

29 November 2013

ORIENT EXPRESS BANK

as Borrower

and

SCI FINANCE B.V.

as Lender

SUBORDINATED LOAN AGREEMENT

LATHAM & WATKINS

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CONTENTS

Clause	Page
1. DEFINITIONS AND INTERPRETATION	1
2. LOAN	7
3. DRAWDOWN	8
4. FEES.....	8
5. SUBORDINATION OF THE LOAN.....	8
6. INTEREST	11
7. REPAYMENT AND PREPAYMENT	12
8. PAYMENTS	14
9. REPRESENTATIONS AND WARRANTIES	17
10. CONDITIONS PRECEDENT AND REPORTS.....	19
11. CHANGE IN LAW; INCREASE IN COST	20
12. EVENTS OF DEFAULT	21
13. INDEMNITY	22
14. SURVIVAL.....	23
15. GENERAL	23
16. NOTICES.....	24
17. ASSIGNMENT.....	25
18. GOVERNING LAW	26
19. JURISDICTION.....	26
20. CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999	26
21. WAIVER OF IMMUNITY	26
22. COUNTERPARTS.....	26
23. LANGUAGE.....	26
24. AMENDMENTS	27
25. PARTIAL INVALIDITY	27
26. CBR PRIOR CONSENT	27
SCHEDULE 1 FORM OF TRIGGER EVENT NOTICE.....	29
SCHEDULE 2 FORM OF LOSS ABSORPTION MEASURE NOTICE.....	30

THIS SUBORDINATED LOAN AGREEMENT is dated 29 November 2013 and made between:

- (1) **ORIENT EXPRESS BANK**, an open 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**");
- (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 Zuidoost (the "**Lender**", such term to include any successor lender under this Agreement).

WHEREAS:

- (A) The Lender has at the request of the Borrower agreed to make available to the Borrower a loan in the amount of US\$125,000,000 on the terms and subject to the conditions of this Agreement.
- (B) 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 Loan shall be subordinated to the claims of Senior Creditors of the Borrower in accordance with the Federal Law "On Insolvency (Bankruptcy) of Credit Organisations" No. 40-FZ dated 25 February 1999 (as amended) and this Agreement.
- (C) The Borrower intends the Loan to be qualified as 215-P Tier 2 Capital (as defined below), to the extent applicable, and 395-P Tier 2 Capital (as defined below).
- (D) 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:

"**215-P Disapplication Date**" means the date on which the provisions of Regulation No. 215-P in relation to 215-P Tier 2 Capital cease to be in effect.

"**215-P Tier 2 Capital**" means additional capital (*dopolnitelny kapital*) of the Borrower within the meaning of paragraph one of Section 3.11.1 of Regulation No. 215-P.

"**395-P Tier 2 Capital**" means additional capital (*dopolnitelny kapital*) of the Borrower within the meaning given to it in Regulation No. 395-P.

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

"**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 this Agreement as originally executed or as it may be amended from time to time.

"**Approval Date**" means the date falling 120 days after the Closing Date.

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

"**Bankruptcy Law**" means Federal Law "On Insolvency (Bankruptcy) of Credit Organisations" No. 40-FZ dated 25 February 1999 (as amended).

"**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 Increase Date**" means a day on which the Loan is included in the own funds of the Borrower as 395-P Tier 2 Capital in accordance with Regulation 395-P and, to the extent applicable, 215-P Tier 2 Capital in accordance with Regulation 215-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.

"**Common Equity Tier 1 Capital**" means, as of any Reporting Date, the aggregate amount, in Russian Roubles, of items that constitute common equity tier 1 capital (*bazoviy kapital osnovnogo kapitala*) of the Borrower as of such Reporting Date, 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.

"**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.

"Civil Code of the Russian Federation" means Part 1 of the Civil Code of the Russian Federation which came into effect on 1 January 1995, Part 2 of the Civil Code of the Russian Federation which came into effect on 1 March 1996, Part 3 of the Civil Code of the Russian Federation which came into effect on 1 March 2002 and Part 4 of the Civil Code of the Russian Federation which came into effect on 1 January 2008.

