

**19 May 2017**

**ORIENT EXPRESS BANK**

as Borrower

and

**SCI FINANCE B.V.**

as Lender

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**AMENDMENT AND RESTATEMENT AGREEMENT  
RELATING TO A SUBORDINATED LOAN AGREEMENT  
DATED 29 NOVEMBER 2013**

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**LATHAM & WATKINS**

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## CONTENTS

Clause	Page
1. DEFINITIONS AND INTERPRETATION .....	1
2. LOAN AND AMENDMENT AND RESTATEMENT .....	7
3. DRAWDOWN .....	8
4. FEES.....	9
5. SUBORDINATION OF THE LOAN .....	9
6. INTEREST .....	12
7. REPAYMENT.....	13
8. PAYMENTS .....	15
9. REPRESENTATIONS AND WARRANTIES .....	18
10. CONDITIONS PRECEDENT AND REPORTS.....	20
11. CHANGE IN LAW; INCREASE IN COST .....	21
12. ACCELERATION EVENTS .....	22
13. INDEMNITY .....	23
14. SURVIVAL.....	25
15. GENERAL.....	25
16. NOTICES.....	25
17. ASSIGNMENT.....	26
18. GOVERNING LAW .....	27
19. JURISDICTION.....	27
20. CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999 .....	27
21. WAIVER OF IMMUNITY .....	28
22. COUNTERPARTS.....	28
23. LANGUAGE.....	28
24. AMENDMENTS .....	28
25. PARTIAL INVALIDITY .....	28
SCHEDULE 1 FORM OF WRITE DOWN EVENT NOTICE.....	30
SCHEDULE 2 FORM OF WRITE DOWN MEASURE NOTICE.....	31
SCHEDULE 3 FORM OF NOTICE ON CANCELLATION OF ACCRUED INTEREST .....	32

**THIS SUBORDINATED LOAN AGREEMENT** (as amended and restated on 19 May 2017) is originally dated 29 November 2013 and made between:

- (1) **ORIENT EXPRESS BANK**, a public joint-stock company organized under the laws of the Russian Federation with primary state registration number (OGRN) 1022800000112 and with its registered address at Svyatogo Innokentiya per, 1, 675000, Blagoveshensk, Amur region, Russia as borrower (the "**Borrower**", such term to include any successor borrower under this Agreement);
- (2) **SCI FINANCE B.V.**, a company with limited liability (*besloten vennootschap met beperkte aansprakelijkheid*) organised and existing under the laws of the Netherlands, registered with the Trade Register of the Chamber of Commerce and Industry Amsterdam under number 34246495, whose registered office is at Herikerbergweg 238, 1101 CM Amsterdam (the "**Lender**", such term to include any successor lender under this Agreement).

**WHEREAS:**

- (A) On the Closing Date (as defined below), the Lender has at the request of the Borrower made available to the Borrower a loan in the amount of US\$125,000,000 on the terms and subject to the conditions of a subordinated loan agreement dated 29 November 2013 (the "**Original Loan Agreement**").
- (B) The Borrower and the Lender now wish to amend and restate the Original Loan Agreement on the terms set out in this Agreement (and pursuant to the provisions of Clause 2 (*Loan and amendment and restatement*)).
- (C) The Borrower and the Lender intend that this Agreement (and the amendments to the Original Loan Agreement prescribed by this Agreement) shall come into full force and effect on the Effective Date (as defined below).
- (D) The Lender and the Borrower have agreed that, on the occurrence of a Bankruptcy Event (as defined below), the claims of the Lender in respect of the principal amount of, and interest on, the Loan and any monetary damages for failure to perform its obligations under this Agreement shall be subordinated to the claims of the Senior Creditors of the Borrower in accordance with the Federal Law "On Insolvency (Bankruptcy)" No. 127-FZ dated 26 October 2002 (as amended, supplemented or replaced from time to time) and this Agreement.
- (E) The Borrower intends that once the CBR issues the Final Conclusion the Loan shall be qualified as Additional Tier 1 Capital (in each case as defined below).
- (F) The Lender and the Borrower hereby confirm that the terms and conditions set forth in this Agreement, including the Interest Rate payable (as defined below), do not differ materially from the terms and conditions of similar agreements concluded on market terms as of the date of this Agreement.

**THE PARTIES AGREE AS FOLLOWS:**

**1. DEFINITIONS AND INTERPRETATION**

**1.1 Definitions**

In this Agreement:

"**Acceleration Event**" any event described in Clauses 12.1 (*Payment Default*) and 12.2 (*Winding-Up*).

"**Additional Amount**" has the meaning given in Clause 8.2 (*No Set-Off, Counterclaim or Withholding; Gross-Up*).

"**Additional Tier 1 Capital**" means, as of any date, the aggregate amount, in Russian Roubles, of items that constitute additional tier 1 capital of the Borrower (*dobavochnyi kapital osnovnogo kapitala*) as of such date, less any deductions from additional tier 1 capital of the Borrower required to be made, in each case as determined by the Borrower pursuant to Regulation No. 395-P.

"**Affiliate**" of any specified Person means (i) any other Person, directly or indirectly, controlling or controlled by or under direct or indirect common control with such specified Person or (ii) any other Person who is a director or officer (a) of such specified Person or (b) of any Person described in (i) above. For the purpose of this definition, "**control**" when used with respect to any Person means the power to direct the management and policies of such Person, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise, and the terms "**controlling**" and "**controlled**" have meanings correlative to the foregoing.

"**Agreement**" means, from and including the Effective Date, the Original Loan Agreement as amended and restated by this Agreement (in accordance with the provisions of Clause 2 (Loan and amendment and restatement)).

"**Approval Date**" means the date falling 120 days after 19 May 2017.

"**Bankruptcy Event**" means the entry into force of a final decision of a competent Russian court finding the Borrower bankrupt.

"**Borrower's Account**" means the account held with VTB BANK (DEUTSCHLAND) AG (SWIFT: OWHBDEFF) with details SWIFT: DALVRU8X, Account No. 0103473419, Reference: SCI Finance B.V., USD Loan.

"**Business Day**" means a day (other than a Saturday or Sunday) on which banks and foreign exchange markets are open for general business in London, Moscow, Amsterdam and New York City.

"**Capital Inclusion Date**" means a day on which the Loan is included in the own funds of the Borrower as Additional Tier 1 Capital in accordance with Regulation 395-P.

"**Capital Stock**" means, with respect to any Person that is a corporation, any and all shares (including preference shares), interests, participations, rights to purchase, warrants, options, or other equivalents (however designated) of capital stock of such corporation; and with respect to a Person that is not a corporation, any and all equivalent ownership interests; in each case whether now outstanding or hereafter issued.

"**CBR**" means the Central Bank of the Russian Federation – Bank of Russia or such other governmental or other authority as shall from time to time carry out functions in relation to the supervision of banks in the Russian Federation as are, on the date hereof, carried out by the CBR.

"**CBR Instruction No. 139-I**" means CBR Instruction No. 139-I dated 3 December 2012 "On mandatory ratios of banks" (as amended, supplemented or replaced from time to time).

"**Change of Law**" means any of the enactment or introduction of any new law, the variation, amendment or repeal of an existing or new law, and any ruling on or interpretation or application by a competent authority of any existing or new law which, in each case, occurs after the date hereof and for this purpose the word "law" means all or any of the following

whether in existence at the date hereof or introduced hereafter and with which it is obligatory or customary for banks or other financial institutions or, as the case may be, companies in the relevant jurisdiction to comply:

- (a) any statute, treaty, order, decree, instruction, letter, directive, instrument, regulation, ordinance, or similar legislative or executive action by any national or international or local government or authority or by any ministry or department thereof and other agencies of state power and administration (including, but not limited to, taxation departments and authorities); and/or
- (b) any letter, regulation, decree, instruction, request, notice, guideline, directive, statement of policy or practice statement given by, or required of, any central bank or other monetary authority, or by or of any Taxing Authority or fiscal or other authority or agency (whether or not having the force of law); and
- (c) the decision or ruling on, the interpretation or application of, or a change in the interpretation or application of, any of the foregoing by any court of law, tribunal, central bank, monetary authority or agency or any Taxing Authority or fiscal or other competent authority or agency.

**"Closing Date"** means 29 November 2013.

**"Common Equity Tier 1 Capital"** means the aggregate amount, in Russian Roubles, of items that constitute common equity tier 1 capital (*bazoviy kapital osnovnogo kapitala*) of the Borrower, less any deductions from common equity tier 1 capital required to be made, in each case as determined by the Borrower pursuant to Regulation No. 395- P.

**"Common Equity Tier 1 Capital Ratio"** means the common equity tier 1 capital adequacy ratio (*normativ dostatochnosti bazovogo kapitala*) (N1.1) as determined by the Borrower pursuant to CBR Instruction No. 139-I.

**"Deposit Insurance Agency"** means the State Corporation Deposit Insurance Agency of the Russian Federation or such other governmental or other authority as shall from time to time carry out functions in relation to deposit insurance in the Russian Federation as are, on the date hereof, carried out by the Deposit Insurance Agency.

**"Effective Date"** means the date on which the CBR issues the Final Conclusion.

**"Final Conclusion"** means the final conclusion (*zaklucheniye*) of the CBR confirming the final unconditional approval by the CBR of this Agreement and the Loan as a subordinated loan eligible for full inclusion into the own funds (capital) of the Borrower as Additional Tier 1 Capital.

**"IFRS"** means International Financial Reporting Standards, (formerly International Accounting Standards) and Interpretations issued by the International Accounting Standards Board ("**IASB**") and interpretations issued by the International Financial Reporting Interpretations Committee of the IASB (as amended, supplemented or re-issued from time to time).

**"IFRS Financial Statements"** means the most recent audited financial statements of the Borrower prepared in accordance with IFRS or unaudited reviewed financial statements of the Borrower prepared in accordance with IFRS, in each case consistently applied.

**"Insolvency Law"** means the Federal Law "On Insolvency (Bankruptcy)" No. 127-FZ dated 26 October 2002 (as amended, supplemented or replaced from time to time).

