevant Interest Period there shall be no EURIBOR for the Loan or that part of the Loan (as applicable) and Clause 6.9 (*Cost of funds*) shall apply to the Loan or that part of the Loan for that Interest Period.

6.7 Calculation of Reference Bank Rate

- (a) Subject to paragraph (b) below, if EURIBOR 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.

6.8 Market disruption

If before close of business in London on the Quotation Day for the relevant Interest Period the Facility Agent receives notification from a Lender or Lenders (whose participations in the Loan or the relevant part of the Loan 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 EURIBOR 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.

6.9 Costs of funds

- (a) If this Clause 6.9 (*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 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 participation in the Loan or that part of the Loan from whatever source it may reasonably select.
- (b) If this Clause 6.9 (*Cost of funds*) applies and the Facility Agent or the Borrower so requires, the Facility Agent and the Borrower shall enter into negotiations (for a period of not more than 30 days) with a view to agreeing a substitute basis for determining the rate of interest or (as the case may be) an alternative basis for funding.
- (c) Subject to Clause 6.10 (*Replacement of Screen Rate*), any substitute or alternative basis agreed pursuant to paragraph (b) above shall, with the prior consent of all the Lenders and the Borrower, be binding on all Parties.
- (d) If paragraph (e) below does not apply and any rate notified to the Facility Agent under sub-paragraph (ii) of paragraph (a) above is less than zero, the relevant rate shall be deemed to be zero.
- (e) If this Clause 6.9 (*Cost of funds*) applies pursuant to Clause 6.8 (*Market disruption*) and:
- (i) a Lender's Funding Rate is less than EURIBOR;
or
 - (ii) a Lender does not supply a quotation by the time specified in sub-paragraph (ii) of paragraph (a) above,

the cost to that Lender of funding its participation in the Loan or the relevant part of the Loan for that Interest Period shall be deemed, for the purposes of paragraph (a) above, to be EURIBOR.

- (f) If this Clause 6.9 (*Cost of funds*) applies but any Lender does not supply a quotation by the time specified in sub-paragraph (ii) of paragraph (a) above, the rate of interest shall be calculated on the basis of the quotations of the remaining Lenders.

6.10 Replacement of Screen Rate

- (a) If a Screen Rate Replacement Event has occurred in relation to the Screen Rate for Euro, any amendment or waiver which relates to:
- (i) providing for the use of a Replacement Benchmark;
and
 - (ii)
 - (A) aligning any provision of any Finance Document to the use of that Replacement Benchmark;

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

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

- (b) If an amendment is required as contemplated in this Clause 6.10 (Replacement of Screen Rate), 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.

6.11 Notice of prepayment

If no agreement is reached with the Borrower under Clause 6.10 (~~Replacement of Screen Rate~~), 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 6.1 (*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.

6.12 Prepayment; termination of Commitments

A notice under Clause 6.11 (~~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 6.6(b)(i);
- (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 (~~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 6.1 (*Fixed or Floating Interest Rate*)).

6.13 Application of prepayment

The provisions of Clause 16 (~~Cancellation, Prepayment and Mandatory Prepayment~~) shall apply in relation to the prepayment.

6.14 Certain
Circumstances

Notwithstanding anything to the contrary in this Agreement:

- (a) in the event of any circumstances falling within Clause 6.8 (~~Market Disruption~~) which might affect the advance of ~~the Loan~~ [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 (~~Market Disruption~~) (the "**Pricing-Related Relevant Circumstances**") occurring before ~~the Loan~~ [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 (~~Unavailability of Screen Rate~~), 6.7 (~~Calculation of Reference Bank Rate~~), 6.8 (~~Market Disruption~~), 6.9 (~~Cost of funds~~) and 6.10 (~~Replacement of Screen Rate~~) (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 ~~Loan~~ [Advance](#) but also before the making of the ~~Loan~~ [Advance](#));
- (c) in the event of any Relevant Circumstances falling within Clause 6.8 (~~Market Disruption~~) (the "**Availability-Related Relevant Circumstances**") occurring before the Loan is made, 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 Euros (or, if unavailable in Euros, then in any available currency). Such discussions shall be without obligation on the Lenders provided that during such discussion period, such circumstances continue.

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 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 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 (~~Floating Interest Rate~~) shall apply.

7 INTEREST PERIODS

7.1 Commencement of Interest Periods

The first Interest Period applicable to ~~the Loan~~ [an Advance](#) shall commence on the Drawdown Date and each subsequent Interest Period shall commence on the expiry of the preceding Interest Period.

7.2 Duration of Interest Periods

Subject to Clause 7.3 ~~(Duration of Interest Periods for Repayment Instalments)~~, each Interest Period shall be 6 months.

7.3 Duration of Interest Periods for Repayment Instalments

Any Interest Period that includes a Repayment Date shall expire on such Repayment Date.

8 SACE PREMIUM AND ITALIAN AUTHORITIES

8.1 SACE Premium

The estimated SACE Premium for an amount equal to [*] (being [*] per cent. ([*]%) of the [Original](#) Maximum Loan Amount) ~~;-or-any-other-amount-communicated-by-SACE-subject-to-the-approval-of-all-Lenders-and-the-Borrower;~~ is due and payable in two instalments as follows:

- (a) the first instalment of the SACE Premium being an amount of [*] 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) 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 [*] 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.

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 *§ACE 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 ~~(e a)~~(iii) of Clause 2.1 *(Amount of facility)* of this Agreement.

Consequently, the Borrower hereby irrevocably instructs the Facility Agent on behalf of the Lenders to pay the Second Instalment to SACE on the Drawdown Date in accordance with paragraph ~~(e 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 ~~(b 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.

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 Agreement.

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 Loan Advance to be drawn on the Delivery Date under Tranche A less (i) any amount cancelled 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 Loan 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.
- (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 [*] Euros (€[*]) or more than [*] Euros (€[*]), calculated by SACE 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.

8.5 Additional Premium

- (a) The Borrower shall pay (through the SACE Agent) to SACE an additional SACE premium in relation to the changes made to the Original Facility Agreement following the 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) €663,900,414.94 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 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	[*]%
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- (b) The Additional SACE Premium is non-refundable ~~and is not~~ **financed**.
- (c) The Borrower has requested, and the Tranche B 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 Clause 8.5 (Additional 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.
- (d) Consequently, the Borrower hereby irrevocably instructs the Facility Agent on behalf of the Tranche B Lenders to pay the amount of the second instalment of the Additional SACE Premium to SACE on the Delivery Date in accordance with paragraph (b) of Clause 2.1 (Amount of facility) of this Agreement.
- (e) The second instalment of the Additional Premium financed by 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.

For avoidance of doubt, in case of discrepancy between this Clause 8.5 (Additional premium) and the relevant provision of the SACE Insurance Policy, the SACE Insurance Policy shall prevail.

9 FEES

9.1 Fees

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 Euros 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 paragraph (a) of Clause 16.1 (Cancellation)) or written termination notice (as described in paragraph (b) of Clause 16.1 (Cancellation)) (as applicable) sent by the Borrower, whichever is the earliest, computed at the rate of:
- (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 31 August 2024, [*] per cent. ([*]% p.a.) per annum;
and

- (iv) from 1 September 2024 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 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 16.1 (*Cancellation*)) or written termination notice (as described in paragraph (b) of Clause 16.1 (*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 sixty-three million nine hundred thousand four hundred fourteen Euros and ninety-four cents (€663,900,414.94) and the Amended Maximum Loan Amount is assumed to be six hundred and eighty-two million, one hundred and seventy thousand, seven hundred and twenty-seven Euros and thirty-eight Cents (€ 682,170,727.38);

- (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.

10 TAXES, INCREASED COSTS, COSTS AND RELATED CHARGES

10.1 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 10.2 (*Tax gross-up*) or a payment under Clause 10.3 (*Tax indemnity*).

- (b) Unless a contrary indication appears, in this Clause 10 (*Taxes, Increased Costs, Costs and related Charge*) reference to "**determines**" or "**determined**" means a determination made in the absolute discretion of the person making the determination.

10.2 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 10.7 (*Lender Status*) at least 30 Business Days prior to such payment date) complied with its obligations under Clause 10.7 (*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.

**10.3 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 10.2 ~~(tax gross-up)~~ or would have been compensated for by an increased payment under Clause 10.2 ~~(tax gross-up)~~ but was not so compensated solely because an exclusion in paragraph (d) of Clause 10.2 ~~(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 (i)(B) 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 10.3 ~~(tax indemnity)~~, notify the Facility Agent.

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.

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.

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 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 10.6 (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.

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 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 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.

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.

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;
 - (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 ~~and~~, (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 (*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.

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 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 10.10 (*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 10.3 (*Tax indemnity*) (or would have been compensated for under Clause 10.3 (*Tax indemnity*) but was not compensated solely because any of the exclusions in paragraph (b) of Clause 10.3 (*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 10.10 (*Increased Costs*), a reference to a "Tax Deduction" has the same meaning given to the term in Clause 10.1 (*Definitions*).

(c) A Lender affected by any provision of this Clause 10.10 (*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 10.10 (*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 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.

10.11 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.

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.

10.13 SACE obligations

To the extent that this Clause 10 (~~Taxes, Increased Costs, Costs and related Charge~~) 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.

11 REPRESENTATIONS AND WARRANTIES

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 (*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 (*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 (*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.

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 Interest (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) 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 Bahamas Maritime Authority 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) it is disregarded as an entity separate from its owner for U.S. federal Tax purposes;
- (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) 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) 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 11.1 (*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, 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) 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 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 12.23 (*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) 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) 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:
 - (i) nor to its knowledge, any director, 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
 - (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 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) 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) 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) no investments made and no payments made, received or to be made by the Borrower, the Shareholder 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 Shareholder 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) no Prohibited Payment has been or will be received, made or provided, directly or indirectly, by (or on behalf of) the Borrower, the Shareholder or the Guarantor (with respect to the Shareholder and the Guarantor, to the best of the Borrower's knowledge), any of its affiliates or its 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, of any authority or public or government entity) in connection with the Ship, this Agreement and/or the Finance Documents;
- (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 (*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 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) 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 10.7 (*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 11.2 (*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 the Borrower complies 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) the Borrower has read and acknowledged the principles provided under the Code of Ethics and Model;
- (mm) the Borrower has implemented adequate internal procedures aimed at preventing commission of crimes provided under Legislative Decree 231/01;
- (nn) no litigation is pending against the Borrower in relation to administrative liability provided under Legislative Decree 231/01;
- (oo) 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) neither the Borrower nor any of its assets are subject to any precautionary measure provided under Legislative Decree 231/01.

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 (*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 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 (*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.

12 GENERAL UNDERTAKINGS

12.1 General

The Borrower undertakes with each Secured Party to comply with the following undertakings during the Security Period:

12.2 Information

The Borrower will provide to the Facility 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 2018 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 Facility 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 (\$20,000,000) 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 12.2 (*information*) shall be prepared in accordance with GAAP and shall fairly represent the financial condition of the relevant company.

12.3 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.

12.4 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 Shareholder, 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 Shareholder, 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.

12.5 Prohibited
Payments

No Prohibited Payment shall be received, 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 public or government entity (or any official, officer, director, 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.

12.6 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.

12.7 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 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.

12.8 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 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.

12.9 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 16.3 (*Mandatory prepayment – Sale and Total Loss*) and except for charters and other arrangements complying with Clause 13.1 (*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.

12.10 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.

12.11 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.

12.12 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.

12.13 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.

12.14 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
 - (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 (*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.

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.

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;
- (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.

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,

provided that the actions in sub-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.

12.18 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 12.15 (*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.

12.19 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.

12.20 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 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.

12.21 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 paragraph (a) ~~c~~(i) of Clause 4.1 (*Borrower's irrevocable payment instructions*) only), the Facility Agent, SACE and the Lenders.

12.22 "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 Facility Agent or any Lender (or, in the case of sub-paragraph (iii) of paragraph (a) of Clause 12.22 ("*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 12.22 ("*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.

12.23 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 (d) and (e) above.

12.24 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.

12.25 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 (*Continuing representations and warranties*) and Clause 18.6 (*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, 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 (*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 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.

12.26 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 sub-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.

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.
- (b) The restrictions in paragraph (a) of Clause 12.27 (*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 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: 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 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 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 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;
 - (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 (viii)(B)(2) of paragraph (b) of [this](#) Clause 12.27 (*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;
- (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
- (xii) without prejudice to Clauses 12.11 (*Mergers*) and 12.15 (*Investments*) and clause 11.13 (*No merger*) of the Guarantee, the issuance of share capital by any Group member to another Group member.

13 SHIP UNDERTAKINGS

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 (*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, 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 (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 [*]; 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 [*] **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;
 - (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.

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.

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.

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 (*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 (*Valuation of the Ship*), the Facility Agent shall be entitled to procure a valuation of the Ship on the same basis.

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.

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. 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 (*Valuation of the Ship*).

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 [*], such inspections shall be limited to one a year and shall all be at reasonable times.

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 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.

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.

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.

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.

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 [*];
- (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.

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 [*] 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 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 (*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 (*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 (*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 [*] 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.

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.

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 [*] 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)).

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.

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.

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.

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.

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.

13.21 Poseidon Principles

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 (*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.

**14INSURANCE
UNDERTAKINGS**

14.1 General

The undertakings in this Clause 14 (*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.

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 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 (*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);
- (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.

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).

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 (*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;
- (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.

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 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.

14.6 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.

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 Facility Agent.

14.8 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.

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.

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.

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.

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.

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.

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.

**15 SECURITY VALUE
MAINTENANCE**

15.1 Security Shortfall

If, upon receipt of a valuation of the Ship in accordance with Clause 13.4 *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 Euros 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 15.2 (*Costs*) and 15.4 (*Documents and evidence*) and paragraph (c) of Clause 16.2 (*Voluntary prepayment*) shall apply to prepayments under paragraph (a) of Clause 15.1 (*Security Shortfall*).

15.2 Costs

All costs in connection with the Facility Agent obtaining any valuation of the Ship referred to in Clause 13.4 (*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 15.1 (*Security Shortfall*) shall be borne by the Borrower.

15.3 Valuation of additional security

For the purpose of this Clause 15 (*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.

15.4 Documents and evidence

In connection with any additional security provided in accordance with this Clause 15 (*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.

15.5 Valuations binding

Any valuation under this Clause 15 (*Security Value Maintenance*) shall be binding and conclusive as regards the Borrower.

15.6 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 15 (*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.

16 CANCELLATION, PREPAYMENT AND MANDATORY PREPAYMENT

16.1 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 16.1 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 Shareholder and the Guarantor) to the Facility Agent, terminate this Agreement and the other Finance Documents and, except for this Clause, Clause 10.11 (~~Transaction Costs~~), Clause 33 (*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.

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 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 ~~Breakage costs and SIMEST arrangement~~ 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 16.2 (*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 ~~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 the [relevant](#) Lenders of the funding for the ~~Loan~~ [relevant Advance or Advances under a Tranche](#) and the rate of interest for the monies to be invested by ~~the~~ [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 6.1 ~~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 (*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 (*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 20.1 (*Indemnities regarding borrowing and repayment of Loan*) and 20.2 (*Breakage costs and SIMEST arrangements*).
- (c) If the Borrower has selected the Fixed Interest Rate pursuant to Clause 6.1(*Fixed or Floating Interest Rate*), the SACE Agent shall give SIMEST thirty (30) days written notice of the intended date of prepayment.

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 (*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.

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 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) of Clause 16.4 (*Mandatory prepayment – SACE Insurance Policy*) the events described in paragraph (a) of Clause 16.4 (*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 (*Mandatory prepayment – SACE Insurance Policy*).

16.5 Breach of new covenants or the Principles

- (a) Failure to comply, until the end of the Deferral Period, with the provisions of Clauses 12.17 (~~Dividends and dividend restriction~~), 12.27 (*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 contract*) 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 (*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 12.27 (*New capital raises or financing*), if at any time after the 2021 Deferral Effective Date:
- (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; 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.

16.6 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 16.2 (*Voluntary prepayment*)).

16.7 Application of partial prepayment

Amounts prepaid shall be applied in accordance with paragraph (b) of Clause 19.1 (*Receipts*).

16.8 No reborrowing

Amounts prepaid may not be reborrowed.

17 INTEREST ON LATE PAYMENTS

17.1 Default rate of interest

Without prejudice to the provisions of Clause 18 (*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) where the Floating Interest Rate is applicable, the aggregate of:
 - (i) €STR;
 - (ii) the applicable Margin;
and
and if that percentage rate is less than zero, the rate of interest shall be deemed to be zero; plus
 - (iii) [*] per cent. ([*]% p.a.) per annum;
or
- (b) where the Fixed Interest Rate is applicable, the higher of:
 - (i) the Fixed Interest Rate plus [*] per cent. ([*]% p.a.) per annum;
and
 - (ii) €STR plus the applicable Margin (and if that percentage rate is less than zero, the rate of interest shall be deemed to be zero) plus [*] per cent. ([*]% p.a.) per annum.

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.

18 EVENTS OF DEFAULT

18.1 Events of Default

An Event of Default occurs if any of the events or circumstances described in Clauses 18.2 (*Non-payment*) to 18.20 (*Material Adverse Change*) occur.

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.

18.3 Non-remediable breaches

The Borrower fails to comply with the provisions of Clauses 12.4 (*Sanctions and illicit payments*), 12.5 (*Prohibited payments*) 12.8 (*Negative pledge*), 12.9 (*Disposals*), 12.11 (*Mergers*) or 12.18 (*Loans and guarantees by the Borrower*).

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 (*Non-payment*) to 18.20 (*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 12.26 (*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 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.

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.

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, [*] (\$[*]) 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(*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 financial covenants in respect of the Group equivalent to those set out in paragraphs (b) and (c) of clause 11.15

(*Financial Covenant*) 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 (*Mandatory prepayment – sale and total loss*) or Clause 16.4 (*Mandatory prepayment – SACE insurance policy*) has occurred.

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.

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.

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.

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 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.

18.11 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.

18.12 Analogous events

Anything analogous to or having a substantially similar effect to any of the events specified in Clauses 18.7 (*Winding-up*) to 18.11 (*Legal process*) shall occur under the laws of any applicable jurisdiction.

18.13 Cessation of business

Any Obligor ceases to carry on all or a substantial part of its business.

18.14 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.

18.15 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.

18.16 Insurances

The Borrower fails to insure the Ship in the manner specified in Clause 14 (*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.

18.17 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.

18.18 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.

18.19 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 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.

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 12.26 (*Code of Ethics and Mode*)), 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.

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 [and the financed second instalment of the Additional 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 Facility Agent and/or the Lenders are entitled to take under any Finance Document or any applicable law.

18.22 Termination of
Commitments

On the service of a notice under paragraph (a) of Clause 18.21 *Actions following an Event of Default*, the Commitments and all other obligations of each Lender to the Borrower under this Agreement shall terminate.

18.23 Acceleration of
Loan

On the service of a notice under paragraph (b) of Clause 18.21 ~~(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.

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 (*Voluntary prepayment*).

18.25 Multiple notices; action without notice

The Facility Agent may serve notices under paragraphs (a) and (b) of Clause 18.21 ~~(Actions following an Event of Default)~~ simultaneously or on different dates and it may take any action referred to in paragraph (c) of Clause 18.21 (~~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.

18.26 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 18.21 ~~(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.

18.27 Lender's rights unimpaired

Nothing in this Clause 18 ~~(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*).

18.28 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.

19 APPLICATION OF SUMS RECEIVED

19.1 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:
 - (A) first, to interest payable pursuant to Clause 17 (~~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 (~~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-paragraphs (ii)(A) to (ii)(E) of paragraph (a) of Clause 19.1 (~~Receipts~~), 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 sub-paragraphs (ii)(A) to (ii)(D) of Clause 19.1 (~~Receipts~~) above.
- (d) Paragraphs (a), (b) and (c) above will override any appropriation made by an Obligor.

20 INDEMNITIES

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 17 (*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 18 (*Events of Default*);
 - (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 20.1 (*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.

20.2 Breakage costs and SIMEST arrangements

Without limiting its generality, Clause 20.1 (*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~~ Contributions and/or any overdue amount (or an aggregate amount which includes its ~~Contribution~~ Contributions or any overdue amount);
- (b) if the Borrower has selected the Fixed Interest Rate in accordance with Clause 6.1 (*Fixed or Floating Interest Rate*), the CIRR Break Costs; and
- (c) any other costs whatsoever or howsoever arising under or in respect of the Interest 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.

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,

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 (*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 (*Continuing representations and warranties*) and/or of Clause 12.26 (*Code of Ethics and Model*).

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 (*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 (*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.

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 (*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.

20.6 Sums deemed due to a Lender

For the purposes of this Clause 20 (*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.

20.7 SACE obligations

To the extent that this Clause 20 (*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.

21 ILLEGALITY, ETC.

21.1 Illegality and Sanctions

This Clause 21 (*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.

21.2 Notification of illegality

The Borrower shall promptly notify the Facility Agent of the occurrence of an event under paragraph (b) of Clause 21.1 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 21.1 which the Facility Agent receives from the Notifying Lender.

21.3 Prepayment; termination of Commitment

- (a) Upon the Facility Agent notifying the Borrower of an event under sub-paragraph (i) of paragraph (a) of Clause 21.1 (*Illegality and Sanctions*) above, the Notifying Lender's Commitment will be immediately suspended and that Lender shall act in accordance with Clause 21.4 (*Mitigation*). To the extent no alternative arrangements have been agreed in accordance with Clause 21.4 (*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 21.1 (*Illegality and Sanctions*) above, the Notifying Lender shall act in accordance with Clause 21.4 (*Mitigation*). To the extent no alternative arrangements have been agreed in accordance with Clause 21.4 (*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 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 21.1 (*Illegality and Sanctions*) above, the Lenders shall act in accordance with Clause 21.4 (*Mitigation*). To the extent no alternative arrangements have been agreed in accordance with Clause 21.4 (*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 (*Notification of illegality*) above; or
 - (ii) the last day of the current Interest Period for the [Loan relevant Advance 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.

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 21.1 (*Illegality and Sanctions*) or Clause 10 (*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.

22 SET-OFF

- 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 Euros;
 - (iii) enter into any other transaction or make any entry with regard to the credit balance which the Creditor Party concerned considers appropriate.

22.2 Existing rights unaffected

No Creditor Party shall be obliged to exercise any of its rights under Clause 22.1 (*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).

22.3 Sums deemed due to a Lender

For the purposes of this Clause 22 (*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.

22.4 No Security Interest

This Clause 22 (*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.

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.

24 CHANGES TO THE LENDERS

24.1 Transfer by a Lender

Subject to Clause 24.2 (*Conditions of assignment or transfer*), Clause 24.5 (*No transfer without Transfer Certificate*), Clause 24.17 (*Assignment or transfer to SACE*) and Clause 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~~ 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 (*Role of the Facility Agent, the Joint Mandated Lead Arrangers, the SACE Agent and the Reference Bank*) and 27 (*The Security Trustee*) respectively.

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 (*No transfer without Transfer Certificate*) and 24.17 (*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[*] Euros (€[*]) or, if less, the Transferor Lender's full Commitment.

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,

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.

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 (*Transfer Certificate, delivery and notification*) on or before that date.

24.5 No transfer without Transfer Certificate

Except as provided in Clause 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 Facility Agent or the Security Trustee unless it is effected, evidenced or perfected by a Transfer Certificate.

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 **Contribution Contributions** as were held by the predecessor Lender.

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 **Contribution 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 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 (*Market Disruption*) and Clause 9 (*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 Maintenance of register of Lenders

During the Security Period the Facility Agent shall maintain a register in which it shall record the name, Commitment, ~~Contribution~~ 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 (*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.

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.

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.

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
- (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 24.1 (*Transfer by a Lender*).

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.

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.

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 (*Taxes, Increased Costs, Costs and Related Charge*), 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 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.

24.16 Security over Lenders'
rights

In addition to the other rights provided to Lenders under this Clause 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, 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 (*Conditions of assignment or transfer*) and 24.3 (*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 (*Security over Lenders' rights*).

24.17 Assignment or transfer to SACE or as directed by SACE

- (a) Notwithstanding the above provisions of this Clause 24 (*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.

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.

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 (*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.

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 (*Assignment or transfer to SACE or as directed by SACE*) or Clause 24.18 (*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.

24.21 Definition of
Affiliate

For the purposes of this Clause 24 (*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.

25 CHANGES TO THE OBLIGORS

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.

26 ROLE OF THE FACILITY AGENT, THE JOINT MANDATED LEAD ARRANGER, THE SCAE AGENT AND THE REFERENCE BANKS

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.

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.

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.

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.

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.

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, 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.

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:
 - (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.

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 Agreement.

26.9 Exclusion of liability

- (a) Without limiting paragraph (b) of Clause 26.9 (*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 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 (*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.

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).

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 (*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.
- (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 *(Role of the Facility Agent, the Joint Mandated Lead Arrangers, the SACE Agent and the Reference Banks)* 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 *(Resignation of the Facility Agent)*. In this event, the Facility Agent shall resign in accordance with paragraph (b) of Clause 26.11 *(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 *(Resignation of the Facility Agent)* shall be subject to compliance with all necessary "know your customer" requirements of the Lenders.

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.

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.

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;
- (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.

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.

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.

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 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 Agreement.

26.18 Resignation of the Facility Agent in relation to FATCA

The Facility Agent shall resign in accordance with Clause 26.11 *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 *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 *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 *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.

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.

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.
- (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.

26.21 Application of certain Clauses

The provisions of Clauses 26.2 (*Duties of the Facility Agent*), 26.4 (*No fiduciary duties*), 26.6 (*Rights and discretions of the Facility Agent*), 26.7 (*Lenders' and SACE's instruction*), 26.8 (*Responsibility for documentation*), 26.9 (*Exclusion of liability*), 26.10 (*Lenders' indemnity to the Facility Agent*), 26.11 (*Resignation of the Facility Agent*), 26.12 (*Confidentiality*), 26.13 (*Relationship with the Lenders*), 26.14 (*Credit appraisal by the Lender*), 26.16 (*Full freedom to enter into transactions*), 26.19 (*No duty to monitor*) and 27.23 (*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 (*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 Bank*) 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 40 (*Confidentiality of Funding Rates and Reference Bank Quotation*) subject to Clause 36.4 (*Third party rights*) and the provisions of the Third Parties Act.

27THE SECURITY TRUSTEE

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 (*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 27.1 (*Trust*) and as excluded or limited by this Clause 27 (*The Security Trustee*) including in particular Clause 27.8 (*Instructions to Security Trustee and exercise of discretion*), Clause 27.13 (*Responsibility for documentation*), Clause 27.14 (*Exclusion of liability*), Clause 27.16 (*Lenders' indemnity to the Security Trustee*), Clause 27.23 (*Business with the Group*) and Clause 27.28 (*Full freedom to enter into transactions*).

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 (*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 (*Parallel Debt (Covenant to pay the Security Trustee)*) to the extent permitted by applicable law, shall be applied in accordance with Clause 19 (*Application of sums received*).
- (f) This Clause 27.2 (*Parallel Debt (Covenant to pay the Security Trustee)*) shall apply, with any necessary modifications, to each Finance Document.

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.

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 (*The Security Trustee*), the "**Recoveries**") shall be transferred to the Facility Agent for application in accordance with Clause 19 (*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 (*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 (*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 Deductions from receipts

- (a) Before transferring any moneys to the Facility Agent under Clause 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 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.

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 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 (*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.

27.7 Investment of proceeds

Prior to the payment of the proceeds of the Recoveries to the Facility Agent for application in accordance with Clause 27.4 (*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 (*Investment of proceeds*).

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 (*Security Trustee's discretions*) to Clause 27.28 (*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 (*Deductions from receipts*) and Clause 27.6 (*Prospective liabilities*).

27.9 Security Trustee's Actions

Without prejudice to the provisions of Clause 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 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;
 - (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.

27.11 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.

27.12 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) be or be deemed to be an agent, trustee or fiduciary of any Obligor.

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.

27.14 Exclusion of liability

- (a) Without limiting Clause 27.15 (*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
- (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.

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 (*Third party rights*) and the provisions of the Third Party Act.