"Closing Date" means 29 November 2013.

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

"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 inclusion into own funds of the Borrower as (i) 215-P Tier 2 Capital if such conclusion is issued by the CBR prior to the 215-P Disapplication Date and (ii) 395-P Tier 2 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.

"Indebtedness" means any indebtedness, in respect of any Person for, or in respect of, moneys borrowed or raised including, without limitation, any amount raised by acceptance under any acceptance credit facility; any amount raised pursuant to any note purchase facility or the issue of bonds, notes, debentures, loan stock or any similar instrument; any amount raised pursuant to any issue of shares which are expressed to be redeemable; any amount raised under any other transaction (including any forward sale or purchase agreement or repurchase agreement) having the economic effect of a borrowing; and the amount of any liability in respect of any guarantee or indemnity for any of the items referred to above.

"Interest Cancellation Amount" means the amount of interest determined by the Borrower as necessary to be cancelled (in conjunction with any other interest cancellation measures taken in respect of Parity Loss Absorption Instruments) in order to immediately remedy the Trigger Event, or if this is not possible, the full amount of interest, in each case accrued to (but excluding) the Loss Absorption Effective Date.

"Interest Cancellation Measure" has the meaning given to it in Clause 5.4 (*Loss Absorption*).

"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*), which shall not be higher than 15 per cent. per annum.

"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.

"Lien" means any mortgage, pledge, encumbrance, easement, restriction, covenant, right-of-way, servitude, lien, charge or other security interest or adverse claim of any kind (including, without limitation, anything analogous to any of the foregoing under the laws of any jurisdiction and any conditional sale or other title retention agreement or lease in the nature thereof).

"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*).

"Loss Absorption Effective Date" means the date as of which the Loss Absorption Measures become effective and which shall occur no later than 30 Moscow Business Days after the relevant Reporting Date on which the Trigger Event has occurred.

"Loss Absorption Measures" means an Interest Cancellation Measure and/or a Principal Write Down Measure.

"Loss Absorption Measure Notice" means a notice which shall be given by the Borrower to the Lender and the Trustee and which shall specify (i) the Loss Absorption Effective Date; and (ii) the Loss Absorption 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.

"Material Adverse Effect" means a material adverse effect on (a) the business, operations, property, financial condition or business prospects of the Borrower; (b) the Borrower's ability to perform or comply with its obligations under this Agreement or (c) the validity or enforceability of this Agreement or the rights or remedies of the Lender hereunder.

"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, to be issued by the Lender (in its capacity as an issuer).

"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.

"Original Principal Amount" means, in respect of the Loan, its principal amount on Closing Date not taking into account implementation of any Principle Write Down Measure or any other write down or cancellation in accordance with the terms of this Agreement.

"Outstanding Principal Amount" means, in relation to the Loan, the Original Principal Amount, 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.

"Parity Loss Absorption Instruments" means obligations (other than the Loan) incurred directly or indirectly by the Borrower and the claims (a) which are subordinated to rank *pari passu* with the claims of the Lender, (b) which contain a similar cancellation or write-down mechanism (whether or not that mechanism also provides for subsequent write-up or reinstatement of such obligations) which is triggered upon the occurrence of the same event as that which triggers an Interest Cancellation Measure or a Principal Write Down Measure in respect of the Loan and (c) which qualify as 395-P Tier 2 Capital.

"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.

"Potential Event of Default" means any event or circumstances which would, with the giving of notice, lapse of time, issue of a certificate and/or fulfilment of any other requirement become an Event of Default.

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

"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.

"Ratio" means, as of any Reporting Date, the Common Equity Tier 1 Capital as of such Reporting Date, divided by the Risk Weighted Assets as of such Reporting Date, expressed as a percentage, determined by the Borrower pursuant to Regulation No. 395-P for the purposes of a Trigger Event.

"Reporting Date" means the first day of each month in respect of which the Borrower is required to report the Ratio to the CBR.