**"Interest Cancellation"** has the meaning set out in Clause 5.4 (*Write Down Measures*).

**"Interest Cancellation Amount"** means all or such part of the amount of the interest accrued to (but excluding) the Write Down Measure Effective Date that is determined by the Borrower as necessary to be cancelled (in conjunction with any interest cancellation measures taken in respect of Write Down Instruments) in accordance with Clause 5.4 (*Write Down Measures*).

**"Interest Cancellation Measure"** has the meaning given to it in Clause 5.4 (*Write Down Measures*).

**"Interest Payment Date"** means 29 May and 29 November in each year, commencing on 29 May 2014.

**"Interest Period"** means each period beginning on (and including) the Closing Date or any Interest Payment Date and ending on (but excluding) the next Interest Payment Date.

**"Interest Rate"** means the interest rate specified in Clause 6.1 (*Interest Rate*).

**"Lender's Account"** means the account number 13896854 in the name of the Lender with Citibank, N.A., London Branch (SWIFT: CITIGB2L) or such other account as may be notified to the Borrower in writing.

**"Loan"**, at any time, means an amount equal to the aggregate principal amount granted by the Lender pursuant to Clause 2.1 (*Loan*) and (where the context so requires) outstanding at such time.

**"Loan Arrangement Fee"** has the meaning given to it in Clause 4.1 (*Loan Arrangement Fee*).

**"Monetary Damages"** means any amount of financial damages (*finansoviye sankcii*) which the Borrower may become liable to pay for failure to perform its obligations under this Agreement.

**"Monetary Damages Cancellation"** has the meaning given to it in Clause 5.4 (*Write Down Measures*).

**"Monetary Damages Cancellation Amount"** means all or such part of the amount of Monetary Damages, if any, accrued to (but excluding) the Write Down Measure Effective Date that is determined by the Borrower as necessary to be cancelled (in conjunction with any equivalent cancellation measures taken in respect of Write Down Instruments) in accordance with Clause 5.4 (*Write Down Measures*).

**"Monetary Damages Cancellation Measure"** has the meaning given to it in Clause 5.4 (*Write Down Measures*).

**"Moscow Business Day"** means a day which is not a public holiday or a non-working Saturday or Sunday in Moscow, Russian Federation.

**"Noteholder"** means, in relation to a Note, the person in whose name such Note is for the time being registered in the register of Noteholders (or, in the case of a joint noteholding, the first named holder thereof).

**"Notes"** means the Series 2013-04 US\$125,000,000 12 per cent. loan participation notes, issued by the Lender (in its capacity as an issuer) on 29 November 2013.

**"Notice on Cancellation of Accrued Interest"** means a notice which shall be given by the Borrower to the Lender and the Trustee pursuant to Clause 6.5 (*Cancellation of Accrued Interest*) being substantially in the form set out in Schedule 3 hereto.

**"Officer's Certificate"** means a certificate signed by an officer of the Borrower who shall be any of the principal executive officer, principal accounting officer or principal financial officer of the Borrower.

**"Operational Day"** means a day when the Borrower's principal office is open for business and all operations during that day are reflected in the Borrower's daily balance sheet.

**"Original CBR Conclusion"** means the final conclusion (*zaklucheniye*) of the CBR No. 19-2-9/7754 dated 11 October 2013 confirming the final unconditional approval by the CBR of the Original Loan Agreement and the Loan as a subordinated loan eligible for inclusion into the own funds of the Borrower as additional capital (*dopolnitelny kapital*) of the Borrower pursuant to Regulation No. 395-P.

**"Original Loan Agreement"** has the meaning give to such term in recital (A).

**"Outstanding Principal Amount"** means, in relation to the Loan in the original principal amount of US\$125,000,000 as reduced from time to time by implementation of any Principal Write Down Measure or any other write down or cancellation pursuant to the terms of the Loan, as the case may be, in accordance with the terms of this Agreement.

**"Person"** means any individual, company, corporation, firm, partnership, joint venture, association, organisation, state or agency of a state, government, trust or other entity, whether or not having separate legal personality.

**"Principal Write Down Measure"** has the meaning given to it in Clause 5.4 (*Write Down Measures*).

**"Qualifying Jurisdiction"** means any jurisdiction in which the Lender or any successor thereto (including permitted assignees and transferees) is entitled to receive payments of interest on the Loan under a double taxation agreement in force on such date (subject to the completion of any necessary procedural formalities) providing for full exemption from Russian withholding tax on interest derived from a source within the Russian Federation to a resident of such jurisdiction.

**"Regulation 395-P"** means CBR Regulation No. 395-P dated 28 December 2012 "On the methodology for determining the amount of own funds (capital) of credit organisations ("Basel III)", as amended, supplemented or replaced from time to time.

**"Russian Rouble"** means the lawful currency of Russia.

**"Same-Day Funds"** means US Dollar funds settled through the New York Clearing House Interbank Payments System or such other funds for payment in immediately available, freely transferable and cleared US Dollars as the Lender may at any time determine to be customary for the settlement of international transactions in New York City of the type contemplated hereby.

**"Senior Creditors"** means all creditors of the Borrower other than (i) shareholders of the Borrower whose claims are in respect of the Capital Stock of the Borrower (including preference shares); or (ii) creditors whose claims rank equally with or are subordinated to the claims of the Lender under this Agreement pursuant to applicable Russian law.

**"Taxes"** means any taxes (including interest or penalties thereon) which are now or at any time hereafter imposed, assessed, charged, levied, collected, demanded, withheld or claimed by the Russian Federation or any Qualifying Jurisdiction or any tax authority thereof or therein, provided however, that for the purposes of this definition the references to the Netherlands (express or implied) shall be deemed to be references to the jurisdiction in which the Lender is resident for tax purposes; and the term **"Taxation"** shall be construed accordingly.

**"Taxing Authority"** means any government or political subdivision or territory or provision of any government or authority or agency therein or thereof having the power to tax within Russia or the Netherlands (or any Qualifying Jurisdiction in which the Lender or any successor is resident for tax purposes).

**"Treaty"** means the agreement between the Russian Federation and the Netherlands (or any other Qualifying Jurisdiction in which the Lender may be resident for tax purposes) for the avoidance of double taxation.

**"Trustee"** means Citicorp Trustee Company Limited, as trustee in relation to the Notes and any successor thereto as provided thereunder.

**"Write Down"** has the meaning given to it in Clause 5.4 (*Write Down Measures*).

**"Write Down Amount"** means all or such part of Outstanding Principal Amount of the Loan determined by the Borrower as necessary to be written down (in conjunction with any Interest Cancellation Amount, Monetary Damages Cancellation Amount and any other write down or conversion of, or other write down measures taken in respect of, Write Down Instruments) in accordance with Clause 5.4 (*Write Down Measures*).

**"Write Down Event"** means any of the following events:

- (a) the Common Equity Tier 1 Capital Ratio of the Borrower falls below 5.125 per cent. for six or more Operational Days in aggregate during any consecutive period of 30 Operational Days in Moscow; or
- (b) the Banking Supervision Committee of the CBR approves a plan for the participation of the Deposit Insurance Agency in bankruptcy prevention measures in respect of the Borrower which contemplate the provision of financial assistance by the Deposit Insurance Agency in accordance with the Insolvency Law (the **"Agency Trigger"**).

**"Write Down Event Date"** means the date of disclosure of the occurrence of a Write Down Event on the official website of the CBR (as of the date of this Agreement, <http://www.cbr.ru/>).

**"Write Down Event Notice"** means a notice which shall be given by the Borrower to the Lender and the Trustee pursuant to Clause 5.5 (*The Borrower's Obligation to Provide Notices*) and which shall (i) state that the Write Down Event has occurred and (ii) specify the event(s) constituting the Write Down Event including the relevant Common Equity Tier 1 Capital Ratio as of the relevant Write Down Event Date and/or the nature of the bankruptcy prevention measures the Deposit Insurance Agency has taken a decision to implement as applicable and the grounds for application of such bankruptcy prevention measures in relation to the Borrower, being substantially in the form set out in Schedule 1 hereto.

**"Write Down Instruments"** means any obligation (other than the Loan) incurred directly or indirectly by the Borrower which (a) in the case of a Bankruptcy Event ranks or is expressed to rank *pari passu* with the Loan; (b) is subordinated debt which qualifies as Additional Tier 1 Capital of the Borrower and (c) contains provisions analogous to those in Clause 6.5 (*Cancellation of Accrued Interest*) and Clause 5.4 (*Write Down Measures*) relating to



cancellation of interest and monetary damages and a write down of the principal amount of such instrument or which otherwise permit or require the cancellation of interest and monetary damages and write down of such instrument and in respect of which the conditions (if any) to the operation of such provisions are (or with the giving of any certificate or notice which is capable of being given by the Borrower, would be) satisfied.

**"Write Down Measure Effective Date"** means the date as of which the Write Down Measures become effective, which is specified in the Write Down Measure Notice and which shall occur on the earlier of the 30<sup>th</sup> Business Day in Moscow after the Write Down Event Date, or the date preceding the date on which the Deposit Insurance Agency starts implementing any bankruptcy prevention measures in accordance with the Insolvency Law.

**"Write Down Measure Notice"** means a notice which shall be given by the Borrower to the Lender and the Trustee pursuant to Clause 5.5 (*The Borrower's Obligation to Provide Notices*) and which shall specify with reasonable detail (i) the Write Down Measure Effective Date; and (ii) the Write Down Measures being implemented, including any Interest Cancellation Amount and any Write Down Amount, and the basis of their calculation, being substantially in the form set out in Schedule 2 hereto.

**"Write Down Measures"** means an Interest Cancellation Measure, a Monetary Damages Cancellation Measure and/or a Principal Write Down Measure.

**"US Dollars"** and **"US\$"** mean the lawful currency of the United States of America.

## 1.2 Interpretation

Unless the context or the express provisions of this Agreement otherwise require, the following shall govern the interpretation of this Agreement:

- (a) The **"Lender"** or the **"Borrower"** shall be construed so as to include it and any of their respective subsequent successors.
- (b) All references to a **"Clause"** or **"Clauses"** are references to a Clause or Clauses of this Agreement.
- (c) The terms **"hereof"**, **"herein"** and **"hereunder"** and other words of similar import shall mean this Agreement as a whole and not any particular part hereof.
- (d) Words importing the singular number include the plural and vice versa.
- (e) All references to **"taxes"** include all present or future taxes, levies, imposts, charges, withholdings and duties of any nature and the terms **"tax"** and **"taxation"** shall be construed accordingly.
- (f) The table of contents and the headings are for convenience only and shall not affect the construction hereof.
- (g) All references to **"laws"** and **"regulations"** include such laws and regulations as amended from time to time.

## 2. LOAN AND AMENDMENT AND RESTATEMENT

### 2.1 Loan

- (a) On the terms and subject to the conditions set forth herein, the Lender hereby agrees to make available to the Borrower, and the Borrower hereby agrees to borrow from the Lender, a single advance in the amount of US\$125,000,000.

- (b) As of the Effective Date, the Outstanding Principal Amount of the Loan is US\$125,000,000.

## 2.2 Purpose

The proceeds of the Loan will be used for general banking purposes, but the Lender shall not be concerned with the application thereof.

## 2.3 Unsecured Loan

No security is provided under the Loan. For the purposes of this Clause 2.3 (*Unsecured Loan*) "security" shall also mean (a) cash or assets directly or indirectly (through third parties) have been provided by the Borrower; and /or (b) any assets provided by third parties, whereby the Borrower has accepted the risk of disposal of such assets.

## 2.4 Amendment and restatement

- (a) From (and including) the Effective Date:
- (i) the Original Loan Agreement shall be amended and restated so that it reads in the form of this Agreement; and
  - (ii) the rights and obligations of the Borrower and the Lender relating to their performance under the Original Loan Agreement shall be governed by, and construed in accordance with, the terms of this Agreement.
- (b) The Borrower and the Lender agree that, with effect from (and including) the Effective Date, they shall have the rights and take on the obligations ascribed to them under this Agreement.
- (c) The Borrower shall promptly notify the Lender of the occurrence of the Effective Date.

## 2.5 Continuation

- (a) The Original Loan Agreement will remain in full force and effect as amended and restated by this Agreement and any reference in this Agreement to "this Agreement" or to any provision of "this Agreement" will be construed as a reference to the Original Loan Agreement, or that provision, as amended and restated by this Agreement.
- (b) If the CBR fails to issue the Final Conclusion to the Borrower by the Approval Date, the Original Loan Agreement shall remain in full force and effect and the Loan shall continue to be treated as additional capital (*dopolnitelny kapital*) of the Borrower.

## 3. DRAWDOWN

### 3.1 Drawdown

- (a) On the terms and subject to the conditions set forth herein, on the Closing Date the Lender shall make the Loan to the Borrower and the Borrower shall make a single drawing in the full amount of the Loan.
- (b) The Borrower and the Lender acknowledge and agree that no further amounts may be borrowed under this Agreement.

### 3.2 **Disbursement**

Subject to the conditions set forth herein and the Lender having obtained sufficient funding, on the Closing Date the Lender shall transfer the amount of the Loan to the Borrower's Account in Same-Day Funds.

## 4. **FEES**

### 4.1 **Loan Arrangement Fee**

In consideration of the Lender making the Loan available to the Borrower, the Borrower hereby agrees that it shall, one (1) Business Day before the Closing Date, pay to the Lender, in Same-Day Funds an arrangement fee in connection with the financing of such Loan (a "**Loan Arrangement Fee**") calculated by taking into account the front-end commissions, fees and costs properly incurred and documented by the Lender in connection with financing such Loan including the negotiation, preparation and execution of all necessary related documents and transactions connected with and necessary for the extension of such Loan, including any legal costs and expenses of third parties involved in the negotiation, preparation and execution of all related documentation. The total amount of the Loan Arrangement Fee is US\$126,816.25.

### 4.2 **Ongoing Expenses**

In consideration of the Lender agreeing to make the Loan to the Borrower, the Borrower shall pay by way of an additional facility fee on demand to the Lender, as and when such payments are due amounts of ongoing commissions and costs as set forth to the Borrower in invoices from the Lender from time to time, providing, in reasonable detail, the nature and calculation of the relevant payment or expense.

## 5. **SUBORDINATION OF THE LOAN**

### 5.1 **Subordination**

The claims of the Lender against the Borrower in respect of the principal of, and interest on, the Loan and any applicable Monetary Damages will be subordinated upon the occurrence of a Bankruptcy Event to the claims of all Senior Creditors in accordance with the Insolvency Law and will rank at least *pari passu* with the claims of other unsecured subordinated creditors of the Borrower (whether actual or contingent) from time to time outstanding and will be senior to the claims of holders of (a) the Capital Stock of the Borrower (including preference shares) in their capacity as shareholders and (b) all other obligations ranking junior to the claims of the Lender pursuant to applicable Russian laws.

### 5.2 **Report**

A report in writing as to the solvency of the Borrower by the liquidator or administrator of the Borrower shall, unless the contrary is proved, be treated and accepted by the Borrower and the Lender as correct and sufficient evidence thereof.

### 5.3 **No Early Termination of Obligations; Set-Off**

The parties shall not be entitled to offset any liabilities under this Agreement against any other liabilities to each other or terminate them in full or in part by way of release from obligations, settlement or novation, and no action leading to non-compliance of this Agreement with the requirements of Regulation No. 395-P may be taken by any party hereto.

#### 5.4 Write Down Measures

If a Write Down Event has occurred, then on the Write Down Measure Effective Date:

- (a) the following consequences arise (in the order set out in sub-clause (b)):
  - (i) any accrued and unpaid interest payable in respect of the Loan shall not be paid and shall not accumulate as a result of the full or partial termination of the Borrower's obligations hereunder to pay the amounts of accrued and unpaid interest under the Loan (such measure being an "**Interest Cancellation Measure**" or an "**Interest Cancellation**" and "**Cancel**" or "**Cancelled**" being construed accordingly); and
  - (ii) the Borrower's obligations hereunder to repay the principal amount of the Loan as well as to pay any applicable Monetary Damages shall be terminated in full or in part (such measure in respect of the principal amount of the Loan being a "**Principal Write Down Measure**", and in respect of any Monetary Damages being a "**Monetary Damages Cancellation Measure**" and the terms "**Write Down**", "**Written Down**", "**Monetary Damages Cancellation**" and "**Cancelled**", respectively, being construed accordingly),  
*provided, however*, that if a Write Down Event has occurred as a result of any losses incurred by the Borrower, a Write Down Measure may only be applied after undistributed profit, reserve fund and other sources of the Borrower's Common Equity Tier 1 Capital have been exhausted to absorb such losses; and
- (b) the Borrower shall on the Write Down Measure Effective Date:
  - (i) *firstly*, Cancel any applicable Monetary Damages for the purposes of the Monetary Damages Cancellation Measure;
  - (ii) *secondly*, if the Monetary Damages Cancellation Measure, together with the cancellation of monetary damages on the Write Down Instruments in full is insufficient to remedy the Write Down Event, Cancel the Interest Cancellation Amount for the purposes of the Interest Cancellation Measure; and
  - (iii) *thirdly*, if the Interest Cancellation Measure, together with cancellation of accrued interest on the Write Down Instruments in full is insufficient to remedy the Write Down Event, Write Down the Write Down Amount for the purposes of the Principal Write Down Measure.
- (c) Any amount of interest, Monetary Damages or principal referred to in sub-clauses (a) and (b) above shall be written down pro rata with any Write Down Instruments.

#### 5.5 The Borrower's Obligation to Provide Notices

- (a) The Borrower shall provide (i) to the Lender and the Trustee no later than two Business Days after the Write Down Event Date, a Write Down Event Notice; and (ii) to the Lender and the Trustee no later than two Business Days prior to the relevant Write Down Measure Effective Date, the Write Down Measure Notice. If, in respect of the Agency Trigger, the Borrower is notified less than five Business Days in advance of the date on which the Deposit Insurance Agency will start to implement any actual bankruptcy prevention measures, it shall promptly give such Write Down Measure Notice and in no event later than the Write Down Measure Effective Date.
- (b) The disclosure of the occurrence of a Write Down Event on the official website of the CBR and the provision by the Borrower to the CBR of information on the aggregate amounts of the Borrower's obligations under the Loan and the Write Down Instruments and monetary damages (if any), which are subject to a write down,

cancellation or other form of termination (conversion or exchange), the aggregate amount of obligations to be terminated and such other information (including information on the Borrower's approach to performance of the relevant provisions of subordinated instruments on conversion or exchange and termination of obligations) as may be required by Regulation No. 395-P or other applicable regulations will be made within the periods and in the manner set out in Regulation No. 395-P or such other applicable regulations.

## 5.6 Consequences of a Write Down Measure

- (a) A Write Down Event may occur on more than one occasion (and Monetary Damages and accrued interest may be Cancelled and the Loan may be Written Down in accordance with Clause 5.4 (*Write Down Measures*) on more than one occasion).
- (b) The principal amount of the Loan may only be used to remedy the Write Down Event pro rata with the Write Down Instruments. Monetary Damages and accrued interest may only be Cancelled by the Borrower pro rata with monetary damages and accrued interest on the Write Down Instruments. If, in connection with any Monetary Damages Cancellation, Interest Cancellation and/or Write Down (if any) of the Loan, any relevant proportion must be determined for the purpose of pro-rating such Monetary Damages Cancellation, Interest Cancellation and Write Down (if any) amongst the Loan and any Write Down Instruments, the monetary damages, accrued interest and principal amount of any obligation (including the Loan and any Write Down Instruments) which is not denominated in Russian Roubles will (for the purposes of such determination only) be deemed to be converted into Russian Roubles at the then prevailing foreign exchange rates determined in the sole discretion of the Borrower in accordance with its accounting policies established under applicable accounting standards.
- (c) Following any Write Down in accordance with Clause 5.4 (*Write Down Measures*), references herein to the "outstanding principal amount" of the Loan shall be construed as references to the Outstanding Principal Amount. If the principal amount of the Loan is Written Down to zero, this Loan Agreement shall cease to have effect.
- (d) Once the principal amount of the Loan has been Written Down in accordance with Clause 5.4 (*Write Down Measures*), the principal amount so Written Down may not be restored under any circumstances, including where the relevant Write Down Event(s) is(are) no longer continuing.
- (e) Any Monetary Damages and/or interest payment that has been Cancelled in accordance with Clause 5.4 (*Write Down Measures*), shall not accumulate or be payable at any time thereafter, including where the relevant Write Down Event(s) is(are) no longer continuing. No Monetary Damages or interest shall accrue from the Write Down Measure Effective Date as long as a Write Down Event(s) is(are) continuing.
- (f) Subject to Clause 5.4 (*Write Down Measures*), the Borrower shall determine the Monetary Damages Cancellation Amount, Interest Cancellation Amount and the Write Down Amount in its sole discretion and shall set out its determination thereof in the relevant Write Down Measure Notice together with the then remaining Outstanding Principal Amount of the Loan (if any) and the then remaining Monetary Damages and accrued but unpaid interest following the relevant Monetary Damages Cancellation, Interest Cancellation and/or Write Down in accordance with Clause 5.4 (*Write Down Measures*). The Borrower's determination of the Interest Cancellation Amount and the Write Down Amount (if any) shall in the absence of fraud or manifest error be binding on all parties.