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 Finance Documents (unless the relevant Security Trustee, Receiver or Delegate has been reimbursed by an Obligor pursuant to a Finance Document).

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.

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 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.

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.

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.

27.21 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 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 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 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.

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.

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.

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.

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.

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 (*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 (*The Security Trustee*), Clause 27.5 (*Deductions from receipts*), Clause 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 27.29 (*Resignation of the Security Trustee*) shall be subject to compliance with all necessary "know your customer" requirements of the Lenders.

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.

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 functions pursuant to that appointment shall, for the purposes of this Agreement, be treated as costs and expenses incurred by the Security Trustee.

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.

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.

29 SHARING AMONG THE CREDITOR PARTIES

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 Clause 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 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 19 (*Application of sums received*) and Clause 30 (*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 Recovering Creditor Party as its share of any payment to be made, in accordance with Clause 19 (*Application of sums received*) and Clause 30 (*Payment Mechanics*).

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 (*Application of sums received*) and Clause 30 (*Payment Mechanics*).

29.3 Recovering Creditor Party's rights

- (a) On a distribution by the Facility Agent under Clause 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 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 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 (*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.

29.5 Exceptions

- (a) This Clause 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
 - (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 (*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 PAYMENT MECHANICS

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) with such bank as the Facility Agent specifies.
- (c) Payment shall be made before 11.00 a.m. Paris time.
- (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.

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 (*Distributions to an Obligor*), Clause 30.4 (*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 (or, in relation to Euro, in the principal financial centre of a Participating Member State).

30.3 Distributions to an Obligor

The Facility Agent may in accordance with Clause 22 (*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 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.

- (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.

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.

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.

30.7 Currency of
account

- (a) Subject to paragraphs (b) and (c) of Clause 30.7 *Currency of account* Euros 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 Euros shall be paid in that other currency.

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.

30.9 Distributions under the Interest Make-Up Agreement

Each payment received by the Facility Agent under the Interest 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).

31 VARIATIONS AND WAIVERS

31.1 Variations, waivers etc. by Majority Lenders

Subject to Clause 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 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.

31.2 Variations, waivers etc. requiring agreement of all Lenders

However, as regards the following, Clause 31.1 (*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 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 8.1 (*SACE Premium*) 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 24 (*Changes to the Lenders*) or this Clause 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 Exclusion of other or implied variations

Except for a document which satisfies the requirements of Clauses 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.

32 NOTICES

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.

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 (<i>Lenders and Commitments</i>) or (as the case may require) in the relevant Transfer Certificate.
(c) to the Facility Agent:	CIB-COO Office-TMEF CIB- ITO Global Banking Operations Credit Transaction Management-Export Finance 9 Rue du Débarcadère Immeuble Océanie ACI: CPE02A1 Millénaire 4 93500 Pantin

	<p>Attention: S. CASET-CARRICABURU/A. SARANT 35 rue de la gare 75019 Paris Fax No. (33) 1 43 16 81 84 Email: [*];[*] Attn: Attention: S. CASET-CARRICABURU/B. SOHIER</p>
(d) to the SACE Agent:	<p>12, place des Etats-Unis CS 70052 92547 Montrouge cedex Paris Fax No. (33) 1 41 89 19 34 Email: [*] Attn: Shipping Middle Office – Ms Clémentine Costil and Romy Roussel</p>
(e) to the Security Trustee:	<p>8 Canada Square London E14 5HQ Fax: +44 20 7991 4350 Email: [*] Attention: Issuer Services – Security Trustee</p>

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.

32.3 Effective date of notices

Subject to Clauses 32.4 (*Service outside business hours*) and 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 Service outside business hours

However, if under Clause 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 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 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.

32.6 Illegible notices

Clauses 32.3 (*Effective date of notices*) and 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 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 English language

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

32.9 Meaning of "notice"

In this Clause 32 (*Notices*), "**notice**" includes any demand, consent, authorisation, approval, instruction, waiver or other communication.

33CONFIDENTIALITY

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 (*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 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) 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;
 - (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 (*Security over Lenders' rights*);
- (xiii) 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.

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) of Clause 33.2 *Disclosure of confidential information* 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) of Clause 33.2 *Disclosure of confidential information* 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), (vii) and (xii) of paragraph (b) of Clause 33.2 *Disclosure of confidential information* 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.

33.3 Entire agreement

This Clause 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 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 the Original Facility Agreement and Effective Date;
- (v) Clause 37 (*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.

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.

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 (*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 (*Confidentiality*).

33.7 Continuing obligations

The obligations in this Clause 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.

33.8 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.

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:

- (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.

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).

34 LEGAL INDEPENDENCE AND UNCONDITIONAL OBLIGATIONS OF THE BORROWER

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.

35 SACE SUBROGATION AND REIMBURSEMENT

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.

35.2 Reimbursement

- (a) Without prejudice to Clause 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 Euros 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 *Default rate of interest*) of this Agreement).

- (c) Each Obligor further agrees that its obligations under this Clause 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 35.2 (*Reimbursement*).
- (e) Each amount that is payable by the Obligors pursuant to Clause 35.2 (*Reimbursement*) is due and payable to SACE in Euros within five (5) Business Days of demand by SACE to the Obligors.

35.3 Obligations Absolute

The obligations of the Obligors under this Clause 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 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 SUPPLEMENTAL

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.

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.

36.3 Counterparts

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

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 (*SACE Subrogation and Reimbursement*), Clause 17 (*Interest on Late Payment*), Clause 8 (*SACE Premium and Italian Authorities*), Clause 10.2 (*Tax gross-up*), Clause 10.3 (*Tax indemnity*), Clause 10.11 (*Transaction Costs*), Clause 20.1 (*Indemnities regarding borrowing and repayment of Loan*), Clause 20.2 (*Breakage costs and SIMEST arrangement*), Clause 20.3 (*Miscellaneous indemnities*), Clause 20.4 (*Currency indemnity*), Clause 22 (*Set-Off*), Clause 27 (*The Security Trustee*), Clause 10.6 (*VAT*), Clause 10.13 (*SACE obligations*), Clauses 33.8 (*Disclosure by SACE*), Clause 33.9 (*Disclosure by SIMEST*), 33.10 (*Press release*), Clause 38 (*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 (*SACE Subrogation and Reimbursement*), Clause 17 (*Interest on Late Payments*), Clause 8 (*SACE Premium and Italian Authorities*), Clause 10.2 (*Tax gross-up*), Clause 10.3 (*Tax indemnity*), Clause 20.4 (*Currency indemnity*), Clause 22 (*Set-Off*), Clause 27 (*The Security Trustee*), Clause 20.3 (*Miscellaneous indemnities*), Clause 10.6 (*VAT*), Clause 10.11 (*Transaction Costs*), Clause 20.1 (*Indemnities regarding borrowing and repayment of Loan*), Clauses 33.8 (*Disclosure by SACE*), Clause 33.9 (*Disclosure by SIMEST*), 33.10 (*Press release*), Clause 38 (*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).

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.

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.

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 (d) of Clause 12.2 (*Information*), Clause 12.4 (*Sanctions and Illicit Payments*), Clause 12.5 (*Prohibited Payments*), Clause 12.24 (*Compliance with laws etc.*) or provisions contained in Clause 20.3 (*Miscellaneous indemnities*) or Clause 21.1 (*Illegality and Sanctions*) and the representations and warranties given under paragraphs (u), (v), (y), (z) and (jj) of Clause 11.2 (*Continuing representations and warranties*) and paragraph (j) of Clause 11.3 (*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.

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.

38 **ENFORCEMENT**

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.

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 ~~9 Cloak Lane~~107 Cheapside, London, UK, EC 4R-2 RU; ~~United Kingdom~~ V 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.

39 WAIVER OF IMMUNITY

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.

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.

40 CONFIDENTIALITY OF FUNDING RATES AND REFERENCE BANK QUOTATIONS

40.1 Confidentiality and disclosure

- (a) The Facility Agent and the each Obligor agree to keep each Funding Rate (and, in 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 (*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 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 (*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.

40.2 Related obligations

- (a) The Facility Agent and each Obligor acknowledge that each Funding Rate (and, in the case of the Facility Agent, each Reference Bank Quotation) is or may be price sensitive information and that its use may be regulated or prohibited by applicable legislation including securities law relating to insider dealing and market abuse and the Facility Agent and each Obligor undertake not to use any Funding Rate (or, in the case of the Facility Agent, any Reference Bank Quotation) for any unlawful purpose.
- (b) The Facility Agent and each Obligor agree (to the extent permitted by law and regulation) to inform the relevant Lender or Reference Bank, as the case may be:
 - (i) of the circumstances of any disclosure made pursuant to sub-paragraph (ii) of paragraph (c) of Clause 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 40 (*Confidentiality of Funding Rates and Reference Bank Quotations*).

40.3 No event of Default

No Event of Default will occur under Clause 18.4 (*Breach of other obligations*) by reason only of an Obligor's failure to comply with this Clause 40 (*Confidentiality of Funding Rates and Reference Bank Quotations*).

41 EFFECTIVE DATE

This Agreement is effective from the 2021 Deferral 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 SIX, LTD.)
in the presence of:)

TRANCHE A 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)
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:)

SIGNED by)
)
for and on behalf of)
BANCO SANTANDER S.A.)
in the presence of:)

~~JOINT MANDATED LEAD ARRANGERS~~

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)
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: _____)

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)
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: _____)

SIGNED by _____)
)
for and on behalf of _____)
BANCO SANTANDER S.A.)
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

SIGNED by)
)
for and on behalf of)
HSBC CORPORATE TRUSTEE)
COMPANY (UK) LIMITED)
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 17 June 2021

EXPLORER III NEW BUILD, LLC

as Borrower

and

NCL CORPORATION LTD.

as Guarantor

and

SEVEN SEAS 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

WATSON FARLEY
&
WILLIAMS

relating to a facility agreement originally dated 19 December 2018 (as amended and restated by an amendment and restatement agreement dated 17 February 2021)
in respect of the part financing of the 740 passenger cruise ship newbuilding
presently designated as Hull No. [*] at Fincantieri S.p.A

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Execution

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Appendices

[Form of Amended and Restated Facility Agreement \(marked to indicate amendments\)](#)

THIS AGREEMENT is made on 17 June 2021

PARTIES

- (1) **EXPLORER III NEW BUILD, LLC** 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) **SEVEN SEAS CRUISES S. DE R.L.** 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 and SOCIÉTÉ GÉNÉRALE** 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 (as defined below), the Lenders agreed to make available to the Borrower a facility of (originally) the Dollar Equivalent of up to €378,800,000 and the amount of the SACE Premium (but not exceeding \$565,154,668.05) 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**") pursuant to which the parties agreed to the temporary suspension 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*, providing for an increase of the Facility for the purpose of financing an amount to be applied towards the second instalment of the Additional SACE Premium.

OPERATIVE PROVISIONS

1 DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Agreement:

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

"Effective Date " means the date on which the Facility Agent notifies the Borrower, the other Creditor Parties, SACE and SIMEST 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.

"June 2021 Fee Letters " means any letter between the Facility Agent and any Obligor which sets out the fees payable in connection with the arrangements contemplated by this Agreement.

"June 2021 Finance Documents" means this Agreement and each June 2021 Fee Letter.

"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.

"Total Tranche B Commitments" means the aggregate of the Tranche B Commitments (as set out in further detail in Part B of Schedule 1 (*The Tranche B Lender*)), being fifteen million, five hundred and fifty-two thousand, eight hundred and sixty-three Dollars and twenty-five Cents (\$15,552,863.25) as at the date of this Agreement.

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 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 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, SACE and SIMEST 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, 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 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 Confirmation of Guarantee

With effect on and from the Effective Date, 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 original terms and the amendments to the Finance Documents as amended, restated and/or supplemented by this Agreement.

4.3 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.

4.4 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) the Facility Agreement and the applicable provisions of this Agreement will be read and construed as one document; and
- (c) 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

- 6.1 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.
- 6.2 The Borrower shall pay to each of (i) the Facility Agent for its own account, and (ii) the Facility Agent (for the account of each Lender) such fees in the amount and at the times specified in the relevant June 2021 Fee Letters.

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 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) /s/ Daniel S. Farkas
duly authorised) Daniel S. Farkas
for and on behalf of)
EXPLORER III NEW BUILD, LLC)

GUARANTOR

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

SHAREHOLDER

SIGNED by) /s/ Daniel S. Farkas
for and on behalf of) Daniel S. Farkas
SEVEN SEAS CRUISES S. DE R.L.)
as its duly appointed attorney-in-fact)
in the presence of:) /s/ Jared G. Silberhorn
Jared G. Silberhorn
7665 Corporate Center Drive
Miami, FL 33126 USA

HOLDING

SIGNED by) /s/ Daniel S. Farkas
for and on behalf of) Daniel S. Farkas
NORWEGIAN CRUISE LINE)
HOLDINGS LTD.)
as its duly appointed attorney-in-fact)
in the presence of:) /s/ Jared G. Silberhorn
Jared G. Silberhorn
7665 Corporate Center Drive
Miami, FL 33126 USA

LENDERS

SIGNED by) /s/ Cosmo Fisher
duly authorised) Cosmo Fisher
for and on behalf of) Attorney-in-Fact
CRÉDIT AGRICOLE CORPORATE)
AND INVESTMENT BANK)

SIGNED by) /s/ Bruno Cloquet
duly authorised) Bruno Cloquet
for and on behalf of) Global Head of Exporters and ECAs Origination
BNP PARIBAS FORTIS S.A./N.V.)
) /s/ Michel Froidebise
) Michel Froidebise
) Head of Export Finance Nordic Origination

SIGNED by) /s/ Varsha Sharan
duly authorised) Varsha Sharan
for and on behalf of) Director
HSBC BANK PLC)

SIGNED by) /s/ Maria Gazi
duly authorised) Maria Gazi
for and on behalf of) Attorney-in-Fact
KFW IPEX-BANK GMBH)

SIGNED by) /s/ Enrico Semprebene
duly authorised) Enrico Semprebene
for and on behalf of)
CASSA DEPOSITI E PRESTITI S.P.A.)

SIGNED by) /s/ Juana González Damen
duly authorised) Juana González Damen
for and on behalf of)
BANCO SANTANDER S.A.)
) /s/ Natalia San Miguel Aguado
) Natalia San Miguel Aguado

SIGNED by) /s/ Isabella Roberts
duly authorised) Isabella Roberts
for and on behalf of) Attorney-in-Fact
SOCIETE GENERALE)

MANDATED LEAD ARRANGERS

SIGNED by) /s/ Cosmo Fisher
duly authorised) Cosmo Fisher
for and on behalf of) Attorney-in-Fact
CRÉDIT AGRICOLE CORPORATE)
AND INVESTMENT BANK)

SIGNED by) /s/ Bruno Cloquet
duly authorised) Bruno Cloquet
for and on behalf of) Global Head of Exporters and ECAs Origination
BNP PARIBAS FORTIS S.A./N.V.)
) /s/ Michel Froidebise
) Michel Froidebise
) Head of Export Finance Nordic Origination

SIGNED by) /s/ Varsha Sharan
duly authorised) Varsha Sharan
for and on behalf of) Director
HSBC BANK PLC)

SIGNED by) /s/ Maria Gazi
duly authorised) Maria Gazi
for and on behalf of) Attorney-in-Fact
KFW IPEX-BANK GMBH)

SIGNED by) /s/ Enrico Semprebene
duly authorised) Enrico Semprebene
for and on behalf of)
CASSA DEPOSITI E PRESTITI S.P.A.)

SIGNED by) /s/ Juana González Damen
duly authorised) Juana González Damen
for and on behalf of)
BANCO SANTANDER S.A.)
) /s/ Natalia San Miguel Aguado
) Natalia San Miguel Aguado

SIGNED by) /s/ Isabella Roberts
duly authorised) Isabella Roberts
for and on behalf of) Attorney-in-Fact
SOCIETE GENERALE)

FACILITY AGENT

SIGNED by) /s/ Philippe Laude
duly authorised) Philippe Laude
for and on behalf of)
BNP PARIBAS) /s/ Georges Curey
) Georges Curey
) Head of Structured Export Finance
)

SACE AGENT

SIGNED by) /s/ Cosmo Fisher
duly authorised) Cosmo Fisher
for and on behalf of) Attorney-in-Fact
CRÉDIT AGRICOLE CORPORATE)
AND INVESTMENT BANK)

SECURITY TRUSTEE

SIGNED by) /s/ Daisuke Takekawa
duly authorised) Daisuke Takekawa
for and on behalf of) Authorised Signatory
HSBC CORPORATE TRUSTEE)
COMPANY (UK) LIMITED)

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 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 ~~_____February_____~~ 2021)

EXPLORER III NEW BUILD, LLC
as Borrower

and

**THE BANKS AND FINANCIAL INSTITUTIONS
LISTED IN
SCHEDULE 1
[LENDERS AND COMMITMENTS](#)**
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 740 passenger cruise ship
newbuilding presently designated as
Hull No. [*] at Fincantieri S.p.A.

WATSON FARLEY
&
WILLIAMS

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THIS AGREEMENT originally made on 19 December 2018 (as amended and restated by an amendment and restatement agreement dated ~~February 2021~~ 17 February 2021 and as further amended and restated by an amendment and restatement agreement dated _____)

PARTIES

- (1) **EXPLORER III NEW BUILD, LLC** 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 PLCCASSA DEPOSITI E PRESTITI S.P.A.**, **SOCIÉTÉ GÉNÉRALE** and **BANCO SANTANDER** as joint mandated lead arrangers (the "**Joint Mandated Lead Arrangers**")
- (4) **CRÉDIT AGRICOLE CORPORATE AND INVESTMENT BANK** **SACE** agent (the "**SACE Agent**")
- (5) **BNP PARIBAS** as facility agent (the "**Facility Agent**")
- (6) **HSBC CORPORATE TRUSTEE COMPANY (UK) LIMITED**, security trustee (the "**Security Trustee**")

BACKGROUND

- (A) By a shipbuilding contract dated as of 25 May 2018 (as amended or supplemented 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) the Borrower, the Builder agreed to design, construct and deliver, and the Borrower agreed to purchase, a 740 passenger cruise ship currently having hull number [*] as more particularly described in the Shipbuilding Contract to be delivered on or about [*] 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 four hundred and seventy three million and five hundred thousand Euros (€473,500,000) (the "**Initial Contract Price**"). The Initial Contract Price is payable on the following terms and:
 - (i) as to [*], being [*], 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**");
 - (ii) as to [*], being [*], 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 [*], being [*], on the later of keel laying in dry-dock and the date falling 24 months prior to the Intended Delivery Date;
 - (iv) as to [*], being [*], on the later of launching and the date falling 12 months prior to the Intended Delivery Date; and

(v) as to [*], being [*], on delivery of the Ship on the Delivery Date,

as each such event is described in the 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 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 19 December 2018 (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, 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 ~~offered by SACE~~ (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~~ 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) [The Parties have agreed to amend and restate the Facility Agreement as set out in an amendment and restatement agreement dated _____ 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 financing an amount to be applied towards the second instalment of the Additional SACE Premium \(as defined below\) \(the "June 2021 Amendment and Restatement Agreement"\)](#).
- (+J) This Agreement sets out the terms and conditions of the ~~Original~~ Facility Agreement as amended and restated by the [June 2021 Amendment and Restatement Agreement](#).

OPERATIVE PROVISIONS

1 INTERPRETATION

1.1 Definitions

Subject to Clause 1.5 (*General Interpretation*), in this Agreement:

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

"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](#).

"Additional SACE Premium" has the meaning given to such term in Clause 8.5 (*Additional Premium*).

"Advance" means the principal amount of each borrowing [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 and the Additional SACE 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; and](#)
- (b) [the second instalment of the Additional SACE Premium, calculated in accordance with sub-paragraph \(ii\) paragraph \(a\) of Clause 8.5 \(Additional Premium\), financed or to be financed pursuant to Tranche B, provided that such amount shall not, at any time, exceed the Total Tranche B Commitments,](#)

[provided that such aggregated 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.

"**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, the period commencing on the date of this Agreement, and](#) ending on:

- (a) the earlier to occur of (i) the Delivery Date and (ii) 27 June 2024 (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.

"**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 [*] 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 New York, Milan, Frankfurt, Brussels, Madrid, Paris, Rome and London; and

"**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 close-out of any hedging arrangement entered into by SIMEST in relation to this Agreement, (iii) default interest and penalties (*naggiorazioni*) 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.

"**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).

"**Commitment**" means ~~, in relation to a Lender, the amount equal to the percentage of the Maximum Loan Amount set opposite its name in Schedule 1 (Lenders and Commitments); or,~~

~~as the case may require, the amount specified in the relevant Transfer Certificate, in each case 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).~~ [a Tranche A Commitment or a Tranche B 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, rollup 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:

- (a) is or becomes public information other than as a direct or indirect result of any breach by that Creditor Party of Clause 33 (*Confidentiality*); or
- (b) is identified in writing at the time of delivery as non-confidential by any member of the Group or any of its advisers; or
- (c) is known by that Creditor Party before the date the information is disclosed to it in accordance with paragraphs (a) or (b) above or is lawfully obtained by that Creditor Party after that date, from a source which is, as far as that Creditor Party is aware, unconnected with the Group and which, in either case, as far as that Creditor Party is aware, has not been obtained in breach of, and is not otherwise subject to, any obligation of confidentiality; or
- (d) 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.

"**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.

"**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.

"**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

"**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 ~~the Loan~~ 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 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 four hundred seventy-three million five hundred thousand Euros (€473,500,000); 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.

"**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 (*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](#) 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 and Tranche B, 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 Commerce et des Sociétés* of Paris or any successor of it appointed under Clause 26 (*Role of the Facility Agent and the Joint Mandated Lead Arrangers [the SACE Agent and the Reference Banks](#)*).

"**Facility Agreement**" ~~means the Original Facility Agreement as amended and restated by the 2021 Amendment and Restatement Agreement~~ [has the meaning given to such term in Recital \(H\)](#)

"**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.

"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\(H\).](#)

"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 Clause9 (*Fees*);
- (b) the Facility Agent and the Borrower setting out the fees referred to in paragraph (b) of Clause9 (*Fees*);
- (c) the SACE Agent and the Borrower setting out the fees referred to in paragraph (d) of Clause9 (*Fees*);

- (d) the Security Trustee and the Borrower setting out the fees referred to in paragraph (e) of Clause9 (*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) [the 2021 Deferral Fee Letters](#);
- (~~a~~b) the [February](#) 2021 Amendment and Restatement Agreement;
- (c) [the June 2021 Amendment and Restatement Agreement](#);
- (~~b~~d) the [June](#) 2021 ~~Deferral~~Fee Letters;
- (~~e~~e) this Agreement;
- (~~d~~f) any Fee Letter;
- (~~e~~g) the Guarantee;
- (~~f~~h) the General Assignment;
- (~~g~~i) the Mortgage;
- (~~h~~j) the Pledge Agreement;
- (~~i~~k) the Post-Delivery Assignment;
- (~~j~~l) any Subordinated Debt Security;
- (~~k~~m) the Approved Manager's Undertaking;
- (~~l~~n) any Transfer Certificate;
- (~~m~~o) any Compliance Certificate;
- (~~n~~p) a n y Drawdown Notice;
- (~~e~~q) 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
- (~~p~~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 8.1 (*SACE Premium*).

"**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) the applicable Margin;
and
- (b) LIBOR for the relevant
period.

"**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 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 (*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.

"**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 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 HM11, Bermuda.

"**Holding**" means 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.

"**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 [*] (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 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*) ~~to be~~ 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 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 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 Agreement.

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

" **Interpolated Screen Rate** " means, in relation to the Loan or any part of the Loan, the rate which results from interpolating on a linear basis between:

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

each as of the Specified Time for Dollars.

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

" **ISPS Code** " means the International Ship and Port Facility Security (ISPS) Code 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 such term in Recital (I).

"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 ~~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~~ Tranche A Lender or a Tranche B Lender.

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

- (a) the applicable Screen Rates of the Specified Time for Dollars and for a period equal in length to the Interest Period of the Loan or that part of the Loan; or
- (b) as otherwise determined pursuant to Clause 6.6 (*Unavailability of Screen Rate*).

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).

"**Loan**" means the aggregate principal amount outstanding for the time being ~~outstanding under this Agreement of the borrowings under the Facility and "part of the Loan"~~ means an Advance, a Tranche or a part of a Tranche.

"**Majority Lenders**" means:

- (a) before ~~the Loan~~ an Advance under any Tranche has been made, Lenders whose Commitments total [*] per cent. of the Total Commitments; and
- (b) after ~~the Loan~~ 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.

"**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.

"**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;
- (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 three hundred and seventy eight million and eight hundred thousand Euros (€378,800,000); and~~
- (b) ~~one hundred per cent. (100%) of the SACE Premium to be paid in accordance with Clause 8.15(ACE Premium);~~

~~provided that such amount shall not, at any time, exceed five hundred and sixty five million, one hundred and fifty four thousand, six hundred and sixty eight Dollars and five cents (\$565,154,668.05).~~

"**Member**" 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 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).

"**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 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 (D).

"**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 three hundred and seventy-eight million and eight hundred thousand Euros (€378,800,000); and

(b) one hundred per cent. (100%) of the SACE Premium to be paid in accordance with Clause 8.15(A) (SACE Premium),

provided that such amount shall not, at any time, exceed five hundred and sixty-five million, one hundred and fifty-four thousand, six hundred and sixty-eight Dollars and five cents (\$565,154,668.05).

"**Original Principles**" has the meaning given in Recital (E).

"**Overnight LIBOR**" means, in relation to the Loan or any part of the 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 (*Unavailability of Screen Rate*),

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. ~~(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 12.14 (*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) ~~(iii)(A)~~ below; and

(ii) any of the Security Interests referred to in sub-paragraph (B) of sub-paragraph (ii) of paragraph (b) ~~(iii)(A)~~, sub-paragraph (C) of sub-paragraph (ii) of paragraph

(b) ~~(ii)(A)~~, sub-paragraph (E) of sub-paragraph (ii) of paragraph (b)~~(ii)(A)~~, sub-paragraph (H) of sub-paragraph (ii) of paragraph (b) ~~(ii)(A)~~ and sub-paragraph (I) of sub-paragraph (ii) of paragraph (b) ~~(ii)(A)~~ 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 sub-paragraph (C) of sub-paragraph (ii) of paragraph (b) ~~(ii)(A)~~ or sub-paragraph (E) of sub-paragraph (ii) of paragraph (b) ~~(ii)(A)~~ or incurred by the Borrower in the case of paragraphs sub-paragraph (B) of sub-paragraph (ii) of paragraph (b) ~~(ii)(A)~~, sub-paragraph (H) of sub-paragraph (ii) of paragraph (b) ~~(ii)(A)~~ or sub-paragraph (I) of sub-paragraph (ii) of paragraph (b) ~~(ii)(A)~~; and

(b) in the case of the Guarantor:

- (i) any of the Security Interests referred to in paragraphs sub-paragraph (A) of sub-paragraph (ii) of paragraph (b) ~~(ii)(A)~~, sub-paragraph (D) of sub-paragraph (ii) of paragraph (b) ~~(ii)(A)~~, sub-paragraph (F) of sub-paragraph (ii) of paragraph (b) ~~(ii)(A)~~ and sub-paragraph (G) of sub-paragraph (ii) of paragraph (b) ~~(ii)(A)~~ 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, 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 [*] 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 [*] 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 12.14 *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 [*] 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 ~~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 (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
- (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).

"**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, the rate at which the relevant Reference Bank could fund itself in the relevant currency 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.

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

- (a) its jurisdiction of incorporation, or formation, as the case may be;
- (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 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 (*Non-applicable provisions between the Obligors, German Lenders and any Creditor Party subject to the EU Blocking Regulation*).

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

"**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 (*Role of the Facility Agent and the Joint Mandated Lead Arrangers, [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 (*SACE Premium and Italian Authorities*), ~~in addition to the Additional SACE Premium (provided, for the avoidance of doubt, that the Additional SACE Premium shall not be financed).~~

"**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](#):

- (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):

- (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
- (iv) the administrator of that Screen Rate or its supervisor announces that that Screen Rate may no longer be used; ~~or~~
- (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](#)
- (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.

