

PLEASE REVIEW THESE TERMS AND CONDITIONS OF FINANCING BEFORE MAKING ANY APPLICATION. PLEASE ALSO REFER TO THE GENERAL TERMS AND CONDITIONS FOR THE USE OF THIS WEBSITE, LENDER TERMS OF USE, BORROWER TERMS OF USE AS WELL AS ALL OTHER DOCUMENTS APPEARING IN THE WEBSITE (HEREAFTER EACH AND ALL DOCUMENTS, AS THE CONTEXT MAY REQUIRE, REFERRED TO AS "TERMS OF USE"). ALL ABOVE-MENTIONED TERMS AND CONDITIONS GOVERN YOUR ACCESS TO AND USE OF THE WEBSITE AND ANY APPLICATION AND SUBSEQUENT APPROVAL OF FINANCING. THE WEBSITE IS AVAILABLE FOR YOUR USE ONLY ON THE CONDITION THAT YOU AGREE TO ALL TERMS OF USE SET FORTH IN THE WEBSITE. IF YOU DO NOT AGREE TO ALL OF THE TERMS OF USE, DO NOT ACCESS OR USE THE WEBSITE. BY ACCESSING OR USING THE WEB SITE, YOU AND ANY ENTITY YOU ARE AUTHORIZED TO REPRESENT ("YOU" OR "YOUR") SIGNIFY YOUR AGREEMENT TO BE BOUND BY THE TERMS OF USE.

1. **DEFINITIONS AND INTERPRETATION**

1.1 **Definitions.** Subject to Clause 1.2 (*Interpretation*) and Clause 1.3 (*Construction of certain terms*), in this Agreement (unless otherwise defined in the relevant Finance Document and unless the context otherwise requires) and the other Finance Documents each term or expression defined in the recital of the parties and in this Clause shall have the meaning given to it in the recital of the parties and in this Clause:

“Agent” means the institution specified in the Facility Letter (or any successor to it);

“Agreement” means the full set of the present general terms and conditions in this document (**“General Terms and Conditions”**), which, together with the Facility Letter, constitute one and the same legal document;

“Additional Conditions Precedent” means the submissions of documents, emails or evidence thereof, by the Borrower and/or any other Security Party, as part of the conditions precedent outlined in Clause 7.2 (*Conditions precedent to the making available of the Facility*).

“Advance” means the principal amount of each borrowing by the Borrower under the Facility described in Clause 2.2 or (as the context may require) the amount of such borrowing for the time being outstanding and **“Advances”** means the aggregate amount of all Advances outstanding at any relevant time;

“Amount” means the amount which the Lender has agreed to make available to the Borrower by way of a credit facility under the terms and conditions of this Agreement, as specified in the Facility Letter;

“Applicable Sanctions” means any Sanctions by which any Security Party is bound or to which it is subject (which shall include, without limitation, any extra-territorial sanctions imposed by law or regulation of the United States of America) or, as regards a regulation, compliance with which is reasonable in the ordinary course of business of any Security Party;

“Assignee” has the meaning ascribed thereto in Clause 14.3 (*Assignment by Lender*);

“Authorised User” means a person or persons granted express or implied permission to access, manage or take decisions in connection with the Site subject to applicable terms and conditions;

“Availability Period” means the period as specified in the Facility Letter during which the Facility can be drawn;

“Banking Day” means any day on which banks and foreign exchange markets in New York and London and in each country or place in or at which an act is required to be done under this Agreement in accordance with the usual practice of the Agent and the Lender, are open for the transaction of business of the nature contemplated in this Agreement;

“Beneficial Shareholder(s)” means the person or persons disclosed by the Borrower as being the ultimate legal and beneficial owner or owners (either directly and/or through companies or other entities beneficially owned by such person or persons or members of his/her direct family and/or trusts or foundations of which such person or persons or members of his/her direct family are legal and beneficial owners) of, at minimum, 25% of the shares and the voting rights in the Borrower;

“Borrowed Money” means Financial Indebtedness incurred in respect of (i) money borrowed or raised, (ii) any bond, note, loan stock, debenture or similar instrument, (iii) acceptance of documentary credit facilities,

(iv) deferred payments for assets or services acquired exceeding Fifty thousand Dollars (\$50,000), (v) rental payments under leases (whether in respect of land, machinery, equipment or otherwise) entered into primarily as a method of raising finance or of financing the acquisition of the asset leased, (vi) guarantees, bonds, stand-by letters of credit or other instruments issued in connection with the performance of contracts and (vii) guarantees or other assurances against financial loss in respect of Financial Indebtedness of any person falling within any of sub-paragraphs (i) to (vi) above;

"Borrower" means the Borrower as specified in the Facility Letter and includes its successors in title and transferees;

"Cargo Contract Finance" means the loan types described on the Site by the same name and mentioned in the Facility Letter.

"Charterer" means the entity specified in the Facility Letter, which has entered into a Charterparty for the use of the Vessel. References in this Agreement to "charterer" will as the context may require also include the Charterer (as defined and specified in the Facility Letter);

"Charterparty" means as the context may require, any time charter or voyage charter or contract of affreightment or agreement for the carriage of goods or any similar document in respect of the employment of the Vessel whether now existing or hereinafter entered into by the Borrower or any person, firm or company on its behalf with an owner or disponent owner or charterer, on terms and conditions acceptable to the Agent and/or the Lender (and shall include any addenda thereto);

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

"Classification" means the highest classification in respect of the Vessel;

"Classification Society" means any classification society which is a member of IACS;

"Compulsory Acquisition" means requisition for title or other compulsory acquisition, requisition, appropriation, expropriation, deprivation, forfeiture or confiscation for any reason of the Vessel by any Government Entity or other competent authority, whether de jure or de facto, but shall exclude requisition for use or hire not involving requisition of title;

"Default" means any Event of Default or any event 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 the foregoing) constitute an Event of Default;

"Default Interest Rate" or **"Default Rate"** means that rate of interest which is specified in the Facility Letter;

"DOC" means a document of compliance issued in accordance with rule 13 of the ISM Code;

"Dollars" (and the sign "\$") means the lawful currency for the time being of the United States of America;

"Drawdown Date" means the earlier date, being a Banking Day, of that date requested by the Borrower for the Facility or any part thereof to be made available, or (as the context requires) the date on which the Facility or any part thereof is actually made available;

“Drawdown Notice” means a notice in the form appearing in the Site;

“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 Vessel, including (but not limited to) all freight, hire and passage moneys, compensation payable to the Borrower in the event of requisition of the Vessel for hire, remuneration for salvage and towage services, demurrage and detention moneys, contributions of any nature whatsoever in respect of general average, damages for breach (or payments for variation or termination) of any Charterparty or other contract for the employment of the Vessel and any other earnings whatsoever due or to become due to the Borrower in respect of the Vessel and all sums recoverable under the Insurances in respect of loss of Earnings and includes, if and whenever the Vessel is employed on terms whereby any and all such moneys as aforesaid are pooled or shared with any other person, that proportion of the net receipts of the relevant pooling or sharing agreement which is attributable to the Vessel;

“Encumbrance” means any mortgage, charge (whether fixed or floating), pledge, lien, hypothecation, assignment, security interest, title retention, arrest, seizure, garnishee order (whether nisi or absolute) or any other order or judgement having similar effect or other encumbrance of any kind securing or any right conferring a priority of payment in respect of any obligation of any person;

“End Use” means the purpose for which the Facility will be used, as specified in the Facility Letter;

“Environmental Affiliate” means any agent or employee of the Borrower or any other Security Party having a contractual relationship with the Borrower or any other Security Party in connection with any Relevant Ship or her operation or the carriage of cargo thereon;

“Environmental Approval” means any consent, authorisation, licence or approval of any governmental or public body or authorities or courts applicable to any Relevant Ship or her operation or the carriage of cargo thereon and/or passengers therein and/or provisions of goods and/or services on or from the Relevant Ship required under any Environmental Law;

“Environmental Claim” means any and all enforcement, clean up, removal or other governmental or regulatory actions or orders instituted or completed pursuant to any Environmental Law or any Environmental Approval together with claims made by any third party relating to damage, contribution, loss or injury, resulting from any actual or threatened emission, spill, release or discharge of a Material of Environmental Concern from any Relevant Ship;

“Environmental Incident” means (i) any release of Material of Environmental Concern from the Vessel, (ii) any incident in which Material of Environmental Concern is released from a vessel other than the Vessel and which involves collision between the Vessel and such other vessel or some other incident of navigation or operation, in either case, where the Vessel, or the Borrower are actually at fault or otherwise liable (in whole or in part) or (iii) any incident in which Material of Environmental Concern is released from a vessel other than the Vessel and where the Vessel is actually liable to be arrested as a result and/or where the Borrower is actually at fault or otherwise liable;

“Environmental Laws” means all national, international and state laws, rules, regulations, treaties and conventions applicable to any Relevant Ship pertaining to the pollution or protection of human health or the environment including, without limitation, the carriage or Materials of Environmental Concern and actual or

threatened emissions, spills, releases or discharges of Materials of Environmental Concern and actual or threatened emissions, spills, releases or discharges of Materials of Environmental Concern from any Relevant Ship;

“Event of Default” means any event or circumstance set out in Clause 9 (*Events*) or described as such in any of the Finance Documents;

“Expenses” means the aggregate at any relevant time (to the extent that the same have not been received or recovered by the Agent or the Lender or the Security Trustee) of:

- (a) all fees, losses, liabilities, costs, charges, expenses, damages and outgoings of whatever nature, (including, without limitation, Taxes, repair costs, registration fees and insurance premiums, crew wages, repatriation expenses and seamen’s pension fund dues) suffered, incurred, charged to or paid or committed to be paid by the Agent or the Lender or the Security Trustee in connection with the exercise of the powers referred to in or granted by any of the Finance Documents or otherwise payable by the Borrower in accordance with the terms of any of the Finance Documents;
- (b) the expenses referred to in Clause 10.2 (*Expenses*); and
- (c) interest on all such losses, liabilities, costs, charges, expenses, damages and outgoings from, in the case of Expenses referred to in sub-paragraph (b) above, the date on which such Expenses were demanded by the Agent or the Lender or the Security Trustee from the Borrower and in all other cases, the date on which the same were suffered, incurred or paid by the Agent or the Lender or the Security Trustee until the date of receipt or recovery thereof (whether before or after judgement) at the Default Rate;

“Extension Option” means, in connection with a Short-Term Loan, the option given to the Borrower to extend the Facility; the terms of the Extension Option are specified in the Facility Letter;

“Extension Fee” means, in connection with a Short-Term Loan, the fee payable by the Borrower further to the exercise of an Extension Option as specified in the Facility Letter;

“Facility” means the amount which the Lender has agreed to make available to the Borrower by way of a credit facility under the terms and conditions of this Agreement;

“Facility Letter” means the separate document which has been signed or will be signed, as the case may be, between the Lender and the Borrower, setting out the specific terms of the present financing, which will be read and construed as one with these General Terms and Conditions and which, together with these General Terms and Conditions constitute the Agreement;

“Final Maturity Date” or “Final Maturity” means,

- (i) in the case of Short-Term Loan, the date as specified in the Facility Letter or, if an Extension Option has been exercised, the later date specified in the Facility Letter in connection with the extension or,
- (ii) in the case of Cargo Contract Finance, the date as specified in the Facility Letter or the date when the relevant freight payment(s) for the Voyage has/ve been received by the Borrower,

whichever occurs earlier;

“Finance Documents” means this Agreement, the Agency Agreement, the Security Documents and any other document designated as such by the Agent;

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

- (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; or
- (e) under a guarantee, indemnity or similar obligation entered into by the debtor in respect of a liability of another person which would fall within (a) to (e) if the references to the debtor referred to the other person;

“Flag State” means any state or territory acceptable to the Lender, as being the **“Flag State”** of the Vessel for the purposes of the Finance Documents;

“Government Entity” means and includes (whether having a distinct legal personality or not) any national or local government authority, board, commission, department, division, organ, instrumentality, court or agency and any association, organisation or institution of which any of the foregoing is a member or to whose jurisdiction any of the foregoing is subject or in whose activities any of the foregoing is a participant;

“Governmental Withholdings” means withholdings and any restrictions or conditions resulting in any charge whatsoever imposed, either now or hereafter, by any sovereign state or by any political sub-division or taxing authority of any sovereign state;

“Group” means the Borrower and all other shipping companies now or in the future substantially directly or indirectly owned and/or controlled by same beneficial interests as the Borrower and **“member of the Group”** means any member of the Group;

“Guarantee” means an irrevocable, unconditional and continuing guarantee, in form and substance satisfactory to the Agent and the Lender, granted by an entity or entities acceptable to the Agent and the Lender as a security of the obligations of the Borrower arising out of or connected to this Agreement;

“Insurances” means, in relation to the Vessel, and includes:

- (a) all policies and contracts of insurance, including entries of the Vessel in any protection and indemnity or war risks association, effected in relation to the Vessel, her Earnings or otherwise in relation to the Vessel whether before, on or after the date of this Agreement; and

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

“Interest Payment Date” means

- in the case of Cargo Contract Finance, in respect of each Advance or any part thereof the Final Maturity Date;
- In the case of Short-Term Loan, the last day of a one-month (“Monthly”) or three-month (“Quarterly”) period, as specified in the Facility Letter,

provided, however, that if any of the aforesaid dates falls on a day which is not a Banking Day the Borrower shall pay the accrued interest on the first Banking Day thereafter unless the result of such extension would be to carry such Interest Payment Date over into another calendar month in which event such Interest Payment Date shall be the immediately preceding Banking Day;

“Interest Rate” means the percentage rate per annum as specified in the Facility Letter;

“ISM Code” means in relation to its application to the Borrower, the Vessel and her operation:

- (a) “The International Management Code for the Safe Operation of Ships and for Pollution Prevention”, currently known or referred to as the “ISM Code”, adopted by the Assembly of the International Maritime Organisation by Resolution A. 741(18) on 4th November 1993 and incorporated on 19th May 1994 into chapter IX of the International Convention for the Safety of Life at Sea 1974 (SOLAS 1974); and
- (b) all further resolutions, circulars, codes, guidelines, regulations and recommendations which are now or in the future issued by or on behalf of the International Maritime Organisation or any other entity with responsibility for implementing the ISM Code, including without limitation, the “Guidelines on implementation or administering of the International Safety Management (ISM) Code by Administrations” produced by the International Maritime Organisation pursuant to Resolution A. 788(19) adopted on 25th November, 1995;

as the same may be amended, supplemented or replaced from time to time;

“ISM Code Documentation” includes:

- (a) the DOC and SMC issued by the Classification Society pursuant to the ISM Code in relation to the Vessel;
- (b) all other documents and data which are relevant to the ISM SMS and its implementation; and
- (c) any other documents which are prepared, or which are otherwise relevant to establish and maintain the Vessel’s or the Borrower’s compliance with the ISM Code;

“ISM SMS” means the safety management system which is required to be developed, implemented and maintained under the ISM Code;

“ISPS Code” means the International Ship and Port Security Code of the International Maritime Organization and includes any amendments or extensions thereto and any regulation issued pursuant thereto;

“ISSC” means an International Ship Security Certificate issued in respect of the Vessel pursuant to the ISPS Code;

“Lender” means the Lender as specified in the Facility Letter and includes its successors in title and transferees;

“Loan ID” means the loan ID as specified in the Facility Letter;

“Loan Type” means the type of credit facility as specified in the Facility Letter;

“Major Casualty” means any casualty to the Vessel in respect whereof the claim or the aggregate of the claims against all insurers, before adjustment for any relevant franchise or deductible, exceeds the Major Casualty Amount;

“Major Casualty Amount” means Fifty thousand Dollars (\$50,000) or the equivalent in any other currency;

“Management Agreement” means the agreement for the management of the Vessel made between the Borrower as owner and the relevant manager or between the Borrower as manager and the relevant owner, as the case may be;

“MARLO” means **MARLO TECHNOLOGIES LIMITED**, with its registered address at 1 Bell Street, 2nd floor, London, NW1 5BY, United Kingdom;

“Material of Environmental Concern” means and includes pollutants, contaminants, toxic substances, oil as defined in the United States Oil Pollution Act of 1990 and all hazardous substances as defined in the United States Comprehensive Environmental Response, Compensation and Liability Act 1980;

“Minimum Days” means the number of days for the calculation of Interest as specified in the Facility Letter;

“month” means a calendar month and **“months”** and **“monthly”** shall be construed accordingly;

“Operating Expenses” in relation to the Vessel and for a particular period means expenses properly and reasonably incurred by the Borrower in connection with the operation, management, employment, maintenance, repair and insurance of the Vessel during that period;

“Outstanding Indebtedness” means the aggregate of (a) the Advances and interest accrued and accruing thereon, (b) the Expenses and (c) all other sums of any nature (together with all interest on any of those sums) which from time to time may be payable by the Borrower to the Agent or the Lender or the Security Trustee pursuant to the Finance Documents, whether actually or contingently and (d) any damages payable as a result of any breach by the Borrower of any of the Finance Documents and (e) any damages or other sums payable as a result of any of the obligations of the Borrower under or pursuant to any of the Finance Documents being disclaimed by a liquidator or any other person or, where the context permits, the amount thereof for the time being outstanding;

“Party” means a party to this Agreement;

“Permitted Encumbrance” means any Encumbrance in favour of the Security Trustee and/or the Lender created pursuant to the Security Documents and Permitted Liens;

“Permitted Liens” in relation to the Vessel means:

- (a) Encumbrances created before the entering into this Agreement;
- (b) Encumbrances created by the Security Documents;
- (c) Liens for unpaid crew’s wages in accordance with usual maritime practice;
- (d) Liens for salvage;
- (e) Liens arising by operation of law for not more than 2 months’ prepaid hire under any charter in relation to the Vessel not prohibited by this Agreement;
- (f) Liens for master’s disbursements incurred in the ordinary course of trading and any other lien arising by operation of law or otherwise in the ordinary course of the operation, repair or maintenance of the Vessel, provided such liens do not secure amounts more than 60 days overdue (unless the overdue amount is being contested in good faith by appropriate steps) and, in the case of liens for repair or maintenance, in the Vessel is put in the possession of any person for the purpose of work being done upon her in an amount exceeding or likely to exceed the Major Casualty Amount;
- (g) Any Encumbrance created in favour of a plaintiff or defendant in any action of the court or tribunal before whom such action is brought as security for costs and expenses where the Borrower is prosecuting or defending such action in good faith by appropriate steps; and
- (h) Encumbrances arising by operation of law in respect of taxes which are not overdue for payment other than taxes being contested in good faith by appropriate steps and in respect of which appropriate reserves have been made;

“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;

“Registry” means any registrar, commissioner or representative of the Flag State of a Vessel who is duly authorised and empowered to register the Vessel and the Borrower’s title to the Vessel under the laws of the Flag State through such Registry;

“Regulatory Agency” means the Government Entity or other organization in the relevant Flag State which has been designated by the government of the relevant Flag State to implement and/or administer and/or enforce the provisions of the ISM Code;

“Related Company” means any company or other entity, which is a Subsidiary of the Borrower and any Subsidiary of any such company or entity (together, the **“Related Companies”**);

“Relevant Jurisdiction” means any jurisdiction in which or where any Security Party is incorporated, resident, domiciled, has a permanent establishment, carries on, or has a place of business or is otherwise effectively connected;

“Relevant Ship” means the Vessel and any other vessel from time to time (whether before or after the date of this Agreement) owned, managed or crewed by, or chartered to, any Security Party;

“Requisition Compensation” means all sums of money or other compensation from time to time payable during the Security Period by reason of the Compulsory Acquisition of the Vessel otherwise than by requisition for hire;

“Sanctions” means any economic or trade 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 or enforced by law or regulation of the United States (including but not limited to, the U.S. Department of the Treasury’s Office of Foreign Assets Control (OFAC), the U.S. Department of State), and/or the United Kingdom and/or the Council of the European Union and/or the United Nations and/or its Security Council and/or the Flag State or other relevant sanctions authority;
- (b) imposed by CISADA; or
- (c) otherwise imposed by any law or regulation by which the relevant Security Party is bound or, as regards a regulation, compliance with which is reasonable in the ordinary course of business of the relevant Security Party and for which a waiver or suspension has not been obtained;

“Security Documents” means, as applicable:

- (a) this Agreement;
- (b) any and all documents under the heading “Additional Security” of the Facility Letter; and
- (c) any other document (whether creating an Encumbrance or not) which is executed at any time by any of the Borrower as security for, or to establish any form of subordination or priorities arrangement in relation to, any amount payable to the Lender (including for the benefit of the Agent or Security Trustee) under this Agreement or any of the documents referred to in this definition;

“Security Party” means the Borrower and any other person (other than the Lender, the Agent, the Security Trustee and any Charterer) which is or may become a party to any of the Finance Documents;

“Security Period” means the period commencing on and including the date hereof and terminating on and including the date upon which the Facility together with all interest thereon and all other moneys payable to the Lender under Finance Documents has been paid in full to the Lender (including for the benefit of the Agent or Security Trustee);

“Security Trustee” means the institution specified in the Agency Agreement (or any successor to it);

“Short-Term Loan” means the loan type described on the Site by the same name and mentioned in the Facility Letter.

“Site” means the website operated by MARLO;

“SMC” means a safety management certificate issued in respect of the Vessel in accordance with rule 13 of

the ISM Code;

“Subsidiary” of a person means any company or entity directly or indirectly controlled by such person;

“Taxes” includes all present and future taxes, levies, imposts, duties, fees or charges of whatever nature together with interest thereon and penalties in respect thereof (except taxes imposed on the net income of the Lender) and **“Taxation”** shall be construed accordingly;

“Total Loss” means:

- (a) actual, constructive, compromised or arranged total loss of the Vessel; or
- (b) the Compulsory Acquisition of the Vessel; or
- (c) the condemnation, capture, seizure, confiscation, arrest or detention of the Vessel (other than where the same amounts to the Compulsory Acquisition of the Vessel) by any Government Entity, or by persons acting on behalf of any Government Entity or otherwise, unless the Vessel be released and restored from such condemnation, capture, seizure, confiscation arrest or detention or within fifteen (15) days after the occurrence thereof; and
- (d) the hijacking, capture, seizure or confiscation of the Vessel arising as a result of a piracy or related incident unless the Vessel be released and restored to from such hijacking, capture, seizure or confiscation within fifteen (15) days after the occurrence thereof;

“Transferee” has the meaning ascribed thereto in Clause 14.3 (Assignment by the Lender);

“Vessel” means a motor vessel, as specified in the Facility Letter, registered under the laws and flag of the Flag State in the ownership of the Borrower **OR** operated by the Borrower **OR** chartered by the Borrower together with all her boats, engines, machinery tackle outfit spare gear fuel consumable and other stores belongings and appurtenances whether on board or ashore and whether now owned or hereafter acquired and all the additions, improvements and replacements in or on the above described vessel;

“Voyage” means the voyage to be undertaken by the Vessel pursuant to the cargo fixture submitted by the Borrower.

1.2 **Interpretation.** In this Agreement:

- (a) Clause headings and the table of contents are inserted for convenience of reference only and shall be ignored in the interpretation of this Agreement;
- (b) subject to any specific provision of this Agreement or of any assignment and/or participation or syndication agreement of any nature whatsoever, reference to each of the parties hereto and to the other Finance Documents shall be deemed to be reference to and/or to include, as appropriate, their respective successors and permitted assigns;
- (c) where the context so admits, words in the singular include the plural and vice versa;
- (d) the words *“including”* and *“in particular”* shall not be construed as limiting the generality of any foregoing words;

- (e) references to (or to any specified provisions of) a Finance Document or any other agreement or instrument is a reference to that Finance Document or other agreement or instrument as it may from time to time be amended, restated, novated or replaced, however fundamentally, whether before the date of this Agreement or otherwise;
- (f) references to Clauses and Schedules are to be construed as references to the Clauses of, and the Schedules to, the relevant Finance Document and references to a Finance Document include all the terms of that Finance Document and any Schedules, Annexes or Appendices thereto, which form an integral part of same;
- (g) references to the opinion of respectively, the Lender, the Agent or the Security Trustee (each an "Opinion Party") or a determination or acceptance by the relevant Opinion Party or to documents, acts, or persons acceptable or satisfactory to the relevant Opinion Party or the like shall be construed as reference to opinion, determination, acceptance or satisfaction of the relevant Opinion Party at the sole discretion of the relevant Opinion Party, in each case acting reasonably;
- (h) references to a "**regulation**" include any present or future regulation, rule, directive, requirement, request or guideline (whether or not having the force of law, but if not having the force of law with which the relevant person habitually complies) of any of any governmental or intergovernmental body, agency, authority, central bank or government department or any self-regulatory or other national or supra-national authority or organisation and includes (without limitation) any Basel II Regulation or Basel III Regulation;
- (i) a Default (other than an Event of Default) is continuing if it has not been remedied or waived and an Event of Default is continuing if it has not been remedied or waived;
- (j) references to any person include such person's assignees and successors in title; and
- (k) references to or to a provision of, any law include any amendment, extension, re-enactment or replacement, whether made before the date of this Agreement or otherwise.

1.3 **Construction of certain terms.** In this Agreement:

"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;

"control" of an entity means:

- (a) the power (whether by way of ownership of shares, proxy, contract, agency or otherwise) to:

- (i) cast, or control the casting of, more than 50 per cent of the maximum number of votes that might be cast at a general meeting of that entity; or
 - (ii) appoint or remove all, or the majority, of the directors or other equivalent officers of that entity; or
 - (iii) give directions with respect to the operating and financial policies of that entity with which the directors or other equivalent officers of that entity are obliged to comply; and/or
- (b) the holding beneficially of more than 50 per cent of the issued share capital of that entity (excluding any part of that issued share capital that carries no right to participate beyond a specified amount in a distribution of either profits or capital) (and, for this purpose, any security interest over the share capital shall be disregarded in determining the beneficial ownership of such share capital);

and **controlled** shall be construed accordingly;

“document” includes a deed; also, a letter or any means of electronic communication (such as email);

“guarantee” means any guarantee, letter of credit, bond, indemnity or similar assurance against loss, or any obligation, direct or indirect, actual or contingent, to purchase or assume any indebtedness of any person or to make an investment in or loan to any person or to purchase assets of any person where, in each case, such obligation is assumed in order to maintain or assist the ability of such person to meet its indebtedness and **“guaranteed”** shall be construed accordingly;

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

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

“person” includes any individual, firm, company, corporation, unincorporated body of persons or any state, political sub-division or any agency thereof and local or municipal authority and any international organisation;

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

“proceedings” means proceedings of any kind, including an application for a provisional or protective measure and including arbitration proceedings;

“regulation” includes any regulation, rule, official directive, request or guideline (whether or not having the force of law but if not having the force of law, with which the relevant party habitually complies) of any governmental, intergovernmental or supranational body, agency, department or regulatory, self-regulatory or other authority or organisation;

“right” means any right, privilege, power or remedy, any proprietary interest in any asset and any other interest or remedy of any kind, whether actual or contingent, present or future, arising under contract or law, or in equity;

“successor” includes any person who is entitled (by assignment, novation, merger or otherwise) to any other person’s rights under this Agreement or any other Finance Document (or any interest in those rights) or who, as administrator, liquidator or otherwise, is entitled to exercise those rights; and in particular references to a successor include a person to whom those rights (or any interest in those rights) are transferred or pass as a result of a merger, division, reconstruction or other reorganisation of it or any other person;

“liquidation”, “winding up”, “dissolution”, or “administration” of person or (ii) a **“receiver”** or **“administrative receiver”** or **“administrator”** in the context of insolvency proceedings or security enforcement actions in respect of a person shall be construed so as to include any equivalent or analogous proceedings or any equivalent and analogous person or appointee (respectively) under the law of the jurisdiction in which such person is established or incorporated or any jurisdiction in which such person carries on business including (in respect of proceedings) the seeking or occurrences of liquidation, winding-up, reorganisation, dissolution, administration, arrangement, adjustment, protection or relief of debtors.

- 1.4 **Same meaning.** Unless a contrary indication appears, a term used in any other Finance Document or in any notice given under or in connection with any Finance Document has the same meaning in that Finance Document or notice as in this Agreement.
- 1.5 **Inconsistency.** Unless a contrary indication appears, in the event of any inconsistency between the terms of this Agreement and the terms of any other Finance Document when dealing with the same or similar subject matter (other than as relates to the creation and/or perfection of security) are subject to the terms of this Agreement and, in the event of any conflict between any provision of this Agreement and any provision of any Finance Document (other than in relation to the creation and/or perfection of security) the provisions of this Agreement shall prevail.
- 1.6 **Finance Documents.** Where any other Finance Document provides that Clauses 1.2 (*Interpretation*) and Clause 1.3 (*Construction of certain terms*), shall apply to that Finance Document, any other provision of this Agreement which, by its terms, purports to apply to all or any of the Finance Documents and/or any Security Party shall apply to that Finance Document as if set out in it but with all necessary changes.

2. THE FACILITY

- 2.1 **Commitment to Lend.** The Lender, relying upon (inter alia) each of the representations and warranties set forth in Clause 6 (*Representations and warranties*) and in each of the Security Documents, agrees to make available to the Borrower a credit facility, upon and subject to the terms of this Agreement, up to the Amount and the Borrower shall apply all amounts borrowed in accordance with the *End Use*.
- 2.2 **Commitment to Borrow.** The execution of the Facility Letter (through an electronic signature or otherwise) by an Authorised User of the Borrower commits the Borrower to borrow the funds as envisaged therein.
- 2.3 **Drawdown Notice.** Upon completion of the conditions precedent as set out in Clause 7 (*Conditions Precedent*) (to be determined at the sole discretion of the Agent and/or Lender, and confirmed via the Site), the Borrower can issue a Drawdown Notice via the Site. The Drawdown Notice must be issued no later than 10:00 a.m. (London time) on the second Banking Day before the date on which the drawdown is intended to be made, and such date to always fall within the Availability Period. Once issued, the Drawdown Notice cannot be revoked without the prior written consent of the Agent.
- 2.4 **Disbursement.** Upon receipt of the Drawdown Notice complying with the terms of this Agreement, the Agent will notify the Lender accordingly and the Lender shall make the relevant Advance available to the Borrower on the date specified in the Drawdown Notice, provided however that the amount of an Advance shall be not less than Ten thousand Dollars (\$10,000) and the aggregate of the amounts of the Advances shall not exceed the Available Facility Amount.
- 2.5 **Application of Proceeds.** Without prejudice to the Borrower's obligations under Clause 8.1(c) (*Use of proceeds*), each of the Agent and the Lender has the right to monitor or verify the application of any amount borrowed pursuant to this Agreement (which may include any reasonable requirements of the Borrower) and shall have no responsibility for the application of the proceeds of the Facility (or any part thereof) by the Borrower. For the purpose of monitoring or verification, each of the Agent and the Lender shall have the right to consult with third parties, as may be necessary or desirable.
- 2.6 **Evidence.** It is hereby expressly agreed and admitted by the Borrower that abstracts or photocopies of the books of the Lender as well as statements of accounts or a certificate signed by an authorised officer of either the Agent or the Lender shall be conclusive, binding and full evidence, save for manifest error, on the Borrower as to any of the matters referred to therein including the existence and/or the amount of the at any time Outstanding Indebtedness, any amount due under this Agreement, the applicable interest rate or Default Rate or any other rate provided for or referred to in this Agreement, the payment or non-payment of any amount. Nevertheless, enforcement procedures or any other court or out-of-court procedure can be commenced by either the Agent or the Lender on the basis of the above-mentioned means of evidence including written statements or certificates of each of the Agent or the Lender.

3. INTEREST

3.1 Normal Interest.

(a)

- (i) For Cargo Contract Finance: The Borrower shall pay on the Interest Payment Date, the accrued interest on each Advance, provided that if the number of days elapsed between the Drawdown Date and the Interest Payment Date in respect of each Advance is less than the Minimum Days, the interest will be calculated by using the Minimum Days.
- (ii) For Short-Term Loan: The Borrower shall pay on each Interest Payment Date, the accrued

interest on each Advance.

- (b) The interest rate for the calculation of interest shall be the Interest Rate as specified in the Facility Letter. Information on determinations or calculations of interest and servicing reports (including information on such determinations and calculations) may at the sole discretion of the Agent be made available to the Borrower on a monthly basis, and shall be conclusive, binding and full evidence, save for manifest error, on the Borrower.
- (c) Compounding of Normal Interest Rate: At the end of every calendar month, any interest accrued shall be compounded until the next month or the next Interest Payment Date, whichever is earlier.

3.2 Default Interest.

- (a) Default interest: If the Borrower fails to pay any sum (including, without limitation, any sum payable pursuant to this Clause 3.2) on its due date for payment under any of the Finance Documents, the Borrower shall pay interest on such sum from the due date up to the date of actual payment (as well after as before judgement) at the Default Interest Rate. The period beginning on such due date and ending on such date of payment shall be divided into successive periods as selected by the Agent, each of which (other than the first, which shall commence on such due date) shall commence on the last day of the preceding such period. Such interest shall be due and payable on the last day of each such period as determined by the Agent (without prejudice to the provisions of Clause 3.2(b)) and each such day shall, for the purposes of this Agreement, be treated as an Interest Payment Date, provided that if such unpaid sum (either of principal or otherwise) became due and payable by reason of a declaration by the Agent on a date other than an Interest Payment Date, the first such period selected by the Agent shall be of a duration equal to the period between the due date of such principal sum and the immediately following Interest Payment Date.
- (b) Interest payable by the Borrower as aforesaid shall be payable on demand.
- (c) Compounding of default interest: Any such interest which is not paid at the end of the period by reference to which it was determined shall be compounded at the end of every month.

4. REPAYMENT AND PREPAYMENT

- 4.1 **Repayment.** Subject to Clause 9 and any provisions of this Agreement, the Facility shall be terminated on the Final Maturity Date relating thereto, on which date the Borrower shall repay or procure repayment to the account of the Lender all the Advances together with interest accrued thereon to the date of repayment and any and all other amounts due under this Agreement and/or the Security Documents, failing which the Borrower shall be automatically in default and any amount so due shall bear default interest (as conclusively certified by the Agent save in case of manifest error) in accordance with Clause 3.2;

provided, however, that the Agent shall be entitled upon the happening of an Event of Default to exercise any of the rights under Clause 9.2 and to terminate the Facility in whole, whereupon all the Advances shall become due and payable without any diligence, presentment, demand of payment, protest or notice or any other procedure from the Agent which are expressly waived by the Borrower and the Borrower shall be obliged to immediately repay or procure repayment to the account of the Lender all the Advances together with interest accrued thereon to the date of payment and any and all other amounts due under this Agreement and/or the Security Documents and the Available Facility Amount shall be reduced to zero.

provided, further, that (a) on the Final Maturity Date the Borrower shall also pay to the Lender any and all other moneys then due and payable under this Agreement and the other Finance Documents and (b) if the Final Maturity Date falls on a day which is not a Banking Day, the due date therefor shall be extended to the next succeeding Banking Day unless such Banking Day falls in the next calendar month in which event such due date shall be the immediately preceding Banking Day.

4.2 **Voluntary Prepayment.** The Borrower shall have the right, upon giving the Agent not less than two (2) Banking Days' notice in writing, to prepay to the account of the Lender, without penalty or prepayment fee, part or all of the Facility, in each case together with all unpaid interest accrued thereon and all other sums of money whatsoever due and owing from the Borrower to the Lender hereunder or pursuant to the other Finance Documents and all interest accrued thereon, provided, that:

- (a) the giving of such notice by the Borrower will irrevocably commit the Borrower to prepay such amount and on the date as stated in such notice;
- (b) each such prepayment shall be in an amount equal to Ten thousand Dollars (\$10,000) or a whole multiple thereof or the balance of the Facility and will be applied in or towards reduction of the outstanding Advances or as otherwise agreed in writing between the Agent and the Borrower;
- (c) every notice of prepayment shall be effective only on actual receipt by the Lender, and written notification from the Lender to the Agent, shall be irrevocable and shall oblige the Borrower to make such prepayment in the amount and on the date specified;
- (d) any Advance or part thereof which is prepaid (and not cancelled) may not be re-borrowed;
- (e) the Borrower may not prepay the Facility or any part thereof, save as expressly provided in this Agreement or as otherwise agreed by the Agent;

Provided always that if the Borrower shall, subject always to Clause 4.2(a), make a prepayment on a Banking Day in respect of the whole of the Facility, it shall, in addition to the amount prepaid and accrued interest, pay to the account of the Lender any amount which the Agent may certify is necessary to compensate the Lender for any costs incurred by the Lender as a result of the making of the prepayment in question.

5 **PAYMENTS, TAXES AND COMPUTATION**

5.1 **Payments – No set-off or Counterclaims**

- (a) The Borrower acknowledges that in performing its obligations under this Agreement, the Lender will be incurring liabilities to third parties in relation to the funding of amounts to the Borrower and that it is reasonable for the Lender to be entitled to receive payments from the Borrower gross on the due date in order that the Lender is put in a position to perform its obligations to the relevant third parties. Accordingly, all payments to be made by the Borrower under this Agreement and/or any of the other Finance Documents shall be made in full, without any set-off or counterclaim whatsoever and, subject as provided in Clause 5.3 (Gross Up), free and clear of any deductions or withholdings or Governmental Withholdings whatsoever, as follows:
 - (i) in Dollars, not later than 10:00 a.m. (London time) on the Banking Day on which the relevant payment is due under the terms of this Agreement; and

(ii) to the account of the Lender, reference: the Loan ID, which appears in the Facility Letter or which has been advised by the Lender to the Agent and the Borrower, provided, however, that the Lender shall have the right to change the place of account for payment, upon three (3) Banking Days' prior written notice to the Agent and the Borrower.

(b) If at any time it shall become unlawful or impracticable for the Borrower to make payment under this Agreement to the relevant account or bank referred to in Clause 5.1(a), the Borrower may request and the Agent, after having consulted with the Lender, may agree to alternative arrangements for the payment of the amounts due by the Borrower to the Lender under this Agreement or the other Finance Documents. These alternative arrangements will be without prejudice to the fact or timing of such obligations to make payment, all of which shall otherwise remain unaffected.

5.2 **Payments on Banking Days.** All payments due shall be made on a Banking Day. If the due date for payment falls on a day which is not a Banking Day, that payment due shall be made on the next following Banking Day unless such Banking Day falls in the next calendar month in which case payment shall be made on the immediately preceding Banking Day.

5.3 **Gross Up.** Subject to the provisions of Clause 10.1(c), if at any time any law, regulation, regulatory requirement or requirement of any governmental authority, monetary agency, central bank or the like compels the Borrower to make payment subject to Governmental Withholdings, or any other deduction or withholding, the Borrower shall pay to the account of the Lender such additional amounts as may be necessary to ensure that there will be received by the Lender a net amount equal to the full amount which would have been received had payment not been made subject to such Governmental Withholdings or other deduction or withholding. The Borrower shall indemnify the Lender against any losses or costs incurred by the Lender by reason of any failure of the Borrower to make any such deduction or withholding or by reason of any increased payment not being made on the due date for such payment. The Borrower shall, not later than thirty (30) days after each deduction, withholding or payment of any Governmental Withholdings, forward to the Agent official receipts and any other documentary receipts and any other documentary evidence reasonably required by the Lender in respect of the payment made or to be made of any deduction or withholding or Governmental Withholding. The obligations of the Borrower under this provision shall, subject to applicable law, remain in force notwithstanding the repayment of the Facility and the payment of all interest due thereon pursuant to the provisions of this Agreement.

5.4 **Computation.** All interest and other payments payable by reference to a rate per annum under this Agreement shall accrue from day to day and be calculated on the basis of actual days elapsed and a 360-day year and, subject to Clauses 3.1 and 3.2 hereof, shall be compounded monthly.

5.5 **Mitigation.** If circumstances arise which would result in an increased amount being payable by the Borrower under this Clause then, without in any way limiting the rights of the Agent and the Lender under this Clause, the Agent and the Lender shall, if requested to do so by the Borrower, use reasonable endeavours to transfer the obligations, liabilities and rights under this Agreement and the other Finance Documents to another office or financial or credit institution not affected by the circumstances, but neither the Agent nor the Lender shall be under any obligation to take any such action if in its opinion, to do so would, might or may:

(a) have an adverse effect on its business, operations or financial condition; or

- (b) involve it in any activity which is unlawful or prohibited or any activity that is contrary to, or inconsistent, with any regulation; or
- (c) involve it in any expense (unless indemnified to its reasonable satisfaction) or tax disadvantage.

5.6 **Tax credits.** If the Lender receives a repayment or credit in respect of tax on account for which the Borrower has made an increased payment under Clause 5.3 (*Gross up*), it shall pay to the Borrower a sum equal to the repayment or credit received, provided, always, that:

- (a) nothing in this Clause shall oblige the Lender to arrange its tax affairs in any particular manner, to claim any type of relief, credit, allowance or deduction instead of, or in priority to, another or to make any such claim within any particular time;
- (b) nothing in this Clause shall oblige the Lender to make a payment which exceeds any repayment or credit in respect of tax on account of which the Borrower has made an increased payment under this Clause; and
- (c) any allocation or determination made by the Agent or the Lender under or in connection with this Clause shall be binding on the Borrower.

6. **REPRESENTATIONS AND WARRANTIES**

6.1 **Representations and warranties.** The Borrower hereby represents and warrants to the Lender as follows:

- (a) Due Incorporation/Valid Existence/Due Corporate Authority: each of the Borrower and any other corporate Security Party is duly incorporated and validly existing and in good standing under the laws of its respective country of incorporation and has power to own its respective property and assets, to carry on its respective business as the same are now being lawfully conducted as well as to undertake the obligations which they have undertaken or shall undertake pursuant to the Finance Documents to which it is a party, has power to execute, deliver and perform its obligations under the Finance Documents to which it is a party and all necessary corporate, shareholder and other action has been taken to authorise the execution, delivery and performance of the same and no limitation on the powers of the Borrower to borrow will be exceeded as a result of borrowing the Facility;
- (b) Authorised User: the person/s who is/are accessing the Site on behalf of the Borrower and any other Security Party have been duly authorised to legally bind the relevant entity by its/their sole signature, electronically or otherwise;
- (c) Valid and Binding obligations: the Finance Documents constitute (or upon their execution will constitute) valid and legally binding obligations of the relevant Security Parties enforceable against the Borrower and the other Security Parties in accordance with their respective terms and that there are no other agreements or arrangements which may adversely affect or conflict with the Finance Documents or the security thereby created;
- (d) No Litigation: no litigation or arbitration, tax claim or administrative proceeding (including action relating to any alleged or actual breach of the ISM Code and the ISPS Code) relating to sums exceeding Two Hundred and Fifty thousand Dollars (\$250,000) involving a potential liability of the Borrower or any other Security Party is current or pending or (to its directors' knowledge)

threatened against any of the Security Parties, which, if adversely determined, would have a material adverse effect on the assets or financial condition of any of them;

- (e) Perfected Securities: when duly executed, the Finance Documents will create a perfected security interest in favour of the beneficiaries thereto, with the intended priority, over the assets and revenues intended to be covered, valid and enforceable against the Borrower and the other Security Parties;
- (f) Financial Condition: to the best of knowledge of the directors/officers of the Borrower, the financial condition of any of the Security Parties has not suffered any material deterioration since the submission of the conditions precedent documents;
- (g) Shareholdings:
 - (i) the relevant percentage of the shares and voting rights in the Borrower are legally and beneficially held directly or indirectly by the Beneficial Shareholders disclosed to the Agent and/or the Lender before signing of this Agreement; and
 - (ii) no change of control has been made directly or indirectly in the ownership, beneficial ownership, or management of the Borrower or any share therein and the relevant percentage of the shares and voting rights in each of the Borrower remain at the day of this Agreement in the ultimate legal and beneficial ownership of the Beneficial Shareholders disclosed to the Agent and/or the Lender before signing of this Agreement;
- (h) Direct obligations - Pari Passu: the obligations of the Borrower under this Agreement are direct, general and unconditional obligations of the Borrower and rank at least pari passu with all other present and future unsecured and unsubordinated Financial Indebtedness of the Borrower with the exception of any obligations which are mandatorily preferred by law;
- (i) No Default under other Financial Indebtedness: neither the Borrower nor any other Security Party is in breach of or in default under any agreement relating to Financial Indebtedness exceeding Two Hundred and Fifty thousand Dollars (\$250,000) to which it is a party or by which it may be bound;
- (j) Information: all information, accounts, statements of financial position, exhibits and reports furnished by or on behalf of any Security Party to the Agent and/or the Lender in connection with the negotiation and preparation of this Agreement and each of the other Finance Documents are true and accurate in all material respects and not misleading, do not omit material facts and all reasonable enquiries have been made to verify the facts and statements contained therein; to the best knowledge of the directors/officers or shareholders of the Borrower, there are no other facts the omission of which would make any fact or statement therein misleading and, in the case of accounts and statements of financial position, they have been prepared in accordance with generally accepted accounting principles which have been consistently applied;
- (k) No Default: no Default has occurred and is continuing;
- (l) Copies true and complete: all copies of documents delivered or to be delivered to the Agent as conditions precedent are, or will when delivered be, true and complete copies of such documents; such documents will, when delivered, constitute valid and binding obligations of the parties thereto

enforceable in accordance with their respective terms and there will have been no amendments or variations thereof or defaults thereunder;

(m) Sanctions:

- (i) none of the Security Parties is a Prohibited Person nor is owned or controlled by, or acting directly or indirectly on behalf of or for the benefit of, a Prohibited Person and the Borrower does not own or control a Prohibited Person; and
- (ii) no proceeds of the Facility shall be made available, directly or indirectly, to or for the benefit of a Prohibited Person or otherwise shall be, directly or indirectly, applied in a manner or for a purpose prohibited by Applicable Sanctions;

(n) Compliance with certain undertakings: At the date of this Agreement, the Borrower are in compliance with Clauses 8.2 (*Negative pledge*) and 11.2 (*Maintenance of Securities*); and

(o) Facility Letter terms: At the date of this Agreement:

- (i) in case of Cargo Contract Finance, the Borrower confirms that all loan terms and cargo contract terms, as appearing in the Facility Letter, are complete, accurate and valid;
- (ii) in case of Short-Term Loan, the Borrower confirms that all loan terms and Vessel's details, as appearing in the Facility Letter, are complete, accurate and valid;

6.2 **Money Laundering - Acting for its own account.** The Borrower further represents and warrants and confirms that it is the beneficiary and ultimate beneficiary for all of the Facility made or to be made available to it and it will promptly inform the Agent by written notice if it is not, or ceases to be, the beneficiary and notify the Agent in writing of the name and the address of the new beneficiary/beneficiaries; the Borrower is aware that under applicable money laundering provisions, it has an obligation to state for whose account the Facility is obtained; the Borrower confirms that, by entering into this Agreement and the other Security Documents, it is acting on its own behalf and for its own account and it is obtaining the Facility for its own account. In relation to the borrowing by the Borrower of the Facility, the performance and discharge of its obligations and liabilities under this Agreement or any of the Security Documents and the transactions and other arrangements effected or contemplated by this Agreement or any of the Security Documents to which the Borrower is or is to be a party, it is acting for its own account and that the foregoing will not involve or lead to a contravention of any law, official requirement or other regulatory measure or procedure which has been implemented to combat "*money laundering*" (as defined in Article 1 of the Directive 2005/60/EC of the of the European Parliament and of the Council).

6.3 **Due diligence - no reliance on MARLO.** The Lender and the Borrower further represent, confirm and acknowledge that each has made its own due diligence checks (including Know Your Customer and Know Your Business) and is entering into this Agreement acting on its own account, without relying on MARLO.

6.4 **Additional representations for ship owning companies.** In case that the Borrower is a ship owning company, then the additional representations contained in Schedule A hereto will apply.

6.5 **Representations Correct.** At the time of entering into this Agreement all above representations and

warranties or any other information given by the Borrower are true and accurate.

6.6 **Repetition of Representations and Warranties.** The representations and warranties in this Clause 6 shall be deemed to be repeated by the Borrower on the Drawdown Date and throughout the Security Period as if made with reference to the facts and circumstances existing on such day.

7. **CONDITIONS PRECEDENT**

7.1 **Conditions precedent to the approval of the financing.** Prior to the Lender approving any financing request (making any bid for a Facility), the Borrower shall have submitted to the Site, the following documents and evidence:

- (a) Ultimate Beneficiaries: details of all ultimate beneficiaries who own or control 25% of more of the Borrower;
- (b) Directors: details of all the Directors of the Borrower;
- (c) Audited financial statements: copies of audited financial statements of the Borrower for the last 3 available years;
- (d) Current fleet: details, as requested in the Site, of the Borrower's current fleet including all vessels fully or partially owned, all time chartered vessels and all bareboat chartered vessels;
- (e) Constitutional Documents: a copy of the Articles of Incorporation and By-Laws or the Memorandum and Articles of Association, or of any other constitutional documents, as the case may be, together with the Certificate of Incorporation of the Borrower;
- (f) Certificates of incumbency: a copy of a recent certificate of incumbency of the Borrower issued by the appropriate authority or, as appropriate, signed by the secretary or a director thereof, stating the officers and the directors of each of them;
- (g) Structure charts: the latest corporate structure chart of the Borrower showing all Group companies as well as the ownership structure chart of the Borrower up to the individual beneficial owners.

7.2 **Conditions precedent to the making available of the Facility.** The obligation of the Lender to advance the Facility (or any part thereof) is subject to the further condition that the Agent shall have received prior to the drawdown or, where this is not possible, simultaneously with the drawdown of the Facility or the relevant part thereof:

- (a) Resolutions: a copy of the minutes of separate meetings of the directors and (if required) shareholders of each corporate Security Party at which there was approved (inter alia) the entry into, execution, delivery and performance of this Agreement, the other Finance Documents and any other documents executed or to be executed pursuant hereto or thereto to which the relevant corporate Security Party is or is to be a party;
- (b) Powers of Attorney: a copy of any power(s) of attorney and any further evidence of the due authority of any person signing this Agreement, the other Finance Documents, and any other documents executed or to be executed pursuant hereto or thereto on behalf of any corporate

person;

- (c) Security Documents: each of the Security Documents duly executed and where appropriate duly registered with the Registry or any other competent authority (as required);
- (d) Title and no Encumbrances: evidence that, prior to or simultaneously with the relevant drawdown, the Vessel is duly registered in the ownership of the Borrower with the Registry and under the laws and flag of the Flag State free from any Encumbrances save for Permitted Encumbrances **OR** evidence that, prior to or simultaneously with the relevant drawdown, the Vessel is chartered by the Borrower pursuant to a valid and current Charterparty;
- (e) Fees: evidence that any fees have been paid in full to MARLO on or prior to the Drawdown Date;
- (f) Lender's Account: evidence that:
 - (i) the Lender has opened an account with a financial institution or escrow with an appropriate counterparty, in each case that is fully operational;
 - (ii) in respect of an escrow, this is stated to be in favour of the Borrower, is and will remain for the Availability Period in an amount of no less than the Facility (less any amounts drawn by, and advanced to, the Borrower), and upon fulfilment or waiver of the conditions precedent in Clause 7.1 and 7.2, all or part of escrow amount will be unconditionally available for drawdown(s) by the Borrower;
 - (iii) in respect of an account, the balance is and will remain for the Availability Period in an amount of no less than the Facility (less any amounts drawn by, and advanced to, the Borrower), and upon fulfilment or waiver of the conditions precedent in Clause 7.1 and 7.2, all or part of the balance of the account will be unconditionally available for drawdown(s) by the Borrower.
- (g) Other Conditions Precedent: as mentioned in the "Conditions Precedent" box in the Site and the Facility Letter, such conditions to be deemed satisfied when the Agent declares so to the Borrower and Lender.

7.4 **Further documents.** The Borrower hereby undertakes to make or procure to be made such amendments and/or additions to any of the documents delivered in accordance with this conditions precedent list, to the extent required by any change in applicable law and regulation or any changes in the Lender's own internal guidelines since the date on which the applicable documents and evidence were delivered to the Agent/submitted to the Site, and to execute and/or deliver to the Agent or procure to be executed and/or delivered to the Agent such further documents as the Agent and its legal advisors may reasonably require to satisfy themselves that all the terms and requirements of this Agreement have been complied with.

7.5 **Waiver of conditions precedent.** The conditions specified herein, with the exception of Clause 7.2 (e) (Fees), are inserted solely for the benefit of the Lender and, with the exception of Clause 7.2 (e) (Fees), may be waived by the Agent in writing in whole or in part and with or without conditions.

8. COVENANTS

8.1 **General.** The Borrower hereby undertakes with the Lender that, from the date of this Agreement and so long as and while all or any part of the Outstanding Indebtedness remains outstanding, it will:

- (a) Notice on adverse change or Default: immediately inform the Agent and MARLO upon becoming aware of any occurrence (including, without limitation, any legal proceedings against the Security Parties or any of them) which might materially adversely affect the ability of any Security Party to perform its obligations under any of the Finance Documents and, without limiting the generality of the foregoing, will inform the Lender of any Default forthwith upon becoming aware thereof and will from time to time, if so requested by the Agent, confirm to the Agent in writing that, save as otherwise stated in such confirmation, no Default has occurred and is continuing;
- (b) Use of proceeds: use the Facility exclusively for the purposes specified as End Use in the Facility Letter;
- (c) Pari passu: ensure that its obligations under this Agreement shall, without prejudice to the provisions of this Clause 8.1, at all times rank at least pari passu with all its other present and future unsecured and unsubordinated Financial Indebtedness with the exception of any obligations which are mandatorily preferred by law and not by contract;
- (d) Provision of further information including documents: promptly, when requested, provide the Agent with such financial and other information, accounts and documents relating to the business, undertaking, assets, liabilities, revenues, each and all Insurances, financial condition or affairs of any Security Party or other member of the Group and such other further general information relating to the Borrower, any Security Party or other member of the Group as the Agent from time to time may reasonably require (the Agent is not obliged to specify each and every item it requires and may reference its requirement to groups or categories of information, for example in case of Insurances);
- (e) Payment on demand: pay to the account of the Lender within five (5) Banking Days of demand any sum of money which is payable by the Borrower to the Lender under this Agreement but in respect of which it is not specified in any other Clause when it is due and payable;
- (f) Compliance with laws and regulations: to comply, or procure compliance with all laws or regulations relating to the Borrower or to the business of the Borrower and cause this Agreement and the other Finance Documents to comply with and satisfy all the requirements and formalities established by the applicable laws to perfect this Agreement and the other Finance Documents as valid and enforceable Finance Documents;
- (g) Maintenance of Encumbrances:
 - (i) at its own cost, do all that it reasonably can to ensure that any Finance Document validly creates the obligations and the Encumbrances which it purports to create; and
 - (ii) without limiting the generality of sub-paragraph (i) above, at its own cost, promptly register, file, record or enrol any Finance Document with any court or authority in all Relevant Jurisdictions, pay any stamp, registration or similar tax in all Relevant Jurisdictions in respect of any Finance Document, give any notice or take any other step which may be or has become necessary for any Finance Document to be valid, enforceable or admissible in

evidence or to ensure or protect the priority of any Encumbrance which it creates;

- (h) Notification of litigation: provide the Agent with details of any legal or administrative action involving any Security Party the Vessel, the Earnings or the Insurances as soon as such action is instituted or it becomes apparent to the Borrower that it is likely to be instituted, unless it is clear that the legal or administrative action cannot be considered material in the context of any Finance Document;
- (i) Know your customer and anti-money laundering compliance: provide the Agent with or procure the provision of, such documentation and other evidence as the Agent shall from time to time require, based on applicable law and regulations from time to time and the Agent's or the Lender's or the Security Trustee's own internal guidelines from time to time to identify the Borrower and the other Security Parties, including the disclosure in writing of the ultimate legal and beneficial owner or owners of such entities, and any other persons involved or affected by the transactions contemplated by this Agreement and the other in the Finance Documents in order for the Agent, the Lender and the Security Trustee to carry out and be satisfied each 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.

8.2 Negative undertakings. The Borrower hereby undertakes with the Lender that, from the date of this Agreement and so long as and while all or any part of the Outstanding Indebtedness remains outstanding, without the prior written consent of the Agent:

- (a) No Encumbrance of assets: save for Permitted Encumbrances, it will not allow any part of its undertaking, property, assets or rights, whether present or future, to be mortgaged, charged, pledged, used as a lien or otherwise encumbered without the prior written consent of the Agent;
- (b) Insurances: it will not do anything or omit to do anything that may:
 - (i) be a breach, repudiation or default of any of the Insurances;
 - (ii) potentially (with passing of time or other events) have the effect of a potential termination of the Insurances, potential rejection of any current or future claim(s), addition currently or in future of extraordinary or special increases in premium(s); or
 - (iii) amount to non-renewal of each and all Insurances.

8.3 Additional representations for ship owning companies. In case that the Borrower is a ship owning company, then the additional representations contained in Schedule A hereto will apply.

8.4 Validity of Securities - Earnings - Taxes etc. The Borrower hereby undertakes with the Lender that, from the date of this Agreement and so long as and while all or any part of the Outstanding Indebtedness remains outstanding, it will:

- (a) Validity: ensure and procure that all governmental or other consents required by law and/or any other steps required for the validity, enforceability and legality of this Agreement and the other Finance Documents are maintained in full force and effect and/or appropriately taken; and

- (b) Additional Documents: from time to time within fifteen (15) days after the Agent 's request, it will execute and deliver to the Agent or procure the execution and delivery to the Agent of all such documents as shall be deemed necessary in the reasonable opinion of the Agent for giving full effect to this Agreement, and for perfecting, protecting the value of or enforcing any rights or securities granted to the Lender or the Security Trustee under any one or more of this Agreement, the other Finance Documents and any other documents executed pursuant hereto or thereto and in case that any conditions precedent (with the Agent 's consent) have not been fulfilled prior to the relevant Drawdown Date, such conditions shall be complied with within fourteen (14) days after the Agent 's written request (unless the Agent agrees otherwise in writing) and failure to comply with this covenant shall be an Event of Default.

8.5 **Covenants for the Securities Parties.** The Borrower hereby undertakes with the Lender that, from the date of this Agreement and so long as any moneys are owing under the Finance Documents and while all or any part of the Outstanding Indebtedness remains outstanding, it will ensure and procure that all other Security Parties and each of them duly and punctually comply, with the covenants in Clauses 8.1 (General) and Clause 8.4 (Validity of Securities - Earnings - Taxes etc) which are applicable to them mutatis mutandis

9. EVENTS OF DEFAULT

9.1 **Events.** There shall be an Event of Default if:

- (a) Non-payment: any Security Party fails to pay any sum payable by it under any of the Finance Documents at the time, in the currency and in the manner stipulated in the Finance Documents (and so that, for this purpose, sums payable on demand shall be treated as having been paid at the stipulated time if paid within two (2) Banking Days of demand made by the Agent; or
- (b) Breach of other obligations: any Security Party commits any breach of or omits to observe any of its obligations or undertakings expressed to be assumed by it under any of the Finance Documents (other than those referred to in Clause 9.1(a) (Non-payment)) and, in respect of any such breach or omission which in the opinion of the Agent is capable of remedy, such action as the Agent may require shall not have been taken within five (5) Banking Days of the Agent notifying in writing the relevant Security Party of such default and of such required action; or
- (c) Misrepresentation: any representation or warranty made or deemed to be made or repeated by or in respect of any Security Party in or pursuant to any of the Finance Documents or in any notice, certificate or statement referred to in or delivered under any of the Finance Documents is or proves to have been incorrect or misleading in any material respect; or
- (d) Cross-default: any Financial Indebtedness of the Borrower relating to an amount exceeding Two Hundred and Fifty thousand Dollars (\$250,000) is not paid when due (unless contested in good faith) or any Financial Indebtedness of the Borrower relating to an amount exceeding Fifty thousand Dollars (\$50,000) becomes (whether by declaration or automatically in accordance with the relevant agreement or instrument constituting the same) due and payable prior to the date when it would otherwise have become due (unless as a result of the exercise by such Security Party of a voluntary right of prepayment), or any facility or commitment available to the Borrower relating to an amount exceeding Fifty thousand Dollars (\$50,000) is withdrawn, suspended or cancelled by reason of any default (however described) of the person concerned unless the relevant Security Party shall have satisfied the Agent that such withdrawal, suspension or cancellation will not affect or prejudice in

any way the relevant Security Party's ability to pay its debts as they fall due, or any guarantee given by the Borrower is not honoured when due and called upon; or

- (e) Legal process: any judgment or order made or commenced in good faith by a person against the Borrower relating to an amount exceeding Two Hundred and Fifty thousand Dollars (\$250,000) is not stayed or complied with within ten (10) days or a good faith creditor attaches or takes possession of, or a distress, execution, sequestration or other *bona fide* process is levied or enforced upon or sued out against, any of the undertakings, assets, rights or revenues of the Borrower and is not discharged within ten (10) days; or
- (f) Insolvency: any Security Party becomes insolvent or stops or suspends making payments (whether of principal or interest) with respect to all or any class of its debts or announces an intention to do so; or
- (g) Winding up: any petition is presented, or other step is taken for the purpose of winding up any Security Party or an order is made, or resolution passed for the winding up of any Security Party or a notice is issued convening a meeting for the purpose of passing any such resolution; or
- (h) Administration: any petition is presented, or other step is taken for the purpose of the appointment of an administrator of any Security Party and such petition is not stayed or dismissed within 10 days of occurring; or
- (i) Appointment of receivers and managers: any administrative or other receiver is appointed of any Security Party or any part of its assets and/or undertaking or any other steps are taken to enforce any Encumbrance over all or any part of the assets of any Security Party; or
- (j) Cessation of business: any Security Party suspends or ceases or threatens to suspend or cease to carry on its business; or
- (k) Seizure: all or a material part of the undertaking, assets, rights or revenues of, or shares or other ownership interests in, any Security Party are seized, nationalised, expropriated or compulsorily acquired by or under the authority of any government; or
- (l) Invalidity: any of the Finance Documents and/or any other substantial document related to this Agreement shall at any time and for any reason become invalid or unenforceable or otherwise cease to remain in full force and effect, or if the validity or enforceability of any of the Finance Documents shall at any time and for any reason be contested by any Security Party, which is a party thereto, or if any such Security Party shall deny that it has any, or any further, liability thereunder; or
- (m) Unlawfulness: it becomes impossible or unlawful at any time for any Security Party, to fulfil any of the covenants and obligations expressed to be assumed by it in any of the Finance Documents or for the Agent, the Lender or the Security Trustee to exercise the rights or any of them vested in it under any of the Finance Documents or otherwise; or
- (n) Repudiation: any Security Party repudiates any of the Finance Documents or does or causes or permits to be done any act or thing evidencing an intention to repudiate any of the Finance Documents; or
- (o) Encumbrances enforceable: any Encumbrance (other than Permitted Liens) in respect of any of the property (or part thereof) which is the subject of any of the Finance Documents becomes enforceable; or

- (p) Material adverse change: any material, in the opinion of the Agent, adverse change occurs in the financial condition of the Borrower from that described by the Security Parties (or any of them) to the Agent in the negotiation of this Agreement which, in the opinion of the Agent would materially impair the ability of the Security Parties (or any of them) to perform their respective obligations under this Agreement and the other Finance Documents to which is or is to be a party; or
- (q) Beneficial Ownership of the Borrower: there has been a change of control directly or indirectly in the ownership, beneficial ownership, or management of the Borrower as a result of which the Borrower ceases to remain in the ultimate legal and beneficial ownership of the Beneficial Shareholders as disclosed to the Lender prior to the date of this Agreement; or
- (r) Material events: any other event or events (whether related or not) occurs or circumstance arises which constitutes a material (in the opinion of the Agent) adverse change, from the position applicable as at the date of this Agreement, in the business, affairs or condition (financial or otherwise) of any Security Party) (including any such material adverse change resulting from an Environmental Incident) the effect of which is likely, in the opinion of the Agent, to impair, delay or prevent the due fulfilment by any Security Party of any of its respective obligations or undertakings contained in this Agreement or any of the other Finance Documents and/or materially and adversely to affect the security created by any of the Finance Documents; or
- (s) Charterparty: the Charterparty is non-fulfilled or terminated or becomes invalid or unenforceable or otherwise ceases to be in full force and effect for any reason prior to its stated termination date; or
- (t) Any of the additional events described in Schedule A hereto occur, in case that the Borrower is the owner of the Vessel; or
- (u) Finance Documents: any event of default (as howsoever described or defined therein) occurs under the Finance Documents (or any of them).

9.2 **Consequences of Default – Acceleration.** The Agent may, without prejudice to any other rights of the Lender (which will continue to be in force concurrently with the following), at any time after the happening of an Event of Default which is continuing:

- (a) by notice to the Borrower declare that the obligation of the Lender to make the Facility available shall be terminated, whereupon same shall be reduced to zero forthwith; and/or
- (b) by notice to the Borrower declare that all Advances and all interest accrued and all other sums payable under the Finance Documents have become due and payable, whereupon the same shall, immediately or in accordance with the terms of such notice, become due and payable without any further diligence, presentment, demand of payment, protest or notice or any other procedure, which are expressly waived by the Borrower; and/or
- (c) put into force and exercise all or any of the rights, powers and remedies possessed by the Lender under this Agreement and/or under any other Finance Document and/or as chargee or assignee or as the beneficiary of any other property right or any other security (as the case may be) of the assets charged or assigned to it under the Finance Documents or otherwise (whether at law, by virtue of any of the Finance Documents or otherwise) and instruct the Security Trustee to commence enforcement proceedings as the case may be.

9.3 **Multiple notices; action without notice.** The Agent may serve notices under sub-Clauses (a) and (b) of Clause 9.2 (*Consequences of Default – Acceleration*) simultaneously or on different dates and it may take any

action referred to in that Clause if no such notice is served or simultaneously with or at any time after service of both or either of such notices, it being understood and agreed that the non-service of a notice in respect of an Event of Default hereunder, or under any of the Finance Documents (whether known to the Lender or not), shall not be construed to mean that the Event of Default shall cease to exist and bring about its lawful consequences.

9.4 **Demand basis.** If, pursuant to Clause 9.2(b), the Agent declares the Advances to be due and payable on demand, the Agent may by written notice to the Borrower (a) call for repayment of the Advances on such date as may be specified whereupon the Advances shall become due and payable on the date so specified together with all interest accrued and all other sums payable under this Agreement or (b) withdraw such declaration with effect from the date specified in such notice.

9.5 **Proof of Default.** It is agreed that (a) the non-payment of any sum of money in time will be proved conclusively by mere passage of time and (b) the occurrence of this (non-payment) shall be proved conclusively by a mere written statement of the Lender (save for manifest error).

9.6 **Exclusion of Lender's liability.** Neither the Agent nor the Lender nor the Security Trustee nor any receiver or manager appointed by the Lender, shall have any liability to the Borrower or a Security Party for any loss caused by an exercise of rights under, or enforcement of an Encumbrance created by, a Finance Document or by any failure or delay to exercise such a right or to enforce such an Encumbrance; except that this does not exempt the Agent, the Lender, the Security Trustee or a receiver or manager appointed by the Lender from liability for losses shown to have been caused by the wilful misconduct of any such party's own officers, partners and employees.

10. **INDEMNITIES - EXPENSES – FEES**

10.1 **Indemnity.** The Borrower shall on demand (and it is hereby expressly undertaken by the Borrower to) indemnify the Agent, the Security Trustee and the Lender, without prejudice to any of the other rights of the Agent, the Security Trustee or the Lender under any of the Finance Documents, against any documented loss or expense which the Agent shall certify as sustained or incurred as a consequence of:

- (a) any default in payment by any of the Security Parties of any sum under any of the Finance Documents when due to the extent it is not already compensated by the Default Rate; or
- (b) the occurrence of any Event of Default which is continuing; or
- (c) the Facility not being advanced for any reason (excluding any default by the Lender and any reason mentioned in Clause 12.1 (*Unlawfulness*)) after the Drawdown Notice has been given, including, in any such case, but not limited to, any loss or expense sustained or incurred in maintaining or funding the Facility or any part thereof or in liquidating or re-employing deposits from third parties acquired to effect or maintain the Facility or any part thereof.

10.2 **Expenses.** The Borrower shall (and it is hereby expressly undertaken by the Borrower to) pay to the account of the Lender on demand of the Agent:

- (a) Amendment expenses: all documented expenses (including reasonable legal, printing and out-of-pocket expenses) reasonably incurred by the Agent, the Security Trustee or the Lender in connection with the negotiation, preparation and execution of this Agreement and the other Finance Documents and of any amendment or extension of or the granting of any waiver or consent; and

(b) Enforcement expenses: all expenses (including reasonable legal and out-of-pocket expenses) incurred by the Agent, the Security Trustee or the Lender in contemplation of, or otherwise in connection with, the enforcement of, or preservation of any rights under, this Agreement and/or any of the other Finance Documents, or otherwise in respect of the moneys owing under this Agreement and/or any of the other Finance Documents or the contemplation or preparation of the above, whether they have been effected or not.

10.3 **Value Added Tax.** All fees and expenses payable pursuant to Clause 5 shall be paid together with value added tax or any similar tax (if any) properly chargeable thereon. Any value added tax chargeable in respect of any services supplied by the Lender, the Agent or Security Trustee under this Agreement or any of the Finance Documents shall, on delivery of the value added tax invoice, be paid in addition to any sum agreed to be paid hereunder.

10.4 **Stamp and other duties.** The Borrower shall pay all stamp, documentary, registration or other like duties or taxes (including any duties or taxes payable by the Agent, the Security Trustee or the Lender) imposed on or in connection with any of the Security Documents or the Facility and shall indemnify each or all of the foregoing parties against any liability arising by reason of any delay or omission by the Borrower to pay such duties or taxes.

10.5 **Currency Indemnity.** If any sum due from the Borrower under any of the Finance Documents or any order or judgement given or made in relation hereto has to be converted from the currency (the "**first currency**") in which the same is payable under the relevant Finance Document or under such order or judgement into another currency (the "**second currency**") for the purpose of (i) making or filing a claim or proof against the Borrower or any other Security Party, as the case may be or (ii) obtaining an order or judgement in any court or other tribunal or (iii) enforcing any order or judgement given or made in relation to any of the Finance Documents, the Borrower shall (and it is hereby expressly undertaken by the Borrower to) indemnify and hold harmless the Lender from and against any loss suffered as a result of any difference between (a) the rate of exchange used for such purpose to convert the sum in question from the first currency into the second currency and (b) the rate or rates of exchange at which the Lender may in the ordinary course of business purchase the first currency with the second currency upon receipt of a sum paid to it in satisfaction, in whole or in part, of any such order, judgement, claim or proof. The term "**rate of exchange**" includes any premium and costs of exchange payable in connection with the purchase of the first currency with the second currency.

10.6 **Environmental Indemnity.** The Borrower shall indemnify the Agent, the Security Trustee or the Lender on demand and hold each or all of the foregoing parties harmless from and against all costs, expenses, payments, charges, losses, demands, liabilities, actions, proceedings (whether civil or criminal) penalties, fines, damages, judgements, orders, sanctions or other outgoings of whatever nature which may be suffered, incurred or paid by, or made or asserted against each or all of the foregoing parties at any time, whether before or after the repayment in full of principal and interest under this Agreement, relating to, or arising directly or indirectly in any manner or for any cause or reason out of an Environmental Claim made or asserted against the Lender if such Environmental Claim would not have been, or been capable of being, made or asserted against each or all of the foregoing parties if it had not entered into any of the Finance Documents and/or exercised any of its rights, powers and discretions thereby conferred and/or performed any of its obligations thereunder and/or been involved in any of the transactions contemplated by the Finance Documents.

10.7 **Maintenance of the Indemnities.** The indemnities contained in this Clause 10 shall apply irrespective of any

indulgence granted to the Borrower or any other party from time to time and shall continue to be in full force and effect notwithstanding any payment in favour of the Lender and/or for the benefit of the Agent or Security Trustee and any sum due from the Borrower under this Clause 10 will be due as a separate debt and shall not be affected by judgement being obtained for any other sums due under any one or more of this Agreement, the other Finance Documents and any other documents executed pursuant hereto or thereto.

10.8 **Communications Indemnity.** It is hereby agreed in connection with communications that:

- (a) Express authority is hereby given by the Borrower to the Agent, the Security Trustee and the Lender to accept all tested or untested communications given by email, facsimile, cable or otherwise, regarding any or all of the notices, requests, instructions or other communications under this Agreement, subject to any restrictions imposed by each or all of the foregoing parties relating to such communications including, without limitation (if so required), the obligation to confirm such communications by letter;
- (b) The Borrower shall recognise any and all of the said notices, requests, instructions or other communications as legal, valid and binding, when these notices, requests, instructions or communications, in case of emails, are duly sent by the person appearing to be sending such notice, request, instruction or other communication;
- (c) The Borrower hereby assumes full responsibility for the execution of the said notices, requests, instructions or communications and promises and recognises that the Agent, the Security Trustee and the Lender shall not be held responsible for any loss, liability or expense that may result from such notices, requests, instructions or other communications. It is hereby undertaken by the Borrower to indemnify in full the Agent, the Security Trustee and the Lender from and against all actions, proceedings, damages, costs, claims, demands, expenses and any and all direct and/or indirect losses which each or all of the foregoing parties may suffer, incur or sustain by reason of each or all of the foregoing parties following such notices, requests, instructions or communications;
- (d) With regard to notices, requests, instructions or communications issued by electronic and/or mechanical processes (e.g. by email or facsimile), the risk of equipment malfunction, including, without limitation, paper shortage, transmission errors, omissions and distortions is assumed fully and accepted by the Borrower, save in case of the Agent's wilful misconduct;
- (e) The risks of misunderstandings and errors resulting from notices, requests, instructions or communications being given as mentioned above, are for the Borrower and the Agent, the Security Trustee and the Lender will be indemnified in full pursuant to this Clause save in case of Bank's wilful misconduct;
- (f) The Agent shall have the right to ask the Borrower to furnish any information to establish the authority of any person purporting to act on behalf of the Borrower for these notices, requests, instructions or communications but it is expressly agreed that there is no obligation for the Agent to do so. The Agent, the Security Trustee and the Lender shall be fully protected in, and shall incur no liability to the Borrower for acting upon the said notices, requests, instructions or communications which were believed in good faith to have been given by the Borrower or by any of its authorised representative(s);

(g) It is undertaken by the Borrower to safeguard the function and the security of the electronic and mechanical appliance(s) such as emails etc., as well as the code word list, if any, and to take adequate precautions to protect such code word list from loss and to prevent its terms becoming known to any persons not directly concerned with its use. The Borrower shall hold the Agent, the Security Trustee and the Lender harmless and indemnified from all claims, losses, damages and expenses which may be incurred by reason of the failure of the Borrower to comply with the obligations under this Clause.

10.9 **Fees.** The Borrower shall pay an arrangement fee (the “**Arrangement Fee**”) as specified in the Facility Letter, such fee to be due and payable to MARLO by the latest, on or prior to the Drawdown Date. The Lender (and such authorisation is hereby expressly given to the Lender) shall have the right but not the obligation to pay the Arrangement Fee on behalf of the Borrower; the Borrower agrees that such amount, if paid by the Lender, shall be regarded as Expenses. The Arrangement Fee shall be payable whether or not any part of the Facility is ever advanced (irrespective of utilisation/cancellation in part or in whole) and shall be non-refundable. Any advance paid towards the Arrangement Fee will be deducted from the final payment of the Arrangement Fee.

11. **SECURITY, APPLICATION, AND SET-OFF**

11.1 **Securities.** For the due and punctual repayment of the Facility and payment of interest thereon as provided in this Agreement and of all other Outstanding Indebtedness, the Borrower shall ensure and procure that the Finance Documents are duly executed as legal, valid, binding and enforceable securities.

11.2 **Maintenance of Securities.** It is hereby undertaken by the Borrower that the Finance Documents shall remain legal, valid, binding and enforceable securities throughout the Security Period and that the Borrower will promptly take any action necessary as the Agent may notify the Borrower in order to perfect or rectify any Finance Document.

11.3 **Application of funds.**

(a) Order of application: All moneys received by the Lender or the Agent under or pursuant to any of the Finance Documents for any purpose, including for repayment or prepayment, shall be applied in the following manner:

- (i) Firstly, in or towards payment of Arrangement Fee which may be due to MARLO;
- (ii) Secondly, in or towards payment of fees due to the Agent and/or the Security Trustee, Expenses and all sums other than principal or interest which may be due to the Lender under this Agreement and the other Finance Documents or any of them at the time of application;
- (iii) Thirdly, in or towards payment of any default interest;
- (iv) Fourthly, in or towards payment of any arrears of interest (other than default interest) due in respect of the Facility or any part thereof;
- (v) Fifthly, in or towards repayment of the Facility (whether the same is due and payable or not);

- (vi) Sixthly, in or towards payment to Lender of any other sums owing to them/it under any of the Finance Documents; and
 - (vii) Seventhly, the surplus (if any) after the full and complete payment of the Outstanding Indebtedness shall be released and paid to the Borrower or to whomsoever else shall be entitled to receive such surplus.
- (b) Notice of variation of order of application: The Agent may, by notice to the Borrower and the Security Parties, provide, at its sole discretion, for a different order of application from that set out in Clause 11.3(a) (*Order of application*) either as regards a specified sum or sums or as regards sums in a specified category or categories, without affecting the obligations of the Borrower to the Lender.
- (c) Appropriation rights overridden: This Clause 11.3 and any notice which the Agent gives under Clause 11.3(b) (*Notice of variation of order of application*) shall override any right of appropriation possessed, and any appropriation made, by the Borrower or any other Security Party.

12. UNLAWFULNESS

12.1 **Unlawfulness.** If any change in, or introduction of, any law, regulation or regulatory requirement or any request of any central bank, monetary, regulatory or other authority or any order of any court renders it unlawful or contrary to any such regulation, requirement, request or order for the Lender to advance the Facility or the relevant part thereof (as the case may be) or to maintain or fund the Facility, notice shall be given promptly by the Lender to the Agent and to the Borrower whereupon the Facility shall be reduced to zero and the Borrower shall be obliged to prepay the Facility in accordance with such notice, together with accrued interest thereon to the date of prepayment and all other sums payable by the Borrower under this Agreement.

In any such event the Borrower and the Lender shall negotiate in good faith (but without incurring any obligations) with a view to agreeing the terms for making the Facility available from another jurisdiction or providing the Facility from alternative sources.

12.2 **Mitigation.** If circumstances arise which would result in a notification under Clause 12.1 (*Unlawfulness*), then, without in any way limiting the rights of the Lender under this Clause, the Lender shall use reasonable endeavours to transfer all the Lender's obligations, liabilities and rights under this agreement and the Finance Documents to another financial institution not affected by the circumstances but the Lender shall not be under any obligation to take any such action if, in its sole and absolute opinion, to do so would or might: (a) have an adverse effect on its business, operations or financial condition; or (b) involve it in any activity which is unlawful or prohibited or any activity that is contrary to, or inconsistent with, any regulation; or involve it in any expense (unless indemnified to its satisfaction) or tax disadvantage.

13. (Intentionally left blank)

14. ASSIGNMENT, TRANSFER, PARTICIPATION, LENDING OFFICE

14.1 **Benefit and burden.** This Agreement shall be binding upon and inure to the benefit of the Lender and the Borrower and their respective successors and permitted assigns.

14.2 No Assignment by the Borrower and other Security Parties. Neither the Borrower nor any other Security Parties may assign or transfer any of its rights and/or obligations under this Agreement or any of the other Finance Documents or any documents executed pursuant to this Agreement and/or the other Finance Documents.

14.3 Assignment by the Lender. The Lender may at any time without the consent of the Borrower, cause all or any part of its rights, benefits and/or obligations under this Agreement and the other Finance Documents to be assigned or transferred to any Subsidiary or affiliate of, or company controlled by, the Lender, a member of the European Central Bank System, a credit institution, a financial services institution, a financial institution, to an insurance company, a social security fund, a pension fund, an investment company/trust or a special purpose company established for the purposes of securitization, a capital investment company, financial intermediary or special purpose vehicle associated to any of them, a trust corporation, fund or other person which is regularly engaged in or established for the purpose of making, purchasing or investing in loans, securities or other financial assets of which are managed or serviced by a Lender or a hedge fund (in each case an “*Assignee*” or a “*Transferee*”),

provided always that the Lender will notify the Borrower of such assignment or transfer and that the liabilities of the Borrower under this Agreement and any other Finance Document shall not be increased as a result of any such assignment or transfer and that in the event that the Borrower’s liabilities (actual or contingent) are increased, the Borrower shall not be liable for any such excess. The Lender may sub-participate all or any part of its rights, benefits and/or obligations under this Agreement and the other Finance Documents without the consent of, or consultation with or notice to the Borrower and the other Security Parties; provided that the Assignee or Transferee, shall deliver to the Lender such undertaking as the Lender may approve, whereby it becomes bound by the terms of this Agreement and agrees to perform all or, as the case may be, part of the Lender’s obligations under this Agreement and provided further that the liabilities of the Borrower under this Agreement and any other Finance Document shall not be increased as a result of any such sub-participation and that in the event that the Borrower’s liabilities (actual or contingent) are increased, the Borrower shall not be liable for any such excess. Any cost of such assignment or transfer or granting sub-participation shall be for the account of the Lender and/or the Assignee, Transferee or sub-participant unless any such assignment, transfer or sub-participation is undertaken at the request of the Borrower in which case any cost arising therefrom shall be for the account of the Borrower.

14.4 Documenting assignments and transfers. If the Lender assigns, transfers or in any other manner grants participation in respect of all or any part of its rights or benefits or transfers all or any of its obligations as provided in this Clause 14.4 the Borrower undertakes, immediately on being requested to do so by the Lender, to enter at the expense of the Lender into and procure that each Security Party enters into such documents as may be necessary to transfer to the Assignee, Transferee or participant all or the relevant part of the interest of the Lender in the Finance Documents and all relevant references in this Agreement to the Lender shall thereafter be construed as a reference to the Lender and/or assignee, transferee or participant of the Lender to the extent of their respective interests and, in the case of a transfer of all or part of the obligations of the Lender, the Borrower shall thereafter look only to the Assignee, Transferee or participant in respect of that proportion of the obligations of the Lender under this Agreement assumed by such assignee, transferee or participant. Subject to the provisions of Clause 14.3 (*Assignment by the Lender*), the Borrower hereby expressly consents to any subsequent transfer of the rights and obligations of the Lender and undertakes that it shall join in and execute such supplemental or substitute agreements as may be necessary to enable the Lender to assign and/or transfer and/or grant participation in respect of its rights

and obligations to another branch or to one or more banks or financial institutions in a syndicate or otherwise. The cost of any such assignment shall be borne by the Lender and/or the relevant Assignee or Transferee.

14.5 **Disclosure of information.**

(a) The Lender may disclose to a prospective assignee, substitute or transferee such information about the Borrower as the Lender shall consider appropriate provided, however, that the Prospective Assignee shall be entitled to disclose such information, reports or documents in the following situations:

- (i) in relation to any proceedings arising out of this Agreement or the other Finance Documents to the extent considered necessary by the Prospective Assignee to protect its interest; or
- (ii) pursuant to a court order relating to discovery or otherwise; or
- (iii) pursuant to any law or regulation or to any fiscal, monetary, tax, governmental or other competent authority; or
- (iv) to its auditors, legal or other professional advisers.

ii. In addition, the Prospective Assignee shall be entitled to disclose or use any such information, reports or documents if the information contained therein shall have emanated in conditions free from confidentiality, bona fide from some person other than the Lender or any Security Party.

14.6 **No additional costs.** The Borrower shall not be obliged to pay any excess which arises from any assignment by the Lender of all or any part of its rights or benefits under this Agreement or any transfer by the Lender of any part of the rights, benefits and/or obligations under this Agreement, which would trigger the Borrower's obligation to pay to the Assignee or Transferee under Clause 5.3 (*Gross-up*) any additional sum in excess of the sum (if any) which the Borrower would have been obliged to pay to the Lender under the relevant Clause in the absence of such assignment, transfer or change.

14.7 **Changes in constitution or reorganisation of the Lender.** For the avoidance of doubt and without prejudice to the provisions of Clause 14.1 (*Benefit and burden*), this Agreement shall remain binding on the Borrower and the other Security Parties notwithstanding any change in the constitution of the Lender or its absorption in, or amalgamation with, or the acquisition of all or part of its undertaking or assets by, any other person, or any reconstruction or reorganisation of any kind, to the intent that this Agreement shall remain valid and effective in all respects in favour of any Assignee, Transferee or other successor in title of the Lender in the same manner as if such Assignee, Transferee or other successor in title had been named in this Agreement as a party instead of, or in addition to, the Lender.

15. **THE AGENT, THE SECURITY TRUSTEE**

15.1 **Appointment of Agent.** The Lender irrevocably appoints and authorises the Agent to act as its agent under this Agreement and the other Finance Documents.

15.2 **Agent's powers and discretions.** The Agent shall have such powers and discretions:

- (a) which are expressly delegated to the Agent by the terms of this Agreement and the other Finance Documents;

- (b) which the Lender considers appropriate to give to the Agent (generally or in a particular case) with the Agent's consent; and
- (c) which the Agent considers to be reasonably incidental to the discharge and performance of any of its functions under this Agreement or any of the Finance Documents or otherwise appropriate in the context of those functions, including the exercise of any powers given to it by the Lender.

15.3 **Agent is agent only.** The relationship between the Agent and the Lender is that of agent and principal only. Nothing in this Agreement or the Finance Documents shall constitute the Agent a trustee or fiduciary for the Lender or any other person and no action taken by the Lender pursuant hereto or thereto, shall be deemed to constitute the Lender and the Agent a partnership, association, joint venture or other entity.

15.4 **Agent's responsibility to Borrower.** In performing its functions and duties under this Agreement and the other Finance Documents, the Agent shall act solely as agent of the Lender and does not assume and shall not be deemed to have assumed any responsibility, liability or obligation (whether fiduciary or otherwise) towards, or relationship of agency or trust with or for, the Borrower except for liability in circumstances where it is not acting in good faith or lawfully or where it acts in breach of the provisions of this Agreement and/or any other Finance Document.

15.5 **Matters within Agent's authority.** Subject to Clause 15.6 and 15.7 and the other provisions of this Agreement and the other Finance Documents, the Agent is irrevocably authorised by the Lender in its name and on its behalf (and shall, if so directed by written notice from the Lender):

- (a) to waive, modify, vary or otherwise amend or excuse performance of any provisions of this Agreement or any of the Finance Documents, all such actions by the Agent will be made in writing; and
- (b) to enforce or take or refrain from taking any other action or proceedings with regard to this Agreement or any of the Finance Documents.

15.6 **Notification of proposed waivers and amendments.** Except in cases where the Agent is of the opinion that the Lender would be prejudiced by any delay in the Agent enforcing or taking action, in which event the Agent may, but shall not be obliged to, enforce or take action without prior notification to the Lender, the Agent shall be obliged to notify the Lender if it proposes to waive, modify, vary or otherwise amend or excuse performance of any provision of this Agreement or any of the Finance Documents and, in case that the Lender does not respond in the negative within five days, the Agent shall be entitled to proceed with that proposal.

15.7 **Agent to act in accordance with instructions of the Lender.** The Agent agrees to act with respect to this Agreement and the other Finance Documents in accordance with the written instructions of the Lender. Any such instructions given by the Lender shall be binding. In the absence of any instructions (and provided that it is not explicitly required to obtain the consent of the Lender pursuant to any relevant provision of this Agreement or the Finance Documents) the Agent shall be entitled (but not bound) to give or withhold its consent or approval in such manner as it considers to be in the interests of the Lender without obtaining instructions from, or consulting with, the Lender.

- 15.8 **Agent not required to act.** In no event shall the Agent be required to take any action which exposes, or is likely to expose, the Agent to personal liability or which is contrary to the provisions of:
- (a) this Agreement or any of the Finance Documents; or
 - (b) any law, regulation or directive.
- 15.9 **Provision of copy communications to Agent.** The Lender will, promptly after receipt or despatch thereof, forward to the Agent a copy of any communication:
- (a) sent by the Lender to the Borrower; or
 - (b) received by the Lender from the Borrower and, in each case, relating to this Agreement or any of the Finance Documents.
- 15.10 **Agent's fees and expenses.**
- (a) The Lender will reimburse the Agent for any agreed fees as well as any documented expenses incurred by the Agent in connection with this Agreement and the Agent will have a direct claim vis-à-vis the Lender for all such fees and expenses.
 - (b) The Borrower will indemnify the Agent as provided for in Clause 10.1.
 - (c) All payments either by the Lender or by the Borrower will be made to the account that the Agent will notify to the respective party.
- 15.11 **Consent of the Agent and the Lender required.** Nothing shall authorise the effecting, without the prior written consent of the Agent and the Lender, of any material matters that could have an adverse effect on the Lender or the Agent including:
- (a) any change in the Interest Rate or in the definitions of Finance Documents;
 - (b) any change in the date for, or alteration in the amount (or the basis of determining the amount) of, any payment of principal, interest or fees payable to the Lender generally;
 - (c) the release of any of the security created by or pursuant to the Finance Documents (or any of them); or
 - (d) any other matter in respect of which the terms of this Agreement or any of the Finance Documents expressly requires the agreement of the Lender.
- 15.12 **Lender and Security Trustee to be informed.** The Agent shall at all times keep the Lender and the Security Trustee informed of each and every approval or consent given and each exercise of any such discretion and each performance of any such other act which the Agent may have performed on behalf of the Lender as required by this Agreement or any of the Finance Documents
- 15.13 **Trust Property defined.** In this Agreement, "**Trust Property**" means:
- (a) all rights, title and interests that may be mortgaged, charged, pledged or assigned in favour of the Security Trustee under or by virtue of the Finance Documents;

- (b) all rights granted to, or held or exercisable by, the Security Trustee by virtue of this Agreement and the other Finance Documents;
- (c) all moneys and other assets, which are received or recovered by or on behalf of the Security Trustee under or by virtue of any of the foregoing rights, including as a result of the enforcement or exercise of any such right; and
- (d) all moneys and other assets accrued in respect of or derived from any of the foregoing.

15.14 Duties of Security Trustee. The Security Trustee shall:

- (a) hold the Trust Property on trust for the Lender in accordance with provisions of this Agreement and the other Finance Documents;
- (b) perform and exercise the rights and benefits vested in it and deal with the Trust Property in accordance with the provisions of this Agreement and the other Finance Documents; and
- (c) keep at all times the Lender and the Agent informed of each and every action which the Security Trustee may have performed on behalf of the Lender as required by this Agreement or any of the Finance Documents.

15.15 Security Trustee's responsibility to Borrowers. The Security Trustee does not assume and shall not be deemed to have assumed any responsibility, liability or obligation (whether fiduciary or otherwise) towards, or relationship of agency or trust with or for, the Borrower in any circumstances whatsoever except for liability in circumstances where it is not acting in good faith or lawfully or where it acts in breach of the provisions of this Agreement and/or any other Finance Document.

15.16 Security Trustee's powers and discretions. The Security Trustee shall have such powers and discretions:

- (a) which are expressly delegated to the Security Trustee by the terms of this Agreement and the other Finance Documents;
- (b) which the Lender considers appropriate and gives to the Security Trustee, (generally or in a particular case) with the Security Trustee's consent;
- (c) which the Security Trustee considers to be reasonably incidental and conducive to the discharge and performance of any of its functions under this Agreement or any of the Finance Documents or otherwise appropriate in the context of those functions, including the exercise of any powers given to it by the Lender; and
- (d) which are conferred on a trustee by the Trustee Act 1925 and/or the Trustee Act 2000 and any other applicable law for the time being in force.

15.17 Security Trustee to act in accordance with instructions of the Lender. Subject to the provisions of the Agreement and the other Finance Documents, the Security Trustee agrees to act with respect to this Agreement and the other Finance Documents in accordance with the written instructions of the Agent, or, if the Agent and the Security Trustee are the same person, the Lender. Any such instructions given by the Agent or Lender, as applicable, shall be binding. In the absence of any instructions from the Lender, the Agent shall be entitled (but not bound) to give or withhold its consent or approval in such manner as it

considers to be in the interests of the Lender without obtaining instructions from, or consulting with, the Lender.

15.18 **Security Trustee not required to act.** In no event shall the Security Trustee be required to take any action which exposes, or is likely to expose, the Security Trustee to personal liability or which is contrary to the provisions of:

- (a) this Agreement or any of the Finance Documents; or
- (b) any law, regulation or directive.

15.19 **Security Trustee not required to receive funds for or on behalf of Lender.** The Security Trustee will ensure and procure that all funds received by the Security Trustee pursuant to the exercise of the Security Trustee's rights under any of the Finance Documents will be paid directly to the Lender's account.

15.20 **Security Trustee's fees and expenses.**

- (a) The Lender will reimburse the Security Trustee for any agreed fees as well as any documented expenses incurred by the Security Trustee in connection with this Agreement and the Security Trustee will have a direct claim vis-à-vis the Lender for all such fees and expenses.
- (b) The Borrower will indemnify the Security Trustee as provided for in Clause 10.1.
- (c) All payments either by the Lender or by the Borrower will be made to the account that the Security Trustee will notify to the respective party.

15.21 **Release of security.** After the end of the Security Period, the Security Trustee shall release without any recourse, warranty or covenants for title whatsoever, all security granted to it pursuant to the Finance Documents then held by it, whereupon the Security Trustee shall be discharged from all liabilities and obligations under this Agreement and the other Finance Documents. Any costs associated with the release of any security shall be for the cost of the Borrower.

15.22 **Resignation of the Agent or the Security Trustee.** The following provisions apply where the Agent or the Security Trustee or any of them wishes to resign from its role as such or, as the case may be, the Lender require any or both of them to resign from such role:

- (a) The Agent or the Security Trustee may at any time resign from its role under this Agreement and appoint one of its affiliates as its successor by giving the Borrower and the Lender written notice to that effect.
- (b) Alternatively, the Agent or the Security Trustee may at any time resign from its role under this Agreement by giving the Borrower and the Lender not less than 15 days' prior written notice to that effect. In such a case, the Lender may appoint a successor. However, if no such successor is appointed within 15 days from the date of the Agent's or the Security Trustee's notice of resignation, the Agent or the Security Trustee may, appoint as its successor any reputable bank, financial institution or similar institution.

- (c) The Lender may, by notice in writing to the Agent or the Security Trustee, require it to resign from its role as such, in which case the Agent or the Security Trustee shall promptly resign in accordance with sub-Clause (b).

15.23 **Effective time of change of the Agent or the Security Trustee.** Any appointment of a successor Agent or Security Trustee under this Clause 15 shall take effect upon:

- (a) the successor confirming in writing its agreement to be bound by the provisions of this Agreement;
- (b) notice thereof by the outgoing Agent or Security Trustee and its successor being given to each of the other Parties; and
- (c) in the case of a new Security Trustee, the outgoing Security Trustee having transferred to its successor all of its rights and obligations under the Finance Documents.

15.24 **Consequence of change of the Agent or the Security Trustee.** Upon the appointment of a successor to the outgoing Agent or the Security Trustee taking effect under Clause 15.23:

- (a) that successor shall become bound by all the obligations of the outgoing Agent or the Security Trustee, as the case may be, and become entitled to all the rights, privileges, powers, authorities and discretions of the outgoing Agent or the Security Trustee under this Agreement and the other Finance Documents;
- (b) the obligations of the outgoing Agent or the Security Trustee under this Agreement and the other Finance Documents shall terminate (but without prejudice to any liabilities which the said Agent or Security Trustee may have incurred prior to that termination) and the outgoing Agent or Security Trustee shall be discharged from any further liability or obligations under this Agreement and the other Finance Documents.

16. MISCELLANEOUS

16.1 **Time of essence.** Time shall be of the essence of this Agreement.

16.2 **No implied waivers.** No failure, delay or omission by the Agent, the Lender or the Security Trustee to exercise any right, remedy or power vested in each or all of the foregoing parties under this Agreement and/or the other Finance Documents or by law shall impair such right or power, or be construed as a waiver of, or as an acquiescence in any default by the Borrower, nor shall any single or partial exercise by the Agent, the Lender or the Security Trustee of any power, right or remedy preclude any other or further exercise thereof or the exercise of any other power, right or remedy. In the event of the Agent, the Lender or the Security Trustee on any occasion agreeing to waive any such right, remedy or power, or consenting to any departure from the strict application of the provisions of this Agreement or of any other Finance Document, such waiver shall not in any way prejudice or affect the powers conferred upon each or all of the foregoing parties under this Agreement and the other Finance Documents or their respective right thereafter to act strictly in accordance with the terms of this Agreement and the other Finance Documents. No modification or waiver by the Agent, the Lender or Security Trustee of any provision of this Agreement or of any of the other Finance Documents nor any consent by each or all of the foregoing parties to any departure therefrom by any Security Party shall be effective unless the same shall be in writing and then shall only be effective in the specific case and for the specific purpose for which given. No notice to or demand on any such party in any such case shall entitle such party to any other or further notice or demand in similar or other

circumstances.

- 16.3 **No modification, waiver etc. unless in writing.** No modification or waiver by the Agent, the Lender or the Security Trustee of any provision of this Agreement or of any of the other Finance Documents nor any consent by the Agent, the Lender or the Security Trustee to any departure therefrom by any Security Party shall be effective unless the same shall be in writing and then shall only be effective in the specific case and for the specific purpose for which given. No notice to or demand on any such party in any such case shall entitle such party to any other or further notice or demand in similar or other circumstances.
- 16.4 **Cumulative Remedies.** The rights and remedies of the Agent, the Lender or the Security Trustee contained in this Agreement and the other Finance Documents are cumulative and not neither exclusive of each other nor of any other rights or remedies conferred by law.
- 16.5 **Integration of Terms.** This Agreement contains the entire agreement of the parties any and all other prior correspondence and oral negotiation by the parties in respect of the matters regulated by this Agreement.
- 16.6 **Amendments in writing.** This Agreement and any other Finance Documents shall not be amended or varied in their respective terms by any oral agreement or representation or in any other manner other than by an instrument in writing of even date herewith or subsequent hereto executed by or on behalf of the parties hereto or thereto.
- 16.7 **Invalidity of Terms.** In the event of any provision contained in one or more of this Agreement, the other Finance Documents and any other documents executed pursuant hereto or thereto being invalid, illegal or unenforceable in any respect under any applicable law in any jurisdiction whatsoever, such provision shall be ineffective as to that jurisdiction only without affecting the remaining provisions hereof or thereof. If, however, this event becomes known to the Agent prior to the drawdown of the Facility or of any part thereof the Agent shall be entitled to refuse drawdown until this discrepancy is remedied. In case that the invalidity of a part results in the invalidity of the whole Agreement, it is hereby agreed that there will exist a separate obligation of the Borrower for the prompt payment to the Lender of all the Outstanding Indebtedness. Where, however, the provisions of any such applicable law may be waived, they are hereby waived by the parties hereto to the full extent permitted by the law to the intent that this Agreement, the other Finance Documents and any other documents executed pursuant hereto or thereto shall be deemed to be valid binding and enforceable in accordance with their respective terms.
- 16.8 **Inconsistency of Terms.** In the event of any inconsistency between the provisions of this Agreement and the provisions of any other Finance Document the provisions of this Agreement shall prevail.
- 16.9 **Language and genuineness of documents**
- (a) Language: All certificates, instruments and other documents to be delivered under or supplied in connection with this Agreement or any of the other Finance Documents shall be in the English language (or such other language as the Lender shall agree) or shall be accompanied by a certified English translation upon which the Lender shall be entitled to rely.
- (b) Certification of documents: Any copies of documents delivered to the Lender, the Agent or the Security Trustee shall be duly certified as true, complete and accurate copies by appropriate authorities or qualified legal counsel or otherwise as will be acceptable to the Agent at the sole discretion of the Agent.

- (c) Certification of signature: Signatures on Board or shareholder resolutions, Secretary's certificates and any other documents are, at the discretion of the Agent, to be verified for their genuineness by appropriate Consul or other competent authority.

16.10 **Recourse to other security.** The Agent shall not be obliged to make any claim or demand or to resort to any Finance Document or other means of payment now or hereafter held by or available to it for enforcing this Agreement or any of the Finance Documents against the Security Parties (or any of them) or any other person liable and no action taken or omitted by the Lender in connection with any such Finance Document or other means of payment will discharge, reduce, prejudice or affect the liability of any Security Party under this Agreement and the other Finance Documents to which it is, or is to be, a party.

16.11 **Conflicts.** In the event of any conflict between this Agreement and any of the other Finance Documents, the provisions of this Agreement shall prevail.

16.12 **Further assurances.** The Borrower undertakes that the Finance Documents shall both at the date of execution and delivery thereof and so long as any moneys are owing under any of the Finance Documents be valid and binding obligations of the respective parties thereto and enforceable in accordance with their respective terms and that it will, at its expense, execute, sign, perfect do and (if required) register, and will procure the execution, signing, perfecting, doing and (if required) registering by each of the other Security Parties of, any and every such further assurance, document, act or thing as in the reasonable opinion of the Lender or Security Trustee may be necessary or desirable for perfecting the security contemplated or constituted by the Finance Documents.

16.13 **Confidentiality**

- (a) Each of the parties hereto agrees and undertakes to keep confidential any documentation and any confidential information concerning the business, affairs, directors or employees of the other which comes into its possession in connection with this Agreement and not to use any such documentation, information for any purpose other than for which it was provided.
- (b) The Borrower acknowledges and accepts that if the Lender, the Agent or the Security Trustee is required by law, regulation or regulatory requirement or any request of any central bank or any court order to disclose information and deliver documentation relating to the Borrower and the transactions and matters in relation to this Agreement and/or the other Finance Documents, the Lender shall comply and disclose same to governmental or regulatory agencies and authorities.
- (c) The Borrower acknowledges and accepts that in case of occurrence of any of the Events of Default that is continuing the Agent, the Lender and the Security Trustee may disclose information and deliver documentation relating to the Borrower and the transactions and matters in relation to this Agreement and/or the other Finance Documents to third parties to the extent that this is necessary for the enforcement or the contemplation of enforcement of the Lender's rights or for any other purpose for which in the opinion of the Agent, such disclosure would be useful or appropriate for the interests of the Lender or otherwise and the Borrower expressly authorises any such disclosure and delivery.

The Borrower acknowledges and accepts that the Agent, the Lender and the Security Trustee may be prohibited from disclosing information to the Borrower by reason of law or duties of confidentiality owed or to be owed to other persons.

16.14 This Deed may be executed in several counterparts, each of which shall be an original, but which together shall constitute but one and the same document.

17. NOTICES AND COMMUNICATIONS

17.1 **Notices.** Every notice, request, demand or other communication under this Agreement or, unless otherwise provided therein, under any of the other Finance Documents shall:

- (a) be in writing delivered personally or be first-class prepaid letter (airmail if available), or shall be served through a process server (as determined by the Agent in its sole discretion) or subject to Clause 10.9 (*Communications Indemnity*) by email;
- (b) be deemed to have been received, subject as otherwise provided in this Agreement or the relevant Finance Document,
 - i. in the case of an email, at the time of dispatch as per notification report (provided that if the date of despatch is not a business day in the country of the addressee it shall be deemed to have been received at the opening of business on the next such business day);
 - ii. in the case of a letter when delivered or served personally or five (5) days after it has been put into registered post; and
- (c) be sent to the person, address or email as will be specified by the relevant Security Party, the Agent, the Lender, the Security Trustee and MARLO.

17.2 **Notices to MARLO.** Each and every notice sent by or to the Lender, the Borrower, the Agent, and/or the Security Trustee shall always include in carbon copy MARLO at ops@marlo.online.

18. LAW AND JURISDICTION

18.1 **Law.** This Agreement and any non-contractual obligations connected with it shall be governed by and construed in accordance with English Law.

18.2 Jurisdiction

- (a) Any dispute arising out of or in connection with this Agreement or any non-contractual obligations connected with it (including a dispute regarding the existence, validity or termination of this Agreement) (a "*Dispute*") will be referred to arbitration in London in accordance with the Arbitration Act 1996.
- (b) In case that the Lender, acting at its sole discretion, elects to start court proceedings for any Dispute, it is agreed that the courts of England shall have exclusive jurisdiction to this effect, and, for the exclusive benefit of the Lender, the Borrower irrevocably and unconditionally submits to the jurisdiction of such courts. The Borrower further specifically consents and agrees to the electronic service of process at the email address specified under the heading "Borrower Notices" of the Facility Letter. The Parties agree that the courts of England are the most appropriate and convenient courts to settle Disputes and accordingly no Party will argue to the contrary and waives any objections to the inconvenience of England as a forum.

(c) This Clause 18.2 is for the benefit of the Lender only. As a result, the Lender shall not be prevented from taking proceedings relating to a Dispute in any other courts with jurisdiction. To the extent allowed by law, the Lender may take concurrent proceedings in any number of jurisdictions.

18.3 **Proceedings in any other country.** If it is decided by the Agent that any such proceedings should be commenced in any other country, then any objections as to the jurisdiction or any claim as to the inconvenience of the forum is hereby waived by the Borrower and it is agreed and undertaken by the Borrower to instruct lawyers in that country to accept service of legal process and not to contest the validity of such proceedings as far as the jurisdiction of the court or courts involved is concerned and the Borrower agrees that any judgment or order obtained in an English court shall be conclusive and binding on the Borrower and shall be enforceable without review in the courts of any other jurisdiction.

18.4 **Third Party Rights.** With the exception of MARLO, a person who is not a party to this Agreement has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce or to enjoy the benefit of any term of this Agreement.

SCHEDULE A – For Ship Owning Companies

1. **Compulsory Prepayment in case of Total Loss of the Vessel.** On the Vessel becoming a Total Loss or suffering damage or being involved in an incident which may, in the reasonable opinion of the Agent, result in the Vessel being subsequently determined to be a Total Loss:
 - (i) prior to the advancing of the Facility, the obligation of the Lender to advance the Facility shall immediately cease and the Facility shall be reduced to zero; or
 - (ii) in case the Facility (or any part thereof) has been already advanced, the Borrower shall prepay the Outstanding Indebtedness the latest on the date falling five (5) days after the occurrence of such Total Loss or the date on which the Vessel suffered damage or the incident which, in the opinion of the Agent, may result in the Vessel being subsequently determined to be a Total Loss occurred or, if earlier, on the date upon which the insurance proceeds in respect of such Total Loss are or Requisition Compensation is received by the Borrower.

For the purpose of this Agreement a Total Loss shall be deemed to have occurred:

- a. in the case of an actual total loss of the Vessel, at the actual date and time the Vessel was lost but in the event of the date of the loss being unknown then the actual total loss shall be deemed to have occurred on the date on which the Vessel was last reported;
 - b. in the case of a constructive total loss of the Vessel, at the date and time notice of abandonment (the “NOA date”) of the Vessel is given to the insurers of the Vessel for the time being;
 - c. in the case of a compromised or arranged total loss of the Vessel, on the date upon which a binding agreement as to such compromised or arranged total loss has been entered into by the then insurers of the Vessel;
 - d. in the case of Compulsory Acquisition of the Vessel, on the date upon which the relevant requisition of title or other compulsory acquisition occurs excluding a requisition for hire;
 - e. in the case of, condemnation, capture, seizure, confiscation, arrest, or detention of the Vessel (other than where the same amounts to Compulsory Acquisition of the Vessel) by any Government Entity, or by persons acting on behalf of any Government Entity or otherwise, which deprives the Borrower of the use of the Vessel for more than fifteen (15) days (excluding instances of requisition for hire), upon the expiry of the period of fifteen (15) days after the date upon which the relevant, condemnation, capture, seizure or confiscation, arrest or detention occurred; or
 - f. in the case of hijacking, capture, seizure or confiscation of the Vessel arising as a result of a piracy or related incident unless the Vessel be released and restored to the Borrower from such hijacking, capture, seizure or confiscation within fifteen (15) days after the occurrence thereof.
2. **Additional Representations.** The Borrower hereby represents and warrants to the Lender as follows:
 - (a) Ownership/Flag/Seaworthiness/Class/Insurance of the Vessel: In case that the Borrower is the owner of the Vessel, the Vessel is and on the Drawdown Date will be:

- (i) in the absolute and free from any Encumbrances (other than a Permitted Encumbrance) ownership of the Borrower who is and will on and after the Drawdown Date be the sole legal and beneficial owner of the Vessel **OR** managed by the Borrower pursuant to a valid and current management agreement with the Vessel's owner and is free from any Encumbrances (other than a Permitted Encumbrance);
 - (ii) registered in the name of the Borrower **OR** Vessel's owner under the laws and flag of the Flag State;
 - (iii) operationally seaworthy and fit for service;
 - (iv) classed with the relevant Classification free of all overdue recommendations of the relevant Classification Society affecting class;
 - (v) insured and managed in accordance with the provisions of this Agreement; and
 - (vi) in full compliance with the ISM and the ISPS Code;
- (b) No charter: Save as disclosed by the Borrower and agreed in writing by the Lender, the Vessel will not on or before the Drawdown Date be subject to any charter or contract nor to any agreement to enter into any charter or contract which, if entered into after the Drawdown Date would have required the consent of the Agent under any of the Finance Documents and there will not on or before the Drawdown Date be any agreement or arrangement whereby the Earnings of the Vessel may be shared with any other person;
- (c) No Encumbrances: Neither the Vessel nor her Earnings, Insurances or Requisition Compensation nor any other properties or rights which are, or are to be, the subject of any of the Security Documents will be, on the Drawdown Date, subject to any Encumbrance save for any Permitted Liens;
- (d) Compliance with Environmental Laws and Approvals: Except as may already have been disclosed by the Borrower in writing to, and acknowledged in writing by the Agent:
- (i) the Borrower and its Related Companies have complied with the provisions of all Environmental Laws;
 - (ii) the Borrower and its Related Companies have obtained all Environmental Approvals and are in compliance with all such Environmental Approvals; and
 - (iii) neither the Borrower nor any of its Related Companies has received notice of any Environmental Claim exceeding Fifty thousand Dollars (\$50,000) or any notice that the Borrower or any of its Related Companies is not in compliance with any Environmental Law or any Environmental Approval;
- (e) No Environmental Claims: Except as may already have been disclosed by the Borrower in writing to, and acknowledged in writing by, the Agent:
- (i) there is no Environmental Claim exceeding Fifty thousand Dollars (\$50,000) pending or, to the best of the Borrower's knowledge and belief, threatened against the Borrower or the

Vessel or the Borrower's Related Companies or any other Relevant Ship; and

(ii) there has been no emission, spill, release or discharge of a Material of Environmental Concern from the Vessel or any other Relevant Ship, which could give rise to an Environmental Claim exceeding Fifty thousand Dollars (\$50,000);

(f) Compliance with ISM code: The Vessel complies or, as the case may be, will comply with the requirements of the ISM Code and the SMC issued or to be issued in respect of the Vessel shall remain valid on the Drawdown Date and thereafter throughout the Security Period;

(g) Compliance with ISPS Code: he Borrower complies with the requirements of the ISPS Code and has obtained and maintains a valid and current ISSC in respect of the Vessel and the Vessel is and will be, throughout the Security Period, in full compliance with the ISPS Code;

3. **Additional Covenants (positive)**. The Borrower hereby undertakes with the Lender that, from the date of this Agreement and so long as and while all or any part of the Outstanding Indebtedness remains outstanding:

(a) Ownership/Management/Control: it will ensure that the Vessel is registered on the Drawdown Date under the laws of the Flag State and thereafter maintain the same control in relation to its ownership and its management;

(b) Class: it will ensure that the Vessel retains her present class free of overdue recommendations affecting class and provide the Lender on demand with copies of all class and trading certificates of the Vessel;

(c) Insurances: it will ensure that all Insurances of the Vessel are maintained and comply with all insurance requirements specified in this Agreement and otherwise and in case of failure to maintain the Vessel so insured, authorise the Agent (and such authorisation is hereby expressly given to the Agent) to have the right but not the obligation to effect such Insurances on behalf of the Borrower (and in case that the Vessel remains in port for an extended period) to effect port risks insurances at the cost of the Borrower which, if paid by the Agent or the Lender, shall be Expenses;

(d) Not imperil Flag, Ownership, Insurances: it will ensure that the Vessel is maintained and trades in conformity with the laws of the Flag State, of its owning company, the requirements of the Insurances and nothing is done or permitted to be done which could endanger the flag of the Vessel or its unencumbered (other than Permitted Encumbrances) ownership or its Insurances;

(e) Chartering: ensure and procure that in the event of the Vessel being employed under a Charterparty, the Agent shall be furnished forthwith with a certified copy of such Charterparty, forthwith after its execution;

(f) Compliance with laws and regulations: to comply, or procure compliance with all laws or regulations relating to the Borrower and/or (in case that the Borrower is the owner of the Vessel) the Vessel, its ownership, operation and management or to the business of the Borrower and cause this Agreement and the other Finance Documents to comply with and satisfy all the requirements and formalities established by the applicable laws to perfect this Agreement and the other Finance Documents as valid and enforceable Finance Documents;

- (g) Maintenance of legal and beneficial interest in the Vessel: hold the legal title to, and own the entire beneficial interest in the Vessel, its Insurances and Earnings, free from all Encumbrances and other interests and rights of every kind, other than a Permitted Encumbrance **OR** is entitled to be the sole operator of the Vessel **OR** is the charterer of the Vessel, **AND** in each case has the legal use of thereof and has a legal title and right in the Vessel's Insurances and Earnings, as the case may be, free from all Encumbrances and other interests and rights of every kind, other than a Permitted Encumbrance including mutatis mutandis any of such Permitted Encumbrance as may be in favour of the owner of the Vessel;
 - (h) Compliance with Environmental Laws: it will comply with, and procure that all Environmental Affiliates of the Borrower comply with, all Environmental Laws including without limitation, requirements relating to manning and establishment of financial responsibility and to obtain and comply with, and procure that all Environmental Affiliates of the Borrower obtain and comply with, all Environmental Approvals and to notify the Agent forthwith:
 - (i) of any Environmental Claim for an amount or amounts in aggregate exceeding Fifty thousand Dollars (\$50,000) made against any of the Vessel and/or the Borrower; and
 - (ii) upon becoming aware of any incident which may give rise to an Environmental Claim and to keep the Agent advised in writing of the Borrower's response to such Environmental Claim on such regular basis and in such detail as the Agent shall reasonably require;
 - (i) Vessel's Inspection: it will permit the Agent by surveyors or other persons appointed by the Agent to board the Vessel at all reasonable times and without interruption to the schedule of the Vessel for the purpose of inspecting her condition and to afford all proper facilities for such inspection, and provided that no Event of Default has occurred and be continuing, the cost of such inspections shall be borne by the Borrower not more than once per year; and
 - (j) Trading: it will use the Vessel only for civil merchant trading.
4. **Additional Covenants (negative)**. The Borrower hereby undertakes with the Lender that, from the date of this Agreement and so long as and while all or any part of the Outstanding Indebtedness remains outstanding, it will not without the prior written consent of the Agent:
- (k) Laid-up: de-activate or lay up the Vessel;
 - (l) Manager: appoint a manager of the Vessel or terminate the Management Agreement;
 - (m) Transfer/Encumbrances: sell or otherwise dispose of the Vessel or any share therein or create or agree to create or permit to subsist any Encumbrance over the Vessel (or any share or interest therein) other than a Permitted Encumbrance; and
 - (n) Sharing of Earnings: enter into any agreement or arrangement whereby the Earnings may be shared with any other person.
5. **Sanctions**. The Borrower shall ensure that:
- (a) the Vessel will not be employed, and will not suffer the Vessel to be employed, and will not and will

ensure that the Borrower does not conduct or undertake any business:

- (i) in breach of any embargo or sanction or prohibited order (or any similar order or directive) of:
 - (aa) the United Nations Security Council;
 - (bb) the European Union;
 - (cc) the United Kingdom;
 - (dd) the United States of America;
 - (ee) the Flag State;
 - (ii) in any trade, carriage of goods or business which is forbidden by the laws of the United Kingdom or the United States of America as they apply to their members or nationals, or any law applicable to the Borrower, any charterer of the Vessel or any country which the Vessel may visit; or
 - (iii) in carrying illicit or prohibited goods; or
 - (iv) in a way which may make it liable to be condemned by a prize court or destroyed, seized or confiscated;
 - (v) in any manner contrary to any law or regulation in any relevant jurisdiction including but not limited to any Applicable Sanctions; and
- (b) generally, it will comply, or procure compliance with any Applicable Sanctions.

6. Additional Events of Default. Any of the additional events described below occur:

- (i) Breach of Insurance and certain other obligations: the Borrower fails to obtain and/or maintain the Insurances (as defined in, and in accordance with the requirements of, the Finance Documents) or if any insurer in respect of such Insurances cancels the Insurances or disclaims liability by reason, in either case, of mis-statement in any proposal for the Insurances or for any other failure or default on the part of the Borrower or any other person or the Borrower commits any breach of or omits to observe any of the obligations or undertakings expressed to be assumed by it under Clause 8 (Covenants); or
- (ii) Ownership of the Vessel: the Vessel ceases to remain 100% owned by the Borrower; or
- (iii) Registration: the registration of the Vessel under the laws and flag of the Flag State is changed or cancelled or terminated without the prior written consent of the Agent; or
- (iv) Unrest: the Flag State of the Vessel becomes involved in hostilities or civil war or there is a seizure of power in such Flag State by unconstitutional means if, in any such case, such event could in the opinion of the Agent reasonably be expected to have a material adverse effect on the security constituted by any of the Finance Documents and the Borrower fails to

register the Vessel under another flag approved by the Agent as and when requested by the Agent; or

- (v) Environment: the Borrower and/or any of their respective Environmental Affiliates fails to comply with any Environmental Law or any Environmental Approval or the Vessel or any Relevant Ship is involved in any incident which gives rise or which may give rise to any Environmental Claim, if in any such case, such non-compliance or incident or the consequences thereof could (in the reasonable opinion of the Agent) be expected to have a material adverse effect on the business assets, operations, property or financial condition of the Borrower or on the security created by any of the Finance Documents; or
- (vi) P&I: any Security Party or any other person fails or omits to comply with any requirements of the protection and indemnity association or other insurer with which the Vessel is entered for insurance or insured against protection and indemnity risks (including oil pollution risks) to the effect that any cover in relation to the said Vessel (including without limitation, liability for Environmental Claims arising in jurisdictions where the Vessel operates or trades) as a result of which the relevant cover is liable to cancellation, qualification or exclusion at any time; or
- (vii) Change of Management: the Vessel ceases to be managed as provided for in this Agreement (for any reason other than the reason of a Total Loss of the Vessel) without the approval of the Agent and the Borrower fails to appoint another manager prior to the termination of the mandate with the previous manager; or
- (viii) Total Loss: the Vessel becomes a Total Loss and the Borrower does not within thirty (30) days from such event prepay the Facility and all other Outstanding Indebtedness; or
- (ix) Arrest: the Vessel is arrested, confiscated, seized, taken in execution, impounded, forfeited, detained in exercise or purported exercise of any possessory lien or other claim or otherwise taken from the possession of the Borrower and the Borrower shall fail to procure the release of the Vessel within a period of five (5) days thereafter; or
- (x) ISM Code and ISPS Code: (without prejudice to the generality of Clause 9.1(c) (*Breach of other obligations*)) for any reason whatsoever the Vessel ceases to comply with the ISM Code or, as the case may be, the ISPS Code; or