"Regulation 215-P" means CBR Regulation No. 215-P dated 10 February 2003 "On the Method of Determination of Own Funds (Capital) of Credit Organisations", as amended, supplemented or replaced from time to time.

"Regulation 395-P" means CBR Regulation No. 395-P dated 28 December 2012 "On the Method of Determination of Amount and Adequacy of Own Funds (Capital) of Credit Organisations (Basel III)", as amended, supplemented or replaced from time to time.

"Repayment Date" means 29 May 2019.

"Russian Rouble" means the lawful currency of Russia.

"Risk Weighted Assets" means, as of any Reporting Date, the aggregate amount, in Russian Roubles, of risk-weighted assets of the Borrower as of such Reporting Date, as determined by the Borrower pursuant to Regulation No. 395-P for the purposes of a Trigger Event.

"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) creditors of the Borrower whose claims are in respect of the Capital Stock of the Borrower; 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.

"Stabilization Law" means Federal Law No. 175-FZ, "On additional measures for the strengthening of the stability of the banking system during the period until 31 December 2014", dated 27 October 2008, as amended, supplemented or replaced from time to time.

"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.

"Trigger Event" means either of the following:

- (a) any time at which the Ratio falls below 2.0 per cent. as of the Reporting Date, or
- (b) in accordance with the Stabilization Law, the Deposit Insurance Agency commences implementation of a plan of measures for prevention of bankruptcy of banks participating in the system of mandatory insurance of deposits of individuals in respect of the Borrower, such plan to be agreed with the CBR.

"Trigger Event Notice" means a notice which shall be given by the Borrower to the Lender and the Trustee and which shall (i) state that the Trigger Event has occurred and (ii) specify the event(s) constituting the Trigger Event including the relevant Ratio as of the relevant Reporting Date and/or the nature of the bankruptcy prevention measures that the Deposit Insurance Agency has committed to, as applicable, and the grounds for application of such bankruptcy prevention measures in relation to the Borrower, in each case being substantially in the form set out in Schedule I hereto.

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

"**Write Down Amount**" means the part of the Outstanding Principal Amount of the Loan determined by the Borrower as necessary to be written down (in conjunction with any other write down or conversion of, or other write down measures taken in respect of, any Parity Loss Absorption Instruments) in order to immediately remedy the Trigger Event, or if this is not possible, the full Outstanding Principal Amount of the Loan.

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

1.2 **Interpretation**

- (a) Unless the context or the express provisions of this Agreement otherwise require, the following shall govern the interpretation of this Agreement.
- (b) All references to "**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**

2.1 **Loan**

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.

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 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 a risk of disposal of such assets.

3. DRAWDOWN

3.1 Drawdown

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.

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 will be subordinated upon the occurrence of a Bankruptcy Event to the claims of all Senior Creditors in accordance with the Bankruptcy Law and will 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 (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

Except as otherwise provided herein, no early termination of obligations under this Agreement (by way of set off or otherwise) shall be permitted without the prior written consent of the CBR. Subject to applicable law, the Lender shall not exercise or claim any right of set-off in respect of any amount owed to it arising under or in connection with this Agreement by the Borrower, and the Lender shall, by virtue of its execution of this Agreement, be deemed to have waived all such rights of set-off.

5.4 Loss Absorption

- (a) Upon the occurrence of a Trigger Event, which is continuing on the Loss Absorption Effective Date:
- (i) any accrued and unpaid interest payable in respect of the Loan shall not be repaid and shall not accumulate, by way of the full or partial termination of the Borrower's obligations hereunder to repay the amounts of accrued and unpaid interest under the Loan to the extent required to remedy a Trigger Event (such measure being an "**Interest Cancellation Measure**"); and, subject to sub-clause (b) of this Clause 5.4 (*Loss Absorption*),
 - (ii) the Borrower's obligations hereunder to repay the principal amount of the Loan shall be terminated in full or in part to the extent required to remedy a Trigger Event (such measure being a "**Principal Write Down Measure**").
- (b) If a Trigger Event is continuing on the Loss Absorption Effective Date, the Borrower shall on the Loss Absorption Effective Date:
- (i) cancel the Interest Cancellation Amount for the purposes of the Interest Cancellation Measure; and
 - (ii) write down the Write Down Amount for the purposes of the Principal Write Down Measure,

provided that the Principal Write Down Measure shall be applied by the Borrower only if after cancellation of the Interest Cancellation Amount accrued as of the Loss Absorption Effective Date in full under the Interest Cancellation Measure, the Trigger Event would still be continuing.

Subject to this Clause 5.4 (*Loss Absorption*), the Borrower shall determine the Interest Cancellation Amount and the Write Down Amount in its sole discretion and shall set out its determination thereof in the Loss Absorption Measure Notice together with the then remaining outstanding principal amount of the Loan (if any) and the then remaining accrued but unpaid interest (if any) following the implementation of the relevant Loss Absorption Measures in accordance with this Clause 5.4 (*Loss Absorption*). The Borrower's determination of the Interest Cancellation Amount and the Write Down Amount shall in the absence of fraud or manifest error be binding on all parties.

- (c) The Borrower shall provide to the Lender and the Trustee no later than:
- (i) two (2) Business Days after the Reporting Date on which the Trigger Event has occurred, the Trigger Event Notice. The Borrower shall also provide a copy of the Trigger Event Notice to its shareholders; and

- (ii) two (2) Business Days prior to the relevant Loss Absorption Effective Date, the Loss Absorption Measure Notice.
- (d) A Trigger Event may occur on more than one occasion and the accrued interest may be cancelled and the Loan may be written down in accordance with this Clause 5.4 (*Loss Absorption*), on more than one occasion.
- (e) Following any write-down of the Loan in accordance with this Clause 5.4 (*Loss Absorption*), references in this Agreement to the outstanding principal amount of the Loan (howsoever described) shall be construed as references to the Outstanding Principal Amount. If the principal amount of the Loan is written down to zero, this Agreement shall cease to have effect. Once the principal amount of the Loan has been written down in accordance with this Clause 5.4 (*Loss Absorption*), the relevant amount written down shall not be restored in any circumstances, including where the relevant Trigger Event ceases to continue.
- (f) Any interest payment that has been cancelled in accordance with this Clause 5.4 (*Loss Absorption*), shall not accumulate or be payable at any time thereafter, including where the relevant Trigger Event is no longer continuing. No interest shall accrue from the Loss Absorption Effective Date and as long as a Trigger Event is continuing.
- (g) From the day when the Trigger Event has occurred and until the Trigger Event ceases to continue, the Borrower shall not make any payments of interest or Outstanding Principal Amount of the Loan, and no interest shall accrue on such unpaid amounts. The Borrower shall immediately notify the Lender and the Trustee in writing on the cessation of any Trigger Event.
- (h) The principal amount of the Loan may only be written down by the Borrower in accordance with this Clause 5.4 (*Loss Absorption*) pro rata with other Parity Loss Absorption Instruments. Accrued interest on the Loan may only be cancelled by the Borrower in accordance with this Clause 5.4 (*Loss Absorption*) pro rata with interest on other Parity Loss Absorption Instruments. If, in connection with any Loss Absorption Measure, any relevant proportion must be determined for pro-rating such Loss Absorption Measure amongst the Loan and any Parity Loss Absorption Instruments, the accrued interest and principal amount of any obligation (including the Loan and any Parity Loss Absorption 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 the applicable accounting standards.
- (i) Notwithstanding any other provision of this Agreement, any Loss Absorption Measure under this Clause 5.4 (*Loss Absorption*) shall not constitute an Event of Default (or a Potential Event of Default) or a default by the Borrower under this Agreement and shall not oblige the Borrower to indemnify the Lender in accordance with Clause 13 (*Indemnity*).

5.5 Further Undertakings

In the event that the implementation of the Loss Absorption Measures set out in Clause 5.4(a) proves insufficient to rectify the grounds which caused the occurrence of the Trigger Event, the Borrower shall, and shall ensure that the shareholders of the Borrower will, take all steps necessary to remedy the Trigger Event, including, if applicable, resorting to the measures that may be set out in any support letters provided to the Borrower by one or more of its shareholders.

5.6 Reclassification

If the CBR fails to issue the Final Conclusion to the Borrower by the relevant Approval Date, the claims of the Lender against the Borrower in respect of principal of and interest on the Loan will rank at least *pari passu* with the claims of Senior Creditors and the Loan shall be treated as senior in priority to any unsecured subordinated debt or Capital Stock of the Borrower and Clauses 5.1, 5.2, 5.3, 5.4, 5.5, 5.7, 7.1(b) and the requirement to obtain prior written consent of the CBR under Clauses 7.1(c), 7.1(d), 7.2(a), 7.5, 24 and 26 shall no longer apply.

5.7 Capital Treatment

If the Loan is to be treated as 215-P Tier 2 Capital (prior to the 215-P Disapplication Date) and 395-P Tier 2 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 such Final Conclusion.

6. INTEREST

6.1 Interest Rate

The Borrower will (unless the Loan has been prepaid in accordance with Clause 7 (*Repayment and Prepayment*)) 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 of 12 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

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) the Repayment Date (or any date of which the Loan is prepaid pursuant to Clauses 7.2 (*Prepayment at the Option of the Borrower, by Reason of Change in Legislation, Taxes or Increased Costs*), 7.3 (*Special Prepayment if the Loan is not Approved for Inclusion in the*

Own Funds of the Borrower as Tier 2 Capital) or 12.2 (*Winding-up*), or upon implementation of Principal Write Down Measure in accordance with Clause 5.4 (*Loss Absorption*) 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.

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).

7. **REPAYMENT AND PREPAYMENT**

7.1 **Repayment; no Prepayment or Termination**

Except as otherwise provided herein,

- (a) the Borrower shall repay the Loan not later than 10:00 am (New York City time) one (1) Business Day prior to the Repayment Date together with any accrued and unpaid interest to (but excluding) the Repayment Date and any other sums due and payable by the Borrower pursuant to this Agreement;
- (b) the Borrower shall not prepay all or any part of the Loan and/or any interest accrued on the Loan during the period from (and including) the Capital Increase Date to (and including) the date falling 5 (five) years after the Capital Increase Date (such period, the "**No Prepayment Period**") save in the circumstances set out in Clauses 7.2 (*Prepayment at the Option of the Borrower, by Reason of Change in Legislation, Taxes or Increased Costs*) and 7.3 (*Special Prepayment if the Loan is not Approved for Inclusion in the Own Funds of the Borrower as Tier 2 Capital*), and in any event shall not prepay the Loan at any time during the No Prepayment Period for so long as the Loan constitutes 215-P Tier 2 Capital prior to the 215-P Disapplication Date or 395-P Tier 2 Capital;
- (c) the Borrower shall not prepay all or any part of the Loan and/or any interest accrued on the Loan unless the Parties agree otherwise and only with the prior written consent of the CBR; and
- (d) this Agreement may not be terminated earlier than the Repayment Date unless the parties agree otherwise and except with the prior written consent of the CBR.

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

- (a) Notwithstanding the provisions of Clause 7.1 (*Repayment; No Prepayment or Termination*), the Borrower, at its option, and with the prior written consent of the CBR, may prepay the Loan:
- (i) if at any time, after the Capital Increase Date, by reason of the introduction of any change (including a change in the interpretation or application of), Regulation No. 215-P, Regulation 395-P or other applicable requirements of the CBR, the Loan would cease to qualify in whole but not in part (i) prior to the 215-P Disapplication Date as 215-P Tier 2 Capital and 395-P Tier 2 Capital and (ii) from the 215-P Disapplication Date as 395-P Tier 2 Capital. For the avoidance of doubt, the disapplication of Regulation 215-P on the 215-P Disapplication Date shall not by itself give grounds for prepayment under this Clause 7.2 (*Prepayment at the Option of the Borrower, by Reason of Change in Legislation, Taxes or Increased Costs*);
 - (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 prepayment together with an Officer's Certificate confirming the existence of the relevant circumstances permitting such a prepayment shall be given by the Borrower to the Lender, with a copy to the Trustee, not less than 30 days prior to such prepayment 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 prepayment date specified in such notice to prepay the Loan (in whole but not in part) at the principal amount thereof, together with interest accrued to (but excluding) the date of prepayment and all other sums payable by the Borrower pursuant to this Agreement in relation to the prepaid amount.