" **Second Instalment**" means the second instalment of the SACE Premium as more particularly described in paragraph (b) of Clause 8.1 (*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
- (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 19 (*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
- (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 (*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 (*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 15 (*Security Value Maintenance*).

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

"Shareholder" 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 as the sole member of the Borrower.

"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 (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.

"SIMEST Margin Contribution" means the margin contribution approved and granted by SIMEST to the Lenders under the Interest Make-up Agreement as communicated by the SACE Agent to the Creditor Parties and the Borrower following the date of the Original Facility Agreement as soon as the SACE Agent is made aware of it.

"**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 time; and
- (b) in relation to a Reference Bank Rate calculated by reference to the available quotations in accordance with Clause 6.7 (*Calculation of Reference Bank Rate*), 11.30 am Brussels time on the Quotation Day.

"**Structuring Fee**" has the meaning given in paragraph (a) of Clause 9 (*Fees*).

"**Subordinated Debt Security**" has the meaning given in paragraph (ii) of paragraph (b) of Clause 12.14 (*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).

"**Third Party Act**" means the Contracts (Rights of Third Parties) Act 1999.

"**Total Commitments**" means the aggregate of the Total Tranche A Commitments and the Total Tranche B Commitments, being five hundred and eighty million, seven hundred and seven thousand, five hundred and thirty-one Dollars and thirty Cents (\$580,707,531.30) as at the date of this Agreement.

" **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 (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 five hundred and sixty-five million, one hundred and fifty-four thousand, six hundred and sixty-eight Dollars and five cents (\$ 565,154,668.05) as at the date of this Agreement.

"Total Tranche B Commitments" means the aggregate of the Tranche B Commitments, being fifteen million, five hundred and fifty-two thousand, eight hundred and sixty-three Dollars and twenty-five Cents (\$15,552,863.25) as at the date of this Agreement.

"Tranche" means Tranche A or Tranche B.

"Tranche A" means the part of the Facility to be made available by the Tranche A Lenders to the Borrower to finance (i) up to the Eligible Amount, being the Dollar Equivalent of three hundred and seventy-eight million and eight hundred thousand Euros (€378,800,000), 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 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 .

"Tranche B" means the part of the Facility to be made available by the Tranche B Lenders to the Borrower to finance, if applicable, the second instalment of the Additional SACE Premium.

calculated in accordance with sub-paragraph (ii) of paragraph (a) of Clause 8.5 *Additional 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.

"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.

"US" means the United States of America.

"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
- (a) 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:

"**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 "**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 _____ ~~February~~ _____ 2021.

"**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;

"**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 (*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.

"**obligatory insurances**" means all insurances effected, or which the Borrower is obliged to effect, under Clause 14 (*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 11 (*Representations and Warranties*), Clause 12 (*General Undertakings*), Clause 20 (*Indemnities*), Clause 21 (*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 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 ~~the Maximum Loan Amount~~, in aggregate, the Total Tranche A Commitments intended to be applied as follows:

- (~~a~~ 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;
- (~~b~~ 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 8.1 (*SACE Premium*); and
- (~~c~~ 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 8.1 (*SACE Premium*) ~~;~~ and

(b) the Tranche B Lenders agreed to make available to the Borrower a loan in relation to Tranche B in one (1) Advance not exceeding the Total Tranche B 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 sub-paragraph (ii) of paragraph (a) of Clause 8.5 *Additional Premium*.

2.2 Lenders' participations in Loan

Subject to the other provisions of this Agreement:

- (a) each Tranche A Lender shall participate in the Advance under Tranche A in the proportion which, as at the Drawdown Date, its Tranche A Commitment bears to the Total Tranche A Commitments; and
- (b) each Tranche B Lender shall participate in the ~~Loan~~ Advance under Tranche B in the proportion which, as at the Drawdown Date, its Tranche B Commitment bears to the Total Tranche B Commitments.

2.3 Purpose of Loan

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

- (a) the Advance under Tranche A only to pay for:
 - (a i) goods and services of Italian origin incorporated in the design, construction or delivery of the Ship;
 - (b 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;
 - (c iii) all or part of eighty per cent. (80%) of the Final Contract Price;
 - (d 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 8.1 (*SACE Premium*); and
 - (e v) the Second Instalment of the SACE Premium payable in accordance with paragraph (b) of Clause 8.1 (*SACE Premium*).
- (b) the Advance under Tranche B only to pay for the second instalment of the Additional SACE Premium which may be payable in accordance with sub-paragraph (ii) of paragraph (a) of Clause 8.5 (*Additional 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
- (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 ~~the Loan~~ [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 ~~of 9 Cloak Lane, currently of 107 Cheapside~~ London ~~UK, EC 4R 2 RU, United Kingdom~~ V 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;
- (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 3.4(c), 3.4(e) and 3.4(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 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 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:

- (a) notification of the Intended Delivery Date;
- (b) a notice from the Borrower as described in paragraph (a) of Clause 8.4 ~~Refund~~;
- 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~~ **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 clause 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 ~~forty-five~~ **forty-five** [*] ([*]) 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 ~~the~~ 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:

- (a i) if applicable, a duly executed original of the Subordinated Debt Security;
- (b 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;
- (c iii) evidence of payment to and receipt by the Builder of:
 - (i A) the four (4) pre-delivery instalments of the Final Contract Price; and
 - (ii B) any other part of the Final Contract Price as at the Delivery Date not being financed hereunder;
- (d 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;
- (e v) evidence of payment of all amounts which are due and payable hereunder by the Borrower on or prior to the Delivery Date;
- (f vi) a certificate from the Borrower, signed by an authorised representative of the Borrower, confirming that:
 - (i A) the representations and warranties contained in Clause 11 (*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

(~~ii~~ B) no mandatory prepayment event pursuant to Clause 16 (*Cancellation, Prepayment and Mandatory Prepayment*) is continuing or would result from the Loan;

(~~g~~ 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; and

(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 subparagraphs (i), (ii), (v) and (vi) of paragraph (a) of this Clause 3.10 (No later than the Delivery Date).

(~~h~~) provided always that, in relation to paragraphs (a) and (b) above, the obligations of the relevant Lenders to make ~~the Loan~~ such Advance under each of Tranche A and Tranche B, 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 ~~the advance of the Loan~~ 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 11.3 (*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 (*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 3.11 (*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 ~~of 9 Cloak Lane, currently of 107 Cheapside~~ London ~~UK, EC 4R 2 RU, United Kingdom V 6DN~~ (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 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 (*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](#) ~~and SACE~~, [the Tranche B 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 Loan~~ [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 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:
 - (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 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, the Facility Agent and the SACE Agent to ensure compliance with the terms of the SACE Insurance Policy or the Interest 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.

- (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 ~~the Loan 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. ~~For the avoidance of doubt, the amount of the Loan shall not exceed the Maximum Loan Amount.~~
- (b) [The Tranche B Lenders shall not be obliged to fulfil their obligation to make an Advance available under Tranche B 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 sub-paragraph \(ii\) of paragraph \(a\) of Clause 8.5 \(Additional Premium\).](#)
- (c) The Borrower hereby instructs the [Tranche A](#) Lenders in accordance with this Clause 4.1 *Borrower's irrevocable payment instructions*:
 - (~~a~~ i) to pay to the Builder, up to the Eligible Amount, all or part of eighty per cent. (80%) of the Final Contract Price;
 - (~~b~~ 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 8.1 (*SACE Premium*); and
 - (~~c~~ 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.
- (d) [If applicable, the Borrower hereby instructs the Tranche B Lenders in accordance with this Clause 4.1 \(Borrower's irrevocable payment instructions\) to pay the Facility Agent on behalf of the Tranche B 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 sub-paragraph \(ii\) of paragraph \(a\) of Clause 8.5 \(Additional Premium\).](#)
- (e) Payment to the Builder of the amount drawn under paragraph (~~a~~ i) of 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*).

Save as contemplated in Clause ~~4.2~~ 4.3 (*Modification of payment terms*) below, the payment instruction contained in this Clause 4.1 (*Borrower's irrevocable payment instructions*) is irrevocable.

~~4.1~~ 4.2 Conversion Rate for Loan

The Dollar amount to be drawn down under paragraph (~~a~~ 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" and "Conversion Rate" in Clause 1.1 (*Definitions*).

~~4.2~~ 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 sub-paragraph (i) of paragraph (a c) 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 sub-paragraphs (b ii) and (iii) of paragraph (c)~~ sub-paragraphs (b ii) and (iii) of paragraph (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 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 sub-paragraph (i) of paragraph (a c) 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.

~~4.3~~ 4.4 Availability and conditions

- (a) Drawing may not be made under this Agreement (and ~~the Loan no Advance~~ shall ~~not~~ be available) after the expiry of the Availability Period.
- (b) ~~There will be only one drawing~~ Under this Agreement: there will be no more than:
- (i) one (1) Advance under Tranche A;
and
 - (ii) one (1) Advance under Tranche B.

it being provided that the Advances in relation to Tranche A and Tranche B shall occur on the same date

- (c) The amount of the Advance under Tranche B shall not exceed the lower of (i) the amount calculated pursuant to the provisions of sub-paragraph (ii) of paragraph (a) of Clause 8.5 (Additional Premium) and (ii) the Total Tranche B Commitments.
- (d) The aggregate amount of:
 - (i) the Tranche A Advance cannot exceed the Total Tranche A Commitments;
 - (ii) the Tranche B Advance cannot exceed the Total Tranche B Commitments;
and
 - (~~c~~ iii) the ~~aggregate amount of the Loan~~ Advances under all Tranches cannot exceed the ~~Maximum Loan Amount~~ Total Commitments.

4.4.4.5 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 and the Tranche B Lenders that it has received a Drawdown Notice in relation to a Tranche and shall inform each relevant Lender of:

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

4.5.4.6 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 Facility Agent the amount due from that Lender under Clause 2.2 (~~Lenders' participations in Loan~~).

4.6.4.7 Disbursement of ~~Loan~~ 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 ~~4.5~~ 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 sub-paragraph (i) of paragraph (~~a~~ c) 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 sub-paragraph (ii) of paragraph (~~b~~ c) 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 sub-paragraph (iii) of paragraph (c) of Clause 4.1 (~~Borrower's irrevocable payment instructions~~) to the account of SACE which the SACE Agent shall specify; ~~and~~

[\(d\) in the case of an amount referred to in paragraph \(d\) of Clause 4.1 *Borrower's irrevocable payment instructions*\) to the account of SACE which the SACE Agent shall specify](#)

4.7.4.8 Disbursement of *Loan Advance* to third party

The payment by the Facility Agent under Clause ~~4.6~~ [4.7](#) (*Disbursement of *Loan Advance**) shall constitute the making of the *Loan 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 *Contribution 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 INTEREST

6.1 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.

6.2 Fixed Interest Rate

If the Borrower has specified a Fixed Interest Rate pursuant to Clause 6.1 *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.

6.3 Floating Interest Rate

If:

- (a) the Borrower has specified a Floating Interest Rate pursuant to Clause 6.1(~~Fixed or Floating Interest Rate~~); or
- (b) the Borrower has specified a Fixed Interest Rate pursuant to Clause 6.1(~~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 (*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).

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.

6.5 Notification of Interest Periods and Floating Interest Rate

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.

6.6 Unavailability of Screen Rate

- (a) *Interpolated Screen Rate* If no Screen Rate is available for LIBOR for the Interest Period of the Loan or any part of the Loan, the applicable LIBOR shall be the Interpolated Screen Rate for a period equal in length to the Interest Period of the Loan or that part of the Loan.
- (b) *Reference Bank Rate* If no Screen Rate is available for LIBOR for:
 - (i) Dollars;
 - (ii) the Interest Period of the Loan or any part of the 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 Loan.
- (c) *Cost of funds*: If paragraph (b) above applies but no Reference Bank Rate is available for Dollars or the relevant Interest Period there shall be no LIBOR for the Loan or that part of the Loan (as applicable) and Clause 6.9(*Cost of funds*) shall apply to the Loan or that part of the Loan for that Interest Period.

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.

6.8 Market disruption

If before close of business in London on the Quotation Day for the relevant Interest Period the Facility Agent receives notification from a Lender or Lenders (whose participations in the Loan or the relevant part of the Loan 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.

6.9 Costs of funds

- (a) If this Clause 6.9 (*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 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 participation in the Loan or that part of the Loan from whatever source it may reasonably select.
- (b) If this Clause 6.9 (*Cost of funds*) applies and the Facility Agent or the Borrower so requires, the Facility Agent and the Borrower shall enter into negotiations (for a period of not more than 30 days) with a view to agreeing a substitute basis for determining the rate of interest or (as the case may be) an alternative basis for funding.
- (c) Subject to Clause 6.10 (*Replacement of Screen Rate*), any substitute or alternative basis agreed pursuant to paragraph (b) above shall, with the prior consent of all the Lenders and the Borrower, be binding on all Parties.
- (d) If paragraph (e) below does not apply and any rate notified to the Facility Agent under sub-paragraph (ii) of paragraph (a) above is less than zero, the relevant rate shall be deemed to be zero.
- (e) If this Clause 6.9 (*Cost of funds*) applies pursuant to Clause 6.8 (*Market disruption*) and:
 - (i) a Lender's Funding Rate is less than LIBOR;
or
 - (ii) a Lender does not supply a quotation by the time specified in sub-paragraph (ii) of paragraph (a) above,

the cost to that Lender of funding its participation in the Loan or the relevant part of the Loan for that Interest Period shall be deemed, for the purposes of paragraph (a) above, to be LIBOR.

- (f) If this Clause 6.9 (*Cost of funds*) applies but any Lender does not supply a quotation by the time specified in sub-paragraph (ii) of paragraph (a) above, the rate of interest shall be calculated on the basis of the quotations of the remaining Lenders.

6.10 Replacement of Screen Rate

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

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

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

- (b) If, as at 30 September ~~2021~~ 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 ~~the Majority~~ 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 ~~2021~~ 2022, unless the Borrower and the Facility Agent (acting on the instructions of ~~the Majority~~ 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.

- (c) If an amendment is required as contemplated in this Clause 6.10 ~~(Replacement of Screen Rate)~~, 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.

6.11 Notice of prepayment

If no agreement is reached with the Borrower under Clause 6.10 ~~(Replacement of Screen Rate)~~, 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 6.1 (*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.

6.12 Prepayment; termination of Commitments

A notice under Clause 6.11 (*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 (*Breakage costs and SIMEST arrangement*)) 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 6.1 (*Fixed or Floating Interest Rate*)).

6.13 Application of prepayment

The provisions of Clause 16 (~~Cancellation, Prepayment and Mandatory Prepayment~~) shall apply in relation to the prepayment.

6.14 Certain Circumstances

Notwithstanding anything to the contrary in this Agreement:

- (a) in the event of any circumstances falling within Clause 6.8 (*Market Disruption*) which might affect the advance of ~~the Loan~~ 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 (*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 (*Unavailability of Screen Rate*), 6.7 (*Calculation of Reference Bank Rate*), 6.8 (*Market Disruption*), 6.9 (*Cost of funds*) and 6.10 (*Replacement of Screen Rate*) 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.
- (c) in the event of any Relevant Circumstances falling within Clause 6.8 (*Market disruption*) (the "**Availability-Related Relevant Circumstances**") occurring before the Loan is made, 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.

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 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 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 (*Floating Interest Rate*) shall apply.

7 INTEREST PERIODS

7.1 Commencement of Interest Periods

The first Interest Period applicable to ~~the Loan~~ [an Advance](#) shall commence on the Drawdown Date and each subsequent Interest Period shall commence on the expiry of the preceding Interest Period.

7.2 Duration of Interest Periods

Subject to Clause 7.3 (*Duration of Interest Periods for Repayment Instalments*), each Interest Period shall be 6 months.

7.3 Duration of Interest Periods for Repayment Instalments

Any Interest Period that includes a Repayment Date shall expire on such Repayment Date.

**8 SACE PREMIUM AND ITALIAN
AUTHORITIES**

**8.1 SACE
Premium**

The estimated SACE Premium for an amount equal to[*] (being [*] per cent. ([*]%) of the [Original](#) Maximum Loan Amount) ~~;-or-any-other-amount-communicated-by-SACE-subject-to-the-approval-of-all-Lenders-and-the-Borrower~~, is due and payable in two instalments as follows:

- (a) the first instalment of the SACE Premium being an amount of[*] (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[*] (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.

**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 *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 [sub-paragraph \(iii\) of paragraph \(e a\)](#) of Clause 2.1 (*Amount of facility*) of this Agreement.

Consequently, the Borrower hereby irrevocably instructs the Facility Agent on behalf of the Lenders to pay the Second Instalment to SACE on the Drawdown Date in accordance with [sub-paragraph \(iii\) of paragraph \(e a\)](#) 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 [sub-paragraph \(ii\) of paragraph \(b a\)](#) 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.

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 Agreement.

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 ~~Loan 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 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 ~~Loan 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.
- (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 [*] Euros

(€ [*]) or more than the equivalent of [*] Euros (€ [*]), calculated by SACE 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 at the European Central Bank EUR/USD exchange rate or for the calculation of any Refund and/or withholding thereof.

8.5 Additional 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 2021 Deferral Effective Date (the "**Additional SACE Premium**"). The Additional SACE Premium is payable, in accordance with the SACE Insurance Policy, ~~payable~~ 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) \$565,154,668.05 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 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 Additional SACE Premium is not financed.~~

(b) The Borrower has requested, and the Tranche B 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 (ii) of this Clause 8.5 (Additional 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 B Lenders to pay the amount of the second instalment of the Additional SACE Premium to SACE on the Delivery Date in accordance with paragraph (b) of Clause 2.1 (Amount of facility) of this Agreement.

(d) The second instalment of the Additional SACE Premium financed by 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) 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.

~~(d) 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.~~

SACE Premium refund = Loan amount outstanding at the time of the Leonardo Six Intended Delivery Date[*]%
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 (Additional 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 (Mandatory Prepayment in case of refund by SACE to the Borrower of the second instalment of the Additional SACE Premium).

9 FEES

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) or written termination notice (as described in sub-paragraph (b) of Clause 16.1) (as applicable) sent by the Borrower, whichever is the earliest, computed at the rate of:
 - (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 28 February 2022, [*] per cent. ([*]% p.a.) per annum; and
 - (iv) from 1 March 2022 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 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 16.1) or written termination notice (as described in paragraph (b) of Clause 16.1 [\(Cancellation\)](#)) (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 five hundred and sixty five million, one hundred and fifty four thousand, six hundred and sixty eight Dollars and five cents (\$ 565,154,668.05) [and the Amended Maximum Loan Amount is assumed to be \\$580,707,531.30;](#)

- (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.

10 TAXES, INCREASED COSTS, COSTS AND RELATED CHARGES

10.1 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 10.2 (*Tax gross-up*) or a payment under Clause 10.3 (*Tax indemnity*).

(b) Unless a contrary indication appears, in this Clause 10 ~~Taxes, Increased Costs, Costs and related Charge~~ reference to "**determines**" or "**determined**" means a determination made in the absolute discretion of the person making the determination.

10.2 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 10.7 (*Lender Status*) at least 30 Business Days prior to such payment date) complied with its obligations under Clause 10.7 (*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.

10.3 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 10.2 (*Tax gross-up*) or would have been compensated for by an increased payment under Clause 10.2 (~~*Tax gross-up*~~) but was not so compensated solely because an exclusion in paragraph (d) of Clause 10.2 (~~*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 10.3 (~~*tax indemnity*~~), notify the Facility Agent.

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.

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.

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 (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.

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 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 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.

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.

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;
 - (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) 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 ~~and~~, (ii) where the relevant Lender becomes a Lender at the date of this Agreement, the date of this Agreement and (ii) where the relevant Lender is a Transferee Lender, the effective date of a Transfer Certificate under Clause 24.4 (*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 paragraph (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.

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 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 10.10 (*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 10.3 (*Tax indemnity*) (or would have been compensated for under Clause 10.3 (*Tax indemnity*) but was not compensated solely because any of the exclusions in paragraph (b) of Clause 10.3 (*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 10.10 (*Increased Costs*), a reference to a "Tax Deduction" has the same meaning given to the term in Clause 10.1 (*Definitions*).

- (c) A Lender affected by any provision of this Clause 10.10 (*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 10.10 (*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 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.

10.11 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.

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.

10.13 SACE

obligations

To the extent that this Clause 10 (~~Taxes, Increased Costs, Costs and related Charge~~) 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.

11 REPRESENTATIONS AND

WARRANTIES

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 (*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 (*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 (*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.

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;
- (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 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) it is disregarded as an entity separate from its owner for U.S. federal Tax purposes;
- (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) 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) 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;
- (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 11.1 (*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, 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) 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) 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 12.23 (*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) 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) 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:
 - (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
 - (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 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) 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) 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) 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) 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) 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 (*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 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) 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 10.7 (*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 11.2 (*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 the Borrower complies 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) the Borrower has read and acknowledged the principles provided under the Code of Ethics and Model;
- (mm) the Borrower has implemented adequate internal procedures aimed at preventing commission of crimes provided under Legislative Decree 231/01;
 - (nn) no litigation is pending against the Borrower in relation to administrative liability provided under Legislative Decree 231/01;
 - (oo) 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) neither the Borrower nor any of its assets are subject to any precautionary measure provided under Legislative Decree 231/01.

11.3 Representations on the Delivery

Date

The Borrower further represents and warrants to each of the Secured Parties at 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 (*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 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 (*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.

12 GENERAL UNDERTAKINGS

12.1 General

The Borrower undertakes with each Secured Party to comply with the following undertakings during the Security Period:

12.2 Information

The Borrower will provide to the Facility 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 2018 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 paragraph (a) and 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 Facility 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 (\$20,000,000) 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 12.2 (*information*) shall be prepared in accordance with GAAP and shall fairly represent the financial condition of the relevant company.

**12.3 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.

**12.4 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.

**12.5 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.

12.6 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.

12.7 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 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.

12.8 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 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.

12.9 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 16.3 (*Mandatory prepayment – Sale and Total Loss*) and except for charters and other arrangements complying with Clause 13.1 (*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.

12.10 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.

12.11 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.

12.12 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.

12.13 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.

12.14 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
 - (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 (*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.

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.

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;
- (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.

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,

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.

12.18 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 12.15 (*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.

12.19 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.

12.20 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 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.

12.21 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 [sub-paragraph \(i\) of paragraph \(a c\)](#) of Clause 4.1 (*Borrower's irrevocable payment instructions*) only), the Facility Agent, SACE and the Lenders.

12.22 "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 Facility Agent or any Lender (or, in the case of sub-paragraph (iii) of paragraph (a) of Clause 12.22 ("*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 12.22 ("*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.

12.23 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 (d) and (e) above.

**12.24 FOREX
Contracts**

The Borrower shall:

- (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.

**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.

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 (*Continuing representations and warranties*) and Clause 18.6 (*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, 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 (*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 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.

12.27 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.

12.28 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);
 - (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.
- (b) The restrictions in paragraph (a) of Clause 12.28 (*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: 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 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 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 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;
 - (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 [this](#) Clause 12.28 (*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
- ([xii](#)) without prejudice to Clauses 12.11 (*Mergers*) and 12.15 (*Investments*) and clause 11.13 (*No merger etc.*) of the Guarantee, the issuance of share capital by any Group member to another Group member.

13 SHIP UNDERTAKINGS

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 (*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 (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 [*]; 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 [*] **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;

- (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.

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.

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.

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 (*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 (*Valuation of the Ship*), the Facility Agent shall be entitled to procure a valuation of the Ship on the same basis.

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.

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. 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 (*Valuation of the Ship*).

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 [*], such inspections shall be limited to one a year and shall all be at reasonable times.

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 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.

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.

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.

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.

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 [*];
- (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.

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 [*] 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 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 (*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 (*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 (*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 [*] 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.

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.

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 [*] 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)).

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.

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.

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.

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.

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.

13.21 Poseidon Principles

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 (*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.

14 INSURANCE

UNDERTAKINGS

14.1 General

The undertakings in this Clause 14 (*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.

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 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 (*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);
- (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.

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).

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 (*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;
- (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.

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 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.

14.6 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.

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 Facility Agent.

14.8 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.

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.

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.

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.

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 [*] (\$[*]) or the equivalent in any other currency and not being a claim arising out of a Total Loss.

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.

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.

15 SECURITY VALUE MAINTENANCE

15.1 Security Shortfall

If, upon receipt of a valuation of the Ship in accordance with Clause 13.4 *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 15.2 (*Costs*) and 15.4 (*Documents and evidence*) and paragraph (c) of Clause 16.2 (*Voluntary prepayment*) shall apply to prepayments under paragraph (a) of Clause 15.1 (*Security Shortfall*).

15.2 Costs

All costs in connection with the Facility Agent obtaining any valuation of the Ship referred to in Clause 13.4 (*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 15.1 (*Security Shortfall*) shall be borne by the Borrower.

15.3 Valuation of additional security

For the purpose of this Clause 15 (*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.

15.4 Documents and evidence

In connection with any additional security provided in accordance with this Clause 15 (*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.

15.5 Valuations binding

Any valuation under this Clause 15 (*Security Value Maintenance*) shall be binding and conclusive as regards the Borrower.

15.6 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 15 (*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.

16 CANCELLATION, PREPAYMENT AND MANDATORY PREPAYMENT

16.1 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 16.1 ([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 10.11 (*Transaction Costs*), Clause 33 (*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.

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 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 (*Breakage costs and SIMEST arrangement*) 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 16.2 (*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 *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 the [relevant](#) Lenders of the funding for the ~~Loan~~ [relevant Advance or Advances under a Tranche](#) and the rate of interest for the monies to be invested by ~~the~~ [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 6.1~~(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 (*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 (*Breakage costs and SIMEST arrangement*) 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 20.1 (*Indemnities regarding borrowing and repayment of Loan*) and 20.2 (*Breakage costs and SIMEST arrangements*).
- (c) If the Borrower has selected the Fixed Interest Rate pursuant to Clause 6.1~~(Fixed or Floating Interest Rate)~~, the SACE Agent shall give SIMEST thirty (30) days written notice of the intended date of prepayment.

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 (*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.

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 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 (a) of Clause 16.4 (*Mandatory*

~~prepayment – SACE Insurance Policy~~ the events described in paragraph (b) of Clause 16.4 (~~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 (~~Mandatory prepayment – SACE Insurance Policy~~).

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 (~~Dividends and dividend restriction~~) and Clause 12.28 (~~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 contract~~) 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 (~~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 (~~New capital raises or financing~~), if at any time after the 2021 Deferral Effective Date:
- (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; 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.

16.6 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 (Additional 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.

16-6 16.7 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 16.2 (*Voluntary prepayment*)).

16-7 16.8 Application of partial prepayment

Amounts prepaid shall be applied in accordance with paragraph (b) of Clause 19.1 (*Receipts*).

16-8 16.9 No reborrowing

Amounts prepaid may not be reborrowed.

17 INTEREST ON LATE PAYMENTS

17.1 Default rate of interest

Without prejudice to the provisions of Clause 18 (*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) 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) 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.

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.

18 EVENTS OF DEFAULT

18.1 Events of Default

An Event of Default occurs if any of the events or circumstances described in Clauses 18.2 (*Non-payment*) to 18.20 (*Material Adverse Change*) occur.

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.

18.3 Non-remediable breaches

The Borrower fails to comply with the provisions of Clauses 12.4 (Sanctions and illicit payments), 12.5 (Prohibited payments) 12.8 (Negative pledge), 12.9 (Disposals), 12.11 (Mergers) or 12.18 (Loans and guarantees by the Borrower).

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 (Non-payment) to 18.20 (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 (Code of Ethics and Mode)) 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 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.

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.

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(~~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 Covenant*) 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 (*Mandatory prepayment – sale and total loss*) or Clause 16.4 (*Mandatory prepayment – SACE insurance policy*) has occurred.

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.

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.

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.

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 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.

18.11 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.

18.12 Analogous events

Anything analogous to or having a substantially similar effect to any of the events specified in Clauses 18.7 (*Winding-up*) to 18.11 (*Legal process*) shall occur under the laws of any applicable jurisdiction.

18.13 Cessation of business

Any Obligor ceases to carry on all or a substantial part of its business.

18.14 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.

18.15 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.

18.16 Insurances

The Borrower fails to insure the Ship in the manner specified in Clause 141(*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.

18.17 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.

18.18 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.

18.19 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 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.

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 (*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.

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 and the financed second instalment of the Additional 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 Facility Agent and/or the Lenders are entitled to take under any Finance Document or any applicable law.

18.22 Termination of Commitments

On the service of a notice under paragraph (a) of Clause 18.21 ~~Actions following an Event of Default~~, the Commitments and all other obligations of each Lender to the Borrower under this Agreement shall terminate.

18.23 Acceleration of Loan

On the service of a notice under paragraph (b) of Clause 18.21 ~~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.

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 (*Voluntary prepayment*).

18.25 Multiple notices; action without notice

The Facility Agent may serve notices under paragraphs (a) and (b) of Clause 18.21 ~~Actions following an Event of Default~~ simultaneously or on different dates and it may take any action referred to in paragraph (c) of Clause 18.21 (~~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.

18.26 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 18.21 (~~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.

18.27 Lender's rights unimpaired

Nothing in this Clause 18 (~~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 severally*).

18.28 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.

19 APPLICATION OF SUMS RECEIVED

19.1 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:
 - (A) first, to interest payable pursuant to Clause 17 (~~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 (~~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 sub-paragraph (A) of sub-paragraph (ii) of paragraph (a) ~~(iii)(A)~~ to sub-paragraph (D) of sub-paragraph (ii) of paragraph (a) ~~(iii)(D)~~ above.
- (d) Paragraphs (a), (b) and (c) above will override any appropriation made by an Obligor.

20 INDEMNITIES

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 17 (*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 18 (*Events of Default*);
 - (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 20.1 (*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.

20.2 Breakage costs and SIMEST arrangements

Without limiting its generality, Clause 20.1 (*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~~ Contributions and/or any overdue amount (or an aggregate amount which includes its ~~Contribution~~ Contributions or any overdue amount);
- (b) if the Borrower has selected the Fixed Interest Rate in accordance with Clause 6.1(Fixed or Floating Interest Rate), the CIRR Break Costs; and
- (c) any other costs whatsoever or howsoever arising under or in respect of the Interest 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.

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,

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 (*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 (*Continuing representations and warranties*) and/or of Clause 12.27 (*Code of Ethics and Model*).

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 (*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 (*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.

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 (*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.

20.6 Sums deemed due to a Lender

For the purposes of this Clause 20 (*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.

20.7 SACE obligations

To the extent that this Clause 20 (*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.

21 ILLEGALITY, ETC.

21.1 Illegality and Sanctions

This Clause 21 (*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**").

**21.2 Notification of
illegality**

The Borrower shall promptly notify the Facility Agent of the occurrence of an event under paragraph (b) of Clause 21.1 ([Illegality and Sanctions](#)) above and the Facility Agent shall promptly notify the Lenders. The Facility Agent shall promptly notify the Borrower, the Obligor and the other Lenders of the notice under Clause paragraph (a) of [Clause 21.1 \(Illegality and Sanctions\)](#) which the Facility Agent receives from the Notifying Lender.

**21.3 Prepayment; termination of
Commitment**

- (a) Upon the Facility Agent notifying the Borrower of an event under sub-paragraph (i) of paragraph (a) of Clause 21.1 ([Illegality and Sanctions](#)) above, the Notifying Lender's Commitment will be immediately suspended and that Lender shall act in accordance with Clause 21.4 ([Mitigation](#)). To the extent no alternative arrangements have been agreed in accordance with Clause 21.4 ([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 21.1 (~~a)(iii)~~ ([Illegality and Sanctions](#)) above, the Notifying Lender shall act in accordance with Clause 21.4 ([Mitigation](#)). To the extent no alternative arrangements have been agreed in accordance with Clause 21.4 ([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 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 21.1 ([Illegality and Sanctions](#)) above, the Lenders shall act in accordance with Clause 21.4 ([Mitigation](#)). To the extent no alternative arrangements have been agreed in accordance with Clause 21.4 ([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 ([Notification of illegality](#)) above; or
 - (ii) the last day of the current Interest Period for the [Loan relevant Advance under a Tranche](#), 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.

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 21.1 (*Illegality and Sanctions*) or Clause 10 (*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.

22 SET-OFF

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.

22.2 Existing rights unaffected

No Creditor Party shall be obliged to exercise any of its rights under Clause 22.1 (*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).

22.3 Sums deemed due to a Lender

For the purposes of this Clause 22 (*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.

22.4 No Security Interest

This Clause 22 (*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.

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.

24 CHANGES TO THE LENDERS

24.1 Transfer by a Lender

Subject to Clause 24.2 (*Conditions of assignment or transfer*), Clause 24.5 (*No transfer without Transfer Certificate*), Clause 24.17 (*Assignment or transfer to SACB*) and Clause 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~~ 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 (*Role of the Facility Agent and the Joint Mandated Lead Arranger*) and 27 (*The Security Trustee*) respectively.

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 (*No transfer without Transfer Certificate*) and 24.17 (*Assignment or transfer to SAC*)) for an assignment or transfer by a 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.

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 Obligor, 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 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.

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 (*Transfer Certificate, delivery and notification*) on or before that date.

24.5 No transfer without Transfer Certificate

Except as provided in Clause 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 Facility Agent or the Security Trustee unless it is effected, evidenced or perfected by a Transfer Certificate.

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 **Contribution Contributions** as were held by the predecessor Lender.

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 **Contribution 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 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 (*Market Disruption*) and Clause 9 (*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 Maintenance of register of Lenders

During the Security Period the Facility Agent shall maintain a register in which it shall record the name, Commitment, ~~Contribution~~ 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 (*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.

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.

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.

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
- (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 24.1 (*Transfer by a Lender*).

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.

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.

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 (~~Taxes, Increased Costs, Costs and related Charge~~), 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 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.

24.16 Security over Lenders' rights

In addition to the other rights provided to Lenders under this Clause 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, 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 and 24.3, 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.

24.17 Assignment or transfer to SACE or as directed by SACE

- (a) Notwithstanding the above provisions of this Clause 24 ~~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.

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.

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 (*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.

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 (*Assignment or transfer to SACE or as directed by SACE*) or Clause 24.18 (*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.

24.21 Definition of Affiliate

For the purposes of this Clause 24 (*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.

25 CHANGES TO THE OBLIGORS

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.

26 ROLE OF THE FACILITY AGENT, THE JOINT MANDATED LEAD ARRANGERS, THE SACE AGENT AND THE REFERENCE BANKS

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.

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.

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.

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.

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.

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.

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:
 - (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.

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 Agreement.

26.9 Exclusion of liability

- (a) Without limiting paragraph (b) of Clause 26.9 (~~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 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 (*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.

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).

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 (*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.
- (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 (*Role of the Facility Agent and the Joint Mandated Lead Arrangers, the SACE Agent and the Reference Bank*). 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 (*Resignation of the Facility Agent*). In this event, the Facility Agent shall resign in accordance with paragraph (b) of Clause 26.11 (*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 (*Resignation of the Facility Agent*) shall be subject to compliance with all necessary "know your customer" requirements of the Lenders.

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.

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.

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;
- (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.

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.

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.

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 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 Agreement.

26.18 Resignation of the Facility Agent in relation to FATCA

The Facility Agent shall resign in accordance with Clause 26.11 *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 *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 *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 *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.

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.

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.
- (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.

26.21 Application of certain Clauses

The provisions of Clauses 26.2 (*Duties of the Facility Agent*), 26.4 (*No fiduciary duties*), 26.6 (*Rights and discretions of the Facility Agent*), 26.7 (*Lenders' and SACE's instruction*), 26.8 (*Responsibility for documentation*), 26.9 (*Exclusion of liability*), 26.10 (*Lenders' indemnity to the Facility Agent*), 26.11 (*Resignation of the Facility Agent*), 26.12 (*Confidentiality*), 26.13 (*Relationship with the Lenders*), 26.14 (*Credit appraisal by the Lender*), 26.16 (*Full freedom to enter into transactions*), 26.19 (*No duty to monitor*) and 27.23 (*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 (*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 Bank*) 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 Bank*) and Clause 41 (*Confidentiality of Funding Rates and Reference Bank Quotation*) subject to Clause 36.4 (*Third party rights*) and the provisions of the Third Parties Act.

27 THE SECURITY TRUSTEE

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 (*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 27.1 (*Trust*) and as excluded or limited by this Clause 27 (*The Security Trustee*) including in particular Clause 27.8 (*Instructions to Security Trustee and exercise of discretion*), Clause 27.13 (*Responsibility for documentation*), Clause 27.14 (*Exclusion of liability*), Clause 27.16 (*Lenders' indemnity to the Security Trustee*), Clause 27.23 (*Business with the Group*) and Clause 27.28 (*Full freedom to enter into transactions*).

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 (*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(*Parallel Debt (Covenant to pay the Security Trustee)*) to the extent permitted by applicable law, shall be applied in accordance with Clause 19 (*Application of sums received*).
- (f) This Clause 27.2 (*Parallel Debt (Covenant to pay the Security Trustee)*) shall apply, with any necessary modifications, to each Finance Document.

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.

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 (*The Security Trustee*), the "Recoveries") shall be transferred to the Facility Agent for application in accordance with Clause 19 (*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 (*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 (*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 Deductions from receipts

- (a) Before transferring any moneys to the Facility Agent under Clause 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 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.

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 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 (*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.

27.7 Investment of proceeds

Prior to the payment of the proceeds of the recoveries to the Facility Agent for application in accordance with Clause 27.4 (*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 (*Investment of proceeds*).

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 (*Security Trustee's discretions*) to Clause 27.28 (*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 (*Deductions from receipts*) and Clause 27.6 (*Prospective liabilities*).

**27.9 Security Trustee's
Actions**

Without prejudice to the provisions of Clause 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 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;
 - (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.

27.11 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.

27.12 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) be or be deemed to be an agent, trustee or fiduciary of any Obligor.

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.

27.14 Exclusion of liability

- (a) Without limiting Clause 27.15 (*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
 - (iv) without prejudice to the generality of 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.

**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 (*Third party rights*) and the provisions of the Third Party Act.

**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 Finance Documents (unless the relevant Security Trustee, Receiver or Delegate has been reimbursed by an Obligor pursuant to a Finance Document).

**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.

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 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.

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.

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.

27.21 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 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.

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.

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.

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.

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.

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.

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.

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.

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 (*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 (*The Security Trustee*), Clause 27.5 (*Deductions from receipts*), Clause 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 27.29 (*Resignation of the Security Trustee*) shall be subject to compliance with all necessary "know your customer" requirements of the Lenders.

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.

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 functions pursuant to that appointment shall, for the purposes of this Agreement, be treated as costs and expenses incurred by the Security Trustee.

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.

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.

29 SHARING AMONG THE CREDITOR PARTIES

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 (*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 19 (*Application of sums received*) and Clause 30 (*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 Recovering Creditor Party as its share of any payment to be made, in accordance with Clause 19 (*Application of sums received*) and Clause 30 (*Payment Mechanics*).

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 (*Application of sums received*) and Clause 30 (*Payment Mechanics*).

29.3 Recovering Creditor Party's rights

- (a) On a distribution by the Facility Agent under Clause 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 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 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 (*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.

29.5 Exceptions

- (a) This Clause 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
 - (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 (*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 PAYMENT MECHANICS

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.

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 (*Distributions to an Obligor*), Clause 30.4 (*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.

30.3 Distributions to an Obligor

The Facility Agent may in accordance with Clause 22 *(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 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.
- (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.

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.

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.

30.7 Currency of account

- (a) Subject to paragraphs (b) and (c) of Clause 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 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.

**30.9 Distributions under the Interest Make-up
Agreement**

Each payment received by the Facility Agent under the Interest 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).

**31 VARIATIONS AND
WAIVERS**

**31.1 Variations, waivers etc. by Majority
Lenders**

Subject to Clause 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 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.

31.2 Variations, waivers etc. requiring agreement of all Lenders

However, as regards the following, Clause 31.1 (*Variations, waivers etc. by Majority Lender*) 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 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 8.1 (*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 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 (*Changes to the Lenders*) or this Clause 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 Exclusion of other or implied variations

Except for a document which satisfies the requirements of Clauses 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.

32 NOTICES

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.

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 (<i>Lenders and Commitments</i>) or (as the case may require) in the relevant Transfer Certificate.
(c) to the Facility Agent:	CIB- COO Office-TMEF ITO Global Banking Operations Millénaire-4 Credit Transaction Management-Export Finance 35 9 Rue de la gare du Débarcadère Immeuble Océanie ACI: CPE02A1 75019 Paris 93500 Pantin Fax No. (33) 1 43 16 81 84 Attn: Attention: S. CASET-CARRICABURU/ B A. SOHIER SARANT Email: [*]; [*]
(d) to the SACE Agent:	12, place des Etats-Unis CS 70052 92547 Montrouge cedex Paris Fax No. (33) 1 41 89 19 34 Attn: Shipping Middle Office – Ms Clémentine Costil and Romy Roussel E-mail: [*]
(e) to the Security Trustee:	8 Canada Square London E14 5HQ Fax: +44 20 7991 4350 Email: [*] 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.

32.3 Effective date of notices

Subject to Clauses 32.4 (*Service outside business hours*) and 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 Service outside business hours

However, if under Clause 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 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 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.

32.6 Illegible notices

Clauses 32.3 (*Effective date of notices*) and 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 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 English language

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

32.9 Meaning of "notice"

In this Clause 32 (*Notices*), "notice" includes any demand, consent, authorisation, approval, instruction, waiver or other communication.

33 CONFIDENTIALITY

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 (*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 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-paragraph (i) of paragraph (b) or (ii) 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-paragraph (i) of paragraph (b) or sub-paragraph (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;
- (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 (*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), (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 paragraphs (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.

33.3 Entire agreement

This Clause 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 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 Agreement and Effective Date;
 - (v) Clause 37 (*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.

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.

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 (*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 (*Confidentiality*).

33.7 Continuing obligations

The obligations in this Clause 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.

33.8 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.

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:

- (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.

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).

34 LEGAL INDEPENDENCE AND UNCONDITIONAL OBLIGATIONS OF THE BORROWER

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.

35 SACE SUBROGATION AND REIMBURSEMENT

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.

35.2 Reimbursement

- (a) Without prejudice to Clause 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 ~~Default rate of interest~~ of this Agreement).

- (c) Each Obligor further agrees that its obligations under this Clause 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 35.2 (*Reimbursement*).
- (e) Each amount that is payable by the Obligors pursuant to Clause 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 Obligations
Absolute**

The obligations of the Obligors under this Clause 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 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 SUPPLEMENTAL

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.

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.

36.3 Counterparts

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

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 (*SACE Subrogation and Reimbursement*), Clause

17 (*Interest on Late Payments*), Clause 8 (*SACE Premium and Italian Authorities*), Clause 10.2 (*Tax gross-up*), Clause 10.3 (*Tax indemnity*), Clause 10.11 (*Transaction Costs*), Clause 20.1 (*Indemnities regarding borrowing and repayment of Loan*), Clause 20.2 (*Breakage costs and SIMEST arrangement*), Clause 20.3 (*Miscellaneous indemnities*), Clause 20.4 (*Currency indemnity*), Clause 22 (*Set-Off*), Clause 27 (*The Security Trustee*), Clause 10.6 (*VAT*), Clause 10.13 (*SACE obligations*), Clauses 33.8 (*Disclosure by SAC*), Clause 33.9 (*Disclosure by SIMEST*), 33.10 (*Press release*), Clause 38 (*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 (*SACE Subrogation and Reimbursement*), Clause 17 (*Interest on Late Payments*), Clause 8 (*SACE Premium and Italian Authorities*), Clause 10.2 (*Tax gross-up*), Clause 10.3 (*Tax indemnity*), Clause 20.4 (*Currency indemnity*), Clause 22 (*Set-Off*), Clause 27 (*The Security Trustee*), Clause 20.3 (*Miscellaneous indemnities*), Clause 10.6 (*VAT*), Clause 10.11 (*Transaction Costs*), Clause 20.1 (*Indemnities regarding borrowing and repayment of Loan*), Clauses 33.8 (*Disclosure by SAC*), Clause 33.9 (*Disclosure by SIMEST*), 33.10 (*Press release*), Clause 38 (*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).

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.

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.

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 (d) of Clause 12.2 (*Information*), Clause 12.4 (*Sanctions and Illicit Payments*), Clause 12.5 (*Prohibited Payments*), Clause 12.25 (*Compliance with laws etc.*) or provisions contained in Clause 20.3 (*Miscellaneous indemnities*) or Clause 21.1 (*Illegality and Sanctions*) and the representations and warranties given under paragraphs (u), (v), (y), (z) and (jj) of Clause 11.2 (*Continuing representations and warranties*) and paragraph (j) of Clause 11.3 (*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.

**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.

38 ENFORCEMENT

**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.

**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 ~~9 Cloak Lane~~ [107 Cheapside](#), London [UK](#), EC ~~4R-2 RU~~, [United Kingdom V 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.

**39 WAIVER OF
IMMUNITY**

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.

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.

40 EFFECTIVE DATE

This Agreement is effective from the 2021 Deferral Effective Date.

41 CONFIDENTIALITY OF FUNDING RATES AND REFERENCE BANK QUOTATIONS

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 (*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 (*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 (*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.

41.2 Related Obligations

- (a) The Facility Agent and each Obligor acknowledge that each Funding Rate (and, in the case of the Facility Agent, each Reference Bank Quotation) is or may be price sensitive information and that its use may be regulated or prohibited by applicable legislation including securities law relating to insider dealing and market abuse and the Facility Agent and each Obligor undertake not to use any Funding Rate or, in the case of the Facility Agent, any Reference Bank Quotation for any unlawful purpose.
- (b) The Facility Agent and each Obligor agree (to the extent permitted by law and regulation) to inform the relevant Lender or Reference Bank, as the case may be:
 - (i) of the circumstances of any disclosure made pursuant to sub-paragraph (ii) of paragraph (c) of Clause 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 41 (*Confidentiality of Funding Rates and Reference Bank Quotations*).

41.3 No Event of Default

No Event of Default will occur under Clause 18.4 (*Breach of other obligations*) by reason only of an Obligor's failure to comply with this Clause 41 (*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 III NEW BUILD, LLC)
in the presence of:)

TRANCHE A 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)
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:)

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)
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:)

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)
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

SIGNED by)
)
for and on behalf of)
HSBC CORPORATE TRUSTEE)
COMPANY (UK) LIMITED)
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 17 June 2021

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 and restated by an amendment and restatement agreement dated 17 February 2021)

in respect of the part financing of the 1,258 passenger cruise ship newbuilding

presently designated as Hull No. [*] at Fincantieri S.p.A

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Schedules

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Appendices

Form of Amended and Restated Facility Agreement (marked to indicate amendments) _Toc73430104	
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THIS AGREEMENT is made on 17 June 2021

PARTIES

- (1) **O CLASS PLUS ONE, LLC** 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.** 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 and SOCIÉTÉ GÉNÉRALE** 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**") pursuant to which the parties agreed to the temporary suspension 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, providing 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 and (iii) financing an amount to be applied towards the Tranche B Premium.

OPERATIVE PROVISIONS

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Agreement:

"**Addendum**" means an addendum to the Shipbuilding Contract, entered into in order to include the option of a new allowance of sixty-six million Euros (€66,000,000) for Upsize Allowance in the Shipbuilding Contract.

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

"**Effective Date**" means the date on which the Facility Agent notifies the Borrower, the other Creditor Parties, SACE and SIMEST 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.

"**June 2021 Fee Letters**" means any letter between the Facility Agent and any Obligor which sets out the fees payable in connection with the arrangements contemplated by this Agreement.

"**June 2021 Finance Documents**" means this Agreement and each June 2021 Fee Letter.

"**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.

"**Total Tranche B Commitments**" means the aggregate of the Tranche B Commitments (as set out in further detail in Part B of Schedule 1 (*The Tranche B Lender*)), being eighty one million, one hundred and thirty two thousand and fifty one United States Dollars and twenty eight Cents (\$81,132,051.28) as at the date of this Agreement.

"**Total Tranche C Commitments**" means the aggregate of the Tranche C Commitments (as set out in further detail in Part C of Schedule 1 (*The Tranche C Lender*)), being nineteen million, eight thousand three hundred and twenty five United States Dollars and sixteen Cents (\$19,008,325.16) as at the date of this Agreement.

"**Tranche B Premium** " means an additional premium to be paid by the Borrower to SACE through the SACE Agent regarding the financing of the Upsize Allowance and, with effect from the Effective Date, as further defined in paragraph (a) of clause 8.6 (*Tranche B Premium*) of the Amended and Restated Facility Agreement.

"**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 (as amended by the Addendum); and
- (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 (as amended by the Addendum)) and the Builder, pursuant to article 9.2(ii)(b) of the Shipbuilding Contract (as amended by the Addendum).

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 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 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, SACE and SIMEST 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, 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, 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 Confirmation of Guarantee

With effect on and from the Effective Date 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 Obligor 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 original terms and the amendments to the Finance Documents as amended, restated and/or supplemented by this Agreement.

4.3 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 Obligor under the Finance Documents as amended, restated and/or supplemented by this Agreement;
- (b) the obligations of the relevant Obligor 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.

4.4 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) the Facility Agreement and the applicable provisions of this Agreement will be read and construed as one document; and
-

- (c) 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**

- 6.1 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.

- 6.2 The Borrower shall pay to each of (i) the Facility Agent for its own account and (ii) the Facility Agent (for the account of each Lender) such fees in the amount and at the times specified in the relevant June 2021 Fee Letters.

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 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) /s/ Daniel S. Farkas
duly authorised) Daniel S. Farkas
for and on behalf of)
O CLASS PLUS ONE, LLC)

GUARANTOR

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

SHAREHOLDER

SIGNED by) /s/ Daniel S. Farkas
for and on behalf of) Daniel S. Farkas
OCEANIA CRUISES S. DE R.L.)
as its duly appointed attorney-in-fact)
in the presence of:) /s/ Jared G. Silberhorn
) Jared G. Silberhorn
) 7665 Corporate Center Drive
) Miami, FL 33126 USA
)

HOLDING

SIGNED by) /s/ Daniel S. Farkas
for and on behalf of) Daniel S. Farkas
NORWEGIAN CRUISE LINE)
HOLDINGS LTD.)
as its duly appointed attorney-in-fact)
in the presence of:) /s/ Jared G. Silberhorn
) Jared G. Silberhorn
) 7665 Corporate Center Drive
) Miami, FL 33126 USA
)

LENDERS

SIGNED by) /s/ Cosmo Fisher
duly authorised) Cosmo Fisher
for and on behalf of) Attorney-in-Fact
CRÉDIT AGRICOLE CORPORATE)
AND INVESTMENT BANK)

SIGNED by) /s/ Bruno Cloquet
duly authorised) Bruno Cloquet
for and on behalf of) Global Head of Exporters and ECAs Origination
BNP PARIBAS FORTIS S.A./N.V.)
) /s/ Michel Froidebise
) Michel Froidebise
) Head of Export Finance Nordic Origination

SIGNED by) /s/ Varsha Sharan
duly authorised) Varsha Sharan
for and on behalf of) Director
HSBC BANK
PLC)

SIGNED by) /s/ Maria Gazi
duly authorised) Maria Gazi
for and on behalf of) Attorney-in-Fact
KFW IPEX-BANK GMBH)

SIGNED by) /s/ Enrico Semprebene
duly authorised) Enrico Semprebene
for and on behalf of)
CASSA DEPOSITI E PRESTITI S.P.A.)

SIGNED by) /s/ Juana González Damen
duly authorised) Juana González Damen
for and on behalf of)
BANCO SANTANDER S.A.)
) /s/ Natalia San Miguel Aguado
) Natalia San Miguel Aguado

SIGNED by) /s/ Isabella Roberts
duly authorised) Isabella Roberts
for and on behalf of) Attorney-in-Fact
SOCIETE GENERALE)

MANDATED LEAD ARRANGERS

SIGNED by) /s/ Cosmo Fisher
duly authorised) Cosmo Fisher
for and on behalf of) Attorney-in-Fact
CRÉDIT AGRICOLE CORPORATE
AND INVESTMENT BANK)

SIGNED by) /s/ Bruno Cloquet
duly authorised) Bruno Cloquet
for and on behalf of) Global Head of Exporters and ECAs Origination
BNP PARIBAS FORTIS S.A./N.V.)
) /s/ Michel Froidebise
) Michel Froidebise
) Head of Export Finance Nordic Origination

SIGNED by) /s/ Varsha Sharan
duly authorised) Varsha Sharan
for and on behalf of) Director
HSBC BANK)
PLC)

SIGNED by) /s/ Maria Gazi
duly authorised) Maria Gazi
for and on behalf of) Attorney-in-Fact
KFW IPEX-BANK GMBH)

SIGNED by) /s/ Enrico Semprebene
duly authorised) Enrico Semprebene
for and on behalf of)
CASSA DEPOSITI E PRESTITI S.P.A.)

SIGNED by) /s/ Juana González Damen
duly authorised) Juana González Damen
for and on behalf of)
BANCO SANTANDER S.A.) /s/ Natalia San Miguel Aguado
) Natalia San Miguel Aguado

SIGNED by) /s/ Isabella Roberts
duly authorised) Isabella Roberts
for and on behalf of) Attorney-in-Fact
SOCIETE GENERALE)

FACILITY AGENT

SIGNED by) /s/ Philippe Laude
duly authorised) Philippe Laude
for and on behalf of)
BNP PARIBAS) /s/ Georges Curey
) Georges Curey
) Head of Structured Export Finance

SACE AGENT

SIGNED by)	/s/ Cosmo Fisher
duly authorised)	Cosmo Fisher
for and on behalf of)	Attorney-in-Fact
CRÉDIT AGRICOLE CORPORATE)	
AND INVESTMENT BANK)	

SECURITY TRUSTEE

SIGNED by)	/s/ Daisuke Takekawa
duly authorised)	Daisuke Takekawa
for and on behalf of)	Authorised Signatory
HSBC CORPORATE TRUSTEE)	
COMPANY (UK) LIMITED)	

APPENDIX

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 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 ~~_____February~~ _____ 2021)

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. [*] at Fincantieri S.p.A.

WATSON FARLEY
&
WILLIAMS

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THIS AGREEMENT originally made on 19 December 2018 (as amended and restated by an amendment and restatement agreement dated ~~February 17~~ [February 17 February 2021 and as further amended and restated by an amendment and restatement dated _____](#) 2021)

PARTIES

- (1) **O CLASS PLUS ONE, LLC** 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 PLCCASSA DEPOSITI E PRESTITI S.P.A.**, **SOCIÉTÉ GÉNÉRALE** and **BANCO SANTANDER** as joint mandated lead arrangers (the "**Joint Mandated Lead Arrangers**")
- (4) **CRÉDIT AGRICOLE CORPORATE AND INVESTMENT BANK** 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 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 [*] 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~~ [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 [*], being [*], 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 [*], being [*], 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 [*], being [*], on the later of keel laying in dry-dock and the date falling 24 months prior to the Intended Delivery Date;

- (iv) as to [*], being [*], on the later of launching and the date falling 12 months prior to the Intended Delivery Date; and
- (v) as to [*], being [*], 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 "**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](#)), 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 offered by SACE (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~~ 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 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 an amendment and restatement agreement dated _____ 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) This Agreement sets out the terms and conditions of the ~~Original~~ Facility Agreement as amended and restated by the June 2021 Amendment and Restatement Agreement.

OPERATIVE PROVISIONS

1 INTERPRETATION

1.1 Definitions

Subject to Clause 1.5 (*General Interpretation*), in this Agreement:

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

"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.

"Additional SACE Premium" has the meaning given to such term in Clause 8.5 (*Additional 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 (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 (Additional 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.

"**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, 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.

"**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 as to [*] 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 New York, Milan, Frankfurt, Brussels, Madrid, Paris, Rome and London; and

"**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~~ 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 close-out of any hedging arrangement entered into by SIMEST in relation to this Agreement, (iii) default interest and penalties (*naggiorazioni*) 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.

"**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).