- (g) Notwithstanding any other provision of this Agreement, an Interest Cancellation or a Write Down shall not constitute an Acceleration Event or a default under this Agreement.

#### 5.7 **No Payments Upon Occurrence of a Write Down Event**

- (a) If a Write Down Event has occurred any Write Down Measures that are being applied shall apply until the Common Equity Tier 1 Capital Ratio of the Borrower is not less than 5.125 per cent. or, in the case of the Agency Trigger, until all of the Borrower's capital adequacy ratios meet the requirements prescribed by CBR Instruction No. 139-I.
- (b) From the Write Down Event Date and until the Write Down Measures cease to apply, the Borrower shall not make any payments of Monetary Damages, interest or any portion of the Outstanding Principal Amount of the Loan, and no Monetary Damages or Interest shall accrue on such unpaid amounts. The Borrower shall immediately notify the Lender and the Trustee in writing on the cessation of any Write Down Event.

#### 5.8 **Capital Treatment**

If the Loan is to be treated Additional Tier 1 Capital by the Borrower, the Borrower will use its best efforts to procure that the CBR issues the Final Conclusion for such treatment, and will provide all relevant information about the Loan to the CBR as may be necessary for the issuance of the Final Conclusion.

### 6. **INTEREST**

#### 6.1 **Interest Rate**

The Borrower will (unless the Loan has been repaid in accordance with Clause 7 (*Repayment*)) pay interest in US Dollars to the Lender on the outstanding principal amount of the Loan from (and including) the Closing Date and thereafter from (and including) each Interest Payment Date, in each case to (but excluding) the next Interest Payment Date at the interest rate:

- (a) up to (and including) the Effective Date equal to 12 per cent. per annum;
- (b) after the Effective Date equal to 10 per cent. per annum.

#### 6.2 **Rounding**

For the purposes of any calculations required in respect of this Agreement (unless otherwise specified), (a) all percentages resulting from such calculations shall be rounded, if necessary, to the nearest one hundred-thousandth of a percentage point (with halves being rounded up), (b) all figures shall be rounded to seven significant figures (with halves being rounded up) and (c) all currency amounts that fall due and payable shall be rounded to the nearest unit of such currency (with halves being rounded up). For these purposes "**unit**" means the lowest amount of such currency that is available as legal tender in the country or countries of such currency.

#### 6.3 **Payment**

- (a) Interest shall accrue from day to day at the Interest Rate, starting from (and including) the Closing Date and shall be paid in US Dollars, semi-annually, in arrear, not later than 10:00 a.m. (New York City time) one (1) Business Day prior to each Interest Payment Date in Same-Day Funds. Interest on the Loan will cease to accrue from (but excluding) any date of which the Loan is repaid pursuant to Clauses 7.2 (*Repayment*

at the Option of the Borrower, by Reason of Change in Legislation, Taxes or Increased Costs), 7.3 (Special Repayment if the Loan is not Approved for Inclusion in the Own Funds of the Borrower as Additional Tier 1 Capital) or 12.2 (Winding-up), or Written Down unless payment of principal is improperly withheld or refused by the Borrower, in which event interest will continue to accrue (before or after any judgment) at the Interest Rate to, but excluding, the date on which payment in full of the principal thereof is made. The amount of interest payable in respect of the Loan for any Interest Period shall be calculated by applying the Interest Rate to the Loan, dividing the product by two and rounding down the resulting figure to the nearest US Dollar. If interest is required to be calculated for a period other than a full Interest Period, it will be calculated on the basis of a 360 day year consisting of 12 months of 30 days each and, in the case of an incomplete month, the number of actual days elapsed.

- (b) If an Interest Payment Date would otherwise fall on a day that is not a Business Day, payment of interest falling on such Interest Payment Date shall be postponed to the next day that is a Business Day.

#### 6.4 **Market Interest Rate**

In order to comply with Regulation 395-P, each of the Lender and the Borrower agree that (i) the terms and conditions set forth in this Agreement do not differ materially from the terms and conditions of similar agreements concluded on market terms as of the date of this Agreement and (ii) as of the date this Agreement, the Interest Rate is market (taking into account all the fees and commissions payable by the Borrower hereunder).

#### 6.5 **Cancellation of Accrued Interest**

- (a) The Borrower may, with regard to any Interest Payment Date, cancel at its discretion the payment of all or any part of the interest accrued on the Loan that otherwise would have been payable on that Interest Payment Date, by sending to the Lender and the Trustee a Notice on Cancellation of Accrued Interest no later than 10 days and no earlier than 30 days before the given Interest Payment Date.
- (b) The Borrower shall not be liable to pay any Monetary Damages as a result of the cancellation of all or any part of the accrued interest in accordance with sub-clause (a) above.

#### 6.6 **Payments of Interest are not Cumulative**

Payments of interest on the Loan are not cumulative. Notwithstanding any other provision of this Agreement but without prejudice to Clause 6.3 (*Payment*), the cancellation or non-payment of any interest payable in accordance with Clause 6.5 (*Cancellation of Accrued Interest*) shall not constitute an Acceleration Event or a default for any purpose under this Agreement. Any interest that is payable in accordance with this Clause 6 (*Interest*) but is not paid shall not accumulate, be payable or be subject to any Interest Cancellation Measures at any time thereafter and the Lender shall have no right thereto.

### 7. **REPAYMENT**

#### 7.1 **No Repayment**

- (a) The Loan has no established redemption date and may only be repaid in accordance with the provisions of this Clause 7 (*Repayment*).
- (b) Except as otherwise provided herein:

- (i) the Borrower shall not repay all or any part of the Loan and/or prepay any interest accrued on the Loan (except with the prior written consent of the CBR); and
  - (ii) this Agreement may not be terminated (except with the prior written consent of the CBR).
- (c) The Loan may not be repaid, in whole or in part before the 5th anniversary of its inclusion in the Additional Tier 1 Capital of the Borrower and with the prior written consent of the CBR.
- (d) The Lender may not require the repayment of the Loan or any part thereof and/or the prepayment of any interest payable under the Loan and (or) termination of this Agreement.
- (e) In accordance with Regulation No. 395-P:
- (i) no repayment of the principal and/ or prepayment of interest under this Agreement (in whole or in part) shall be permitted without the prior written consent of the CBR;
  - (ii) no termination of, or amendment to, this Agreement shall be permitted without the prior written consent of the CBR;
  - (iii) no termination of obligations under this Agreement shall be permitted without the prior written consent of the CBR; and
- (f) no termination of obligations under this Agreement by way of discharge, set off (including as a result of an assignment) or novation or by any other means that would result in the non-compliance of this Agreement with the requirements of Regulation No. 395-P shall be permitted.

**7.2 Repayment at the Option of the Borrower, by Reason of Change in Legislation, Taxes or Increased Costs**

- (a) Notwithstanding the provisions of Clause 7.1 (*No Repayment*), the Borrower, at its option, and with the prior written consent of the CBR, may repay the Loan:
- (i) if at any time after the Capital Inclusion Date, if, as a result of any amendment to, clarification of or change in (including a change in interpretation or application of) Regulation 395-P or other applicable requirements of the CBR, this Agreement and the Loan would cease to qualify in full as Additional Tier 1 Capital;
  - (ii) if, as a result of the application of or any amendments or clarification of, or change (including a change in interpretation or application) in, the double tax treaty between the Russian Federation and the Netherlands or the laws or regulations of the Russian Federation or the Netherlands or of any political sub-division thereof, the Borrower would be required to pay Additional Amounts or Notes Additional Amounts in accordance with Clauses 8.2 (*No Set-Off, Counterclaim or Withholding; Gross-Up*) or 8.3 (*Withholding on Notes*) respectively and such Additional Amounts or Notes Additional Amounts cannot be avoided by the Borrower taking reasonable measures available to it, or
  - (iii) (for whatever reason) the Borrower would have to or has been required to pay additional amounts pursuant to Clause 11 (*Change in Law; Increase in Cost*)



and such obligation cannot be avoided by the Borrower taking reasonable measures available to it.

- (b) Notice of such repayment together with an Officer's Certificate confirming the existence of the relevant circumstances permitting such a repayment shall be given by the Borrower to the Lender, with a copy to the Trustee, not less than 30 days prior to such repayment date. Upon the delivery of such notice and such Officer's Certificate, the Borrower shall be required not later than 10:00 am (New York City time) one (1) Business Day prior to repayment date specified in such notice to repay the Loan (in whole but not in part) at the principal amount thereof, together with interest accrued to (but excluding) the date of repayment and all other sums payable by the Borrower pursuant to this Agreement in relation to the repaid amount.

### 7.3 **Special Repayment if the Loan is not approved for Inclusion in the Own Funds of the Borrower as Additional Tier 1 Capital**

Notwithstanding the provisions of Clause 7.1 (*No Repayment*), if, by the Approval Date, the CBR has not issued the Final Conclusion to the Borrower, then the Borrower may at any time (without premium or penalty), upon not less than 20 days' notice (which notice shall be irrevocable) to the Lender, with a copy to the Trustee, prior to such repayment date, repay the Loan in whole (but not in part) at the principal amount thereof, together with interest accrued to (but excluding) such repayment date not later than 10:00 am (New York City time) one (1) Business Day prior to such repayment date and all other sums payable by the Borrower pursuant to this Agreement in relation to the repaid amount.

### 7.4 **Provisions Exclusive**

The Borrower shall not repay all or any part of the Loan except in accordance with the express terms of this Agreement. Any amount repaid under this Agreement may not be re-borrowed under this Agreement.

### 7.5 **Reduction of the Loan upon Cancellation of Notes**

Subject to the prior written consent of the CBR, the Borrower may from time to time deliver, or procure the delivery of, Notes held by it having an aggregate value of at least US\$1,000,000 (or the global Note representing such Notes held by it, as the case may be) to the Lender, together with a request for the Lender to procure cancellation of such Notes (or a specified aggregate principal amounts of Notes where such Notes are represented by a global Note) by the registrar of the Notes (the "**Registrar**") (which instructions shall be accompanied by evidence satisfactory to the Registrar that the Borrower is entitled to give such instructions), whereupon the Lender shall request the Registrar to cancel such Notes, or a specified aggregate principal amount of Notes represented by the global Note, as the case may be. Upon any such cancellation by or on behalf of the Registrar, and with the prior written consent of the CBR, the principal amount of the Loan corresponding to the principal amount of such Notes together with any accrued and unpaid interest and other amounts (if any) thereon shall be deemed extinguished for all purposes as of the date of such cancellation.

## 8. **PAYMENTS**

### 8.1 **Making of Payments**

All payments in respect of outstanding principal, interest, and additional amounts (if any) to be made by the Borrower under this Agreement shall be made unconditionally by credit transfer to the Lender by making payment to the Lender's Account not later than 10:00 am (New York City time) on one (1) Business Day immediately preceding each Interest Payment

Date, any date set for repayment of the Loan in accordance with Clause 7.2 (*Repayment at the Option of the Borrower, by Reason of Change in Legislation, Taxes or Increased Costs*), in each case in Same-Day Funds.

## 8.2 **No Set-Off, Counterclaim or Withholding; Gross-Up**

All payments to be made by the Borrower under this Agreement shall be made in full without set-off or counterclaim and (except to the extent required by law) free and clear of and without deduction for or on account of any Taxes. If the Borrower shall be required by applicable law to make any deduction or withholding from any payment under this Agreement for or on account of such Taxes, it shall, on the due date for such payment, increase any payment due hereunder by such amount (an "**Additional Amount**") as may be necessary to ensure that the Lender receives a net amount in US Dollars equal to the full amount which it would have received had payment not been made subject to such Taxes, shall account to the relevant authorities for the relevant amount of such Taxes so withheld or deducted within the time allowed for such payment under applicable law and shall deliver to the Lender without undue delay evidence in the form of a payment order and a letter signed by the principal executive officer of the Borrower (or such other evidence as the parties, acting reasonably, may mutually agree) of such deduction or withholding and evidence of the accounting therefor to the relevant Taxing Authority. If the Lender pays any amount in respect of such Taxes, the Borrower shall reimburse the Lender in US Dollars for such payment on demand on the basis of an invoice (supported by copies of the relevant documents evidencing payment by the Lender).

## 8.3 **Withholding on Notes**

If the Lender notifies the Borrower (setting out in reasonable detail the nature and extent of the obligations with such evidence as the Borrower may reasonably require) that it has become obliged to make any withholding or deduction for or on account of any Taxes from any payment which it is obliged to make under or in respect of the terms and conditions of the Notes in circumstances where the Lender, subject to receipt of such amount, is required to pay additional amounts pursuant to the terms and conditions of such Notes, the Borrower agrees to pay to the Lender, not later than 10:00 am (New York City time) one (1) Business Day prior to the date on which payment by the Lender is due to the holders of the relevant Notes in Same-Day Funds to the Lender's Account, such additional amounts (each such additional amount, a "**Notes Additional Amount**") as are equal to the said additional amounts which the Lender must pay pursuant to such terms and conditions; provided, however, that as soon as reasonably practicable upon receipt by the Lender of any Notes Additional Amount, to the extent that the Noteholders of any Notes are not entitled to such Notes Additional Amount, the Lender shall repay such Notes Additional Amount to the Borrower (it being understood that the Lender (or any successor or assignees thereto), shall not have any obligation to determine whether any Noteholder is entitled to such Notes Additional Amount).

## 8.4 **Reimbursement**

To the extent that the Lender subsequently obtains or uses any tax credit, relief or allowance or other reimbursements relating to a deduction or withholding with respect to which the Borrower has made a payment pursuant to this Clause 8 (*Payments*), or obtains any other reimbursement in connection therewith, it shall pay to the Borrower so much of (but in any event no amount greater than) the actual benefit received as will leave the Lender, in its reasonable opinion, in exactly the same position as it would have been had no additional amount been required to be paid by the Borrower pursuant to this Clause 8 (*Payments*) or had no reimbursement been paid to the Lender; provided, however, that the question of whether any such benefit has been received, and accordingly, whether any payment should be made to the Borrower, the amount of any such payment and the timing of any such payment, shall be

determined solely by the Lender. The Lender shall use reasonable efforts (subject to the provisions of Clauses 8.6 (*Mitigation*) and 8.7 (*Tax Treaty Relief*)) to claim any credits, allowances or refunds available to it but need not disclose to the Borrower any information regarding its tax affairs or computations. Any such refund or reimbursement shall, in the absence of manifest error and subject to the Lender specifying in writing in reasonable detail the calculation of such credit, relief, allowance, refund or other reimbursement and of such payment and providing relevant supporting documents evidencing such matters, be conclusive evidence of the amount due to the Lender hereunder and shall be accepted by the Borrower in full and final settlement of its rights of reimbursement under this Agreement in respect of such deduction or withholding.

If as a result of a failure to obtain relief from deduction or withholding of any taxes imposed by Russia or any Qualifying Jurisdiction: (a) such taxes are deducted or withheld by the Borrower and pursuant to this Clause 8 (*Payments*) an increased amount is paid by the Borrower to the Lender in respect of such deduction or withholding, and (b) following the deduction or withholding of taxes as referred to above, the Lender applies to the relevant Russian or Qualifying Jurisdiction tax authorities for a tax refund and such tax refund is credited by the Russian or Qualifying Jurisdiction tax authorities to a bank account of the Lender, the Lender shall as soon as reasonably possible notify the Borrower of the receipt of such tax refund and promptly transfer the entire amount of the tax refund actually received less any applicable costs or tax thereon to a bank account of the Borrower specified for that purpose by the Borrower. The Borrower agrees to use its reasonable endeavours to assist the Lender in making such an application. The Lender will not be liable for any delay in transferring such amount to the Borrower if the Borrower fails to provide the Lender with the relevant bank account details in due time.

#### **8.5 Evidence of Debt**

The entries made in the accounts of the Lender shall, in the absence of manifest error, constitute conclusive evidence of the existence and amounts of the Borrower's obligations to pay amounts thereto, as recorded therein.

#### **8.6 Mitigation**

If at any time either party hereto becomes aware of circumstances which would or might, then or thereafter, give rise to an obligation on the part of the Borrower to make any deduction, withholding or payment as described in Clauses 8.2 (*No Set-Off, Counterclaim or Withholding; Gross-Up*) or 8.3 (*Withholding on Notes*), then, without in any way limiting, reducing or otherwise qualifying the Lender's rights, or the Borrower's obligations, under such Clauses, such party shall promptly upon becoming aware of such circumstances notify the other party, and, thereupon the parties shall consider and consult with each other in good faith with a view to finding, agreeing upon and implementing a method or methods by which any such obligation may be avoided or mitigated and, to the extent that both parties can do so without taking any action which in the reasonable opinion of such party is prejudicial to its own position, take such reasonable steps as may be reasonably available to it to avoid such obligation or mitigate the effect of such circumstances. The Borrower agrees to reimburse the Lender for all properly incurred costs and expenses (including but not limited to legal fees) incurred by the Lender in connection with this Clause and in respect of which an itemised invoice (supported by copies of the relevant documents evidencing payment by the Lender) from the Lender has been provided to the Borrower.

#### **8.7 Tax Treaty Relief**

(a) The Lender shall at the cost and expense of the Borrower use all reasonable endeavours to provide the Borrower with a certificate issued by the competent taxing authorities in the Qualifying Jurisdiction confirming that the Lender is a tax resident

of a Qualifying Jurisdiction for the purpose of the Treaty no later than 10 Business Days before the first Interest Payment Date (and thereafter as soon as possible at the beginning of each calendar year but not later than 10 Business Days prior to the first Interest Payment Date in that year) and such other information or forms as may be reasonably requested by the Borrower to enable it to apply to obtain relief from deduction or withholding of Russian taxes after the date of this Agreement or, as the case may be, to apply to obtain a tax refund if a relief from deduction or withholding of Russian taxes has not been obtained, provided that the Lender shall not be liable for any failure to provide, or any delays in providing, such residency certificate as a result of any action or inaction of the competent tax authorities in the Qualifying Jurisdiction, but shall notify the Borrower without delay about any such failure or delay with a written description of the actions taken by the Lender to obtain such tax residency certificate. Such a certificate shall be appropriately apostilled and a certified translation shall be supplied at the expense of the Borrower.

- (b) The Borrower and the Lender acknowledge that the Russian legislation regulating the procedure for obtaining access to Treaty benefits, as well as the practical approach and technical interpretations of the Russian tax authorities, may be subject to change. The Borrower and the Lender further acknowledge that any such change may result in access to Treaty benefits, and in particular to obtaining the reduced rate of withholding with respect to interest, becoming more difficult or impossible. In the event of any such change impacting adversely the Borrower's ability to apply the reduced rate of withholding tax on interest, the Borrower and the Lender shall use their best endeavours to amend the procedure described in this Clause 8.7 (*Tax Treaty Relief*) including, if required, the provision regarding the procurement of the necessary documents and actions from other parties, in order to ensure that the rate of withholding tax on interest as provided for in the Treaty can be successfully applied.

## **9. REPRESENTATIONS AND WARRANTIES**

### **9.1 The Borrower's Representations and Warranties**

The Borrower represents and warrants to the Lender as follows, to the intent that such shall form the basis of this Agreement and shall remain in full force and effect at the date of the Original Loan Agreement and shall be deemed to be repeated by the Borrower on the Closing Date in accordance with Clause 10 (*Conditions Precedent*):

- (a) The Borrower is duly organised and incorporated and validly existing under the laws of and resident for tax purposes in the Russian Federation and has the power and legal right to own its property, to conduct its business as currently conducted and to enter into and to perform its obligations under this Agreement and to borrow the Loan; the Borrower has taken all necessary corporate, legal and other action required to authorise the borrowing of the Loan on the terms and subject to the conditions of this Agreement and to authorise the execution and delivery of this Agreement and all other documents to be executed and delivered by it in connection with this Agreement, and the performance of this Agreement in accordance with its terms.
- (b) This Agreement has been duly executed and delivered by the Borrower and constitutes a legal, valid and binding obligation of the Borrower enforceable in accordance with its terms, subject to applicable bankruptcy, insolvency, moratorium and similar laws affecting creditors' rights generally, and subject, as to enforceability, (i) to general principles of equity (regardless of whether enforcement is sought in a proceeding in equity or at law); (ii) with respect to the enforceability of a judgment, to the laws of the relevant jurisdiction where such judgment must be enforced and whether there is a treaty in force relating to the mutual recognition of foreign

judgments; and (iii) to the fact that the gross-up provisions contained in Clauses 8.2 (*No Set-Off, Counterclaim or Withholding; Gross-Up*) and 8.3 (*Withholding on Notes*) may not be enforceable under Russian law.

- (c) The execution, delivery and performance of this Agreement by the Borrower will not conflict with or result in any breach or violation of the constitutive documents, rules and regulations of the Borrower;
- (d) All consents, authorisations or approvals of, or filings with, any governmental, judicial and public bodies and authorities of the Russian Federation, if any (other than any Russian law requirements to provide a Russian court with a duly notarised Russian translation of this Agreement or any other related documents required in connection with any proceedings in respect thereof), required by the Borrower in connection with the execution, delivery, performance, legality, validity, enforceability, and admissibility in evidence of this Agreement have been obtained or effected and are in full force and effect (excluding, for the avoidance of doubt, the Final Conclusion and any subsequent filing and/or submissions to be made by the Borrower with the CBR in connection therewith).
- (e) The claims of the Lender against the Borrower under this Agreement in respect of the principal of, and interest on, will, on the occurrence of a Bankruptcy Event, rank at least *pari passu* with the claims of other unsecured subordinated creditors of the Borrower (whether actual or contingent) having a fixed maturity from time to time outstanding and will be senior to the claims of holders of the Capital Stock of the Borrower (including preference shares) in their capacity as shareholders.
- (f) The execution, delivery and enforceability of this Agreement is not subject to any tax, duty, fee or other charge, including, without limitation, any registration or transfer tax, stamp duty or similar levy, imposed by or within the Russian Federation or any constituent part or political sub-division or taxing authority thereof or therein (other than state duty paid on any claim filed with a Russian court).
- (g) The Borrower has not taken any corporate action or the best of the knowledge and belief of the Borrower, have any other steps been taken or legal proceedings been started or threatened in writing against the Borrower for its bankruptcy, winding-up, dissolution, external administration or re-organisation (whether by way of merger, accession, division, separation or transformation (as these terms are construed by applicable Russian legislation) or any other type of corporate reconstruction) or for the appointment of a receiver, administrator, administrative receiver, conservator, custodian, trustee or similar officer of its or of any or all of its assets or revenues.
- (h) The most recent IFRS Financial Statements:
  - (i) were prepared in accordance with IFRS, as consistently applied; and
  - (ii) present fairly in all material respects the assets and liabilities as at that date and the results of operations of the Borrower during the relevant financial period.
- (i) The choice of English law as the governing law of this Agreement and any arbitration award obtained in England pursuant to Clause 19 (*Jurisdiction*) in relation to this Agreement will be recognised and enforced in the Russian Federation after compliance with the applicable procedural rules and all other legal requirements in the Russian Federation subject to the following:
  - (i) application of conflict of law principles; and

- (ii) determination as to whether (A) the application of English law contradicts (1) any public policy of the Russian Federation or (2) any mandatory provisions of Russian law, or (B) a statute makes the application of foreign law subject to reciprocity.
- (j) Under the laws of the Russian Federation, in conjunction with the agreement between the Russian Federation and the Netherlands (or any other Qualifying Jurisdiction in which the Lender may be resident for tax purposes) for the avoidance of double taxation (the "**Treaty**") and subject to Clause 8.7 (*Tax Treaty Relief*), the Borrower will not be required to make any deduction or withholding from any payment it may make hereunder.
- (k) The Borrower has not agreed, undertaken or become obliged under any obligation or otherwise to repay the Loan in full or in part other than in accordance with the terms of this Agreement.

## 9.2 The Lender's Representations and Warranties

The Lender represents and warrants to the Borrower as follows:

- (a) The Lender is duly incorporated under the laws of the Netherlands and has full power and capacity to execute this Agreement and to undertake and perform the obligations expressed to be assumed by it herein and therein and the Lender has taken all necessary action to approve and authorise the same.
- (b) The execution of this Agreement and the undertaking and performance by the Lender of the obligations expressed to be assumed by it herein and therein will not conflict with, or result in a breach of or default under, the laws of the Netherlands or the constitutive documents, rules and regulations of the Lender or any agreement or instrument to which it is a party or by which it is bound or in respect of indebtedness in relation to which it is a surety.
- (c) The Lender (i) is a company with limited liability (*besloten vennootschap met beperkte aansprakelijkheid*) which at the date of this Agreement is a resident of the Netherlands, is subject to taxation in the Netherlands on the basis of its registration as a legal entity, location of its management body or another similar criteria and it is not subject to taxation in the Netherlands merely on income from sources in the Netherlands or connected with property located in the Netherlands, (ii) is a company which is a resident of the Netherlands for the purposes of the Treaty, and (iii) does not have a permanent establishment in the Russian Federation.
- (d) The Lender has no intention to effect any corporate action or reorganisation or change of taxation jurisdiction that would result in the Lender ceasing to be a resident of the Netherlands or ceasing to be subject to taxation in the Netherlands.
- (e) The Lender is not a subsidiary or a dependent company of the Borrower and the Loan is not being made available from funds of pension reserves of Russian non-state pension funds, in each case as such terms are defined under applicable Russian law.

## 10. CONDITIONS PRECEDENT AND REPORTS

### 10.1 Conditions Precedent

The obligation of the Lender to make the Loan shall be subject to the conditions precedent that as of the Closing Date (a) the representations and warranties made and given by the Borrower in Clause 9 (*Representations and Warranties*) shall be true and accurate as if made

and given on the Closing Date with respect to the facts and circumstances then existing, (b) the Borrower shall not be in breach of any of the terms, conditions and provisions of this Agreement; and (c) receipt by the Lender on or prior to the Closing Date of any documents that are to be provided to the Lender by the Closing Date in connection with this Agreement.

## 10.2 Reporting

So long as any amount remains outstanding under this Agreement:

- (a) the Borrower hereby undertakes that it will deliver to the Lender and the Trustee within 180 days of the end of each of its financial years, copies of its audited IFRS Financial Statements for such financial year in English, including a report thereon by the Borrower's certified independent accountants, provided that if such IFRS Financial Statements are disclosed to the public on the Borrower's web-site this sub-clause (a) shall not apply;
- (b) the Borrower agrees that any information provided to the Lender under this Agreement, including, pursuant to this Clause 10.2 and Clauses 5.2 (*Report*), 7.2 (*Repayment at the Option of the Borrower, by Reason of Change in Legislation, Taxes or Increased Costs*) and 7.3 (*Special Repayment if the Loan is not approved for Inclusion in the Own Funds of the Borrower as Additional Tier 1 Capital*), may also be provided and/or disclosed to the Trustee and the Noteholders, without violating any duty of confidentiality or secrecy that the Lender may owe to the Borrower under the laws of the Netherlands or any other applicable laws;
- (c) promptly upon receipt by the Borrower of the Final Conclusion, the Borrower shall deliver a copy of the Final Conclusion to the Lender and the Trustee; and
- (d) the Borrower undertakes that it will deliver to the Lender and the Trustee within five (5) Business Days of each anniversary of the Closing Date, a written notice in the form of an Officer's Certificate setting out the Common Equity Tier 1 Capital Ratio that was most recently reported by the Borrower to the CBR.

## 11. CHANGE IN LAW; INCREASE IN COST

### 11.1 Compensation

If after the date of this Agreement, by reason of (a) any Change of Law and/or (b) change of any regulatory requirement or official directive (whether or not having the force of law but, if not having the force of law, the observance of which is in accordance with the generally accepted financial practice of similar companies in the country concerned) or in the interpretation or application thereof by any person charged with the administration thereof:

- (a) the Lender incurs an additional cost as a result of it entering into or performing its obligations (including its obligation to make, fund or maintain the Loan) under this Agreement other than any such cost incurred as a result of any increase in the rate of tax payable by the Lender on its income or as a result of any taxes, withholding or deduction, as the case may be referred to in Clause 8.2 (*No Set-Off, Counterclaim or Withholding; Gross-Up*) or 8.3 (*Withholding on Notes*); or
- (b) the Lender becomes liable to make any additional payment on account of tax or otherwise on or calculated by reference to the amount of the Loan and/or to any sum received or receivable by it hereunder other than any such tax on the Lender's income or any tax, withholding or deduction as the case may be referred to in Clause 8.2 (*No Set-Off, Counterclaim or Withholding; Gross-Up*) or 8.3 (*Withholding on Notes*);

then the Borrower shall, on demand of the Lender, pay to the Lender amounts sufficient to hold harmless and indemnify it from and against, as the case may be, such properly documented cost or liability, provided that the Lender will not be entitled to indemnification where such additional cost or liability arises as a result of the gross negligence, fraud or wilful default of the Lender.

## 11.2 Mitigation

In the event that the Lender becomes aware that it is entitled to make a claim pursuant to Clause 11.1 (*Compensation*), the Lender shall consult in good faith with the Borrower and shall use reasonable efforts (based on the Lender's reasonable interpretation of any relevant tax, law, regulation, requirement, official directive, request, policy or guideline) to reduce, in whole or in part, the Borrower's obligations to pay any additional amount pursuant to such Clause, except that nothing in this Clause 11.2 (*Mitigation*) shall obligate the Lender to incur any costs or expenses in taking any action which, in the reasonable opinion of the Lender, is prejudicial to its interests.

## 12. ACCELERATION EVENTS

### 12.1 Payment Default

If the Borrower fails to pay any sum due from it hereunder at the time, in the currency and in the manner specified herein, and such failure is not remedied within five (5) Business Days of the due date for payment, the Lender may, other than in cases set out in Clause 6.5 (*Cancellation of Accrued Interest*) and Clause 5.4 (*Write Down Measures*), at its discretion and without further notice, institute proceedings in a manner and to the extent contemplated by the applicable law for the insolvency (bankruptcy) of the Borrower and/or to prove for its debt, and claim, in any consequent liquidation of the Borrower.

### 12.2 Winding-up

On the occurrence of any of the following events:

- (a) the commencement of any liquidation of the Borrower (*likvidatsia*, as such term is defined under the Civil Code of the Russian Federation);
- (b) the entering into force of the decision of a competent court of the Russian Federation on bankruptcy of the Borrower (*reshenie o priznanii dolzhnika bankrotom*, as such term is defined under the Insolvency Law); or
- (c) any revocation or nullification of any licence for the performance of banking operations of the Borrower; or
- (d) any other event which, under applicable Russian laws, is analogous to the events specified in the foregoing paragraphs, whereby the obligations of the Borrower under this Agreement are accelerated,

the Lender may give notice to the Borrower that under the laws of the Russian Federation the Loan is, and it shall accordingly become, due and repayable (*srok ispolneniya obyazatelstv schitaetsya nastypivshim*, as such term is used in Russian law) (subject to and in accordance with the provisions of Clause 5.1 (*Subordination*)) at the principal amount thereof together with any interest accrued and unpaid on the date of such repayment and any other sums due and payable by the Borrower pursuant to this Agreement, and the Lender may, at its discretion and without further notice, take any actions in the manner and to the extent contemplated by the applicable law of the Russian Federation to prove for its debt and/or, to the extent applicable, commence liquidation or winding up proceedings of the Borrower.



For the avoidance of doubt, a reorganisation or any other type of corporate reconstruction (by way of merger, accession, transformation or otherwise) of the Borrower shall not result in the acceleration of the obligations of the Borrower under this Agreement.

### 12.3 **Notice of Acceleration Event**

The Borrower shall deliver to the Lender and the Trustee, within 10 days after becoming aware thereof, written notice of any Acceleration Event, its status and what action the Borrower is taking or proposes to take with respect thereto.

### 12.4 **Proceedings**

In addition to its rights under Clauses 12.1 (*Payment Default*) and 12.2 (*Winding-Up*), the Lender may institute such other proceedings against the Borrower as it may think fit to enforce any obligation, condition or provision binding on the Borrower under this Agreement (other than any obligation for payment of any principal or interest in respect of the Loan contemplated by Clause 12.1 (*Payment Default*)) provided that the Borrower shall not by virtue of any such proceedings be obliged to pay (i) any sum or sums representing or measured by reference to principal or interest in respect of the Loan sooner than the same would otherwise have been payable by it or (ii) any damages (including any Monetary Damages).

## 13. **INDEMNITY**

### 13.1 **Indemnification**

The Borrower undertakes to the Lender that if the Lender, any director, Affiliate or controlling person, officer, employee or agent of the Lender (each an "**Indemnified Party**") incurs any loss, damage, claim, demand, judgment, action, proceeding (including, without limitation, in respect of taxes, duties, levies, imposts and other charges) and including any value added tax or similar tax charged or chargeable in respect thereof and properly documented and reasonably incurred out-of-pocket costs and expenses (including legal fees) on a full indemnity basis together with any Taxes thereon (a "**Loss**") in relation to the preparation and execution, or purported execution, of the exercise of its powers, authorities and discretions and the performance of its duties under, and in any other manner in relation to, this Agreement (or enforcement thereof), the Borrower shall pay to the Indemnified Party on demand an amount equal to such Loss unless, in any such case, and save to the extent that such Loss is caused by such Indemnified Parties' gross negligence or wilful misconduct or such Loss arises out of a breach of the representations and warranties of the Lender contained herein. The Indemnified Party shall deliver to the Borrower (in accordance with Clause 16 (*Notices*)) a certificate describing in reasonable detail the amount of such loss together with supporting documents evidencing such amount.

If and to the extent the Lender finally and irrevocably recovers from any person other than the Borrower any damages in connection with, or arising out of, any litigation or arbitration in respect of the Loan, and has previously been indemnified by the Borrower under this Clause 13.1 (*Indemnification*) in respect of the Loss on an after tax basis, corresponding to such damages, the Lender shall pay to the Borrower the amount of such damages less any applicable fees, costs and expenses including, but not limited to, the cost of such litigation or arbitration that have not been otherwise finally and irrevocably recovered. Notwithstanding the foregoing, in no event shall the Lender be obliged to seek recovery of damages from third parties before it requires indemnification pursuant to this Clause 13.1 (*Indemnification*) or if it has previously been indemnified by the Borrower with respect to the corresponding Loss.

### 13.2 **Conduct of Proceedings**

In case any proceeding (including governmental investigation) shall be instituted involving any person in respect of which indemnity may be sought pursuant to Clause 13.1 (*Indemnification*), such person (the "**Indemnified Person**") shall promptly notify the person against whom such indemnity may be sought (the "**Indemnifying Person**") and shall take such action and give such information and access to personnel, documents and records to the Indemnifying Person and its professional advisers as the Indemnifying Person may reasonably request, and at the request of the Indemnifying Person, allow the Indemnifying Person to take the sole conduct of such proceeding as the Indemnifying Person may reasonably deem appropriate in connection with such proceeding in the name of the Indemnified Person. In such event, the Indemnified Person shall make no admission of liability, agreement, settlement or compromise with any third party in relation to any such proceeding or adjudication thereof without the prior written consent of the Indemnifying Person and the Indemnified Person has the right to such information and consultation concerning the development and defence of any litigation or threatened litigation as it sees fit, and reserves the right to re-assume the defence of any such action at any time.

The Indemnifying Person will not settle any proceeding in respect of which indemnity may be sought pursuant to Clause 13.1 (*Indemnification*) without the prior written consent of the relevant Indemnified Party, which consent shall not be unreasonably withheld, unless such settlement includes an unconditional release of each Indemnified Party from all liability arising out of such proceeding, action, claim or demand and does not include a statement as to admission of fault, culpability or failure to act by or on behalf of an Indemnified Person.

### 13.3 **Independent Obligation**

Clause 13.1 (*Indemnification*) constitutes a separate and independent obligation of the Borrower from its other obligations under or in connection with this Agreement and shall not affect, or be construed to affect, any other provision of this Agreement.

### 13.4 **Evidence of Loss**

A certificate of the Lender, supported by relevant documentation, setting forth the amount of Losses described in Clause 13.1 (*Indemnification*) and specifying in reasonable detail, as requested by the Borrower, the basis therefor shall, in the absence of manifest error, be *prima facie* evidence of the amount of such Losses.

### 13.5 **Currency Indemnity**

To the fullest extent permitted by law, the obligation of the Borrower in respect of any amount due in US Dollars under this Agreement shall, notwithstanding any payment in any other currency (whether pursuant to a judgment or otherwise), be discharged only to the extent of the amount in US Dollars that the Lender may, in accordance with normal banking procedures, purchase with the sum paid in such other currency (after any premium and costs of exchange) on the Business Day immediately following the day on which the Lender receives such payment. If the amount in US Dollars that may be so purchased for any reason falls short of the amount originally due (the "**Due Amount**"), the Borrower hereby agrees to indemnify and hold harmless the Lender against any deficiency in US Dollars. Any obligation of the Borrower not discharged by payment in US Dollars shall, to the fullest extent permitted by applicable law, be due as a separate and independent obligation and, until discharged as provided herein, shall continue in full force and effect. If the amount in US Dollars that may be purchased exceeds that Due Amount the Lender shall promptly pay the amount of the excess to the Borrower.

## **14. SURVIVAL**

The obligations of the Borrower pursuant to Clauses 4.1 (*Loan Arrangement Fee*), 4.2 (*Ongoing Fees*), 8.2 (*No Set-Off, Counterclaim or Withholding; Gross-Up*), 8.3 (*Withholding on Notes*), 13.1 (*Indemnification*), 15.1 (*Stamp Duties*) and 13.5 (*Currency Indemnity*) shall survive the execution and delivery of this Agreement, the issue of the Notes and repayment of the Loan, in each case, by the Borrower.

## **15. GENERAL**

### **15.1 Stamp Duties**

- (a) The Borrower shall pay all stamp, registration and documentary taxes or similar charges (if any) imposed on the Borrower by any person in the Russian Federation or the Netherlands (or any other Qualifying Jurisdiction in which the Lender may be resident for tax purposes) which may be payable or determined to be payable in connection with the execution, delivery, performance, enforcement, or admissibility into evidence of this Agreement and shall indemnify the Lender against any and all costs, penalties and expenses properly documented which may be incurred or suffered by the Lender with respect to, or resulting from, delay or failure by the Borrower to pay such taxes or similar charges.
- (b) The Borrower agrees that if the Lender incurs a liability to pay any stamp, registration and documentary taxes, duties or similar charges imposed by any person in the Russian Federation or the Netherlands (or any other Qualifying Jurisdiction in which the Lender may be resident for tax purposes) which may be payable or determined to be payable in connection with the execution, delivery, performance, enforcement, or admissibility into evidence of this Agreement and any documents related thereto as well as the documents related to the Notes, the Borrower shall reimburse the Lender on demand an amount equal to such stamp or other documentary taxes, duties or similar charges and shall indemnify the Lender against any and all costs and expenses properly documented and connected with the payment of such amounts.

### **15.2 Waivers**

No failure to exercise and no delay in exercising, on the part of the Lender or the Borrower, any right, remedy, power or privilege hereunder and no course of dealing between the Borrower and the Lender shall operate as a waiver thereof, nor shall any single or partial exercise of any right, remedy, power or privilege preclude any other or further exercise thereof, or the exercise of any other right, remedy, power or privilege. The rights and remedies herein provided are cumulative and not exclusive of any rights, or remedies provided by applicable law.

## **16. NOTICES**

All notices, requests, demands or other communication to or upon the respective parties hereto shall be given or made in the English language by courier or fax (in the case of the Lender only) or electronic communication to the party to which such notice, request, demand or other communication is required or permitted to be given or made under this Agreement addressed as follows:

### **16.1 if to the Borrower, to it at:**

ORIENT EXPRESS BANK  
Svyatogo Innokentiya per, 1  
675000, Blagoveshensk

Amur region, Russia

Facsimile: + 7 495 780 5105  
E-mail: astsakunov@express-bank.ru  
Attention: Alexander Tsakunov, Director, Corporate Finance Department

**16.2 if to the Lender, to it at:**

SCI Finance B.V.  
Herikerbergweg 238  
1101 CM Amsterdam Zuidoost  
The Netherlands

Facsimile: +31 20 673 0016  
Attention: the Directors

**16.3 if to the Trustee, to it at:**

Citicorp Trustee Company Limited  
Citigroup Centre  
Canada Square  
Canary Wharf  
London E14 5LB  
United Kingdom

Facsimile: +44 207 500 5877  
Attention: The Directors

or to such other postal address, electronic address or fax number as any party may hereafter specify in writing to the other.

Any notice, request, demand or other communication given by courier shall be conclusively deemed to have been given on the day of actual delivery thereof and, if given by fax or electronic communication, on the day of transmission thereof, in each case if given during the normal business hours of the recipient, and on the Business Day during which such normal business hours next occur if not given during such hours on any day.

For the avoidance of doubt, notices provided to the Trustee hereunder by the Borrower or the Lender are provided to the Trustee for information purposes only. The receipt of such notices by the Trustee shall not oblige the Trustee to take any action in respect thereof. In particular, but without limitation, the Trustee is not obliged to deliver such notices to the Noteholders.

**17. ASSIGNMENT**

**17.1 General**

This Agreement shall inure to the benefit of and be binding upon the parties, their respective successors and any permitted assignee or transferee of some or all of a party's rights or obligations under this Agreement. Any reference in this Agreement to any party shall be construed accordingly and, in particular, references to the exercise of rights, benefits and discretions by, and the delivery of any notices or information to, the Lender following the enforcement of the security and/or assignment referred to in Clause 17.3 below, shall be references to the exercise of such rights, benefits or discretions by, and the delivery of any notices or information to, the Trustee (as Trustee). Notwithstanding the foregoing, the Trustee shall not be entitled to participate in any discussions between the Lender and the

Borrower or any agreements of the Lender or the Borrower pursuant to Clause 8.4 (*Reimbursement*) or Clause 11 (*Change in Law; Increase in Cost*).

#### 17.2 **Assignment by the Borrower**

The Borrower shall not assign or transfer all or any part of its rights or obligations hereunder to any other party.

#### 17.3 **Assignment by the Lender**

- (a) The Lender may assign or transfer, in whole or in part, on or at any time after the date of this Agreement, any of its rights and benefits under this Agreement (i) with the prior written consent of the Borrower, to a company located in a Qualifying Jurisdiction and/or (ii), in connection with the Notes, and, in each case by way of first fixed charge granted by the Lender and the absolute assignment by the Lender to the Trustee (as Trustee) of the Lender's rights and benefits under this Agreement, and in each case under (ii) hereof, the Borrower agrees that it will, on or prior to the Closing Date, acknowledge in writing such charge and assignment.
- (b) Any references in this Agreement to any such assignee or transferee pursuant to Clause 17.3 (*Assignment by the Lender*) shall be construed accordingly and, in particular, references to the rights, benefits and obligations hereunder of the Lender, following such assignment or transfer, shall be references to such rights, benefits or obligations by the assignee or transferee.

### 18. **GOVERNING LAW**

#### 18.1 **Choice of Law**

This Agreement, including the arbitration agreement at Clause 19 (*Jurisdiction*) and any non-contractual obligations arising out of or in connection with it shall be governed by, and construed in accordance with, the laws of England.

### 19. **JURISDICTION**

The parties irrevocably agree that any dispute or claim arising out of, under or connected with this Agreement, including a dispute or claim as to the validity, existence or termination of this Agreement or the consequences of its nullity and/or this Clause 19 (*Jurisdiction*) or any non-contractual obligations arising out of or in connection with this Agreement (a "**Dispute**"), shall be referred to and finally settled by arbitration in London, England, conducted in the English language by three arbitrators, in accordance with the Arbitration Rules of the LCIA (formerly the London Court of International Arbitration) as in force at the date of this Agreement (the "**LCIA Rules**"), which rules are deemed to be incorporated by reference into this Clause 19 (*Jurisdiction*), save that Article 5.6 of the LCIA Rules shall be amended as follows: "unless the parties agree otherwise, the third arbitrator, who shall act as chairman of the tribunal, shall be nominated by the two arbitrators nominated by or on behalf of the parties. If he is not so nominated within 30 days of the date of nomination of the later of the two party-nominated arbitrators to be nominated, he shall be chosen by the LCIA. The parties agree to exclude the jurisdiction of the English court under Sections 45 and 69 of the Arbitration Act 1996.

### 20. **CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999**

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

**21. WAIVER OF IMMUNITY**

To the extent that the Borrower or the Lender may, in relation to any Dispute, claim in any jurisdiction, for itself or its assets or revenues, immunity from the jurisdiction of any court or tribunal, service of process, injunctive or other interim relief, or any process for execution of any award or judgment against its property, the Borrower and the Lender irrevocably waive such immunity.

**22. COUNTERPARTS**

This Agreement may be executed in any number of counterparts and all of such counterparts taken together shall be deemed to constitute one and the same agreement.

**23. LANGUAGE**

This Agreement has been executed in the English language. Although this Agreement may be translated into the Russian language, such Russian version of this Agreement would be for information only. In the event of any discrepancies between the English and Russian versions of this Agreement, or any dispute regarding the interpretation of any provision in the English or Russian versions of this Agreement, the English version of this Agreement shall prevail and any question of interpretation shall be addressed solely in the English language. Each communication and document made or delivered by one party to another pursuant to this Agreement shall be in the English language or accompanied by a translation thereof into English certified by an officer of the Person making or delivering the same as being a true and accurate translation thereof.

**24. AMENDMENTS**

This Agreement may not be varied unless: (i) it is in writing signed by the parties; (ii) an amendment agreement (or draft) has been submitted to the CBR; and (iii) prior written consent from the CBR to such amendment has been received.

**25. PARTIAL INVALIDITY**

The illegality, invalidity or unenforceability to any extent of any provision of this Agreement under the law of any jurisdiction shall affect its legality, validity or enforceability in such jurisdiction to such extent only and shall not affect its legality, validity or enforceability under the law of any other jurisdiction, nor the legality, validity or enforceability of any other provision.

**IN WITNESS WHEREOF**, the parties hereto have caused this Agreement to be executed on the date first written above.

For and on behalf of  
**ORIENT EXPRESS BANK**

By:  
Title:



For and on behalf of  
**SCI FINANCE B.V.**

By:  
Title:

By:  
Title:

**IN WITNESS WHEREOF**, the parties hereto have caused this Agreement to be executed on the date first written above.

For and on behalf of  
**ORIENT EXPRESS BANK**

By:  
Title:

For and on behalf of  
**SCI FINANCE B.V.**

By:   
Title: TMF Management B.V.  
Managing Director

By: P.T.W. Rutovitz  
Title: Proxyholder A

P.M. Bazen  
Proxy Holder B



**SCHEDULE 1**  
**Form of Write Down Event Notice**

To: SCI FINANCE B.V.

CITICORP TRUSTEE COMPANY LIMITED

From: ORIENT EXPRESS BANK

Dated: [●]

Dear Sirs

**ORIENT EXPRESS BANK - Subordinated Loan Agreement dated [●] (the "Subordinated Loan Agreement")**

1. We refer to the Subordinated Loan Agreement. Terms defined therein shall have the same meaning herein.
2. This is a Write Down Event Notice for the purposes of the Subordinated Loan Agreement.
3. We notify that the Write Down has occurred on [●].
4. *[Specify relevant event(s) constituting the Write Down Event including the relevant Common Equity Tier 1 Capital Ratio as of the relevant Write Down Event Date and/or the nature of the bankruptcy prevention measures the Deposit Insurance Agency has taken a decision to implement as applicable and the grounds for application of such bankruptcy prevention measures in relation to the Borrower]*

for and on behalf of ORIENT EXPRESS BANK signed:

**SCHEDULE 2**  
**Form of Write Down Measure Notice**

To: SCI FINANCE B.V.  
CITICORP TRUSTEE COMPANY LIMITED

From: ORIENT EXPRESS BANK

Dated: [●]

Dear Sirs

**ORIENT EXPRESS BANK - Subordinated Loan Agreement dated [●] (the "Subordinated Loan Agreement")**

1. We refer to the Subordinated Loan Agreement. Terms defined therein shall have the same meaning herein.
2. This is a Write Down Measure Notice for the purposes of the Subordinated Loan Agreement.
3. We confirm that the Write Down Measure Effective Date is [●].
4. [*Specify relevant Write Down Measures being implemented including any Interest Cancellation Amount, Monetary Damages Cancellation Amount and any Write Down Amount and the basis of their calculation*]

for and on behalf of ORIENT EXPRESS BANK signed:

**SCHEDULE 3**  
**Form of Notice on Cancellation of Accrued Interest**

To: SCI FINANCE B.V.  
CITICORP TRUSTEE COMPANY LIMITED

From: ORIENT EXPRESS BANK

Dated: [●]

Dear Sirs

**ORIENT EXPRESS BANK - Subordinated Loan Agreement dated [●] (the "Subordinated Loan Agreement")**

- 1 We refer to the Subordinated Loan Agreement. Terms defined therein shall have the same meaning herein.
- 2 This is a Notice on Cancellation of Accrued Interest for the purposes of the Subordinated Loan Agreement.
- 3 [*Specify interest amount subject to cancellation and the Interest Payment Date with respect to which the payment of interest is being cancelled*]

for and on behalf of ORIENT EXPRESS BANK signed: