

**DATED**

**2012**

**(1) [◆ ]  
as Borrower**

**- and -**

**(2) [◆ ]  
as Lender**

**AIRCRAFT LOAN  
AGREEMENT**  
in respect of  
one [◆ ] aircraft  
msn [◆ ]  
registration mark [◆ ]

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**BETWEEN:**

- (1) [◆ ] (company number [◆ ]) whose registered office is at [◆ ] ("**Borrower**"); and
- (2) [◆ ] (company number [◆ ]) whose registered office is at [◆ ] ("**Lender**").

**BACKGROUND:**

The Lender has agreed, upon the terms and subject to the conditions of this Agreement, to make available to the Borrower a [*insert description of facility*] facility in the maximum aggregate amount of [◆ ].

**IT IS AGREED:**

**1. DEFINITIONS AND CONSTRUCTION**

**1.1 Definitions**

In this Agreement unless the context otherwise requires:

"**Affiliate**" means, in relation to any person, a Subsidiary or Holding Company of that person or any other Subsidiary of that Holding Company;

"**Agreed Deductible**" means [◆ ];

"**Agreed Liability**" means [◆ ];

"**Agreed Value**" means [◆ ];

"**Aircraft**" means the Airframe together with the Engines (whether or not any of the Engines may from time to time be installed on the Airframe) and, where the context permits, references to the "**Aircraft**" shall include the Manuals and Technical Records and, unless otherwise provided in this Agreement, shall mean the Aircraft as a whole or any part thereof;

"**Aircraft Mortgage**" means [◆ ];

"**Aircraft Purchase Agreement**" means the agreement for the sale and purchase of the Aircraft dated [◆ ] and made between [◆ ] (as seller) and [◆ ] (as buyer);<sup>1</sup>

"**Airframe**" means the [◆ ] aircraft with manufacturer's serial number [◆ ] (excluding the Engines or engines from time to time installed thereon), and all Parts installed on or after the date of this Agreement, or which having been removed therefrom are required by the terms of [this Agreement][the Finance Documents] to remain the property of the Borrower subject to [this Agreement][the Finance Documents], and all

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<sup>1</sup> This definition has been inserted on the assumption that the Borrower will purchase the Aircraft from a third party. Where the Borrower is refinancing an Aircraft already owned by the Borrower, this definition may not be required.

replacements, renewals and additions made to the foregoing in accordance with [this Agreement][the Finance Documents] (but excluding those Parts temporarily installed);

"**Approved Brokers**" means [◆ ] or such other aviation insurance brokers as may be reasonably approved in writing by the Lender from time to time;

"**Approved Operator**" means [◆ ] or such other person as may be reasonably approved in writing by the Lender from time to time;

"**Auditors**" means [◆ ] or any substitute firm of accountants duly appointed by the Borrower with the prior written approval of the Lender;]

"**Availability Period**" means the period from and including the date of this Agreement to and including [◆ ];

"**Aviation Authority**" means [◆ ] and each person who shall from time to time be vested with the control and supervision of, or have jurisdiction over, the registration, airworthiness and operation of aircraft or other matters relating to civil aviation in the State of Registration;

"**Break Costs**" [means the amount (if any) which:

- (a) the interest which the Lender should have received for the period from the date of receipt of all or any part of the Loan to the last day of the current Interest Period in respect of the Loan, had the principal amount received been paid on the last day of that Interest Period;

exceeds:

- (b) the amount which the Lender would be able to obtain by placing an amount equal to the principal amount received by it on deposit with a leading bank in the London interbank market for a period starting on the Business Day following receipt or recovery and ending on the last day of the current Interest Period;]<sup>2</sup>

**OR**

[means any Loss suffered, incurred or paid by the Lender (or any Affiliate of the Lender) in liquidating, cancelling or re-allocating all and any loans, deposits or other funding obtained by the Lender (or any Affiliate of the Lender) to fund the Loan or any part of the Loan;]

"**Business Day**" means a day other than a Saturday or Sunday when financial institutions in London are generally open for banking business;

"**Cape Town Convention**" means the Convention on International Interests in Mobile Equipment ("**Convention**") and the Protocol on International Interests in Mobile Equipment on Matters Specific to Aircraft Equipment ("**Protocol**"), in each case, signed at Cape Town on 16 November 2001, and references to articles of the Cape Town Convention are to articles of the Consolidated Text;

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<sup>2</sup> There is a possibility that this first definition of Break Costs (which is similar to the LMA definition) may not fully compensate the Lender where Break Costs arise following a prepayment which is caused by a requirement to gross-up following the imposition of withholding tax on interest payments. This is possible if "*the interest which a Lender should have received*" is deemed to refer to interest net of withholding tax which is required to be deducted. The definition can be amended or, alternatively, the risk can be dealt with by ensuring that the tax indemnity is sufficiently wide. Lenders commonly have their own definitions of Break Costs which they prefer to use.

**"Change of Control"** means [◆ ];

**"Compulsory Acquisition"** means requisition of title or other compulsory acquisition, requisition, appropriation, expropriation, deprivation or confiscation for any reason of the Aircraft 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;

**"Currency"** means [◆ ];

**"Default"** means an Event of Default or any event or circumstance specified in clause [◆ ] which would (with the expiry of any grace period, the giving of notice, the making of any determination under the Finance Documents or any combination of any of the foregoing) be an Event of Default;

**"Default Rate"** means the annual rate determined by the Lender to be the aggregate of:

- (a) the Interest Rate; and
- (b) [◆ ]% per annum;

**"Drawdown Date"** means the date on which the Loan is made or is to be made to the Borrower, as specified in the Drawdown Notice;

**"Drawdown Notice"** means a notice substantially in the form of schedule 1 (*Form of Drawdown Notice*);

**"Earnings"** means all amounts whatsoever which may at any time be earned by or become payable to or for the account of the Borrower arising out of the ownership, possession, use or operation of the Aircraft by the Borrower including all freight, hire and all other amounts payable under any charter, contract of hire, pooling agreement, or other contract relating to the Aircraft [(including the Operating Agreement)], all payments for any variation on termination of any such contract and all damages for any breach of any such contract;

**"Engine"** means [either of] the [◆ ] engine[s] with manufacturer's serial numbers [◆ ] [and [◆ ]] installed on the Airframe at the date of this Agreement or any other replacement engine substituted, in accordance with the terms of [this Agreement][the Finance Documents] (other than as a temporary replacement for an engine which had immediately prior to such replacement been an Engine) together with, in each case, all Parts from time to time belonging to, installed in or appurtenant to the relevant engine;

**"Euro"** and **"€"** means the lawful currency of any member state of the European Communities that adopts or has adopted the euro as its lawful currency in accordance with legislation of the European Community relating to Economic and Monetary Union;]

**"Event of Default"** means any event or circumstance specified as such in clause [◆ ];

**"Facility"** means the [*insert description of facility*] facility made available under this Agreement as described in clause 2 (*The Facility*);

**"Facility Amount"** means [◆ ];

**"Final Repayment Date"** means [◆ ] OR [the [◆ ] anniversary of the Drawdown Date];

**"Finance Documents"** means this Agreement, the Security Documents[, [◆ ]] and any other document designated as such by the Lender and the Borrower;

**"GAAP"** means generally accepted accounting principles in [the United Kingdom] [including IFRS];

**"Group"** means the Borrower and its Subsidiaries for the time being;]

**"Guarantee"** means the guarantee dated [on or about the date of this Agreement] and given or to be given by the Guarantor in relation to the Borrower's obligations [under [this Agreement][the Finance Documents]];

**"Guarantor"** means [◆ ] [company number [◆ ]] whose registered office is at [◆ ] [of [◆ ]];<sup>3</sup>

**"Holding Company"** means, in relation to any person, an entity of which that person is a Subsidiary;

**"IDERA"** means an Irrevocable De-registration and Export Request Authorisation to be entered into by the Borrower;

**"IFRS"** means international accounting standards within the meaning of the IAS Regulation 1606/2002 to the extent applicable to the relevant financial statements;]

**"Indebtedness"** means any indebtedness for or in respect of:

- (a) monies borrowed;
- (b) any amount raised by acceptance under any acceptance credit facility;
- (c) any amount raised pursuant to any note purchase facility or the issue of bonds, notes, debentures, loan stock or any similar instrument;
- (d) the amount of any liability in respect of any lease or hire purchase contract which would, in accordance with GAAP, be treated as a finance or capital lease;
- (e) receivables sold or discounted (other than any receivables to the extent they are sold on a non-recourse basis);
- (f) any amount raised under any other transaction (including any forward sale or purchase agreement) having the commercial effect of a borrowing;
- (g) any derivative transaction entered into in connection with protection against or benefit from fluctuation in any rate or price (and, when calculating the value of any derivative transaction, only the marked to market value shall be taken into account);
- (h) any counter-indemnity obligation in respect of a guarantee, indemnity, bond, standby or documentary letter of credit or any other instrument issued by a bank or financial institution; and

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<sup>3</sup> The definitions of Guarantee and Guarantor should be included where the Borrower's obligations are guaranteed (such as by a parent or holding company of the Borrower).

- (i) the amount of any liability in respect of any guarantee or indemnity for any of the items referred to in paragraphs (a) to (h);

**"Insurances"** means all policies and contracts of insurance or such other insurance arrangements which are from time to time entered into in respect of the Aircraft pursuant to schedule 6 (*Insurance Covenants*), including all claims under the policies and contracts and return of premiums;

**"Insurers"** means the underwriters, insurance companies, mutual insurance associations or other associations or companies with or by which the Insurances are effected;

**"Interest Payment Date"** means the last day of an Interest Period;

**"Interest Period"** means each period determined in accordance with clause [◆ ];

**"Interest Rate"** means the annual percentage rate determined by the Lender to be the aggregate of:

- (a) the Margin;
- (b) LIBOR; [and
- (c) Mandatory Costs, if any];

**"International Registry"** means the international registration facilities established for the purposes of the Cape Town Convention, currently administered by Aviareto Limited of 29 Earlsfort Terrace, Dublin 2, Republic of Ireland;

**"LIBOR"** means, in relation to the Loan:

- (a) the applicable Screen Rate for the relevant Interest Period; or
- (b) (if no Screen Rate is available for the currency or Interest Period of the Loan) the [insert relevant bank] offered rate, as at [◆ ]am [on the first day of the relevant Interest Period][two [◆ ] days prior to the start of the relevant Interest Period], for the offering of deposits in the Currency for a period comparable to the relevant Interest Period of the Loan;<sup>4</sup>

**"Loan"** means the loan made or to be made under the Facility or the principal amount outstanding for the time being of the Loan;

**"Loss"** means any loss, demand, liability, obligation, claim, action, proceeding, penalty, fine, damage, adverse judgement, order or other sanction, fee and out-of-pocket cost and expense (including any fee and out-of-pocket cost and expense of any legal counsel);

**"Maintenance Performer"** means the independent maintenance performer approved in writing by the Lender to perform all major maintenance work on the Aircraft [and, for the avoidance of doubt, [◆ ] is hereby approved by the Lender];

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<sup>4</sup> Lenders commonly have their own definitions of LIBOR which they prefer to use and the above definition does not give Reference Banks as an alternative way of calculating LIBOR.

**"Maintenance Programme"** means, in relation to the Aircraft, the Airframe, any Engine or any Part, [◆ ] or such other maintenance programme as may be [reasonably] approved in writing by the Lender from time to time;

**"Mandatory Costs"** means the costs incurred by the Lender in complying with Bank of England reserve asset requirements and other requirements and regulations of the Bank of England from time to time, and the rate of charge payable by the Lender to the Financial Services Authority from time to time;]

**"Manuals and Technical Records"** means all records, logs, manuals, technical data and other materials and documents (whether kept or to be kept in compliance with any regulation of the Aviation Authority or otherwise and including without limitation any data maintained in a computer or on computer files) relating to the Aircraft;

**"Manufacturer"** means [◆ ] having its registered office in [◆ ];

**"Margin"** means [◆ ]% per annum;

**"Market Value"** means the open market value of the Aircraft as assessed by the Lender's professional valuer [which shall be a valuer of recognised standing and repute in the corporate aviation market];

**"Obligor"** means the Borrower, the Guarantor and [◆ ];

**"Part"** means all appliances, parts, accessories, instruments, navigational and communications equipment, furnishings, modules, components and other items of equipment (other than complete Engines or engines);

**"Process Agent"** shall have the meaning given to it in clause [◆ ];

**"Repayment Date"** means [in relation to any repayment of the Loan required under clause 6(a)], the date corresponding to such repayment set out in column [◆ ] of schedule 4 (*Repayment Schedule*)]];

**"Repayment Instalment"** means the instalments to reduce the Facility set out in clause 6(a) to be repaid on each Repayment Date;]

**"Requisition Compensation"** means all moneys or other compensation from time to time payable in respect of the Compulsory Acquisition of the Aircraft;

**"Reservations"** means:

- (a) the principle that equitable remedies may be granted or refused at the discretion of a court and the limitation of enforcement by laws relating to insolvency, reorganisation and other laws generally affecting the rights of creditors;
- (b) the time barring of claims under applicable statutes of limitation, the possibility that an undertaking to assume liability for or indemnify a person against non-payment of stamp duty may be void and defences of set-off or counterclaim; and



(c) similar principles, rights and defences under the laws of its jurisdiction of incorporation;]<sup>5</sup>

**"Screen Rate"** means the British Banks' Association Interest Settlement Rate for the Currency and Interest Period, displayed on the appropriate page of the Reuters screen. If the agreed page is replaced or service ceases to be available, the Lender may specify another page or service displaying the appropriate rate;

**"Security Documents"** means [the Aircraft Mortgage, the Share Charge, the Guarantee] [*insert here description of security documents to be taken initially*] and any other Security Interest documented and created at any time by [the Borrower][any member of the Group] as security for the Facility;

**"Security Interest"** means any mortgage, charge, pledge, lien or other security interest securing any obligation of any person or any other agreement having similar effect;

**"Seller"** means [◆ ] of [◆ ];]<sup>6</sup>

**"Share Charge"** means [◆ ];

**"State of Registration"** means, [◆ ][the United Kingdom] in relation to the Aircraft, or any other state or territory on whose national aircraft register the Aircraft is registered from time to time;

**"Sterling"** and **"£"** means the lawful currency of the United Kingdom from time to time;]

**"Subsidiary"** means a subsidiary within section 1159 of the Companies Act 2006;

**"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 and **"Taxation"** shall be construed accordingly;

**"Total Loss"** means any of the following events:

- (a) the actual or constructive total loss of the Aircraft (including any damage to the Aircraft which results in an insurance settlement on the basis of a total loss, or requisition for use or hire of the Aircraft which results in an insurance settlement on the basis of a total loss);
- (b) the Aircraft being destroyed, damaged beyond repair, or otherwise ceasing to be usable by an airline in the normal course of its business for a period exceeding 60 days;
- (c) the Compulsory Acquisition of the Aircraft; or
- (d) the hijacking, theft, confiscation, capture, detention, seizure or requisition for use or hire of the Aircraft, other than where the same amounts to Compulsory Acquisition of the Aircraft for more than 30 days;

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<sup>5</sup> This is Borrower friendly.

<sup>6</sup> If the Aircraft is not being purchased by the Borrower, this definition may be deleted.

**"Tripartite Agreement"** means the tripartite agreement dated on or about the date of this Agreement and made between the Borrower, the Lender and the Approved Operator with respect to the Aircraft;

**["US Dollars" and "US\$"** means the lawful currency of the United States of America from time to time;]

**"VAT"** means value added tax as provided for in the Value Added Tax Act 1994 and any other tax of a similar nature; and

**"Warranties"** means:

- (a) all warranties in respect of the Airframe, any Engine or Part by any manufacturer or supplier, including all post-delivery rights relating to such warranties [and, as more particularly set out in [◆ ]]; and
- (b) the benefit of any agreement for the repair, overhaul, testing or servicing of the Airframe, any Engine or any Part including the benefit of all warranties and indemnities relating thereto.

## 1.2 Construction

In this Agreement:

- (a) any reference to:
  - (i) **"assets"** includes present and future properties, revenues and rights of every description;
  - (ii) [this Agreement][a Finance Document] or any other agreement or instrument is a reference to [this Agreement][that Finance Document] or that other agreement or instrument as amended or novated;
  - (iii) **"indebtedness"** includes any obligation (whether incurred as principal or as surety) for the payment or repayment of money, whether present or future, actual or contingent;
  - (iv) a **"person"** includes any person, firm, company, corporation, government, state or agency of a state or any association, trust or partnership (whether or not having separate legal personality) or two or more of the foregoing;
  - (v) the **"Borrower"** or the **"Lender"** shall, where the context permits, include such person's successors and permitted assigns and any persons deriving title under such person;
  - (vi) a **"regulation"** includes any regulation, rule, official directive, request or guideline (whether or not having the force of law) of any governmental, intergovernmental or supranational body, agency, department or regulatory, self-regulatory or other authority or organisation;
  - (vii) a provision of law is a reference to that provision as amended or re-enacted;
  - (viii) a clause or schedule is a reference to a clause of or schedule to this Agreement;

- (ix) a time of day is a reference to London time; and
- (x) a Default (other than an Event of Default) which is "*continuing*" is a reference to a Default which has not been remedied or waived and any reference to an Event of Default which is "*continuing*" is a reference to an Event of Default which has not been waived;
- (b) words importing the plural include the singular (and vice versa);
- (c) the *ejusdem generis* rule shall not apply and accordingly the interpretation of general words shall not be restricted by being preceded by words including a particular class of acts, matters or things or by being followed by particular examples; and
- (d) section, clause and schedule headings are for ease of reference only.

## 2. THE FACILITY

Subject to the terms of this Agreement, the Lender shall make available to the Borrower a [*insert description of the facility*] facility in an aggregate maximum amount equal to the Facility Amount.

## 3. PURPOSE AND AVAILABILITY

- (a) Subject to the terms of this Agreement, the Loan shall be made available to the Borrower in full, in one amount during the Availability Period. If the Loan is not drawn down during the Availability Period the Facility shall be reduced to zero at [5:00pm] on the last Business Day of the Availability Period.
- (b) The Borrower shall apply all amounts borrowed by it under the Facility towards [◆ ].<sup>7</sup> The Lender shall not be bound to monitor or verify the application of any amount borrowed under this Agreement.

## 4. CONDITIONS PRECEDENT

### 4.1 Conditions Precedent

The Borrower may not deliver a Drawdown Notice unless the Lender has received all the documents and other evidence listed in schedule 2 (*Conditions Precedent*) in form and substance satisfactory to the Lender. The Lender shall notify the Borrower promptly upon being so satisfied.

### 4.2 Further Conditions Precedent

The Lender will only be obliged to make the Loan available if on the date of the Drawdown Notice and on the proposed Drawdown Date:

- (a) the representations and warranties set out in clause 15.1 (*Representations and Warranties*) are true and correct in all material respects;
- (b) no Default is continuing or would result from the proposed Loan;

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<sup>7</sup> The purpose of the facility should be stated. If the Borrower already owns the Aircraft and is refinancing it, the appropriate wording should be selected.

- (c) the proposed Drawdown Date is a Business Day falling within the Availability Period;
- (d) the Interest Rate applicable to the Loan does not fall to be determined pursuant to clause 9 (*Substitute Basis*); [and]<sup>8</sup>
- (e) no material adverse change in the financial condition of the Borrower [or any Guarantor] has occurred from that represented in the most recent financial statements provided to the Lender [other than any such change which has been disclosed to and accepted by the Lender].

#### **4.3 Conditions Subsequent**

The Borrower shall pay all costs, fees and valuations for which it is liable in connection with the Facility (including in connection with the negotiation, preparation and execution of [this Agreement][the Finance Documents]), in each case within 14 days of delivery to the Borrower of the relevant invoice therefore (whether or not the Facility proceeds to drawdown) [(unless it fails to proceed solely due to the fault of the Lender)].

### **5. THE LOAN**

#### **5.1 Delivery of a Drawdown Notice**

The Borrower may utilise the Facility by delivery to the Lender of a duly completed Drawdown Notice not later than [◆ ]am (London time) on the [[◆ ] Business Day before the] proposed Drawdown Date. A Drawdown Notice shall be effective on actual receipt by the Lender and, once given, shall be irrevocable.

#### **5.2 Payment of Proceeds**

All amounts to be made available by the Lender to the Borrower shall be made available on the due date in the Currency in immediately available freely transferable cleared funds to [the account of the Borrower as specified by the Borrower for this purpose or to such other account(s) as may be specified by the Borrower in the Drawdown Notice and accepted by the Lender.

### **6. REPAYMENT**

- (a)

#### **EITHER**

#### **[SINGLE BULLET REPAYMENT**

[The Borrower shall repay the Loan in full in one amount on the Final Repayment Date together with all interest accrued thereon and all other amounts payable hereunder.]

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<sup>8</sup> Clause 4.2(d) is to be deleted in the event that clause 9 (*Substitute Basis*) is removed.

**OR**

**[EQUALISED VARIABLE RATE**

- (i) [The Borrower shall repay the Loan in [◆ ] [monthly] instalments of capital and interest of [◆ ] [and a final instalment of capital and interest of [◆ ] on the Final Payment Date]. Each [monthly] instalment of capital and interest shall be made on the last day of the relevant Interest Period.
- (ii) The amount of each instalment of capital and interest set out in clause 6(a) [(including the final instalment of capital and interest)] are minimum repayment amounts only and are based on an assumption that LIBOR for each Interest Period shall be a constant of [◆ ] per cent per annum for the duration of the Facility. Pursuant to any increase or decrease in LIBOR for any Interest Period, the Lender may, in its sole and absolute discretion, and by notice to the Borrower, increase or decrease the amount of any or all of the [monthly] instalments of capital and interest [(including the final instalment)] required under clause 6(a).]

**OR**

**[SEPARATE PAYMENTS OF CAPITAL AND INTEREST**

The Borrower shall repay the Loan by [◆ ] [consecutive] repayment instalments [of [◆ ] each] [in the amounts set out in schedule 4 (*Repayment Schedule*)] on each Repayment Date.]

- (b) The Borrower shall ensure that the Loan is repaid in full no later than the Final Repayment Date.
- (c) No part of the Loan repaid (or prepaid) shall be available for reborrowing.
- (d) In the event of a Total Loss the Borrower shall repay the Loan together with all interest accrued thereon, any applicable Break Costs and any other amount payable by it under [the Finance Documents] upon the earlier of receipt by the Borrower of any amount from the Insurers with respect to the Total Loss and [60 days] from the date of the Total Loss. For the avoidance of doubt, interest shall continue to accrue on the Loan following the occurrence of a Total Loss until the Loan is repaid in full by the Borrower.

**7. PREPAYMENT AND CANCELLATION**

**7.1 Voluntary Prepayments**

- (a) The Borrower may prepay, subject to Break Costs (if any), without premium or penalty, [(other than, if applicable, the fee specified in clause 7.1(b))] all or part of the Loan on an Interest Payment Date applicable to the amount to be prepaid, provided that:
  - (i) the Borrower shall have given to the Lender not less than [30 days] prior written notice specifying the amount and proposed date of prepayment; and

- (ii) the amount of any partial prepayment shall be not less than [◆ ] or an integral multiple thereof.
- (b) At the time of any prepayment under clause 7.1(a) the Borrower shall pay to the Lender a prepayment fee equal to [◆ ]% of the amount prepaid [unless the Lender is satisfied that the prepayment is not made from, or by reason of, funds being acquired from any financial institution (other than from the Lender by way of refinancing [or from any placement of shares by the Borrower])].
- (c) No prepayment fee shall be payable under clause 7.1(b) in the event that the Loan is repaid in full pursuant to clauses [◆ ] and [◆ ].

## 7.2 Additional Amounts on Prepayments

Prepayments under this Agreement shall be made together with accrued interest thereon, any Break Costs suffered, incurred or paid by the Lender as a result of such prepayment and all other sums then due and payable under this Agreement.

## 7.3 Cancellation of Facility

[The Borrower may, by giving to the Lender not less than 30 days' prior written notice specifying the amount to be cancelled, cancel [without premium or penalty] all or any part (but, if in part, being an amount of not less than [◆ ] or integral multiples thereof) of the Facility. The Lender shall not be obliged to reinstate all or any part of the Facility which is reduced or cancelled under this Agreement.]<sup>9</sup>

## 7.4 Irrevocability

Any notice of prepayment or cancellation given by the Borrower under this Agreement shall be irrevocable, shall specify the date upon which such prepayment or cancellation is to be made and the amount of such prepayment or cancellation and shall oblige the Borrower to make such prepayment or cancellation on the specified date.

## 7.5 Limitation on Prepayments

The Borrower may not voluntarily prepay or repay the Loan or any part thereof or cancel any part of the Facility except at the times and in the manner expressly provided for in this Agreement.

## 7.6 Application of Prepayments

Any prepayment made in accordance with clause 7.1(a) shall satisfy *pro tanto* the Borrower's repayment obligations under clause 6 (*Repayment*) in inverse order of maturity. [Any prepayment made in accordance with clause 9.4 (*Prepayment*), 10.1 (*Taxes*) or 11 (*Increased Costs*) shall reduce rateably the remaining obligations of the Borrower under clause 6 (*Repayment*).]<sup>10</sup>

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<sup>9</sup> Consider whether a Facility Fee and/or a Non-Utilisation Fee will be payable.

<sup>10</sup> Check compatibility with the Lender's systems.

## **8. INTEREST**

### **8.1 Interest**

The rate of interest on the Loan for each Interest Period is the Interest Rate. The Borrower shall pay accrued interest on the Loan on the last day of each Interest Period.

### **8.2 Interest Periods**

The Interest Periods applicable to the Loan shall be of [[◆ ] month(s) duration] [one (1), two (2), three (3) or, subject to availability in the London interbank market (as determined by the Lender), six (6) months duration, as selected by the Borrower in accordance with clause 8.3 (*Selection*)] provided that:

- (a) the first Interest Period in relation to the Loan shall commence on the Drawdown Date;
- (b) each Interest Period (other than the first) shall commence on the last day of the preceding Interest Period;
- (c) [any Interest Period which would otherwise end on a non-Business Day shall instead end on the next following Business Day, in which case an adjustment is to be made to the amount of interest payable, or, if that Business Day is in another calendar month, on the immediately preceding Business Day, in which case no such adjustment is to be made;]<sup>11</sup>
- (d) if any Interest Period commences on the last Business Day of a calendar month or on a day for which there is no numerically corresponding day in the calendar month [one (1), two (2), three (3) or six (6) months] thereafter [as the case may be], that Interest Period shall, subject to clause 8.2(e), end on the last Business Day of such later calendar month;
- (e) any Interest Period which would otherwise overrun a Repayment Date shall instead end on that Repayment Date, subject to adjustment in accordance with clause [13.5];
- (f) any Interest Period which would otherwise extend beyond the Final Repayment Date shall instead end on that date.

### **8.3 [Selection]**

[Subject to clause 8.2 (*Interest Periods*), the Borrower may select the length of an Interest Period by written notice to be received by the Lender not later than 11.00am ([◆ ] time) on the third Business Day before the start of that Interest Period, save that if the Borrower does not give such a notice or if a declaration under clause 18.2 (*Acceleration*) has been made, the Interest Period shall be of a duration (not exceeding three months) selected by the Lender at its discretion.]

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<sup>11</sup> Check compatibility with the Lender's systems.

#### **8.4 Day Count Fraction**

Interest shall accrue from day to day, shall be calculated on the basis of the actual number of days elapsed and a [365][360] day year, including the first day of the period during which it accrues but excluding the last.<sup>12</sup>

#### **8.5 Default Interest**

If the Borrower fails to pay any amount payable by it under [this Agreement][the Finance Documents] on the due date therefor, interest shall accrue on the overdue amount from such due date up to the date of actual payment (both before and after judgment) at the Default Rate. Any interest accruing under this clause [8.5] shall be immediately payable by the Borrower on demand by the Lender and, if unpaid, will be calculated on a daily basis and on [the first day of each Interest Period] [each Repayment Date] [or, following the Final Repayment Date, on the first day of each calendar month] (but will remain immediately due and payable).

### **9. SUBSTITUTE BASIS<sup>13</sup>**

#### **9.1 Market Disruption**

If, in relation to any Interest Period:

- (a) the Lender determines (which determination shall be conclusive and binding) that by reason of circumstances affecting the London interbank market generally, adequate and fair means do not or will not exist for ascertaining LIBOR for that Interest Period; or
- (b) the Lender determines that deposits in the Currency in the required amount for the relevant Interest Period are not available to it in the London interbank market or that the rate does not adequately reflect the cost to the Lender of obtaining funds for that Interest Period;

the Lender shall promptly notify the Borrower accordingly and, the Loan shall not be made until a substitute basis as mentioned below is agreed.

#### **9.2 Consultation and Agreement**

Immediately following the notification referred to in clause 9.1 (*Market Disruption*), the Borrower and the Lender shall negotiate in good faith with a view to agreeing upon a substitute basis for funding the Loan and determining the applicable interest rate. If a substitute basis is agreed within a period of 30 days after such notification or such longer period for discussion as the Borrower and the Lender may agree, that substitute basis shall take effect in accordance with its terms.

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<sup>12</sup> The convention is 360 days for US Dollars and Euro and 365 days for Sterling. Check compatibility of day count with Lender's systems.

<sup>13</sup> Substitute basis is relevant only where the Lender is required to determine LIBOR pursuant to independent sources. If the Lender has its own definition of LIBOR, clause 9 in its entirety can be deleted.



### 9.3 No Agreement

If a substitute basis is not so agreed and the Loan has been made, the Borrower shall pay interest on the Loan to the Lender for the relevant Interest Period at the rate per annum equal to the aggregate of:

- (a) the Margin; [and]
- (b) the cost (expressed as an annual interest rate) to the Lender of funding the Loan during the relevant Interest Period [from whatever sources and in whatever manner it may reasonably select] [(as conclusively determined by the Lender in a certificate setting out the calculation in reasonable detail to the Borrower); [and]
- (c) [the Mandatory Costs (if any) applicable to the Loan].

### 9.4 Prepayment

If a substitute basis is not so agreed pursuant to clause 9.2 (*Consultation and Agreement*):

- (a) if the Loan has not been made, the Facility shall be cancelled and all sums outstanding under this Agreement shall be paid to the Lender at the end of the period for negotiation ascertained in accordance with clause 9.2 (*Consultation and Agreement*); or
- (b) if the Loan has been made, the Lender may request the prepayment of the Loan, by giving written notice to the borrower specifying a prepayment date which is not less than 30 days after such notice is given. On the specified date the Facility shall be cancelled and the Borrower shall prepay the Loan in full together with interest thereon to the date of prepayment and all other sums payable hereunder. For this purpose, the interest rate from time to time applicable to the Loan shall be the rate as ascertained in accordance with clause 9.3 (*No Agreement*) in relation to the relevant period.]

## 10. TAXES

### 10.1 Taxes

All payments by the Borrower under [this Agreement][the Finance Documents] shall be made without set-off or counterclaim whatsoever and free and clear of any Taxes, deduction or withholding of any kind save as required by applicable law. If the Borrower is required by law to make any deduction or withholding from any such payment, whether on account of Taxes or otherwise, the sum due from it in respect of such payment shall be increased to the extent necessary to ensure that, after the making of such deduction or withholding, the Lender receives and retains (free from any liability in respect of any such deduction or withholding) a net sum equal to the sum which it would have received had no deduction or withholding been made or been required to be made. The Borrower shall promptly supply the Lender with evidence satisfactory to the Lender that the Borrower has accounted to the relevant authority for any sum deducted or withheld.<sup>14</sup>

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<sup>14</sup> This clause ensures that all payments to be made to the Lender should be free and clear of and without deduction on account of Taxes. If the Borrower is obliged to deduct any amount in respect of Taxes, payment must be "grossed-up" so that the Lender receives the amount that it would have received had no such deduction or withholding on account of any Taxes been made.

## 10.2 [Tax Credits

- (a) If the Borrower pays any increased amount under clause 10.1 (*Taxes*) and the Lender effectively obtains a refund of tax or credit against tax by reason of that payment, and if the Lender is able (in its sole opinion, which shall not be capable of being challenged) to identify that refund or credit as being attributable to that payment having regard to its other activities, then the Lender shall reimburse to the Borrower such amount as it shall determine (any such determination being conclusive) to be the proportion of that refund or credit as will leave the Lender after that reimbursement in no better or worse position than it would have been in if that payment had not been required. [The Lender shall not be obliged to arrange its tax affairs in any particular manner or to disclose any information regarding its tax affairs or computations to the Borrower.]
- (b) The Lender shall, in consultation with the Borrower, take all reasonable steps to mitigate any circumstances which arise and which would result in any amount becoming payable under or pursuant to, or cancelled pursuant to, clause 10.2(a) including transferring its rights and obligations under the Finance Documents to an Affiliate. This clause does not in any way limit the obligations of any Obligor under the Finance Documents. The Borrower shall indemnify the Lender for all costs and expenses reasonably incurred by the Lender as a result of steps taken by it under this clause. The Lender is not obliged to take any steps under this clause if, in the opinion of the Lender (acting reasonably), to do so might be prejudicial to it.<sup>15</sup>

## 10.3 Stamp Duty

The Borrower shall pay all stamp, documentary, registration or other like duties or Taxes (including any duties or Taxes payable by the Lender) imposed on or in connection with [this Agreement][the Finance Documents] and shall indemnify the Lender against any liability arising by reason of any delay or omission by the Borrower to pay such duties or Taxes.

## 10.4 Value Added Tax

All amounts payable under [this Agreement][the Finance Documents] by the Borrower to the Lender shall be deemed to be exclusive of VAT. If VAT is chargeable, the Borrower shall pay to the Lender (in addition to and at the same time as paying the relevant amount) an amount equal to the amount of the VAT. Where [this Agreement][a Finance Document] requires the Borrower to reimburse the Lender for any Losses, costs or expenses, the Borrower shall also at the same time pay and indemnify the Lender against all VAT suffered, incurred or paid by the Lender in respect of the relevant Losses, costs or expenses [(save to the extent that the Lender is entitled to repayment or credit in respect of the VAT)].

## 11. INCREASED COSTS

If the result of any [change in, or the introduction of, any] law, regulation or regulatory requirement or [any change in] the interpretation or application thereof or compliance by the Lender or any of its Affiliates with any direction, request or requirement (whether or not having the force of law) of any central bank, monetary, regulatory or other authority (including, in each case without limitation, those relating to Taxation, capital adequacy, liquidity, reserve assets and special deposits) is to:

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<sup>15</sup> This is Borrower friendly.

- (a) subject the Lender or any of its Affiliates to Taxes or change the basis of Taxation of the Lender or any of its Affiliates with respect to any payment under this Agreement (other than Taxes or Taxation on the overall net income or profits of the Lender or any of its Affiliates imposed in the jurisdiction in which it is incorporated or in which its lending office under this Agreement is located);
- (b) increase the cost of, or impose an additional cost on, the Lender or any of its Affiliates in relation to the making, maintaining or funding the Loan;
- (c) reduce the amount payable or the effective return to the Lender or any of its Affiliates under this Agreement;
- (d) reduce the Lender's or any of its Affiliates' rate of return on its overall capital by reason to a change in the manner in which it is required to allocate capital resources to its obligations under this Agreement; and/or
- (e) require the Lender or any of its Affiliates to make a payment or forgo a return on or calculated by reference to any amount received or receivable by it under or by reason by this Agreement,

then in each such case:

- (i) the Lender shall notify the Borrower in writing of such event promptly upon its becoming aware of the same; and
- (ii) the Borrower shall on demand pay to the Lender the amount which the Lender certifies the amount required to compensate the Lender or its Affiliates for such increased cost, reduction, payment or forgone return; and
- (iii) without prejudice to the obligations of the Borrower under clause 11(ii), so long as the circumstances giving rise to such increased cost, reduction, payment or foregone return continue, the Borrower may prepay the Loan together with accrued interest thereon to the date of actual payment, on giving not less than 30 days' prior written notice to the Lender, provided that such notice is given within 60 days of the notification under clause 11(i). The Facility shall be cancelled on the giving of such notice.

## **11.2 Allocation**

The Lender may in good faith allocate or spread costs and/or losses among its assets and liabilities (or any class thereof) on such basis as it [reasonably] considers appropriate. A demand may be made by the Lender under this clause at any time whether or not the Loan has been repaid.

## **12. ILLEGALITY**

If it becomes unlawful in any jurisdiction applicable to the Lender for the Lender to make available or fund or maintain the Loan or to give effect to its obligations as contemplated hereby, the Lender may, by written notice to the Borrower, declare that the Lender's obligations shall be terminated forthwith whereupon the Borrower will if so required pursuant to such law, regulation, treaty or official directive prepay forthwith (or, if permitted by the relevant law, regulation treaty or official directive, at the end of the then current Interest Period) the Loan. The Facility shall be cancelled on the giving of such notice.

## 13. INDEMNITIES

### 13.1 General Indemnity

The Borrower shall, on demand of the Lender, indemnify the Lender against any Loss (including Break Costs and loss of margin) suffered, incurred or paid by the Lender as a result of or in connection with:

- (a) the occurrence and/or continuation of any Default and/or investigating any event or circumstance which it reasonably believes is a Default;
- (b) a failure by the Borrower to pay any amount due under [this Agreement][a Finance Document] on its due date;
- (c) the Lender funding or making arrangements to fund, the Loan requested by the Borrower in a Drawdown Notice but not made by reason of any one or more of the provisions of this Agreement [(other than by reason of the default or negligence of the Lender)];
- (d) any repayment or prepayment of the Loan or any part thereof being made other than in accordance with the provisions of clause 7 (*Prepayment and Cancellation*);
- (e) any payment of principal being received from any source otherwise than on the last day of an Interest Period;
- (f) acting or relying on any notice, request or instruction which it [reasonably] believes to be genuine, correct and appropriately authorised; or
- (g) the manufacture, description, fitness for purpose, merchantability, suitability, quality, state, appearance, safety, durability, value, design, testing, delivery, import, export, registration, ownership, possession, control, use, operation, leasing, sub-leasing, insurance, maintenance, repair, refurbishment, service, overhaul, modification, change, alteration, loss, damage, storage, removal, re-delivery or otherwise of the Aircraft.

### 13.2 Currency Indemnity

If an amount due to the Lender from the Borrower in one currency (the "**first currency**") is received by the Lender in another currency (the "**second currency**"), the Borrower's obligations to the Lender in respect of such amount shall only be discharged to the extent that the Lender may purchase the first currency with the second currency in accordance with its normal banking practice. If the amount of the first currency which may be so purchased (after deducting any costs of exchange and any other related costs) is less than the amount so due, the Borrower shall indemnify the Lender against the shortfall.

## 14. PAYMENT

### 14.1 Place

All payments by the Borrower under this Agreement shall be made to the Lender to its account at such office or bank as it may notify to the Borrower for this purpose.

## 14.2 Funds

Payments under this Agreement shall be made for value on the due date at such times and in such funds as the Lender may specify as being customary at the time for the settlement in the applicable Currency.

## 15. REPRESENTATIONS AND WARRANTIES

### 15.1 Representations and Warranties

The Borrower represents and warrants to the Lender that:

- (a) **Status:** the Borrower is a company duly incorporated and validly existing and has full power, authority and legal right to own its property and assets and to carry on its business as such business is now being conducted;
- (b) **Power and Authority:** the Borrower has all legal power and authority to enter into this Agreement and perform its obligations under this Agreement and all action (including any corporate and regulatory action) required to authorise the execution and delivery of this Agreement and the performance of its obligations under this Agreement has been duly taken;
- (c) **Legal Validity:** [subject to the Reservations] this Agreement constitutes the legal, valid and binding obligations of the Borrower enforceable in accordance with its terms;
- (d) **Non-conflict with laws:** the entry into and performance of this Agreement and the transactions contemplated by this Agreement do not and will not conflict with or result in a breach of:
  - (i) any law, judgment or regulation or any official or judicial order;
  - (ii) the constitutional documents of the Borrower; or
  - (iii) any agreement or document to which the Borrower is a party or which is binding upon it or any of its assets or revenues, nor cause any limitation placed on it or the powers of its directors to be exceeded or result in the creation or imposition of any Security Interest on any of its assets pursuant to the provisions of any such agreement or document;
- (e) **No consents:** [save for the registration of any Finance Document which creates a registrable Security Interest,] no consent of, giving of notice to, or registration with, or taking of any other action in respect of, any governmental authority or agency in any relevant jurisdiction or any shareholders or creditors of the Borrower is required for or in connection with the execution, validity, delivery and admissibility in evidence in any proceedings of this Agreement, or the carrying out by the Borrower of any of the transactions contemplated hereby;
- (f) **Litigation:** no litigation, arbitration or administrative proceeding is currently taking place or pending or, to the knowledge of the Borrower, threatened against the Borrower or its assets [which would adversely affect its ability to perform its obligations under this Agreement];

- (g) **Taxes on Payments:** all payments to be made by the Borrower under this Agreement may be made by the Borrower free and clear of, and without deduction for, Taxes and no deductions or withholdings are required to be made therefrom;
- (h) **Winding Up:** no corporate action, legal proceeding or other procedure or step has been or is about to be taken in relation to:
  - (i) a suspension of payments, moratorium of any indebtedness, winding-up, dissolution, administration or reorganisation (by way of voluntary arrangement, scheme of arrangement or otherwise) of the Borrower;
  - (ii) a composition, compromise, assignment or arrangement with any creditor or any member of the Borrower;
  - (iii) the appointment of a liquidator, receiver, administrator, administrative receiver, compulsory manager or other similar officer in respect of the Borrower or any of its assets; or
  - (iv) the enforcement of any Security Interest over any assets of the Borrower;
- (i) **Pari Passu Ranking:** the obligations of the Borrower under this Agreement rank at least pari passu with all its other present and future unsecured obligations save for any obligations mandatorily preferred by law and not by contract;
- (j) **[Ownership of Assets:** each member of the Group has good and marketable title to or valid leases of all its assets which are reflected in the financial statements for the year ended [◆ ] subject to no Security Interest except as disclosed in such financial statements [or as created by the Finance Documents];]
- (k) **Tax Liabilities:** the Borrower and every other member of the Group have complied with all Taxation laws in all jurisdictions in which they are subject to Taxation and have paid all taxes due and payable by each of them; no material claims are being asserted against them with respect to Taxes;
- (l) **No Default:** no Event of Default has occurred and is continuing or might reasonably be expected to result from the making of the Loan;
- (m) **Financial Statements:** the most recent [audited] financial statements of the Borrower [and each other member of the Group] [for the time being] (including the [audited] profit and loss account and balance sheet) were prepared in accordance with GAAP consistently applied and show a true and fair view of the financial position of the Borrower [and each member of the Group or the Group, as the case may be,] as at the end of, and the results of [their respective] operations for, the financial period to which they relate, and as at the end of such period, [neither] the Borrower [nor any other member of the Group] had any significant liabilities (contingent or otherwise) or any unrealised or anticipated losses which are not disclosed by or reserved against in such financial statements and there has been no material adverse change in the business or financial condition of the Borrower [or any other member of the Group] since the date of such financial statements;
- (n) **Other Information:** all financial and other information supplied to the Lender by or on behalf of the Borrower [or any other Obligor] in connection with the Facility or the matters envisaged therein is true and accurate in all material respects;

- (o) **[Sole Legal and Beneficial owner:** [on the Drawdown Date] the Borrower is [(or will be) and (subject to [this Agreement][the Finance Documents])] will remain the sole, absolute legal and beneficial owner of the Aircraft and no Security Interest will exist with respect to the Aircraft other than as created by the Finance Documents; and]<sup>16</sup>
- (p) **Security Interests over Assets:** save as may be permitted by clause [16.14 (*Negative Pledge*)] [or as created by Finance Documents], no Security Interest exists over all or any of the present or future revenues or assets of [the Borrower][any member of the Group].

## 15.2 Repetition

The representations and warranties in clause 15.1 (*Representations and Warranties*) shall be deemed to be repeated by the Borrower through the continuance of this Agreement as if made, with reference to the facts and circumstances existing from time to time.

## 16. UNDERTAKINGS<sup>17</sup>

### 16.1 Operational and Maintenance Covenants

The Borrower undertakes to the Lender at all times to comply and to procure compliance with the operational and maintenance covenants set out in schedule 5 (*Operational and Maintenance Covenants*).

### 16.2 Insurance Covenants

The Borrower undertakes to the Lender at all times to comply and to procure compliance with the insurance covenants set out in schedule 6 (*Insurance Covenants*).

### 16.3 Habitual Base

The Borrower shall ensure that the habitual base for the Aircraft is at [◆ ].

### 16.4 Aircraft Value

- (a) The Lender may request (on an annual basis and at any time following the occurrence of an Event of Default) an annual inspection and desk-top valuation of the Aircraft, the [reasonable] cost of which will be for the Borrower's account.
- (b) Where the Loan exceeds [◆ ]% per cent of the [Market Value] of the Aircraft, the Lender may require the Borrower to make a one off capital payment in relation to the Loan and/or increase the [monthly] payments required to be made by the Borrower under clause [◆ ], in each case to the extent required to ensure that the Loan does not exceed [◆ ]% per cent of the [Market Value] of the Aircraft.

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<sup>16</sup> Where the State of Registration is the USA and the Aircraft is the subject of an owner trustee structure, the foregoing representation shall apply in relation to the beneficial ownership of the Aircraft only.

<sup>17</sup> These undertakings are critical to the protection of the Lender's position. Although the Aircraft Mortgage will invariably set out equivalent types of undertakings, some aircraft financiers also require their loan agreements to set out appropriate undertakings in respect of the Aircraft.

## **16.5 Cape Town Convention**

If, at the date of this Agreement, the Cape Town Convention is in force in the State of Registration and/or the jurisdiction of the Borrower's incorporation or domicile, the Borrower shall procure that all interests created by the [Finance Documents] which constitute an "*international interest*" or "*international interests*" under the Cape Town Convention shall be registered in the International Registry and the Lender shall consent to such registration. All costs incurred in relation to the documentation and registration of such interests (including reasonable legal fees) shall be for the account of the Borrower.

If, at the date of this Agreement, the Cape Town Convention is not in force in the State of Registration and/or the jurisdiction of the Borrower's incorporation or domicile, the Borrower shall, at the request of the Lender, enter into such [new Finance Documents], effective from the date the Cape Town Convention takes effect in the State of Registration and/or the jurisdiction or domicile of the Borrower's incorporation as are necessary to constitute an "*international interest*" or "*international interests*" under the Cape Town Convention, and to ensure that the Lender retains a first priority security interest in the Aircraft. Any such [new Finance Documents] shall contain such additional provisions as the Lender may require (acting reasonably) to obtain the full benefit and protection of the Cape Town Convention. The Borrower shall promptly (and in any event, on or before the date the Cape Town Convention comes into force in the State of Registration and/or the jurisdiction of the Borrower's incorporation or domicile) issue an IDERA in favour of the Lender. All such international interests shall be registered in the International Registry on that effective date by the Lender and the Borrower shall consent to such registration. All costs incurred in relation to the documentation and registration of such interests (including reasonable legal fees) shall be for the account of the Borrower.

## **16.6 [Single Purpose Company]**

The Borrower shall operate as and remain a single purpose company and shall conduct no business nor incur or undertake any duties, obligations or liabilities (actual or contingent) other than those which are incurred or undertaken in connection with the ownership or operation of the Aircraft or under [this Agreement][the Finance Documents to which it is party].]

## **16.7 Duration**

The undertakings in this clause shall remain in force from and after the date of this Agreement and for so long as any sum remains payable under this Agreement.

## **16.8 Information**

The Borrower will furnish to the Lender:

- (a) as soon as they are available, but in any event within [180 days] after the end of each of its financial years, copies of the audited financial statements (including a profit and loss account and balance sheet and in the case of the Borrower, prepared on a consolidated basis) of the Borrower and each of its Subsidiaries in respect of such financial year;
- (b) as soon as they are available, but in any event within [60 days] after the end of each half of its financial years, copies of the unaudited financial statements (including a profit and loss account and balance sheet prepared on a basis consistent with the audited financial statements of the relevant company and in the case of the Borrower,



prepared on a consolidated basis) of the Borrower and each of its Subsidiaries in respect of such six months;

- (c) promptly on request, all notices or other documents despatched by the Borrower to the Borrower's shareholders or creditors (or any class thereof);
- (d) promptly on request, such further information in the possession or control of the Borrower [or of any of its Subsidiaries] with respect to the financial condition and operations of the Borrower [or any other member of the Group] as the Lender may from time to time reasonably request; and
- (e) promptly, details of any actual, pending or threatened litigation, arbitration or administrative proceedings against the Borrower [or any other member of the Group] or any of [its][their respective] assets which might materially and adversely affect the Borrower's financial condition or its ability to perform its obligations under this Agreement.

All financial statements required hereunder shall be prepared in accordance with GAAP consistently applied (or if not consistently applied accompanied by details of the inconsistencies) and shall fairly represent the financial condition of the Borrower [and its Subsidiaries or the Group, as the case may be]. Such accounts, if audited, shall be certified without qualification by [an internationally] recognised firm of independent accountants acceptable to the Lender or if qualified by such accountants, the qualification is acceptable to the Lender acting reasonably; and, if unaudited, shall be accompanied by a certificate signed by the principal financial officer of the Borrower to the effect that such accounts are true in all respects and fairly represent the financial condition of the Borrower [and its Subsidiaries or the Group, as the case may be].

#### **16.9 Records**

The Borrower shall keep proper records and books of account in respect of its business [and that of its Subsidiaries] and permit the Lender and/or any professional consultants appointed by the Lender at all reasonable times upon prior notice to inspect and examine the records and books of account of the Borrower [and its Subsidiaries].

#### **16.10 Notification of Default**

The Borrower will notify the Lender in writing of any Default forthwith upon the occurrence thereof.

#### **16.11 Compliance Certificates**

The Borrower will within 90 days of the end of each of its financial years and also promptly at the request of the Lender from time to time furnish the Lender with a certificate signed by the Auditors certifying that no Default has occurred and is continuing or, if the same has occurred, specifying the Default or event and the steps being taken to remedy the same.

#### **16.12 Consents**

The Borrower will obtain and promptly renew from time to time and thereafter maintain in full force and effect, and will comply with and promptly furnish certified copies to the Lender of, all such authorisations, approvals, consents, licences and exemptions as may be required under any applicable law or regulation to enable it to perform its obligations under this

Agreement [or the Finance Documents to which it is a party] or required for the validity or enforceability of this Agreement [or the Finance Documents to which it is a party].

### **16.13 Pari Passu Ranking**

The Borrower undertakes that its obligations hereunder do and will at all times rank at least pari passu with all other present and future unsecured obligations of the Borrower save for any obligations preferred by law.

### **16.14 Negative Pledge**

The Borrower will not [and will procure that no other member of the Group, will] [without the prior written consent of the Lender] create or permit or suffer to subsist any Security Interest on the whole or any part of the [respective] present or future assets or revenues of the Borrower [or any other member of the Group], other than:

- (a) any Security Interest which has been disclosed in writing to the Lender by the Borrower and which secures only Indebtedness outstanding at the date hereof;
- (b) liens arising solely by operation of law and in the ordinary course of [their respective] business and not entered into primarily for the purpose of securing any indebtedness;
- (c) any Security Interest over goods or documents of title to goods which arise in the ordinary course of [their respective] business in connection with letters of credit and similar transactions which secures on indebtedness representing the acquisition cost of such goods and which are repayable within [180] days after the date on which the relevant indebtedness was incurred; and
- (d) [any Security Interest existing on or over the assets of any company which becomes a Subsidiary of the Borrower after the date of this Agreement and not created in contemplation of or in connection with it becoming a Subsidiary, to secure obligations of that Subsidiary existing at the date on which it becomes a Subsidiary (but not any increase in principal, capital or nominal amount or extension of maturity or renewal of such obligations).]

### **16.15 Disposals**

The Borrower will not [and will procure that no other member of the Group, will] either in a single transaction or in a series of transactions whether related or not and whether voluntary or involuntarily, sell, transfer, lease or otherwise dispose of all or any substantial part of the assets or revenues of the Borrower [or such member of the Group] [except that the following disposals shall not be taken into account provided such disposal does not adversely affect the ability of the Borrower to perform its obligations under this Agreement:]

- (a) [disposals made with the prior written consent of the Lender;]
- (b) [disposals of cash raised or borrowed for the purposes for which such cash was raised or borrowed;]
- (c) [disposals of assets in exchange for other assets comparable as to type and value;]
- (d) [disposals of any of its assets on terms whereby such asset is leased to or re-acquired by the Borrower or any other member of the Group, if any;]

- (e) [any disposal by a Subsidiary of the Borrower to the Borrower or by the Borrower to a Subsidiary or by a Subsidiary to any other Subsidiary;]
- (f) [any distribution of the surplus assets of a Subsidiary of the Borrower in a liquidation or winding-up not involving insolvency;]
- (g) [the application of the proceeds of an issue of securities (whether equitable or debt) for the purposes stated in the prospectus or other offering document relating to that issue.]

#### **16.16 Change of Business and Name**

- (a) Except with the prior written consent of the Lender, the Borrower will not, [and will procure that no other member of the Group will,] make any substantial change in its business as presently conducted.
- (b) Except with the prior written consent of the Lender, the Borrower will not make any change to its name.

#### **16.17 Mergers**

- (a) The Borrower will not without the prior written consent of the Lender enter into any merger or consolidation with any entity or take any step with a view to dissolution, liquidation or winding up.
- (b) Except with the prior written consent of the Lender, the Borrower will not[, and will procure that no other member of the Group, will,] acquire any assets or business or acquire or make any investment if such assets, business or investment is substantial in relation to the Group taken as a whole.

#### **16.18 Maintenance of Status**

- (a) The Borrower will do all such things as are necessary to maintain its corporate existence in good standing and to conduct its business in a proper and efficient manner and in compliance with all laws, regulations, authorisations, agreements and obligations applicable to it and pay all Taxes imposed on it when due.
- (b) The Borrower will [and will procure that each other member of the Group will,] ensure that it has the right and is qualified to conduct its business as it is or is intended as at the date hereof to be conducted in all applicable jurisdictions and will obtain and maintain all franchises and rights necessary for the conduct of its business.

#### **16.19 Constitutional Documents**

The Borrower shall procure that no material amendments or supplement is made to the memorandum of association or bye-laws of the Borrower [or the constitutional documents of its Subsidiaries, if any,] without the prior written consent of the Lender such consent not be unreasonably withheld or delayed.

#### **16.20 Share Capital**

The Borrower will not [and will procure that no other member of the Group will,] without the prior written consent of the Lender purchase or redeem any of their respective issued shares

or reduce their respect share capital or make a distribution of assets or other capital distribution to their respective shareholders.

#### **16.21 Dividends**

The Borrower will not [and will procure that no other member of the Group will,] without the prior written consent of the Lender pay any dividend or make any other income distribution to [its][their respective] shareholders.

#### **16.22 Indebtedness**

[Save for [◆ ], no member of the Group will] [the Borrower shall not] borrow or obtain credit or execute any guarantees or indemnities in favour of any person [other than another member of the Group] (other than any such guarantees which arise in the ordinary course of business) or incur any other Indebtedness [(in any such case if the total amount of such Indebtedness would at any time exceed [◆ ])].

#### **16.23 Lending**

The Borrower will not and will procure that no other member of the Group will make or grant any loan or advance except as may be necessary in the ordinary course of its business.

#### **16.24 [Borrower's Listing**

The Borrower will procure that the shares of the [Borrower][◆ ] shall remain listed on [◆ ] at all times.]

#### **16.25 Process Agent**

The Borrower shall ensure that the Process Agent (or such other agent for service of process as may be approved in writing by the Lender) is appointed as agent for service of process for [each of] the Borrower [and the Guarantor and [◆ ]] with respect to the Finance Documents.

### **17. POSSESSION AND SUB-LEASING**

- (a) The Borrower shall not lease or otherwise part with possession of the Aircraft without the prior written consent of the Lender, which consent the Lender may grant or withhold in its absolute discretion except that the Borrower may:
  - (i) wet lease or charter the Aircraft for a period of not more than [three] months on terms under which possession and operational control of the Aircraft will remain with the Borrower, ensuring that the requirements of schedules [5 (*Operational and Maintenance Covenants*)] and [6 (*Insurance Covenants*)] are fully complied with at all times; and
  - (ii) deliver possession of the Aircraft, Airframe, any Engine or any Part to the relevant Maintenance Performer or to any other suitably qualified maintenance contractor approved by the Lender for the purpose of performing maintenance or other work required or permitted by this Agreement.
- (b) The Borrower may appoint the Approved Operator to be the operator of the Aircraft pursuant to the [operating agreement] dated [◆ ] and made between the

Borrower and the Approved Operator (the "**Operating Agreement**"). The Operating Agreement shall not reduce any of the duties, obligations or liabilities of the Borrower to the Lender under [this Agreement][the Finance Documents]. Notwithstanding clause 17(a), the Borrower may charter or wet lease the Aircraft through the Approved Operator on terms under which possession and operational control of the Aircraft will remain with the Approved Operator, ensuring that the requirements of schedules [5 (*Operational and Maintenance Covenants*)] and [6 (*Insurance Covenants*)] are fully complied with at all times and provided that no single charter or wet lease (including any renewal thereof) exceeds [14] days in duration. The Borrower shall not agree to any [material] amendment to the Operating Agreement without the prior express written consent of the Lender and shall promptly inform the Lender of any material breach of the terms of the Operating Agreement by either party thereto and any termination or purported termination of the Operating Agreement whether pursuant to [section][clause [◆ ]] thereof or otherwise.

## 18. EVENTS OF DEFAULT

18.1 Each of the following events and circumstances is an Event of Default:

- (a) **Non-payment:** the Borrower fails to pay any sum due from it under this Agreement [any Finance Document to which it is a party] at the time, in the currency and in the manner stipulated herein [or therein] [provided that such non-payment shall not constitute an Event of Default if it is solely due to administrative or technical reasons affecting the transfer of funds despite timely payment instructions having been given by the Borrower and such payment is actually received by the Lender within [two] Business Days of the due date]; or
- (b) [**Breach of Insurance Covenant:** there is a breach at any time of clause 16.2;]
- (c) [**Breach of Operational and Maintenance Covenant:** there is a breach at any time of clause 16.1;]
- (d) **Other Breach:** the Borrower fails duly and punctually to comply with any of its obligations (other than those referred to in clauses 18.1(a), (b) and (c)) under this Agreement [any Finance Document] [and in respect only of a failure which in the opinion of the Lender is capable of remedy, does not remedy such failure to the Lender's satisfaction within [seven] days after receipt of written notice from the Lender requiring it to do so]; or
- (e) **Breach of Representation:** any representation or warranty made or deemed to be made or repeated by or in respect of the Borrower in or pursuant to this Agreement [any Finance Document] is or proves to have been incorrect or misleading in any respect [considered by the Lender to be material] [which in the opinion of the Lender does or may adversely affect the ability of the Borrower to perform its obligations under the Agreement [any Finance Document]]; or
- (f) **Consents:** any consents, authorisation, licence or approval of, or registration with or declaration to, governmental or public bodies or authorities or courts required by the Borrower to authorise, or required by the Borrower in connection with, the execution, delivery, performance, validity, enforceability or admissibility in evidence of this Agreement [or any Finance Document] is modified in a manner unacceptable to the Lender or is not granted or is revoked or terminated or expires and is not renewed or otherwise ceases to be in full force and effect; or

- (g) **Creditors:** a creditor attaches or takes possession of, or a distress, execution sequestration or other process is levied or enforced upon or sued out against any of the material undertakings, assets, rights or revenues of [the Borrower][any member of the Group] and is not discharged within [seven] days or any step is taken to enforce any present or future Security Interest on or over all or any substantial part of the assets or revenues of the Borrower [or any member of the Group]; or
- (h) **Suspension of Debts:** the Borrower [or any member of the Group] stops or suspends or threatens to stop or suspend payment of all or any material part of its debts or is unable or admits inability to pay its debts as they fall due or commences negotiations with one or more of its creditors or takes any proceedings or other step with a view to the general re-adjustment or re-scheduling or a moratorium of all or part of its Indebtedness or proposes a general assignment or enters into any composition or other arrangement for the benefit of its creditors generally or any class of creditors or proceedings are commenced in relation to the Borrower [or any member of the Group] under any law, regulation or procedure relating to reconstruction or re-adjustment of debts; or
- (i) **Winding-up:** any person takes any action, or any proceedings are started or other steps taken by any person, for:
- (i) the Borrower [or any member of the Group] to be adjudicated or found bankrupt or insolvent;
  - (ii) the winding-up, re-organisation, reconstruction or dissolution of the Borrower [or any member of the Group]; or
  - (iii) the appointment of a liquidator, administrator, trustee, receiver or similar officer of the Borrower [or any member of the Group] of the whole or a material part of [its][their respective] undertakings, assets, rights or revenues; or
- (j) **Other Jurisdictions:** any event occurs or proceeding is taken with respect to the Borrower [or any member of the Group] in any jurisdiction to which it is subject which has an effect equivalent or similar to any of the events mentioned in clauses 18.1(h), (i) or (j) or this clause 18.1(j); or
- (k) **Suspension of Business or Expropriation:** the Borrower [or any member of the Group] suspends or ceases or threatens to suspend or ceases to carry on its business or any substantial part thereof or changes or threatens to change the nature or scope of its business or any governmental or other authority expropriates, seizes, or compulsorily acquires or threatens to expropriate, seize or compulsorily acquire all or any substantial part of its business or assets; or
- (l) **Illegality:** it becomes or will become unlawful at any time for the Borrower to perform all or any of its [respective] obligations under this Agreement [any Finance Document] or any of the [respective] obligations of the Borrower under this Agreement [any Finance Document] are not or cease to be or is claimed by it not to be legal, valid and binding and in full force and effect;
- (m) **Cross Default:** any Indebtedness of the Borrower [or any member of the Group] [which in aggregate amounts to more than [◆ ] or its equivalent in any other currency] is not paid when due or becomes due, or capable of being declared due, before its prior stated maturity or any Security Interest, guarantee or other

security created or to be created by the Borrower [or any member of the Group] becomes enforceable;

- (n) **Repudiation:** the Borrower repudiates this Agreement [any Finance Document] or does or causes to be done any act or thing evidencing an intention to repudiate this Agreement [any Finance Document] or any action or proceedings are commenced (and not withdrawn or dismissed within a period of [14 days] after its commencement) to enjoin or restrain the performance of or compliance with any obligation of the Borrower under this Agreement [any Finance Document] or otherwise dispute the ability of the Borrower to enter into, exercise its rights or perform or comply with any of its obligations under this Agreement [any Finance Document];
- (o) **Default under other Agreements:** any event occurs which constitutes an event of default, howsoever described, under any other agreement to which the Borrower [or any member of the Group] is a party;
- (p) **Tripartite Agreement:** the Operator breaches any of its [material] duties, obligations or liabilities under the Tripartite Agreement;
- (q) **Material Adverse Change:** any other event occurs or circumstance arises which, in the reasonable opinion of the Lender, is likely, materially and adversely to affect the ability of the Borrower to perform all or any of its obligations under or otherwise to comply with the terms of this Agreement [any Finance Document];
- (r) **[Cessation or Suspension of Listing:** the shares in the Borrower cease to be listed on [the London Stock Exchange] or trading in the shares in the Borrower is suspended for a period of more than three consecutive trading days;]
- (s) **[Securities Regulations:** the Borrower does not comply in all material respects with, or does not diligently perform in all material respects any of its duties and obligations under, all rules, codes, regulations, consents, licences, approvals and authorisations, laid down, imposed or issued by the [London Stock Exchange];
- (t) **[Obligors:** any of the events or circumstances set out in this clause 18 occurs in relation to any Obligor;] or
- (u) **[Change of Control:** a Change of Control occurs without the prior express written consent of the Lender.]

## 18.2 Acceleration

The Lender may, without prejudice to any other rights of the Lender, at any time after the occurrence of an Event of Default [which is continuing] by notice to the Borrower:

- (a) declare that the obligation of the Lender to make the Loan available shall be terminated, whereupon the Facility shall be reduced to zero forthwith; and/or
- (b) declare that the Loan, all interest and all other sums payable under this [Agreement][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 further demand or other legal formality of any kind; and/or

- (c) take any action, exercise any other right or pursue any other remedy conferred upon the Lender by [this Agreement][the Finance Documents] or by any applicable law or regulation or otherwise as a consequence of such Event of Default.

## **19. FEES AND EXPENSES**

### **19.1 Fees**

Until the Loan is fully and irrevocably paid and discharged by the Borrower:

- (a) the Borrower shall pay to the Lender on each anniversary of the Drawdown Date an annual fee of [◆ ]; and
- (b) the Lender may request (on an annual basis and at any time following the occurrence of an Event of Default) a review of the insurances put in place by you [or the Approved Operator] with respect to the Aircraft, the [reasonable] cost of which will be for your account.

### **19.2 Expenses**

The Borrower shall pay to the Lender on demand, and in the currency specified by the Lender:

- (a) all [reasonable] expenses (including legal, printing and out-of-pocket expenses) [properly] incurred by the Lender in connection with the negotiation, preparation[, registration (where relevant)] and execution of [this Agreement][the Finance Documents] and any amendment of, extension of or the granting of any waiver or consent under [[this Agreement] or [any Finance Document]]; and
- (b) all [reasonable] expenses (including legal and out-of-pocket expenses) [properly] incurred by the Lender in connection with, the enforcement of, or preservation of any rights under [this Agreement][any Finance Document], or otherwise in respect of the moneys owing under [this Agreement][ any Finance Document] together with interest at the Default Rate from the date on which such expenses were incurred to the date of payment (as well after as before judgement).

## **20. SET-OFF**

The Lender may set-off any matured obligation due from the Borrower under [this Agreement][any Finance Document] against any matured obligation owed by the Lender to the Borrower, regardless of the place of payment, booking branch or currency of either obligation. If the obligations are in different currencies, the Lender may convert either obligation at a market rate of exchange in its usual course of business for the purpose of the set-off.

## **21. MISCELLANEOUS**

### **21.1 Waivers**

[Time shall be of the essence under this Agreement but] no failure or delay on the part of the Lender to exercise any power, right or remedy under this Agreement shall operate as a waiver thereof, nor shall any single or partial exercise by the Lender of any power, right or remedy preclude any other or further exercise thereof or the exercise of any other power, right or remedy.



## **21.2 Remedies**

The remedies provided in this Agreement are cumulative and are not exclusive of any remedies provided by law.

## **21.3 Amendment**

Any amendment or waiver of any provision of this Agreement and any waiver of any default under this Agreement shall only be effective if made in writing and signed by the Lender.

## **21.4 Statement of Account**

Any statement of account, certificate or determination signed as correct by the Lender showing or relating to any rate of interest or any amount due under [the Facility Agreement][any Finance Document] shall, in the absence of manifest error, be conclusive evidence of the amount so due.

## **21.5 Business Day Convention**

When any payment under this Agreement would otherwise be due on a day which is not a Business Day, the due date for payment shall be the next immediately following Business Day and the amount payable shall be adjusted accordingly.

## **21.6 Severability**

If any provision of this Agreement is prohibited or unenforceable in any jurisdiction such prohibition or unenforceability shall not invalidate the remaining provisions hereof or affect the validity or enforceability of such provision in any other jurisdiction.

## **21.7 Assignment**

The Lender may assign and/or transfer any or all of its rights and obligations under [this Agreement][the Finance Documents]. The Borrower shall not assign or transfer any of its rights or obligations under [[this Agreement] or [any Finance Document]].

## **21.8 Successors and Assigns**

This Agreement shall bind and shall inure for the benefit of each of the parties hereto and each of their respective successors and permitted assigns.

## **21.9 Third Party Rights**

A person who is not a party to this Agreement has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce or to enjoy the benefit of any term of this Agreement.

## **21.10 Counterparts**

This Agreement may be executed in any number of counterparts, all of which taken together shall constitute one and the same instrument, and any party hereto may execute this Agreement by signing any such counterpart.

## 22. NOTICES

- (a) Any communication to be made under or in connection with this Agreement shall be in the English language and be made in writing and may be made by letter or fax.
- (b) The address and fax number of each party for any communication or document to be made or delivered under or in connection with this Agreement is:

in the case of the Borrower:

[◆ ]

Fax: [◆ ]

Attention: [◆ ]

and, in the case of the Lender:

[◆ ]

Fax: [◆ ]

Attention: [◆ ]

Or any substitute address or fax number as one party may notify to the other by not less than five Business Days' notice.

- (c) Any communication or document made or delivered by one person to another under or in connection with this Agreement will only be effective:
  - (i) if by way of fax, when received in legible form; or
  - (ii) if by way of letter, when it has been left at the relevant address or two Business Days after being deposited in the post postage prepaid in an envelope addressed to it at that address.

## 23. GOVERNING LAW AND JURISDICTION

- (a) This Agreement is governed by English law.
- (b) The courts of England have exclusive jurisdiction to settle any dispute arising out of or in connection with this Agreement (including a dispute regarding the existence, validity or termination of this Agreement) ("**Dispute**").
- (c) Each of 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.
- (d) Clauses 23(b) and 23(c) are 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.
- (e) [Without prejudice to any other mode of service allowed under any relevant law, [the Borrower] irrevocably appoints [◆ ] of [◆ ] [(Company Number [◆ ])] as its agent to receive service of process in respect of any

proceedings commenced by any party in the Courts of England arising out of or in connection with [this Agreement][any Finance Document]. The Borrower agrees that failure by a process agent to notify the Borrower of the process will not invalidate the proceedings concerned.]

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

## SCHEDULE 1: FORM OF DRAWDOWN NOTICE

To: [Name and address of Lender]

[Date]

**AIRCRAFT LOAN AGREEMENT DATED [◆ ] WITH RESPECT TO ONE [◆ ] AIRCRAFT WITH MANUFACTURER'S SERIAL NUMBER [◆ ] AND REGISTRATION MARK [◆ ] ("LOAN AGREEMENT")**

We refer to the Loan Agreement and hereby give you notice that we wish to draw down the Loan namely [◆ ], on [◆ ]. The funds should be credited to [name and number of account] with [insert bank details].

[For the purposes of clause [8.3 (*Selection*)] of the Loan Agreement, we select a first Interest Period of [◆ ] months[s].]

We confirm that:

1. no event or circumstance has occurred [and is continuing] which constitutes a Default;
2. the representations and warranties contained in the Loan Agreement are true and correct at the date hereof as if made with respect to the facts and circumstances existing at such date;
3. the borrowing to be effected by the drawdown of the Loan will be within our powers, has been validly authorised by appropriate action and will not cause any limit on our borrowings (however imposed) to be exceeded.

Terms defined in the Loan Agreement shall have the same meanings where used to this notice.

This notice shall be governed by English law.

Yours faithfully

\_\_\_\_\_  
For and on behalf of  
[BORROWER]

## SCHEDULE 2: CONDITIONS PRECEDENT

1. Fully executed original counterparts of each of:
  - (a) [this Agreement][the Finance Documents];
  - (b) all notices, consents, acknowledgements and other documents required to be received, given or exchanged pursuant to [this Agreement][the Finance Documents] prior to drawdown of the Loan;
  - (c) a borrower's certificate in the form set out in schedule [3 (*Form of Borrower's Certificate*)] together with all the documents referred to therein.
2. A drawdown notice with respect to the utilisation of the Facility.
3. Notice having being given to the Approved Brokers, the Maintenance Performer(s) and the Approved Operator that the Borrower's rights and interests in relation to (respectively) the Insurances, Warranties and Earnings have been assigned to the Lender pursuant to the Aircraft Mortgage.
4. Consent to and acknowledgement of the notices of assignment referred to in paragraph 3 by each of the Approved Brokers, the Maintenance Performer(s) and the Approved Operator.
5. Evidence that the Borrower is in compliance with the operational and maintenance covenants set out schedule 5 (*Operational and Maintenance Covenants*) including evidence that the benefit of any relevant maintenance programme has been transferred to the Lender.
6. Certified true copies of the Approved Operator's air operator's certificate.
7. Evidence that the Borrower is in compliance with the insurance covenants set out in schedule 6 (*Insurance Covenants*) together with a letter of undertaking from the Approved Brokers in such form as the Lender may [reasonably] require.
8. [A letter from the Manufacturer to the Lender confirming the balance of the purchase price payable by you under the Aircraft Purchase Agreement and confirming that, upon receipt of such amount from the Borrower (or the Lender on the Borrower's behalf), it will transfer title, possession, custody and control of the Aircraft to the Borrower free from any Security Interest.]<sup>18</sup>
9. A letter from the Borrower [and the Approved Operator] to the European Organisation for the Safety of Air Navigation (Eurocontrol) permitting the Lender to monitor the value of air navigation charges incurred by the Borrower [and the Approved Operator] in relation to the Aircraft and all other aircraft operated by the Borrower [and the Approved Operator].
10. A true, complete and up-to-date copy of the Aircraft Purchase Agreement together with copies of all conditions precedent to the sale and purchase of the Aircraft under the Aircraft Purchase Agreement, such documents to include:
  - (a) Bill of Sale;
  - (b) Invoice;

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<sup>18</sup> This relates to new aircraft only.

- (c) Technical Acceptance Certificate;
- (d) Delivery Receipt;
- (e) Certificate of Deregistration or Certificate of Non Registration;
- (f) Certificate of Airworthiness or Export Certificate of Airworthiness; and
- (g) any applicable escrow agreement and confirmation from escrow agent (acceptable to us) that all conditions of escrow have been satisfied in full.

Items 10(a), 10(d) and 10(f) will be made available immediately following delivery of the Aircraft.]<sup>19</sup>

11. A true complete copy of:
  - (a) the [Aircraft Purchase Agreement]
  - (b) Bill of Sale;
  - (c) Invoice;
  - (d) Delivery Receipt;
  - (e) Certificate of Registration; and
  - (f) Certificate of Airworthiness.
12. Evidence that the Borrower is [(or will be immediately on drawdown)] the sole and absolute legal and beneficial owner of the Aircraft free from any Security Interest (other than the Aircraft Mortgage).
13. Evidence that the Aircraft is not registered and has never been registered prior to drawdown on the register of civil aircraft maintained by the [◆ ] Aviation Authority.<sup>20</sup>
14. Confirmation of the Aviation Authority that all documents necessary for the registration of the Aircraft on the [◆ ] Register have been lodged with the Aviation Authority and that upon lodgement of [◆ ], the Aircraft will be immediately registered on the [◆ ] Register in the name of the Borrower as registered owner [and in the name of the Approved Operator as operator].<sup>21</sup>
15. A valuation of the [Market Value] and [useful life] of the Aircraft acceptable to the Lender to be carried out by [◆ ] or such other person as the Lender may nominate.
16. Satisfactory legal opinion of:
  - (a) [◆ ] counsel with respect to the Borrower and the Share Charge;

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<sup>19</sup> This relates to new aircraft only.

<sup>20</sup> This relates to new aircraft only.

<sup>21</sup> This relates to new aircraft only.

- (b) [◆ ] counsel in relation to the Aircraft and the [Foreign] Aircraft Mortgage;
  - (c) [◆ ] counsel in respect of the capacity of [◆ ] to enter into the Share Charge; and
  - (d) [◆ ] counsel in relation to the Guarantor.
17. Confirmation that the account opening formalities for the Borrower have been completed.
  18. Evidence of compliance with the Lender's "*Know Your Client*" procedural requirements by the Borrower[, the Guarantor] [and all of the shareholders and directors of the Borrower].
  19. Confirmation from the Process Agent that it has agreed to accept the appointment as process agent for you [and the Guarantor] in connection with the Finance Documents.
  20. The Borrower shall provide the Lender with satisfactory evidence that the Aircraft has been properly customs cleared for export from [◆ ] by the Borrower [as exporter of record] and that all non-[◆ ] VAT and non-[◆ ] export duty incurred outside [◆ ] has been or will be paid by the Borrower [or the Approved Operator] within [◆ ] days of the Drawdown Date.
  21. The Borrower shall provide the Lender with satisfactory evidence that the Aircraft has been properly imported by the Borrower as importer of record into [◆ ] and customs cleared for free circulation in [◆ ] and that all [◆ ] import VAT and import duty incurred in connection therewith has been or will be paid by the Borrower [or the Approved Operator] within 30 days of the Drawdown Date or tax rulings from the responsible federal authorities that no [◆ ] import VAT and [◆ ] import duty is/are payable in relation to the Aircraft's declaration and release for free circulation within the [◆ ] customs territory.
  22. Evidence that all governmental and other licences, approvals, consents, registrations and filings necessary for any matter or thing contemplated by [this Agreement][the Finance Documents] and for the legality, validity, priority, enforceability, admissibility in evidence and effectiveness thereof have been obtained or effected on an unconditional basis and remain in full force and effect (or, in the case of effecting of any registrations and filings, that arrangements satisfactory to the Lender have been made for the effecting of the same within any applicable time limit).
  23. Such other documents and evidence as the Lender may [reasonably] require.

### SCHEDULE 3: FORM OF BORROWER'S CERTIFICATE

To: [Name and address of the Lender]

[Date]

I refer to the aircraft loan agreement ("**Facility Agreement**") dated [◆ ] between [◆ ] as borrower ("**Borrower**") and [◆ ] as lender ("**Lender**") in relation to a loan facility in the maximum aggregate of [◆ ].

I am [a Director] of the Borrower and hereby certify as follows:

1. **Authority:** I am duly authorised to give this Certificate.
2. **Powers:** Delivered with this Certificate and signed by me for the purpose of identification is a true, complete and up-to-date copy of the Memorandum of Association of the Borrower as in effect when it signed the Facility Agreement and on the date of this Certificate. The Borrower is carrying on a business authorised under its Memorandum of Association. Neither the entry into the Facility Agreement by the Borrower nor the exercise of its rights and/or performance of or compliance with its obligations under the Facility Agreement does or will violate, or exceed any borrowing or other power or restriction granted or imposed by, its Memorandum of Association.
3. **Due Authorisation:** Delivered with this Certificate and signed by me for the purpose of identification is a true and complete copy of the minutes of a duly convened meeting of the Board of Directors of the borrower duly held on [◆ ] at which a duly constituted quorum of Directors was present throughout and at which the Resolutions set out in the Minutes were duly passed. Each of those Resolutions remains in full force and effect without modification. Those Resolutions constitute all action necessary on the part of the Borrower to approve the Facility Agreement and to authorise the signing of the Facility Agreement and the giving of any communication or taking of any other action required in connection with the Facility Agreement on behalf of the Borrower.
4. **Due Execution:** The Facility Agreement has been duly signed and delivered by the Borrower. The persons who signed the Facility Agreement on behalf of the Borrower were duly authorised signatories of the Borrower. Delivered with this Certificate and signed by me for the purpose of identification is a list of the names and titles, and specimens of the signatures, of the persons who are at the date of this Certificate the Directors and Secretary of the Borrower and who signed the Facility Agreement and are authorised to give all communications and take any other action required in connection with the Facility Agreement on behalf of the Borrower.
5. **Consents:** No consents are or will be required by the Borrower for any of the purposes stated in clause 15.1(e) of the Facility Agreement.

Yours faithfully

\_\_\_\_\_  
[DIRECTOR]



**SCHEDULE 4: REPAYMENT SCHEDULE**

	<b>Repayment Date</b>	<b>[Insert Currency Symbol]</b>
1.	[◆ ]	[◆ ]
2.	[◆ ]	[◆ ]
3.	[◆ ]	[◆ ]

## SCHEDULE 5: OPERATIONAL AND MAINTENANCE COVENANTS

1. The Borrower shall:
  - (a) use, maintain and repair the Aircraft, the Engines and all Parts in accordance with:
    - (i) the [Maintenance Programme];
    - (ii) all mandatory rules and regulations of the Aviation Authority to the standard required by the Aviation Authority; and
    - (iii) any other regulations or requirements necessary in order to enable the Aircraft at any time to obtain a Certificate of Airworthiness issued by the Aviation Authority plus a valid annual release to service stamp issued by the [Maintenance Performer];
  - (b) maintain or cause to be maintained (in writing and in English) all logbooks, maintenance records, record books and other documents as are required by the Aviation Authority or the Maintenance Programme to be maintained with respect to the Aircraft;
  - (c) permit the Lender and its authorised representatives to inspect the Aircraft at any time upon giving notice and for that purpose grant or procure access for the Lender and its authorised representatives to any land or buildings on or in which the Aircraft may be stored provided that any such inspection shall not (unless an Event or Default has occurred) disturb the normal commercial operation or maintenance of the Aircraft;
  - (d) promptly pay and discharge as they fall due all costs and expenses of operating, storing and maintaining the Aircraft and performing its obligations under the documents in relation to the Aircraft (including all charges of airport authorities (whether relating to landing fees, parking fees, handling charges or otherwise), all charges imposed by air navigation authorities (including Eurocontrol) and all charges of the Aviation Authority (whether relating to navigation or otherwise) and will:
    - (i) deliver a letter to Eurocontrol in such form as may be required by the Lender; and
    - (ii) on written request by the Lender supply evidence of the payment of any such charges;
  - (e) replace promptly any Part of the Aircraft or any Engine in respect of which a Total Loss occurs with a replacement Part or Engine which shall be:
    - (i) owned by the Borrower free and clear of all Security Interests; and
    - (ii) in such operating condition as, and of equivalent or better value to, the replaced Part or Engine was (or would have been if it had been maintained in accordance with the terms hereof);
  - (f) make all mandatory or recommended alterations and modifications and additions to the Aircraft and the Engines as may from time to time be required by the Aviation Authority or any other relevant authority within the time period required by the relevant authority or the relevant manufacturer;
  - (g) comply (on a terminating action basis where available) with all mandatory airworthiness directives from time to time issued by the Aviation Authority and any modification recommended by the manufacturer of the Aircraft or any Engine in a Mandatory Service Bulletin (unless such Mandatory Service Bulletin is excluded by the relevant authority);
  - (h) ensure that all inspections, services, repairs, overhauls, tests and modifications to be carried out to or on the Aircraft are carried out by a maintenance performer approved by the Aviation Authority;
  - (i) not suffer any arrest, detention, exercise of a possessory lien, execution, distress or other legal process to be levied or sued out against the Aircraft and following the occurrence of such event or circumstance, the Borrower shall notify the Lender immediately and shall take all steps necessary to ensure that the Aircraft is promptly released therefrom;

- (j) ensure that such crew and engineers are employed in connection with the operation and maintenance of the Aircraft have such qualifications and hold such licences as are required by the Aviation Authority and by all other applicable laws and regulations;
- (k) affix and keep affixed to the Aircraft (in a prominent position in the cockpit) and to each Engine (underneath the cowling) a fireproof metal plate which has inscribed thereon (in legible characters):  

"This [Aircraft, its engines and accessories][Engine] [is][are] owned by [◆ ] as owner subject to a first priority mortgage in favour of [◆ ]";
- (l) operate the Aircraft in the ordinary course of its business and not permit the Aircraft to be operated for testing, training, racing or any purpose for which it is not designated or reasonably suitable;
- (m) at any time make available to the Lender for inspection the Manuals and Technical Records and all other records kept by the Borrower or any other person in respect of the Aircraft;
- (n) on request, promptly furnish to the Lender all such information regarding the operation, maintenance and condition of the Aircraft as the Lender may reasonably request;
- (o) promptly furnish the Lender with full details of any casualty or other damage or accident to the Aircraft; and
- (p) ensure that the Aircraft shall not be used or operated when the Insurances are not in full force and effect or otherwise at a time or in a manner or in any geographical area which constitutes a breach of the terms of the Insurances or is otherwise inconsistent with the terms of the Insurances.

2. Until the occurrence of an Event of Default, the Borrower may:

- (a) remove any Part (other than an Engine) in the ordinary course of maintenance, service, repair, overhaul or testing, it promptly replaces it with a replacement Part which complies with paragraph 1(e);
- (b) remove any Engine in the ordinary course of maintenance, service, repair, overhaul or testing provided that such Engine is re-installed on the Aircraft, or a replacement engine which complies with paragraph 1(e) is installed on the Aircraft, within 30 days of the removal from the Aircraft of such Engine and provided further that the removed Engine remains the property of the Borrower unless and until a replacement engine which complies with paragraph 1(e) is installed on the Aircraft;
- (c) make such alterations and modifications in and additions to the Aircraft as it thinks desirable in the proper conduct of its business or which may arise as a result of an Airworthiness Directive or a Service Bulletin provided that no such alteration, modification or addition (other than an Airworthiness Directive or Mandatory Service Bulletin) breaches the requirements or recommendations of the Aviation Authority, the [Maintenance Programme], the manufacturer or any other relevant authority or materially diminishes the value or utility of the Aircraft or impairs the airworthiness of the Aircraft and provided further that no such alteration or modification may be made with or comprising Parts which are not owned absolutely by the Borrower free from all Security Interests;
- (d) remove any Part (other than an Engine) from the Aircraft without replacing it as required by this Agreement if such Part:
  - (i) is in addition to and not in replacement of any Part previously installed on or attached to the Aircraft;
  - (ii) is not required to be installed on or attached to the Aircraft; and
  - (iii) can be removed from the Aircraft without impairing the airworthiness of the Aircraft or diminishing its value;
- (e) whilst an Engine has been removed from the Aircraft in accordance with the provisions of paragraph 2(b), install a replacement engine which is not the property of the Borrower provided that the removed Engine is re-installed, or such other engine as may satisfy the requirements of paragraph 1(e) is installed, on the Aircraft within the period specified in paragraph 2(b) and, further provided that the Engine substituted or replaced by such replacement engine shall at all times remain free from any Security Interest, shall remain the property of the Borrower, and shall not cease to be subject to [the

Aircraft Mortgage] and until it is replaced by an engine which satisfied the requirements of paragraph 1(e); and

(f) print or paint its name or other symbol on the Aircraft.

3. Subject to paragraph 2, the Borrower may not without the prior written consent of the Lender:

- (a) make any alteration in or modification or addition to the Aircraft, remove any part from the Aircraft or install any Part on or attach any of the said events to occur;
- (b) make, do or permit or agree to any act or omission which might cause the Aircraft to be exposed to penalty, forfeiture, impounding, destruction or abandonment under any applicable law or regulation; or
- (c) hold out or represent, permit or suffer the holding out or representation that any member of the crew of the Aircraft is in the employment of the Lender or that the Lender is carrying persons or goods in the Aircraft or are in any way connected or associated (whether for hire or gratuitously) with any operation of the Aircraft undertaken by (or on behalf of) the Borrower.

4. The Borrower shall promptly notify the Lender:

- (a) of any material alterations in or material modifications or additions to the Aircraft;
- (b) of any Security Interest arising on the Aircraft and/or exercised over the Aircraft; and
- (c) (if the Lender requests) the location of the Aircraft and of any Engine which is not, for the time being, installed or attached to the Aircraft.

5. The existence of any agreement for maintenance of the Aircraft shall not in any way absolve, negate, reduce or mitigate the obligations of the Borrower to maintain the Aircraft in the manner required under this Agreement.

## SCHEDULE 6: INSURANCE COVENANTS

1. The Borrower shall effect and maintain in relation to the Aircraft:
  - (a) Hull All-Risks insurance for loss of or damage to the Aircraft whilst flying and on the ground on an agreed value basis in an amount in [*the Currency*] which is no less than the Agreed Value;
  - (b) Hull War and Allied Perils insurance, being such risks excluded from the Hull All risks policy by application of war, hijacking and other perils exclusion clause AVN48B to the fullest extent available from the leading aviation insurance markets, including confiscation and requisition by the State of Registration on an "*agreed value basis*" for an amount in [*the Currency*] which is no less than the Agreed Value; and
  - (c) All risks insurance (including Hull, War and Allied Perils to the fullest extent available) on the Engines and Parts while not installed on the Airframe (and not considered part of the Aircraft for insurance purposes) or the Aircraft on an "*agreed value basis*" for their full replacement cost in [*the Currency*].
2. The insurances required under paragraph 1 shall be provided on an agreed value basis (in the event of a Total Loss the Insurers will pay the specified agreed value rather than the cost of acquiring a replacement aircraft) and the policies shall:
  - (a) include the Lender as additional insured and contract party for its respective rights and interests;
  - (b) include a reference to [this Agreement] [and the Aircraft Mortgage];
  - (c) include, in the event of separate insurances being arranged to cover the "*Hull All Risks*" insurance and the "*Hull War Risk*" and related insurance, a 50/50 claims funding arrangement in the event of any dispute as to whether a claim is covered by the "*Hull All Risks*" or "*Hull War Risks*" policy, wording in the terms of Lloyds clause AVS103 being sufficient for such purpose; and
  - (d) be subject to a deductible (except in the event of Total Loss) of not more than the Agreed Deductible.
3. The Borrower shall effect and maintain in relation to the Aircraft, a policy or policies of insurance covering aircraft third party, passenger, baggage, cargo, [mail and airline general third party (including Products, premises and hangerkeepers)] legal liability for a combined single limit (Bodily Injury/Property Damage) of not less than the Agreed Liability Amount (and in any event no less than the amount carried in respect of the same or similar aircraft in the Borrower's fleet in the same jurisdiction as the Aircraft). War and Allied Perils Risks shall also be covered in accordance with the then current market practice for aircraft of the same type as the Aircraft.
4. The policies evidencing the insurances required under paragraph 3 shall:
  - (a) include the Lender and its officers, directors, employees, agents and its successors and assigns each as additional insured and as contract parties;
  - (b) provide that all the provisions thereof, except the limits of liability, shall operate to give each named insured the same protection as if there were a separate policy covering each named insured save that this provision shall not operate to include any claim arising in respect of loss or damage to the Aircraft or relevant spare parts covered under the Hull or Spares Insurance, it being understood that notwithstanding the foregoing the total liability of Insurers in respect of any and all insureds shall not exceed the limits of liability stated in the policy; and
  - (c) be primary and without right of contribution from other insurance which may be available to the Lender or any of its officers, directors, employees, agents and its successors and assigns.
5. The policies evidencing any Insurances required under paragraphs 1 and 3 shall:
  - (a) provide that the cover afforded to the additional insured shall not be invalidated by any act or omission (including misrepresentation and non-disclosure) of any other person or any party which results in a breach of any term, condition or warranty of the policy provided that the additional insured so protected has not caused, contributed to or knowingly condoned the said act or omission;

- (b) provide for worldwide coverage (subject only to such exceptions as are consistent with the then generally accepted market practice);
  - (c) provide that the Insurers shall waive any right of subrogation to any right against the Lender, any of its officers, directors, employees, agents and its successors, transferees and assigns;
  - (d) provide that the Lender shall not be liable for any premiums in respect thereof and that the Insurers shall not exercise any right of set-off or counterclaim in respect of unpaid premiums or otherwise against the interest of the Lender otherwise than in respect of unpaid premiums with respect to the Insurances; and
  - (e) provide that the required insurance may only be cancelled or materially altered in a manner adverse to the additional insureds and contract parties by the giving of not less than 30 days notice in writing (but seven days or such lesser period as may be customarily available in respect of War and Allied Perils) to the Lender. Notice shall be deemed to commence from the date such notice is given by the Insurers. It is understood that such notice will not, however, be given at normal expiry date of the policy or any endorsement.
6. All Insurances shall be maintained with such insurance underwriters and companies as the Lender may approve.
7. The Borrower shall in relation to the Aircraft:
- (a) furnish to the Lender forthwith upon the date not later than seven days after the renewal date of each Insurance, a certificate or certificates signed by the relevant Insurers (or their authorised representatives) or brokers, acceptable to the Lender (the "**Brokers**") providing evidence of insurance coverage pursuant to this schedule 6. Each such certificate shall:
    - (i) describe the perils covered by each policy of insurance issued by it then in force;
    - (ii) specify the amounts of insurance coverage provided against each such peril and any deductible or uninsured amount; and
    - (iii) certify that each such policy is then in full force and effect;
  - (b) furnish to the Lender, on written request, evidence of:
    - (i) payment of each sum then due and payable under or in connection with the Insurances; and
    - (ii) before or on the expiry of any policy or policies in respect of such Insurances, renewal of the relevant policy or policies or that renewal will be effected on expiry; and
  - (c) procure that the relevant Insurers or Brokers provide the Lender with such other information as to any Insurances as the Lender may request.
8. The following provisions shall apply with respect to the distribution of proceeds of the Insurances and any re-insurances:
- (a) all proceeds of a Total Loss shall be paid in full to the Lender or as the Lender shall direct without any deduction or deductions whatsoever subject to deductions for unpaid premiums relating to the Aircraft;
  - (b) all proceeds in respect of a partial loss or in respect of repairable damage to the Aircraft or an Engine shall be paid directly to the repairer or to the person who has paid for such repairs on production of the relevant invoice [provided that if the proceeds of insurance in respect of such a partial loss are equal to or exceed [◆ ] then they shall be paid in full to the Lender or as the Lender shall direct without any deduction or deductions whatsoever]; and
  - (c) all proceeds of loss of or damage to an Engine which does not constitute repairable damage shall be paid in full to the Borrower or to the seller of an engine which the Lender has accepted as a replacement for the Engine which has suffered a Total Loss.
9. The Borrower shall, in relation to the Aircraft cause the relevant Brokers to issue a written undertaking in favour of the Lender in such form as the Lender may approve which shall inter alia:

- (a) require such Brokers to notify the Lender forthwith upon such Brokers becoming aware of any cancellation or non-renewal of or modification to the Insurances of their ceasing to act as insurance brokers to the Borrower or of any other fact or circumstance of which they may at any time learn which might invalidate the Insurances or render them wholly or partially unenforceable; and
  - (b) require the Brokers to provide the Lender with a certificate of insurance at the same time as the Broker supplies the same to the Borrower.
- 10. The Borrower shall, in relation to the Aircraft, forthwith notify the Lender of any event which may give rise to a claim under the Insurances.
- 11. The Borrower shall not, in relation to the Insurances:
  - (a) make or permit the making of any modification to the Insurances without the prior written consent of the Lender; or
  - (b) do omit to do, permit or suffer to exist anything whereby the Insurances would or might be expected to be rendered in whole or in part invalid or unenforceable and, without prejudice to the foregoing, shall not use or keep or permit the Aircraft or any part thereof to be used or kept for any purpose, in any manner or in any place not covered by the required Insurances; or
  - (c) cause or knowingly permit the Aircraft to be employed or used in any place or in any manner or for any purpose inconsistent with the terms of or outside the cover provided by the Insurances or if the Insurances have lapsed.
- 12. The Borrower shall, in relation to the Insurances, bear any part of any loss or liability which is to be borne by the insured under the Insurances (notwithstanding that such Insurance names the Lender or other person as additional named insured).
- 13. The Borrower shall, in relation to the Insurances, reimburse the Lender on demand the amount of any premiums or premium instalments which the Lender may pay.
- 14. If the Borrower shall fail to maintain Insurances, or cause to be maintained Insurances which in the opinion of the Lender do not meet the requirements of this Agreement, the Lender may at its option, after notice in writing to the Borrower, obtain such Insurances and in such event the Borrower shall, upon demand, reimburse the Lender for the cost thereof.
- 15. Without in any way limiting the Borrower's obligations under the other provisions of this schedule 6 the Borrower undertakes that if, at any time clause "*AVN2000 Date Recognition Exclusion Clause*" or any equivalent clause is endorsed on the policies of insurance required hereunder the Borrower shall, at its costs and expense, do all things and take any and all such action available to it to ensure that the interests of the Lender under such policies of insurance are fully protected (including, without limitation, ensuring that clauses "*AVN2001 Date Recognition Limited Coverage Clause*" and "*AVN2002 Date Recognition Limited Coverage Clause*" or any equivalent clauses are endorsed on the policies of insurance required hereunder as soon as possible thereafter). If at any time the Lender shall be of the opinion that its interests in the insurances are not adequately protected by reason of the operation of clause "*AVN2000 Date Recognition Exclusion Clause*" or any equivalent clause, the Lender may without obligation take out such policy of insurance to insure the Lender against such risks as the Lender may think fit (acting reasonably) and the Borrower shall indemnify and does hereby indemnify the Lender against any Loss suffered, incurred or paid in connection therewith.

## SCHEDULE 7: FORM OF EUROCONTROL LETTER

[To be typed on Owner's Letterhead]

[Date]

The Director General of the Central Route Charges Office  
European Organisation for the Safety of Air Navigation (EUROCONTROL)  
Rue de la Fusee, 96  
1130 BRUXELLES  
Belgium

By e-mail to: crco.cat.head@eurocontrol.int

### AUTHORISATION LETTER

Dear Sir

[◆ ] AIRCRAFT, MSN [◆ ], REGISTRATION MARK [◆ ]  
("AIRCRAFT")

We refer to an aircraft mortgage dated on or about the date of this authorisation and made between [◆ ] ("Owner") and [◆ ] ("Mortgagee") under which the Owner has mortgaged the Aircraft in favour of the Mortgagee as security for sums payable to us pursuant to an aircraft loan agreement dated on or about the date of this authorisation.

We hereby authorise you to provide the Mortgagee (or its duly authorised representative) with a general statement of account in relation to air navigation charges incurred by us and due to EUROCONTROL. Access to the statement(s) of account will be provided in accordance with the procedures established by EUROCONTROL.

The authorisation contained in this letter may only be revoked or amended by a written instruction signed by us and the Mortgagee.

Yours faithfully

.....  
For and on behalf of

[◆ ]

Name:

Title:



**EXECUTION PAGE**

**THE BORROWER**

**SIGNED** for and on behalf of )  
[◆ ] )  
by a director )  
in the presence of a witness: )

Signature .....

Name (block capitals) .....

**Director**

Witness signature .....

Witness name  
(block capitals) .....

Witness address  
.....  
.....  
.....

**THE LENDER**

**SIGNED** for and on behalf of )  
[◆ ] )  
by an authorised signatory )  
in the presence of a witness: )

Signature .....

Name (block capitals) .....

**Authorised signatory**

Witness signature .....

Witness name  
(block capitals) .....

Witness address  
.....  
.....  
.....