"**Commitment**" means ~~in relation to a Lender, the amount equal to the percentage of the Maximum Loan Amount set opposite its name in Schedule 1 (Lenders and Commitments), or, as the case may require, the amount specified in the relevant Transfer Certificate, in each case 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):~~ 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, rollup 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:

- (a) is or becomes public information other than as a direct or indirect result of any breach by that Creditor Party of Clause 33 (*Confidentiality*); or
- (b) is identified in writing at the time of delivery as non-confidential by any member of the Group or any of its advisers; or
- (c) is known by that Creditor Party before the date the information is disclosed to it in accordance with paragraphs (a) or (b) above or is lawfully obtained by that Creditor Party after that date, from a source which is, as far as that Creditor Party is aware, unconnected with the Group and which, in either case, as far as that Creditor Party is aware, has not been obtained in breach of, and is not otherwise subject to, any obligation of confidentiality; or
- (d) 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.

"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.

"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.

"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

"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 ~~the Loan~~ 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 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~~ 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 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 (*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 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 Commerce et des Sociétés* of Paris or any successor of it appointed under Clause 26 (*Role of the Facility Agent and the Joint Mandated Lead Arrangers* [the SACE Agent and the Reference Banks](#)).

"**Facility Agreement**" ~~means the Original Facility Agreement as amended and restated by the 2021 Amendment and Restatement Agreement~~ [has the meaning given to this term in Recital \(H\)](#)

"**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.

"**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).

"**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 (*Fees*);
- (b) the Facility Agent and the Borrower setting out the fees referred to in paragraph (b) of Clause 9 (*Fees*);
- (c) the SACE Agent and the Borrower setting out the fees referred to in paragraph (d) of Clause 9 (*Fees*);
- (d) the Security Trustee and the Borrower setting out the fees referred to in paragraph (e) of Clause 9 (*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) the 2021 Deferral Fee Letters;
- (~~a~~ b) t h e February 2021 Amendment and Restatement Agreement;
- (c) the June 2021 Amendment and Restatement Agreement;
- (~~b~~ d) t h e June 2021 ~~Deferral~~Fee Letters;
- (~~e~~ e) this Agreement;
- (~~d~~ f) any Fee Letter;
- (~~e~~ g) the Guarantee;
- (~~f~~ h) the General Assignment;
- (~~e~~ i) the Mortgage;

- (h j) the Pledge Agreement;
- (i k) the Post-Delivery Assignment;
- (j l) any Subordinated Debt Security;
- (k m) the Approved Manager's Undertaking;
- (n) any Transfer Certificate;
- (m o) any Compliance Certificate;
- (p q) any Drawdown Notice;
- (e 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
- (p 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 8.1 (*SACE Premium*).

"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) the applicable Margin;
and
- (b) LIBOR for the relevant
period.

"Floating Rate Margin" means one point ~~forty five~~ 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 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 (*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.

"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](#) 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 HM11, Bermuda.

"Holding" means 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.

"**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 [*] (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 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*) ~~to be~~ 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 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 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 Agreement.

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

"**Interpolated Screen Rate**" means, in relation to the Loan or any part of the Loan, the rate which results from interpolating on a linear basis between:

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

each as of the Specified Time for Dollars.

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

"**ISPS Code**" means the International Ship and Port Facility Security (ISPS) Code 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 (J).

"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 ~~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.~~ Tranche A Lender, a Tranche B Lender or a Tranche C Lender.

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

- (a) the applicable Screen Rates of the Specified Time for Dollars and for a period equal in length to the Interest Period of the Loan or that part of the Loan; or
- (b) as otherwise determined pursuant to Clause 6.6 (*Unavailability of Screen Rate*).

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).

"**Loan**" means the aggregate principal amount outstanding for the time being ~~outstanding under this Agreement 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 Loan an Advance under any Tranche~~ has been made, Lenders whose Commitments total [*] per cent. of the Total Commitments; and
- (b) after ~~the Loan 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.

"**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.

"**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;
- (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 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 8.15(ACE 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).~~

"**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).

"**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 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).

"**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 8.1SACE 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).

"**Original Principles**" has the meaning given in Recital (F).

"**Overnight LIBOR**" means, in relation to the Loan or any part of the 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 (*Unavailability of Screen Rate*),

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(*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 12.14 (*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) below; and
 - (ii) any of the Security Interests referred to in sub-paragraphs (B), (C), (E), (H) and (I) of sub-paragraph (ii) of paragraph (b) 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 (C) or (E) of sub-paragraph (ii) of paragraph (b) or incurred by the Borrower in the case of sub-paragraphs (B), (H) or (I) of sub-paragraph (ii) of paragraph (b) below; and
- (b) in the case of the Guarantor:
- (i) any of the Security Interests referred to in paragraphs (A), (D), (F) and (G) of sub-paragraph (ii) of paragraph (b) 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, 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[*] 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[*] 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 12.14 (*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 [*] 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 ~~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 (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
- (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).

"**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, the rate at which the relevant Reference Bank could fund itself in the relevant currency 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.

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

- (a) its jurisdiction of incorporation, or formation, as the case may be;
- (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 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 (*Non-applicable provisions between the Obligors, German Lenders and any Creditor Party subject to the EU Blocking Regulation*).

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

"**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 *Role of the Facility Agent and the Joint Mandated Lead Arrangers, [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 [8.1](#) (*SACE Premium ~~and Italian Authorities~~, in addition*

~~to the Additional SACE Premium (provided, for the avoidance of doubt, that the Additional SACE Premium shall not be financed).~~

"**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):

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

(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

- (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.

" **Second Instalment**" means the second instalment of the SACE Premium as more particularly described in paragraph (b) of Clause 8.1 (*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
- (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 19 (*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
- (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 (*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 (*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 15 (*Security Value Maintenance*).

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

"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.[*] (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 (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.

"**SIMEST Margin Contribution**" means the margin contribution approved and granted by SIMEST to the Lenders under the Interest Make-up Agreement as communicated by the SACE Agent to the Creditor Parties and the Borrower following the date of the Original Facility Agreement as soon as the SACE Agent is made aware of it.

"**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 time;
and
- (b) in relation to a Reference Bank Rate calculated by reference to the available quotations in accordance with Clause 6.7 (*Calculation of Reference Bank Rate*), 11.30 am Brussels time on the Quotation Day.

"**Structuring Fee**" has the meaning given in paragraph (a) of Clause 9 (*Fees*).

"**Subordinated Debt Security**" has the meaning given in ~~sub-paragraph (ii) of~~ paragraph (b) (ii) of Clause 12.14 (*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).

"**Total Commitments**" means the aggregate of the Total Tranche A Commitments, the Total Tranche B Commitments and the Total Tranche C Commitments, being seven hundred and ninety million, eight hundred fifty eight thousand, four hundred forty six United States Dollars and ninety eight Cents (\$790,858,446.98) 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:
 - (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 hundred and ninety million seven hundred and eighteen thousand and seventy Dollars and fifty-four cents (\$690,718,070.54) as at the date of this Agreement.

"**Total Tranche B Commitments**" means the aggregate of the Tranche B Commitments, being eighty one million, one hundred and thirty two thousand and fifty one United States Dollars and twenty eight Cents (\$81,132,051.28) as at the date of this Agreement.

"**Total Tranche C Commitments**" means the aggregate of the Tranche C Commitments, being nineteen million, eight thousand three hundred and twenty five United States Dollars and sixteen Cents (\$19,008,325.16) 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.

"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 (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.

"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 (Additional 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 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](#)
- (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.

"**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:

"**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 _____ ~~February~~ _____ 2021.

"**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;

"**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 (*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.

"**obligatory insurances**" means all insurances effected, or which the Borrower is obliged to effect, under Clause 14 (*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 11 (*Representations and Warranties*), Clause 12 (*General Undertakings*), Clause 20 (*Indemnities*), Clause 21 (*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 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 ~~the Maximum Loan Amount~~, in aggregate, the Total Tranche A Commitments intended to be applied as follows:

- (a 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;
- (b 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 8.1 (*SACE Premium*); and
- (c 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 8.1 (*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:
- (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, of the amount of the Tranche B Premium payable by the Borrower to SACE in accordance with paragraph (a) of Clause 8.6 (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 (Additional Premium).

2.2 Lenders' participations in Loan

Subject to the other provisions of this Agreement, ~~each Lender shall participate in the Loan;~~

- (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 ~~the Loan only to pay for:~~

- (a) an Advance under Tranche A only to pay for:
 - (~~a~~ i) goods and services of Italian origin incorporated in the design, construction or delivery of the Ship;
 - (~~b~~ 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;
 - (~~c~~ iii) all or part of eighty per cent. (80%) of the Final Contract Price;

- (d 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 8.1 (*SACE Premium*); and
- (e v) the Second Instalment of the SACE Premium payable in accordance with paragraph (b) of Clause 8.1 (*SACE Premium*);

(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) 100% of the Tranche B Premium, payable in accordance with the provisions of paragraph (a) of Clause 8.6 (*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 (a)(ii) of Clause 8.5 (*Additional 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
- (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 ~~the Loan~~ [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 ~~of, 9 Cloak Lane~~ currently of 107 Cheapside London UK, EC 4R, United Kingdom 2V 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;
- (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 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 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:

- (a) notification of the Intended Delivery Date;
- (b) a notice from the Borrower as described in paragraph (a) of Clause 8.4 ~~Refund~~ and in paragraph (f) of Clause 8.6 (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~~ 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 ~~clause~~ 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 [*] 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 ~~the~~ 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:

- (a i) if applicable, a duly executed original of the Subordinated Debt Security;
- (b 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;
- (c iii) evidence of payment to and receipt by the Builder of:
 - (i A) the four (4) pre-delivery instalments of the Final Contract Price; and
 - (ii B) any other part of the Final Contract Price as at the Delivery Date not being financed hereunder;
- (d 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;
- (e v) evidence of payment of all amounts which are due and payable hereunder by the Borrower on or prior to the Delivery Date;
- (f vi) a certificate from the Borrower, signed by an authorised representative of the Borrower, confirming that:
 - (i A) the representations and warranties contained in Clause 11 (*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
 - (ii B) no mandatory prepayment event pursuant to Clause 16 (*Cancellation, Prepayment and Mandatory Prepayment*) is continuing or would result from the Loan;
- (g 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; ~~and~~

- (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 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),
- ~~(h)~~ provided always that, pursuant to paragraphs (a), (b) and (c) above, the obligations of the relevant Lenders to make ~~the Loan~~ 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 ~~the advance of the Loan~~ 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 11.3 (*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 (*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 3.11 (*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 ~~of 9 Cloak Lane~~ currently of 107 Cheapside, London UK, EC 4R, United Kingdom 2V 6DN (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 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 (*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](#) ~~and SACE~~, [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 ~~loan~~ [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 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:
 - (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 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, the Facility Agent and the SACE Agent to ensure compliance with the terms of the SACE Insurance Policy or the Interest 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.

- (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 ~~the Loan 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. ~~For the avoidance of doubt, the amount of the Loan shall not exceed the Maximum Loan Amount.~~
- (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 (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 (Additional Premium).
- (d) The Borrower hereby instructs the Tranche A Lenders in accordance with this Clause 4.1 ~~Borrower's irrevocable payment instructions~~):
 - (~~a~~)i) to pay to the Builder, up to the Eligible Amount, all or part of eighty per cent. (80%) of the Final Contract Price;

- (~~b~~ 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 8.1 (*SACE Premium*); and
- (~~c~~ iii) to pay to the Facility 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 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 (*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 (*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 (*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 (*Additional Premium*).
- (g) Payment to the Builder of the ~~amount~~ amounts drawn under paragraph (~~a~~ d)(i) of 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 (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 Contractor to the Borrower's account to be specified by the Borrower 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*).

- (i) Save as contemplated in Clause ~~4.2~~ 4.3 (*Modification of payment terms*) below, the payment instruction contained in this Clause 4.1 (*Borrower's irrevocable payment instructions*) is irrevocable.

~~4.1~~ 4.2 Conversion Rate for Loan

The Dollar amount to be drawn down under ~~paragraph (a)~~ paragraphs (a), (b) and (c) 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*).

~~4.2~~ 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 ~~paragraph (a)~~ paragraphs (d)(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 (~~b~~ d)(ii), (d)(iii), (e)(ii) and (~~e~~ 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 (~~a~~ 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.

~~4.3~~ 4.4 Availability and conditions

- (a) Drawing may not be made under this Agreement (and ~~the Loan an Advance~~ shall not be available) after the expiry of the Availability Period.

- (b) ~~There will be only one drawing~~ 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 (Additional Premium) and (ii) the Total Tranche C Commitments.
- (d) The aggregate amount of:
 - (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
- (c iv) ~~the aggregate amount of the Loan Advances under all Tranches~~ cannot exceed the ~~Maximum Loan Amount~~ Total Commitments.

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

4.5.4.6 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~~.

4.6.4.7 Disbursement of ~~Loan 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 ~~4.5 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 ~~(a 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 ~~(b 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](#)
- (e.g) in the case of an amount referred to in paragraph (e f) of Clause 4.1 (Borrower's irrevocable payment instructions) to the account of SACE which the SACE Agent shall specify.

4.7.4.8 Disbursement of ~~Loan~~ Advance to third party

The payment by the Facility Agent under Clause ~~4.6~~ 4.7 (Disbursement of ~~Loan~~ Advance) shall constitute the making of the ~~Loan~~ 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 ~~Contribution~~ 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 INTEREST

6.1 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.

6.2 Fixed Interest Rate

If the Borrower has specified a Fixed Interest Rate pursuant to Clause 6.1~~(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.

6.3 Floating Interest Rate

If:

- (a) the Borrower has specified a Floating Interest Rate pursuant to Clause 6.1~~(Fixed or Floating Interest Rate)~~; or
- (b) the Borrower has specified a Fixed Interest Rate pursuant to Clause 6.1~~(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 (*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).

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.

6.5 Notification of Interest Periods and Floating Interest Rate

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.

6.6 Unavailability of Screen Rate

- (a) *Interpolated Screen Rate* If no Screen Rate is available for LIBOR for the Interest Period of the Loan or any part of the Loan, the applicable LIBOR shall be the Interpolated Screen Rate for a period equal in length to the Interest Period of the Loan or that part of the Loan.
- (b) *Reference Bank Rate* If no Screen Rate is available for LIBOR for:
 - (i) Dollars;

- (ii) the Interest Period of the Loan or any part of the 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 Loan.
- (c) *Cost of funds*: If paragraph (b) above applies but no Reference Bank Rate is available for Dollars or the relevant Interest Period there shall be no LIBOR for the Loan or that part of the Loan (as applicable) and Clause 6.9 (*Cost of funds*) shall apply to the Loan or that part of the Loan for that Interest Period.

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.

6.8 Market disruption

If before close of business in London on the Quotation Day for the relevant Interest Period the Facility Agent receives notification from a Lender or Lenders (whose participations in the Loan or the relevant part of the Loan 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.

6.9 Costs of funds

- (a) If this Clause 6.9 (*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 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 participation in the Loan or that part of the Loan from whatever source it may reasonably select.
- (b) If this Clause 6.9 (*Cost of funds*) applies and the Facility Agent or the Borrower so ~~requires~~ require, the Facility Agent and the Borrower shall enter into negotiations (for a period of not more than 30 days) with a view to agreeing a substitute basis for determining the rate of interest or (as the case may be) an alternative basis for funding.
- (c) Subject to Clause 6.10 (*Replacement of Screen Rate*), any substitute or alternative basis agreed pursuant to paragraph (b) above shall, with the prior consent of all the Lenders and the Borrower, be binding on all Parties.

- (d) If paragraph (e) below does not apply and any rate notified to the Facility Agent under sub-paragraph (ii) of paragraph (a) above is less than zero, the relevant rate shall be deemed to be zero.
- (e) If this Clause 6.9 (*Cost of funds*) applies pursuant to Clause 6.8 (*Market disruption*) and:
- (i) a Lender's Funding Rate is less than LIBOR;
or
 - (ii) a Lender does not supply a quotation by the time specified in sub-paragraph (ii) of paragraph (a) above,
- the cost to that Lender of funding its participation in the Loan or the relevant part of the Loan for that Interest Period shall be deemed, for the purposes of paragraph (a) above, to be LIBOR.
- (f) If this Clause 6.9 (*Cost of funds*) applies but any Lender does not supply a quotation by the time specified in sub-paragraph (ii) of paragraph (a) above, the rate of interest shall be calculated on the basis of the quotations of the remaining Lenders.

6.10 Replacement of Screen Rate

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

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

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

- (b) If, as at 30 September ~~2021~~ 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 ~~the Majority~~ 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 ~~2021~~ 2022, unless the Borrower and the Facility Agent (acting on the instructions of ~~the Majority~~ 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.
- (c) If an amendment is required as contemplated in this Clause 6.10 (*Replacement of Screen Rate*), 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.

6.11 Notice of prepayment

If no agreement is reached with the Borrower under Clause 6.10 (*Replacement of Screen Rate*), 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 6.1 (*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.

6.12 Prepayment; termination of Commitments

A notice under Clause 6.11 (*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;
- (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 (*Breakage costs and SIMEST arrangement*)) 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 6.1 (*Fixed or Floating Interest Rate*)).

6.13 Application of prepayment

The provisions of Clause 16 (*Cancellation, Prepayment and Mandatory Prepayment*) shall apply in relation to the prepayment.

6.14 Certain Circumstances

Notwithstanding anything to the contrary in this Agreement:

- (a) in the event of any circumstances falling within Clause 6.8 (*Market Disruption*) which might affect the advance of ~~the Loan~~ [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 (*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 (*Unavailability of Screen Rate*), 6.7 (*Calculation of Reference Bank Rate*), 6.8 (*Market Disruption*), 6.9 (*Cost of funds*) and 6.10 (*Replacement of Screen Rate*) 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.
- (c) in the event of any Relevant Circumstances falling within Clause 6.8 (*Market disruption*) (the "**Availability-Related Relevant Circumstances**") occurring before the Loan is made, 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.

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 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 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 (*Floating Interest Rate*) shall apply.

7 INTEREST PERIODS

7.1 Commencement of Interest Periods

The first Interest Period applicable to ~~the Loan~~ [an Advance](#) shall commence on the Drawdown Date and each subsequent Interest Period shall commence on the expiry of the preceding Interest Period.

7.2 Duration of Interest Periods

Subject to Clause 7.3 (*Duration of Interest Periods for Repayment Instalments*), each Interest Period shall be 6 months.

7.3 Duration of Interest Periods for Repayment Instalments

Any Interest Period that includes a Repayment Date shall expire on such Repayment Date.

8 SACE PREMIUM AND ITALIAN AUTHORITIES

8.1 SACE Premium

The estimated SACE Premium for an amount equal to[*] (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[*] (\$[*] (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[*] (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.

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 (*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 (e [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 (e [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 (b [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.

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 Agreement.

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 [Loan 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 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 [Loan 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.

- (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 [*] 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 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.

8.5 Additional Premium

(a) The Borrower shall pay to SACE (through the SACE Agent) an additional SACE premium in relation to the changes made to the Facility Agreement following the 2021 Deferral Effective Date (the "Additional SACE Premium"). The Additional SACE Premium is payable, in accordance with the SACE Insurance Policy, ~~payable~~ 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 ~~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 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 Additional SACE Premium is not financed.~~

(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 (Additional 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.

~~(d) 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.~~

SACE Premium refund = Loan amount outstanding at the time of the Leonardo Six Intended Delivery Date \times %
 $\times ((TTMi + 0.5)/2)/6.25 \times (\text{Revised SACE Premium Rate} - p\%),$

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 (Additional 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 (Mandatory Prepayment in case of refund by SACE to the Borrower of the second instalment of the Additional SACE Premium).

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 (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 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 (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 (c) 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 paragraph (c) and (e) 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.

9 FEES

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 paragraph (a) of Clause 16.1 (Cancellation)) or written termination notice (as described in paragraph (b) of Clause 16.1 (Cancellation)) (as applicable) sent by the Borrower, whichever is the earliest, computed at the rate of:

- (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 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 16.1 [\(Cancellation\)](#)) or written termination notice (as described in paragraph (b) of Clause 16.1 [\(Cancellation\)](#)) (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 hundred and ninety million, eight hundred fifty eight thousand, four hundred forty six United States Dollars and ninety eight Cents \(\\$790,858,446.98\)](#);

- (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.

10 TAXES, INCREASED COSTS, COSTS AND RELATED CHARGES

10.1 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 10.2 (*Tax gross-up*) or a payment under Clause 10.3 (*Tax indemnity*).

- (b) Unless a contrary indication appears, in this Clause 10 ~~Taxes, Increased Costs, Costs and related Charge~~ reference to "**determines**" or "**determined**" means a determination made in the absolute discretion of the person making the determination.

10.2 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 10.7 (*Lender Status*) at least 30 Business Days prior to such payment date) complied with its obligations under Clause 10.7 (*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.

10.3 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 10.2 (*Tax gross-up*) or would have been compensated for by an increased payment under Clause 10.2 (~~*Tax gross-up*~~) but was not so compensated solely because an exclusion in paragraph (d) of Clause 10.2 (~~*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 10.3 (~~*tax indemnity*~~), notify the Facility Agent.

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.

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.

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 (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.

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 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

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.

**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.

**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;

- (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 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 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 (*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.

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 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 10.10 (*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 10.3 (*Tax indemnity*) (or would have been compensated for under Clause 10.3 (*Tax indemnity*) but was not compensated solely because any of the exclusions in paragraph (b) of Clause 10.3 (*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 10.10 (*Increased Costs*), a reference to a "Tax Deduction" has the same meaning given to the term in Clause 10.1 (*Definitions*).

(c) A Lender affected by any provision of this Clause 10.10 (*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 10.10 (*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 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.

10.11 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.

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.

10.13 SACE obligations

To the extent that this Clause 10 (~~Taxes, Increased Costs, Costs and related Charge~~) 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.

11 REPRESENTATIONS AND WARRANTIES

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 (*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 (*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 (~~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.

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;

- (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 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) it is disregarded as an entity separate from its owner for U.S. federal Tax purposes;
- (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) 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) 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;

- (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 11.1 (*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, 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) 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) 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 12.23 (*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) 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) 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:
 - (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

- (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 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) 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) 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) 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) 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) 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 (*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 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) 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 10.7 (*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 11.2 (*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 the Borrower complies 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) the Borrower has read and acknowledged the principles provided under the Code of Ethics and Model;
- (mm) the Borrower has implemented adequate internal procedures aimed at preventing commission of crimes provided under Legislative Decree 231/01;
- (nn) no litigation is pending against the Borrower in relation to administrative liability provided under Legislative Decree 231/01;

- (oo) 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) neither the Borrower nor any of its assets are subject to any precautionary measure provided under Legislative Decree 231/01.

11.3 Representations on the Delivery

Date

The Borrower further represents and warrants to each of the Secured Parties at 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 (*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

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 (*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.

**12 GENERAL
UNDERTAKINGS**

12.1 General

The Borrower undertakes with each Secured Party to comply with the following undertakings during the Security Period:

12.2 Information

The Borrower will provide to the Facility 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 2018 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 paragraph (a) 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 Facility 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 (\$20,000,000) 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 12.2 (*information*) shall be prepared in accordance with GAAP and shall fairly represent the financial condition of the relevant company.

**12.3 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.

12.4 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.

12.5 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.

12.6 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.

12.7 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 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.

12.8 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 (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.

12.9 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 16.3 (*Mandatory prepayment – Sale and Total Loss*) and except for charters and other arrangements complying with Clause 13.1 (*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.

12.10 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.

12.11 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.

12.12 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.

12.13 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.

12.14 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
 - (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 (*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.

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.

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;
- (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.

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,

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.

12.18 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 12.15 (*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.

12.19 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.

12.20 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 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.

12.21 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 ~~paragraph (a)~~ [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.

12.22 "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 Facility Agent or any Lender (or, in the case of sub-paragraph (iii) of paragraph (a) of Clause 12.22 (*"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 12.22 ("*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.

12.23 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 (d) and (e) above.

12.24 FOREX Contracts

The Borrower shall:

- (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.

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.

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 (*Continuing representations and warranties*) and Clause 18.6 (*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, 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 (*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 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.

12.27 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.

12.28 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);
 - (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.

- (b) The restrictions in paragraph (a) of Clause 12.28 (*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: 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 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 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 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;
 - (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 Clause 12.28 (*New capital raises or financing*) does not exceed [*] (\$[*]) at any time; or

(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
- (xii) without prejudice to Clauses 12.11 (*Mergers*) and 12.15 (*Investments*) and clause 11.13 (*No merger etc.*) of the Guarantee, the issuance of share capital by any Group member to another Group member.

13 SHIP UNDERTAKINGS

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 (*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 (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 [*]; 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 [*] **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;

- (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.

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.

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.

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 (*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 (*Valuation of the Ship*), the Facility Agent shall be entitled to procure a valuation of the Ship on the same basis.

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.

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. 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 (*Valuation of the Ship*).

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[*], such inspections shall be limited to one a year and shall all be at reasonable times.

**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 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.

**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.

**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.

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.

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 [*];
- (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.

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 [*] 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 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 (*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 (*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 (*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 [*] 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.

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.

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 [*] 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)).

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.

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.

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.

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.

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.

13.21 Poseidon Principles

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 (*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.

14 INSURANCE UNDERTAKINGS

14.1 General

The undertakings in this Clause 14 (*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.

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 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 (*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);
- (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.

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).

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 (*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;
- (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.

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 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.

14.6 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.

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 Facility Agent.

14.8 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.

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.

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.

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.

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.

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.

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.

15 SECURITY VALUE MAINTENANCE

15.1 Security Shortfall

If, upon receipt of a valuation of the Ship in accordance with Clause 13.4 (*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 15.2 (*Costs*) and 15.4 (*Documents and evidence*) and paragraph (c) of Clause 16.2 (*Voluntary prepayment*) shall apply to prepayments under paragraph (a) of Clause 15.1 (*Security Shortfall*).

15.2 Costs

All costs in connection with the Facility Agent obtaining any valuation of the Ship referred to in Clause 13.4 (*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 15.1 (*Security Shortfall*) shall be borne by the Borrower.

15.3 Valuation of additional security

For the purpose of this Clause 15 (*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.

15.4 Documents and evidence

In connection with any additional security provided in accordance with this Clause 15 (*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.

15.5 Valuations binding

Any valuation under this Clause 15 (*Security Value Maintenance*) shall be binding and conclusive as regards the Borrower.

15.6 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 15 (*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.

16 CANCELLATION, PREPAYMENT AND MANDATORY PREPAYMENT

16.1 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 16.1 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 10.11 (*Transaction Costs*), Clause 33 (*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.

**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 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 ~~(Breakage costs and SIMEST arrangement)~~ 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 16.2 (*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 ~~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 ~~the those~~ Lenders of the funding for the ~~Loan~~ relevant Advance or Advances under a Tranche and the rate of interest for the monies to be invested by ~~the 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 6.1 ~~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 (*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 ~~(Breakage costs and SIMEST arrangement)~~ 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 20.1 (*Indemnities regarding borrowing and repayment of Loan*) and 20.2 ~~(Breakage costs and SIMEST arrangements)~~.
- (c) If the Borrower has selected the Fixed Interest Rate pursuant to Clause 6.1 ~~Fixed or Floating Interest Rate~~, the SACE Agent shall give SIMEST thirty (30) days written notice of the intended date of prepayment.

**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 (*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.

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 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 (a) of Clause 16.4 (*Mandatory prepayment – SACE Insurance Policy*) the events described in paragraph (b) of Clause 16.4 (*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 (*Mandatory prepayment – SACE Insurance Policy*).

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 (*Dividends and dividend restriction*) and Clause 12.28 (*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 contact*) 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 (*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 (*New capital raises or financing*), if at any time after the 2021 Deferral Effective Date:
 - (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; 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.

16.6 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 (Additional 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.

16.6 16.7 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 16.2 (*Voluntary prepayment*)).

16.7 16.8 Application of partial prepayment

Amounts prepaid shall be applied in accordance with paragraph (b) of Clause 19.1 (*Receipts*).

16.8 16.9 No reborrowing

Amounts prepaid may not be reborrowed.

17 INTEREST ON LATE PAYMENTS

17.1 Default rate of interest

Without prejudice to the provisions of Clause 18 (*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) 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) 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.

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.

18 EVENTS OF DEFAULT

18.1 Events of Default

An Event of Default occurs if any of the events or circumstances described in Clauses 18.2 (*Non-payment*) to 18.20 (*Material Adverse Change*) occur.

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.

18.3 Non-remediable breaches

The Borrower fails to comply with the provisions of Clauses 12.4 (*Sanctions and Illicit payments*), 12.5 (*Prohibited payments*) 12.8 (*Negative pledge*), 12.9 (*Disposals*), 12.11 (*Mergers*) or 12.18 (*Loans and guarantees by the Borrower*).

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 (*Non-payment*) to 18.20 (*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 (*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 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.

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.

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.
- (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.
- (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;
- (e) No Event of Default will occur, or be deemed to have occurred, under this Clause 18.6(*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 (*Mandatory prepayment – sale and total loss*) or Clause 16.4 (*Mandatory prepayment – SACE insurance policy*) has occurred.

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.

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.

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.

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 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.

18.11 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.

18.12 Analogous events

Anything analogous to or having a substantially similar effect to any of the events specified in Clauses 18.7 (*Winding-up*) to 18.11 (*Legal process*) shall occur under the laws of any applicable jurisdiction.

18.13 Cessation of business

Any Obligor ceases to carry on all or a substantial part of its business.

18.14 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.

18.15 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.

18.16 Insurances

The Borrower fails to insure the Ship in the manner specified in Clause 14 (*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.

18.17 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.

18.18 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.

18.19 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 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.

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 (*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.

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.

18.22 Termination of Commitments

On the service of a notice under paragraph (a) of Clause 18.21 *Actions following an Event of Default*, the Commitments and all other obligations of each Lender to the Borrower under this Agreement shall terminate.

18.23 Acceleration of Loan

On the service of a notice under paragraph (b) of Clause 18.21 *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.

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 (*Voluntary prepayment*).

18.25 Multiple notices; action without notice

The Facility Agent may serve notices under paragraphs (a) and (b) of Clause 18.21 *Actions following an Event of Default* simultaneously or on different dates and it may take any action referred to in paragraph (c) of Clause 18.21 (*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.

18.26 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 18.21

(*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.

18.27 Lender's rights unimpaired

Nothing in this Clause 18 (*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 severally*).

18.28 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.

19 APPLICATION OF SUMS

RECEIVED

19.1 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:
 - (A) first, to interest payable pursuant to Clause 17 (*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 (*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.

20 INDEMNITIES

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 17 (*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 18 (*Events of Default*);
 - (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 20.1 (*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.

20.2 Breakage costs and SIMEST arrangements

Without limiting its generality, Clause 20.1 (*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~~ Contributions and/or any overdue amount (or an aggregate amount which includes its ~~Contribution~~ Contributions or any overdue amount);
- (b) if the Borrower has selected the Fixed Interest Rate in accordance with Clause 6.1 (*Fixed or Floating Interest Rate*), the CIRR Break Costs; and
- (c) any other costs whatsoever or howsoever arising under or in respect of the Interest 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.

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,

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 (*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 (*Continuing representations and warranties*) and/or of Clause 12.27 (*Code of Ethics and Model*).

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 (*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 (*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.

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 (*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.

20.6 Sums deemed due to a Lender

For the purposes of this Clause 20 (*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.

20.7 SACE obligations

To the extent that this Clause 20 (*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.

21 ILLEGALITY, ETC.

21.1 Illegality and Sanctions

This Clause 21 (*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**').

21.2 Notification of illegality

The Borrower shall promptly notify the Facility Agent of the occurrence of an event under paragraph (b) of Clause 21.1 (*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 21.1 (*Illegality and Sanctions*) which the Facility Agent receives from the Notifying Lender.

21.3 Prepayment; termination of Commitment

- (a) Upon the Facility Agent notifying the Borrower of an event under sub-paragraph (i) of paragraph (a) of Clause 21.1 (*Illegality and sanctions*) above, the Notifying Lender's Commitment will be immediately suspended and that Lender shall act in accordance with Clause 21.4 (*Mitigation*). To the extent no alternative arrangements have been agreed in accordance with Clause 21.4 (*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 21.1 (*Illegality and Sanctions*) above, the Notifying Lender shall act in accordance with Clause 21.4 (*Mitigation*). To the extent no alternative arrangements have been agreed in accordance with Clause 21.4 (*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 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 21.1 (*Illegality and Sanctions*) above, the Lenders shall act in accordance with Clause 21.4 (*Mitigation*). To the extent no alternative arrangements have been agreed in accordance with Clause 21.4 (*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 [\(Notification of Illegality\)](#) above; or
 - (ii) the last day of the current Interest Period for the [Loan 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.

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 21.1 (*Illegality and Sanctions*) or Clause 10 (*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.

22 SET-OFF

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.

22.2 Existing rights unaffected

No Creditor Party shall be obliged to exercise any of its rights under Clause 22.1 [\(Application of credit balances\)](#); 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).

22.3 Sums deemed due to a Lender

For the purposes of this Clause 22 (*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.

22.4 No Security Interest

This Clause 22 (*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.

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.

24 CHANGES TO THE LENDERS

24.1 Transfer by a Lender

Subject to Clause 24.2 (*Conditions of assignment or transfer*), Clause 24.5 (*No transfer without Transfer Certificate*), Clause 24.17 (*Assignment or transfer to SAC*) and Clause 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~~ 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 (*Role of the Facility Agent and the Joint Mandated Lead Arrangers*) and 27 (*The Security Trustee*) respectively.

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 (*No transfer without Transfer Certificate*) and 24.17 (*Assignment or transfer to SAC#*)) 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.

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 Obligor, 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 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.

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 (*Transfer Certificate, delivery and notification*) on or before that date.

24.5 No transfer without Transfer Certificate

Except as provided in Clause 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 Facility Agent or the Security Trustee unless it is effected, evidenced or perfected by a Transfer Certificate.

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 [Contribution Contributions](#) as were held by the predecessor Lender.

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 [Contribution 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 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 (*Market Disruption*) and Clause 9 (*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 Maintenance of register of Lenders

During the Security Period the Facility Agent shall maintain a register in which it shall record the name, Commitment, ~~Contribution~~ 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 (*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.

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.

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.

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
- (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 24.1 (*Transfer by a Lender*).

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.

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.

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 (~~Taxes, Increased Costs, Costs and related Charge~~), 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 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.

24.16 Security over Lenders' rights

In addition to the other rights provided to Lenders under this Clause 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, 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 ([Conditions of assignment or transfer](#)) and 24.3 ([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 ([Security over Lenders' rights](#)).

24.17 Assignment or transfer to SACE or as directed by SACE

- (a) Notwithstanding the above provisions of this Clause 24 (~~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.

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.

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 (*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.

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 (*Assignment or transfer to SACE or as directed by SACE*) or Clause 24.18 (*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.

24.21 Definition of Affiliate

For the purposes of this Clause 24 (*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.

25 CHANGES TO THE OBLIGORS

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.

26 ROLE OF THE FACILITY AGENT, THE JOINT MANDATED LEAD ARRANGERS, THE SACE AGENT AND THE REFERENCE BANKS

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.

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.

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.

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.

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.

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.

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:
 - (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.

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 Agreement.

26.9 Exclusion of liability

- (a) Without limiting paragraph (b) of Clause 26.9 ~~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 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 (*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.

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).

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 (*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.
- (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 (*Role of the Facility 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 Facility Agent, require it to resign in accordance with paragraph (b) of Clause 26.11 (*Resignation of the Facility Agent*). In this event, the Facility Agent shall resign in accordance with paragraph (b) of Clause 26.11 (*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 (*Resignation of the Facility Agent*) shall be subject to compliance with all necessary "know your customer" requirements of the Lenders.

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.

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.

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;
- (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.

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.

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.

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 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 Agreement.

26.18 Resignation of the Facility Agent in relation to FATCA

The Facility Agent shall resign in accordance with Clause 26.11 *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 (*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 *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 *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.

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.

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.
- (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.

26.21 Application of certain Clauses

The provisions of Clauses 26.2 (*Duties of the Facility Agent*), 26.4 (*No fiduciary duties*), 26.6 (*Rights and discretions of the Facility Agent*), 26.7 (*Lenders' and SACE's instruction*), 26.8 (*Responsibility for documentation*), 26.9 (*Exclusion of liability*), 26.10 (*Lenders' indemnity to the Facility Agent*), 26.11 (*Resignation of the Facility Agent*), 26.12 (*Confidentiality*), 26.13 (*Relationship with the Lenders*), 26.14 (*Credit appraisal by the Lender*), 26.16 (*Full freedom to enter into transactions*), 26.19 (*No duty to monitor*) and 27.23 (*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 (*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 Bank*) 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 Bank*) and Clause 41 (*Confidentiality of Funding Rates and Reference Bank Quotation*) subject to Clause 36.4 (*Third party rights*) and the provisions of the Third Parties Act.

27 THE SECURITY TRUSTEE

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 (*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 27.1 (*Trust*) and as excluded or limited by this Clause 27 (*The Security Trustee*) including in particular Clause 27.8 (*Instructions to Security Trustee and exercise of discretion*), Clause 27.13 (*Responsibility for documentation*), Clause 27.14 (*Exclusion of liability*), Clause 27.16 (*Lenders' indemnity to the Security Trustee*), Clause 27.23 (*Business with the Group*) and Clause 27.28 (*Full freedom to enter into transactions*).

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 (*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 (*Parallel Debt (Covenant to pay the Security Trustee)*) to the extent permitted by applicable law, shall be applied in accordance with Clause 19 (*Application of sums received*).
- (f) This Clause 27.2 (*Parallel Debt (Covenant to pay the Security Trustee)*) shall apply, with any necessary modifications, to each Finance Document.

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.

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 (*The Security Trustee*), the "**Recoveries**") shall be transferred to the Facility Agent for application in accordance with Clause 19 (*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 (*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 (*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 Deductions from receipts

- (a) Before transferring any moneys to the Facility Agent under Clause 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 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.

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 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 (*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.

27.7 Investment of proceeds

Prior to the payment of the proceeds of the recoveries to the Facility Agent for application in accordance with Clause 27.4 (*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 (*Investment of proceeds*).

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 (*Security Trustee's discretions*) to Clause 27.28 (*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 (*Deductions from receipts*) and Clause 27.6 (*Prospective liabilities*).

27.9 Security Trustee's Actions

Without prejudice to the provisions of Clause 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 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;
 - (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.

27.11 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.

27.12 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) be or be deemed to be an agent, trustee or fiduciary of any Obligor.

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.

27.14 Exclusion of liability

- (a) Without limiting Clause 27.15 (*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
 - (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.

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 (*Third party rights*) and the provisions of the Third Party Act.

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 Finance Documents (unless the relevant Security Trustee, Receiver or Delegate has been reimbursed by an Obligor pursuant to a Finance Document).

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.

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 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.

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.

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.

27.21 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 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.

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.

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.

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.

**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.

**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.

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.

**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.

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 (*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 (*The Security Trustee*), Clause 27.5 (*Deductions from receipts*), Clause 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 27.29 (*Resignation of the Security Trustee*) shall be subject to compliance with all necessary "know your customer" requirements of the Lenders.

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.

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 functions pursuant to that appointment shall, for the purposes of this Agreement, be treated as costs and expenses incurred by the Security Trustee.

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.

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.

29 SHARING AMONG THE CREDITOR PARTIES

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 (*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 19 (*Application of sums received*) and Clause 30 (*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 Recovering Creditor Party as its share of any payment to be made, in accordance with Clause 19 (*Application of sums received*) and Clause 30 (*Payment Mechanics*).

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 (*Application of sums received*) and Clause 30 (*Payment Mechanics*).

29.3 Recovering Creditor Party's rights

- (a) On a distribution by the Facility Agent under Clause 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 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 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 (*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.

29.5 Exceptions

- (a) This Clause 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
 - (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 (*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.

**30.5 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 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 Currency of
account**

- (a) Subject to paragraphs (b) and (c) of Clause 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 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.

**30.9 Distributions under the Interest Make-up
Agreement**

Each payment received by the Facility Agent under the Interest 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).

31 VARIATIONS AND WAIVERS

31.1 Variations, waivers etc. by Majority Lenders

Subject to Clause 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 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.

31.2 Variations, waivers etc. requiring agreement of all Lenders

However, as regards the following, Clause 31.1 (*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 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 8.1 (*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 (*Changes to the Lenders*) or this Clause 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 Exclusion of other or implied variations

Except for a document which satisfies the requirements of Clauses 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.

32 NOTICES

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.

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- COO Office-TMEF ITO Global Banking Operations Credit Transaction Management-Export Finance 9 Rue du du Débarcadère Immeuble Océanie ACI: CPE02A1 Millénaire 4 93500 Pantin 35 rue de la gare 75019 Paris

	<p>Fax No. (33) 1 43 16 81 84</p> <p>Attn: Attention: S. CASET-CARRICABURU/ B A. SOHIER SARANT</p> <p>Email: [*]; [*]</p>
(d) to the SACE Agent:	<p>12, place des Etats-Unis CS 70052 92547 Montrouge cedex Paris</p> <p>Fax No. (+33) 1 41 89 19 34</p> <p>Attn Attention: Shipping Middle Office – Ms Clémentine Costil and Romy Roussel</p> <p>E-mail: [*]</p>
(e) to the Security Trustee:	<p>8 Canada Square London E14 5HQ</p> <p>Fax: +44 20 7991 4350</p> <p>Email: [*]</p> <p>Attention: Issuer Services – Security Trustee</p>

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.

32.3 Effective date of notices

Subject to Clauses 32.4 (*Service outside business hours*) and 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 Service outside business hours

However, if under Clause 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 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 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.

32.6 Illegible notices

Clauses 32.3 (*Effective date of notices*) and 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 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 English language

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

32.9 Meaning of "notice"

In this Clause 32 (*Notices*), "**notice**" includes any demand, consent, authorisation, approval, instruction, waiver or other communication.

33 CONFIDENTIALITY

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 (*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 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;

- (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 (*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.

33.3 Entire agreement

This Clause 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 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 Agreement and Effective Date;
- (v) Clause 37 (*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.

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.

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 (*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 (*Confidentiality*).

33.7 Continuing obligations

The obligations in this Clause 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.

33.8 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.

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:

- (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.

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).

34 LEGAL INDEPENDENCE AND UNCONDITIONAL OBLIGATIONS OF THE BORROWER

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.

35 SACE SUBROGATION AND REIMBURSEMENT

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.

35.2 Reimbursement

- (a) Without prejudice to Clause 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 *Default rate of interest*) of this Agreement).
- (c) Each Obligor further agrees that its obligations under this Clause 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 35.2 (*Reimbursement*).
- (e) Each amount that is payable by the Obligors pursuant to Clause 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 Obligations Absolute

The obligations of the Obligors under this Clause 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 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 SUPPLEMENTAL

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.

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.

36.3 Counterparts

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

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 (*SACE Subrogation and Reimbursement*), Clause 17 (*Interest on Late Payment*), Clause 8 (*SACE Premium and Italian Authorities*), Clause 10.2 (*Tax gross-up*), Clause 10.3 (*Tax indemnity*), Clause 10.11 (*Transaction Costs*), Clause 20.1 (*Indemnities regarding borrowing and repayment of Loan*), Clause 20.2 (*Breakage costs and SIMEST arrangement*), Clause 20.3 (*Miscellaneous indemnities*), Clause 20.4 (*Currency indemnity*), Clause 22 (*Set-Off*), Clause 27 (*The Security Trustee*), Clause 10.6 (*VAT*), Clause 10.13 (*SACE obligations*), Clauses 33.8 (*Disclosure by SACE*), Clause 33.9 (*Disclosure by SIMEST*), 33.10 (*Press release*), Clause 38 (*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 (*SACE Subrogation and Reimbursement*), Clause 17 (*Interest on Late Payments*), Clause 8 (*SACE Premium and Italian Authorities*), Clause 10.2 (*Tax gross-up*), Clause 10.3 (*Tax indemnity*), Clause 20.4 (*Currency indemnity*), Clause 22 (*Set-Off*), Clause 27 (*The Security Trustee*), Clause 20.3 (*Miscellaneous indemnities*), Clause 10.6 (*VAT*), Clause 10.11 (*Transaction Costs*), Clause 20.1 (*Indemnities regarding borrowing and repayment of Loan*), Clauses 33.8 (*Disclosure by SACE*), Clause 33.9 (*Disclosure by SIMEST*), 33.10 (*Press release*), Clause 38 (*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).

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.

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.

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 (d) of Clause 12.2 (*Information*), Clause 12.4 (*Sanctions and Illicit Payments*), Clause 12.5 (*Prohibited Payments*), Clause 12.25 (*Compliance with laws etc.*) or provisions contained in Clause 20.3 (*Miscellaneous indemnities*) or Clause 21.1 (*Illegality and Sanctions*) and the representations and warranties given under paragraphs (u), (v), (y), (z) and (jj) of Clause 11.2 (*Continuing representations and warranties*) and paragraph (j) of Clause 11.3 (*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.

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.

38 ENFORCEMENT

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.

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 ~~9 Cloak Lane~~ [107 Cheapside](#), London ~~UK~~ [EC 4R 2 RU](#), ~~United Kingdom~~, [V 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.

39 WAIVER OF IMMUNITY

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.

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.

40 EFFECTIVE DATE

This Agreement is effective from the 2021 Deferral Effective Date.

41 CONFIDENTIALITY OF FUNDING RATES AND REFERENCE BANK QUOTATIONS

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 (*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 (*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 (*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.

41.2 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 (*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 (*Confidentiality of Funding Rates and Reference Bank Quotations*).

41.3 No Event of Default

No Event of Default will occur under Clause 18.4 (*Breach of other obligations*) by reason only of an Obligor's failure to comply with this Clause 41 (*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)
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)
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 _____)
)
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: _____)

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)
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: _____)

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: _____)

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: _____)

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)
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

SIGNED by)
)
for and on behalf of)
HSBC CORPORATE TRUSTEE)
COMPANY (UK) LIMITED)
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 17 June 2021

O CLASS PLUS TWO, 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 and restated by an amendment and restatement agreement dated 17 February 2021)

in respect of the part financing of the 1,258 passenger cruise ship newbuilding

presently designated as Hull No.[*] at Fincantieri S.p.A

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Schedules

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Appendices

Form of Amended and Restated Facility Agreement (marked to indicate amendments)	
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THIS AGREEMENT is made on 17 June 2021

PARTIES

- (1) **O CLASS PLUS TWO, LLC** 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.** 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 and SOCIÉTÉ GÉNÉRALE** 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 (as defined below), the Lenders agreed to make available to the Borrower a facility of (originally) up to €480,248,962.66 and the amount of the SACE Premium 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**") pursuant to which the parties agreed to the temporary suspension 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, providing for an increase of the Facility for the
-

purpose of financing an amount to be applied towards the second instalment of the Additional SACE Premium.

OPERATIVE PROVISIONS

1 DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Agreement:

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

"Effective Date" means the date on which the Facility Agent notifies the Borrower, the other Creditor Parties, SACE and SIMEST 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.

"June 2021 Fee Letters" means any letter between the Facility Agent and any Obligor which sets out the fees payable in connection with the arrangements contemplated by this Agreement.

"June 2021 Finance Documents" means this Agreement and each June 2021 Fee Letter.

"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.

"Total Tranche B Commitments" means the aggregate of the Tranche B Commitments (as set out in further detail in Part B of Schedule 1 (*The Tranche B Lender*)), being thirteen million, two hundred and sixteen thousand, two hundred and eighty-seven Euros and twenty-six Cents (€13,216,287.26) as at the date of this Agreement.

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 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 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, SACE and SIMEST 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, 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, 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 Confirmation of Guarantee

With effect on and from the Effective Date, 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 original terms and the amendments to the Finance Documents as amended, restated and/or supplemented by this Agreement.

4.3 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.

4.4 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) the Facility Agreement and the applicable provisions of this Agreement will be read and construed as one document; and
- (c) 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

- 6.1 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.
- 6.2 The Borrower shall pay to each of (i) the Facility Agent for its own account and (ii) the Facility Agent (for the account of each Lender) such fees in the amount and at the times specified in the relevant June 2021 Fee Letters.

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 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) /s/ Daniel S. Farkas
duly authorised) Daniel S. Farkas
for and on behalf of)
O CLASS PLUS TWO, LLC)

GUARANTOR

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

SHAREHOLDER

SIGNED by) /s/ Daniel S. Farkas
for and on behalf of) Daniel S. Farkas
OCEANIA CRUISES S. DE R.L.)
as its duly appointed attorney-in-fact)
in the presence of:) /s/ Jared G. Silberhorn
) Jared G. Silberhorn
) 7665 Corporate Center Drive
) Miami, FL 33126 USA

HOLDING

SIGNED by) /s/ Daniel S. Farkas
for and on behalf of) Daniel S. Farkas
NORWEGIAN CRUISE LINE)
HOLDINGS LTD.)
as its duly appointed attorney-in-fact)
in the presence of:) /s/ Jared G. Silberhorn
) Jared G. Silberhorn
) 7665 Corporate Center Drive
) Miami, FL 33126 USA

LENDERS

SIGNED by) /s/ Cosmo Fisher
duly authorised) Cosmo Fisher
for and on behalf of) Attorney-in-Fact
CRÉDIT AGRICOLE CORPORATE)
AND INVESTMENT BANK)

SIGNED by) /s/ Bruno Cloquet
duly authorised) Bruno Cloquet
for and on behalf of) Global Head of Exporters and ECAs Origination
BNP PARIBAS FORTIS S.A./N.V.)
) /s/ Michel Froidebise
) Michel Froidebise
) Head of Export Finance Nordic Origination

SIGNED by) /s/ Varsha Sharan
duly authorised) Varsha Sharan
for and on behalf of) Director
HSBC BANK PLC)

SIGNED by) /s/ Maria Gazi
duly authorised) Maria Gazi
for and on behalf of) Attorney-in-Fact
KFW IPEX-BANK GMBH)

SIGNED by) /s/ Enrico Semprebene
duly authorised) Enrico Semprebene
for and on behalf of)
CASSA DEPOSITI E PRESTITI S.P.A.)

SIGNED by) /s/ Juana González Damen
duly authorised) Juana González Damen
for and on behalf of)
BANCO SANTANDER S.A.) /s/ Natalia San Miguel Aguado
) Natalia San Miguel Aguado

SIGNED by) /s/ Isabella Roberts
duly authorised) Isabella Roberts
for and on behalf of) Attorney-in-Fact
SOCIETE GENERALE)

MANDATED LEAD ARRANGERS

SIGNED by) /s/ Cosmo Fisher
duly authorised) Cosmo Fisher
for and on behalf of) Attorney-in-Fact
CRÉDIT AGRICOLE CORPORATE)
AND INVESTMENT BANK)

SIGNED by) /s/ Bruno Cloquet
duly authorised) Bruno Cloquet
for and on behalf of) Global Head of Exporters and ECAs Origination
BNP PARIBAS FORTIS S.A./N.V.)
) /s/ Michel Froidebise
) Michel Froidebise
) Head of Export Finance Nordic Origination

SIGNED by) /s/ Varsha Sharan
duly authorised) Varsha Sharan
for and on behalf of) Director
HSBC BANK PLC)

SIGNED by) /s/ Maria Gazi
duly authorised) Maria Gazi
for and on behalf of) Attorney-in-Fact
KFW IPEX-BANK GMBH)

SIGNED by) /s/ Enrico Semprebene
duly authorised) Enrico Semprebene
for and on behalf of)
CASSA DEPOSITI E PRESTITI S.P.A.)

SIGNED by) /s/ Juana González Damen
duly authorised) Juana González Damen
for and on behalf of)
BANCO SANTANDER S.A.)
) /s/ Natalia San Miguel Aguado
) Natalia San Miguel Aguado

SIGNED by) /s/ Isabella Roberts
duly authorised) Isabella Roberts
for and on behalf of) Attorney-in-Fact
SOCIETE GENERALE)

FACILITY AGENT

SIGNED by) /s/ Philippe Laude
duly authorised) Philippe Laude
for and on behalf of)
BNP PARIBAS) /s/ Georges Curey
) Georges Curey
) Head of Structured Export Finance

SACE AGENT

SIGNED by) /s/ Cosmo Fisher
duly authorised) Cosmo Fisher
for and on behalf of) Attorney-in-Fact
CRÉDIT AGRICOLE CORPORATE)
AND INVESTMENT BANK)

SECURITY TRUSTEE

SIGNED by) /s/ Daisuke Takekawa
duly authorised) Daisuke Takekawa
for and on behalf of) Authorised Signatory
HSBC CORPORATE TRUSTEE)
COMPANY (UK) LIMITED)

APPENDIX

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 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 ~~_____February_____~~ 2021)

O CLASS PLUS TWO, 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. [*] at Fincantieri S.p.A.

WATSON FARLEY
&
WILLIAMS

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THIS AGREEMENT originally made on 19 December 2018 (as amended and restated by an amendment and restatement agreement dated ~~February 17~~ February 2021 and as further amended and restated by an amendment and restatement agreement dated _____ 2021)

PARTIES

- (1) **O CLASS PLUS TWO, LLC** 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 PLCCASSA DEPOSITI E PRESTITI S.P.A.**, **SOCIÉTÉ GÉNÉRALE** and **BANCO SANTANDER** as joint mandated lead arrangers (the "**Joint Mandated Lead Arrangers**")
- (4) **CRÉDIT AGRICOLE CORPORATE AND INVESTMENT BANK** **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 dated as of 31 October 2018 (as amended or supplemented 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) 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 Shipbuilding Contract to be delivered on or about [*] 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 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 [*], being [*], 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**");
 - (ii) as to [*], being [*], 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 [*], being [*], on the later of keel laying in dry-dock and the date falling 24 months prior to the Intended Delivery Date;
 - (iv) as to [*], being [*], on the later of launching and the date falling 12 months prior to the Intended Delivery Date; and

(v) as to [*], being [*], on delivery of the Ship on the Delivery Date,

as each such event is described in the 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 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 19 December 2018 (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 [\(as defined therein\)](#), the Lenders agreed to make available to the Borrower a Euro loan facility for the purpose of assisting the Borrower in financing, 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 ~~offered by SACE~~ (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~~ 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) [The Parties have agreed to amend and restate the Facility Agreement as set out in an amendment and restatement agreement dated _____ 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 financing an amount to be applied towards the second instalment of the Additional SACE Premium \(as defined below\) \(the "June 2021 Amendment and Restatement Agreement"\)](#).
- (+J) This Agreement sets out the terms and conditions of the ~~Original~~ Facility Agreement as amended and restated by the [June](#) 2021 Amendment and Restatement Agreement.

OPERATIVE PROVISIONS

1 INTERPRETATION

1.1 Definitions

Subject to Clause 1.5 (*General Interpretation*), in this Agreement:

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

"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.

"Additional SACE Premium" has the meaning given to such term in Clause 8.5 (*Additional Premium*).

"Advance" means the principal amount of each borrowing [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 and the Additional SACE 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; and](#)

(b) [the second instalment of the Additional SACE Premium, calculated in accordance with paragraph \(a\) \(ii\) of Clause 8.5 \(Additional Premium\), financed or to be financed pursuant to Tranche B, provided that such amount shall not, at any time, exceed the Total Tranche B Commitments,](#)

[provided that such aggregated 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.

"**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, the period commencing on the date of this Agreement and](#) ending on:

- (a) the earlier to occur of (i) the Delivery Date and (ii) 10 November 2025 (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.

"**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.

"**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 New York, Milan, Frankfurt, Brussels, Madrid, Paris, Rome and (in relation to any payment or purchase of Euros) which is a TARGET Day; and

"**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 one point zero six per cent. (1.06% 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 close-out of any hedging arrangement entered into by SIMEST in relation to this Agreement, (iii) default interest and penalties (*naggiorazioni*) 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.

"**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).

"**Commitment**" means ~~, in relation to a Lender, the amount equal to the percentage of the Maximum Loan Amount set opposite its name in Schedule 1 (Lenders and Commitments), or, as the case may require, the amount specified in the relevant Transfer Certificate, in each case~~

~~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)~~ [a Tranche A Commitment or a Tranche B 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, rollup 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:

- (a) is or becomes public information other than as a direct or indirect result of any breach by that Creditor Party of Clause 33 (*Confidentiality*); or
- (b) is identified in writing at the time of delivery as non-confidential by any member of the Group or any of its advisers; or
- (c) is known by that Creditor Party before the date the information is disclosed to it in accordance with paragraphs (a) or (b) above or is lawfully obtained by that Creditor Party after that date, from a source which is, as far as that Creditor Party is aware, unconnected with the Group and which, in either case, as far as that Creditor Party is aware, has not been obtained in breach of, and is not otherwise subject to, any obligation of confidentiality; or
- (d) 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.

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

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

"**Creditor Party**" means 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.

"**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

"**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.

"**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 ~~the Loan~~ 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 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) five hundred and seventy eight million and seven hundred thousand Euros (€578,700,000);
and
- (b) 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.

"**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.

"**€STR**" means the euro short term rate administered by the European Central Bank (or any other person which takes over the administration of that rate) for the relevant period displayed (before any correction, recalculation or republication by the administrator) on the relevant page 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.

"**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.

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

- (a) the applicable Screen Rate as of the Specified Time for euro and for a period equal in length to the Interest Period of the Loan or that part of the Loan; or
- (b) as otherwise determined pursuant to Clause 6.6 (*Unavailability of Screen Rate*),

and if, in either case, that rate is less than zero, EURIBOR shall be deemed to be zero (except with respect to the Interest Make-Up Agreement).

"**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 (*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](#) 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 and Tranche B, 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*

Commerce et des Sociétés of Paris or any successor of it appointed under Clause 26 ~~Role of the Facility Agent and the Joint Mandated Lead Arrangers~~).

"Facility Agreement" means the Original Facility Agreement as amended and restated by the 2021 Amendment and Restatement Agreement [has the meaning given to such term in Recital \(H\)](#)

"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.

"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).

"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 (*Fees*);
- (b) the Facility Agent and the Borrower setting out the fees referred to in paragraph (b) of Clause 9 (*Fees*);
- (c) the SACE Agent and the Borrower setting out the fees referred to in paragraph (d) of Clause 9 (*Fees*);
- (d) the Security Trustee and the Borrower setting out the fees referred to in paragraph (e) of Clause 9 (*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) [the 2021 Deferral Fee Letters](#);
- (~~a~~b) the [February 2021 Amendment and Restatement Agreement](#);
- (c) [the June 2021 Amendment and Restatement Agreement](#);
- (~~b~~d) the [June 2021 Deferral Fee Letters](#);
- (~~e~~e) this Agreement;
- (~~d~~f) any Fee Letter;
- (~~e~~g) the Guarantee;
- (~~f~~h) the General Assignment;
- (~~g~~i) the Mortgage;
- (~~h~~j) the Pledge Agreement;
- (~~i~~k) the Post-Delivery Assignment;
- (~~j~~l) any Subordinated Debt Security;
- (~~k~~m) the Approved Manager's Undertaking;
- (~~l~~n) any Transfer Certificate;
- (~~m~~o) any Compliance Certificate;
- (~~n~~p) any Drawdown Notice;
- (~~o~~q) 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



([P](#)) 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 8.1 (*SACE Premium*).

"**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) the applicable Margin;
and
- (b) EURIBOR for the relevant
period.

"**Floating Rate Margin**" means one point fifteen per cent. (1.15%).

"**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 (*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.

"**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 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 HM11, Bermuda.

" **Holding**" means 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.

" **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 [*] (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 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*) ~~to be~~ 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 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 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 Agreement.

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

"**Interpolated Screen Rate**" means, in relation to the Loan or any part of the Loan, the rate which results from interpolating on a linear basis between:

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

each as of the Specified Time for Euros.

"**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 such term in Recital (I).

"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 ~~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~~ Tranche A Lender or a Tranche B Lender.

"**Loan**" means the aggregate principal amount outstanding for the time being ~~outstanding under this Agreement of the borrowings under the Facility and "part of the Loan" means an Advance, a Tranche or a part of a Tranche.~~

"**Majority Lenders**" means:

- (a) before ~~the Loan~~ an Advance under any Tranche has been made, Lenders whose Commitments total [*] per cent. of the Total Commitments; and
- (b) after ~~the Loan~~ 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.

"**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.

"**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;
- (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) 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 8.15(ACE Premium);~~

~~provided that such amount shall not, at any time, exceed four hundred and eighty million two hundred and forty eight thousand nine hundred and sixty two Euros and sixty six cents (€480,248,962.66);~~

"**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).

"**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 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 (D).

"**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) 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 8.15(SACE Premium),

provided that such amount shall not, at any time, exceed four hundred and eighty million two hundred and forty eight thousand nine hundred and sixty two Euros and sixty six cents (€480,248,962.66).

"**Original Principles**" has the meaning given in Recital (E).

"**Parallel Debt**" means any amount which an Obligor owes to the Security Trustee under Clause 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 12.14 (*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) below; and
 - (ii) any of the Security Interests referred to in sub-paragraphs (B), (C), (E), (H) and (I) of sub-paragraph (ii) of paragraph (b) 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 sub-paragraphs (C) or (E) of sub-paragraph (ii) of paragraph (b) incurred by the Borrower in the case of (B), (H) or (I) of sub-paragraph (ii) of paragraph (b); and
- (b) in the case of the Guarantor:
 - (i) any of the Security Interests referred to in sub-paragraph (A), (D), (F) and (G) of sub-paragraph (ii) of paragraph (b) 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, 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 [*] 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 [*] 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 12.14 *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 [*] 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 ~~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 (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

- (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).

"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:

- (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 Euros 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 European Interbank Market.

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

- (a) its jurisdiction of incorporation, or formation, as the case may be;
- (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 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 (*Non-applicable provisions between the Obligors, German Lenders and any Creditor Party subject to the EU Blocking Regulation*).

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

"**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 (*Role of the Facility 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 Facility 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 (*SACE Premium and Italian Authorities*), ~~in addition to the Additional SACE Premium (provided, for the avoidance of doubt, that the Additional SACE Premium shall not be financed).~~

"**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:

- (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):

- (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 euro interbank offered rate administered by the European Money Markets Institute (or any other person which takes over the administration of that rate) for the relevant period displayed (before any correction, recalculation or republication by the administrator) on page EURIBOR 01 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; 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~~
- (v) [in the case of a Screen Rate for EURIBOR, 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

- (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.

"**Second Instalment**" means the second instalment of the SACE Premium as more particularly described in paragraph (b) of Clause 8.1 (*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
- (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 19 (*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
- (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 Euros (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 (The Security Trustee).

"**Security Value**" means the amount in Euros (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 (*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 15 (*Security Value Maintenance*).

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

"**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.[*] (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 (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.

"**SIMEST Margin Contribution**" means the margin contribution approved and granted by SIMEST to the Lenders under the Interest Make-up Agreement as communicated by the SACE Agent to the Creditor Parties and the Borrower following the date of the Original Facility Agreement as soon as the SACE Agent is made aware of it.

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

- (a) if EURIBOR is fixed, the Quotation Day as of 11:00 am Brussels time;
and
- (b) in relation to a Reference Bank Rate calculated by reference to the available quotations in accordance with Clause 6.7 (*Calculation of Reference Bank Rate*), 11.30 am Brussels time on the Quotation Day.

"**Structuring Fee**" has the meaning given in paragraph (a) of Clause 9 (*Fees*).

"**Subordinated Debt Security**" has the meaning given in sub-paragraph (ii) of paragraph (b) of Clause 12.14 (*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.

"**TARGET2**" means the Trans-European Automated Real-time Gross Settlement Express Transfer payment system which utilises a single shared platform and which was launched on 19 November 2007.

"**TARGET Day**" means any day on which TARGET2 is open for the settlement of payment in Euros.

"**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).

"**Third Party Act**" means the Contracts (Rights of Third Parties) Act 1999.

"**Total Commitments**" means the aggregate of the [Total Tranche A Commitments and the Total Tranche B Commitments, being four hundred and ninety-three million, four hundred and sixty-five thousand, two hundred and forty-nine Euros and ninety-two Cents \(€493,465,249.92\) as at the date of this Agreement.](#)

" **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 (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 four hundred and eighty million two hundred and forty eight thousand nine hundred and sixty two Euros and sixty six cents (€ 480,248,962.66) as at the date of this Agreement.

"Total Tranche B Commitments" means the aggregate of the Tranche B Commitments, being thirteen million, two hundred and sixteen thousand, two hundred and eighty-seven Euros and twenty-six Cents (€13,216,287.26) as at the date of this Agreement.

"Tranche" means Tranche A or Tranche B.

"Tranche A" means the part of the Facility to be made available by the Tranche A Lenders to the Borrower to finance (i) up to the Eligible Amount, being four hundred 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 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 .

"Tranche B" means the part of the Facility to be made available by the Tranche B 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 (Additional 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.

"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.

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

"**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:

"**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 "**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 ____ **February** ____ 2021.

"**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;

"**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 (*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.

"**obligatory insurances**" means all insurances effected, or which the Borrower is obliged to effect, under Clause 14 (*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 11 (*Representations and Warranties*), Clause 12 (*General Undertakings*), Clause 20 (*Indemnities*), Clause 21 (*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 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) references to Dollar amounts in Clause 10.11 (*Transaction Costs*), Clause 12 (*General Undertakings*), Clause 13 (*Ship Undertakings*), Clause 14 (*Insurance Undertakings*) and Clause 18 (*Events of Default*) shall be a reference to Dollars (or the equivalent amount in any other currency);
- (f) 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;
- (g) words denoting the singular number shall include the plural and vice versa;
and
- (h) 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 ~~the Lenders agree to make available to the Borrower a loan not exceeding the Maximum Loan Amount intended to be applied as follows:~~

- (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:
 - (a 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;
 - (b 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 8.1 (*SACE Premium*); and
 - (e 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 8.1 (*SACE Premium*) ~~;~~ and
- (b) the Tranche B Lenders agreed to make available to the Borrower a loan in relation to Tranche B in one (1) Advance not exceeding the Total Tranche B 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 (*Additional Premium*).

2.2 Lenders' participations in Loan

Subject to the other provisions of this Agreement;

- (a) [each Tranche A Lender shall participate in the Advance under Tranche A in the proportion which, as at the Drawdown Date, its Tranche A Commitment bears to the Total Tranche A Commitments; and](#)
- (b) each [Tranche B](#) Lender shall participate in the ~~Loan~~ [Advance under Tranche B](#) in the proportion which, as at the Drawdown Date, its [Tranche B](#) Commitment bears to the Total [Tranche B](#) Commitments.

2.3 Purpose of Loan

The Borrower undertakes with each Secured Party to use ~~the Loan~~ :

- (a) [the Advance under Tranche A](#) only to pay for:
 - (~~a~~ i) goods and services of Italian origin incorporated in the design, construction or delivery of the Ship;
 - (~~b~~ 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;
 - (~~c~~ iii) all or part of eighty per cent. (80%) of the Final Contract Price;
 - (~~d~~ 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 8.1 (*SACE Premium*); and
 - (~~e~~ v) the Second Instalment of the SACE Premium payable in accordance with paragraph (b) of Clause 8.1 (*SACE Premium*).
- (b) [the Advance under Tranche B 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 \(*Additional Premium*\).](#)

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
- (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 ~~the Loan~~ [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 ~~of 9 Cloak Lane~~ currently of 107 Cheapside, London UK, EC ~~4R~~, ~~United Kingdom~~ 2V 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;
- (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 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 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:

- (a) notification of the Intended Delivery Date;
- (b) a notice from the Borrower as described in paragraph (a) of Clause 8.4 (*Refund*);
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 [7.2](#).

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 ~~the~~ 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:

- (~~a~~ i) if applicable, a duly executed original of the Subordinated Debt Security;
- (~~b~~ 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;
- (~~c~~ iii) evidence of payment to and receipt by the Builder of:
 - (~~i~~ A) the four (4) pre-delivery instalments of the Final Contract Price; and
 - (~~ii~~ B) any other part of the Final Contract Price as at the Delivery Date not being financed hereunder;
- (~~d~~ 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;
- (~~e~~ v) evidence of payment of all amounts which are due and payable hereunder by the Borrower on or prior to the Delivery Date;
- (~~f~~ vi) a certificate from the Borrower, signed by an authorised representative of the Borrower, confirming that:
 - (~~i~~ A) the representations and warranties contained in Clause 11 (~~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
 - (~~ii~~ B) no mandatory prepayment event pursuant to Clause 16 (~~Cancellation, Prepayment and Mandatory Prepayment~~) is continuing or would result from the ~~Loan~~ Advance;
- (~~g~~ 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; and

(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).

~~(H)~~ provided always that in relation to paragraphs (a) and (b) above, the obligations of the relevant Lenders to make ~~the Loan~~ such Advance under each of Tranche A and Tranche B, 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 ~~the advance of the Loan~~ 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 11.3 *(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 *(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 3.11 (*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 ~~of 9 Cloak Lane, currently of 107 Cheapside~~ London ~~UK, EC 4R,~~ ~~United Kingdom~~ 2V 6DN (or any replacement process agent satisfactory to the Facility Agent acting reasonably) that it will act for each of the relevant Obligor 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 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 (*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](#) ~~and SACE~~, [the Tranche B 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 Loan~~ [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 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:
 - (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 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, the Facility Agent and the SACE Agent to ensure compliance with the terms of the SACE Insurance Policy or the Interest 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.
- (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 ~~the Loan an Advance~~ available under a Tranche 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. ~~For the avoidance of doubt, the amount of the Loan shall not exceed the Maximum Loan Amount.~~
- (b) The Tranche B Lenders shall not be obliged to fulfil their obligation to make an Advance available under Tranche B 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 (Additional Premium).
- (c) The Borrower hereby instructs the Tranche A Lenders in accordance with this Clause 4.1 (*Borrower's irrevocable payment instructions*):
- (~~a~~ i) to pay to the Builder, up to the Eligible Amount, all or part of eighty per cent. (80%) of the Final Contract Price;
- (~~b~~ 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 8.1; and
- (~~c~~ 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.
- (d) If applicable, the Borrower hereby instructs the Tranche B Lenders in accordance with this Clause 4.1 (*Borrower's irrevocable payment instructions*) to pay the Facility Agent on behalf of the Tranche B 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 (Additional Premium).
- (e) Payment to the Builder of the amount drawn under paragraph (~~a~~ c)(i) of 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*).
- (f) Save as contemplated in Clause 4.2 (*Modification of payment terms*) below, the payment instruction contained in this Clause 4.1 (*Borrower's irrevocable payment instructions*) is irrevocable.

4.2 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 paragraph (~~a~~ c)(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 (~~b~~ c)(ii) and (c) (iii) of Clause 4.1 (*Borrower's irrevocable payment instructions*).

4.3 Availability and conditions

(a) Drawing may not be made under this Agreement (and ~~the Loan~~ no Advance shall ~~not~~ be available) after the expiry of the Availability Period.

(b) ~~There will be only one drawing~~ Under this Agreement: , there will be no more than:

(i) one (1) Advance under Tranche A;
and

(ii) one (1) Advance under Tranche B.

it being provided that the Advances in relation to Tranche A and Tranche B shall occur on the same date.

(c) The amount of the Advance under Tranche B shall not exceed the lower of (i) the amount calculated pursuant to the provisions of paragraph (a)(ii) of Clause 8.5 (*Additional Premium*) and (ii) the Total Tranche B Commitments.

(~~e~~ d) The aggregate amount of ~~the Loan cannot exceed the Maximum Loan Amount.;~~

(i) the Tranche A Advance cannot exceed the Total Tranche A Commitments;

(ii) the Tranche B Advance cannot exceed the Total Tranche B Commitments;
and

(iii) the Advances under all Tranches cannot exceed the Total Commitments.

4.4 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 and the Tranche B Lenders that it has received a Drawdown Notice in relation to a Tranche and shall inform each relevant Lender of:

(a) the amount of the ~~Loan~~ Advance and the Drawdown Date;

(b) the amount of that Lender's participation in the ~~Loan~~ Advance;
and

(c) the duration of the first Interest Period.

4.5 Lenders to make available Contributions

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

4.6 Disbursement of

Loan 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 4.5 (~~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 ~~(a c)(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 ~~(b c)(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 ~~(c)(iii)~~ of Clause 4.1 (*Borrower's irrevocable payment instructions*) to the account of SACE which the SACE Agent shall specify; ~~and~~
- (d) in the case of an amount referred to in paragraph (d) of Clause 4.1 (Borrower's irrevocable payment instructions) to the account of SACE which the SACE Agent shall specify.

4.7 Disbursement of Loan Advance to third party

The payment by the Facility Agent under Clause 4.6 (*Disbursement of Loan Advance*) shall constitute the making of the Loan 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 ~~Contribution~~ 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 INTEREST

6.1 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.

6.2 Fixed Interest Rate

If the Borrower has specified a Fixed Interest Rate pursuant to Clause 6.1 *(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.

6.3 Floating Interest Rate

If:

- (a) the Borrower has specified a Floating Interest Rate pursuant to Clause 6.1 *(Fixed or Floating Interest Rate)*; or
- (b) the Borrower has specified a Fixed Interest Rate pursuant to Clause 6.1 *(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 *(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).

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.

6.5 Notification of Interest Periods and Floating Interest Rate

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.

6.6 Unavailability of Screen

Rate

- (a) *Interpolated Screen Rate* If no Screen Rate is available for EURIBOR for the Interest Period of the Loan or any part of the Loan, the applicable EURIBOR shall be the Interpolated Screen Rate for a period equal in length to the Interest Period of the Loan or that part of the Loan.
- (b) *Reference Bank Rate* If no Screen Rate is available for EURIBOR for:
- (i) Euro;
 - (ii) the Interest Period of the Loan or any part of the Loan and it is not possible to calculate the Interpolated Screen Rate,
 - (iii) the applicable EURIBOR shall be the Reference Bank Rate as of the Specified Time and for a period equal in length to the Interest Period of the Loan or that part of the Loan.
- (c) *Cost of funds.* If paragraph (b) above applies but no Reference Bank Rate is available for Euro or the relevant Interest Period there shall be no EURIBOR for the Loan or that part of the Loan (as applicable) and Clause 6.9 (*Cost of funds*) shall apply to the Loan or that part of the Loan for that Interest Period.

6.7 Calculation of Reference Bank

Rate

- (a) Subject to paragraph (b) below, if EURIBOR 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.

6.8 Market

Disruption

If before close of business in London on the Quotation Day for the relevant Interest Period the Facility Agent receives notification from a Lender or Lenders (whose participations in the Loan or the relevant part of the Loan 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 EURIBOR 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.

6.9 Cost of

funds

- (a) If this Clause 6.9 (*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 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 participation in the Loan or that part of the Loan from whatever source it may reasonably select.

- (b) If this Clause 6.9 (*Cost of funds*) applies and the Facility Agent or the Borrower so requires, the Facility Agent and the Borrower shall enter into negotiations (for a period of not more than 30 days) with a view to agreeing a substitute basis for determining the rate of interest or (as the case may be) an alternative basis for funding.
- (c) Subject to Clause 6.10 (*Replacement of Screen Rate*), any substitute or alternative basis agreed pursuant to paragraph (b) above shall, with the prior consent of all the Lenders and the Borrower, be binding on all Parties.
- (d) If paragraph (e) below does not apply and any rate notified to the Facility Agent under sub-paragraph (ii) of paragraph (a) above is less than zero, the relevant rate shall be deemed to be zero.
- (e) If this Clause 6.9 (*Cost of funds*) applies pursuant to Clause 6.8 (*Market disruption*) and:
 - (i) a Lender's Funding Rate is less than EURIBOR;
or
 - (ii) a Lender does not supply a quotation by the time specified in sub-paragraph (ii) of paragraph (a) above,

the cost to that Lender of funding its participation in the Loan or the relevant part of the Loan for that Interest Period shall be deemed, for the purposes of paragraph (a) above, to be EURIBOR.
- (f) If this Clause 6.9 (*Cost of funds*) applies but any Lender does not supply a quotation by the time specified in sub-paragraph (ii) of paragraph (a) above, the rate of interest shall be calculated on the basis of the quotations of the remaining Lenders.

6.10 Replacement of Screen Rate

- (a) If a Screen Rate Replacement Event has occurred in relation to the Screen Rate for Euro, any amendment or waiver which relates to:
 - (i) providing for the use of a Replacement Benchmark;
and
 - (ii)
 - (A) aligning any provision of any Finance Document to the use of that Replacement Benchmark;
 - (B) enabling that Replacement Benchmark to be used for the calculation of interest under this Agreement (including, without limitation, any consequential changes required to enable that Replacement Benchmark to be used for the purposes of this Agreement);
 - (C) implementing market conventions applicable to that Replacement Benchmark;
 - (D) providing for appropriate fallback (and market disruption) provisions for that Replacement Benchmark; or

- (E) adjusting the pricing to reduce or eliminate, to the extent reasonably practicable, any transfer of economic value from one Party to another as a result of the application of that Replacement Benchmark (and if any adjustment or method for calculating any adjustment has been formally designated, nominated or recommended by the Relevant Nominating Body, the adjustment shall be determined on the basis of that designation, nomination or recommendation),

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

- (b) If an amendment is required as contemplated in this Clause 6.10 ~~(Replacement of Screen Rate)~~, 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.

6.11 Notice of prepayment

If no agreement is reached with the Borrower under Clause 6.10 (Replacement of Screen Rate), 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 6.1 (*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.

6.12 Prepayment; termination of Commitments

A notice under Clause 6.11 (*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 (*Breakage costs and SIMEST arrangement*)) 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 6.1 (*Fixed or Floating Interest Rate*)).

6.13 Application of prepayment

The provisions of Clause 16 (~~*Cancellation, Prepayment and Mandatory Prepayment*~~) shall apply in relation to the prepayment.

6.14 Certain Circumstances

Notwithstanding anything to the contrary in this Agreement:

- (a) in the event of any circumstances falling within Clause 6.8 (*Market Disruption*) which might affect the advance of ~~the Loan~~ [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 (*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 (*Unavailability of Screen Rate*), 6.7 (*Calculation of Reference Bank Rate*), 6.8 (*Market Disruption*), 6.9 (*Cost of funds*) and 6.10 (*Replacement of Screen Rate*) 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.
- (c) in the event of any Relevant Circumstances falling within Clause 6.8 (*Market disruption*) (the "**Availability-Related Relevant Circumstances**") occurring before the Loan is made, 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 Euros (or, if unavailable in Euros, then in any available currency). Such discussions shall be without obligation on the Lenders provided that during such discussion period, such circumstances continue.

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 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 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 (*Floating Interest Rate*) shall apply.

7 INTEREST PERIODS

7.1 Commencement of Interest Periods

The first Interest Period applicable to ~~the Loan~~ [an Advance](#) shall commence on the Drawdown Date and each subsequent Interest Period shall commence on the expiry of the preceding Interest Period.

7.2 Duration of Interest Periods

Subject to Clause 7.3 (*Duration of Interest Periods for Repayment Instalments*), each Interest Period shall be 6 months.

7.3 Duration of Interest Periods for Repayment Instalments

Any Interest Period that includes a Repayment Date shall expire on such Repayment Date.

8 SACE PREMIUM AND ITALIAN AUTHORITIES

8.1 SACE Premium

The estimated SACE Premium for an amount equal to[*] (being [*] per cent. ([*]%) of the Original Maximum Loan Amount) ~~; or any other amount communicated by SACE subject to the approval of all Lenders and the Borrower~~, is due and payable in two instalments as follows:

- (a) the first instalment of the SACE Premium being an amount of[*] 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) 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[*] 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.

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 (*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 (~~€ a)(iii)~~ of Clause 2.1 (*Amount of facility*) of this Agreement.

Consequently, the Borrower hereby irrevocably instructs the Facility Agent on behalf of the Lenders to pay the Second Instalment to SACE on the Drawdown Date 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.

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 Agreement.

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 ~~Loan Advance~~ to be drawn on the Delivery Date under Tranche A less (i) any amount cancelled 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 ~~Loan 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.
- (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 [*] Euros (€[*]) or more than [*] Euros (€[*]), calculated by SACE 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.

8.5 Additional 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 2021 Deferral Effective Date (the "**Additional SACE Premium**"). The Additional SACE Premium is payable, in accordance with the SACE Insurance Policy, ~~payable~~ 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) €480,248,962.66 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 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 Additional SACE Premium is non-refundable ~~and is not~~ **financed**.
- (c) The Borrower has requested, and the Tranche B 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 Clause 8.5 (Additional 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.](#)

(d) [Consequently, the Borrower hereby irrevocably instructs the Facility Agent on behalf of the Tranche B Lenders to pay the amount of the second instalment of the Additional SACE Premium to SACE on the Delivery Date in accordance with paragraph \(b\) of Clause 2.1 \(Amount of facility\) of this Agreement.](#)

(e) [The second instalment of the Additional SACE Premium financed by 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.](#)

For avoidance of doubt, in case of discrepancy between this Clause 8.5 (Additional premium) and the relevant provision of the SACE Insurance Policy, the SACE Insurance Policy shall prevail.

9 FEES

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 Euros 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 paragraph (a) of Clause 16.1) or written termination notice (as described in paragraph (b) of Clause 16.1) (as applicable) sent by the Borrower, whichever is the earliest, computed at the rate of:
- (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 31 October 2022, [*] per cent. ([*]% p.a.) per annum;
 - (iv) from 1 November 2022 to 31 March 2024, [*] per cent. ([*]%) per annum;
 - (v) from 1 April 2024 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 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 16.1) or written termination notice (as described in paragraph (b) of Clause 16.1) (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 four hundred and eighty million two hundred and forty eight thousand, nine hundred and sixty two Euros and sixty six cents (€ 480,248,962.66) [and the Amended Maximum Loan Amount is assumed to be four hundred and ninety-three million, four hundred and sixty-five thousand, two hundred and forty-nine Euros and ninety-two Cents \(€493,465,249.92\)](#);

- (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.

10 TAXES, INCREASED COSTS, COSTS AND RELATED CHARGES

10.1 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 10.2 (*Tax gross-up*) or a payment under Clause 10.3 (*Tax indemnity*).

- (b) Unless a contrary indication appears, in this Clause 10 *Taxes, Increased Costs, Costs and related Charge* reference to "**determines**" or "**determined**" means a determination made in the absolute discretion of the person making the determination.

10.2 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 10.7 (*Lender Status*) at least 30 Business Days prior to such payment date) complied with its obligations under Clause 10.7 (*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.

10.3 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 10.2 (*Tax gross-up*) or would have been compensated for by an increased payment under Clause 10.2 (~~*Tax gross-up*~~) but was not so compensated solely because an exclusion in paragraph (d) of Clause 10.2 (~~*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 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 10.3 ~~(tax indemnity)~~, notify the Facility Agent.

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.

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.

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 (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.

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 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 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.

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.

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 (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 (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) 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 ~~and~~, (ii) where the relevant Lender becomes a Lender at the date of this Agreement, the date of this Agreement and (ii) where the relevant Lender is a Transferee Lender, the effective date of a

Transfer Certificate under Clause 24.4 (*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 paragraph (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.

**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 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 10.10 (*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 10.3 (*Tax indemnity*) (or would have been compensated for under Clause 10.3 (*Tax indemnity*) but was not compensated solely because any of the exclusions in paragraph (b) of Clause 10.3 (*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 10.10 (*Increased Costs*), a reference to a "Tax Deduction" has the same meaning given to the term in Clause 10.1 (*Definitions*).

- (c) A Lender affected by any provision of this Clause 10.10 (*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 10.10 (*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 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.

10.11 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.

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.

10.13 SACE obligations

To the extent that this Clause 10 (~~Taxes, Increased Costs, Costs and related Charge~~) 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.

11 REPRESENTATIONS AND WARRANTIES

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 (*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 (*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 (*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.

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;
- (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 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) it is disregarded as an entity separate from its owner for U.S. federal Tax purposes;
- (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) 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) 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;
- (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 11.1 (*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, 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) 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) 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 12.23 (*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) 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) 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:
 - (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
 - (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 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) 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) 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) 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) 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) 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 (*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 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) 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 10.7 (*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 11.2 (*Continuing representations and warranties*);
- (hh) none of the Obligor 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 the Borrower complies with in all respects) compliant with all laws or regulations relating to it and its business generally;
- (kk) each of the Obligor 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) the Borrower has read and acknowledged the principles provided under the Code of Ethics and Model;
- (mm) the Borrower has implemented adequate internal procedures aimed at preventing commission of crimes provided under Legislative Decree 231/01;
- (nn) no litigation is pending against the Borrower in relation to administrative liability provided under Legislative Decree 231/01;
- (oo) 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) neither the Borrower nor any of its assets are subject to any precautionary measure provided under Legislative Decree 231/01.

11.3 Representations on the Delivery

Date

The Borrower further represents and warrants to each of the Secured Parties at 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 (*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 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 (*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.

12 GENERAL UNDERTAKINGS

12.1 General

The Borrower undertakes with each Secured Party to comply with the following undertakings during the Security Period:

12.2 Information

The Borrower will provide to the Facility 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 2018 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 paragraph (a) 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 Facility 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 (\$20,000,000) 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 12.2 (*Information*) shall be prepared in accordance with GAAP and shall fairly represent the financial condition of the relevant company.

12.3 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.

12.4 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.

12.5 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.

12.6 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.

12.7 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 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.

12.8 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 (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.

12.9 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 16.3 (*Mandatory prepayment – Sale and Total Loss*) and except for charters and other arrangements complying with Clause 13.1 (*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.

12.10 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.

12.11 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.

12.12 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.

12.13 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.

12.14 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
 - (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 (*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.

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.

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;
- (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.

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,

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.

12.18 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 12.15 (*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.

12.19 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.

12.20 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 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.

12.21 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 paragraph (a)(i) of Clause 4.1 (*Borrower's irrevocable payment instructions*) only), the Facility Agent, SACE and the Lenders.

12.22 "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 Facility Agent or any Lender (or, in the case of paragraph (a)(iii) of Clause 12.22 "*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 paragraph (a)(iii) of Clause 12.22 ("*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.

12.23 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 (d) and (e) above.

12.24 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.

12.25 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 (*Continuing representations and warranties*) and Clause 18.6 (*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, 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 (*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 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.

12.26 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.

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.
- (b) The restrictions in paragraph (a) of Clause 12.27 (*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 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: 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 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 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 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;
 - (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 paragraph (b)(viii)(B)(2) of [this](#) Clause 12.27 (*New capital raises or financing*) does not exceed [*] Dollars (\$[*]) at any time; or
 - (3) has been approved with the prior written consent of SACE;
- (i) any Permitted Security Interest;
- (ii) any Security Interest otherwise approved with the prior written consent of SACE;
- (iii) any Financial Indebtedness incurred in the ordinary course of business which in the aggregate does not exceed USD [*] during any twelve-month period; and
- (iv) without prejudice to Clauses 12.11 (*Mergers*) and 12.15 (*Investments*) and clause 11.13 (*No merger etc.*) of the Guarantee, the issuance of share capital by any Group member to another Group member.

13 SHIP UNDERTAKINGS

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

(*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 (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 [*]; 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 [*] **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;

- (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.

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.

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.

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 (*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 (*Valuation of the Ship*), the Facility Agent shall be entitled to procure a valuation of the Ship on the same basis.

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.

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. 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 (*Valuation of the Ship*).

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 [*], such inspections shall be limited to one a year and shall all be at reasonable times.

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 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.

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.

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.

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.

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 [*];
- (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.

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 [*] 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 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 (*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 (*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 (*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 [*] 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.

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.

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 [*] 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)).

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.

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.

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.

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.

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.

13.21 Poseidon Principles

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 (*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.

14 INSURANCE

UNDERTAKINGS

14.1 General

The undertakings in this Clause 14 (*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.

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 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 (*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);
- (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.

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).

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 (*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;
- (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.

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 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.

14.6 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.

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 Facility Agent.

14.8 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.

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.

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.

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.

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 [*] (\$[*]) or the equivalent in any other currency and not being a claim arising out of a Total Loss.

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.

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.

15 SECURITY VALUE MAINTENANCE

15.1 Security Shortfall

If, upon receipt of a valuation of the Ship in accordance with Clause 13.4 *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 Euros 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 15.2 (*Costs*) and 15.4 (*Documents and evidence*) and paragraph (c) of Clause 16.2 (*Voluntary prepayment*) shall apply to prepayments under paragraph (a) of Clause 15.1 (*Security Shortfall*).

15.2 Costs

All costs in connection with the Facility Agent obtaining any valuation of the Ship referred to in Clause 13.4 (*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 15.1 (*Security Shortfall*) shall be borne by the Borrower.

15.3 Valuation of additional security

For the purpose of this Clause 15 (*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.

15.4 Documents and evidence

In connection with any additional security provided in accordance with this Clause 15 (*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.

15.5 Valuations binding

Any valuation under this Clause 15 (*Security Value Maintenance*) shall be binding and conclusive as regards the Borrower.

15.6 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 15 (*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.

16 CANCELLATION, PREPAYMENT AND MANDATORY PREPAYMENT

16.1 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 16.1 (*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 10.11 (*Transaction Costs*), Clause 33 (*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.

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 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 (*Breakage costs and SIMEST arrangement*) 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 16.2 (*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 *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 the Lenders of the funding for the ~~Loan~~ [relevant Advance or Advances under a Tranche](#) and the rate of interest for the monies to be invested by ~~the~~ [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 6.1~~(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 (*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 (*Breakage costs and SIMEST arrangement*) 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 20.1 (*Indemnities regarding borrowing and repayment of Loan*) and 20.2 (*Breakage costs and SIMEST arrangements*).
- (c) If the Borrower has selected the Fixed Interest Rate pursuant to Clause 6.1~~(Fixed or Floating Interest Rate)~~, the SACE Agent shall give SIMEST thirty (30) days written notice of the intended date of prepayment.

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 (*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.

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 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 (a) of Clause 16.4 (*Mandatory*

~~prepayment – SACE Insurance Policy~~ the events described in paragraph (b) of Clause 16.4 (~~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 (~~Mandatory prepayment – SACE Insurance Policy~~).

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 (~~Dividends and dividend restriction~~) and Clause 12.27 (~~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 contract~~) 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 (~~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 12.27 (~~New capital raises or financing~~), if at any time after the 2021 Deferral Effective Date:
- (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; 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.

16.6 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 16.2 (~~Voluntary prepayment~~)).

16.7 Application of partial prepayment

Amounts prepaid shall be applied in accordance with paragraph (b) of Clause 19.1 (~~Receipts~~).

**16.8 No
reborrowing**

Amounts prepaid may not be reborrowed.

**17 INTEREST ON LATE
PAYMENTS**

**17.1 Default rate of
interest**

Without prejudice to the provisions of Clause 18 ~~(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) where the Floating Interest Rate is applicable, the aggregate of:

(i) €STR;

(ii) the applicable Margin;
and

and if that percentage rate is less than zero, the rate of interest shall be deemed to be zero; plus

(iii) [*] per cent. ([*]% p.a.) per annum;
or

(b) where the Fixed Interest Rate is applicable, the higher of:

(i) the Fixed Interest Rate plus [*] per cent. ([*]% p.a.) per annum;
and

(ii) €STR plus the applicable Margin (and if that percentage rate is less than zero, the rate of interest shall be deemed to be zero) plus [*] per cent. ([*]% p.a.) per annum.

**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.

**18 EVENTS OF
DEFAULT**

**18.1 Events of
Default**

An Event of Default occurs if any of the events or circumstances described in Clauses 18.2 ~~(Non-payment)~~ to 18.20 ~~(Material Adverse Change)~~ occur.

**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.

18.3 Non-remediable breaches

The Borrower fails to comply with the provisions of Clauses 12.4 (Sanctions and ~~illicit payments~~), 12.5 (Prohibited payments) 12.8 (Negative pledge), 12.9 (Disposals), 12.11 (Mergers) or 12.18 (Loans and guarantees by the Borrower).

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 (*Non-payment*) to 18.20 (*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 12.26 (~~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 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.

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.

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(~~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 (*Mandatory prepayment – sale and total loss*) or Clause 16.4 (*Mandatory prepayment – SACE insurance policy*) has occurred.

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.

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.

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.

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 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.

18.11 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.

18.12 Analogous events

Anything analogous to or having a substantially similar effect to any of the events specified in Clauses 18.7 (*Winding-up*) to 18.11 (*Legal process*) shall occur under the laws of any applicable jurisdiction.

18.13 Cessation of business

Any Obligor ceases to carry on all or a substantial part of its business.

18.14 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.

18.15 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.

18.16 Insurances

The Borrower fails to insure the Ship in the manner specified in Clause 14 (*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.

18.17 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.

18.18 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.

18.19 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 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.

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 12.26 (*Code of Ethics and Mode*)), 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.

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 and the financed second instalment of the Additional 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 Facility Agent and/or the Lenders are entitled to take under any Finance Document or any applicable law.

18.22 Termination of Commitments

On the service of a notice under paragraph (a) of Clause 18.21 ~~Actions following an Event of Default~~, the Commitments and all other obligations of each Lender to the Borrower under this Agreement shall terminate.

18.23 Acceleration of Loan

On the service of a notice under paragraph (b) of Clause 18.21 ~~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.

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 (*Voluntary prepayment*).

18.25 Multiple notices; action without notice

The Facility Agent may serve notices under paragraphs (a) and (b) of Clause 18.21 ~~Actions following an Event of Default~~ simultaneously or on different dates and it may take any action referred to in paragraph (c) of Clause 18.21 (~~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.

18.26 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 18.21 (~~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.

18.27 Lender's rights unimpaired

Nothing in this Clause 18 (~~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*).

18.28 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.

19 APPLICATION OF SUMS RECEIVED

19.1 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:
 - (A) first, to interest payable pursuant to Clause 17 (~~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 (~~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 paragraphs (a)(ii)(A) to (a)(ii)(E) 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 paragraphs (a)(ii)(A) to (a)(ii)(D) above.
- (d) Paragraphs (a), (b) and (c) above will override any appropriation made by an Obligor.

20 INDEMNITIES

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 17 (*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 18 (*Events of Default*);
 - (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 20.1 (*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.

20.2 Breakage costs and SIMEST arrangements

Without limiting its generality, Clause 20.1 (*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~~ Contributions and/or any overdue amount (or an aggregate amount which includes its ~~Contribution~~ Contributions or any overdue amount);
- (b) if the Borrower has selected the Fixed Interest Rate in accordance with Clause 6.1(Fixed or Floating Interest Rate), the CIRR Break Costs; and
- (c) any other costs whatsoever or howsoever arising under or in respect of the Interest 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.

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,

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 (*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 (*Continuing representations and warranties*) and/or of Clause 12.26 (*Code of Ethics and Model*).

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 (*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 (*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.

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 (*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.

20.6 Sums deemed due to a Lender

For the purposes of this Clause 20 (*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.

20.7 SACE obligations

To the extent that this Clause 20 (*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.

21 ILLEGALITY, ETC.

21.1 Illegality and Sanctions

This Clause 21 (*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**").

**21.2 Notification of
illegality**

The Borrower shall promptly notify the Facility Agent of the occurrence of an event under paragraph (b) of Clause 21.1 (*Illegality and Sanctions*) above and the Facility Agent shall promptly notify the Lenders. The Facility Agent shall promptly notify the Borrower, the Obligor and the other Lenders of the notice under paragraph (a) of Clause 21.1 (*Illegality and sanctions*) which the Facility Agent receives from the Notifying Lender.

**21.3 Prepayment; termination of
Commitment**

- (a) Upon the Facility Agent notifying the Borrower of an event under sub-paragraph (i) of paragraph (a) of Clause 21.1 (*Illegality and Sanctions*) above, the Notifying Lender's Commitment will be immediately suspended and that Lender shall act in accordance with Clause 21.4 (*Mitigation*). To the extent no alternative arrangements have been agreed in accordance with Clause 21.4 (*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 21.1 (*Illegality and Sanctions*) above, the Notifying Lender shall act in accordance with Clause 21.4 (*Mitigation*). To the extent no alternative arrangements have been agreed in accordance with Clause 21.4 (*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 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 21.1 (*Illegality and Sanctions*) above, the Lenders shall act in accordance with Clause 21.4 (*Mitigation*). To the extent no alternative arrangements have been agreed in accordance with Clause 21.4 (*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 (*Notification of illegality*) above; or
 - (ii) the last day of the current Interest Period for the [Loan relevant Advance under a Tranche](#), 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.

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 21.1 (*Illegality and Sanctions*) or Clause 10 (*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.

22 SET-OFF

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 Euros;
 - (iii) enter into any other transaction or make any entry with regard to the credit balance which the Creditor Party concerned considers appropriate.

22.2 Existing rights unaffected

No Creditor Party shall be obliged to exercise any of its rights under Clause 22.1 (*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).

22.3 Sums deemed due to a Lender

For the purposes of this Clause 22 (*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.

22.4 No Security Interest

This Clause 22 (*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.

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.

24 CHANGES TO THE LENDERS

24.1 Transfer by a Lender

Subject to Clause 24.2 (*Conditions of assignment or transfer*), Clause 24.5 (*No transfer without Transfer Certificate*), Clause 24.17 (*Assignment or transfer to SACB*) and Clause 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~~ 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 (*Role of the Facility Agent and the Joint Mandated Lead Arranger*) and 27 (*The Security Trustee*) respectively.

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 (*No transfer without Transfer Certificate*) and 24.17 (*Assignment or transfer to SAC*)) for an assignment or transfer by a 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[*] Euros (€[*]) or, if less, the Transferor Lender's full Commitment.

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,

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.

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 (*Transfer Certificate, delivery and notification*) on or before that date.

24.5 No transfer without Transfer Certificate

Except as provided in Clause 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 Facility Agent or the Security Trustee unless it is effected, evidenced or perfected by a Transfer Certificate.

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 ~~Contribution~~ [Contributions](#) as were held by the predecessor Lender.

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 ~~Contribution~~ [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 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 (*Market Disruption*) and Clause 9 (*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 Maintenance of register of Lenders

During the Security Period the Facility Agent shall maintain a register in which it shall record the name, Commitment, ~~Contribution~~ 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 (*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.

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.

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.

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
- (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 24.1 (*Transfer by a Lender*).

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.

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.

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 (~~Taxes, Increased Costs, Costs and related Charge~~), 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 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.

24.16 Security over Lenders' rights

In addition to the other rights provided to Lenders under this Clause 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, 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 and 24.3, 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.

24.17 Assignment or transfer to SACE or as directed by SACE

- (a) Notwithstanding the above provisions of this Clause 24 ~~(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.

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.

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 (*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.

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 (*Assignment or transfer to SACE or as directed by SACE*) or Clause 24.18 (*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.

24.21 Definition of Affiliate

For the purposes of this Clause 24 (*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.

25 CHANGES TO THE OBLIGORS

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.

26 ROLE OF THE FACILITY AGENT, THE JOINT MANDATED LEAD ARRANGERS, THE SACE AGENT AND THE REFERENCE BANKS

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.

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.

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.

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.

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.

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.

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:
 - (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.

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 Agreement.

26.9 Exclusion of liability

- (a) Without limiting paragraph (b) of Clause 26.9 (~~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 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 (*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.

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).

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 (*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.
- (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 (*Role of the Facility Agent and the Joint Mandated Lead Arranger*). 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 (*Resignation of the Facility Agent*). In this event, the Facility Agent shall resign in accordance with paragraph (b) of Clause 26.11 (*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 (*Resignation of the Facility Agent*) shall be subject to compliance with all necessary "know your customer" requirements of the Lenders.

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.

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.

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;
- (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.

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.

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.

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 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 Agreement.

26.18 Resignation of the Facility Agent in relation to FATCA

The Facility Agent shall resign in accordance with Clause 26.11 *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 *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 *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 *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.

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.

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.
- (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.

26.21 Application of certain Clauses

The provisions of Clauses 26.2 (*Duties of the Facility Agent*), 26.4 (*No fiduciary duties*), 26.6 (*Rights and discretions of the Facility Agent*), 26.7 (*Lenders' and SACE's instruction*), 26.8 (*Responsibility for documentation*), 26.9 (*Exclusion of liability*), 26.10 (*Lenders' indemnity to the Facility Agent*), 26.11 (*Resignation of the Facility Agent*), 26.12 (*Confidentiality*), 26.13 (*Relationship with the Lenders*), 26.14 (*Credit appraisal by the Lender*), 26.16 (*Full freedom to enter into transactions*), 26.19 (*No duty to monitor*) and 27.23 (*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 (*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 Bank*) 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 Bank*) and Clause 41 (*Confidentiality of Funding Rates and Reference Bank Quotation*) subject to Clause 36.4 (*Third party rights*) and the provisions of the Third Parties Act.

27 THE SECURITY TRUSTEE

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 (*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 27.1 (*Trust*) and as excluded or limited by this Clause 27 (*The Security Trustee*) including in particular Clause 27.8 (*Instructions to Security Trustee and exercise of discretion*), Clause 27.13 (*Responsibility for documentation*), Clause 27.14 (*Exclusion of liability*), Clause 27.16 (*Lenders' indemnity to the Security Trustee*), Clause 27.23 (*Business with the Group*) and Clause 27.28 (*Full freedom to enter into transactions*).

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 (*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(*Parallel Debt (Covenant to pay the Security Trustee)*) to the extent permitted by applicable law, shall be applied in accordance with Clause 19 (*Application of sums received*).
- (f) This Clause 27.2 (*Parallel Debt (Covenant to pay the Security Trustee)*) shall apply, with any necessary modifications, to each Finance Document.

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.

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 (*The Security Trustee*), the "Recoveries") shall be transferred to the Facility Agent for application in accordance with Clause 19 (*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 (*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 (*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 Deductions from receipts

- (a) Before transferring any moneys to the Facility Agent under Clause 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 (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 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 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 (*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.

27.7 Investment of proceeds

Prior to the payment of the proceeds of the recoveries to the Facility Agent for application in accordance with Clause 27.4 (*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 (*Investment of proceeds*).

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 (*Security Trustee's discretions*) to Clause 27.28 (*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 (*Deductions from receipts*) and Clause 27.6 (*Prospective liabilities*).

27.9 Security Trustee's Actions

Without prejudice to the provisions of Clause 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 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;
 - (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.

27.11 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.

27.12 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) be or be deemed to be an agent, trustee or fiduciary of any Obligor.

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.

27.14 Exclusion of liability

- (a) Without limiting Clause 27.15 (*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
 - (iv) without prejudice to the generality of 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.

**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 (*Third party rights*) and the provisions of the Third Party Act.

**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 Finance Documents (unless the relevant Security Trustee, Receiver or Delegate has been reimbursed by an Obligor pursuant to a Finance Document).

**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.

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 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.

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.

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.

27.21 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 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 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 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.

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.

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.

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.

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.

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 (*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 (*The Security Trustee*), Clause 27.5 (*Deductions from receipts*), Clause 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 27.29 (*Resignation of the Security Trustee*) shall be subject to compliance with all necessary "know your customer" requirements of the Lenders.

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.

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 functions pursuant to that appointment shall, for the purposes of this Agreement, be treated as costs and expenses incurred by the Security Trustee.

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.

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.

29 SHARING AMONG THE CREDITOR PARTIES

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 (*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 19 (*Application of sums received*) and Clause 30 (*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 Recovering Creditor Party as its share of any payment to be made, in accordance with Clause 19 (*Application of sums received*) and Clause 30 (*Payment Mechanics*).

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 (*Application of sums received*) and Clause 30 (*Payment Mechanics*).

29.3 Recovering Creditor Party's rights

- (a) On a distribution by the Facility Agent under Clause 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 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 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 (*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.

29.5 Exceptions

- (a) This Clause 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
 - (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 (*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 PAYMENT MECHANICS

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) with such bank as the Facility Agent specifies.
- (c) Payment shall be made before 11.00 a.m. Paris time.
- (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.

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 (*Distributions to an Obligor*), Clause 30.4 (*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 (or, in relation to Euro, in the principal financial centre of a Participating Member State).

30.3 Distributions to an Obligor

The Facility Agent may in accordance with Clause 22 *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 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.
- (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.

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.

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.

30.7 Currency of account

- (a) Subject to paragraphs (b) and (c) of Clause 30.7 *Currency of account*) Euros 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 Euros shall be paid in that other currency.

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.

30.9 Distributions under the Interest Make-up Agreement

Each payment received by the Facility Agent under the Interest 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).

31 VARIATIONS AND WAIVERS

31.1 Variations, waivers etc. by Majority Lenders

Subject to Clause 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 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.

31.2 Variations, waivers etc. requiring agreement of all Lenders

However, as regards the following, Clause 31.1 (*Variations, waivers etc. by Majority Lender*) 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 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 8.1 (*SACE Premium*) 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 24 (*Changes to the Lenders*) or this Clause 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 Exclusion of other or implied variations

Except for a document which satisfies the requirements of Clauses 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.

32 NOTICES

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.

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 (<i>Lenders and Commitments</i>) or (as the case may require) in the relevant Transfer Certificate.
(c) to the Facility Agent:	CIB- COO Office-TMEF ITO Global Banking Operations Credit Transaction Management-Export Finance 9 Rue du Débarcadère Immeuble Océanie ACI: CPE02A1 Millénaire 4 93500 Pantin 35 rue de la gare 75019 Paris Fax No. (33) 1 43 16 81 84 Attn: Attention: S. CASET-CARRICABURU/ B.A. SOHIER SARANT Email: [*]; [*]
(d) to the SACE Agent:	12, place des Etats-Unis CS 70052 92547 Montrouge cedex Paris Fax No. (33) 1 41 89 19 34 Attn: Shipping Middle Office – Ms Clémentine Costil and Romy Roussel E-mail: [*] [*]
(e) to the Security Trustee:	8 Canada Square London E14 5HQ Fax: +44 20 7991 4350 Email: [*]

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.

32.3 Effective date of notices

Subject to Clauses 32.4 (*Service outside business hours*) and 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 Service outside business hours

However, if under Clause 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 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 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.

32.6 Illegible notices

Clauses 32.3 (*Effective date of notices*) and 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 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 English language

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

32.9 Meaning of "notice"

In this Clause 32 (*Notices*), "notice" includes any demand, consent, authorisation, approval, instruction, waiver or other communication.

33 CONFIDENTIALITY

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 (*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 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 paragraph (b)(i) or (ii) 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 paragraph (b)(i) or (b)(ii) 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;
- (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 (*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), (b)(iii) and (b)(iv) 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)(v) 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)(vi), (b)(viii) and (b)(xiii) 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.

33.3 Entire agreement

This Clause 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 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 Agreement and Effective Date;
 - (v) Clause 37 (*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.

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.

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 (*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 (*Confidentiality*).

33.7 Continuing obligations

The obligations in this Clause 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.

33.8 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.

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:

- (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.

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).

34 LEGAL INDEPENDENCE AND UNCONDITIONAL OBLIGATIONS OF THE BORROWER

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.

35 SACE SUBROGATION AND REIMBURSEMENT

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.

35.2 Reimbursement

- (a) Without prejudice to Clause 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 Euros 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 *Default rate of interest* of this Agreement).

- (c) Each Obligor further agrees that its obligations under this Clause 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 35.2 (*Reimbursement*).
- (e) Each amount that is payable by the Obligors pursuant to Clause 35.2 (*Reimbursement*) is due and payable to SACE in Euros within five (5) Business Days of demand by SACE to the Obligors.

**35.3 Obligations
Absolute**

The obligations of the Obligors under this Clause 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 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 SUPPLEMENTAL

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.

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.

36.3 Counterparts

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

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 (*SACE Subrogation and Reimbursement*), Clause

17 (*Interest on Late Payments*), Clause 8 (*SACE Premium and Italian Authorities*), Clause 10.2 (*Tax gross-up*), Clause 10.3 (*Tax indemnity*), Clause 10.11 (*Transaction Costs*), Clause 20.1 (*Indemnities regarding borrowing and repayment of Loan*), Clause 20.2 (*Breakage costs and SIMEST arrangement*), Clause 20.3 (*Miscellaneous indemnities*), Clause 20.4 (*Currency indemnity*), Clause 22 (*Set-Off*), Clause 27 (*The Security Trustee*), Clause 10.6 (*VAT*), Clause 10.13 (*SACE obligations*), Clauses 33.8 (*Disclosure by SAC*), Clause 33.9 (*Disclosure by SIMEST*), 33.10 (*Press release*), Clause 38 (*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 (*SACE Subrogation and Reimbursement*), Clause 17 (*Interest on Late Payments*), Clause 8 (*SACE Premium and Italian Authorities*), Clause 10.2 (*Tax gross-up*), Clause 10.3 (*Tax indemnity*), Clause 20.4 (*Currency indemnity*), Clause 22 (*Set-Off*), Clause 27 (*The Security Trustee*), Clause 20.3 (*Miscellaneous indemnities*), Clause 10.6 (*VAT*), Clause 10.11 (*Transaction Costs*), Clause 20.1 (*Indemnities regarding borrowing and repayment of Loan*), Clauses 33.8 (*Disclosure by SAC*), Clause 33.9 (*Disclosure by SIMEST*), 33.10 (*Press release*), Clause 38 (*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).

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.

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.

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 (d) of Clause 12.2 (*Information*), Clause 12.4 (*Sanctions and Illicit Payments*), Clause 12.5 (*Prohibited Payments*), Clause 12.24 (*Compliance with laws etc.*) or provisions contained in Clause 20.3 (*Miscellaneous indemnities*) or Clause 21.1 (*Illegality and Sanctions*) and the representations and warranties given under paragraphs (u), (v), (y), (z) and (jj) of Clause 11.2 (*Continuing representations and warranties*) and paragraph (j) of Clause 11.3 (*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.

**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.

38 ENFORCEMENT

**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.

**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 ~~9 Cloak Lane~~ [107 Cheapside](#), London [_UK](#), EC ~~4R-2 RU~~, ~~United Kingdom~~ [V 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.

**39 WAIVER OF
IMMUNITY**

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.

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.

40 EFFECTIVE DATE

This Agreement is effective from the 2021 Deferral Effective Date.

41 CONFIDENTIALITY OF FUNDING RATES AND REFERENCE BANK QUOTATIONS

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 (*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 (*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 (*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.

41.2 Related Obligations

- (a) The Facility Agent and each Obligor acknowledge that each Funding Rate (and, in the case of the Facility Agent, each Reference Bank Quotation) is or may be price sensitive information and that its use may be regulated or prohibited by applicable legislation including securities law relating to insider dealing and market abuse and the Facility Agent and each Obligor undertake not to use any Funding Rate or, in the case of the Facility Agent, any Reference Bank Quotation for any unlawful purpose.
- (b) The Facility Agent and each Obligor agree (to the extent permitted by law and regulation) to inform the relevant Lender or Reference Bank, as the case may be:
 - (i) of the circumstances of any disclosure made pursuant to sub-paragraph (ii) of paragraph (c) of Clause 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 41 (*Confidentiality of Funding Rates and Reference Bank Quotations*).

41.3 No Event of Default

No Event of Default will occur under Clause 18.4 (*Breach of other obligations*) by reason only of an Obligor's failure to comply with this Clause 41 (*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)
O CLASS PLUS TWO, LLC)
in the presence of:)

TRANCHE A 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)
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:)

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)
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:)

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)
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

SIGNED by)
)
for and on behalf of)
HSBC CORPORATE TRUSTEE)
COMPANY (UK) LIMITED)
in the presence of:)

CERTIFICATION

I, Frank J. Del Rio, 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 9, 2021

/s/ Frank J. Del Rio

Name: Frank J. Del Rio

Title: President and Chief Executive Officer

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 9, 2021

/s/ Mark A. Kempa

Name: Mark A. Kempa

Title: Executive Vice President and Chief Financial Officer

**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 Frank J. Del Rio, 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, 2021 (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 9, 2021

By: /s/ Frank J. Del Rio
Name: Frank J. Del Rio
Title: President and Chief Executive Officer
By: /s/ Mark A. Kempa
Name: Mark A. Kempa
Title: Executive Vice President and Chief
Financial Officer