7.3 **Special Prepayment if the Loan is not Approved for Inclusion in the Own Funds of the Borrower as Tier 2 Capital**

Notwithstanding the provisions of Clause 7.1 (*Repayment; no Prepayment or Termination*), 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 prepayment date, prepay the Loan in whole (but not in part) at 101 per cent. of the principal amount thereof, together with interest accrued to (but excluding) such prepayment date not later than 10:00 am (New York City time) one (1) Business Day prior to such

prepayment date and all other sums payable by the Borrower pursuant to this Agreement in relation to the prepaid amount.

7.4 **Provisions Exclusive**

The Borrower shall not prepay or repay all or any part of the Loan except in accordance with the express terms of this Agreement. Any amount prepaid 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 prepayment of the Loan in accordance with Clause 7.2 (*Prepayment at the Option of the Borrower, by Reason of Change in Legislation, Taxes or Increased Costs*) or the Repayment Date (as the case may be), 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 hereof 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 prepay 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

(*Prepayment at the Option of the Borrower, by Reason of Change in Legislation, Taxes or Increased Costs*) and 7.3 (*Special Prepayment if the Loan is not Approved for Inclusion in the Own Funds of the Borrower as 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 Ratio as of the latest Reporting Date.

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. EVENTS OF DEFAULT

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 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 Bankruptcy 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 ispoleninya 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.

12.3 Notice of Event of Default

The Borrower shall deliver to the Lender and the Trustee, within 10 days after becoming aware thereof, written notice of any Event of Default, 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.

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 or prepayment 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, 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.

26. CBR PRIOR CONSENT

- (a) Pursuant to the provisions of Clauses 7.1 (*Repayment; no Prepayment or Termination*), 7.2 (*Prepayment at the Option of the Borrower, by Reason of Change in Legislation, Taxes or Increased Costs*), and Clause 7.3 (*Special Prepayment if the Loan is not Approved for Inclusion in the Own Funds of the Borrower as Tier 2 Capital*) of this Agreement, no prepayment of the principal and (or) interest under the Loan Agreement (in whole or in part) shall be permitted without the prior written consent of the CBR;
- (b) Pursuant to the provisions of Clause 24 (*Amendments*) of this Agreement, no amendment, modification or waiver to this Agreement shall be permitted without the prior written consent of the CBR;
- (c) No early termination of this Agreement shall be permitted without the prior written consent of the CBR; and
- (d) No early termination of obligations under this Agreement (by way of set off or otherwise) shall be permitted without the prior written consent of the CBR.

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: S.N.Vlasov
Title: Chairman of the Management Board



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
SCIFINANCE B.V.

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

By:
Title:

SCHEDULE 1
Form of Trigger 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 Trigger Event Notice for the purposes of the Subordinated Loan Agreement.
3. We notify that the Trigger Event has occurred on [●].
4. *[Specify relevant event(s) constituting the Trigger Event including the relevant Ratio as of the relevant Reporting Date and/or the nature of the bankruptcy prevention measures the Deposit Insurance Agency has committed to as applicable and the grounds for application of such bankruptcy prevention measures]*

for and on behalf of ORIENT EXPRESS BANK signed:

SCHEDULE 2
Form of Loss Absorption 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 Loss Absorption Measure Notice for the purposes of the Subordinated Loan Agreement.
3. We confirm that the Loss Absorption Effective Date is [●].
4. *[Specify relevant Loss Absorption Measures being implemented including any Interest Cancellation Amount and any Write Down Amount and the basis of their calculation]*

for and on behalf of ORIENT EXPRESS BANK signed: