



**PODER JUDICIÁRIO DO ESTADO DO RIO DE JANEIRO**

**COMARCA DA CAPITAL  
TERCEIRA VARA EMPRESARIAL**

**Termo de abertura de volume**

Processo nº 08925f1-55.2013.8.19.0003

Nesta data iniciei o 17<sup>o</sup> volume dos autos acima mencionados, a contar da folha nº 3201

Rio de Janeiro, 3 de Julho de 2014



000201

## RELATÓRIO

Cuida-se de embargos de declaração (fls. 35/36), deduzidos contra o acórdão de fls.28/31, que deu parcial provimento ao agravo de instrumento, para que o Juiz competente, por livre distribuição da Recuperação Judicial das Agravadas, possa nomear o Administrador Judicial de sua confiança, fixando os seus honorários.

Em seu inconformismo, o embargante, alega que no dispositivo do acórdão não consta expressamente se esta Câmara teria reformado a decisão ou anulado por completo a decisão agravada. Dessa forma, requer que seja esclarecido se a decisão agravada foi cassada em sua plenitude.

## VOTO

O artigo 535, do Código de Processo Civil, com a nova redação da Lei nº 8.950/94, estatui caber embargos de declaração quando houver, na sentença ou no acórdão, obscuridade ou contradição, ou quando for omitido ponto sobre o qual deveria se pronunciar o juízo ou o Tribunal.

*In casu*, vertente o acórdão embargado não traz insita contradição, obscuridade, bem como não se omitiu em nenhum de seus pontos.

Em verdade, esta C. Câmara julgou, por unanimidade de votos, o recurso de Agravo de Instrumento nº. 0064637-04.2013.8.19.0000 interposto pela ACCIONA INFRAESTRUTURA S.A. contra a decisão prolatada pelo douto Juízo de Direito da 4ª. Vara Empresarial, tendo como partes Agravadas o mesmo Grupo OSX, determinando a remessa dos autos da Recuperação Judicial daquele Grupo, ora Agravados, por livre





PODER JUDICIÁRIO  
ESTADO DO RIO DE JANEIRO  
DÉCIMA QUARTA CÂMARA CÍVEL



distribuição, a um dos Juízos de Direito das Varas 000202  
Empresariais da Comarca da Capital.

Assim, eventuais divergências de quais sejam os atos que efetivamente devam ser considerados nulos ou modificados deverão ser desenvolvidas ao Juízo competente, que não está obrigado a manter atos decisórios do Juiz considerado incompetente.

Cabe ressaltar que a decisão explicitou claramente seus fundamentos. Desta forma, os argumentos lançados pelo Embargante são absolutamente insuficientes para suportar o pretendido direito.

Este recurso é sede imprópria para manifestar-se o inconformismo com o julgado e obter a sua reforma porque, salvo as hipóteses específicas, nele não se devolve o exame da matéria.

Desse modo, inexistente qualquer relação entre as alegações suscitadas nestes embargos e aquelas matérias que, nos termos do artigo 535, do Código de Processo Civil, podem ser conhecidas pelo Julgador através dos embargos declaratórios.

Não havendo qualquer omissão, contradição ou obscuridade a serem declarados, VOTO NO SENTIDO DE NEGAR PROVIMENTO AO PRESENTE EMBARGOS DECLARATÓRIOS.

Rio de Janeiro, \_\_\_\_\_ de \_\_\_\_\_ de 2014.

**Des. PLÍNIO PINTO COELHO FILHO**  
**Relator**



**CERTIDÃO**

000203

Certifico que não houve interposição de recurso contra o(a) Acórdão/Decisão no Agravo de Instrumento nº **0003415-98.2014.8.19.0000**.

Em, 01 de julho de 2014.

**VERA SAYOKO SHIRAKI**

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**CERTIDÃO**

Certifico que nos autos do Agravo de Instrumento nº **0003415-98.2014.8.19.0000**, em que é agravante **ACCIONA INFRAESTRUTURAS S A** e agravado **OSX BRASIL S A EM RECUPERAÇÃO JUDICIAL REP/P/S/ADMINISTRADOR JUDICIAL E OUTROS**, as custas foram recolhidas corretamente.

Em, 01 de julho de 2014.

**VERA SAYOKO SHIRAKI**





REPÚBLICA FEDERATIVA DO BRASIL  
PODER JUDICIÁRIO

003204

## MALOTE DIGITAL

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Remetente: Vera Sayoko Shiraki

DGJUR - SECRETARIA DA 14 CAMARA CIVEL

TJRJ

Assunto: Ofício nº 1824/2014 - comunica o trânsito em julgado e solicita o cumprimento da resolução nº 11/2008 referente ao AI 0003370-94.2014.8.19.0000.



ESTADO DO RIO DE JANEIRO  
PODER JUDICIÁRIO

000205

**TRIBUNAL DE JUSTIÇA DO ESTADO DO RIO DE JANEIRO  
DÉCIMA QUARTA CÂMARA CÍVEL**

Rio de Janeiro, 01 de julho de 2014.

Ofício nº 1824/2014

Senhor Juiz,

Pelo presente, comunico a Vossa Excelência que não houve interposição de recurso contra o(a) acórdão/decisão prolatado(a) no(a) **AGRAVO DE INSTRUMENTO - CÍVEL nº 0003370-94.2014.8.19.0000** (ação originária nº 0392571-55.2013.8.19.0001), em que são partes **G-COMEX ARAMZÉNS GERAIS LTDA** e **OSX BRASIL S A EM RECUPERAÇÃO JUDICIAL REP/P/S/ADMINISTRADOR JUDICIAL** E OUTROS.

Desta forma, por se tratar de processo eletrônico, solicito a V. Exa. que determine a visualização e impressão das peças a que se refere o **Inciso I do Artigo 1º, da Resolução nº 11/2008, do Órgão Especial do Tribunal de Justiça**, por meio do caminho indicado abaixo<sup>(\*)</sup>, anexando-as à ação originária para prosseguimento.

Respeitosamente,

**ROSANE ROSALVO SANTOS**  
Secretária da 14ª Câmara Cível

\* INTRANET | SERVIÇOS | SISTEMAS | LOGIN E SENHA | CONSULTA PROCESSO ELETRÔNICO |  
NUMERAÇÃO ÚNICA OU ANTIGA

Ao Exmo. Sr. JUIZ DE DIREITO DA COMARCA DE(A) CAPITAL 4 VARA EMPRESARIAL





PODER JUDICIÁRIO  
ESTADO DO RIO DE JANEIRO  
DÉCIMA QUARTA CÂMARA CÍVEL

000206



**AGRAVO DE INSTRUMENTO N.º. 0003370-94.2014.8.19.0000**  
**AGRAVANTE: G-COMEX ARMAZENS GERAIS LTDA.**  
**AGRAVADAS: 1. OSX BRASIL S.A., EM RECUPERAÇÃO JUDICIAL**  
**2. OSX CONSTRUÇÃO NAVAL S.A., EM**  
**RECUPERAÇÃO JUDICIAL**  
**3. OSX SERVIÇOS OPERACIONAIS LTDA.**  
**RELATOR: DES. PLINIO PINTO COELHO FILHO**

**AGRAVO DE INSTRUMENTO. DECISÃO AGRAVADA QUE FIXOU OS HONORÁRIOS OS HONORÁRIOS DO ADMINISTRADOR JUDICIAL DO GRUPO OSX – AGRAVADOS – NO PERCENTUAL DE 0,25% DO TOTAL DOS CRÉDITOS SUJEITOS AO PROCEDIMENTO DE RECUPERAÇÃO, PASSÍVEL DE REAJUSTAMENTO POSTERIOR DE ACORDO COM A CONSOLIDAÇÃO DO PASSIVO. PRETENSÃO DA AGRAVADA NA REDUÇÃO DOS MESMOS COM FULCRO AO ESTATUÍDO PELO ART. 24 DA LEI DE RECUPERAÇÕES E FALÊNCIAS (LEI 11.101/2005). DECISÃO DESTE COLEGIADO NO RECURSO DE A. I. N.º. 0064637-04.2013.8.19.0000, POR UNANIMIDADE DE VOTOS, PARA DETERMINAR A REMESSA DOS AUTOS DA RECUPERAÇÃO JUDICIAL DAS AGRAVADAS, POR LIVRE DISTRIBUIÇÃO, A UM DOS JUÍZOS DE DIREITO DAS VARAS EMPRESARIAIS DA COMARCA DA CAPITAL/RJ. EVENTUAIS DIVERGÊNCIAS DE QUAIS SEJAM OS ATOS QUE EFETIVAMENTE DEVAM SER CONSIDERADOS NULOS DEVERÃO SER DESENVOLVIDAS AO JUÍZO COMPETENTE. RECURSO QUE SE DÁ PARCIAL PROVIMENTO, PARA QUE O JUÍZO COMPETENTE, POR LIVRE**

LSR





**DISTRIBUIÇÃO DA RECUPERAÇÃO JUDICIAL  
DAS AGRAVADAS, POSSA NOMEAR O  
ADMINISTRADOR JUDICIAL DE SUA  
CONFIANÇA, FIXANDO OS SEUS HONORÁRIOS.**

**Vistos, relatados e discutidos** estes autos de Agravo de Instrumento nº. 0003415-98.2014.8.19.0000, em que são, respectivamente, Agravante **G COMEX ARMAZENS GERAIS LTDA.**, e Agravadas **OSX BRASIL S.A.**, em Recuperação Judicial, **OSX CONSTRUÇÃO NAVAL S.A.**, em Recuperação Judicial, e, **OSX SERVIÇOS OPERACIONAIS LTDA.**, em Recuperação Judicial,

**ACORDAM**

Os Desembargadores que integram a 14ª. Câmara Cível do Tribunal de Justiça do Estado do Rio de Janeiro, por maioria de votos, dar parcial provimento ao Recurso para que o Juiz competente, por livre distribuição da Recuperação Judicial das Agravadas, possa nomear o Administrador Judicial de sua confiança, fixando os seus honorários. Vencido o Des. Gilberto Guarino nesta parte mínima, na medida em que preservava a validade, tão somente, dos atos praticados comprovadamente urgentes, visando a não paralisação dos autos de Recuperação Judicial em questão.

**RELATÓRIO**

Cuida-se de recurso de Agravo de Instrumento interposto por G. COMEX ARMAZENS GERAIS LTDA. contra decisão proferida pelo douto Juízo de Direito da 4ª. Vara Empresarial da Comarca da Capital, nos autos de pedido de RECUPERAÇÃO JUDICIAL Nº.







0392571-55.2013.8.19.0001, que fixou os honorários do Administrador Judicial do Grupo OSX – DELLOITTE TOUCHE TCHMATSU – no percentual de 025% do valor total dos créditos sujeitos ao procedimento de recuperação das Agravadas, com possibilidade de reajustamento posterior de acordo com a consolidação do passivo.

Aduz em suas razões a necessidade de redução do valor dos honorários arbitrados na decisão guerreada (0,25%), a fim de adotar um critério objetivo a alcançar a proporcionalidade entre os honorários e o trabalho a ser desempenhado pelo Administrador Judicial (fls. 02/05).

Instada a se pronunciar, opinou a ilustre Procuradora de Justiça, às fls. 14/19, pelo não conhecimento do presente recurso ou, assim não entendendo, pugnano pelo seu provimento.

É o breve Relatório.

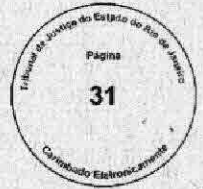
### V O T O

Conheço do Agravo de Instrumento que preenche os requisitos extrínsecos e intrínsecos de admissibilidade recursal.

Este mesmo Colegiado, em sessão, julgou, por unanimidade de votos, o recurso de Agravo de Instrumento nº. 0064637-04.2013.8.19.0000 interposto pela ACCIONA INFRAESTRUTURA S.A. contra a decisão prolatada pelo douto Juízo de Direito da 4ª. Vara Empresarial da Comarca da Capital, tendo como partes Agravadas o mesmo Grupo OSX, em Recuperação Judicial, determinando a remessa dos autos da Recuperação Judicial daquele Grupo, ora Agravados, por livre distribuição, a um dos Juízos de Direito das Varas Empresariais da Comarca da Capital.



000209



**TRIBUNAL DE JUSTIÇA DO ESTADO DO RIO DE JANEIRO  
DÉCIMA QUARTA CÂMARA CÍVEL**

**AGRAVO DE INSTRUMENTO Nº 0003370.2014.8.19.0000**

**AGRAVANTE:** G-COMEX ARMAZÉNS GERAIS LTDA.

**AGRAVADAS:** OSX BRASIL S/A. EM RECUPERAÇÃO JUDICIAL, OSX CONSTRUÇÃO NAVAL S/A. EM RECUPERAÇÃO JUDICIAL, OSX SERVIÇOS OPERACIONAIS LTDA. EM RECUPERAÇÃO JUDICIAL

**VOTO VENCIDO**

01. Votei vencido em mínima parte, discordando da douta maioria apenas no que tange à preservação da validade de todos os atos comprovadamente urgentes e praticados, desde que fundamentais à não paralisação do procedimento de recuperação judicial em foco.

02. Isso porque, tal como fundamentado nos autos do **Agravo de Instrumento n.º 0064637-04.2013.8.19.0000**, de minha relatoria, que foi interposto também pela ora agravante, destaquei a necessidade de adoção da medida ponderando os princípios da celeridade e da economia processual, bem como a finalidade da recuperação judicial (art. 47 da Lei n.º 11.101/2005), sem olvidar da fase atual em que se encontra o procedimento concursal.

03. A anulação e repetição de atos processuais que hajam, na realidade, sido praticados sob urgência, por essenciais e necessários à tramitação do feito recuperatório, agrava a situação do GRUPO OSX, aumentando-lhe o volume de endividamento, e, por outro lado, prejudica a principal pretensão dos credores, que consiste no recebimento de seus créditos e se caracteriza pela falta de interesse na decretação de falência da devedora.

04. Observa-se, porém, que o plano de recuperação ainda não foi, no caso, sequer apresentado, não havendo por que nomear-se o





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administrador, antes do julgamento dos agravos, já que, liminarmente, fora concedido efeito suspensivo simples ao **Agravo de Instrumento n.º 0064637-04.2013.8.19.0000**.

05. Ficam assim resumidos os motivos que me levaram a abrir mínima divergência, mais de coloração redacional, com o de toda sorte culto voto vencedor.

Rio de Janeiro, 19 de fevereiro de 2014.

**Desembargador GILBERTO GUARINO**

**2º Vogal, vencedor**





PODER JUDICIÁRIO  
ESTADO DO RIO DE JANEIRO  
DÉCIMA QUARTA CÂMARA CÍVEL

003211



**EMBARGOS DE DECLARAÇÃO NO AGRAVO DE INSTRUMENTO Nº: 0003370-94.2014.8.19.0000**  
**EMBARGANTE: G-COMEX ARMAZENS GERAIS LTDA**  
**EMBARGADO: OSX BRASIL S.A EM RECUPERAÇÃO JUDICIAL E OUTROS**  
**RELATOR: Desembargador PLÍNIO PINTO COELHO FILHO**

EMBARGOS DE DECLARAÇÃO. ALEGAÇÃO DE OMISSÃO DO ACÓRDÃO QUE DEU PARCIAL PROVIMENTO AO AGRAVO DE INSTRUMENTO. INEXISTÊNCIA DE OMISSÃO, CONTRADIÇÃO OU OBSCURIDADE A ENSEJAR A OPOSIÇÃO DOS PRESENTES ACLARATÓRIOS. NÃO PODE SER ACOLHIDA PRETENSÃO QUE, SOB O RÓTULO DE EMBARGOS DECLARATÓRIOS, PRETENDE SUBSTITUIR O ACÓRDÃO POR OUTRO CUJOS TERMOS JÁ FORAM APRECIADOS. OS EMBARGOS DECLARATÓRIOS SÃO APELOS DE INTEGRAÇÃO, NÃO DE SUBSTITUIÇÃO. NEGA-SE PROVIMENTO AO RECURSO.

## ACÓRDÃO

**VISTOS**, relatados e discutidos estes autos, em Embargos de Declaração onde é Embargante **G-COMEX ARMAZENS GERAIS LTDA** sendo Embargado **OSX BRASIL S.A EM RECUPERAÇÃO JUDICIAL e OUTROS**

**ACORDAM** os Desembargadores integrantes da Décima Quarta Câmara Cível do Tribunal de Justiça do Estado do Rio de Janeiro, por unanimidade de votos em conhecer e negar provimento aos presentes embargos declaratórios.







## RELATÓRIO

Cuida-se de embargos de declaração (fls. 34/35), deduzidos contra o acórdão de fls. 27/30, que deu parcial provimento ao agravo de instrumento, para que o Juiz competente, por livre distribuição da Recuperação Judicial das Agravadas, possa nomear o Administrador Judicial de sua confiança, fixando os seus honorários.

Em seu inconformismo, o embargante, alega que no dispositivo do acórdão não consta expressamente se esta Câmara teria reformado a decisão ou anulado por completo a decisão agravada. Dessa forma, requer que seja esclarecido se a decisão agravada foi cassada em sua plenitude.

## VOTO

O artigo 535, do Código de Processo Civil, com a nova redação da Lei nº 8.950/94, estatui caber embargos de declaração quando houver, na sentença ou no acórdão, obscuridade ou contradição, ou quando for omitido ponto sobre o qual deveria se pronunciar o juízo ou o Tribunal.

*In casu*, vertente o acórdão embargado não traz insita contradição, obscuridade, bem como não se omitiu em nenhum de seus pontos.

Em verdade, esta C. Câmara julgou, por unanimidade de votos, o recurso de Agravo de Instrumento nº. 0064637-04.2013.8.19.0000 interposto pela ACCIONA INFRAESTRUTURA S.A. contra a decisão prolatada pelo douto Juízo de Direito da 4ª. Vara Empresarial, tendo como partes Agravadas o mesmo Grupo OSX, determinando a remessa dos autos da Recuperação Judicial daquele Grupo, ora Agravados, por livre



distribuição, a um dos Juízos de Direito das Vara Empresariais da Comarca da Capital.

Assim, eventuais divergências de quais sejam os atos que efetivamente devam ser considerados nulos ou modificados deverão ser desenvolvidas ao Juízo competente, que não está obrigado a manter atos decisórios do Juiz considerado incompetente.

Cabe ressaltar que a decisão explicitou claramente seus fundamentos. Desta forma, os argumentos lançados pelo Embargante são absolutamente insuficientes para suportar o pretendido direito.

Este recurso é sede imprópria para manifestar-se o inconformismo com o julgado e obter a sua reforma porque, salvo as hipóteses específicas, nele não se devolve o exame da matéria.

Desse modo, inexistente qualquer relação entre as alegações suscitadas nestes embargos e aquelas matérias que, nos termos do artigo 535, do Código de Processo Civil, podem ser conhecidas pelo Julgador através dos embargos declaratórios.

Não havendo qualquer omissão, contradição ou obscuridade a serem declarados, VOTO NO SENTIDO DE NEGAR PROVIMENTO AO PRESENTE EMBARGOS DECLARATÓRIOS.

Rio de Janeiro, \_\_\_\_\_ de \_\_\_\_\_ de 2014.

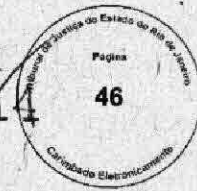
**Des. PLÍNIO PINTO COELHO FILHO**  
**Relator**





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003370-94



**CERTIDÃO**

Certifico que não houve interposição de recurso contra o(a) Acórdão/Decisão no Agravo de Instrumento nº **0003370-94.2014.8.19.0000**.

Em, 01 de julho de 2014.

**VERA SAYOKO SHIRAKI**

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**CERTIDÃO**

Certifico que nos autos do Agravo de Instrumento nº **0003370-94.2014.8.19.0000**, em que é agravante **G-COMEX ARAMZÉNS GERAIS LTDA** e agravado **OSX BRASIL S A EM RECUPERAÇÃO JUDICIAL REP/P/S/ADMINISTRADOR JUDICIAL E OUTROS**, as custas foram recolhidas corretamente.

Em, 01 de julho de 2014.

**VERA SAYOKO SHIRAKI**

Estado do Rio de Janeiro  
Poder Judiciário  
Tribunal de Justiça  
Comarca da Capital  
Cartório da 3ª Vara Empresarial  
Av. Erasmo Braga, 115 Lan Central 713CEP: 20020-903 - Centro - Rio de Janeiro - RJ Tel.: 3133-3605  
e-mail: cap03vemp@tjrj.jus.br

Processo : 0392571-55.2013.8.19.0001

Fis: 3215

Classe/Assunto: Recuperação Judicial - Recuperação Judicial

### Atos Ordinatórios

CERTIFICO que são tempestivas as objeções ao Plano de Recuperação Judicial apresentadas às fls. 2901/3110, 3111/3125, 3126/3183 e 3184/3189.

Rio de Janeiro, 03/07/2014.



Alessandra Santos Neto - Técnico de Atividade Judiciária - Matr. 01/29150



Ao  
Cartório da 3<sup>a</sup> Vara Empresarial  
A/C Dra. Daíze Gomes Machado  
Av. Erasmo Braga, nº 115  
Rio de Janeiro-RJ  
CEP 20020-903

Curitiba, 5 de junho de 2014

PPM 0319/2014

0392571-55-2013

Ref: **Ofício Circular nº 13/2014/SUSEP-SEGER**  
**Expediente nº. 10-04636/2014; 10-004635/2014; 10-004634/2014**  
**Ofício nº. 435/2014/OF; 567/2014/OF; 487/2014/OF**  
**Processo nº. 0028235-81.2014.8.19.0001; 0392571-55.2013.8.19.0001;**  
**0432210-80.2013.8.19.0001**

**Excelentíssima Doutora Juíza,**

Em atenção ao ofício acima mencionado, informamos que após pesquisa na base de dados desta instituição, não localizamos: seguros de vida, planos de previdência e/ou títulos de capitalização vigentes para os nomes citados nos referidos ofícios.

Sem mais para o momento, aproveitamos a oportunidade para renovar nossos votos de elevada estima e consideração.

Atenciosamente,

  
**Everaldo Ribeiro Zieben**  
**Diretor**

5300P ENP03 201403421754 24/06/14 10:00:00122375 01/26316

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**Elizabeth Faria Martins Cotta**  
**Advogada**

**EXMO SR DR JUIZ DE DIREITO DA. 3ª VARA EMPRESARIAL DA  
COMARCA DO RIO DE JANEIRO/RJ**

**Autos no. 0392571-55.2013.19.0001**

**IMAGEM SISTEMAS DE INFORMAÇÕES**

**LTDA, estabelecida na Cidade de São José dos Campos-SP, na Rua Itororó 555, com CNPJ no. 07.668.045/0001-88 , por sua advogada infra-assinada nos autos da **RECUPERAÇÃO JUDICIAL DE OSX BRASIL S/A** , vem respeitosamente à presença de V. Exa., na qualidade de credora da empresa devedora , requerer a juntada da cópia do seu Contrato Social e Instrumento de Mandato (docs. nos. 01e 02) .**

**Outrossim requer a anotação do nome da advogada que esta subscrive na contra-capa dos autos, para que a mesma seja intimada dos despachos e decisões relativas ao presente processo.**

**Termos em que,**

**P.Deferimento.**

**Rio de Janeiro, 13 de junho de 2014**

**ELIZABETH FARIA M. COTTA**  
**OAB/SP-127.376**



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**INSTRUMENTO PARTICULAR DE 3º ALTERAÇÃO E CONSOLIDAÇÃO DE  
CONTRATO SOCIAL DE SOCIEDADE EMPRESARIAL LIMITADA**

**"IMAGEM SISTEMAS DE INFORMAÇÕES LTDA."**

**CNPJ nº 07.668.045/0001-88**

**NIRE: 35225183306**

1. São signatários do presente instrumento:

**1.1. ENÉAS RODRIGUES BRUM**, brasileiro, natural de Campo Grande – MS, nascido aos 27/12/1957, casado pelo regime da comunhão parcial de bens, engenheiro, residente e domiciliado nesta cidade de São José dos Campos - SP, à Avenida São João, n. 485, apto 191, Ed. Villa Sorrento, Jd Esplanada, Cep: 12.242-840, portador da Cédula de Identidade R.G. nº. 21.262.233 – SSP/SP e inscrito no CPF sob nº. 866.325.158-00;

**1.2. MARCOS COVRE**, brasileiro, natural de São Paulo – SP, nascido aos 26/08/1962, divorciado, engenheiro agrônomo, residente e domiciliado nesta cidade de São José dos Campos – SP, à Rua das Baleias nº. 95, Apto 142, Parque Residencial Aquarius, CEP: 12.246-290 portador da Cédula de Identidade RG. nº. 13.437.874 – SSP/SP, e inscrito no CPF sob nº. 057.268.928-44.

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**1.3. LUIZ LEONARDI**, brasileiro, natural de Flórida - PR, nascido aos 26/12/1961, casado pelo regime de comunhão parcial de bens, engenheiro, residente e domiciliado na Rua Francisco de Oliveira Pinto, 21, Jardim das Colinas, São José dos Campos-SP - CEP: 12242-070 , portador da Cédula de Identidade R.G. nº. 13.343.470 - SSP/SP e inscrito no CPF sob nº. 028.478.428-10;

**1.4. LÚCIO MURATORI DE ALENCASTRO GRAÇA**, brasileiro, natural da cidade do Rio de Janeiro - RJ, nascido aos 04/10/1958, casado pelo regime de comunhão parcial de bens, engenheiro cartógrafo, residente e domiciliado na cidade de São José dos Campos - SP, à Rua Helena David Neme, nº 180 apto. 144 - São Dimas, CEP: 12245-310, portador da Cédula de Identidade RG. nº. 03.841.721-8 IFF/RJ, e inscrito no CPF sob o nº 535.574.847-34, e

**1.5. GABRIELA ALEXANDRA IPPOLITI RAMILO**, uruguaia, naturalizada brasileira, nascida aos 19/10/1968, casada pelo regime de comunhão parcial de bens, empresária, residente e domiciliada na cidade de São José dos Campos - SP, na Rua Cônego José Francisco Monteiro, nº 110 - Vila Bandeirantes, CEP: 12.216-180, portadora da Cédula de Identidade RG nº 39.168.507-7 SSP/SP, e inscrita no CPF sob o nº 808.958-160-91.

2. As partes nomeadas e qualificadas nos itens 1.1. a 1.5. acima são as únicas sócias da Sociedade Empresária Limitada IMAGEM SISTEMAS DE INFORMAÇÕES LTDA, inscrita no CNPJ/MF sob o nº07.668.045/0001-88, que teve seu contrato primitivo registrado no Cartório de Registro de Pessoas Jurídicas de São José dos Campos/SP sob o numero 9.000 em sessão de 18/10/2005 com a transferência

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para o seu devido Registro na Junta Comercial do Estado de São Paulo sob NIRE 35225183306, datado de 03.03.2011, ; para que surta seus efeitos jurídicos e que será regida pelas cláusulas e condições estabelecidas a seguir conforme Lei nº 10.406/2002 (Código Civil). A sociedade tem sua sede na cidade de São José dos Campos – SP, à Travessa João Dias, nº 40. Sala 21, Centro, Edifício Drogasil, CEP 12209-640.

3. Por meio do presente instrumento e na melhor forma de direito, a sócia **GABRIELA ALEXANDRA IPPOLITI RAMILO**, nomeada e qualificada no item 1.5. do preâmbulo, cede e transfere a **ENÉAS RODRIGUES BRUM**, nomeado e qualificado no item 1.1. do preâmbulo, 19.600 (dezenove mil e seiscentas) das suas 68.800 (sessenta e oito mil e oitocentas) quotas representativas do capital social da sociedade, remanescendo a sócia **GABRIELA ALEXANDRA IPPOLITI RAMILO** com 49.200 (quarenta e nove mil e duzentas) quotas representativas do capital social da sociedade.
4. Resolve ainda a sócia **GABRIELA ALEXANDRA IPPOLITI RAMILO**, nomeada e qualificada no item 1.5. do preâmbulo, ceder e transferir a **MARCOS COVRE**, nomeado e qualificado no item 1.2. do preâmbulo, 22.800 (vinte e duas mil e oitocentas) das suas 49.200 (quarenta e nove mil e duzentas) quotas representativas do capital social da sociedade, remanescendo a sócia **GABRIELA ALEXANDRA IPPOLITI RAMILO** com 26.400 (vinte e seis mil e quatrocentas) quotas representativas do capital social da sociedade.
5. A sócia **GABRIELA ALEXANDRA IPPOLITI RAMILO**, nomeada e qualificada no item 1.5. do preâmbulo, por meio deste instrumento cede e transfere a **LUIZ LEONARDI**,

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nomeado e qualificado no item 1.3. do preâmbulo, 20.400 (vinte mil e quatrocentas) das suas 26.400 (vinte e seis mil e quatrocentas) quotas representativas do capital social da sociedade, remanescendo a sócia **GABRIELA ALEXANDRA IPPOLITI RAMILO** com 6.000 (seis mil) quotas representativas do capital social da sociedade.

- 6. Por fim, decide a sócia **GABRIELA ALEXANDRA IPPOLITI RAMILO**, nomeada e qualificada no item 1.5. do preâmbulo, por meio de instrumento, ceder e transferir a **LÚCIO MURATORI DE ALENCASTRO GRAÇA**, nomeado e qualificado no item 1.4. do preâmbulo, 6.000 (seis mil) quotas representativas do capital social da sociedade, retirando-se a sócia **GABRIELA ALEXANDRA IPPOLITI RAMILO** da sociedade empresarial limitada.
  
- 7. Decidem os sócios remanescentes, **ENÉAS RODRIGUES BRUM, MARCOS COVRE, LUIZ LEONARDI** e **LUCIO MURATORI DE ALENCASTRO GRAÇA**, nomeados e qualificados nos itens 1.1 a 1.4 respectivamente, aumentar o capital social da sociedade em R\$ 1.000.000,00 (hum milhão de reais), representado por 1.000.000 (hum milhão) de quotas, no valor nominal de R\$ 1,00 (hum real) cada uma, e o fazem proporcionalmente à sua participação societária.
  
- 8. Os sócios **ENÉAS RODRIGUES BRUM** e **LUCIO MURATORI DE ALENCASTRO GRAÇA**, nomeados e qualificados nos itens 1.1 e 1.4 respectivamente, integralizam o aumento de capital por meio de capitalização de saldo existentes de empréstimos em conta corrente e o fazem neste ato. Já os sócios **MARCOS COVRE** e **LUIZ LEONARDI**, nomeados e qualificados nos itens 1.2 e 1.3 respectivamente,

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integralizarão o aumento de capital em moeda nacional corrente em até 36 (trinta e seis) meses a contar da assinatura deste Instrumento.

9. Assim, a sociedade terá neste ato, totalmente integralizado, o capital social equivalente a R\$ 4.640.000,00 (quatro milhões e seiscentos e quarenta mil reais), e a integralizar em até 36 (trinta e seis) meses pelos sócios **MARCOS COVRE** e **LUIZ LEONARDI**, o equivalente a R\$ 360.000,00 (trezentos e sessenta mil reais), sendo R\$ 190.000,00 (cento e noventa mil reais) a ser integralizado pelo sócio **MARCOS COVRE** e R\$ 170.000,00 (cento e setenta mil reais) a ser integralizado pelo sócio **LUIZ LEONARDI**.
10. Por conseguinte e de modo a refletir as decisões tomadas nos itens precedentes, os sócios quotistas, por **unanimidade resolvem alterar a redação da cláusula VI do contrato social** que passa a vigorar com a seguinte redação:

#### VI - DO CAPITAL SOCIAL

O Capital Social, totalmente subscrito e a ser integralizado em sua totalidade em até 36 (trinta e seis) meses a contar da assinatura deste Instrumento, é de R\$ 5.000.000,00 (cinco milhões de reais) representado por 5.000.000 (cinco milhões) de quotas, no valor nominal de R\$ 1,00 (um real) cada uma, assim distribuído entre os sócios:

SÓCIOS	%	QTE. QUOTAS	VALOR EM R\$
ENEAS RODRIGUES BRUM	59	2.950.000	2.950.000,00
MARCOS COVRE	19	950.000	950.000,00
LUIZ LEONARDI	17	850.000	850.000,00
LÚCIO MURATORI DE ALENCASTRO GRAÇA	5	250.000	250.000,00
<b>TOTAL</b>	<b>100</b>	<b>5.000.000</b>	<b>5.000.000,00</b>

11. Os sócios quotistas, nomeados e qualificados nos itens 1.1., 1.2., 1.3. e 1.4., por unanimidade, resolvem alterar o endereço da sede da sociedade da **Travessa João Dias, nº 40. Sala 21, Centro, Edifício Drogasil, São José dos Campos - S.P. - CEP: 12209-640** para a **Rua Itororó, 555, Vila Bandeirantes, São José dos Campos - S.P. - CEP 12216-440.**

12. Por conseguinte e de modo a refletir as decisões tomadas no item 8 precedente, os sócios quotistas, por unanimidade resolvem alterar da cláusula III do contrato social e excluir o seu parágrafo único que passa a vigorar com a seguinte redação:

### III - DA SEDE DA SOCIEDADE

A sociedade tem sua sede na cidade de **São José dos Campos - S.P.**, à **Rua Ithoró, 555, Vila Bandeirantes, CEP 12216-440**, podendo contudo abrir filiais ou nomear representantes em outras cidades do território nacional, devendo sempre cada dependência possuir um capital social autônomo.

**Parágrafo Único:** A sociedade possui a seguinte filial:

- Na cidade de São Paulo - SP na Avenida Brigadeiro Luis Antonio, nº 2.504 Conjunto 12, 1º Andar - Jd. Belq Vista - CEP: 01.402-000, inscrita no CNPJ sob nº 07.668.045/0002-69, com atividade de escritório administrativo.

13. Os sócios quotistas, nomeados e qualificados nos itens 1.1., 1.2., 1.3. e 1.4., **por unanimidade**, resolvem alterar o objeto social para nele incluir as atividades de licenciamento ou cessão de direitos de uso de programas de computador; de revenda de softwares licenciados por terceiros, e de participação em outras empresas como sócia ou acionista.

14. Por conseguinte e de modo a refletir as decisões tomadas no item 10 precedente, os sócios quotistas, **por unanimidade resolvem alterar da cláusula V do contrato social** que passa a vigorar com a seguinte redação:

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## V - DO OBJETO DA SOCIEDADE

A Sociedade tem por objeto:

- a) Prestação de serviços profissionais especializados na área de Consultoria em Engenharia de Sistemas, compreendendo a utilização de sensoriamento remoto geotecnologia e desenvolvimento de sistemas informatizados;
  - b) Prestação de Serviços de pesquisa, desenvolvimento de softwares e treinamentos em softwares, sistemas, aplicativos e ferramentas especializadas em geotecnologia.
  - c) Comercialização, importação e exportação de softwares (s) próprios e/ou terceiros.
  - d) Licenciamento ou cessão de direitos de uso de programas de computador;
  - e) Revenda de softwares licenciados por terceiros e
  - f) Participação em outras empresas como sócia ou acionista.
15. Decidem ainda os sócios quotistas, por unanimidade, alterar a redação das cláusulas IX e X do Contrato Social, que passam a vigorar com a seguinte redação:

## IX - DA ADMINISTRAÇÃO DA SOCIEDADE

A administração da sociedade será exercida pelos sócios **ENÉAS RODRIGUES BRUM** e **LÚCIO MURATORI DE ALENCASTRO GRAÇA**, em conjunto ou isoladamente, zelando pelos interesses da sociedade, sendo portanto, responsáveis pelas atividades comerciais, administrativas e financeiras.

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**X - DA RETIRADA DE PRO-LABORE**

Os sócios administradores terão direito a uma retirada mensal de valor a ser livremente fixado pelos mesmos, a título de **Pro-Labore**, importância essa que será levada à conta de "Despesas Operacionais" da sociedade.

- 16. Por conseguinte e de modo a refletir as decisões tomadas nos itens precedentes, os quotistas, por **unanimidade resolvem**, mantendo inalteradas e em vigor todas as cláusulas não modificadas por este instrumento, **consolidar o contrato social** que passa a vigorar com a seguinte redação:

**CONSOLIDAÇÃO DO CONTRATO SOCIAL DE**  
**SOCIEDADE EMPRESÁRIA LIMITADA**  
**"IMAGEM SISTEMAS DE INFORMAÇÕES LTDA"**

**I - DOS SÓCIOS**

- 1. **ENÉAS RODRIGUES BRUM**, brasileiro, natural de Campo Grande - MS, nascido aos 27/12/1957, casado pelo regime da comunhão parcial de bens, engenheiro, residente e domiciliado nesta cidade de São José dos Campos - SP, à Avenida São João, n. 485, apto 191, Ed. Villa Sorrento, Jd Esplanada, Cep: 12.242-840, portador da Cédula de Identidade R.G. nº. 21.262.233 - SSP/SP e inscrito no CPF sob nº. 866.325.158-00;

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2. **MARCOS COVRE**, brasileiro, natural de São Paulo - SP, nascido aos 26/08/1962, divorciado, engenheiro agrônomo, residente e domiciliado nesta cidade de São José dos Campos - SP, à Rua das Baleias nº. 95, Apto 142, Parque Residencial Aquarius, CEP: 12.246-290 portador da Cédula de Identidade RG. nº. 13.437.874 - SSP/SP, e inscrito no CPF sob nº. 057.268.928-44.
3. **LUIZ LEONARDI**, brasileiro, natural de Flórida - PR, nascido aos 26/12/1961, casado pelo regime de comunhão parcial de bens, engenheiro, residente e domiciliado na Rua Francisco de Oliveira Pinto, 21, Jardim das Colinas, São José dos Campos-SP - CEP: 12242-070, portador da Cédula de Identidade R.G. nº. 13.343.470 - SSP/SP e inscrito no CPF sob nº. 028.478.428-10; e
4. **LÚCIO MURATORI DE ALENCASTRO GRAÇA**, brasileiro, natural da cidade do Rio de Janeiro - RJ, nascido aos 04/10/1958, casado pelo regime de comunhão parcial de bens, engenheiro cartógrafo, residente e domiciliado cidade de São José dos Campos - SP, à Rua Helena David Neme, nº 180 apto. 144 - São Dimas, CEP: 12245-310, portador da Cédula de Identidade RG. nº. 03.841.721-8 IFP/RJ, e inscrito no CPF sob o nº 535.574.847-34.

## II - DA DENOMINAÇÃO SOCIAL

A sociedade girará sob a denominação social de "**IMAGEM SISTEMAS DE INFORMAÇÕES LTDA**", e sua natureza jurídica, Sociedade Empresária Limitada.



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**III - DA SEDE DA SOCIEDADE**

A sociedade tem sua sede na cidade de **São José dos Campos – S.P.**, à **Rua Iitororó, 555, Vila Bandeirantes, CEP 12216-440**, podendo contudo abrir filiais ou nomear representantes em outras cidades do território nacional, devendo sempre cada dependência possuir um capital social autônomo.

**Parágrafo Único:** A sociedade possui a seguinte filial:

- Na cidade de São Paulo – SP na Avenida Brigadeiro Luis Antonio, nº 2.504 Conjunto 12, 1º Andar – Jd. Bela Vista – CEP: 01.402-000, inscrita no CNPJ sob nº 07.668.045/0002-69, com atividade de escritório administrativo.

**IV - DO PRAZO DE DURAÇÃO DA SOCIEDADE**

O prazo de duração da sociedade será por tempo indeterminado.

**V - DO OBJETO DA SOCIEDADE**

A Sociedade tem por objeto:

- a) Prestação de serviços profissionais especializados na área de Consultoria em Engenharia de Sistemas, compreendendo a utilização de sensoriamento remoto geotecnologia e desenvolvimento de sistemas informatizados;
- b) Prestação de Serviços de pesquisa, desenvolvimento de softwares e treinamentos em softwares, sistemas, aplicativos e ferramentas especializadas em geotecnologia.

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- c) Comercialização, importação e exportação de softwares (s) próprios e/ou terceiros.
- d) Licenciamento ou cessão de direitos de uso de programas de computador;
- e) Revenda de softwares licenciados por terceiros, e
- f) Participação em outras empresas como sócia ou acionista.

**VI - DO CAPITAL SOCIAL**

O Capital Social, totalmente subscrito e a ser integralizado em sua totalidade em até 36 (trinta e seis) meses a contar da assinatura deste Instrumento, é de R\$ 5.000.000,00 (cinco milhões de reais) representado por 5.000.000 (cinco milhões) de quotas, no valor nominal de R\$ 1,00 (um real) cada uma, assim distribuída entre os sócios:

SÓCIOS	%	QTE. QUOTAS	VALOR EM R\$
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MARCOS COVRE	19	950.000	950.000,00
LUIZ LEONARDI	17	850.000	850.000,00
LÚCIO MURATORI DE ALENCASTRO GRAÇA	5	250.000	250.000,00
<b>TOTAL</b>	<b>100</b>	<b>5.000.000</b>	<b>5.000.000,00</b>

**VII - DAS ALTERAÇÕES**

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O Contrato Social poderá ser alterado no todo ou em parte, com respeito a qualquer assunto, mediante aprovação dos sócios que representem no mínimo  $\frac{3}{4}$  (três quartos) das quotas do capital social, na forma do art. nº. 1.076 da Lei 10.406/2002.

#### VIII - DA RESPONSABILIDADE DOS SÓCIOS-QUOTISTAS

De acordo com o art. nº. 1.052 do Código Civil 2002 (Lei 10.406/2002), a responsabilidade de cada sócio é restrita ao valor de suas quotas, mas todos respondem solidariamente pela integralização do capital social.

**Parágrafo único:** Nos termos do inciso VIII do artigo nº. 997 do Código Civil 2002 (Lei nº. 10.406/2002), os sócios não respondem subsidiariamente pelas obrigações sociais.

#### IX - DA ADMINISTRAÇÃO DA SOCIEDADE

A administração da sociedade será exercida pelos sócios **ENÉAS RODRIGUES BRUM** e **LÚCIO MURATORI DE ALENCASTRO GRAÇA**, em conjunto ou isoladamente, zelando pelos interesses da sociedade, sendo portanto, responsáveis pelas atividades comerciais, administrativas e financeiras.

#### X - DA RETIRADA DE PRO-LABORE



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Os sócios administradores terão direito a uma retirada mensal de valor a ser livremente fixado pelos mesmos, a título de **Pro-Labore**, importância essa que será levada à conta de "Despesas Operacionais" da sociedade.

**XI - DO USO DO NOME EMPRESARIAL**

O uso do Nome Empresarial, representando a sociedade, em juízo ou fora dele, será de todos os sócios, assinando sempre individualmente, podendo os mesmos praticar todos os atos necessários à consecução dos objetivos da sociedade, ficando proibido seu uso para fins estranhos, como endossos de favor, cartas de fiança e outros documentos análogos, ficando individualmente responsável o sócio que porventura infringir esta proibição.

**XII - DO EXERCÍCIO SOCIAL - LUCROS E PERDAS**

O exercício social coincidirá com o ano civil. A 31 de Dezembro de cada ano, levantar-se-á o Balanço Patrimonial, de acordo com as normas contábeis e o disposto na legislação do Imposto de Renda. Os lucros ou prejuízos apurados serão atribuídos de conformidade com a efetiva participação de cada sócio na composição do capital social, ou de acordo com deliberação dos sócios registradas em ata.

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**Parágrafo Primeiro:** Poderá ocorrer distribuição de lucros em períodos inferiores a um ano, desde que amparados por demonstração de resultado do Exercício aprovado pelos sócios que representem no mínimo 75% do Capital Social.

**Parágrafo Segundo:** Nos quatro meses seguintes ao término do exercício social, os sócios deliberarão sobre as contas e designarão administradores quando for o caso.

**Parágrafo Terceiro:** De acordo com o Art. 1.080 da Lei 10.406/2002, as deliberações infringentes ao contrato ou à lei tornam ilimitada a responsabilidade dos que expressamente as aprovaram.

**Parágrafo Quarto:** De conformidade com o descrito no Art. 1.072 da Lei 10.406/2002, e seus parágrafos, as deliberações serão tomadas como segue:

- Nas sociedades com até 10(dez) sócios, em reuniões convocadas por carta, entregue pessoalmente ou via sedex, na qual deverá constar a confirmação do recebimento.
- Nas sociedades com mais de 10(dez) sócios, em assembléia convocada nos termos do artigo 1.152 do Código Civil e seus parágrafos.

**Parágrafo Quinto:** Dispensam-se as formalidades de convocação previstas na § 3º do Art. 1.152, quando todos os sócios comparecerem ou se declararem, por escrito, cientes do local, data, hora e ordem do dia.

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**Parágrafo Sexto:** A reunião ou Assembléia tornam-se dispensáveis quando todos os sócios decidirem, por escrito, sobre a matéria que seria objeto delas.

### XIII - DA CESSÃO DE QUOTAS

As quotas são indivisíveis e não poderão ser cedidas ou transferidas a terceiros sem o consentimento da maioria dos sócios em relação ao capital social, ficando assegurado aos demais sócios, ainda, em igualdade de condições e preço e na proporção de sua participação no capital social, direito de preferência para a sua aquisição se postas à venda, formalizando, se realizada a cessão delas, a alteração contratual pertinente.

**Parágrafo Único:** Na proporção das suas quotas que possuírem, terão os sócios preferência para a subscrição dos aumentos de capital. Para esse fim deverão os sócios exercer o seu direito de preferência, dentro do prazo de 10 (dez) dias da ciência da proposta do aumento.

### XIV - DA RETIRADA DE SÓCIO-QUOTISTA

O sócio que desejar retirar-se da sociedade deverá comunicar sua livre intenção aos demais sócios, mediante carta registrada, com antecedência mínima de 60 (sessenta) dias. O(s) sócio(s) remanescente(s) terá(ão) o direito de rejeitar o ingresso na sociedade do sucessor, a qualquer título, do sócio retirante, caso em que se



procederá a necessária alteração contratual para a retirada do sócio da sociedade, continuando a sociedade com o(s) sócio(s) remanescente(s), devendo a sociedade ser recomposta no prazo máximo de 180 dias caso tenha sido reduzida a um único sócio (art. 1033, IV do Código Civil). Os haveres do sócio que se retira/se exclui serão apurados mediante balanço especial, levantado na "data-marco" que se estabelece como sendo a data da notificação da sua intenção de retirada, ou da recusa do ingresso do sucessor, e o valor dos haveres/deveres será determinado pela divisão do patrimônio líquido da sociedade pelo número de quotas, atendida a porcentagem da realização verificada. Para fins de apuração do balanço especial tanto o ativo (inclusive o ativo imobilizado), quanto o passivo deverão ser atualizados até a "data-marco". Além disso, deverá ser apurada a mais valia da sociedade por meio do método "Fluxo de Caixa Descontado" projetado para 5 (cinco) anos, contados da "data-marco". O pagamento dos haveres do sócio que se retira será efetuado em 12 (doze) prestações mensais, iguais e consecutivas, que serão corrigidas monetariamente pelo IGP-M da FGV e acrescidas de juros de 12% (doze por cento) ao ano, sendo que o primeiro pagamento deverá ser feito em até 30 (trinta) dias contados da data do balanço especial.

#### XV - DO FALECIMENTO DE SÓCIO-QUOTISTA

Na hipótese de falecimento, interdição ou impedimento de qualquer sócio, a sociedade continuará com o(s) sócio(s) remanescente(s).

**Parágrafo Primeiro:** O(s) herdeiro(s)/sucessor(es) do sócio falecido ingressará(o) na sociedade nas mesmas condições daquele.

**Parágrafo Segundo:** O sócio interditado e o sócio impedido receberão os seus haveres observados a forma e prazos estabelecidos na cláusula XIV.

#### XVI - DO FORO

Fica eleito o Foro da Comarca de São José dos Campos - SP, para dirimir as dúvidas advindas na interpretação do presente instrumento.

#### XVII - DAS DISPOSIÇÕES GERAIS

Os Administradores declaram, sob as penas da Lei, que não estão impedidos de exercer a administração da sociedade, por lei especial, ou em virtude de condenação criminal, ou por se encontrarem sob os efeitos dela, a pena que vede, ainda que temporariamente, o acesso a cargos públicos; ou por crime falimentar, de prevaricação, peita ou suborno, concussão, peculato, ou contra a economia popular, contra o sistema financeiro nacional, contra normas de defesas de concorrência, contra as relações de consumo, fé pública ou a propriedade.

Na forma do artigo 1.053, parágrafo único, da Lei 10.406 de 10/01/2002, esta sociedade reger-se-á supletivamente pelas normas da Sociedade Anônima.

E por estarem desta maneira perfeitamee convencionados, assinam o presente instrumento em 03 (três) vias de igual teor forma, juntamente com as testemunhas de estilo.

São José dos Campos, 03 de Dezembro d012.

  
ENEAS RODRIGUES BRUM

  
MARCOS GOYRE


  
LÚCIO MURATORI DE ALENCASTRO GRAÇA

  
LUIZ LEONARDI

  
GABRIELA ALEXA IPPOLITO RAMILO

Testemunhas:

  
ALINE MARIA FARIA BALESTRA  
RG nº: M 7.771.980-SSP/MG  
CPF/MF nº: 035.877.106-43

  
MARCOS JOSÉ RIBEIRO  
RG nº: 22.223.173-7  
CPF/MF nº: 098.650.238-30

  
Visto: \_\_\_\_\_  
Gustavo Friggi Vantine  
OAB/SP n. 123.678



CERTIFICO O REGISTRO  
SOB O NÚMERO 137.216/13-0  
GISELA SÍNTEMA CESCHEN  
SECRETARIA GERAL





## PROCURAÇÃO

Pelo presente instrumento particular de procuração, **IMAGEM SISTEMAS DE INFORMAÇÕES LTDA**, empresa estabelecida na Cidade de São José dos Campos/SP, na Rua Itororó, nº 555, Vila Bandeirantes, com CNPJ/MF No. 07.668.045/0001-88, nomeia e constitui seus bastantes procuradores, a advogada **Dra. ELIZABETH FARIA MARTINS COTTA**, brasileira, casada, estabelecida na Rua Dr. Wladimir dos Santos Melo, 137- São Paulo/SP, inscrita na Ordem dos Advogados do Brasil, sob No. 127.376/SP e o advogado **Dr. NILTON FERREIRA DOS SANTOS JUNIOR**, brasileiro, casado, estabelecido na Rua Dr. Wladimir dos Santos Melo, 137- São Paulo/SP, inscrito nos quadros da Ordem dos Advogados do Brasil, Seção de São Paulo sob o número 207.452/SP, a quem confere poderes para o foro em geral perante qualquer juízo, Instância ou Tribunal, com cláusula "ad judicium" e mais especiais para receber e dar quitação, transigir, desistir, firmar compromisso, requerer e acompanhar falências, habilitar em Recuperações Judiciais, embargá-las, fazer declaração de créditos, representação criminal, impugnar os de terceiros, arguir suspeição, representar junto as Repartições Públicas Federais, Estaduais, Municipais e Autárquicas, encaminhar títulos a protesto, fazer levantamentos de créditos junto aos Cartórios em geral, inclusive de Protesto, e substabelecer.

Com poderes especiais para representar a outorgante na Recuperação Judicial das empresas **LLX LOGÍSTICA S/A, CCX BRASIL PARTICIPAÇÕES S/A e OSX BRASIL S/A**, inclusive participar nas Assembleias Gerais de Credores e votar, podendo atuar em conjunto ou separadamente, dando tudo por bom e valioso, em especial para a defesa dos interesses do Outorgante.

São José dos Campos, 28 de Abril de 2014.



IMAGEM SISTEMAS DE INFORMAÇÕES LTDA  
CNPJ No. 07.668.045/0001-88  
Enéas Rodrigues Brum - sócio

## SUBSTABELECIMENTO

Com as reservas de praxe, substabeleço ao advogado DR. JOÃO LUIZ LOPES COELHO, inscrito na OAB/RJ sob o número 80.512, com escritório profissional à Av. Graça Aranha, 145- conj. 501- Rio de Janeiro\RJ, todos os poderes que me foram outorgados por **IMAGEM SISTEMAS DE INFORMAÇÕES LTDA** nos autos da **RECUPERAÇÃO JUDICIAL DE OSX BRASIL S/A**, na Comarca do Rio de Janeiro\RJ.

São Paulo, 20 de junho de 2014.



**ELIZABETH FARIA MARTINS COTTA**

**OAB-SP-127376**

**Processo: 0392571-55.2013.8.19.0001**

Classe/Assunto: Recuperação Judicial - Recuperação Judicial  
Requerente: OSX BRASIL S/A  
Requerente: OSX CONSTRUÇÃO NAVAL S/A  
Requerente: OSX SERVIÇOS OPERACIONAIS LTDA  
Administrador: DELOITTE TOUCHE TOHMATSU CONSULTORES LTDA.  
Representante Legal: LUIS VASCO ELIAS

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Nesta data, faço os autos conclusos ao MM. Dr. Juiz  
Gilberto Clovis Farias Matos

Em 07/07/2014

### Despacho

- 1 - Fls.2693/2705. Tendo em vista a semelhança entre os pleitos deduzidos, desentranhe-se a peça, acostando-a aos autos do proc.0159941/90/2014 (feito secundário, no qual consta, como requerente, a Caixa Econômica Federal).
- 2 - Fl.2736. Junte-se cópia do ofício ali referido (549/2014), para possibilitar a apreciação, na forma devida. → Fls. 3244
- 3 - Fls.2737/2738. Ao Administrador e MP.
- 4 - Fls.2763/2764. À recuperanda.

Rio de Janeiro, 09/07/2014.

  
Gilberto Clovis Farias Matos - Juiz em Exercício

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Autos recebidos do MM. Dr. Juiz

Gilberto Clovis Farias Matos

Em \_\_\_\_/\_\_\_\_/\_\_\_\_



EXMO. SR. DR. JUIZ DE DIREITO DA 3ª VARA EMPRESARIAL DA  
COMARCA DA CAPITAL DO RIO DE JANEIRO

Processo nº. 0392571-55.2013.8.19.0001

MRO SERVIÇOS DE PLANEJAMENTO DE ESTOQUES E  
ASSESSORIA TÉCNICA LTDA. ("MRO"), sociedade empresarial com sede à  
Avenida das Américas, nº. 700, bloco 3, sala 101, Barra da Tijuca, Rio de Janeiro, RJ,  
CEP 22.640-100, inscrita no CNPJ/MF sob o nº. 14.780.192/0001-00 (doc. 1), nos autos  
da RECUPERAÇÃO JUDICIAL de OSX SERVIÇOS OPERACIONAIS LTDA.  
("OSX Serviços") e OUTROS, vêm, por suas advogadas regularmente constituídas (doc.  
2), respeitosamente, à presença de Vossa Excelência, com fundamento no artigo 55 da  
Lei nº. 11.101/2005, apresentar

OBJEÇÃO AO PLANO DE RECUPERAÇÃO JUDICIAL

pelas razões a seguir aduzidas.

I. TEMPESTIVIDADE

1. O edital por meio do qual os credores são intimados a apresentar, a seu  
critério, objeção ao plano de recuperação judicial, foi publicado no Diário Oficial do dia

03.06.2014, terça-feira (fl. 2344). Assim, o prazo de 30 dias previsto no artigo 55 da Lei 11.101/2005 começou a fluir em 04.06.2014, quarta-feira, chegando a termo em 03.07.2014, quinta-feira. Manifesta, portanto, a tempestividade desta objeção, apresentada hoje.

**II. O PLANO DE RECUPERAÇÃO JUDICIAL**  
**CONDIÇÕES DE PAGAMENTO E EFEITOS**

2. O plano de recuperação judicial de fls. prevê as seguintes condições de pagamento em relação aos créditos quirografários: (i) carência de 1 (um) ano para pagamento, a partir da homologação do plano; (ii) pagamento em 12 (doze) parcelas mensais, devendo a primeira parcela ser paga na data do 1º (primeiro) aniversário da data da homologação, e as demais parcelas pagas nas mesmas datas dos meses subsequentes; (iii) juros de 1% ao mês e correção monetária corresponderão à variação do IPCA, incidentes a partir da data da homologação sobre o saldo do valor principal na data do pedido; e (iv) juros serão pagos mensalmente junto com o pagamento do crédito.

3. Em relação aos efeitos do plano que interessam a essa objeção, as cláusulas 6.4, 6.7, e 8 preveem: (i) a extinção de ações judiciais envolvendo créditos que não estão sujeitos à recuperação judicial; (ii) a ausência de responsabilidade dos administradores da recuperanda por atos por eles praticados e obrigações contratadas no curso da Recuperação Judicial; e (iii) a convocação obrigatória de Assembleia Geral de Credores em caso de descumprimento do Plano, em vez de convocação em falência.

**III. OBJEÇÃO AO PLANO DE RECUPERAÇÃO JUDICIAL**

4. Essa objeção tem por escopo impugnar os efeitos do plano de recuperação indicados no item 3 acima, na medida em que, por violarem a Lei Federal, são **nulos** e não podem ser mantidos no plano.

**III. (i) Extinção de ações: as condições estabelecidas na cláusula 6.4 não podem ser aplicadas aos créditos que não estão sujeitos à recuperação judicial**

5. Por meio da cláusula 6.4 do plano, a recuperanda pretende tolher o direito dos credores de perseguir créditos que não estão submetidos à recuperação judicial e, portanto, aos termos de pagamento do plano. Confira-se:

**"6.4. Extinção de ações.** Exceto se previsto de forma diversa no Plano, os credores não mais poderão, a partir da Aprovação do Plano, (i) ajuizar ou prosseguir toda e qualquer ação judicial ou processo de qualquer tipo relacionado ou não a qualquer crédito contra a OSX Serviços; (ii) executar qualquer sentença, decisão judicial ou sentença arbitral contra a OSX Serviços; (iii) penhorar quaisquer bens da OSX Serviços para satisfazer seus créditos; (iv) criar, aperfeiçoar ou executar qualquer garantia real sobre bens e direitos de OSX Serviços para assegurar o pagamento de seus créditos; (v) reclamar qualquer direito de compensação contra qualquer crédito devido a OSX Serviços; e (vi) buscar a satisfação de seus créditos por quaisquer outros meios. Todas as execuções judiciais em curso contra a OSX Serviços, relativas aos créditos serão extintas, e as penhoras e constrições existentes serão liberadas." (fls. 1950/1951)

6. Essa cláusula viola o artigo 49 da Lei nº 11.101/2005, que prevê que apenas os créditos existentes à época da recuperação devem ser submetidos ao procedimento e ao plano aprovado.

7. Se o crédito existir **após** o pedido de recuperação judicial, o credor pode se valer de procedimento autônomo para cobrá-lo da recuperanda, já que, nos termos do artigo supra, tal crédito não está sujeito ao procedimento da recuperação.

8. Qualquer disposição em contrário, como é o caso da cláusula 6.4 do plano, não terá nenhum efeito ou validade, pois, além de contrária à Lei 11.101/2005, viola o direito de ação previsto no artigo 5º, XXXV, da Constituição.

9. Mais ainda, essa disposição é totalmente estranha à recuperação, na medida em que dá tratamento a créditos que nem sequer estão contemplados na presente recuperação.

**III. (ii) Os administradores da recuperanda devem atuar no limite de suas obrigações e devem ser responsabilizados por atos praticados em excesso (atos ilícitos)**

10. A cláusula 6.7 do plano isenta os administradores e sócios da recuperanda de responsabilidade por todos e quaisquer atos e obrigações praticados por eles durante a recuperação judicial. Observe-se:

**"6.7. Isenção de Responsabilidade e Renúncia.** Em razão da Aprovação do Plano, os credores expressamente reconhecem e isentam as Partes Isentas<sup>1</sup> de toda e qualquer responsabilidade pelos atos praticados e obrigações contratadas no curso da Recuperação Judicial incluindo, mas não se limitando, ao *Plan Support Agreement*, conferindo as Partes Isentas quitação ampla, rasa, geral, irrevogável e irretroatável de todos os referidos atos a qualquer título. A aprovação do Plano pela Assembleia de Credores representa igualmente a renúncia expressa e irrevogável dos Credores a toda e qualquer pretensão, ação ou direito a demandar, perseguir ou reclamar, em Juízo ou fora dele, a qualquer título e sem qualquer reserva, reparação de danos e/ou quaisquer outras ações ou medidas contra as Partes Isentas em relação aos atos praticados e obrigações contraídas pelas Partes Isentas durante a Recuperação Judicial." (fl. 1951)

11. Essa cláusula igualmente é nula e não pode subsistir, até porque, com ela, buscam os administradores e sócios um verdadeiro "salvo-conduto".

12. Os administradores de uma sociedade, no exercício de suas funções sociais, estão obrigados a atuar não só de acordo com a lei, documentos societários e interesses da sociedade, mas, também com probidade e respeito às normas éticas, morais e à função social da empresa. Nesse sentido, dispõe o artigo 1.011 do Código Civil e o artigo 154 da Lei das Sociedades Anônimas, aplicados ao caso por analogia:

"Art. 1.011. a administrador da sociedade deve empregar, no exercício das suas funções, o cuidado e diligência que todo homem ativo e probo costuma empregar na administração dos seus próprios negócios. (..)"

"Art. 154. O administrador deve exercer as atribuições que a lei e o estatuto lhe conferem para lograr os fins e no interesse da companhia, satisfeitas as exigências do bem público e da função social da empresa. "

13. Nesse sentido, ensina Fabio Ulhoa Coelho:

"Os deveres de diligência e lealdade, prescritos aos administradores de sociedade anônima, embora referidos na LSA (arts. 153 e 155), podem ser vistos como preceitos gerais, aplicáveis a qualquer pessoa incumbida de administrar bens ou

<sup>1</sup> São a OSX Serviços, o Grupo OSX, os Acionistas Controladores, e suas respectivas controladas, subsidiárias, afiliadas e coligadas e outras sociedades pertencentes ao mesmo grupo societário e econômico, seus diretores, conselheiros, acionistas, agentes, funcionários, representantes, assessores, consultores e advogados, sucessores e cessionários.



interesses alheios. A eles se submetem, nesse sentido, o síndico da massa falida, o mandatário, o liquidante ou interventor da instituição financeira, e, também, o gerente da sociedade limitada. Como as atribuições de gerência, no plano interno, são as de administrar a empresa, os membros do órgão devem ser diligentes e leais. Tais de veres representam, portanto, os parâmetros de aferição do desempenho dos diretores da limitada. Sua responsabilidade tem lugar, assim, quando desatendidos os deveres gerais dos administradores (CC/2002, arts. 1.011, 1.016 e 1.017)."<sup>2</sup>

14. Nesse passo, caso os administradores e demais pessoas responsáveis pela direção da recuperanda não colaborem efetivamente para o sucesso e prosperidade da recuperação judicial, desvirtuando as atribuições e prerrogativas que a lei e o contrato social lhes conferiram, é evidente que a junta diretiva da recuperanda estará praticando desvio de poder<sup>3</sup> e, portanto, ato ilícito, devendo ser responsabilizados.

15. Daí a nulidade da cláusula 6.7 do plano: caso os administradores e demais responsáveis pela direção da recuperanda venham a agir em detrimento dos interesses da própria recuperanda e, por consequência, dos credores, ainda que durante a recuperação judicial, terão transgredido normas morais e legais que norteiam a conduta de diretor/administrador, violando o mais elementar dos seus deveres, previsto no *caput* do artigo 155 da Lei das Sociedade Anônimas: o dever de lealdade.

16. Vale lembrar, ainda, que o artigo 1.016 do Código Civil determina que "*os administradores respondem solidariamente perante a sociedade e os terceiros prejudicados, por culpa no desempenho de suas funções*".

17. O artigo 158 da Lei das Sociedade Anônimas, por sua vez, acolhendo a teoria da responsabilidade objetiva do administrador, tipifica com precisão o dever de indenizar, caso o administrador não se atenha a seus poderes e não desempenhe corretamente sua função. Confira-se:

<sup>2</sup> *Curso de Direito Comercial*, vol. 2, 5ª ed. São Paulo: Saraiva, 2005, pag. 440.

<sup>3</sup> "O desvio de poder caracteriza-se pelo desvirtuamento da finalidade da própria lei societária e do estatuto da companhia, embora preservados os elementos formais da respectiva regra. Trata-se, portanto, de uma fraude a lei e ao estatuto, mediante a manipulação e aplicação deformada de suas regras, visando a lograr fins outros que não os da companhia ou, então, observância das exigências do bem público e da função social da empresa". In Carvalho, Modesto. *Comentários a Lei de Sociedades Anônimas*, vol. 3, 1997, p. 154.

"O administrador não é pessoalmente responsável pelas obrigações que contrair em nome da sociedade e em virtude de ato regular de gestão; responde, porém, civilmente, pelos prejuízos que causar, quando proceder:

- I- dentro de suas atribuições, com culpa ou dolo;
- II- com violação da lei ou do estatuto. (..)"

18. Desse modo, inaceitável a isenção da responsabilidade da junta diretiva da recuperanda por atos praticados durante a recuperação judicial, que representa violação direta à Lei Federal e configura nulidade.

### **III. (iii) Descumprimento do plano e convocação imediata da recuperação judicial em falência**

19. A cláusula 8 do plano determina que, caso haja descumprimento do plano de recuperação judicial, é obrigatória a convocação de Assembleia Geral de Credores para discussão da questão. Confira-se:

**"8. Descumprimento do Plano.** Em caso de mora, a OSX Serviços deverá requerer a convocação de uma Assembleia de Credores ao Juízo da Recuperação, com a finalidade de deliberar junto a seus Credores Concursais sobre a medida mais adequada para sanar o descumprimento do Plano. Para fins desta cláusula, havendo mora caso a OSX Serviços descumpra culposamente alguma disposição deste Plano e não sane tal descumprimento no prazo de até 30 (trinta) dias contados do recebimento pela OSX Serviços de notificação enviada pela parte prejudicada com o descumprimento de tal obrigação." (fl. 1952)

20. Ora, nos termos dos artigos 61, §1º e 73, IV da Lei nº 11.101/2005, o descumprimento do plano aprovado leva à imediata convocação da recuperação judicial em falência, independentemente da designação de Assembleia Geral de Credores.


21. Diante do exposto, justificada está a necessidade de imediata convocação de Assembleia Geral de Credores, para que haja (i) deliberação e revisão do plano de fls. 1.939/1.960, nos termos do artigo 56, caput, da Lei nº 11.101/2005; ou (ii) rejeição do plano, nos termos do artigo 56, §4º, da Lei nº 11.101/2005.

### **IV. PEDIDO**

22. Ante o exposto, nos termos dos artigos 55 e 56, *caput*, da Lei nº 11.101/2005, a MRO, na qualidade de credora quirografária da recuperanda, requer

digne-se Vossa Excelência de receber essa objeção ao plano de recuperação judicial de fls. 1.939/1.960, determinando a designação de Assembleia Geral de Credores na forma e prazo estabelecidos em lei, para deliberação e alteração do plano de recuperação judicial apresentado ou para sua rejeição.

Nesses Termos,  
Pedem deferimento.  
Rio de Janeiro, 03 de julho de 2014.

  
Andrea Zoghbi Brick  
OAB/RJ nº. 94.630

  
Paula Felix de Souza Barçante  
OAB/RJ nº. 169.007

3ª ALTERAÇÃO AO CONTRATO SOCIAL DA SOCIEDADE EMPRESÁRIA LIMITADA DENOMINADA MRO SERVIÇOS DE PLANEJAMENTO DE ESTOQUES E ASSESSORIA TÉCNICA LTDA.

Pelo presente instrumento particular, as partes abaixo nomeadas e qualificadas, a saber:

I. MRO SERVIÇOS LOGÍSTICOS S.A., sociedade anônima, de capital fechado, inscrita no CNPJ/MF sob o nº 11.669.055/0001-05, com sede na Avenida das Américas, 700 - Bloco 2 - salas 224 e 225, Barra da Tijuca, na Cidade do Rio de Janeiro, RJ, CEP 22.640-100, neste ato representada por seu Diretor Presidente Sr. ALEXANDRE ARREBOLA, brasileiro, divorciado, engenheiro mecânico, portador da carteira de identidade nº 7193-D expedida pelo CREA/ES, inscrito no CPF/MF sob o nº 027.636.147-44, residente e domiciliado na Avenida Prefeito Dulcídio Cardoso nº 1.100, bloco 01 - apto 1005, Barra da Tijuca - RJ, CEP: 22.520-31 e por seu diretor Sr. GLAUBER CÉSAR DE SOUZA, brasileiro, casado, comador, portador da carteira de identidade nº M-5.568.235 expedida pelo SSP/MG, inscrito no CPF/MF nº 942.503.246-72, residente e domiciliado na Rua General de Carvalho, nº 2939, Aptº 203, Recreio - Rio de Janeiro, CEP 22.795-077, doravante denominada simplesmente "MRO LOGISTICS"; e

II. MARCELO DA SILVA LARA, brasileiro, casado pelo regime da comunhão parcial de bens, engenheiro, carteira de identidade nº 09387623, expedida pelo IFP-RJ e, inscrito no CPF/MF sob o nº 016.799.647-98, residente e domiciliado na Rua Luiz Orlando Cardoso, 284, Barra da Tijuca, Rio de Janeiro, RJ CEP 22.793-323, doravante denominado simplesmente "SR. MARCELO";

únicos sócios da sociedade empresária limitada denominada MRO SERVIÇOS DE PLANEJAMENTO DE ESTOQUES E ASSESSORIA TÉCNICA LTDA., com sede na cidade do Rio de Janeiro, Estado do Rio de Janeiro, Avenida das Américas, nº 700, bloco 3, sala 101, Città Office, Barra da Tijuca, CEP 22.640-100, inscrita no CNPJ/MF sob o nº 14.780.192/0001-00, com seus atos constitutivos arquivados na Junta Comercial do Estado do Rio de Janeiro sob o nº 33.209.152.394, por decisão de 16 de dezembro de 2011, doravante denominada simplesmente a "SOCIEDADE"; e ainda,

III. GRANMODAL INVESTIMENTOS LTDA., sociedade limitada, inscrita no CNPJ/MF sob o nº 18.143.745/0001-75, com sede na Praia de Botafogo, nº 228, - Ala B, 15º andar, sala 1501, Botafogo, na Cidade e Estado do Rio de Janeiro, CEP 22.250-906, neste ato representada na forma de seu contrato social, doravante designada simplesmente "GRANMODAL";

têm entre si, justo e contratado, alterar, o Contrato Social da MRO SERVIÇOS DE PLANEJAMENTO DE ESTOQUES E ASSESSORIA TÉCNICA LTDA., da seguinte forma:

I. Aprovar a retirada do SR. MARCELO da Sociedade, mediante a emissão e transferência de 1 (uma) quota de emissão da Sociedade, pelo valor de R\$1,00 (um real), com tudo o que a mesma representa, livre e desembaraçada de quaisquer ônus e gravames à sócia ingressante

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GRANMODAL acima qualificada.

- 1.1. O SR. MARCELO e a sócia ingressante GRANMODAL outorgam-se mutuamente a mais ampla, plena, geral, irrevogável e irretroatável quitação pela cessão e transferência acima, para nada mais reclamarem, por si ou seus sucessores, sobre a referida cessão e transferência, a qualquer modo, título e tempo.
  - 1.2. A MRO LOGISTICS neste ato declara sua expressa anuência e concordância com a cessão e transferência acima deliberada, renunciando, expressamente, a qualquer direito de preferência que poderia ter na aquisição de tal quota.
2. Em razão da deliberação aprovada no item 1 acima, resolvem os sócios alterar a Cláusula 5ª do Contrato Social, que passa a vigorar com a seguinte redação:

#### CAPITAL E PARTICIPAÇÃO

*Cláusula 5ª - O Capital Social totalmente subscrito e integralizado é de R\$ 675.000,00 (seiscentos e setenta e cinco mil reais), divididos em 675.000 (seiscentos e setenta e quatro mil e oitocentas) quotas, com valor nominal de R\$ 1,00 (um real), cada uma, assim distribuídas entre os sócios:*

Sócio	Nº. Quotas	Valor em R\$	%
MRO Serviços Logísticos S/A	674.999	674.999,00	99,99
Granmodal Investimentos Ltda.	1	1,00	0,01
<b>Total:</b>	<b>675.000</b>	<b>675.000,00</b>	<b>100</b>

3. Em seguida, resolvem os sócios eleger o SR. MARCELO como Diretor de Operações da Sociedade. O administrador ora eleito declara não estar impedido por lei especial ou condenado por pena que vede, ainda que temporariamente, o acesso a cargos públicos; ou por crime falimentar, de prevaricação, peita ou suborno, concussão, peculato; ou contra a economia popular, contra o sistema financeiro nacional, contra as normas de defesa da concorrência, contra as relações de consumo, a fé pública ou a propriedade.

4. Em razão da eleição do SR. MARCELO aprovada no item 3 acima e de forma a refletir a nova composição da diretoria, distribuição de cargos e atribuições, bem como forma de representação da Sociedade, resolvem os sócios alterar o Capítulo III do Contrato Social da Sociedade, que passa a vigorar com a seguinte redação:

#### "CAPÍTULO III ADMINISTRAÇÃO

*Cláusula 8ª - A Sociedade será administrada conjuntamente por pessoas físicas não sócias, residentes no Brasil, e neste ato os sócios ratificam a nomeação do Sr. ALEXANDRE ARREBOLA, brasileiro, divorciado, engenheiro, portador da carteira de identidade nº 7193-D expedida pelo CREA/ES, inscr.º no Cadastro de Pessoas*

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Físicas do Ministério da Fazenda sob o nº 027.636.14.-44, que usará o título de **Diretor Presidente**, do Sr. **GLAUBER CESAR DE SOUZA**, brasileiro, casado, contador, portador da carteira de identidade nº M-5.568 235 expedida pelo SSPMG, inscrito no Cadastro de Pessoas Físicas do Ministério da Fazenda sob o nº 942.503.246-72, que usará o título de **Diretor Financeiro**, e do Sr. **MARCELO DA SILVA LARA**, brasileiro, casado pelo regime da comunhão parcial de bens, engenheiro, portador da carteira de identidade nº 09387123-3 expedida pelo IFP-RJ, inscrito no Cadastro de Pessoas Físicas do Ministério da Fazenda sob o nº 016.799.647-98, que usará o título de **Diretor de Operações**.

**Parágrafo Primeiro** - Caberá aos administradores, a prática de todos os atos em nome da Sociedade, inclusive, os de assinar e endossar cheques, contratos, letras de câmbio, duplicatas, bem como os de admitir e demitir empregados, constituir procuradores, representar a Sociedade em Juízo ou fora dele e perante os poderes públicos e terceiros em geral, adquirir, alienar ou onerar bens móveis e imóveis, conceder avais, fianças ou outras garantias (observado o disposto neste Contrato Social), transigir, renunciar, desistir, fazer acordos, firmas compromissos, contrair obrigações, fazer aplicações de recursos, observado o disposto no Parágrafo Segundo abaixo, em disposições estabelecidas na lei, neste Contrato Social e no Acordo de Acionistas da MRO (conforme definido abaixo).

**Parágrafo Segundo** - São expressamente e vedados, sendo nulos e inoperantes em relação à Sociedade, os atos de qualquer dos sócios-quotistas, administradores, procuradores ou empregados da Sociedade que a envolvem em obrigações relativas a negócios ou transações estranhas ao seu objeto social, inclusive fianças, avais ou a prestação de quaisquer outras garantias, reais ou fidejussórias, em favor de terceiros.

**Parágrafo Terceiro** - Os administradores ficam expressamente dispensados da prestação de caução ou fiança pelo exercício de sua função, não podendo fazer uso da denominação social para a prática de atos estranhos aos interesses da Sociedade.

**Parágrafo Quarto** - Compete ao Diretor Presidente: (a) executar e fazer executar as deliberações de Reuniões de Sócios; (b) determinar e promover a execução e implementação das políticas, estratégias, orçamentos, projetos de investimentos e demais condições do plano de negócios da Sociedade; (c) coordenar as atividades dos demais diretores, observadas as atribuições específicas previstas neste Contrato Social; (d) presidir as reuniões de Diretoria; e (e) manter permanente coordenação da atuação dos demais diretores, traçando as diretrizes empresariais, jurídicas, políticas, corporativas e institucionais no desenvolvimento das atividades da Sociedade.

**Parágrafo Quinto** - Compete ao Diretor Financeiro: (a) planejar, implementar e coordenar a política financeira da Sociedade, além de organizar, elaborar e controlar o orçamento da Sociedade; e (b) planejar e executar políticas de gestão em sua área de competência.

Assessoria Técnica Ltda.  
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*Parágrafo Sexto - Compete ao Diretor de Operações (a) planejar, executar e administrar as atividades comerciais da Sociedade; e (b) planejar, executar e administrar as atividades operacionais da Sociedade.*

*Parágrafo Sétimo - A sociedade não terá Conselho Fiscal.*

*Cláusula 9ª - A sociedade considerar-se-á obrigada quando representada:*

*(a) Conjuntamente por 2 (dois) Diretores; ou*

*(b) Conjuntamente por 1 (um) Diretor e 1 (um) Procurador, constituído pela assinatura conjunta de 2 (dois) Diretores, na extensão dos poderes que houverem sido outorgados."*

5. Resolvem os sócios alterar o Parágrafo 5º, bem como inserir novo Parágrafo 6º na Cláusula 10 do Contrato Social, que passa a vigorar com a seguinte redação:

*"Cláusula 10 - (...)*

*Parágrafo Quinto - Compete à Reunião de Sócios deliberar acerca das seguintes matérias, sem prejuízo de outras previstas em lei, neste Contrato Social e no Acordo de Acionistas da MRO:*

*a) A aprovação das contas da administração, bem como do plano de negócios, dos orçamentos, das políticas internas (incluindo eventuais revisões e ajustes) e da estrutura organizacional da Sociedade;*

*b) A designação e destituição dos administradores;*

*c) A modificação de quaisquer disposições deste Contrato Social;*

*d) A nomeação ou destituição de liquidantes e o julgamento de suas contas;*

*e) A distribuição de dividendos, pagamento de juros sobre o capital próprio, constituição de reservas de lucros ou qualquer outra distribuição que não esteja expressamente prevista neste Contrato Social;*

*f) As operações de incorporação, cisão, fusão, aquisição ou negócios similares envolvendo a Sociedade ou afiliadas;*

*g) A extinção da Sociedade ou liquidação do acervo da Sociedade;*

*h) A celebração de qualquer contrato, acordo ou transação entre, de um lado, a Sociedade; e, de outro lado, suas Afiliadas; seus Sócios e/ou qualquer outra Parte Relacionada à Sociedade, ainda que for realizado processo competitivo que justifique a*

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contratação com tais Afiliadas, seus Sócios e/ou qualquer outra Parte Relacionada à Sociedade;

- i) A celebração de contratos de prestação de serviço pela Sociedade cujo valor global seja superior a R\$ 5.000.000,00 (cinco milhões de reais);
- j) A contratação de empréstimos, renúncia a direitos e transação em valores, que envolvam, em um só negócio, montante superior a R\$ 300.000,00 (trezentos mil reais) ou, em negócios agregados, um montante superior a R\$ 1.500.000,00 (um milhão e quinhentos mil reais) e, uma vez ultrapassado esse limite dentro de um exercício social, autorização para toda e qualquer uma dessas operações, independentemente do valor envolvido;
- k) A aquisição, alienação e oneração de bens integrantes do ativo permanente, bem como de participações societárias de caráter não-permanente, que envolvam, em uma só transação ou transações agregadas, um montante superior a 10% do ativo permanente da Sociedade na referida data;
- l) A aprovação das metas de desempenho a serem fixadas para os administradores da Sociedade;
- m) A concessão de qualquer modalidade de doação, independentemente do beneficiário;
- n) A fixação do voto a ser dado pela Sociedade nas Assembleias Gerais e reuniões das sociedades em que venha a participar como sócia, acionista ou quotista, inclusive aprovando a escolha dos administradores de sociedades controladas ou coligadas a serem eleitos com o voto da Sociedade;
- o) Prestação de garantias pela Sociedade que envolva, em uma só transação ou transações agregadas, um montante superior a 10% do ativo permanente da Sociedade na referida data;
- p) Fiscalização da gestão dos diretores, examinando a qualquer tempo, as atas, livros e papéis da Sociedade, solicitando informações sobre contratos celebrados, ou em vias de celebração, e quaisquer outros atos;
- q) Abertura, transferência ou extinção de filiais, agências, departamentos, escritórios, depósitos ou quaisquer outros estabelecimentos em qualquer parte do território nacional e no exterior.

**Parágrafo Sexto** – Para fins desta Cláusula, são aplicáveis as seguintes definições:



a. "Afiliada" significa, com relação a determinada pessoa: qualquer outra pessoa que seja, direta ou indiretamente, uma controladora, coligada, controlada, ou sociedade sob controle comum, tendo os termos "Controle", "Coligada" e "Controlada" o significado previsto nos artigos 116 e 243 da Lei das Sociedades por Ações; e

b. "Partes Relacionadas" significa (i) as pessoas naturais ou jurídicas que detenham, direta ou indiretamente, participação no capital social da Sociedade e/ou de qualquer das Controladas; (ii) o cônjuge e/ou qualquer ascendente, descendente e/ou colaterais até 3º grau das pessoas naturais mencionadas no item (i); (iii) qualquer sociedade que as pessoas mencionadas nos itens (i) e/ou (ii) controlem ou em que possuam, direta ou indiretamente, participação societária superior a 10% (dez por cento) do capital social; e (iv) qualquer sociedade em que as pessoas mencionadas nos itens (i) e/ou (ii) exerçam função de empregado, gerente, administrador, consultor, prestador de serviços ou autônomo."

6. Resolvem os sócios, ainda, alterar a Cláusula 15, bem como inserir a nova Cláusula 16 no Contrato Social, de acordo com a seguinte redação:

*"Cláusula 15 - A Sociedade, seus sócios e administradores obrigam-se a resolver toda e qualquer disputa ou controvérsia que possa surgir entre eles, relacionada ou oriunda das disposições deste Contrato Social, do Acordo de Acionistas da MRO e de toda e qualquer lei brasileira aplicável, por arbitragem, administrada pelo Centro de Arbitragem da Câmara de Comércio Brasil-Canadá, de acordo com seu Regulamento, com a Lei n. 9.307/96, e com as demais leis brasileiras aplicáveis.*

*Parágrafo Único - As arbitragens em referência terão sede na Cidade do Rio de Janeiro e serão conduzidas, em língua portuguesa, por Tribunal Arbitral composto por 3 (três) árbitros, conforme procedimentos previstos no Acordo de Acionistas da MRO.*

*Cláusula 16 - As quotas de emissão da Sociedade estão sujeitas aos termos do Acordo de Acionistas da MRO Serviços Logísticos S.A., celebrado em 24 de maio de 2013, e seus eventuais aditamentos, arquivados na sede da Sociedade ("Acordo de Acionistas da MRO")."*

7. Por fim, decidem os sócios aprovar a nova redação consolidada do Contrato Social, que passará a vigorar com a redação abaixo:



**CONTRATO SOCIAL DE MRO SERVIÇOS DE PLANEJAMENTO  
DE ESTOQUES E ASSESSORIA TÉCNICA LTDA.**

**CAPÍTULO I  
DENOMINAÇÃO, SEDE, OBJETO E DURAÇÃO**

**Cláusula 1ª** - A razão social da Sociedade é **MRO SERVIÇOS DE PLANEJAMENTO DE ESTOQUES E ASSESSORIA TÉCNICA LTDA**

**Parágrafo único** - A Sociedade adota o nome fantasia de **MRO Inventor & Planning**.

**Cláusula 2ª** - A sede, foro e domicílio da Sociedade é na Av. das Américas 700 - Bloco 2 - Sala 224 PARTE - Città Office - Barra da Tijuca - Cidade do Rio de Janeiro - Estado do Rio de Janeiro - CEP: 22.640-100, podendo por resolução dos sócios abrir, transferir ou encerrar filiais, agências e escritórios em qualquer parte do País.

**Cláusula 3ª** - A Sociedade tem por objeto prestação de serviços de planejamento de estoques de peças de manutenção, reparo e operação (MRO), assessoria e consultoria para gestão e desenvolvimento de projetos logísticos, podendo participar de outras companhias como acionista, sócia ou quotista.

**Cláusula 4ª** - O prazo de duração da sociedade será indeterminado.

**CAPÍTULO II  
CAPITAL E PARTICIPAÇÃO**

**Cláusula 5ª** - O Capital Social totalmente subscrito e integralizado é de R\$ 675.000,00 (seiscentos e setenta e cinco mil reais), divididos em 675.000 (seiscentos e setenta e quatro mil e oitocentas) quotas, com valor nominal de R\$ 1,00 (um real), cada uma, assim distribuídas entre os sócios:

Sócio	Nº. Quotas	Valor em R\$	%
<i>MRO Serviços Logísticos S/A</i>	674.999	674.999,00	99,99
<i>Granmodal Investimentos Ltda.</i>	1	1,00	0,01
<b>Total:</b>	<b>675.000</b>	<b>675.000,00</b>	<b>100</b>

**Cláusula 6ª** - A responsabilidade de cada sócio é restrita ao valor de suas quotas, mas todos respondem solidariamente pela integralização do Capital Social.

**Cláusula 7ª** - As quotas são indivisíveis e não poderão ser cedidas ou transferidas a outros sócios ou a terceiros sem o consentimento dos demais sócios, a quem fica assegurado, em igualdade de condições e preço, o direito de preferência para a sua aquisição, nas suas respectivas proporções no capital social da Sociedade.

**Parágrafo Primeiro** - Cada quota vale um voto nas deliberações sociais da Sociedade.

**Parágrafo Segundo** - Caso qualquer dos sócios deseje alienar quotas que detêm no capital social da Sociedade, este sócio deverá comunicar aos demais sócios do seu desejo, mediante notificação por escrito, contendo (a) a qualificação completa do potencial adquirente das quotas, com a descrição da respectiva distribuição de seu capital social, se pessoa jurídica, (b) a quantidade e valor nominal das quotas que deseja alienar, (c) o preço e forma de pagamento pela aquisição das quotas e (d) cópia da proposta feita pelo potencial adquirente, a qual deverá conter o compromisso irrevogável e irretroatável para aquisição das quotas.

**Parágrafo Terceiro** - A contar da data de recebimento da notificação mencionada no Parágrafo Segundo acima, os demais sócios terão o prazo de 30 (trinta) dias para informar se desejam ou não adquirir as quotas ofertadas, nos mesmos termos e condições constantes da proposta, entendendo-se a ausência de resposta como renúncia ao exercício do direito de preferência.

### CAPÍTULO III ADMINISTRAÇÃO

**Cláusula 8ª** - A Sociedade será administrada conjuntamente por pessoas físicas não sócias, residentes no Brasil, e neste ato os sócios ratificam a nomeação do Sr. **ALEXANDRE ARREBOLA**, brasileiro, divorciado, engenheiro, portador da carteira de identidade nº 7193-D expedida pelo CREA/ES, inscrito no Cadastro de Pessoas Físicas do Ministério da Fazenda sob o nº 027.636.147-44, que usará o título de **Diretor Presidente**, do Sr. **GLAUBER CESAR DE SOUZA**, brasileiro, casado, contador, portador da carteira de identidade nº M-5.568.235 expedida pelo SSPMG, inscrito no Cadastro de Pessoas Físicas do Ministério da Fazenda sob o nº 942.503.246-72, que usará o título de **Diretor Financeiro**, e do Sr. **MARCELO DA SILVA LARA**, brasileiro, casado pelo regime da comunhão parcial de bens, engenheiro, portador da carteira de identidade nº 09387623-3 expedida pelo IFRRJ, inscrito no Cadastro de Pessoas Físicas do Ministério da Fazenda sob o nº 016.799.647-98, que usará o título de **Diretor de Operações**.

**Parágrafo Primeiro** - Caberá aos administradores, a prática de todos os atos em nome da Sociedade, inclusive, os de assinar e endossar cheques, contratos, letras de câmbio, duplicatas, bem como os de admitir e demitir empregados, constituir procuradores, representar a Sociedade em Juízo ou fora dele e perante os poderes públicos e terceiros em geral, adquirir, alienar ou onerar bens sociais, móveis e imóveis, conceder avais, fianças ou outras garantias (observado o disposto neste Contrato Social), transigir, renunciar, desistir, fazer acordos, firmas compromissos, contrair obrigações, fazer aplicações de recursos, observado o disposto no Parágrafo Segundo abaixo, em disposições estabelecidas na lei neste Contrato Social e no Acordo de Acionistas da MRO (conforme definido abaixo).

**Parágrafo Segundo** - São expressamente e vedados, sendo nulos e inoperantes em relação à Sociedade, os atos de qualquer dos sócios-quotistas, administradores, procuradores ou

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empregados da Sociedade que a envolverem em obrigações relativas a negócios ou transações estranhas ao seu objeto social, inclusive fianças, avais ou a prestação de quaisquer outras garantias, reais ou fidejussórias, em favor de terceiros.

**Parágrafo Terceiro** - Os administradores ficam expressamente dispensados da prestação de caução ou fiança pelo exercício de sua função, não podendo fazer uso da denominação social para a prática de atos estranhos aos interesses da Sociedade.

**Parágrafo Quarto** - Compete ao Diretor Presidente: (a) executar e fazer executar as deliberações de Reuniões de Sócios; (b) determinar e promover a execução e implementação das políticas, estratégias, orçamentos, projetos de investimentos e demais condições do plano de negócios da Sociedade; (c) coordenar as atividades dos demais diretores, observadas as atribuições específicas previstas neste Contrato Social; (d) presidir as reuniões de Diretoria; e (e) manter permanente coordenação da atuação dos demais diretores, traçando as diretrizes empresariais, jurídicas, políticas, corporativas e institucionais no desenvolvimento das atividades da Sociedade.

**Parágrafo Quinto** - Compete ao Diretor Financeiro: (a) planejar, implementar e coordenar a política financeira da Sociedade, além de organizar, elaborar e controlar o orçamento da Sociedade; e (b) planejar e executar políticas de gestão em sua área de competência.

**Parágrafo Sexto** - Compete ao Diretor de Operações: (a) planejar, executar e administrar as atividades comerciais da Sociedade; e (b) planejar, executar e administrar as atividades operacionais da Sociedade.

**Parágrafo Sétimo** - A sociedade não terá Conselho Fiscal.

**Cláusula 9ª** - A sociedade considerar-se-á obrigada quando representada:

- (a) Conjuntamente por 2 (dois) Diretores; ou
- (b) Conjuntamente por 1 (um) Diretor e 1 (um) Procurador, constituído pela assinatura conjunta de 2 (dois) Diretores, na extensão dos poderes que houverem sido outorgados.

#### CAPÍTULO IV DAS REUNIÕES DOS SÓCIOS

**Cláusula 10** - Semestralmente, os sócios, reunir-se-ão ordinariamente, dentro dos 03 (três) meses subsequentes ao término do exercício social, para aprovar as contas dos administradores e deliberar sobre o balanço patrimonial e o registro econômico; eleger ou destituir sócio administrador, quando for o caso; fixar a remuneração do sócio-administrador e qualquer assunto constante da ordem do dia.

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**Parágrafo Primeiro** - Os documentos mencionados na Cláusula 10ª serão colocados à disposição dos sócios, na sede da sociedade até 15 (quinze) dias antes da reunião anual de sócios.

**Parágrafo Segundo** - As deliberações sociais dependem da aprovação de sócios que representem a maioria (50% mais 1 quota) do capital social, ressalvadas as hipóteses de *quorum* especial previstas no artigo 1076 do Código Civil.

**Parágrafo Terceiro** - No caso de empate nas deliberações sociais, o impasse será submetido a um mediador, escolhido de comum acordo entre os sócios.

**Parágrafo Quarto** - As convocações prévias para as reuniões de sócios poderão ser dispensadas, se estiverem presentes sócios representando a totalidade dos votos, ou se os sócios ausentes se declararem cientes da realização da reunião, em conformidade com o parágrafo 2º do artigo 1072 do Código Civil.

**Parágrafo Quinto** - Compete à Reunião de Sócios deliberar acerca das seguintes matérias, sem prejuízo de outras previstas em lei, neste Contrato Social e no Acordo de Acionistas da MRO:

- a) A aprovação das contas da administração, bem como do plano de negócios, dos orçamentos, das políticas internas (incluindo eventuais revisões e ajustes) e da estrutura organizacional da Sociedade;
- b) A designação e destituição dos administradores;
- c) A modificação de quaisquer disposições deste Contrato Social;
- d) A nomeação ou destituição de liquidantes e o julgamento de suas contas;
- e) A distribuição de dividendos, pagamento de juros sobre o capital próprio, constituição de reservas de lucros ou qualquer outra distribuição que não esteja expressamente prevista neste Contrato Social;
- f) As operações de incorporação, cisão, fusão, aquisição ou negócios similares envolvendo a Sociedade ou afiliadas;
- g) A extinção da Sociedade ou liquidação do acervo da Sociedade;
- h) A celebração de qualquer contrato, acordo ou transação entre, de um lado, a Sociedade; e, de outro lado, suas Afiliadas; seus Sócios e/ou qualquer outra Parte Relacionada à Sociedade, ainda que for realizado processo competitivo que justifique a contratação com tais Afiliadas, seus Sócios e/ou qualquer outra Parte Relacionada à Sociedade;
- ii) A celebração de contratos de prestação de serviços pela Sociedade cujo valor global seja superior a R\$ 5.000.000,00 (cinco milhões de reais);

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- r) A contratação de empréstimos, renúncia a direitos e transação em valores, que envolvam, em um só negócio, montante superior a R\$ 300.000,00 (trezentos mil reais) ou, em negócios agregados, um montante superior a R\$ 1.500.000,00 (um milhão e quinhentos mil reais) e, uma vez ultrapassado esse limite dentro de um exercício social, autorização para toda e qualquer uma dessas operações, independentemente do valor envolvido;
- s) A aquisição, alienação e oneração de bens integrantes do ativo permanente, bem como de participações societárias de caráter não-permanente, que envolvam, em uma só transação ou transações agregadas, um montante superior a 10% do ativo permanente da Sociedade na referida data;
- t) A aprovação das metas de desempenho a serem fixadas para os administradores da Sociedade;
- u) A concessão de qualquer modalidade de doação, independentemente do beneficiário;
- v) A fixação do voto a ser dado pela Sociedade nas Assembleias Gerais e reuniões das sociedades em que venha a participar como sócia, acionista ou quotista, inclusive aprovando a escolha dos administradores de sociedades controladas ou coligadas a serem eleitos com o voto da Sociedade;
- w) Prestação de garantias pela Sociedade que envolva, em uma só transação ou transações agregadas, um montante superior a 10% do ativo permanente da Sociedade na referida data;
- x) Fiscalização da gestão dos diretores, examinando, a qualquer tempo, as atas, livros e papéis da Sociedade, solicitando informações sobre contratos celebrados, ou em vias de celebração, e quaisquer outros atos;
- y) Abertura, transferência ou extinção de filiais, agências, departamentos, escritórios, depósitos ou quaisquer outros estabelecimentos em qualquer parte do território nacional e no exterior.

**Parágrafo Sexto** – Para fins desta Cláusula, são aplicáveis as seguintes definições:

- c. "Afilhada" significa, com relação a determinada pessoa, qualquer outra pessoa que seja, direta ou indiretamente, uma controladora, coligada, controlada ou sociedade sob controle comum, tendo os termos "Controle", "Coligada" e "Controlada" o significado previsto nos artigos 116 e 243 da Lei das Sociedades por Ações; e
- d. "Partes Relacionadas" significa (i) as pessoas naturais ou jurídicas que detenham, direta ou indiretamente, participação no capital social da Sociedade e/ou em qualquer das Controladas;

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(ii) o cônjuge e/ou qualquer ascendente, descendente e/ou colaterais até 3º grau das pessoas naturais mencionadas no item (i); (iii) qualquer sociedade que as pessoas mencionadas nos itens (i) e/ou (ii) controlem ou em que possuam, direta ou indiretamente, participação societária superior a 10% (dez por cento) do capital social; e (iv) qualquer sociedade em que as pessoas mencionadas nos itens (i) e/ou (ii) exerçam função de empregado, gerente, administrador, consultor, prestador de serviços ou autônomo.

## CAPÍTULO V DO EXERCÍCIO SOCIAL

**Cláusula 11** - O exercício social terá início em 1º de janeiro de cada ano e terminará em 31 de dezembro, ficando o Administrador da Sociedade autorizado a levantar Balanços a qualquer tempo e a distribuir os lucros apurados, se houver, ocasiões em que proceder-se-á à elaboração do Balanço Patrimonial e Demonstrações de Resultado do Exercício, consoante prevê o artigo 1065 do Código Civil.

**Parágrafo Primeiro** - Os lucros apurados serão distribuídos entre os sócios, independentemente da participação que detêm no capital social, conforme deliberação de sócios que representem a maioria (50% mais 1 quota) do capital social. Da mesma forma, parte ou todo o lucro poderá ser destinado à Conta de Reserva de Lucros, conforme deliberação de sócios que representem a maioria (50% mais 1 quota) do capital social.

**Parágrafo Segundo** - Eventuais prejuízos serão suportados pelos sócios, na proporção de suas participações no capital social, não havendo, todavia, obrigação de repor o capital social.

**Parágrafo Terceiro** - Na forma do artigo 1059 do Código Civil os sócios serão obrigados à reposição dos lucros e das quantias retiradas, a qualquer título, ainda que autorizados pelo contrato, quando tais lucros ou quantias tiverem sido distribuídos com prejuízo do capital."

## CAPÍTULO VI DISPOSIÇÕES FINAIS

**Cláusula 12** - A Sociedade não se dissolverá por morte, interdição, renúncia ou falência de qualquer dos sócios, continuando com os sócios remanescentes. Os sócios nas condições aqui previstas, ou os sucessores do "de cujus", receberão o valor das quotas, apurado em Balanço Geral especial, em 12 (doze) parcelas mensais, iguais e sucessivas, pagável a primeira 30 (trinta) dias após o prazo de 30 (trinta) dias estipulado no Parágrafo Terceiro da Cláusula 7ª, acima.

**Cláusula 13** - Qualquer sócio poderá ser excluído da Sociedade por justa causa, nas hipóteses em que a sua conduta estiver pondo em risco a continuidade da empresa, em virtude de atos de inegável gravidade, mediante deliberação de sócios que representem a maioria (50% mais 1 quota) do capital social, na forma do artigo 1085 do Código Civil inclusive ao não se esmerar

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manifestamento e não contribuir conjuntamente nos serviços contratados pela Sociedade, dentro das especificações assumidas, prejudicando a eficiência e cumprimento das obrigações da Sociedade e conseqüentemente o seu alto conceito técnico e de seriedade no mercado em que atua.

**Parágrafo Primeiro** - Dentre outras hipóteses ensejadoras de exclusão de sócio, considera-se falta grave o fato de um sócio, pessoalmente ou através de pessoa jurídica da qual participe, direta ou indiretamente, como sócio, quotista, acionista, associado, membro, administrador, funcionário ou prestador de serviços, praticar ato que potencialmente ou efetivamente caracterize ato de concorrência com o objeto da Sociedade, excetuando-se, para todos os fins, a empresa sócia **MRO LOGISTICS**, assim como a participação acionária dos demais sócios na **MRO SERVIÇOS DE PLANEJAMENTO DE ESTOQUES E ACESSORIA TÉCNICA LTDA.**

**Parágrafo Segundo** - A exclusão somente poderá ser determinada em reunião especialmente convocada para esse fim, ciente o acusado em tempo hábil para permitir o seu comparecimento e o exercício do direito de defesa, conforme o disposto no artigo 1085 do Código Civil.

**Cláusula 14** - Os administradores declaram sob as penas da lei, que não estão impedidos de exercer atividades mercantis e/ou a administração da Sociedade, por lei especial, ou em virtude de condenação criminal, ou por se encontrarem sob os efeitos dela, a pena que vede, ainda que temporariamente, o acesso a cargos públicos; ou por crime falimentar, de prevaricação, peita ou suborno, concussão, peculato, ou contra a economia popular, contra o sistema financeiro nacional, contra normas de defesa da concorrência, contra as relações de consumo, fé pública, ou a propriedade.

**Cláusula 15** - A Sociedade, seus sócios e administradores obrigam-se a resolver toda e qualquer disputa ou controvérsia que possa surgir entre eles, relacionada ou oriunda das disposições deste Contrato Social, do Acordo de Acionistas da MRO e de toda e qualquer lei brasileira aplicável, por arbitragem, administrada pelo Centro de Arbitragem da Câmara de Comércio Brasil-Canadá, de acordo com seu Regulamento, com a Lei n. 9.307/96, e com as demais leis brasileiras aplicáveis.

**Parágrafo Único** - As arbitragens em referência terão sede na Cidade do Rio de Janeiro e serão conduzidas, em língua portuguesa, por Tribunal Arbitral composto por 3 (três) árbitros, conforme procedimentos previstos no Acordo de Acionistas da MRO.

**Cláusula 16** - As quotas de emissão da Sociedade estão sujeitas aos termos do Acordo de Acionistas da MRO Serviços Logísticos S.A., celebrado em 24 de maio de 2013, e seus eventuais aditamentos, arquivados na sede da Sociedade ("Acordo de Acionistas da MRO").

E por assim estarem certas, justas e contratadas, as partes firmam o presente instrumento em 2 (duas) vias de igual teor e forma, na presença de 2 (duas) testemunhas, que abaixo assinam, a fim de que produza seus jurídicos e legais efeitos.



16

Rio de Janeiro, 01 de julho de 2013.

OFICIO DE NOTAS - RJ

Sócios:

*Alexandre Rubla*  
MRO SERVIÇOS LOGÍSTICOS S.A.

*Miguel*  
OFICIO DE NOTAS - RJ GRANMODAL INVESTIMENTOS LTDA.

Sócio retirante e Diretor de Operações eleito:

*Marcelo da Silva Lara*  
MARCELO DA SILVA LARA - OFICIO DE NOTAS - RJ

TESTEMUNHAS:

*Alcine Martins Reis*  
Nome: Alcine Martins Reis  
ID: 10754075-9

*Clarice Maria Dias Barua*  
Nome: CLARICE MARIA  
ID: 20.024.726-4

13. OFICIO DE NOTAS - FERNANDA DE FREITAS LIMA - TABELA  
RECONHECO POR SEMELHANÇA a(s) firmatari(a)s:  
MIQUEL DE ALMEIDA GRADIN  
SELO(S): 80071651  
FOLHA 13 DE 13  
R.J., 10 de Outubro de 2013 - Rua do Curicó, 89, Centro (021) 3223-2600  
MAT: 94-014846-RAMON REZENDE CORDEIRO-ESCREVENTE

SELO DE FISCALIZAÇÃO  
OF: 141595  
ESCREVENTE  
OFICIO DE NOTAS  
Matr.: 84-014846

SELO DE FISCALIZAÇÃO  
OF: 141595  
ESCREVENTE  
OFICIO DE NOTAS  
Matr.: 84-014846

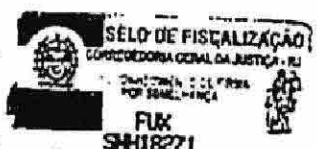
JUNTA COMERCIAL DO ESTADO DO RIO DE JANEIRO  
Nome: MRO SERVIÇOS DE PLANEJAMENTO DE ESTOQUES E ASSESSORIA TÉCNICA LTDA  
Nire: 33.2.0015239-4  
Protocolo: 00-2013/511346-6  
CERTIFICO QUE O PRESENTE FOI ARQUIVADO SOB O N.º 00002557154  
Valéria L.M. Serra  
SECRETARIA GERAL

JUNTA COMERCIAL DO ESTADO DO RIO DE JANEIRO  
Nome: MRO SERVIÇOS DE PLANEJAMENTO DE ESTOQUES E ASSESSORIA TÉCNICA LTDA  
Nire: 33.2.0015239-4  
Protocolo: 00-2013/511346-6 - 75/10/2013  
CERTIFICO O DEFERIMENTO EM 30/10/2013, E O REGISTRO SOB O NÚMERO E DATA ABAIXO.  
00002557154  
DATA: 31/10/2013  
Valéria L.M. Serra  
SECRETARIA GERAL



189 Ofício de Notas - Tabelião Luis Vitgriano Vieira Teixeira  
 Av. Presidente Vargas, 435 12. andar - RJ - Tel. 2507-6151 - MO 1063916  
 Reconheço por semelhança a(s) firma(s): ALEXANDRE ARREBOLA-284/87-SNV  
 H18271, CLAUER CESAR DE SOUZA-309/48-SNH18272, MARCELO SILVA DE LARA-  
 A-314/117-SNH18273. 8

Rio de Janeiro, 15 de Outubro de 2013 as 08:44:57  
 3- Em Testemunho da verdade.  
 FERNANDO RENAN DE QUEIROZ - Autorizado - FRQ - 1487  
 Firma 3,97 + FETJ 0,79 + Fundos, 0.60 = R\$5,36

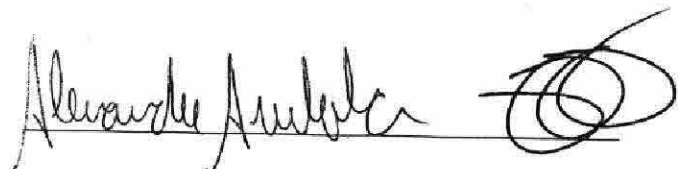


00-2013/ 5 1 1 3 4 6 - 6      25 out 2013 11:59  
 JUCERJA      Guia: 100965256  
 3320915239-4      Atos: 105  
 MRO SERVICOS DE PLANEJAMENTO DE ESTOQUES E ASSESSO  
 RIA TECNICA LTDA  
 Cumprir a exigência no      Junta » Calculado: 319,00      Pago: 319,00  
 mesmo local da entrada.      DNRC » Calculado: 21,00      Pago: 21,00  
 ULT. ARQ.: 00002466702 02/05/2013 105

**PROCURAÇÃO**

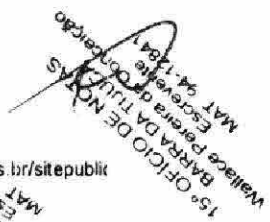
Pelo presente instrumento particular de mandato, **MRO SERVIÇOS DE PLANEJAMENTO DE ESTOQUES E ASSESSORIA TÉCNICA LTDA.**, sociedade empresarial inscrita no CNPJ sob o nº. 14.780.192/0001-00, com sede na Av. das Américas, 700, Bloco 3, Sala 101, Barra da Tijuca - Rio de Janeiro/RJ, CEP 22.640-100, por seu representante legal infra-assinado, nomeia e constitui seus bastantes procuradores os advogados **Andrea Zoghbi Brick**, brasileira, casada, inscrita na OAB/RJ sob o nº 94.630 e no CPF/MF sob o nº 072.593.227-99; **Adriana da Cunha Rocha**, brasileira, solteira, inscrita na OAB/RJ sob o nº 144.231 e no CPF/MF sob o nº 099.592.587-93; **Paulla Felix de Souza Barçante**, brasileira, solteira, inscrita na OAB/RJ sob o nº 169.007 e no CPF/MF sob o nº 111.487.607-09; **João Marçal Rodrigues Martins da Silva**, brasileiro, solteiro, inscrito na OAB/RJ sob o nº 166.939 e no CPF/MF sob o nº 118.218.857.59; **Julia Cunha Ribeiro**, brasileira, solteira, inscrita na OAB/RJ sob nº 180.732 e no CPF/MF sob o nº 124.241.907-12 e os estagiários **Bernardo Gomes Paiva**, brasileiro, solteiro, inscrito na OAB/RJ sob nº 175.625-E e no CPF/MF sob o nº 119.137.507-28 e **Lais Salgado Nepomuceno**, brasileira, solteira, inscrita na OAB/RJ sob o nº 198.731-E e no CPF/MF sob o nº 096.502.986-73, todos participantes da sociedade **Trench, Rossi e Watanabe Advogados** (a qual, também, neste ato, é nomeada procuradora com poderes para efetuar levantamentos judiciais, receber e dar quitação), com endereço na Cidade e Estado do Rio de Janeiro, na Av. Rio Branco nº 1, 19º andar - setor "B", inscrita no CNPJ/MF sob nº 01.281.360/0001-71 e registrada na OAB/RJ sob o nº RS-195.156/1996, outorgando-lhes procuração geral para o foro e mais os poderes para confessar, reconhecer a procedência do pedido, desistir, transigir, renunciar ao direito sobre que se funda a ação, receber, dar quitação, firmar compromisso, representá-la em assembleia geral de credores para todos os fins de Direito, representá-la para toda e qualquer providência prevista na Lei nº. 11.101/2005, judicial ou extrajudicial, por ela agindo em conjunto ou separadamente, independentemente de ordem de nomeação, podendo substabelecer com ou sem reservas de iguais poderes e especialmente para representá-la na qualidade de credora na **Recuperação Judicial** requerida por **OSX BRASIL S.A.** e outras, processo nº. 0392571-55.2013.8.19.0001, em trâmite perante a 3ª Vara Empresarial da Comarca da Capital do Estado do Rio de Janeiro.

Rio de Janeiro, 16 de abril de 2014.



**MRO SERVIÇOS DE PLANEJAMENTO DE ESTOQUES E ASSESSORIA TÉCNICA LTDA.**

15. OFÍCIO DE NOTAS-FERNANDA DE FREITAS LEITÃO-TABELIÁ  
 Av. das Américas, 500 Bl. 11 loja 106 Downtown (021) 3154-7151 - 16 de Abril de 2014  
**RECONHECO POR SEMELHANÇA a(s) firma(s) de:**  
**ALEXANDRE ARREBOLA; GLAUBER CESAR DE SOUZA**  
 .....  
 FUNPERJIO,42P JNDIPEPERJIO,42PFEI,68FLINARRENSA,2PMCMVMO,06EMOILB,408CTAL11,40  
 Em Testemunho: ..... de verdade  
 MAT.94-12841 - WALLACE PEREIRA DA CONCEIÇÃO - ESCRIVENTE  
**EAEP59847-ROU e EAEP59848-YKK** Consulte em <http://www.br/sitepublic>

  
 15º OFÍCIO DE NOTAS  
 Barra da Tijuca  
 Escritura da Barra da Tijuca  
 MAT. 94-12841  
 Wallace Pereira da Conceição

**EXCELENTÍSSIMO SENHOR DOUTOR JUIZ DE DIREITO DA 3ª VARA  
EMPRESARIAL DO FORO DA COMARCA DO RIO DE JANEIRO, RJ.**

PROCEP EM019 20140362806 08/07/14 17:54:38/2014 11663/119

**Processo nº. 0392571-55.2013.8.19.0001**

**EMERSON PROCESS MANAGEMENT LTDA.** ("EMERSON"), por suas advogadas, nos autos da **RECUPERAÇÃO JUDICIAL** requerida por **OSX SERVIÇOS OPERACIONAIS LTDA.** e **OUTRAS**, vem, respeitosamente, à presença de Vossa Excelência, com fundamento no artigo 55 da Lei nº. 11.101/2005, apresentar

**OBJEÇÃO AO PLANO DE RECUPERAÇÃO JUDICIAL**

pelas razões a seguir aduzidas.

**I. TEMPESTIVIDADE**

1. O edital por meio do qual os credores são intimados a apresentar, a seu critério, objeção ao plano de recuperação judicial, foi publicado no Diário Oficial do dia 03.06.2014, terça-feira (fl. 2344). Assim, o prazo de 30 dias previsto no artigo 55 da Lei 11.101/2005 começou a fluir em 04.06.2014, quarta-feira, chegando a termo em



03.07.2014, quinta-feira. Manifesta, portanto, a tempestividade desta objeção, apresentada hoje.

## **II. O PLANO DE RECUPERAÇÃO JUDICIAL** **CONDIÇÕES DE PAGAMENTO E EFEITOS**

2. O plano de recuperação judicial de fls. prevê as seguintes condições de pagamento em relação aos créditos quirografários: **(i)** carência de 1 (um) ano para pagamento, a partir da homologação do plano; **(ii)** pagamento em 12 (doze) parcelas mensais, devendo a primeira parcela ser paga na data do 1º (primeiro) Aniversário da data da homologação, e as demais parcelas pagas nas mesmas datas dos meses subsequentes; **(iii)** juros de 1% ao mês e correção monetária corresponderão à variação do IPCA, incidentes a partir da data da homologação sobre o saldo do valor principal na data do pedido; e **(iv)** juros serão pagos mensalmente junto com o pagamento do crédito.

3. Em relação aos efeitos do plano que interessam a essa objeção, as cláusulas 6.4, 6.7, 10 e 10.9 preveem: **(i)** a extinção de ações judiciais envolvendo créditos que não estão sujeitos à recuperação judicial; **(ii)** a ausência de responsabilidade dos administradores da recuperanda por atos por eles praticados e obrigações contratadas no curso da Recuperação Judicial; **(iii)** a convocação obrigatória de Assembleia Geral de Credores em caso de descumprimento do Plano, em vez de convocação ; e **(iv)** a vinculação dos credores a eventuais processos de falência, recuperação judicial ou insolvência a serem ajuizados no exterior.

## **III. OBJEÇÃO AO PLANO DE RECUPERAÇÃO JUDICIAL**

4. Essa objeção tem por escopo impugnar os efeitos do plano de recuperação indicados no item 3 acima, na medida em que, por violarem a Lei Federal, são consideradas **nulas** e não podem ser mantidas no plano.

**III. (i) Extinção de ações: as condições estabelecidas na cláusula 6.4 não podem ser aplicadas aos créditos que não estão sujeitos à recuperação judicial**

5. Por meio da cláusula 6.4 do plano, a recuperanda pretende tolher o direito dos credores de perseguir créditos que não estão submetidos à recuperação judicial e, portanto, aos termos de pagamento do plano. Confira-se:

**"6.4. Extinção de ações.** Exceto se previsto de forma diversa no Plano, os credores não mais poderão, a partir da Aprovação do Plano, (i) ajuizar ou prosseguir toda e qualquer ação judicial ou processo de qualquer tipo relacionado ou não a qualquer crédito contra a OSX Serviços; (ii) executar qualquer sentença, decisão judicial ou sentença arbitral contra a OSX Serviços; (iii) penhorar quaisquer bens da OSX Serviços para satisfazer seus créditos; (iv) criar, aperfeiçoar ou executar qualquer garantia real sobre bens e direitos de OSX Serviços para assegurar o pagamento de seus créditos; (v) reclamar qualquer direito de compensação contra qualquer crédito devido a OSX Serviços; e (vi) buscar a satisfação de seus créditos por quaisquer outros meios. Todas as execuções judiciais em curso contra a OSX Serviços, relativas aos créditos serão extintas, e as penhoras e constrições existentes serão liberadas." (fls. 1950/1951)

6. Essa cláusula viola o artigo 49 da Lei nº 11.101/2005, que prevê que apenas os créditos existentes à época da recuperação devem ser submetidos ao procedimento e ao plano aprovado.

7. Se o crédito existir **após** o pedido de recuperação judicial, o credor pode se valer de procedimento autônomo para cobrá-lo da recuperanda, já que, nos termos do artigo supra, tal crédito não está sujeito ao procedimento da recuperação.

8. Qualquer disposição em contrário, como é o caso da cláusula 6.4 do plano, não terá nenhum efeito ou validade, pois, além de contrária à Lei 11.101/2005, viola o direito de ação previsto no artigo 5º, XXXV, da Constituição.

9. Mais ainda, essa disposição é totalmente estranha à recuperação, na medida em que dá tratamento a créditos que nem sequer estão contemplados na presente recuperação.

**III. (ii) Os administradores da recuperanda devem atuar no limite de suas obrigações e devem ser responsabilizados por atos praticados em excesso (atos ilícitos)**

10. A cláusula 6.7 do plano isenta os administradores e sócios da recuperanda de responsabilidade por todos e quaisquer atos e obrigações praticados por eles durante a recuperação judicial. Observe-se:

**"6.7. Isenção de Responsabilidade e Renúncia.** Em razão da Aprovação do Plano, os credores expressamente reconhecem e isentam as Partes Isentas<sup>1</sup> de toda e qualquer responsabilidade pelos atos praticados e obrigações contratadas no curso da Recuperação Judicial incluindo, mas não se limitando, ao *Plan Support Agreement*, conferindo as Partes Isentas quitação ampla, rasa, geral, irrevogável e irretroatável de todos os referidos atos a qualquer título. A aprovação do Plano pela Assembleia de Credores representa igualmente a renúncia expressa e irrevogável dos Credores a toda e qualquer pretensão, ação ou direito a demandar, perseguir ou reclamar, em Juízo ou fora dele, a qualquer título e sem qualquer reserva, reparação de danos e/ou quaisquer outras ações ou medidas contra as Partes Isentas em relação aos atos praticados e obrigações contraídas pelas Partes Isentas durante a Recuperação Judicial." (fl. 1951)

11. Essa cláusula igualmente é nula e não pode subsistir, até porque, com ela, buscam os administradores e sócios um verdadeiro "salvo-conduto".

12. Os administradores de uma sociedade, no exercício de suas funções sociais, estão obrigados a atuar não só de acordo com a lei, documentos societários e interesses da sociedade, mas, também com probidade e respeito às normas éticas, morais e à função social da empresa. Nesse sentido, dispõe o artigo 1.011 do Código Civil, a respeito das sociedades anônimas, e o artigo 154 da Lei das Sociedades Anônimas, aplicados ao caso por analogia:

"Art. 1.011. a administrador da sociedade deve empregar, no exercício das suas funções, o cuidado e diligência que todo homem ativo e probo costuma empregar na administração dos seus próprios negócios. (..)"

"Art. 154. O administrador deve exercer as atribuições que a lei e o estatuto lhe conferem para lograr os fins e no interesse da companhia, satisfeitas as exigências do bem público e da função social da empresa. "

13. Nesse sentido, ensina Fabio Ulhoa Coelho:

"Os deveres de diligência e lealdade, prescritos aos administradores de sociedade anônima, embora referidos na LSA (arts. 153 e 155), podem ser vistos como

<sup>1</sup> São a OSX Serviços, o Grupo OSX, os Acionistas Controladores, e suas respectivas controladas, subsidiárias, afiliadas e coligadas e outras sociedades pertencentes ao mesmo grupo societário e econômico, seus diretores, conselheiros, acionistas, agentes, funcionários, representantes, assessores, consultores e advogados, sucessores e cessionários.

preceitos gerais, aplicáveis a qualquer pessoa incumbida de administrar bens ou interesses alheios. A eles se submetem, nesse sentido, o síndico da massa falida, o mandatário, o liquidante ou interventor da instituição financeira, e, também, o gerente da sociedade limitada. Como as atribuições de gerência, no plano interno, são as de administrar a empresa, os membros do órgão devem ser diligentes e leais. Tais de veres representam, portanto, os parâmetros de aferição do desempenho dos diretores da limitada. Sua responsabilidade tem lugar, assim, quando desatendidos os deveres gerais dos administradores (CC/2002, arts. 1.011, 1.016 e 1.017)."<sup>2</sup>

14. Nesse passo, caso os administradores e demais pessoas responsáveis pela direção da recuperanda não colaborem efetivamente para o sucesso e prosperidade da recuperação judicial, desvirtuando as atribuições e prerrogativas que a lei e o contrato social lhes conferiram, é evidente que a junta diretiva da recuperanda estará praticando desvio de poder<sup>3</sup> e, portanto, ato ilícito, devendo ser responsabilizados.

15. Daí a nulidade da cláusula 6.7 do plano: caso os administradores e demais responsáveis pela direção da recuperanda venham a agir em detrimento dos interesses da própria recuperanda e, por consequência, dos credores, ainda que durante a recuperação judicial, terão transgredido normas morais e legais que norteiam a conduta de diretor/administrador, violando o mais elementar dos seus deveres, previsto no *caput* do artigo 155 da Lei das Sociedade Anônimas: o dever de lealdade.

16. Vale lembrar, ainda, que o artigo 1.016 do Código Civil determina que “*os administradores respondem solidariamente perante a sociedade e os terceiros prejudicados, por culpa no desempenho de suas funções*”.

17. O artigo 158 da Lei das Sociedade Anônimas, por sua vez, acolhendo a teoria da responsabilidade objetiva do administrador, tipifica com precisão o dever de indenizar, caso o administrador não se atenha a seus poderes e não desempenhe corretamente sua função. Confira-se:

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<sup>2</sup> *Curso de Direito Comercial*, vol. 2. 5ª ed. São Paulo: Saraiva, 2005, pag. 440.  
<sup>3</sup> “O desvio de poder caracteriza-se pelo desvirtuamento da finalidade da própria lei societária e do estatuto da companhia, embora preservados os elementos formais da respectiva regra. Trata-se, portanto, de uma fraude a lei e ao estatuto, mediante a manipulação e aplicação deformada de suas regras, visando a lograr fins outros que não os da companhia ou, então, observância das exigências do bem público e da função social da empresa”. In Carvalhosa, Modesto. *Comentários a Lei de Sociedades Anônimas*, vol. 3, 1997, p. 154.

"O administrador não é pessoalmente responsável pelas obrigações que contrair em nome da sociedade e em virtude de ato regular de gestão; responde, porém, civilmente, pelos prejuízos que causar, quando proceder:

- I- dentro de suas atribuições, com culpa ou dolo;
- II- com violação da lei ou do estatuto. (..)"

18. Desse modo, inaceitável a isenção da responsabilidade da junta diretiva da recuperanda por atos praticados durante a recuperação judicial, que representa violação direta à Lei Federal e configura nulidade.

### **III. (iii) Descumprimento do plano e convocação imediata da recuperação judicial em falência**

19. A cláusula 8 do plano determina que, caso haja descumprimento do plano de recuperação judicial, é obrigatória a convocação de Assembleia Geral de Credores para discussão da questão. Confira-se:

**"8. Descumprimento do Plano.** Em caso de mora, a OSX Serviços deverá requerer a convocação de uma Assembleia de Credores ao Juízo da Recuperação, com a finalidade de deliberar junto a seus Credores Concursais sobre a medida mais adequada para sanar o descumprimento do Plano. Para fins desta cláusula, havendo mora caso a OSX Serviços descumpra culposamente alguma disposição deste Plano e não sane tal descumprimento no prazo de até 30 (trinta) dias contados do recebimento pela OSX Serviços de notificação enviada pela parte prejudicada com o descumprimento de tal obrigação." (fl. 1952)

20. Ora, nos termos dos artigos 61, §1º e 73, IV da Lei nº 11.101/2005, o descumprimento do plano aprovado leva à imediata convocação da recuperação judicial em falência, independentemente da designação de Assembleia Geral de Credores.

### **III. (iv) Da não obrigação dos credores a se vincular a processos falimentares no exterior**

21. A cláusula 10.9 do plano prevê que a recuperanda estaria autorizada a ajuizar processos de falência, recuperação judicial ou insolvência no exterior, com o objetivo de conferir efeitos ao plano fora do território brasileiro, vinculando os credores domiciliados e estabelecidos no exterior, conforme necessário. Observe-se:

**"10.9. Processo Auxiliar no Exterior.** A OSX Serviços poderá ajuizar processo de falência, recuperação judicial ou insolvência no exterior, com o objetivo de



conferir efeitos ao Plano fora do território brasileiro, vinculando os credores domiciliados e estabelecidos no exterior, conforme necessário. Os referidos processos não poderão alterar as condições de pagamento e os demais termos deste Plano." (fl. 1954).

22. Essa cláusula é nula, seja porque ela pode estar autorizando tratamento díspar entre credores que deveriam ser tratados da mesma maneira, seja porque pode afetar diretamente as condições e parcerias comerciais estabelecidas pelos credores.

**23. Ora, não tem sentido dar tratamento distinto a credores brasileiros e estrangeiros simplesmente porque distinta sua nacionalidade. E, essa cláusula, em última análise, franqueia, exatamente, essa possibilidade, na medida em que não pode a recuperanda, desde agora, assegurar que os credores estrangeiros aceitarão o mesmo plano que foi oferecido aos credores brasileiros.**

24. Por outro lado, como muitos credores listados nesta recuperação judicial, a EMERSON é empresa mundialmente conhecida em seu ramo de atividades, que possui como sócias duas empresas estrangeiras. Atua, portanto, em relações comerciais internacionais de mercado.

25. Nesse contexto, é prejudicial aos negócios da EMERSON ter seu nome obrigatoriamente vinculado a um pedido de recuperação judicial, falência ou insolvência no exterior contra um de seus parceiros e/ou clientes, ou, ainda, de potenciais parceiros e/ou clientes.

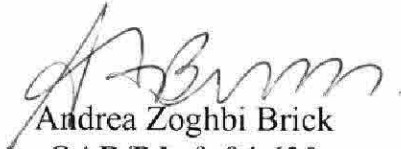
26. Se, por um lado, a Lei nº 11.101/05 deve trazer ao devedor o alívio econômico-financeiro necessário para a reestruturação de sua atividade produtiva, por outro lado não é permitido ao devedor preterir os interesses de seus credores ou, ainda, obrigá-los a se vincular a ações judiciais que, estrategicamente falando, trarão mais prejuízos do que benefícios para a relação comercial das partes envolvidas.

27. Posto isso, justificada está a necessidade de imediata convocação de Assembleia Geral de Credores, para que haja **(i)** deliberação e revisão do plano de fls. 1.939/1.960, nos termos do artigo 56, *caput*, da Lei nº 11.101/2005; ou **(ii)** rejeição do plano, nos termos do artigo 56, §4º, da Lei nº 11.101/2005.

**IV. PEDIDO**

28. Ante o exposto, nos termos dos artigos 55 e 56, *caput*, da Lei nº 11.101/2005, a EMERSON, na qualidade de credora quirografária da recuperanda, requer digno-se Vossa Excelência de receber essa objeção ao plano de recuperação judicial de fls. 1.939/1.960, determinando a designação de Assembleia Geral de Credores na forma e prazo estabelecidos em lei, para deliberação e alteração do plano de recuperação judicial apresentado ou para sua rejeição.

Nesses Termos,  
Pedem deferimento.  
Rio de Janeiro, 3 de julho de 2014.

  
Andrea Zoghbi Brick  
OAB/RJ nº. 94.630

Paula Felix de Souza Barçante  
OAB/RJ nº. 169.007

Estado do Rio de Janeiro  
Poder Judiciário  
Tribunal de Justiça  
Comarca da Capital  
Cartório da 3ª Vara Empresarial  
Av. Erasmo Braga, 115 Lan Central 713 CEP: 20020-903 - Centro - Rio de Janeiro - RJ Tel.: 3133-3605  
e-mail: cap03vemp@tj.rj.jus.br

Processo : 0392571-55.2013.8.19.0001

Fls: 3271

Classe/Assunto: Recuperação Judicial - Recuperação Judicial

### Atos Ordinatórios

CERTIFICO que são tempestivas as objeções ao Plano de Recuperação Judicial apresentadas às fls. 3240/3262 e 3263/3270.

Rio de Janeiro, 09/07/2014.



**Alessandra Santos Neto - Técnico de Atividade Judiciária - Matr. 01/29150**

# Galdino · Coelho · Mendes · Carneiro

/ Advogados

3272

Flavio Galdino  
Sergio Coelho  
João Mendes de Oliveira Castro  
Bernardo Carneiro  
Rodrigo Candido de Oliveira  
Leandro Felga Cariello  
Eduardo Takemi Kataoka  
Cristina Biancastelli  
/  
Gustavo Salgueiro  
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Karina Lochetti

EXMO. SR. DR. JUIZ DE DIREITO DA 3ª VARA EMPRESARIAL DA COMARCA DA  
CAPITAL DO ESTADO DO RIO DE JANEIRO

J. I.  
Defere-m.  
Rio, 07.11.14.

Processo nº 0392571-55.2013.8.19.0001



OSX BRASIL S.A., em recuperação judicial e Outras, todas já qualificadas nos autos de sua Recuperação Judicial em epígrafe, vêm a V. Exa. informar e requerer o que segue:

1. Em resposta ao ofício nº 559/2014, enviado por este MM. Juízo, o Departamento de Trânsito do Estado do Rio de Janeiro – DETRAN/RJ – apresentou a manifestação de fls. 2818/2829, contendo informações relativas aos automóveis que os senhores Eucherio Lerner Rodrigues e Antonio Jorge Gonçalves Caldas possuem registrados em seus nomes.

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2. Contudo, com amparo na garantia constitucional de inviolabilidade da vida privada (artigo, 5º, X, CF), para que se evite a violação indevida e desnecessária do sigilo dessas informações, requerem a V.Exa. que se digne a determinar o desentranhamento do ofício de fls. 2818/2829 dos autos do processo de recuperação judicial e o seu acautelamento em Cartório, sob sigredo de Justiça, só podendo ser copiadas ou de qualquer forma acessadas por terceiros mediante requerimento fundamentado, e com prévia e expressa autorização desse MM. Juízo, ouvidos antes as Requerentes e o representante do Ministério Público.

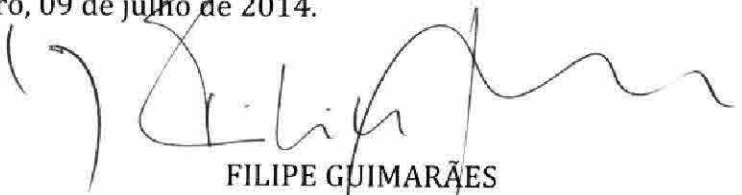
Nestes termos,

Pedem deferimento.

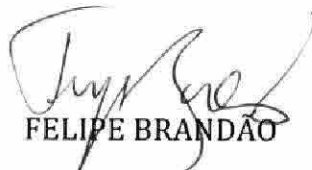
Rio de Janeiro, 09 de julho de 2014.



FLAVIO GALDINO  
OAB/RJ nº 94.605



FILIFE GUIMARÃES  
OAB/RJ nº 153.005



FELIPE BRANDÃO  
OAB/RJ nº 163.343



TATIANA SARMENTO LEITE MELAMED  
OAB/RJ nº 180.926



Estado do Rio de Janeiro  
Poder Judiciário  
Tribunal de Justiça  
Comarca da Capital  
Cartório da 3ª Vara Empresarial  
Av. Erasmo Braga, 115 Lan Central 713 CEP: 20020-903 - Centro - Rio de Janeiro - RJ Tel.: 3133-3605  
cap03vemp@tjrj.jus.br  
Ofício Nº : 549/2014/OF

Rio de Janeiro, 31 de março de 2014.

Processo : 0392571-55.2013.8.19 0001  
Distribuído em: 18/03/2014  
Classe/Assunto: Recuperação Judicial - Recuperação Judicial  
Requerente: OSX BRASIL S/A  
Requerente: OSX CONSTRUÇÃO NAVAL S/A  
Requerente: OSX SERVIÇOS OPERACIONAIS LTDA  
Administrador: DELOITTE TOUCH TOHMSTU CONSULTORES LTDA  
Representante Legal: LUIS VASCO ELIAS

Sr. Presidente,

Em vista do disposto no art. 52 da Lei nº 11.101/05 comunico a V.Sa. para os devidos fins de direito que em data de 19 de março de 2014, por este Juízo, foi deferido o processamento da recuperação judicial de **OSX BRASIL S.A.**, inscrita no CNPJ/MF nº 09.112.685/0001-32, **OSX CONSTRUÇÃO NAVAL S.A.**, inscrita no CNPJ/MF nº 11.198.242/0001-58 e **OSX SERVIÇOS OPERACIONAIS LTDA**, inscrita no CNPJ/MF nº 11.437.203/0001-66, com sede na Praça Mahatma Gandhi, nº 14, parte, Centro, Rio de Janeiro, CEP: 20031-100, cujos sócios são: **EUCHÉRIO LERNER RODRIGUES**, brasileiro, casado, administrador de empresas, portador da carteira de identidade nº 368538, inscrito no CPF/MF sob o nº 773.156.267-00, residente e domiciliado na Cidade e Estado do Rio de Janeiro, com escritório na Praia do Flamengo, nº 66, bloco A, 11º andar, Flamengo, CEP: 22210-903; **CLÁUDIO ANTÔNIO DA SILVA ZUICKER**, brasileiro, separado, economista, portador da carteira de identidade nº 23.199.790-5, expedida pelo SSP/RJ, inscrito no CPF/MF sob o nº 129.559.538-90, residente e domiciliado na Cidade e Estado do Rio de Janeiro, com escritório na Praia do Flamengo, nº 66, bloco A, 11º andar, Flamengo, CEP: 22210-903 e **ANTÔNIO JORGE GONÇALVES CALDAS**, brasileiro, casado, contador, inscrito no CRC/MJ sob o nº 061504-0 e no CPF/MF sob o nº 820.813.287-04, residente e domiciliado na Cidade e Estado do Rio de Janeiro, com escritório na Praia do Flamengo, nº 66, bloco A, 11º andar, Flamengo, CEP: 22210-903. Sendo nomeado Administrador Judicial a empresa DELOITTE TOUCHE TOHMATSU CONSULTORES LTDA, inscrita no CNPJ/MF sob o nº 02.189.924/0001-03, com endereço na Av. Presidente Wilson, nº 231, 22º, 25º e 26º andares, salas 2201, 2202, 2203, 2204, 2502, 2603 e 2604, CEP: 20030-905, Rio de Janeiro, RJ.

Nos termos da legislação falimentar, de ordem, este Juízo requisita a expedição de circulares a todas às instituições financeiras e entidades do mercado de capitais em todo território nacional, comunicando a decisão judicial e, de ordem, requisita que seja informado sobre o que estiver em nome da empresa em recuperação judicial, especialmente: das contas correntes e operações financeiras; dos descontos de títulos constitutivos de dívidas ativas; dos investimentos mobiliários da falida; das contas de depósitos do FGTS - Fundo de Garantia do Tempo de Serviço, devendo indicar sempre os respectivos saldos.

Cordiais saudações,

**ORIGINAL ASSINADO**

Daíze Gomes Machado - Responsável pelo Expediente - Matr. 01/31184

Assinado por ordem do MM. Juiz de Direito

A(o)Ilmo Sr. Presidente do Banco Central do Brasil

Estado do Rio de Janeiro  
Poder Judiciário  
Tribunal de Justiça  
Comarca da Capital  
Cartório da 3ª Vara Empresarial  
Av. Erasmo Braga, 115 Lan Central 713CEP: 20020-903 - Centro - Rio de Janeiro - RJ Tel.: 3133-3605  
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Processo : 0392571-55.2014.8.19.0001

Fls: 3275

Classe/Assunto: Recuperação Judicial - Recuperação Judicial

### Atos Ordinatórios

Certifico que cumpro o que determinado no item 1 do despacho de fl. 3239, desentranhando a petição acostada à fl. 2693, a fim de acostá-la aos autos do proc. 0159941-90.2014.8.19.0001, conforme determinado.

Certifico que dei cumprimento ao item 2 do referido despacho, juntando a cópia do ofício mencionado à fl. 3274.

Certifico que cumpro o que determinado no r. despacho de fl. 3272, desentranhando a peça acostada às fls. 2818/2829, a fim de acautelá-la no cartório, conforme deferido.

Rio de Janeiro, 09/07/2014.



Alessandra Santos Neto - Técnico de Atividade Judiciária - Matr. 01/29150

3276

# Galdino · Coelho · Mendes · Carneiro

/ Advogados

Flavio Galdino  
Sergio Coelho  
João Mendes de Oliveira Castro  
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Karina Lochetti

EXMO. SR. DR. JUIZ DE DIREITO DA 3ª VARA EMPRESARIAL DA COMARCA DA  
CAPITAL DO ESTADO DO RIO DE JANEIRO

J. I.  
Digam os interessados.  
Rio, 09.07.14.

Processo nº 0392571-55.2013.8.19.0001

OSX BRASIL S.A. em recuperação judicial, OSX CONSTRUÇÃO NAVAL S.A. em recuperação judicial, e OSX SERVIÇOS OPERACIONAIS LTDA. em recuperação judicial, todas já qualificadas nos autos da sua Recuperação Judicial em epígrafe, vêm a V. Exa. informar que tomaram conhecimento das solicitações formuladas pelo Banco Votorantim S.A. (fls. 2.763/2.765) e pela Administradora Judicial (fls. 2.329/2.335) e, independente de intimação, vêm a V.Exa. expor e requerer o seguinte:

1. Antes do mais, as Recuperandas esclarecem que o Instrumento Particular de Outorga de Opção de Subscrição de Ações e Outras Avenças,



celebrado em 16.03.2010, cuja apresentação também foi solicitada pelo Banco Votorantim em petição administrativa dirigida à Administradora Judicial (fls. 2.333/2.335) já está acostado aos autos desta recuperação judicial às fls. 642/650.

2. Em adição, requerem a juntada dos documentos elencados a seguir:

- (i) Termo dos *Bonds OSX-3*, títulos emitidos por OSX-3 Leasing B.V. aos *Bondholders OSX-3* ("13.00 per cent OSX-3 Leasing B.V. Senior Secured Callable Bond Issue 2012/2015");
- (ii) "Contrato de Afretamento OSX-3" ("*Bare Boat Charter Agreement in respect of the OSX-3 Floating Production Storage Offloading (FPSO Vessel*") entre OSX-3 Leasing B.V., OSX-3 Holding B.V. e OGX, datado de 06.03.2012;
- (iii) "Contrato de Operação OSX-3" (Contrato de Operação relativo ao Navio Flutuante de Produção, Armazenagem e Descarga (FPSO) OSX-3), entre OSX Serviços e OGX, com interveniência-anuência da OSX-3 Leasing B.V., datado de 06.09.2012;
- (iv) "Termo de Acordo OSX-3", acordado em março de 2014 entre OSX e os *Bondholders OSX-3*;
- (v) "*Plan Support Agreement*" (PSA) celebrado entre o Grupo OSX e o Grupo OGX, datado de 24.12.2014; e
- (vi) "Contrato FMM-CEF" (Contrato de Financiamento n° 0385.755-63), celebrado entre Caixa Econômica Federal e OSX Construção Naval em 14.06.2012.

3. Por fim, as Recuperandas informam que estão providenciando tradução juramentada dos instrumentos contratuais indicados acima que foram redigidos em língua inglesa e, em razão do volume de documentos, pugnam pela concessão de prazo não inferior a 15 (quinze) dias para promover a respectiva regularização nestes autos.

Nestes termos,

Pede deferimento.

Rio de Janeiro, 9 de julho de 2014.



FLAVIO GALDINO

OAB/RJ N° 94.605

EDUARDO TAKEMI KATAOKA

OAB/RJ N° 106.736



FILIFE GUIMARÃES

OAB/RJ N° 153.005



FÉLIFE BRANDÃO

OAB/RJ n° 163.343



TATIANA SARMENTO LEITE MELAMED

OAB/RJ n° 180.926



## **Termo dos *Bonds OSX-3***

Títulos emitidos por OSX-3 Leasing B.V. aos *Bondholders OSX-3*  
(“*13.00 per cent OSX-3 Leasing B.V. Senior Secured Callable Bond*  
*Issue 2012/2015*”)

**OSX-3 Bondholder Termsheet (OSX-Side)**

This indicative termsheet (the “**Termsheet**”) sets out the OSX-side proposed terms of a restructuring of the OSX and OGX groups of companies, involving amendment agreements to (a) the existing OSX-3 Bare Boat Charter Agreement dated 6 March 2012 between, amongst others, OSX 3 Leasing B.V. (the “**Issuer**”) and OGX Petroleo e Gas Ltda (the “**Charter Contract**”, and the amendments thereof as described in the OGX-side termsheet (the “**OGX Termsheet**”) to be implemented pursuant to an amendment agreement hereinafter described as the “**Charter Amendment Agreement**”), (b) the OSX-3 bond agreement dated 15 March 2012 between the Issuer and Norsk Tillitsmann ASA (the “**OSX-3 Bond Trustee**”) (as amended from time to time, the “**Bond Agreement**” and the proposed amendments described below to be implemented pursuant to an amendment agreement hereinafter described as the “**Bond Amendment Agreement**”, and together with the Charter Amendment Agreement, the “**Amendment Agreements**”), (c) other Finance Documents (as defined in the Bond Agreement) and (d) the related O&M contract dated 6 September 2013 between OGX Petroleo e Gas S.A. and OSX Servicos Operacionais Ltda (the “**O&M Contract**”) (all such amendments hereinafter described as the “**Amendments**”).

**Summary of Key Terms****Documentation and Timing**

- Signing and effectiveness of the Amendment Agreements is subject to the terms of this Termsheet and the OGX Termsheet
- Within 30 days of agreement of this Termsheet, the parties will agree on definitive documents for amendments to the Bond Agreement, other related Finance Documents (as defined in the OSX-3 Bond Agreement) and any other documents that may be necessary to implement the Amendments
- As soon as practicable, a meeting of the holders of the OSX-3 Leasing B.V. Senior Secured Callable Bond Issue 2012/2015 issued under the Bond Agreement (the “**OSX-3 Bonds**”, and the holders thereof, the “**OSX-3 Bondholders**”) shall be convened to obtain the requisite approval of OSX-3 Bondholders to the Amendments provided for in this Term Sheet and in the OGX Termsheet, with authority to finalise definitive documentation in consultation with its advisers and, if necessary, in consultation with the ad hoc committee of OSX-3 Bondholders, and to enter into such definitive documentation being provided to the OSX-3 Bond Trustee (the “**Bondholder Approval**”)
- The Issuer, OSX-3 Bond Trustee and relevant Obligor (as defined in the Bond Agreement) shall sign the Bond Amendment Agreement promptly after the later of (a) the date on which Bondholder Approval is obtained and (b) the date on which the Charter Amendment Agreement is

executed, (such date of execution, the “**Bond Amendment Execution Date**”)

- The Bond Amendment Execution Date shall occur on the same date as the Amendment Agreement Execution Date (as defined in the OGX Termsheet)

#### Coupon on OSX-3 Bonds

- 13.00% cash coupon to accrue from 30 October 2013
- 20 December 2013 interest coupon to be paid in full on the First Invoice Payment Date (as defined in the OGX Termsheet)
- 20 March 2014 and 20 June 2014 coupons will be paid on 20 June 2014 using funds standing to the credit of the Retention Account (as defined in the Bond Agreement)
- On 20 June 2014, to the extent that there is a shortfall (i.e. in circumstances where the funds in the Retention Account are insufficient to pay the 20 March 2014 and 20 June 2014 coupons in full, the “**Shortfall**”), the Issuer shall issue additional OSX-3 Bonds in an amount equivalent to the Shortfall. Such additional OSX-3 Bonds shall be issued to the OSX-3 Bondholders on a pro rata basis, and shall form part of the principal on which interest shall accrue under the Bond Agreement
- For the avoidance of doubt, if Excess Proceeds (as defined below) are deposited into the Retention Account prior to 20 June 2014 those Excess Proceeds shall be applied in cash payment of the Shortfall and the issue of OSX3 Bonds shall be reduced accordingly
- If the Issuer fails to pay any coupon payment in full when due (as provided for above with respect to payments up to 20 June 2014, and in the ordinary course for payments after 20 June 2014), such non-payment of coupon shall constitute an event of default under the OSX-3 Bonds

#### Consent Fee

- On the Bond Amendment Execution Date, the Issuer shall issue additional OSX-3 Bonds in a principal amount of \$12,500,000 to be distributed to each of the OSX-3 Bondholders on a pro rata basis relative to their holdings of OSX-3 Bonds at the Bond Amendment Execution Date. The issue of such additional OSX-3 Bonds shall constitute a 2.50% consent fee with respect to the consent of the OSX-3 Bondholders to the Amendments

#### Pledged Accounts

- All payments due to the Issuer by OGX prior to repayment, refinancing or novation in full of the OSX-3 Bonds shall, from time to time, be paid into the Retention Account (as defined in the Bond Agreement)
- No withdrawals shall be made from the Retention Account or any other accounts pledged in favour of the OSX-3

Bond Trustee (as per the terms of the Bond Agreement) by any party other than the OSX-3 Bond Trustee, except as permitted below with respect to the KPA Account, prior to repayment, refinancing or novation in full of the OSX-3 Bonds

#### OSX1/OSX2 Waterfall

- The following payment waterfall (the “**OSX1/OSX2 Waterfall**”) shall apply with respect to the proceeds of a sale or refinancing of (a) OSX-1 (subject to the Credit Suisse security over the OSX1 Collection Account) or (b) OSX-2 (subject to the first \$2.1m being applied to repay the Credit Suisse March Loan and subject to repayment of the OSX2 Holding Itaú facility<sup>1</sup>):
  - repayment of secured financial creditors as at the date of this Termsheet (including but not limited to those above) and payment of sale or refinancing costs, then
  - payment of the Key Payments Amount (as defined below), to the extent not already paid under the DPU Waterfall (as described below), then
  - retention of \$2m towards the Leasing Group Governance Reserve (as defined and described below, and only to the extent not already paid under the DPU Waterfall (as described below)), then
  - payment of up to \$19m towards the Modec obligation set forth in the DPU Waterfall (as defined below) to the extent not already paid under the DPU Waterfall, then
  - to the extent that the amounts applied in respect of the Leasing Group Retention Amount (as defined and described below) are equal to or less than \$26.6m at the relevant time (whether received from the proceeds of sale or refinancing of OSX1, OSX2 and/or the DPU), payment of up to \$10m towards the Leasing Group Retention Amount (as defined below) (provided that, in no circumstances shall the Leasing Group Retention Amount be funded with more than \$26.6m of the proceeds of sale or refinancing of OSX1 and/or OSX2), then
  - the balance of such proceeds shall be paid as follows:
    - (i) to the extent that the amounts applied in respect of the Leasing Group Retention Amount are equal to or less than \$26.6m at the relevant time (whether received from the proceeds of sale or refinancing of

<sup>1</sup> Approximately \$115m.

OSX1, OSX2 and/or the DPU), on a 50/50 basis as between (a) further payment towards the Leasing Group Retention Amount (provided that, in no circumstances shall the Leasing Group Retention Amount be funded with more than \$26.6m of the proceeds of sale or refinancing of OSX1 and/or OSX2), and (b) to the Retention Account to be applied in mandatory prepayment of the OSX-3 Bonds, then/or

- (ii) once an amount of \$26.6m has been applied in respect of the Leasing Group Retention Amount (whether received from the proceeds of sale or refinancing of OSX1, OSX2 and/or the DPU), to the Retention Account to be applied in mandatory prepayment of the OSX-3 Bonds

(the amount that is paid under (i)(b) and (ii) above, the “**Excess Proceeds**”)

- There shall be a mandatory prepayment event under the OSX-3 Bonds in the event that there is a sale or refinancing of OSX 1 or OSX 2 in an amount equivalent to the Excess Proceeds
- Restricted OSX-3 Bondholders,<sup>2</sup> and the OSX-3 Bond Trustee and its advisers shall, subject to applicable law and customary confidentiality requirements, have prompt, full and open access (including to all marketing materials, offeree and buyer logs, terms of contract, indication of interest, etc.) to the process and the investment bank and broker, with respect to the sale processes of OSX-1, OSX-2 and DPUs

#### DPU Waterfall

- The proceeds of the sale of the DPUs (the “**DPU Proceeds**”) shall be applied in accordance with the DPU waterfall as set out at Appendix 2 (the “**DPU Waterfall**”), to the extent the obligations set forth therein have not already been paid under the OSX1/OSX2 Waterfall
- The OSX group shall be entitled to raise financing (the “**Refinancing Debt**”) which involves the grant of security over the DPU to the new financing provider, provided that at least \$66.4m of the Refinancing Debt shall be immediately applied in accordance with the DPU Waterfall
- After the Key Payments Amount has been paid in full,

<sup>2</sup> Right of OSX-3 Bondholders to receive confidential information going forward will require that they not have an ongoing right to cleanse.



OSX Leasing Group (the “**Leasing Group**”) shall retain, to the extent not already paid under the OSX1/OSX2 Waterfall, a reserve of \$2m to be applied to fund corporate governance costs within the Leasing Group (the “**Leasing Group Governance Reserve**”)

- Leasing Group shall, following any application of the Leasing Group Governance Reserve (whether from the proceeds of sale or refinancing of OSX1, OSX2 and/or the DPU), promptly provide a detailed account of the application of the Leasing Group Governance Reserve to the OSX-3 Bond Trustee, accompanied with a certificate signed by a director of Leasing Group confirming that such application was in compliance with Leasing Group’s obligations under the Finance Documents. In the event that Leasing Group fails to provide this certificate or is in breach of this obligation, that shall constitute an event of default under the OSX-3 Bonds
- As described below, the Bond Trustee shall receive up to \$15.9m (to the extent not already paid under the OSX1/OSX2 Waterfall) to the extent required to pay (a) the Shortfall (to the extent that it has not already been compensated in the form of additional OSX-3 Bonds), (b) outstanding premia for Insurances (as defined in the OSX-3 Bond Agreement) through to July 2015<sup>3</sup>, (c) payment of outstanding invoices from certain vendors with potential maritime liens over the Vessel and (d) the documented accrued and projected costs and expenses of the Bond Trustee and its Advisers (including a success fee for AlixPartners in an amount not to exceed \$2m) ( clauses (a) through (d) together, the “**Key Payments Amount**”)
- Apart from amounts with respect to the Shortfall, which shall be paid directly into the Retention Account, the Key Payments Amount shall be paid into a new account (or existing account acceptable to the Bond Trustee) that is pledged in favour of the OSX-3 Bond Trustee (the “**KPA Account**”). Notwithstanding the foregoing sentence, if Leasing Group presents invoices for items falling within sub-sections (b) and (c) of the definition of Key Payments Amount to the OSX-3 Bond Trustee, the OSX-3 Bond Trustee shall, subject to the limits set out in the DPU Waterfall, authorize the payment of such invoices from the KPA Account. The OSX-3 Bond Trustee shall be entitled to apply funds in the KPA Account, from time to time, to pay outstanding invoices that fall within sub-section (d) of the definition of Key Payments Amount. Upon repayment, refinancing or novation of the OSX-3 Bonds in full, any

<sup>3</sup> The amount that has been specified in the DPU Waterfall for insurance premia shall be reduced to the extent that outstanding premia instalments have been paid subsequent to the agreement of the Termsheet but prior to the date on which the Key Payments Amount is to be calculated.

remaining amounts in the KPA Account shall be returned to Leasing Group

- Leasing Group shall be entitled to retain, to the extent not already paid under the OSX1/OSX2 Waterfall, the DPU Proceeds after the Key Payments Amount and the Leasing Group Governance Reserve have been paid (the “**Leasing Group Retention Amount**”) provided that if and to the extent that Modec, the Key Payments Amount, the Leasing Group Governance Reserve and/or the Leasing Group Retention Amount have been paid from those proceeds relating to OSX1 and/or OSX2, there shall be a mandatory prepayment event under the OSX-3 Bonds, such that the DPU Proceeds shall be applied in mandatory prepayment of the OSX-3 Bonds in the same order as contemplated by the DPU Waterfall, and in an equivalent amount to the payments that were made to Modec, the Key Payments Amount, Leasing Group Governance Reserve and/or the Leasing Group Retention Amount out of the OSX1/OSX2 proceeds, and provided further that such mandatory prepayment of the OSX-3 Bonds shall occur in priority to any amounts from a sale or financing of the DPU being paid to Leasing Group with respect to the Leasing Group Retention Amount

#### **Subordination of Santander and Votorantim Guarantees**

- Leasing Group shall use its best efforts to procure that Santander and Votorantim shall enter into a subordination agreement with the OSX-3 Bond Trustee as soon as practicable (the “**S+V Subordination Agreement**”) confirming that, notwithstanding anything to the contrary in the Santander and Votorantim guarantee agreement (the “**S+V Guarantees**”) (a) certain conditions and restrictions in the S+V Guarantees shall be irrevocably removed, (b) Santander and Votorantim’s guarantee claims against Leasing Group under the S+V Guarantees shall be subordinated in full to the claims of the OSX-3 Bondholders at Leasing Group, and (c) market standard intercreditor and turnover arrangements in favour of the OSX-3 Bond Trustee and the OSX-3 Bondholders shall be included<sup>4</sup>
- Leasing Group shall (a) keep the OSX-3 Bond Trustee and its advisers informed on a regular basis of the progress and status of its discussions with Santander and Votorantim with respect to the S+V Subordination Agreement, and (b) facilitate discussions between Santander and Votorantim and the OSX-3 Bond Trustee and its advisers with a view to agreeing the S+V Subordination Agreement, with a representative of OSX present

<sup>4</sup> There shall be a restrictive covenant in the Leasing Group guarantee that restricts Leasing Group granting, or enabling a guarantee to be effective (intended to prevent the S+V Guarantees becoming effective in the future) - this will not be necessary once the S+V Subordination Agreement is effective.

<p><b>Credit Suisse Agreement</b></p>	<ul style="list-style-type: none"> <li>• Leasing Group will use its best efforts to co-operate with the OSX-3 Bond Trustee and its advisers (including all reasonable request therefrom) in order to facilitate agreement being entered into between Credit Suisse Brazil (Bahamas) Limited (“<b>Credit Suisse</b>”) and the OSX-3 Bond Trustee as soon as practicable as to the application of the Excess Proceeds including confirmation from Credit Suisse that they shall not seek to obtain any new collateral or payment rights at the Leasing Group level</li> <li>• The OSX-3 Bondholders shall have “most favoured nation” protection in the Bond Agreement relative to the treatment of Credit Suisse at the Leasing Group level</li> </ul>
<p><b>Acciona &amp; Techint Disputes</b></p>	<ul style="list-style-type: none"> <li>• Restricted OSX-3 Bondholders<sup>5</sup> and the OSX-3 Bond Trustee and its advisers, shall, subject to applicable law and customary confidentiality requirements, be provided with regular, prompt, full and open access to information with respect to the Acciona and Techint Disputes</li> </ul>
<p><b>Governance</b></p>	<ul style="list-style-type: none"> <li>• <u>Independent Directors</u> <ul style="list-style-type: none"> <li>○ As long as the OSX-3 Bonds remain outstanding, the OSX-3 Bond Trustee shall appoint one Dutch resident to serve as board independent director (the “<b>Independent Director</b>”) at each of the following entities:           <ul style="list-style-type: none"> <li>▪ A. OSX 3 Holding B.V.</li> <li>▪ B. OSX 3 Holdco B.V.</li> <li>▪ C. OSX 3 Leasing B.V.</li> </ul> </li> <li>○ The approval of the Independent Director will be required for all of the “Reserved Matters” set out in Appendix 1 (Part A)</li> <li>○ Each entity to which an Independent Director is appointed shall create a “special share” without economic rights which shall be granted to the OSX-3 Bond Trustee and shall have only the right, which shall be exclusive to it, to appoint and dismiss the Independent Director</li> <li>○ The articles of each entity to which an Independent Director is appointed shall be amended (a) to create and issue the special share, to state the right attaching to the special share, and to confirm that the OSX-3 Bond Trustee shall co-operate with the relevant entity in returning the special share once the OSX-3 Bonds have been repaid, refinanced or novated in full (providing that the relevant entity covers all costs and expenses incurred by the OSX-3 Bond Trustee in doing so) (b) to clarify that the Reserved Matters shall only be undertaken with unanimous consent of the board (including the</li> </ul> </li> </ul>

<sup>5</sup> Right of OSX-3 Bondholders to receive confidential information going forward will require that they not have an ongoing right to cleanse.

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Independent Director), (c) to require that any general meeting of shareholders that is convened by the board must be convened by unanimous consent of the board (including the Independent Director) (d) to grant the OSX-3 Bond Trustee (in its discretion, or with the approval of a majority in value of the OSX-3 Bondholders) the right to bring enquiry proceedings before the Enterprise Division of the Amsterdam Court of Appeal (under article 2:345 of the Dutch Civil Code) in circumstances where it believes that there has been a breach of the articles (without limitation on the remedy sought) and (e) to require that: (i) in-person board meetings will be held in the Netherlands, (ii) at least 50% of the board is Dutch resident, (iii) public announcements and correspondence from the entity are sent from the Netherlands, (iv) the entity's bank accounts are located in the Netherlands, (v) payments by the entity are made to and from those account in the Netherlands and (vi) the business address of the entity shall be in the Netherlands, with the intention that (x) the centre of main interests (the "COMI") of the entity be in the Netherlands and (y) the Netherlands remain the exclusive jurisdiction for an insolvency filing of the entity

- Board Observer
  - As long as the OSX-3 Bonds remain outstanding, the Independent Director shall be appointed as a board observer at Leasing Group (in such capacity, the "**Board Observer**" and together with the Independent Director, the "**Independent Representative**")
  - The Board Observer shall have right of access to all board meetings, and to all board materials (which shall be sent to the Board Observer at the same time as providing the Board Observer with written notice of a forthcoming board meeting)
  - It shall be a requirement for any of the "Reserved Matters" set out in Appendix 1 (Part B) to take place that the Board Observer has been given at least 14 days' advance written notice of the board meeting (at which the Board Observer shall be entitled to render advice to the board with respect to such Reserved Matters) at which the Reserved Matter is to be approved, and that such Reserved Matter shall not be undertaken by written consent or board resolution. In circumstances where the entity is legally required to obtain shareholder approval for the Reserved Matter the notice period

for convening the board meeting shall be reduced to at least 7 days' advance written notice

- The articles of Leasing Group shall be amended to provide as follows (a) the Board Observer may be appointed or dismissed only by consent of the OSX-3 Bond Trustee, (b) due notice to the Board Observer (as set out above) shall be required prior to undertaking any Reserved Matter, (c) to grant the OSX-3 Bond Trustee (in its discretion, or with the approval of a majority in value of the OSX-3 Bondholders) the right to bring enquiry proceedings before the Enterprise Division of the Amsterdam Court of Appeal (under article 2:345 of the Dutch Civil Code) in circumstances where it believes that there has been a breach of the articles (without limitation on the remedy sought), and (d) to require that: (i) in-person board meetings will be held in the Netherlands, (ii) at least 50% of the board is Dutch resident, (iii) public announcements and correspondence from the entity are sent from the Netherlands, (iv) Leasing Group's bank accounts are located in the Netherlands, (v) payments by Leasing Group are made to and from those accounts in the Netherlands and (vi) the business address of Leasing Group shall be in the Netherlands, with the intention that (x) the centre of main interests (the "COMI") of Leasing Group be in the Netherlands and (y) the Netherlands remain the exclusive jurisdiction for an insolvency filing of Leasing Group

- It shall be an event of default under the OSX-3 Bonds if (a) the Independent Representative is removed (other than by the OSX-3 Bond Trustee) or (b) the articles of association of the relevant entities have not been complied with in respect to the Reserved Matters
- The Independent Representative shall be paid a market standard fee at the expense of the relevant companies (which, in aggregate, shall not exceed \$75,000 p.a.) and shall be reimbursed for out-of-pocket expenses
- If the Independent Representative's fees are not paid within 30 days of them becoming due it will be an event of default under the OSX-3 Bonds

#### Insurances

- It shall be a condition precedent to the effectiveness of each of (a) the Bond Amendment Agreement and (b) Charter Amendment Agreement, that (i) all required Insurances (as defined in the Bond Agreement) are in place and (ii) there are no outstanding premia instalments due but unpaid at the relevant time. It shall be an immediate event of default under the OSX-3 Bonds if the Issuer has not provided evidence by 1 September 2014 to the OSX-3



Bond Trustee in a form satisfactory to its Advisers that sufficient funds are in an escrow account to pay all premia that are due and payable between September 1, 2014 and the OSX-3 Bond maturity date.

#### Adviser Fees

- It shall be a condition precedent to the signing of each of the Bond Amendment Agreement that:
  - the Issuer confirms in writing to the OSX-3 Bond Trustee (in a form satisfactory to the OSX-3 Bond Trustee) that the following costs and expenses, in each case subject to provision to the Issuer of customary billing detail in advance, shall be deemed to fall under the fee agreement in place between the OSX-3 Bond Trustee and the Issuer:
    - the documented fees and expenses of Bingham McCutchen (“**Bingham**”), incurred by certain of the OSX-3 Bondholders, for the period from 24 July 2013 until the repayment in full of all amounts due with respect to the OSX-3 Bonds; and
    - the documented fees (including a success fee for AlixPartners in an amount not to exceed \$2m) and expenses of AlixPartners (“**Alix**” and together with Bingham, the “**Advisors**”), pursuant to the engagement letter dated 1 October 2013 between the OSX-3 Bond Trustee and AlixPartners, from 1 October 2013 until the repayment in full of all amounts due with respect to the OSX-3 Bonds
  - the Issuer shall have irrevocably instructed Citibank to make all necessary transfers from the pledged Retention Account to the OSX-3 Bond Trustee to meet its documented costs and expenses
- It shall be a condition precedent to the effectiveness of each of (a) the Bond Amendment Agreement and (b) Charter Amendment Agreement, that all fees and expenses of the OSX-3 Bond Trustee (including those of the Advisers) up until the effectiveness date have been paid in full
- As of 30 October 2013, the Retention Account contained c.\$3.8m (the “**Original Retention Moneys**”). In accordance with its rights under the deed of pledge over the Retention Account, the OSX-3 Bond Trustee has been applying the Original Retention Moneys to pay its own fees and fees, costs and expenses of its Advisors. The Issuer acknowledges that the OSX-3 Bond Trustee shall, at all times, be entitled to continue to use funds standing to the credit of the Retention Account to satisfy outstanding invoices relating to such fees, costs and expenses, on the

terms and to the extent provided herein. To the extent that the OSX-3 Bond Trustee deducts amounts from the Retention Account in excess of the Original Retention Moneys (once these have been exhausted), (a) the OSX-3 Bond Trustee shall inform the Issuer that deductions have been made in excess of the Original Retention Moneys and shall keep the Issuer informed on a monthly basis of the extent to which additional deductions have been made and (b) there shall be a corresponding obligation on the Issuer to pay, on demand, an equivalent amount into the Retention Account

- The Issuer acknowledges that the OSX-3 Bond Trustee shall be entitled to continue to retain legal and financial advisers until the OSX-3 Bonds have been repaid, refinanced or novated in full and that until such date, the Issuer shall be obliged to pay the documented fees, costs and expenses of such advisers

#### Other Conditions

- It shall be a condition precedent to the signing of the Bond Amendment Agreement that (i) any intercompany loans (a) owed to the Issuer by OSX 3 Holding B.V., (b) owed to OSX 3 Holding B.V. by OSX 3 Holdco B.V. and (c) owed to OSX 3 Holdco B.V. by Leasing Group, shall be equitized, and (ii) any intercompany loans owed by the Issuer, OSX 3 Holding B.V., OSX Holdco B.V. and Leasing Group shall be contractually subordinated to the claims of the OSX-3 Bondholders, and that no such intercompany loans may be repaid (save to another one of these entities) until the OSX-3 Bonds have been repaid, refinanced or novated in full
- The OSX-3 Bond Trustee shall not enter into the Amendment Agreements unless it is reasonably comfortable with Modec's current position with respect to OSX and the Vessel
- The Bond Agreement and certain other Finance Documents (as defined in the Bond Agreement) shall be subject to certain amendments required by the advisers to the OSX-3 Bond Trustee, which shall not affect any material or economic terms of the OSX-3 Bonds
- Immediately prior to the signing of the Amendment Agreements, there will be a full reversal or withdrawal of the "Enforcement Time" notice and all related enforcement notices that have been given pursuant to the Charter Contract, such that, without limitation, the Issuer shall be authorized to enter into the Charter Amendment Agreement. It is acknowledged that the "Enforcement Time" under the Charter Contract may occur in the future on the occurrence of (a) a new event of default under the OSX-3 Bonds, (b) an acceleration of the OSX-3 Bonds as a result of a new event of default) or (c) the Drop-Dead Date (as defined in the OGX Termsheet) if the Charter

Amendments Full Effectiveness Date (as defined in the OGX Termsheet) has not occurred by then. It is further acknowledged that "Enforcement Time" may occur and be immediately effective with respect to any new event of default or related acceleration arising from the Acciona and Techint Disputes

- It shall be a condition precedent to the Bond Amendment Agreement that the Issuer has provided a copy of all documentation relating to the Techint loan and DPUs transfer and intercompany documentation, to the advisers to the OSX-3 Bond Trustee subject to applicable law and customary confidentiality requirements
- The advisers to the OSX-3 Bond Trustee shall, subject to customary confidentiality requirements and applicable principals of law, have full and open access to information, until the OSX-3 Bonds have been repaid, refinanced or novated in full
- It shall be a condition precedent to the effectiveness of the Bond Amendment Agreement that the Brazilian Port Authority has confirmed that there are no outstanding arrests subsisting on the Vessel
- It shall be a condition precedent to the effectiveness of the Bond Amendment Agreement that the Issuer is in full compliance with its obligations under Clause 13.7 of the Bond Agreement in connection with deliverables due on the Delivery Date, which occurred on 19 November 2013
- Certain Brazilian law requirements to be satisfied in relation to the Amendment Agreements and ancillary documentation<sup>6</sup>
- If the Charter Amendment Agreement terminates before the Drop-Dead Date or if the Charter Amendments Full Effectiveness Date (as defined in the OGX Termsheet) has not occurred by the Drop-Dead Date, it shall be an event of default under the OSX-3 Bonds
- Upon the Bond Amendment Agreement becoming effective, the Bond Trustee shall waive all existing events of default under the OSX-3 Bonds save for those relating to the judicial reorganization of OSX Brasil, S.A. (relating to which the OSX-3 Bond Trustee's rights shall be fully reserved, but on the basis that if a judicial reorganization plan for OSX Brasil, S.A. is approved by the Brazilian court then the related event of default shall cease to exist)
- Customary lock-up agreement to be entered into by sufficient OSX-3 Bondholder to effect the Amendments

<sup>6</sup> To be discussed and agreed once specified.

**APPENDIX 1****Reserved Matters**

Defined terms used herein shall have the meaning given to them in the Bond Agreement.

A. The following corporate actions, in relation to OSX 3 Leasing B.V., OSX 3 Holdco B.V. and OSX 3 Holding B.V. (the “**Companies**”) shall require the affirmative written consent of the Independent Director:

- 1) Any corporate action, legal proceedings or other procedures are taken in relation to an insolvency or bankruptcy proceeding of or suspension of payments by the Companies;
- 2) Amendment to the constitutional documents of the Companies in a manner adverse to the OSX-3 Bonds (except as provided in the Termsheet or to effect the amendments to the Project Documents as per the Termsheet provisions);
- 3) Any sale of the OSX-3 FPSO for less than the total outstanding amount due to the OSX-3 Bondholders pursuant to the Bond Agreement at the time of sale;
- 4) Entry into any agreements with any affiliates or related entities of the Companies (except for (a) intragroup loans to, and intragroup balances owed by, the Companies provided that such loans and balances are subordinated in favour of the OSX-3 Bonds, and (b) employment transactions on market standard terms entered into in the ordinary course of business);
- 5) Convening any shareholder meeting of the Companies with the purpose of either (a) changing the constitutional documents of the Companies in a manner adverse to the OSX-3 Bonds, (b) issuing or allotting any shares or other securities of the Companies other than to their immediate parent or (c) seeking to remove the Independent Director;
- 6) The incurrence of any financial indebtedness or guarantee obligations, or the encumbrance of any of the Companies’ assets (except for intragroup loans from the Companies provided that such loans are subordinated in favour of the OSX-3 Bonds); and
- 7) Payment of any dividends or distributions to shareholders.

**B** - The articles of OSX Leasing Group B.V. (the “**Company**”) shall require that the following corporate actions only be undertaken at a board meeting and providing that the Board Observer have been given full access to the materials relating to, and due notice to attend, such board meeting:

- 1) Any corporate action, legal proceedings or other procedures are taken in relation to an insolvency or bankruptcy proceeding of or suspension of payments by the Company;
- 2) Amendment to the constitutional documents of the Company in a manner adverse to the OSX-3 Bonds (except as provided in the Termsheet or to effect the amendments as per the Termsheet provisions);
- 3) Entry into any agreements with any affiliates or related entities of the Company in a manner adverse to the OSX-3 Bonds (except for intragroup loans from the Company provided that such loans are subordinated in favour of the OSX-3 Bonds);
- 4) The incurrence of any financial indebtedness or guarantee obligations, or the encumbrance of any of the Company’s assets (except for intragroup loans by the Company provided that such loans are subordinated in favour of the OSX-3 Bonds, and otherwise comply with the Bond Agreement);
- 5) Any transaction or agreement that may reasonably be expected to interfere with the matters contemplated in the Termsheet, or prejudice the position of the OSX-3 Bonds; and
- 6) Payment of any dividends or distributions to shareholders.



APPENDIX 2  
DPU WATERFALL

Priority	Description	\$m	
	<b>Net Receipts</b>	<b>93.0</b>	
1	Broker fees	(2.0)	
2	Credit Suisse (to the extent not already repaid from proceeds of OSX-1)	(17.5)	
3	Itaú (to the extent not already repaid from proceeds of OSX-2 or provided replacement collateral)	(10.0)	
4	Modec	(19.0)	
5	Outstanding and Projected Insurance Premia	(3.4)	} Key Payment: Amount
6	Reserve for Costs and Expenses of NTM and its Advisor Fees	(5.2)	
7	Critical Vendors with Potential Maritime Liens	(1.0)	
8	Expected Coupon Shortfall (to the extent not already PIK'ed)	Up to: (6.3)	
9	Leasing Group Governance Reserve	(2.0)	
10	<b>Balance applied to Leasing Group Retention Amount</b>	<b>26.6</b>	

**Assumptions**

- Insurance costs based on current contracts, projected to July 2015
- Funds in retention account assumed to pay professional fees up to end March 2014
- Any surplus in retention account will reduce funding required for future professional fees
- Coupon Shortfall calculated with Invoicing Start Date of 8 April 2014

**OSX-3 Term Sheet: Charter Amendment**

This indicative term sheet (including Appendix A hereto, the “**Term Sheet**”) sets out the proposed terms of amendments and restatements to the existing OSX-3 Bare Boat Charter Agreement (prior to the amendments under this Term Sheet, the “**Existing Charter**”, to be amended and restated by an amendment agreement (the “**Charter Amendment Agreement**”), and the related O&M contract (as amended and restated, the “**O&M Contract**”) (collectively as amended and restated, the “**Amended and Restated Contracts**”).

**Summary of Key Terms****I – Process**

- Within 30 days of agreement on the Term Sheet, the parties will agree on a form of the Amended and Restated Contracts which would be executed by OGX Petroleo e Gas Ltda (“**Charterer**”) and OGX Petroleo e Gas Participacoes, S.A. (the “**Charterer Parent**” and together with the Charterer, “**OGX**”), OSX, and OSX-3 (the “**Required Parties**”) after Bondholder Approval.
- Also during the 30 day period, the parties will agree on definitive documents for amendments to the OSX-3 Bond Agreement, other related Finance Documents (as defined in the OSX-3 Bond Agreement) and any other documents that may be necessary to implement the Amended and Restated Contracts including the issuance and draw conditions for the OSX-3 LC (the “**Related Documents**”).
- As soon as practicable, a meeting of the holders of the OSX-3 Leasing B.V. Senior Secured Callable Bond Issue 2012/2015 issued under the Bond Agreement (“**OSX-3 Bond Agreement**”) between OSX-3 Leasing B.V. as issuer and Norsk Tillitsmann ASA as Bond Trustee, (the “**OSX-3 Bond Trustee**”), dated as of 15 March 2012 (as it may be amended or supplemented in prior to the Invoicing Start Date)<sup>1</sup> (the “**OSX-3 Bonds**”, and the holders thereof, the “**OSX-3 Bondholders**”) shall be convened to obtain the requisite approval of OSX-3 Bondholders to the amendments provided for in this Term Sheet and in the term sheet agreed between OSX and the OSX-3 Bond Trustee (together, the “**Amendments**”), with authority to finalise definitive documentation in consultation with its advisers and, if necessary, in consultation with the ad hoc committee of OSX-3 Bondholders, and to enter into such definitive documentation being provided to the OSX-3

<sup>1</sup> Note: Documentation for amendments to OSX-3 Bond Agreement to be agreed before the Invoicing Start Date in form and substance acceptable to all Required Parties.

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Bond Trustee (the “**Bondholder Approval**”).

- Payment (without any interest, charges or penalties for past delayed payments) under the existing O&M Contract to begin within 7 business days of disbursement of funding of first tranche of DIP.<sup>2</sup>
- The Required Parties shall sign the Charter Amendment Agreement promptly after the later of (a) the date on which Bondholder Approval is obtained and (b) the date on which definitive documentation to reflect the Amendments is agreed, (such date of execution, the “**Invoicing Start Date**” or the “**Amendment Agreement Execution Date**”).
- The terms and provisions of the amended and restated Existing Charter (the “**A&R Charter Contract**”) shall become effective pursuant to the Charter Amendment Agreement on the date on which both of the following have occurred: (a) the OSX-3 LC has been issued and (b) the final tranche under the DIP Financing has been disbursed (the “**Charter Amendments Full Effectiveness Date**”); except for the Subordination and Charter Rate Waiver Provisions, the Current Default Waiver and the obligation to invoice and pay charter rates at the Amended Charter Rates subject to the terms set forth below under “*OSX-3 Day Rate*”, which shall become effective on the Amendment Agreement Execution Date.
- OGX shall cause the OSX-3 LC to be issued and delivered to OSX-3 by the date (the “**LC Posting Deadline**”) that is the later of (a) 15 days after the Invoicing Start Date and (b) 10 business days after the disbursement of the final tranche under the DIP Financing.
- The Charter Amendment Agreement will terminate automatically if the Charter Amendments Full Effectiveness Date has not occurred by August 31, 2014 (the “**Drop-Dead Date**”), in which case the A&R Charter Contract will never take force or effect. Notwithstanding this, the relevant provisions in the Charter Amendment Agreement that deal with (1) payment of charter rates at the Amended Charter Rates until the Drop-Dead Date, and (2) the Subordination & Charter Rate Waiver Provisions (as set forth in the corresponding section of this Term Sheet), shall each survive any termination.
- Except as set forth above, prior to the Charter Amendments Full Effectiveness Date or after the Drop-Dead Date, the relationship of the parties with respect to the Vessel shall be governed by the current arrangements (except as set forth in the bullet point immediately above), without prejudice to any party’s rights, claims, or status under law or contract prior to entry into the Charter Amendment Agreement.

**2 – OSX-3 Day Rate**

- Fixed day rate of USD 250,000 per day (the “**Amended Charter Rate**”) to accrue from 19 November 2013 (the “**Delivery Date**”) until and including December 31, 2026, after which the day rates specified

<sup>2</sup> Financial advisors need to understand outstanding invoices and payment terms, but we are OK with concept that O&M payments do not need to wait until effectiveness of agreements. This assumes that OSX confirm their support of the terms of this deal, consistent with its obligations under their Support Agreement.

	<p>in the June 28, 2013 Settlement Agreement (<i>Instrumento Particular de Transação, Quitação e Outras Avenças</i> (the “Settlement Agreement”) apply for such future periods, in each case without any indexation or other adjustment (whether set forth in the Existing Charter, the Settlement Agreement or otherwise).</p> <ul style="list-style-type: none"> <li>• Charter day rate invoicing at the Amended Charter Rate under the Charter Amendment Agreement, and invoicing under the O&amp;M Contract, each to begin from the Invoicing Start Date; thereafter invoicing shall be for each calendar month and occur on the last day of each month.</li> <li>• The first invoice, issued by OSX-3 on the Invoicing Start Date, shall be for all charter rate, at the Amended Charter Rate (without penalty or interest), accrued from the Delivery Date up to and until the later of (a) the end of the last calendar month that is at least 7 calendar days prior to the Invoicing Start Date and (b) the 15<sup>th</sup> day of the last calendar month that ends prior to the Invoicing Start Date.</li> <li>• The first invoice shall be paid within 15 days of the Invoicing Start Date on which such invoice is delivered to OGX (the date on which it is paid, the “<b>First Invoice Payment Date</b>”)<sup>3</sup>; for subsequent invoices, payment to be within 30 days of the date on which the invoice is delivered to OGX. Each such invoice, for the avoidance of doubt, will be at the Amended Charter Rate, and any previous invoices submitted at the original charter rate under the Existing Charter shall be superseded and replaced in its entirety by subsequent invoices at the Amended Charter Rate.</li> <li>• Until the date on which the OSX-3 Bonds are repaid, refinanced or novated in full, all payments made under the Charter Amendment Agreement and the A&amp;R Charter Contract shall be paid into the Retention Account (as defined in the OSX-3 Bond Agreement).</li> <li>• Elimination of indexation clause and other charter rate adjustment provisions for the life of the A&amp;R Charter Contract.</li> </ul>
<p><b>3 – Production-Related Charter Termination Right – OGX</b></p>	<ul style="list-style-type: none"> <li>• If, at any point on or after July 1, 2015, the average production in the trailing six month period is less than 8,500 barrels per day, the Charterer shall be entitled to terminate the A&amp;R Charter Contract on six months’ notice for no termination sum or additional compensation except for payment of any accrued but unpaid charter rates (at the Amended Charter Rate) due through termination, provided that OGX shall remain responsible to undertake, and fund costs of, disconnection of the Vessel and redelivery of the Vessel to port (“<b>Redelivery Obligations</b>”), and for the payment of charter rates (at the Amended Charter Rate) until the later of the termination date and redelivery date. No termination sum shall apply in this scenario.</li> </ul>
<p><b>4 – Production-Related OSX-3 Capped Claim in OGX Bankruptcy</b></p>	<ul style="list-style-type: none"> <li>• If at any time prior to July 1, 2015, the trailing six-month average production is less than 8,500 barrels per day and during such period (but after the confirmation of the reorganization plan in the OGX judicial reorganization proceeding filed on October 30, 2013) an</li> </ul>

<sup>3</sup> We know that this definition is not used in this termsheet, but it is cross referred to in the OSX termsheet.

voluntary or involuntary insolvency, liquidation or other bankruptcy-related proceeding in respect of OGX is commenced, then (a) the Charterer shall be entitled to terminate the A&R Charter Contract and (b) regardless of whether the A&R Charter Contract is terminated by OSX-3 or the Charterer in such circumstances, the claim of OSX-3 in any such insolvency, liquidation or other bankruptcy-related proceeding in respect of the Charterer or the Charterer Parent shall be equal to any accrued but unpaid Amended Charter Rates up to the date that is 6 months after the date of termination, provided that OGX shall be responsible for its Redelivery Obligations, and for the payment of charter rates (at the Amended Charter Rate) until the later of the termination date and redelivery date. No termination sum shall apply in this scenario.

**5 – Redelivery & Termination Sum**

- For purposes of the calculation of a termination sum, when due under the terms of the A&R Charter Contract prior to the refinancing, repayment or novation of the OSX-3 Bonds, the termination sum shall be, without prejudice to any deduction of the OGX Credit permitted under the terms of the A&R Charter Contract, the Outstanding Amount (as defined below) of the OSX-3 Bonds, subject to the provisions regarding alternative employment of the Vessel set forth in Section 16.2(d) of the Existing Charter.
- After the refinancing, repayment or novation of the OSX-3 Bonds, the termination sum shall be the net present value of future unpaid charter rates at the Amended Charter Rate until the date that is 13 years after the Delivery Date (i.e. 19 November 2013), calculated at a 10% real USD discount rate, without prejudice to other provisions regarding mitigation and alternative employment set forth in the Settlement Agreement and to become effective upon refinancing, repayment or novation of the OSX-3 Bonds in full.
- Before refinancing, repayment or novation of the OSX-3 Bonds:
  - if the Charterer terminates the A&R Charter Contract due to Vessel Unavailability (as described in Appendix A) and vessel unavailability resulted from a fault with the Vessel that is attributable to OSX-3 (e.g. as to design, materials or workmanship in the construction of the Vessel) – then (a) OGX shall be responsible for the Redelivery Obligations, (b) OGX shall be entitled to reimbursement from OSX-3 for 50% of the costs of surface disconnection (with respect to moorings and risers) and of sail away, and (c) no termination sum applies and no charter rates are due after termination.
  - if the Charterer terminates the A&R Charter Contract due to Vessel Unavailability (as described in Appendix A) and vessel unavailability is not attributable to a fault of OGX or OSX-3 (whether attributable to the Operator or otherwise) – then (a) OGX shall be responsible for the Redelivery Obligations, (b) no charter rates are due after termination, and (c) termination sum is payable subject to a deduction of the future value of



USD\$157 million, using an interest rate of 12% from June 30, 2013 through the date of termination (such amount, the “OGX Credit”).

- if the Charterer terminates the A&R Charter Contract due to Vessel Unavailability (as described in Appendix A) and vessel unavailability is attributable to a fault of OGX – then (a) OGX shall be responsible for the Redelivery Obligations, (b) charter rates (at the Amended Charter Rate) are due through the redelivery date, and (c) termination sum applies.
- if the Charterer terminates the A&R Charter Contract exercising any other termination right specified in Appendix A, and such event results in the Vessel becoming unavailable to the Charterer – then (a) OGX shall be responsible for the Redelivery Obligations, provided that OSX-3 shall pay 50% of the costs of surface disconnection of the moorings and risers, and of sail away, (b) OGX is responsible for charter rates (at the Amended Charter Rate) until the later of termination date and halt in oil production, and (c) no termination sum applies.
- if the Charterer terminates the A&R Charter Contract exercising any other termination right specified in Appendix A, and such event does not result in the Vessel becoming unavailable to the Charterer – then (a) OGX shall be responsible for the Redelivery Obligations, (b) charter rates (at the Amended Charter Rate) are due until the later of the termination date and the redelivery date and (c) the termination sum applies subject to a deduction in the amount of the OGX Credit, provided that (x) OGX shall be entitled to further deduct from the termination sum an amount equivalent to specific and reasonable costs and expenses (including legal and advisory costs) incurred by the Charterer that are directly related to the event, events or circumstances that afford the Charterer a termination right and (y) if the Vessel subsequently becomes unavailable before termination becomes effective, no termination sum shall be due.
- if the A&R Charter Contract is terminated under the circumstances described under “*Production-Related Charter Termination Right – OGX*”, “*Production-Related OSX-3 Capped Claim in OGX Bankruptcy*”, and “*Post-Maturity Bond Trustee Termination Right*” scenarios -- then Redelivery Obligations and termination sums will be allocated as set forth in the corresponding sections of this Term Sheet.
- in all other scenarios where OSX-3 terminates, except as specifically set forth in Appendix A -- OGX shall be responsible for Redelivery Obligations, termination sum and

charter rates (at the Amended Charter Rate) through the redelivery date in accordance with the A&R Charter Contract.<sup>4</sup>

- After refinancing, repayment or novation of the OSX-3 Bonds, the Settlement Agreement amendments that allocate Redelivery Obligations, the termination sum and related costs and define each of the parties termination rights shall apply, as modified by the “*Production-Related Charter Termination Right – OGX*” and “*Production-Related OSX-3 Capped Claim in OGX Bankruptcy*” of this Term Sheet.
- In all circumstances, following a termination of the A&R Charter Contract, (a) OGX shall use its reasonable commercial efforts to disconnect the Vessel from the field as promptly as practicable after termination and (b) Section 16.2(d) of the Existing Charter shall continue to apply.

#### 6 – Sale Process and Novation

- Not later than the date that is 6 months prior to the maturity date of the OSX-3 Bonds, OSX shall be obliged to commence a multi-track process to (i) refinance in full the OSX-3 Bonds; (ii) sell the Vessel with and subject to the A&R Charter Contract; and/or (iii) sell 100% of the OSX-3 equity, with and subject to the A&R Charter Contract (i.e. the purchaser shall be obliged to assume the A&R Charter Contract for its remaining term), in each case to the highest and best bidder, and use the proceeds to repay in full the OSX-3 Bonds.
- The process shall be led by an internationally recognized investment bank and/or an internationally recognized FPSO broker, to be engaged by OSX. OGX shall have full and open access (including to all marketing materials, offeror and buyer logs, terms of contract, indication of interest, etc) to the process and the investment bank and broker. OSX-3 shall keep the OSX-3 Bond Trustee reasonably informed of developments in the process on a timely basis, subject to confidentiality arrangements and appropriate limitations (including ‘advisors’ eyes only’ limitations) to exclude or limit distribution of commercially sensitive information.
- Such process shall be completed and the transactions thereunder consummated on or before the maturity date.
- Absent a refinancing, OSX shall be obligated to sell the Vessel or OSX-3 equity (as the case may be) to the highest and best bidder whose bid enables the prompt repayment of all amounts due and payable under and with respect to the OSX-3 Bonds. Proceeds from any such sale shall be first applied to the repayment of the OSX-3 Bonds.
- In the event OSX-3 has not notified the OSX-3 Bond Trustee and OGX, pursuant to an irrevocable notice of its intent to consummate such refinancing or sale prior to maturity by the date falling 10 business days prior to the OSX-3 Bonds maturity date (as automatically extended if the OSX-3 Bond Trustee exercises the Post-Maturity Bond Trustee Termination Right described below), OGX (or

<sup>4</sup> Note: “Total Loss” provisions of Existing Charter are not being amended.

its affiliate or designee) shall have the right (the “**OGX Novation Right**”) to purchase, and once such right is exercised all OSX-3 Bondholders shall be obligated to sell (or OSX-3 and the OSX-3 Bondholders shall have the obligation to novate to OGX), all, but not less than all, of the OSX-3 Bonds (by purchase, novation, or otherwise) for an amount equal to all amounts due and payable in respect of the OSX-3 Bonds at such time (the “**Outstanding Amount**”), such amount to be payable in cash and without set off or counterclaim (save, for the avoidance of doubt, that such amount shall be reduced to the extent of any amount that has previously been applied in repayment of the OSX-3 Bonds using funds derived from the OSX-3 LC (as defined and described below)).

- Once the OSX-3 Bonds are purchased or novated, OGX shall retain all of the rights and benefits granted to the OSX-3 Bondholders under or in respect of the OSX-3 Bonds, and shall become their successor in interest under the related debt and collateral documents, including with respect to any enforcement of such rights or security interest and any rights under the OSX-3 LC.
- All amendments necessary to effect these provisions in the OSX-3 Bond Agreement and related collateral documents, the OSX organizational documents or as otherwise required shall be made on terms and conditions satisfactory to the parties hereto prior to the Invoicing Start Date.
- For mechanical and local law purposes, the buyout right may be structured as a call option.

**7 – Charter Termination Right – OGX and OSX; Post-Maturity Bond Trustee Termination Right**

- For the avoidance of doubt, the only new termination rights under or in respect of the A&R Charter Contract shall be those set forth in this Term Sheet, and the termination rights in the Existing Charter shall continue and be included in the A&R Charter Contract as amended pursuant to the terms of this Term Sheet.
- OSX-3 shall not be entitled to terminate the Charter Amendment Agreement or the A&R Charter Contract solely as a result of the currently pending OGX judicial reorganization or any events leading to it, including any existing default and related acceleration of any OGX debt and the failure of OGX to pay charter rates at the original rates under the Existing Charter, without limitation to the obligation to pay the Amended Charter Rates in accordance with the Charter Amendment Agreement and the A&R Charter Contract (the “**Current Default Waiver**”).
- If the OSX-3 Bonds have not been repaid, novated or refinanced by 20 March 2015 and the right of OGX to purchase/novate the OSX-3 Bonds set forth above is not exercised, the OSX-3 Bond Trustee, either (a) upon the written direction of holders of at least 2/3 of the principal amount of the OSX-3 Bonds, or (b) upon the direction of at least 2/3 of the principal amount of the OSX-3 Bonds represented at a duly convened Bondholders’ Meeting, shall be entitled to deliver a notice directly to OGX (with a copy to OSX-3) within 12 months after the maturity date to terminate the A&R Charter Contract (the “**Post-**

**Maturity Bond Trustee Termination Right**”), effective on the date that is 24 months after such notice delivery date (the “**Termination Period**”), provided that the OGX Novation Right remains operative during the Termination Period. If the OSX-3 Bond Trustee terminates the A&R Charter Contract pursuant to the Post-Maturity Bond Trustee Termination Right, (a) OGX shall be responsible for Redelivery Obligations only up to the undrawn amount of the OSX-3 LC, and OSX-3 shall be responsible for all other or excess Redelivery Obligations or related costs, (b) no termination sum shall be due by OGX, and (c) OGX shall be responsible for the payment of charter rates (at the Amended Charter Rate) until the redelivery date.

- If a “Non-payment” Event of Default has occurred under the OSX-3 Bonds solely as a result of OGX’s failure to pay the Amended Charter Rates, and such failure of OGX to pay the amounts due under the Amended Charter Rates has not been cured within 45 days after written notice thereof has been given to OGX by OSX-3 or the OSX-3 Bond Trustee, then the OSX-3 Bond Trustee, either (a) upon the written direction of holders of at least 2/3 of the principal amount of the OSX-3 Bonds, or (b) upon the direction of at least 2/3 of the principal amount of the OSX-3 Bonds represented at a duly convened Bondholders’ Meeting, shall be entitled to give notice of immediate termination of the A&R Charter Contract to the Charterer directly (the “**Charter Payment Default Bond Trustee Termination Right**”, and together with the Post-Maturity Bond Trustee Termination Right, the “**Bond Trustee Termination Rights**”). In a termination of the A&R Charter Contract pursuant to the Charter Payment Default Bond Trustee Termination Right, OGX shall remain responsible for the Redelivery Obligations, termination sum and charter rates until the redelivery date in accordance with the A&R Charter Contract.
- The Bond Trustee Termination Rights shall be set out in a direct agreement between OSX-3, OGX and the OSX-3 Bond Trustee, which agreement will not contain any exculpatory language limiting or modifying the liability of the OSX-3 Bond Trustee or the OSX-3 Bondholders with respect to the exercise of the Bond Trustee Termination Rights.
- For the avoidance of doubt, the rights set out above shall be in addition to, and shall not prejudice in any way, the rights available to the OSX-3 Bond Trustee under the existing Finance Documents (as defined in the OSX-3 Bond Agreement), and to OSX-3 under the A&R Charter Contract.

**8 – O&M Contract  
Termination Right –  
OGX<sup>5</sup>**

- OGX shall have the right, at any time, to terminate the O&M Contract without cause by giving OSX Servicios Operacionais Ltda. (the “Operator”) 30 days’ written notice.
- Upon any termination by OGX, OGX shall pay all sums due and duly invoiced by the Operator to OGX in respect of services performed and accepted by OGX prior to the termination date, together with any demobilization costs incurred by the Operator (including, without limitation, labor and related costs), less any amounts due from the Operator to OGX (without prejudice to indemnification rights of OGX under the O&M Contract).
- OGX must arrange for a replacement operator to immediately assume operation of the Vessel; such operator may be selected by OGX but must be internationally recognized and qualified, and acceptable to ANP, and must agree to operate the Vessel in accordance with international standards applicable to a vessel of the kind and size of the Vessel.
- Until the replacement operator actually takes over the operation of the Vessel, in accordance with applicable law and regulation, and the Operator continues to provide services to OGX and OGX shall continue paying the Operator for such services as provided in the O&M Contract, notwithstanding its termination.
- OGX will hold the Operator harmless against any direct costs and damages resulting from such termination of the O&M Contract; provided that OGX shall not be responsible for any costs or damages arising from the negligent behavior or willful misconduct of the Operator or for costs or damages resulting from the termination of the O&M Contract by OGX as a result of a breach of the contract by the Operator; and provided further that in no event shall OGX be responsible for any consequential damages (including any damages resulting from the inability to pay any indebtedness) or for any loss of expected income. The Operator shall be under obligation to mitigate such costs and damages.

**9 – OSX-3 LC**

- By the LC Posting Deadline, OGX shall arrange the issue of an on demand standby letter of credit by an international bank (with the facility for demand to be made in London and/or New York) in an amount of USD 25 million in favor of OSX-3 (and in a form reasonably acceptable to the OSX-3 Bond Trustee) to secure the obligations of OGX under the A&R Charter Contract (the “OSX-3 LC”).<sup>6</sup> The OSX-3 LC shall remain in place until the OSX-3 Bonds have been repaid, refinanced or novated in full or otherwise in accordance with the provisions in this Term Sheet.
- OSX-3 shall have the right to call on the OSX-3 LC in the event of and

<sup>5</sup> OSX to confirm whether any consents required to amend O&M Contract (e.g. from Credit Suisse).

<sup>6</sup> Note that the availability of this construct remains subject to CGSH/Rothschild ongoing review of OGX cash flow forecasts. Form of OSX-3 LC to be agreed in form and substance acceptable to all Required Parties.



to the extent of a failure by OGX to pay any amounts due and owing under the A&R Charter Contract (an “LC Trigger”).

- OSX-3 shall not be able to make any demand under the OSX-3 LC without the prior written approval of the OSX-3 Bond Trustee, and shall make demand under the LC Trigger within 3 business days if requested to by the OSX-3 Bond Trustee.
- OSX-3 shall not be able to waive an event or circumstance that has given rise to or may give rise to the occurrence of an LC Trigger, without the prior written approval of the OSX-3 Bond Trustee.<sup>7</sup>
- All funds deriving from a demand under the OSX-3 LC shall be paid directly into the Retention Account (as defined in the OSX-3 Bond Agreement) and shall reduce amounts due and owing to OSX-3 under the A&R Charter Contract .
- The OSX-3 Bond Agreement shall be amended to include an optional prepayment event under the OSX-3 Bonds (the option to be exercised if the OSX-3 Bond Trustee is instructed to do so by OSX-3 Bondholders in a Bondholder’s Meeting) in an amount equivalent to any amounts derived from a demand under the OSX-3 LC.
- OSX-3 shall assign its rights and obligations under the OSX-3 LC to the OSX-3 Bond Trustee as security for the OSX-3 Bonds, and OSX-3 and OGX shall acknowledge that such assignment shall entitle the OSX-3 Bond Trustee to make demand under the OSX-3 LC directly in circumstances where there has occurred an LC Trigger irrespective of whether or not there is an outstanding event of default under the OSX-3 Bond Agreement.
- So long as there is no LC Trigger, neither OSX-3 nor the OSX-3 Bond Trustee shall be entitled to make a demand on the OSX-3 LC.
- Multiple demands under the OSX-3 LC shall be permitted.
- In the event the A&R Charter Contract is terminated by OGX in accordance with the terms thereof, and provided that OGX is in full compliance with all of its material obligations under the A&R Charter Contract (which shall include all Amended Charter Rates that are due and payable having been paid, and redelivery having occurred), and that no LC Triggers remain outstanding, OGX shall be entitled to cancel the OSX-3 LC.
- In the event that the OSX-3 Bonds are refinanced, repaid or novated, OGX shall be entitled to cancel the OSX-3 LC.

**10 – Subordination &  
Charter Rate Waiver  
Provisions**

- (A) Any claims that OSX-3 has or may have under the Existing Charter or the A&R Charter Contract, save for any administrative expense claims for payment of the Amended Charter Rate that has accrued prior to the Drop-Dead Date and remains unpaid, will be contractually subordinated in right of payment and liquidation to claims under all tranches of the OGX DIP Financing (the “DIP Financing”), and (B)

<sup>7</sup> Note: Documentation for LC Triggers and demands or waivers relating thereto to be agreed before the Invoicing Start Date in form and substance acceptable to all Required Parties.

any claims that OSX-3 has or may have for charter rate in excess of the Amended Charter Rate for any period prior to the earlier of (a) the Charter Amendments Full Effectiveness Date, and (b) the Drop-Dead Date, shall be irrevocably and unconditionally waived (the “**Subordination & Charter Rate Waiver Provisions**”) in the Charter Amendment Agreement. Such Subordination & Charter Rate Waiver Provisions shall be immediately and unconditionally effective upon the Invoicing Start Date and shall survive notwithstanding any termination of the Charter Amendment Agreement or the A&R Charter Contract.

**11 – Settlement Agreement**

- Amendments to the Existing Charter termination provisions listed in Appendix A hereto shall be immediately effective as of the Charter Amendments Full Effectiveness Date. Otherwise, except as specifically modified herein, no amendments to the Existing Charter agreed pursuant to the Settlement Agreement will be implemented and become effective prior to the date on which the OSX-3 Bonds have been refinanced, repaid or novated. Following the refinancing, repayment, or novation of the OSX-3 Bonds, all amendments under the Settlement Agreement shall apply including the right of OGX to terminate the A&R Charter Contract without payment of a termination sum at any time following the 13th anniversary of the Delivery Date, and all termination rights and related obligations shall be as set forth in the Settlement Agreement without giving effect to any changes introduced in this Term Sheet, except in each case to reflect the terms of the “*OSX-3 Day Rate*”, “*Production-Related Charter Termination Right – OGX*”, “*Production-Related OSX-3 Capped Claim in OGX Bankruptcy*” sections, and the calculation of the net present value of future payments set forth in second bullet of the “*Redelivery & Termination Sum*” section, of this Term Sheet.<sup>8</sup>

<sup>8</sup> Note: OGX to consider inclusion of tax and insurance provisions of the Settlement Agreement with immediate effect from the Invoicing Start Date.

APPENDIX A**CHARTER TERMINATION PROVISIONS (AS MODIFIED BY SETTLEMENT AGREEMENT AND FURTHER MODIFIED HEREUNDER)**

Category	Settlement Agreement Section	Charter Contract Modification Under Settlement Agreement
OSX-3 Termination Events (i.e. where OSX-3 has the right to terminate)	17	<ul style="list-style-type: none"> <li>• OSX-3 Termination Event Summary:</li> <li>• <u>Nonpayment</u> (amended - 15 BD cure period after written notice received, up from 2 BD prior to June 2013 settlement) (of any amount due);</li> <li>• <u>Failure to insure</u> (amended - 21 days cure period vs 0) (required insurances not in full force, insurer cancels, insurer fails to renew, insurer disclaims liability by reason of misstatement, insurances not placed and kept in force); provided that if event results from non-payment of insurance premia owed by OGX, cureperiod will be 5 business days</li> <li>• <u>Breach of Other Obligations by OGX</u> (amended - 45 days cure period vs 15 BD);</li> <li>• <u>Illegality</u> (amended 21 days cure vs 0, unless due to an event that is not capable of being cured in which case, immediate; no termination sum if illegality results from changes in law or acts or omissions on the part of any person other than OGX ; termination sum if otherwise);</li> <li>• <u>Litigation</u> (amended - termination on 18 months' notice, unless litigation does result or will manifestly result in OGX being unable to pay the agreed charter rates, in which case termination shall be immediate) (final and non-appealable judgment or arbitral award vs actions expected to have material adverse effect; no termination sum in this event unless there is a final and non-appealable judgment or arbitral award holding that willful misconduct or gross negligence on the part of OGX was proximate cause of such litigation vs termination sum).</li> <li>• <u>Insolvency</u> (amended - termination on 18 months' notice, without prejudice to ability of OSX-3 to terminate for non-payment)</li> <li>• <u>Insolvency Proceedings</u> (amended - termination on 18 months' notice without prejudice to ability of OSX-3 to terminate for non-payment)</li> <li>• <u>Creditor's Process</u> (amended - termination on 18 months' notice, without prejudice to ability of OSX-3 to terminate for non-payment) (must materially affect OGX or OGX guarantor's performance under contract vs no materiality requirement)</li> <li>• <u>Misrepresentation</u> (DELETED)</li> <li>• <u>Registration</u> (amended) (if registration is canceled as a result of a material breach by OGX of its obligations, termination sum; if registration is cancelled or terminated for other reasons, 30 days cure period (unless not capable of cure in which case immediate), and no termination sum).</li> <li>• <u>Cross-Default</u> (DELETED).</li> <li>• <u>Repudiation or Rescission of Transaction Documents</u> (rescind or purport to rescind transaction document)</li> <li>• <u>Arrest of Vessel</u> (amended) (applies only if claim is against OGX or if claim arises as a direct result of OGX's failure to pay amounts it owes under the A&amp;R Charter Contract only vs any claim)</li> <li>• <u>Qualification of Accounts</u> (DELETED)</li> <li>• <u>Environmental incidents</u> (amended - no termination sum due unless proximate cause of incident is an act or omission on the part of OGX)</li> <li>• <u>Abandonment</u> (amended - 30 days cure period from 20 days).</li> <li>• <u>Operation of the Vessel</u> (amended - if operator no longer operates and a reputable operator with experience in the industry either internationally or in Brazil or an</li> </ul>

		operator acceptable to ANP is not found within 90 BD).
OGX Termination Events (i.e. where OGX has the right to terminate)	19	<ul style="list-style-type: none"> <li>• Amended to include the following Charterer Termination Events, for which there shall be no termination sum due unless otherwise specifically set forth in the front part of the Term Sheet:</li> <li>• <u>Vessel Unavailability</u> (amended - for 120 days vs 365; can occur at any time vs after 6 years after Commencement Date; unavailability cannot be caused by an OGX breach)</li> <li>• <u>Breach of Material Obligations by OSX-3</u> (45 day curetime vs 0).</li> <li>• <u>*Insolvency</u> (amended - termination on 18 months' notice, unless result of insolvency is that OGX is unable to use and operate the Vessel, in which case termination shall be immediate)</li> <li>• <u>*Insolvency Proceedings</u> (amended - termination on 18 months' notice, unless result of insolvency proceedings is that OGX is unable to use and operate the Vessel, in which case termination shall be immediate )</li> <li>• <u>Winding-Up</u> (amended - termination on 18 months' notice, unless result of winding-up is that OGX is unable to use and operate the Vessel, in which case termination shall be immediate)</li> <li>• <u>* Illegality</u> (amended - 21 days cure, unless due to an event that is not capable of being cured in which case, immediate; no termination sum if illegality results from changes in law or acts or omissions on the part of any person other than OGX ; termination sum due if otherwise);</li> <li>• <u>*Litigation</u> (amended - termination on 18 months' notice, unless litigation will manifestly result in OGX being unable to use and operate the Vessel, in which case termination shall be immediate)</li> <li>• <u>*Creditor's Process</u> (amended - termination on 18 months' notice, unless result of creditors' process is that OGX is unable to use and operate the Vessel, in which case termination shall be immediate)</li> <li>• <u>*Loss or constructive loss of Vessel.</u></li> <li>• <u>*Sale, transfer, or disposal</u> (Vessel or Vessel components; unless (1) with OGX's written consent or (2) a sale or transfer of the Vessel that is (A) through a sale process notified in advance to OGX and as to which OGX is kept reasonably informed, and in which the buyer provides evidence to the reasonable satisfaction of OGX that it has the financial and technical resources to perform Owner's obligations under the A&amp;R Charter Contract and (B) such sale is subject to the A&amp;R Charter Contract, and buyer provides written undertaking to OGX assuming all of OSX-3's obligations under the A&amp;R Charter Contract and guaranteeing OGX's right to quiet enjoyment under the A&amp;R Charter Contract)</li> </ul> <p>*New clause added by Settlement Agreement</p>
	20	<ul style="list-style-type: none"> <li>• After the OSX-3 Bonds have been refinanced, repaid or novated, OGX shall have the right to terminate agreement without cause ("<u>OGX At-Will Termination Right</u>") with 120 days' notice, and shall pay the termination sum as calculated pursuant to the portion of this Term Sheet preceding this Appendix A, and after the 13<sup>th</sup> anniversary of the Delivery Date, there will be no termination sum.</li> </ul>
	21	<ul style="list-style-type: none"> <li>• OGX no longer has to wait 6 years after charter commencement to exercise termination rights; if OGX terminates charter, it must promptly return or cause to be returned the Vessel to OSX-3 at OSX-3's cost and expense (except as otherwise provided in the portion of this Term Sheet preceding this Appendix A).</li> </ul>
	24	<ul style="list-style-type: none"> <li>• Force Majeure –force majeure clause providing for reduced charter rates for 90 days and zero charter rate thereafter, with a termination right exercisable by either party free of any termination obligation or liability except for any accrued liability prior to such</li> </ul>

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DRAFT – PRIVILEGED & CONFIDENTIAL –  
SETTLEMENT DISCUSSIONS  
AGREED VERSION

		termination.
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# **Contrato de Afretamento OSX-3**

*("Bare Boat Charter Agreement in respect of the OSX-3 Floating Production Storage Offloading (FPSO) Vessel")* entre OSX-3 Leasing B.V., OSX-3 Holding B.V. e OGX, datado de 06.03.2012

02311

Dated 6 March 2012

**OSX 3 LEASING B.V.**  
as Owner

**OGX PETRÓLEO E GÁS LTDA.**  
as Charterer

-and-

**OSX 3 Holding B.V.**  
as Alternative Payer

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**Bare Boat Charter Agreement**  
in respect of the  
**OSX-3 Floating Production Storage**  
**Offloading (FPSO) Vessel**

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SCHEDULE 4 BOND FINANCING TERM SHEET



**THIS BARE BOAT CHARTER AGREEMENT** (this "Agreement") is made on 6 March 2012

**BETWEEN:**

- (1) **OSX 3 LEASING B.V.**, a company duly incorporated and validly existing in accordance with the laws of the Netherlands, whose registered office is at Haagsche Hof, Parkstraat 83, offices 209/210, 2514 JG, the Hague, the Netherlands (the "Owner");
- (2) **OGX PETRÓLEO E GÁS LTDA.**, a company duly incorporated and validly existing in accordance with the laws of the Federative Republic of Brazil, whose registered office is at Praça Mahatma Gandhi, 14, part, Rio de Janeiro, registered with the Brazilian tax authority under registered number CNPJ 08.926.302/0001-05 (the "Charterer"); and
- (3) **OSX 3 HOLDING B.V.**, a company duly incorporated and validly existing in accordance with the laws of the Netherlands, whose registered office is at Haagsche Hof, Parkstraat 83 (2514 JG), the Hague, the Netherlands (the "Alternative Payer"),

each a "Party" and together the "Parties".

**WHEREAS**

- (A) Pursuant to the EPCI Contract, the Owner has contracted the engineering, procurement, construction and installation of the Vessel and the Vessel Components, of which it shall become the owner.
- (B) The Charterer now wishes to bareboat charter the Vessel, together with the Vessel Components from the Owner on the terms set out herein.
- (C) The Charterer shall enter into the Operation Agreement with the Operator, pursuant to which the Charterer may transfer the possession and the duty of care to the Operator, which shall import, operate and maintain the Vessel and the Vessel Components and perform other services in respect thereof, which operation, maintenance and other services shall be executed simultaneously with the charter of the Vessel pursuant to this Agreement.

**IT IS AGREED**

**1. DEFINITIONS AND INTERPRETATION**

**1.1 Definitions**

In this Agreement (including in the Recitals and the Schedules, all of which form an integral part of this Agreement) capitalised terms and expressions shall have the following meanings:

"Acts of War" means any acts of war, declared or not, hostilities, revolution, acts of terrorism, civil war or insurrections;

"Additional Equipment" has the meaning given to such term in Clause 7.5.1 (*Additional Equipment, Modifications and Alterations*);

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

"Applicable Law" means applicable national, state, municipal, international or supra-national conventions, treaties, laws, rules, statutes, decrees, acts, codes, legislation, treaties, directives, decisions, regulations, rules and similar instruments (including, without any limitation whatsoever, all Environmental Laws, international maritime laws, the ISM Code, the ISPS Code, the STCW Code and all conditions and recommendations of the Classification Society) (in each case whether civil, criminal or administrative) and, in respect of any of the foregoing,





any instrument passed in substitution therefor or for the purposes of consolidation thereof with any other instrument or instruments;

**“Approved Broker”** means Marsh, Willis or AON or any other broker approved by the Owner in case of Charterer Required Insurances, or by the Charterer in case of Owner Required Insurances, in either case, such approval not to be unreasonably withheld;

**“Approved Credit Rating”** means, in respect of any insurer or reinsurer (or in the event that there is more than one such person, in respect of any insurance or reinsurance syndicate), a credit rating for the long term indebtedness of that person (or, as the case may be, of such insurance or reinsurance syndicate calculated as a weighted average based on the respective participations of the members of such syndicate) of not less than A with Standard & Poor’s Rating Agency and/or A3 with Moody’s Rating Agency (or the equivalent with another internationally recognised credit rating agency);

**“Approved Insurer/Reinsurer”** means any underwriter which is an international, reputable insurance company (or syndicate of such underwriters) and any P&I Club which is a member of the International Group of P&I Clubs and any first class war risks club or association (as applicable) in each case with an Approved Credit Rating; in case of Charterer Required Insurances, approved by the Owner in writing; and in case of Owner Required Insurances, approved by the Charterer in writing; in either case, such approval not to be unreasonably withheld;

**“Bond Financing”** means the Norwegian law senior secured bond issue 2012/2015 to be launched in the first quarter of 2012 by the Owner as borrower and Norsk Tillistmann as the Bond Trustee aiming at raising USD 400-500 million for the purpose of part-financing the Project, which Bond Financing shall be substantially on the terms set out in the Bond Financing Term Sheet set out in Schedule 4 (*Bond Financing Term Sheet*) hereof.

**“Business Day”** means any day (other than Saturday or Sunday) on which banks are open for general business in Amsterdam, London, New York City, Rio de Janeiro, São Paulo and Singapore;

**“Change in Tax Law”** means any change in Applicable Law relating to Taxes in any jurisdiction;

**“Charter Commencement Certificate”** means a certificate to be granted by the Charterer in favour of the Owner in a form reasonably acceptable to the Owner to indicate acceptance of the Vessel at the commencement of the Charter Period, pursuant to Clause 2.4.1;

**“Charter Rate”** has the meaning given to such term in Clause 8.2;

**“Charterer Required Insurances”** means any and all contracts or policies of insurance required to be effected from time to time by the Charterer pursuant to this Agreement;

**“Charterer Termination Event”** means any one of the events specified in Clause 16.3 (*Charterer Termination Events*) of this Agreement that permit termination of the charter by the Charterer;

**“Charter Guarantee”** means a guarantee and indemnity granted by the Charter Guarantor in favour of the Owner covering the financial obligations of the Charterer under this Agreement in accordance with Clause 18;

**“Charter Guarantor”** means OGX Petróleo e Gás Participações S.A., a company duly incorporated and validly existing in accordance with the laws of the Federative Republic of Brazil, whose registered office is at Praça Mahatma Gandhi, 14, part, Rio de Janeiro, registered with the Brazilian tax authority under registered number CNPJ 07.957.093/0001-96;

**"Charter Period"** means the period during which the Charterer bareboat charters the Vessel from the Owner pursuant to this Agreement commencing on the Commencement Date and ending on the Termination Date;

**"Classification Society"** means the classification society specified in Schedule 2 (*Vessel Information*) or another classification society which is a member of the International Association of Classification Societies, consent to which has been received from the Owner pursuant to Clause 4.8.3;

**"Commencement Date"** means the earlier of: (a) the date on which the situation set out in clause 3.4.2 occurs, (b) the Physical Delivery Date; (c) 25 March 2014.

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

**"Corporate Tax"** means any and all present or future taxes (of any nature and however termed) which are now or at any time hereafter imposed, assessed, charged, levied, collected, demanded, withheld or claimed by any government or taxing authority and are assessed upon the income, profits, gains, net wealth, asset values or turnover of the entity which is subject thereto, together with all interest thereon and penalties or similar liabilities with respect thereto, except for withholdings within the meaning of clause 9.1;

**"Default Rate"** means five per cent (5%) per annum;

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

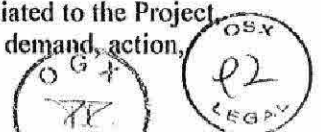
**"Effective Date"** means the date of this Agreement;

**"Encumbrance"** means any mortgage, charge (whether fixed or floating), pledge, lien, assignment, trust, hypothecation, title retention or any other security interest of any kind securing any obligation of any person or any other agreement or arrangement having a similar effect;

**"Environment"** means all or any of the following media: air (including air within buildings or other structures and whether below or above ground); land (including buildings and any other structures or erections in, on or under it and any soil and anything below the surface of the land); land covered with water; water (including sea, ground and surface water and any living organism supported by such media), and, living organism supported by natural or man-made environment, and the interaction of all living species;

**"Environmental and Social Matters"** includes (a) the generation, deposit, disposal, keeping, treatment, transportation, transmission, handling, importation, exportation, processing, collection, sorting, presence or manufacture of any Pollutant and/or any Hazardous Material; (b) nuisance, noise, traffic or defective premises; (c) the pollution, conservation or protection of the Environment (both natural and built) or of man or any living organisms supported by the Environment; (d) emissions, discharges, releases or threatened releases of any Pollutant or Hazardous Material into the environment including, without limitation, ambient air, surface water, groundwater, or land; (e) the manufacture, processing, distribution, use, treatment, storage, disposal, transport, or handling of any Pollutant or Hazardous Material, (f) health and safety at work (including illness, injury and hazards), (g) Labour Laws, (h) labour rights, worker rights, or human rights; or (i) any material matter whatsoever relating to human health, environment, social issues or health and safety;

**"Environmental Claim"** means, with respect to the Project, or, where associated to the Project the Owner or Charterer, to the best of its knowledge, any claim, prosecution, demand, action,



official warning, abatement or other order (conditional or otherwise) relating to the following, (i) Environmental and Social Matters, (ii) a Spill or in response to a Spill, (iii) Hazardous Materials, (iv) compliance with the terms of any Environmental Licence or any Environmental Law;

**"Environmental Incident"** means any Spill, explosion, fire or release of Hazardous Material from any vessel in circumstances where:

- (a) the Vessel, the Charterer or the Operator of the Vessel is reasonably likely to be liable for Environmental Claims arising from the occurrence (other than Environmental Claims arising and fully satisfied before the date of this Agreement);
- (b) the Vessel may be arrested or attached in connection with any such Environmental Claim; and/or
- (c) there are occurrence of any deaths or significant injuries;

**"Environmental Law"** includes the following:

- (a) all or any applicable law, statute, rule, ordinance, regulation, treaty, by-law, code of practice generally accepted and applied within the global oil and gas industry relating to Environmental and Social Matters (for the purposes of this definition, the "Laws"),
- (b) any applicable judicial, arbitral or administrative interpretation of any Laws relating to Environmental and Social Matters, or
- (c) any binding order, decree, arbitral award, decision of the courts, or of any governmental authority or agency or any other regulatory or other relevant body in any relevant jurisdiction imposing liability or setting standards of conduct relating to Environmental and Social Matters now or hereafter in effect.

**"Environmental Licence"** includes any permit, licence, authorisation, consent or other approval required at any time by any Environmental Law for the operation of the Charterer's, the Operator's or the Charter Guarantor's business or in order for the Charterer or the Operator, as the case may be, to comply with their respective obligations under the Transaction Documents;

**"EPCI Contract"** means the contract for the engineering, procurement, construction, installation and commissioning of a floating production, storage and offloading (FPSO) vessel entered into between the Owner and Modec Inc. on 15 July 2011, as amended from time to time;

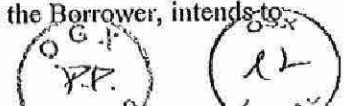
**"EPCI Contractor"** means Modec Inc., a company incorporated and existing under the laws of Japan, with its registered office at 25<sup>th</sup> floor, Kasumigaseki Common Gate, West Tower 2-1, Kasumigaseki, 3 chome, Chiyoda-ku, Tokyo, Japan, or assignee of, or successor in interest to, the rights and obligations of such entity in the EPCI Contract;

**"Event of Loss"** means any damage, including a Total Loss, suffered by the Vessel;

**"Expiry Date"** means the twentieth (20<sup>th</sup>) anniversary of the Physical Delivery Date;

**"Extension Project Costs"** means any costs incurred by the Owner in agreement with the Charterer in order to update/maintain the Vessel, in accordance with good industry practices, solely for purposes of maintaining adequate safety and technical standards required for the operation of the Vessel, in connection with the extension set out in clause 2.2 of the Agreement;

**"Long Term Financing"** means the long term debt financing in an amount sufficient to meet 70-80% of the total estimated costs of the Project, which the Owner, as the Borrower, intends to



obtain from one or more financing parties for the purposes of financing the engineering, procurement, construction and installation of the Vessel, provided further that Owner expects to use a portion of the proceeds of the Long Term Financing to take out any outstanding amounts under the Bond Financing;

**“Government Entity”** means any national, supranational, regional or local government or governmental, administrative, fiscal, judicial, or government-owned body, department, commission, authority, tribunal, agency, or central bank (or any person, whether or not government-owned and howsoever constituted or call, that exercises the functions of a central bank) in any relevant jurisdiction or England and Wales;

**“Hazardous Material”** means any substance or wastes that is regulated or could lead to liability under any Environmental Law, including, but not limited to, any petroleum, petroleum product, by-product or component, petroleum distillate or derivative, low specific activity residues resulting from the production of hydrocarbons, asbestos, or asbestos containing material, in any form that is or could become friable, transformers or other equipment that contain dielectric fluid containing levels of polychlorinated biphenyls (PCB’s), radioactive materials, radon, mold, urea formaldehyde insulation, or chlorofluorocarbons or other ozone-depleting substances, greenhouse gases (including carbon dioxide, methane, nitrous oxide, sulphur hexafluoride, hydroflouorocarbons, chloroflouorocarbons, perfluorocarbons and other fluorinated greenhouse gases, or radioactive, explosive, medical or biohazardous materials), hazardous waste, hazardous material, hazardous substance, toxic substance, contaminant or pollutant, as defined or regulated as such under any applicable Environmental Law.

**“Holding Company”** means, in relation to a company or corporation, any other company or corporation of which it is a Subsidiary;

**“Insurances”** means any and all contracts or policies of insurance required to be effected from time to time by the Charterer or the Owner pursuant to this Agreement;

**“Insurance Instruments”** means all cover notes and, in respect of the protection and indemnity insurance, all certificates of entry (excluding pricing information) and the Approved Brokers’ letters of undertaking issued or to be issued in connection with the Insurances;

**“ISM Code”** means the International Safety Management Code for the Safe Operation of Vessels and for Pollution Prevention constituted pursuant to Resolution A741(18) of the International Maritime Organization and incorporated into the Safety of Life at Sea Convention and includes any amendments or extensions of it and any regulation issued pursuant to it;

**“ISPS Code”** means the International Vessel and Port Security Code of the International Maritime Organization, including any amendments and includes any amendments or extensions and any regulation issued pursuant to it;

**“Labour Laws”** means any and all binding laws in the applicable jurisdictions, now or hereafter in effect and any judicial or administrative interpretation thereof, including any judicial or administrative order, consent, decree or judgement relating to occupational health and safety including those related to preventing and combating harmful and exploitative forms of forced or compulsory labour (where forced labour means all work or service, not voluntarily performed, which is extracted from an individual under threat or force or penalty) and child labour (where child labour means any work or service performed by children under fourteen (14) years of age, or, if older than fourteen (14) and younger than eighteen (18) years of age, in hazardous conditions or at night).

**“Legal Reservations”** means

- (a) the principle that equitable remedies may be granted or refused at the discretion of a court and the limitation of enforcement by laws relating to insolvency, reorganisation and other laws generally affecting the rights of creditors;



- (b) the time barring of claims under the Limitation Acts, the possibility that an undertaking to assume liability for, or indemnify a person against, non-payment of UK stamp duty may be void and defences of set-off or counterclaim; and
- (c) similar principles, rights and defences under the laws of any relevant jurisdiction.

**"Losses"** means any losses, costs, charges, expenses, interest, fees and outgoings of whatsoever nature (including, without limitation, reasonable legal fees and any Taxes and VAT thereon), payments, demands, liabilities, penalties, damages, adverse judgments, orders or other sanctions;

**"Major Casualty Amount"** means ten million Dollars (US\$10,000,000) (or the equivalent in any other currency);

**"Maritime Registry"** means the maritime registry of Liberia or such other registry as may be agreed from time to time between the Charterer and the Owner;

**"Material Adverse Effect"** means, in the reasonable opinion of the other Party, a material adverse effect on (i) the ability of the Owner or the Charterer or the Charter Guarantor (as relevant) to perform all or any of its material obligations under, or otherwise to comply with the terms of, the Transaction Documents (or in the case of the Owner, the Bond Financing or the Long Term Financing or any other document entered into in connection therewith) to which it is party or (ii) to the business, operations, assets or the financial condition of the Owner or Charterer or Charter Guarantor (as relevant);

**"Operator"** means OSX Serviços Operacionais Ltda., a limited liability company whose registered office is situated at Praça Mahatma Gandhi, 14, part, Centro, Rio de Janeiro, RJ, Brazil;

**"Operating Year"** has the meaning given to such term in Clause 6.7.1;

**"Operation Agreement"** means the operation and maintenance agreement entered or to be entered into between the Charterer and the Operator in respect of the operation and maintenance of the Vessel to be performed simultaneously with the bare boat charter of the Vessel pursuant to this Agreement;

**"Operational Unavailability Credit"** has the meaning given to such term in Clause 8.7 (*Alternative Payer*);

**"Operation Site"** means the Waikiki oil complex (Concession Contracts No. 48610.001367/2008-54 and 48610.001368/2008-07) in the Campos basin or any other oil field with similar characteristics offshore Brazil, where the Vessel will be moored and operated, as notified from time to time by the Charterer and agreed by the Owner, which agreement shall not be unreasonably withheld;

**"Owner Required Insurances"** means any and all contracts or policies of insurance required to be effected from time to time by the Owner pursuant to this Agreement;

**"Owner Termination Event"** means any one of the events specified in Clause 16.1 (*Owner Termination Events*) of this Agreement that permit termination of the charter by the Owner;

**"Permitted Encumbrance"** means, in relation to the Vessel and any Vessel Component, any Encumbrance over them which is:

- (a) granted by the Bond Financing or the Long Term Financing or any other document entered into in connection therewith;





- (b) unless an Owner Termination Event is continuing, any ship repairer's or outfitter's possessory lien in respect of the Vessel for an amount not exceeding the Major Casualty Amount unless otherwise covered by Insurances;
- (c) any lien for master's, officers' or crew's wages outstanding in the ordinary course of its trading which are not overdue;
- (d) any lien for salvage;
- (e) any lien arising in the ordinary course of business or operation of the Vessel created by statute or by operation of law in Brazil or at any Operation Site (and constituting a bona fide, non-discriminatory measure of general application) after the date of this Agreement and in respect of obligations which are not overdue or which are being contested in good faith by appropriate proceedings (and for the payment of which adequate reserves have been provided) so long as any such proceedings or the continued existence of such lien do not, in the reasonable opinion of the Owner, involve any likelihood of the sale, forfeiture or loss of, or of any interest in, or loss of use for a period exceeding twenty (20) days of, the Vessel; or
- (f) approved by the Owner.

**"Physical Delivery"** means the transfer of care and custody of the Vessel from the EPCI Contractor to the Owner in accordance with the provisions of the EPCI Contract;

**"Physical Delivery Date"** means the date upon which Physical Delivery occurs, as set out in the Provisional Completion Certificate;

**"Pollutant"** means and includes crude oil and its products, any other polluting, toxic or hazardous substance and any other substance whose release into the Environment is regulated or penalised by Environmental Laws;

**"Potential Termination Event"** means any event which would, with the passage of time, the making of any determination or the issuing of any notice by any of the Parties, constitute an Owner Termination Event;

**"Project"** means the project to construct, install, charter and operate the Vessel for the receipt, processing and testing of crude oil, gas and water from oil wells from the Operation Site and exporting crude oil, as more particularly described in this Agreement

**"Project Authorisations"** shall have the meaning given to such term in Clause 6.2;

**"Provisional Completion Certificate"** shall have the meaning given to it in the EPCI Contract;

**"Redelivery Location"** has the meaning given to such term in Clause 10.1(b);

**"Required Insured Value"** means on any date, an amount which is at least equal to one hundred and twenty per cent (120%) of the loan amount outstanding pursuant to the Bond Financing or the Long Term Financing at such date;

**"Requisition for Hire"** means the requisition for use of the Vessel by any Governmental Entity which results in the loss of possession thereof by the Charterer;

**"ROF"** means the *Registro da Operação Financeira* made by the Charterer with the Brazilian Central Bank in accordance with the rules edited by the Brazilian Monetary Council required to enable payments due under this Agreement by the Charterer or the Charter Guarantor to the Owner.



**"Spill"** means with respect to any chemical, material or substance any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, disposing or other introduction into the Environment of such chemical, material or substance, including the abandonment or discarding of barrels, containers, and other closed receptacles containing any Hazardous Material;

**"STCW Code"** means the 1978 International Convention on Standards of Training, Certification and Watchkeeping for Seafarers and the code related thereto;

**"Sub-Sea Installations"** has the meaning given to such term in Clause 3.4.1.

**"Subsidiary"** means, with respect to any entity, any other entity: (a) directly or indirectly controlled by such entity; or (b) of whose dividends or distributions on ordinary voting share capital such person is entitled to receive more than fifty percent (50%);

**"Supplemental Charter Rate"** means the amounts described in Clause 8.4 (*Supplemental Charter Rate*) of this Agreement;

**"Taxes"** and **"taxes"** means any and all present or future taxes (of any nature and however termed), levies, fiscal charges, imposts, duties, fees, assessments, surcharges, restrictions, conditions or other charges or withholdings of whatever nature and however arising which are now or at any time hereafter imposed, assessed, charged, levied, collected, demanded, withheld or claimed by any government or taxing authority, together with all interest thereon and penalties or similar liabilities payable in connection with any failure to pay or delay in paying any of the same (other than Corporate Tax) and **"Tax"**, **"tax"**, **"taxation"** and **"Taxation"** shall be construed accordingly;

**"Termination Date"** means the Expiry Date or such earlier date on which the charter of the Vessel is terminated in accordance with the terms of this Agreement;

**"Termination Sum"** means, on any date, the aggregate of:

- (a) any Charter Rate due and payable at such date;
- (b) any Supplemental Charter Rate due and payable at such date;
- (c) the outstanding loan amount (if any), including accrued interest and any other amounts which are then due and payable by the Owner under or in connection with the Bond Financing or the Long Term Financing;
- (d) all breakage costs charged to Owner as a result of an early termination and unwinding of any swap arrangements entered into in connection with the Bond Financing or the Long Term Financing (as the case may be).

**"Total Loss"** means, in relation to the Vessel, its:

- (a) actual, constructive, compromised or arranged total loss; or
- (b) requisition for title, confiscation (excluding a Requisition for Hire for a fixed period against payment of market hire, not exceeding one year without any right to extension) or other Compulsory Acquisition by a Government Entity; or
- (c) hijacking, theft, condemnation, capture, seizure, arrest (other than by a creditor) or detention for more than one hundred and eighty (180) days;

**"Transaction Documents"** means:

- (a) this Agreement;



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- (b) the Charter Guarantee;
- (c) the EPCI Contract;
- (d) the Operation Agreement;
- (e) any other document as may after the date of this Agreement be executed by the Owner in connection with this Charter, the Vessel and/or supply of Vessel Components, which the Owner and the Charterer may from time to time agree to be a Transaction Document;

“Vessel” means the OSX-3 floating production, storage and offloading vessel as more particularly described in Schedule 2 (*Vessel Information*) to be built by the EPCI Contractor pursuant to the EPCI Contract;

“Vessel Components” means (i) all outfit, machinery, equipment (including the equipment to safely moor the Vessel), spare parts, appliances, furniture, fittings, furnishings, appurtenances and stores needed to ensure the operability of the Vessel which are procured and delivered by the EPCI Contractor to the Owner on the Physical Delivery Date and (ii) all substitutions, replacements and renewals of the same in or on the Vessel made pursuant to Clause 7.3 (*Repairs*);

“Vessel Rights” means all rights, including without prejudice to the generality of the foregoing, the benefit of all warranties and indemnities to which the Owner may from time to time be entitled from any builder, manufacturer, sub-contractor, supplier or repairer in respect of the manufacture, supply, condition, design, customisation, construction, installation or operation of the Vessel or any part thereof pursuant to the EPCI Contract and any liquidated damages payable to the Owner from time to time under the EPCI Contract and shall include any rights of the Owner under any guarantees or warranties issued pursuant to the EPCI Contract; and

“Wilful Misconduct / Gross Negligence” means, in respect of the Owner, any act or failure to act of any director, officer or senior management of the Owner which was intended to cause, or which was in reckless disregard of or wanton indifference to, the harmful consequences that such person knew, or should have known, such act or failure would have on the safety or property of another person or entity.

1.2 Interpretation

Clause headings and the table of contents are inserted for convenience of reference only and shall be ignored in the interpretation of this Agreement.

1.3 Construction

In this Agreement, unless the context otherwise requires:

- (a) references to Clauses and Schedules are to be construed as references to the clauses of, and schedules to, this Agreement and references to this Agreement include its Schedules;
- (b) references to (or to any specified provision of) this Agreement or any other document shall be construed as references to this Agreement, that document or that provision as in force for the time being and as amended, supplemented, modified, varied or novated from time to time in compliance with any obligation in that regard contained in this Agreement or any such document and in accordance with the terms hereof and thereof;
- (c) words importing the plural shall include the singular and vice versa;



- (d) references to any law, enactment or other statutory provision shall be deemed to include references to such law, enactment or other statutory provision as re-enacted, amended, extended, consolidated or replaced and any orders, decrees, proclamations, regulations, instruments or other subordinate legislation made thereunder;
- (e) words importing any gender shall be construed as including every gender;
- (f) references to "continuing" means in relation to a Termination Event where such event has not been duly remedied within the relevant grace period (if applicable) nor waived in accordance with the terms of this Agreement;
- (g) references to "hereof", "herein" and "hereunder" and other words of similar import mean this Agreement as a whole and not any particular part hereof;
- (h) references to "indemnify", "indemnity" and other words of similar import shall include being indemnified, being compensated, being held harmless and being reimbursed;
- (i) references to any person shall where the context permits include respective successors, transferees and permitted assigns and any persons deriving title under them;
- (j) references to "person" mean any natural person, corporation, firm, joint venture, partnership, association, enterprise, trust or other entity or organisation or any government agency;
- (k) references to a "guarantee" include references to an indemnity or other assurance against financial loss including, without limitation, an obligation to purchase assets or services as a consequence of a default by any other person to pay any indebtedness and "guaranteed" shall be construed accordingly; and
- (l) where any action or decision is subject to the consent of the Owner, it shall not be unreasonable for the Owner to withhold its consent to the extent the bond trustee or the bondholders under the Bond Financing or the finance parties under the Long Term Financing are entitled to withhold, and have withheld, their consent to such action or decision.

## 2. CHARTER PERIOD AND DELIVERY

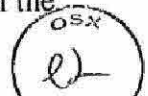
### 2.1 Charter Period

The Owner agrees to bareboat charter the Vessel to the Charterer for the period commencing on the Commencement Date (notwithstanding that Physical Delivery may not yet have occurred) and, subject to Clause 16, ending on the Expiry Date.

### 2.2 Extension

2.2.1 Notwithstanding the foregoing, if the Charterer gives notice thereof to the Owner at least six (6) months prior to the Expiry Date, the Charterer shall have the right to extend the bare boat charter of the Vessel for one period of no less than one (1) and no more than ten (10) years beyond the Expiry Date.

2.2.2 In the event that Charterer's right to extend is exercised pursuant to clause 2.2.1, the Charter Rate applicable during the extension period shall be jointly established by the Parties, to ensure a 15% leveraged return on Owner's equity in respect of the Vessel over the whole of Charter Period (including the Extension Project Costs), always assuming revenue corresponding to an operational efficiency of ninety five percent (95%). Without prejudice of the



above, the Charter Rate applicable during the extension period shall not be less than the amount equivalent to USD 28,200 (twenty eight thousand and two hundred Dollars) per day, escalated annually from the date of execution of the Agreement in accordance with the Producer Price Index published by the US Bureau of Labor Statistics (PPI).

## 2.3 Delivery

- 2.3.1 Upon the Physical Delivery Date, the Owner undertakes to deliver the Vessel and transfer care and custody thereof, to the Charterer at the same place and simultaneously with the delivery, and transfer of care and custody, of the Vessel by the EPCI Contractor to the Owner pursuant to the EPCI Contract, provided that the Vessel shall be simultaneously delivered and care and custody thereof simultaneously transferred by the Charterer to the Operator under the Operation Agreement.
- 2.3.2 The Owner shall not be responsible for any Losses arising from any delay in the delivery of, or failure to deliver, the Vessel to the Charterer.
- 2.3.3 The Charterer shall not have any right to terminate this Agreement due to delay of delivery from the EPCI Contractor pursuant to the EPCI Contract, nor shall Charterer have any right to damages or liquidated damages in respect of any such delay. However, any amount received by the Owner from the EPCI Contractor as a result of such delay (including without limitation any liquidated damages payable pursuant to clause 18 of the EPCI Contract) shall reduce the capital expenditure associated with the Vessel and, consequently, shall reduce the Charter Rates payable by the Charterer in accordance with Clause 8.3.1 (*Actual Vessel Capex / Vessel Financing Adjustment*).

## 2.4 Charter Commencement

- 2.4.1 The Charterer shall sign the Charter Commencement Certificate upon the Commencement Date, notwithstanding that Physical Delivery may not yet have occurred at that time.
- 2.4.2 The Charter Commencement Certificate as signed by the Charterer shall constitute an acceptance of the Vessel by the Charterer for the purposes of this Agreement.
- 2.4.3 The Charterer agrees that it will not be entitled to refuse to receive delivery of the Vessel following the acceptance of the Vessel by the Owner from the EPCI Contractor.
- 2.4.4 Without prejudice to any rights that the Owner or the Charterer may have against the EPCI Contractor, the Charterer will accept the Vessel under this Agreement in the condition in which the Vessel is found on the Commencement Date, on an "as is, where is" basis.

## 2.5 Vessel Components

- 2.5.1 The Vessel shall be equipped upon delivery to the Charterer hereunder on the Physical Delivery Date with the Vessel Components existing at the time of its delivery by the EPCI Contractor to the Owner under the EPCI Contract, together with replacement parts to be agreed between the Owner and the Charterer of an aggregate value of up to ten million Dollars (US\$10,000,000).
- 2.5.2 All other equipment of whatever kind which may be necessary for the use of the Vessel at the Operation Site will be provided by the Charterer at the sole expense of the Charterer.





2.6 Defects

2.6.1 The Charterer waives and renounces with respect to the Owner all claims for hidden or apparent defects of materials or workmanship, malfunctions or lack of conformity to specified performance or other characteristics. Without prejudice to Clause 8.7 (Alternative Payer), the Charterer shall not be entitled to any claim against the Owner in the event of any unavailability, however long it may be, in the use of the Vessel or any Vessel Component, or make any claim whatsoever, of whatever nature, against the Owner as a consequence of the condition of the Vessel or any Vessel Component or any hidden or apparent defects of materials or workmanship, malfunctions or lack of conformity to specified performance or other characteristics.

3. PRE-PHYSICAL DELIVERY

3.1 Owner Covenants

The Owner undertakes to the Charterer that it shall not, without the prior written consent of the Charterer, such consent not to be unreasonably withheld or delayed:

- (a) make any material changes to the specifications and plans approved by the Charterer for the engineering, procurement, construction and installation of the Vessel pursuant to the EPCI Contract; nor
- (b) allow the Vessel to be converted from a very large crude carrier (VLCC) into a floating production, storage and offloading vessel (FPSO), and the majority of conversion and integration works required under the EPCI Contract to be performed, otherwise than at Jurong shipyard in Singapore.

3.2 Charterer Inspections

The Owner shall allow the Charterer to attend, and shall provide reasonable advance notice of, any inspections of the Vessel, any Vessel Component or any of the works to be conducted pursuant to the EPCI Contract, which the Owner shall have the right to attend in accordance with the terms of the EPCI Contract. The Charterer may nominate a reasonable number of representatives to attend such inspections, on the same terms and conditions applicable to the Owner under the EPCI Contract.

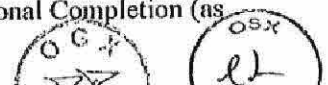
3.3 Customs Clearances and Importation

The Charterer shall at its own cost obtain all necessary customs clearances and authorisations and pay all Taxes in connection with the importation of the Vessel and the Vessel Components into Brazil and the delivery thereof to the Operation Site. Responsibility therefor may be delegated to the Operator under the Operation Agreement, without prejudice to the Charterer's obligations and the Owner's rights under this Agreement.

3.4 Installation, Hook-Up and Mooring

3.4.1 The Charterer shall provide the Owner and the EPCI Contractor such assistance as may reasonably be required for the installation, hook-up and mooring of the Vessel in accordance with the EPCI Contract. The Charterer shall be solely responsible for installation of subsea facilities, risers, flowlines and umbilicals (the "Sub-Sea Installations"), provided that the hook-up of risers to the Vessel shall be conducted in collaboration with the EPCI Contractor in accordance with the EPCI Contract.

3.4.2 The Charterer shall use its best endeavours to ensure that the Subsea Installations are timely completed in order to permit Physical Delivery to occur by its scheduled date under the EPCI Contract. In the event that the Vessel timely arrives in Brazilian waters and is ready to depart to the Operation Site but Provisional Completion (as



such term is defined in the EPCI Contract) cannot be achieved by such scheduled date due to delays in completion of the Subsea Installations by the Charterer, then (i) the Charterer shall promptly reimburse the Owner upon request for any increased or additional costs, either under the EPCI Contract or otherwise (including, *inter alia*, hire of spreads and other installation vessels and equipment and mobilization and demobilization costs) incurred as a result of such delay and (ii) the Charter Commencement Date shall be deemed to have occurred and, at the request of the Owner, the Charterer shall issue the Charter Commencement Certificate.

### 3.5 Failure to Achieve Physical Delivery

If Physical Delivery shall not have occurred by 25 September 2014, except for any reason solely attributable to the Owner, the Owner shall have the right to terminate this Agreement and the charter of the Vessel by notice to the Charterer and, upon such termination, to require the Charterer to pay the amounts specified in Clause 16.2(d), subject to the provisions thereof.

## 4. OWNERSHIP OF THE VESSEL

### 4.1 Rights and Interests of Owner

The Owner will at all times during the Charter Period remain the exclusive owner of the Vessel and, from Physical Delivery for the remainder of the Charter Period, the Charterer shall procure that the ownership interest of the Owner shall remain without any reservations on the Maritime Registry, subject solely to any naval mortgage entered into in connection with the Bond Financing or the Long Term Financing, as required to be filed with the Maritime Registry.

### 4.2 Undertakings of the Charterer

In recognition of the ownership rights of the Owner, from Physical Delivery for the remainder of the Charter Period and at the sole cost and expense of the Charterer, the Charterer shall:

- (a) defend the exclusive ownership interest of the Owner in the Vessel and the Vessel Components vis-à-vis third parties and shall, in the event of Compulsory Acquisition, Requisition for Hire, theft, forfeiture, arrest or seizure of the Vessel, inform the Owner without delay as soon as it becomes aware of the same and shall make all protests, file all actions, exercise all remedies and take all reasonably available measures to preserve the ownership interest of the Owner and to recover the free use of the Vessel;
- (b) make known to all third parties to whom notification is necessary in order to preserve the rights of the Owner and any mortgagee, that the Vessel is and remains the exclusive property of the Owner and is subject to any naval mortgage required to be filed with the Maritime Registry;
- (c) not purport or attempt to sell, mortgage or pledge the Vessel or any Vessel Component, whether or not for compensation;
- (d) not create, incur or permit to be imposed upon the Vessel any lien whatsoever other than for crew's wages and salvage, nor to create, incur or permit to be imposed upon any Vessel Component not forming part of the Vessel any Encumbrance whatsoever, in either case, other than any Permitted Encumbrance;
- (e) ensure that there are on board the Vessel and accessible, copies of all drawings and specifications of the Vessel and all other documents which are required by Applicable Law to be kept on board the Vessel; and
- (f) cause to be affixed on the bridge and in the master's cabin of the Vessel in a completely visible position, and to maintain in such position unobscured and unobliterated, a framed notice inscribed as follows:



"THIS VESSEL IS THE PROPERTY OF OSX 3 LEASING B.V., A COMPANY WITH ITS REGISTERED OFFICE AT HAAGSCHE HOF, PARKSTRAAT 83, OFFICES 209/210, 2514 JG, THE HAGUE, THE NETHERLANDS; IS UNDER BAREBOAT CHARTER TO OGX PETRÓLEO E GÁS LTDA., A COMPANY WITH ITS DOMICILE AT PRAÇA MAHATMA GANDHI, 14, PART, RIO DE JANEIRO, BRAZIL; IS OPERATED BY OSX SERVIÇOS OPERACIONAIS LTDA., A COMPANY WITH ITS REGISTERED OFFICE IN PRAÇA MAHATMA GANDHI, 14, PART, RIO DE JANEIRO, BRAZIL AND IS SUBJECT TO A MORTGAGE IN FAVOUR OF NORSK TILLITSMANN ASA";

- (g) cause to be prominently displayed in the navigation room and in the Master's cabin of the Vessel a framed printed notice of the Mortgage. The notice must be in plain type and read as follows:

"This Vessel is subject to a first mortgage in favour of Norsk Tillitsmann ASA acting as Bond Trustee for and on behalf of the relevant secured parties. Under the said mortgage and related documents, neither the Owner nor any charterer nor the Master of this Vessel has any right, power or authority to create, incur or permit to be imposed upon this Vessel any commitments or encumbrances whatsoever other than for crew's wages and salvage."

#### 4.3 Prevention of Arrest

From Physical Delivery for the remainder of the Charter Period, the Charterer shall promptly pay and discharge any and all Losses which have given, or may give, rise to maritime, statutory or possessory liens on, or claims enforceable against, the Vessel, the Charter Rates or the Insurances or which otherwise have a Material Adverse Effect on the Owner, the Charterer or the Charter Guarantor.

#### 4.4 Owner's Preservation Rights

In the event that any Encumbrance other than Permitted Encumbrances shall arise on or over the Vessel, the Owner, without being obliged to do so, shall have the right with prior notice to and, where reasonably practicable, prior consultation with, the Charterer to pay and discharge all obligations and liabilities whatsoever which have given rise to such Encumbrance and to take all other steps necessary to prevent a threatened arrest or procure the release of the Vessel and the Charterer shall forthwith indemnify the Owner for any Losses incurred or suffered by the Owner arising in connection with the exercise of such right.

#### 4.5 Possession

4.5.1 The Charterer shall, throughout the Charter Period, have physical and legal possession of the Vessel, provided that the possession, custody and care of the Vessel may be simultaneously transferred only to Operator pursuant to the Operation Agreement.

4.5.2 Without prejudice to Charterer's right to sub-contract the operation of the Vessel to the Operator pursuant to the Operation Agreement and subject to the provisions of this Agreement, the Charterer shall not, throughout the Charter Period, allow the Vessel to be sub-chartered, nor transfer any of its rights and/or obligations to any other person, in either case without the prior written consent of the Owner.

#### 4.6 Quiet Enjoyment of Charterer

From Physical Delivery and subject to no Owner Termination Event having occurred and being continuing and Applicable Law, the Owner shall not disturb or interfere with the quiet and peaceful use, possession and enjoyment of the Vessel by the Charterer.



4.7 Flag and Registration

- 4.7.1 The Owner shall ensure that upon Physical Delivery the Vessel will fly the flag of, and be registered in, the Maritime Registry in the name of the Owner.
- 4.7.2 The Charterer shall ensure that from the Physical Delivery Date and for the remainder of the Charter Period, the Vessel will maintain the flag of, and will at all times remain registered in, the Maritime Registry in the name of the Owner.
- 4.7.3 The Owner shall provide all reasonable assistance which is needed by the Charterer relating to the continued registration at the Charterer's cost of the Vessel, the Owner and any mortgage entered into in connection with the Bond Financing or the Long Term Financing required to be filed with the Maritime Registry (and to the filing of this Agreement, if applicable) with the Maritime Registry.

4.8 Classification

- 4.8.1 The Owner shall ensure that upon Physical Delivery the Vessel shall be properly classified for a vessel of its type and class within the Classification Society.
- 4.8.2 The Charterer shall ensure that from the Physical Delivery Date and for the remainder of the Charter Period, the Vessel shall be properly classified at the highest standard for a vessel of its type and class within the Classification Society, free of all conditions and recommendations of the relevant Classification Society which have not expired or which in the opinion of the Owner will not be satisfied in a timely manner.
- 4.8.3 The Charterer may, from time to time during the Charter Period, change the classification society of the Vessel provided such classification society is a member of the International Association of Classification Societies and provided that the Owner shall have provided prior written consent to any such change. All costs and expenses arising out of a change in the Classification Society (including without limitation, the costs associated with any reclassification works) shall be paid for by the Charterer.
- 4.8.4 The Vessel and the Charterer shall at all times comply with the requirements of the applicable code or prescribed procedures required by the Classification Society to be observed by the Vessel in relation to its operation. The Owner shall promptly be informed of:
  - (a) any threatened or actual withdrawal of any certificate issued in accordance with any such code, which is or may be applicable to the Vessel or its operation;
  - (b) the receipt of notification that any application for such a certificate has been refused.

5. RISKS AND INDEMNITIES

5.1 Liability

Without prejudice to any rights that the Owner or the Charterer may have against the EPCI Contractor and without prejudice to Clause 2.6 (*Defects*) and Clause 8.7 (*Alternative Payer*), from the Physical Delivery Date and for the duration of the Charter Period, the Charterer alone shall bear all risks and liability in respect of:

- (a) the type, design, manufacture, performance, construction, description, condition, order, state, repair, modification, transportation, sailing, fuelling, supplying, manning, servicing, seaworthiness, use, employment, mooring, installation, loading, unloading, operation or maintenance of the Vessel and of any Losses, damage, injuries of any kind or death caused to any person (including without limitation, the master, the crew and the passengers) or the assets of any person (including of the Charterer) resulting

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therefrom (including without limitation as a result of any defect in the design or in the construction) and/or caused by the Vessel or any Vessel Component;

- (b) any damage to the Vessel or any Vessel Component, of whatever nature or origin, including without limitation where any such liability arises out of an event of force majeure, governmental action, Acts of War, acts of piracy or malevolence which may be committed on or to the Vessel or any Vessel Component or exceptional or unforeseeable circumstances.

## 5.2 Operational Indemnity

Notwithstanding the procuring and maintenance of the Insurances, the Charterer irrevocably undertakes to indemnify the Owner within five (5) Business Days of demand against all Losses properly suffered or incurred by the Owner:

- (a) as a result of any Losses, damages or injury referred to in Clause 5.1 (*Liability*); and
- (b) in connection with the ownership, operation, bareboat chartering, time chartering, selling or repossession of the Vessel; and
- (c) as a result of or arising out of any Encumbrance on the Vessel or any arrest or detention of the Vessel by reason of any claims or Encumbrances in respect of the Vessel.

## 5.3 Intellectual Property Indemnity

Strictly without prejudice to the rights of the Owner or the Charterer against the EPCI Contractor, the Charterer irrevocably undertakes to indemnify the Owner against any Losses suffered or incurred as a result of any claims made or brought on the ground that any design, article or material in the Vessel or the operation or use thereof constitutes an infringement of patent, intellectual property right or any other right whatsoever.

## 5.4 Environmental Indemnity

The Charterer shall indemnify save and hold harmless the Owner on demand, and hold the Owner harmless from and against all costs, expenses, payments, charges, Losses, demands, liabilities, actions, proceedings (whether civil or criminal), penalties, fines, damages, judgements, orders, sanctions or other outgoings of whatever nature which may be suffered, incurred or paid by, or made or asserted against the Owner (unless directly caused by the Owner's gross negligence or wilful misconduct) at any time, relating to, or arising directly or indirectly in any manner or for any cause or reason whatsoever out of an Environmental Claim made or asserted against the Owner if such Environmental Claim would not have been, or been capable of being, made or asserted against the Owner if it had not entered into this Agreement and/or exercised any of its rights, powers and discretions hereby conferred and/or performed any of its obligations hereunder and/or been involved in any of the transactions contemplated by this Agreement.

## 5.5 Operation of the Vessel

- 5.5.1 The Charterer irrevocably undertakes to indemnify the Owner for any Losses suffered or incurred by it as a result of a breach of any of the provisions of Clause 6 (*Operation of the Vessel*) by the Charterer, any person having possession or use of the Vessel from time to time, the master, the crew or any passenger (including without limitation as a result of the fraud or smuggling by the master of the Vessel and/or the crew and/or any passenger or from the wilful misconduct of the master and/or the crew of the Vessel and/or any passenger).





5.5.2 If due to any action or inaction of the Charterer, any person having custody or use of the Vessel from time to time, the master, and/or the crew, any form of guarantee or security (financial or otherwise) must be given or a deposit must be made to any Government Entity or federal, state, municipal or other division or authority thereof, the Charterer will be personally responsible to provide or pay the same and will indemnify the Owner from and against all Losses suffered or incurred by the Owner as a result of the Charterer's failure or inability to do so.

## 5.6 Mitigation

Without prejudice to any of the indemnities set forth in this Clause 5 (*Risks and Indemnities*) or elsewhere in this Agreement, the Owner must, at the cost of the Charterer and without prejudice to its own position, take reasonable steps available to it to minimise its Losses.

## 5.7 Exclusions

The indemnities contained in this Clause 5 (*Risks and Indemnities*) shall not extend to any Loss:

- (a) to the extent that such Loss is caused by the Wilful Misconduct / Gross Negligence of the Owner; or
- (b) to the extent that such Loss is caused by any failure on the part of the Owner to comply with any of its express material obligations under any of the Transaction Documents to which it is a party; or
- (c) subject to Clause 10.4, to the extent that the event giving rise to such Loss arises after the Termination Date.

## 6. OPERATION OF THE VESSEL

### 6.1 Operation

From the Physical Delivery Date and throughout the Charter Period, the Charterer shall have the full use of the Vessel in the capacity of bareboat charterer and operator. The Charterer shall ensure, at its own cost, the proper operation of the Vessel in accordance with Applicable Law and industry standards applied by FPSO operators operating offshore Brazil. The Charterer may elect to sub-contract the operation of the Vessel to the Operator pursuant to the Operation Agreement. Notwithstanding the Operation Agreement, the Charterer shall remain at all times solely liable to the Owner for the operation of the Vessel.

### 6.2 Authorisations

The Charterer must at all times throughout the Charter Period have, and be able to prove that it has, in full force and effect, all licences, permits, approvals, filings, registrations, exemptions, authorisations and consents (including, without limitation, Environmental Licences) necessary: (a) in connection with the use and operation of the Vessel at the Operation Site; and (b) to enable it to lawfully enter into, exercise its rights and comply with its respective obligations under the Transaction Documents to which it is a party (together "Project Authorisations"), and shall not default in the observance of the conditions and restrictions (if any) imposed in, or in connection with, such Project Authorisations, which could result in the revocation, suspension, variation, withdrawal or non-renewal of the same or otherwise have a Material Adverse Effect.

### 6.3 Compliance with Laws and Codes

6.3.1 The Charterer shall comply with all Applicable Laws (including, without limitation, Environmental Laws) and all relevant customs, usages and recognised practices in respect of the operation, identification and registration of the Vessel and documents to:

be maintained in respect of the Vessel and it shall carry out and perform, at its own expense, all actions and formalities (including, to the extent permitted by Applicable Law, those which would otherwise be the responsibility of the Owner as owner of the Vessel) which are necessary or which are required under Applicable Law. Subject to the prior written consent of the Owner being given, the Owner shall cooperate with the Charterer and provide all assistance as may be reasonably necessary in a timely manner in connection with any change of name and/or flag.

- 6.3.2 Without prejudice to the generality of Clause 6.3.1, the Charterer shall, in the operation of the Vessel, respect the rules of safety and hygiene, water pollution, the traffic regulations applicable at sea and in harbour and the rules regarding the control of persons on board and the competence and aptitude of officers and seagoing personnel, in each case in accordance with Applicable Law.
- 6.3.3 Without prejudice to the generality of Clause 6.3.1, the Charterer shall ensure that at all times throughout the Charter Period, all officers and personnel are trained and certified to a standard customary for first class floating production, storage and offloading vessels in accordance with the STCW Code and have subscribed to a policy concerning drug and alcohol use which meets or exceeds the standards in the Oil Companies International Marine Forum Guidelines for the Control of Drugs and Alcohol Onboard Ship.
- 6.3.4 Without prejudice to the generality of Clause 6.3.1, the Charterer shall comply with and ensure that the Vessel at all times complies with the requirements of the ISM Code and the ISPS Code in force from time to time and immediately inform the Owner if there is any threatened or actual withdrawal of its document of compliance or of the Vessel's safety management certificate (issued pursuant to the ISM Code).
- 6.3.5 The Charterer shall maintain all log books, manuals, plans, maintenance records and other related documents required by Applicable Law for the operation of the Vessel and the Charterer shall keep on board the Vessel all such documents and certificates (as are required from time to time by Applicable Law).
- 6.3.6 The Charterer undertakes not to employ the Vessel, or suffer her employment:
- (a) in any trade or business other than the production, receipt, loading, off-loading, processing and storage of crude oil;
  - (b) in any way or in any activity which is prohibited or unlawful under any Applicable Law;
  - (c) in storing illicit or prohibited goods;
  - (d) in any territory in respect of which Insurance cover is not available or in any manner which is or is likely to be outside the scope and cover of the Insurances;
  - (e) in loading or carrying nuclear fuel or radioactive products or waste, save for radio-isotopes used or intended to be used for any industrial, commercial, medical or scientific purposes, and in respect of which the Charterer has obtained, prior to the loading thereof, appropriate insurance cover;
  - (f) in any manner whatsoever which is likely to render (i) the Owner liable to penalties or (ii) the Vessel liable to be condemned by a prize court or destroyed, seized or confiscated by any person, body or state whatsoever; or
  - (g) if there are hostilities in any part of the world (whether declared or not), in carrying contraband goods in such parts.



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6.4 Testing and inspection

- 6.4.1 The Charterer shall submit the Vessel, at its sole expense, to all periodic or annual checks, departure visits and inspections, tests and surveys required by Applicable Law or prudent practice and in order to maintain the Vessel's classification in accordance with Clause 4.8.2 above. The Charterer shall notify the Owner of any material performance tests in relation to the Vessel (whether any such test is to be conducted on or off the Vessel) occurring at any time during the Charter Period. Copies of reports of those surveys shall be provided promptly to the Owner if it so requests.
- 6.4.2 The Charterer shall allow the Owner or its authorised representatives or appointees to attend any such tests referred to in Clause 6.4.1 above.

6.5 Vessel Warranties

- 6.5.1 The Charterer shall be solely responsible for monitoring the compliance of the Vessel with the Vessel Rights.
- 6.5.2 During the Charter Period for so long as no Owner Termination Event has occurred and is continuing, the Owner shall, to the extent reasonably practicable, comply with Charterer's reasonable requests with respect to enforcement of the Vessel Rights.

6.6 Navigational Zones

- 6.6.1 The Charterer shall not permit the Vessel to undergo any voyage or transportation other than (i) between Operation Sites, and (ii) on redelivery from the final Operation Site to the Redelivery Location.
- 6.6.2 The Charterer shall, at any time upon request of the Owner, inform the Owner of the current location of the Vessel.
- 6.6.3 Deviations made in the course of any assistance, salvage or rescue operation shall not give rise to any reduction or suspension of Charter Rates.
- 6.6.4 All costs and expenses of all types incurred as a result of any assistance, salvage or rescue operation shall be borne by the Charterer and any remuneration payable in respect of any assistance or salvage or rescue operation shall be paid in full to the Charterer or (if received by the Owner) be promptly and fully paid over to the Charterer.

6.7 Operating Plan

- 6.7.1 On or before the Physical Delivery Date, the Charterer shall cause the Operator to adopt an operating plan for the Vessel for the period from such date to the end of the first Operating Year, and, no less than sixty (60) days in advance of the beginning of each Operating Year thereafter, it shall cause the Operator to similarly adopt an operating plan for the ensuing Operating Year. Such operating plan and budget for an Operating Year is herein called an "Operating Plan". Copies of the Operating Plan for each period shall be furnished to the Owner promptly upon the adoption thereof.
- 6.7.2 Each Operating Plan shall describe in reasonable detail (i) the maintenance and overhaul schedule (including any major maintenance or overhauls which are projected for the next succeeding Operating Year), anticipated staffing plans, mobilization schedules, equipment acquisitions and spare parts and consumable inventories management, and administrative activities and (ii) any other material plans and protocols in connection with the operation and maintenance of the Vessel.



## 7. MAINTENANCE, VESSEL COMPONENTS, REPAIRS AND INSPECTION

### 7.1 Maintenance

7.1.1 The Charterer shall, at all times throughout the Charter Period at its own cost: (i) keep the Vessel in a good, safe and efficient state of repair and in accordance with appropriate industry standards; (ii) carry out all maintenance, overhauls, replacements and repairs necessary to the Vessel, in accordance with the recommendations of the EPCI Contractor, which shall be to a standard consistent with the standards of first-class FPSO contractors for vessels of a similar type and age engaged in similar activities and on a non-discriminating basis with other vessels owned, chartered and/or operated by the Charterer; and (iii) maintain the Vessel in such condition generally so as to comply with all Applicable Laws and requirements whatsoever and wheresoever to which the Vessel and the master, officers and crew may be subject from time to time.

7.1.2 The Charterer shall, at all times throughout the Charter Period at its own cost maintain the Vessel (free of overdue conditions and recommendations of the Classification Society affecting the class) at the highest standards for a vessel of its type and class, save following damage affecting her class, in which case the Charterer shall take all steps as are required, at its own cost, to restore such class as soon as possible and in accordance with the recommendations of the Classification Society and shall, at the request of the Owner furnish the Owner with an up-to-date certification of confirmation from the Classification Society that such class is restored and maintained. The Charterer shall not operate the Vessel until the class has been restored as certified by the Classification Society (provided that the Charterer may operate the Vessel if the class has been restored subject to recommendations of the Classification Society).

### 7.2 Vessel Components

Subject to Clause 7.6 (*Removal of Vessel Components*), all Vessel Components (including replacement parts) shall be the property of the Owner. The Charterer shall have the use of all Vessel Components and shall ensure and procure that it is maintained in the same good condition as when delivered to the Charterer, fair wear and tear excepted and except for any modifications and alterations properly made and permitted by this Agreement.

### 7.3 Repairs

7.3.1 The Charterer shall, at all times throughout the Charter Period at its own cost and thereafter until the redelivery of the Vessel in accordance with Clause 10 (*Redelivery of the Vessel*), repair, substitute, replace or renew (as the case may be) any Vessel Component which is used up or which is so damaged as to be no longer fit for use.

7.3.2 The Charterer shall procure that all such repairs, substitutions, replacements and renewals shall be effected in such manner (as regards quality of workmanship and materials) (i) so as to ensure that the value of the Vessel is not materially reduced (fair wear and tear excepted) and (ii) such that title to such substitutions, replacements or renewals shall vest immediately in the Owner free and clear of any Encumbrances save for Permitted Encumbrances.

### 7.4 Repairer's Liens

Except with prior written approval of the Owner, the Vessel shall not be put into any other person's possession for work to be done on the Vessel if the cost of that work will exceed or is likely to exceed the Major Casualty Amount unless either: (i) that person gives a written undertaking in approved terms not to exercise any lien on the Vessel or the Charter Rates for



any of the cost of such work or (ii) the Charterer provides evidence satisfactory to the Owner that it has sufficient funds or insurance proceeds to cover the cost of such work.

## 7.5 Additional Equipment

- 7.5.1 At the expense of the Charterer, at any time, any additional equipment may be fitted, as is necessary for the use or operation of the Vessel in accordance with this Agreement (hereafter "Additional Equipment") and any modification or alteration may be made for such purpose, provided that the prior written consent of the Owner shall be required for any Additional Equipment or modification or alteration which might alter the structure, type or performance characteristics of the Vessel or which might reduce the value of the Vessel or its useful economic life or which cannot be removed without risk of causing damage to the structure or fabric of the Vessel or incurring significant expense.
- 7.5.2 Any Additional Equipment so fitted to the Vessel shall be considered to be the property of the Charterer and (i) may be removed from the Vessel by the Charterer, so long as such removal does not adversely affect the class of the Vessel or her seaworthiness, or risks causing damage to the structure or fabric of the Vessel, and is not otherwise contrary to Clause 7.5.3 and (ii) at redelivery of the Vessel shall, at the Owner's option be either removed from the Vessel (in which case the Charterer shall make good and repair any damage consequent upon the removal of such Additional Equipment) or returned on the Vessel in which case the Owner shall purchase such Additional Equipment for cost value.
- 7.5.3 The Charterer shall not be entitled to remove any Additional Equipment where such Additional Equipment was required to be fitted by the Classification Society or by any Applicable Law.

## 7.6 Removal of Vessel Components

Without prejudice to Clause 7.3 (*Repairs*) and Clause 7.5.2 (*Additional Equipment*), the Charterer shall not remove any material part of the Vessel, or any material item of Vessel Components installed on the Vessel unless, after prior written approval by the Owner, the part or item so removed is replaced promptly by a suitable part or item which is in the same condition as, or better condition than, the part or item removed, is free from any Encumbrances and becomes on installation on the Vessel the property of the Owner.

## 7.7 Compliance with Law

In the event that any improvement, structural changes, modifications, alterations or Additional Equipment to or for the Vessel become necessary for the continued operation of the Vessel by reason of new class requirements or Applicable Law the Charterer shall immediately request the prior written approval of the Owner (which approval shall be deemed to be given unless the Owner shall, within a reasonable time, propose a reasonable alternative means to ensure the continued operation of the Vessel in accordance with class requirements and Applicable Law) and at the Charterer's own expense it shall promptly implement the same and shall provide the Owner with notice of the same, together with details of the expenditure.

## 7.8 Inspection Rights

- 7.8.1 The Owner and its authorised representatives or appointees shall have the right (but shall not have any obligation) at any time, on reasonable notice and during normal business hours, to inspect and take copies of or instruct a duly authorised surveyor to inspect and take copies of or survey the Vessel, the logs and technical records to ascertain the condition of the Vessel and to satisfy the Owner that the Vessel is being operated, repaired and maintained in accordance with the provisions of this Agreement, and the Charterer shall provide access and assistance reasonably required



in order allow such inspection. If the inspection is required by the bond trustee under the Bond Financing or by lenders under the Long Term Financing or if a Potential Termination Event or an Owner Termination Event has occurred (a) the cost of such inspection by the Owner or its authorised representatives or appointees shall be borne by the Charterer and (b) the Owner (or its authorised representatives or appointees) shall be granted unrestricted access to the logs, technical records and such other documentation as the Owner may request.

7.8.2 Inspection or survey in dry-dock shall be made only when the Vessel shall be in scheduled dry-dock for the Charterer's purposes unless the Charterer fails to have the Vessel docked at such intervals as the Charterer has agreed with the Classification Society as being appropriate for the Vessel, in which case the Owner shall have the right to require that the Vessel be dry-docked specifically for the purposes of inspection or survey. The Charterer shall give Owner reasonable advance notice of any proposed drydocking of the Vessel and shall obtain the prior written consent of the Owner to such drydocking and to the yard in which the Vessel is to be drydocked.

8. PAYMENTS

8.1 Nature of Payments

The charter of the Vessel is granted by the Owner to the Charterer subject to the timely payment in full by the Charterer of all amounts payable by the Charterer under this Agreement and in relation to all such amounts, time is of the essence. The Charterer acknowledges that the Owner shall at all times receive from the Charterer all of the amounts which are owed to it under this Agreement to allow the Owner to fulfil all of its obligations under the Transaction Documents, the Bond Financing or the Long Term Financing and any other documents entered into in connection therewith.

8.2 Charter Rates

Subject to Clause 8.3, the Charterer shall pay the following amounts ("Charter Rate") to the Owner:

- (a) from the Commencement Date until the date falling twelve (12) months thereafter, four hundred and thirty nine thousand, three hundred and twenty Dollars (US\$ 439,320) per day; and
- (b) from the date following the final day of payment pursuant to sub-Clause 8.2(a) until the date falling twelve (12) months thereafter, four hundred and twenty four thousand, eight hundred and thirty seven Dollars (US\$ 424,837) per day; and
- (c) from the date following the final day of payment pursuant to sub-Clause 8.2(b) until the date falling twelve (12) months thereafter, four hundred and ten thousand, three hundred and fifty four Dollars (US\$ 410,354) per day; and
- (d) from the date following the final day of payment pursuant to sub-Clause 8.2(c) until the date falling twelve (12) months thereafter, three hundred and ninety seven thousand and seventy eight Dollars (US\$ 397,078) per day; and
- (e) from the date following the final day of payment pursuant to sub-Clause 8.2(d) until the date falling twelve (12) months thereafter, three hundred and eighty two thousand, five hundred and ninety five Dollars (US\$ 382,595) per day; and
- (f) from the date following the final day of payment pursuant to sub-Clause 8.2(e) until the date falling twelve (12) months thereafter, three hundred and sixty eight thousand, one hundred and twelve Dollars (US\$ 368,112) per day; and



- (g) from the date following the final day of payment pursuant to sub-Clause 8.2(f) until the date on which Owner makes payment of the final amount due pursuant to the Long Term Financing, three hundred and sixty four thousand and thirty nine Dollars (US\$ 364,039) per day; and
- (h) from the date following the final day of payment pursuant to sub-Clause 8.2 (g) until the end of the Charter Period, such amount as may be required in order to ensure a fifteen percent (15%) leveraged return on Owner's equity in respect of the Vessel over the Charter Period (assuming revenue corresponding to an operational efficiency of ninety five percent (95%)).

In case of any event occurring after the adjustment set out in Clause 8.3.1 below that would require an adjustment to the Charter Rates payable pursuant to this Clause 8.2 to ensure the leveraged return on Owner's equity referred to above, the Owner shall notify the Charterer and provide reasonable evidence thereof. The Charter Rates shall be increased with effect from such notice by an amount necessary to ensure such leveraged return on Owner's equity in accordance with the methodology set out in Schedule 1 (*Charter Rate Calculation Methodology*).

### 8.3 Charter Rate Adjustments

#### 8.3.1 Actual Vessel Capex / Vessel Financing Adjustment

The Charter Rates set out in Clause 8.2 have been calculated on the basis of the estimated costs of construction, mobilization, installation, commissioning and delivery of the Vessel, costs of Owner Required Insurances, terms and conditions for the Long Term Financing and related financing and security documents (including hedging and bank fees payable in connection with the issuance and maintenance of letters of credit and other financial security required in connection with the Long Term Financing) and other costs relating to the Vessel, the Vessel Components, the financing arrangements or the EPCI Contract.

As promptly as practicable upon the occurrence of the last of the following events:

- (a) the Owner makes payment to the EPCI Contractor of the milestone payment associated with Provisional Completion (as such term is defined in the EPCI Contract) of the Vessel under the EPCI Contract;
- (b) the lenders make a final disbursement of funds under the Long Term Financing or the Owner is no longer entitled to disbursement of additional funds thereunder in accordance with the terms thereof;
- (c) the costs of hedging in accordance with the Long Term Financing are finally established,

the Parties will adjust and revise the Charter Rates, in accordance with the methodology used to determine the indicative Charter Rates set out in Clause 8.2 (*Charter Rates*), as set out in Schedule 1 (*Charter Rate Calculation Methodology*), in order to ensure a fifteen percent (15%) leveraged return on Owner's equity in respect of the Vessel over the Charter Period (assuming revenue corresponding to an operational availability of ninety five percent (95%)), taking into account the minimum Charter Rates that need to be generated in order to permit Owner to comply with debt service coverage ratio requirements and other financial covenants set out in the Long Term Financing.

#### 8.3.2 Insurance Premia Adjustment



If, at any time during the Charter Period, there are any incremental insurance premia amounts payable by the Owner (resulting from differences between the actual annual premia of Owner Required Insurances as compared to the assumptions used for calculating the Charter Rates), the Owner shall notify the Charterer and provide reasonable evidence thereof. Any such incremental amounts shall be added to, form part of, and be payable together with, the Charter Rates (as they may be adjusted pursuant to this Clause 8.3).

In the event that the actual annual insurance premia amounts payable by the Owner are lower than the budgeted amounts therefor, the difference in favour of the Charterer shall be added to, and paid together with, the Operational Unavailability Credit pursuant to Clause 8.7 below.

### 8.3.3 Financing Surplus Adjustment

If, at any time during the Charter Period, the Charter Rates, as may be otherwise adjusted pursuant to this Clause 8.3, are insufficient to ensure that the Owner is able to meet the debt service coverage ratio or any other applicable financial covenant under the Long Term Financing, the Owner shall notify the Charterer and provide reasonable evidence thereof. The Charter Rates shall be increased with effect from the date of such notice by an amount equal to the additional amount (the "Financing Surplus") required to ensure that the Owner is able to meet such financial covenants at all times. Such Financing Surplus shall be added to, form part of, and be payable together with, the Charter Rates (as they may be adjusted pursuant to this Clause 8.3). In such event, the Charter Rates will be further adjusted in order to ensure a fifteen percent (15%) leveraged return on Owner's equity in respect of the Vessel over the Charter Period (assuming revenue corresponding to an operational availability of ninety five percent (95%)).

### 8.3.4 Annual Escalation

The Charter Rates, as they may be otherwise adjusted pursuant to this Clause 8.3, shall be escalated annually on each anniversary of this Agreement by reference to the following formula:

$$EI = \frac{PPI}{PPI_0}$$

Where:

EI = Escalation Index

PPI = the arithmetic average of the monthly values of the producer price index for finished goods, published by the United States Bureau of Labor Statistics Data in the Producer Index Revision Report for the 12 (twelve) months ending 3 (three) months prior to the anniversary of this Agreement.

PPI<sub>0</sub> = the monthly value of the producer price index for finished goods published by the United States Bureau of Labor Statistics Data in the Producer Index Revision Report, for the month three months prior to the date of this Agreement.

## 8.4 Supplemental Charter Rates

- 8.4.1 The Charterer shall also be liable to the Owner for Supplemental Charter Rates corresponding to all duly evidenced and incurred costs, expenses, indemnities or other amounts, in each case which are due from the Charterer to the Owner under this Agreement or any other agreement between the Owner and the Charterer in relation to



the Vessel (including, but without any limitation whatsoever, any amounts that the Owner and the Charterer may agree to be payable from time to time in respect of the purchase of spare parts or other materials for the Vessel).

- 8.4.2 All Supplemental Charter Rates shall be paid by the Charterer in the currency in which they are charged by the Owner.
- 8.4.3 All Supplemental Charter Rates shall be added to the Charter Rates and invoice and paid in accordance with Clause 8.5 (*Manner of Payments*).

#### 8.5 Manner of Payments

- 8.5.1 All amounts payable under Clause 8.2 (*Charter Rates*), as adjusted pursuant to Clause 8.3 (*Charter Rate Adjustments*) shall be invoiced by the Owner to the Charterer monthly in arrears and payment shall be due from the Charterer within thirty (30) days following the end of the relevant month (whether or not such invoice has been received).
- 8.5.2 On each date on which any amount is due to the Owner under this Agreement, the Charterer (or, as the case may be, the Alternative Payer) shall before 18.00 hours (Rio de Janeiro time) on such date make such amount available to the Owner by SWIFT transfer to such account as the Owner may specify from time to time in writing reasonably in advance of the date on which such payment falls due.
- 8.5.3 On each date on which any amount is due to the Charterer under this Agreement, the Owner shall before 18.00 hours (Rio de Janeiro time) on such date make such amount available to the Charterer by SWIFT transfer to such account as the Charterer may specify from time to time in writing reasonably in advance of the date on which such payment falls due.

#### 8.6 Unconditional Payments

Subject to Clause 8.7 (*Alternative Payer*), the obligation of the Charterer to pay the Charter Rates and all other sums payable under this Agreement and the obligation of the Alternative Payer to make payments pursuant to Clause 8.7 (*Alternative Payer*) are absolute and unconditional. Except as set out in Clause 16.4 (*Rights of Charterer on a Charterer Termination Event*), neither the Charterer nor the Alternative Payer shall have any right to terminate this Agreement, nor, except as set out in Clause 8.7 (*Alternative Payer*), to be released, relieved or discharged from any obligation or liability under this Agreement by any circumstance whatsoever, including but not limited to:

- (a) any right of set-off, counterclaim, recoupment, defence or other right which any party to this Agreement may have, or may become entitled to, against any other Party or against any other person;
- (b) any charge, extension, indulgence or other act or omission in respect of any indebtedness or obligation of the Charterer or of the Alternative Payer, or any sale, exchange, release or surrender of, or other dealing in, any security for any such indebtedness or obligation;
- (c) any title defect or encumbrance or dispossession of the Vessel by title paramount or otherwise;
- (d) any damage to or loss, destruction, capture, seizure, judicial attachment or arrest, forfeiture or marshal's or other sale of the Vessel or any Vessel Component;
- (e) any libel, attachment, levy, detention, sequestration or taking into custody of the Vessel or any Vessel Component or any restriction or prevention of its interference



with or interruption or cessation in the use or possession thereof by the Charterer for any reason whatsoever, or any inability to engage in any particular trade or employment for any reason whatsoever including:

- (i) any Requisition for Hire or Compulsory Acquisition of the Vessel or any part of the Vessel not constituting a Total Loss;
  - (ii) any prohibition, interruption, failure, withholding or cessation of or other restriction against the Charterer's use, operation or possession of the Vessel (including *force majeure*) or any interference with such use, operation or possession (including but not limited to drydocking of the Vessel);
  - (iii) any want of any registration or the absence of any permit, authorisation licence, certificate, approval or consent, equipment or capability for the use, operation or possession of the Vessel by the Charterer;
- (f) any lack of or defect in or invalidity of title to or the seaworthiness, satisfactory condition, quality, fitness for any purpose, design or operation of any kind or any nature of the Vessel or any part thereof;
- (i) the unavailability, ineligibility, unsuitability or incompleteness of the Vessel (including its logs and documentation) or any part thereof for any particular use or trade; and
  - (ii) any loss, damage or Total Loss affecting the Vessel or any part thereof;
- (g) any insolvency, bankruptcy, reorganization, arrangement, readjustment of debt, dissolution, liquidation or similar proceedings by or against the Owner, the Charterer, the Alternative Payer or any other person;
- (h) any invalidity or unenforceability or lack of due authorisation of, or other defect in any of the Transaction Documents or any provision thereof;
- (i) any failure or delay by any Party duly to comply with its obligations under any of the Transaction Documents, whether with or without fault on its part; and
- (j) any other cause which, but for this provision, would or might have the effect of terminating or in any way affecting any obligation of the Charterer or the Alternative Payer under this Agreement.

Whether or not the Charterer or, as the case may be, the Owner or the Alternative Payer shall have notice or knowledge of any of the foregoing, to the extent permitted by applicable law, each of the Charterer and the Alternative Payer hereby waives any and all rights which it may now have or which at any time hereafter may be conferred upon it, by statute or otherwise, to terminate or cancel the charter of the Vessel (including without limitation the right to terminate the charter for repudiatory breach) except in accordance with the express terms hereof.

#### 8.7 Alternative Payer

Notwithstanding any other provision of this Agreement or the Charter Guarantee:

- (a) the Parties may agree that if the operational efficiency of the Vessel (as defined by agreement between the Parties) is less than ninety seven per cent (97%) for any part of the Charter Period following the Physical Delivery Date, the Owner may invoice the Alternative Payer for such amount as may be agreed to compensate the Charterer for such deficiency in the operational efficiency of the Vessel (the "Operational Unavailability Credit");





- (b) the Alternative Payer shall pay to the Owner (or procure the payment of) the Operational Unavailability Credit in accordance with Clause 8.5.2, whereupon the Owner shall immediately notify the Charterer of such payment;
- (c) if and to the extent that the Owner has received the Operational Unavailability Credit from the Alternative Payer by the due date for payment of the Charter Rate by the Charterer, the Charter Rate payable by the Charterer for the period to which such Operational Unavailability Credit relates shall be reduced *pro tanto* by the amount of the Operational Unavailability Credit;
- (d) if and to the extent that any Operational Unavailability Credit is not received by the due date for payment thereof, such amount shall remain due from the Charterer, and the Charterer shall pay such amount to the Owner by no later than the due date for payment of the Charter Rate;
- (e) for the avoidance of doubt, nothing in this Clause 8.7 shall affect, in any way, the right of the Owner to receive the sum corresponding to the Charter Rates in full (either from the Charterer by way of Charter Rate or from the Alternative Payer by way of Operational Unavailability Credit) by the due date for payment thereof and, if the Alternative Payer fails to comply with its obligation pursuant to this Clause 8.7, the Charterer remains unconditionally bound to pay all Charter Rates in full and to perform all other obligations in accordance with the terms of the Agreement.

#### 8.8 Default Interest

If the Charterer fails to make payment in full when due of any amount under this Agreement on the exact date for payment thereof, the Charterer shall, on demand of the Owner, pay interest on such amount from and including its due date until the date of actual payment in full thereof at a rate per annum equal to the Default Rate. The interest will itself bear interest at such rate if it is due for at least one entire year.

#### 8.9 Business Day Convention

If any amount (not being an amount payable on demand) becomes due for payment pursuant to this Agreement on a day which is not a Business Day in the city from which payment is being made or where payment is being received, such payment shall be made on the immediately preceding Business Day in both such cities.

### 9. TAXES

#### 9.1 Withholdings

Any and all payments (including payments by way of indemnity) made by the Charterer or the Alternative Payer ("Paying Party") to the Owner ("Receiving Party") hereunder or under any other document or instrument delivered hereunder shall be made free and clear of and without deduction of any Taxes whatsoever or any Corporate Taxes that may be withheld by any Brazilian authority. If the Paying Party shall be required by Applicable Law to make any such deduction from any payment hereunder or under any other document or instrument delivered hereunder then (i) the sum payable hereunder by the Paying Party shall be increased as may be necessary so that after making all such required deductions (including deductions applicable to additional sums payable under this Clause 9.1 (*Withholdings*)) the Receiving Party receives an amount equal to the amount it would have received had no such deductions been made, (ii) the Paying Party shall make payment of the latter amount to the Receiving Party and (iii) the Paying Party shall pay the amount of the relevant deduction or tax to the relevant taxation authority or other authority in accordance with applicable law.



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9.2 Tax Benefit

In the event that the Receiving Party actually receives and uses the benefit of a tax credit or allowance or a repayment of tax resulting solely and directly from a payment by the Paying Party under Clause 9.1 (*Withholdings*), then the Receiving Party shall pay to the Paying Party such part of that benefit as will leave it (after such payment) in no more and no less favourable a position than it would have been in if the Paying Party had not been required under Clause 9.1 (*Withholdings*) to make payment on account of any deduction or withholding as referred to in Clause 9.1 (*Withholdings*) provided always that:

- (a) such payment would be a deductible expense for tax purposes for the Receiving Party;
- (b) the Receiving Party shall not be obliged to take any action which in its reasonable opinion would or may prejudice its ability to benefit from any other credit, relief, remission, repayment, allowance or deduction to which it may be entitled;
- (c) the Paying Party acknowledges that the order and manner in which the Receiving Party claims tax credits, allowances and deductions available to it is a matter which will be determined in accordance with the Receiving Party's accounting and taxation practices, and that any credits, allowances or deductions resulting from additional amounts paid under this clause shall not receive any preferential treatment; and
- (d) the Paying Party shall indemnify the Receiving Party for any Taxes that are imposed on the Receiving Party as a result of the disallowance, unavailability, recapture or reduction of any Tax benefit that were taken into account in computing any indemnification or as to which the Receiving Party has made in full the payment to the Paying Party required hereby.

9.3 Tax Indemnity

The Charterer will pay promptly all Taxes levied or assessed on the Owner as a result of or in connection with this Agreement.

9.4 Tax Mitigation

In the event that the Charterer would become obliged to make any payment or increased payment under Clause 9.1 (*Withholdings*) or 9.3 (*Tax Indemnity*), and without prejudice to the obligations of the Charterer thereunder, the Charterer and the Owner shall discuss how such payment or increased payment could be avoided or reduced. Both parties shall use reasonable endeavours to find a solution to such problem, including the making of any changes to the structure of the Project provided that the Owner shall not be obliged to change the present structure of the Project or to take any other action if it considers (acting reasonably) that to do so would be significantly adverse to its interests and provided further that the costs of any such change or solution shall be borne by the Charterer.

10. REDELIVERY OF THE VESSEL

10.1 Redelivery

Except in the event of a Total Loss of the Vessel, the Charterer shall, upon termination of this Agreement for any reason whatsoever, return the Vessel to the Owner on the Termination Date and the following provisions shall apply:

- (a) Upon such return, the Vessel and the Vessel Component must be (i) free from all Encumbrances other than those granted in connection with the Bond Financing and the Long Term Financing, (ii) properly maintained in accordance with the provisions of Clause 7 (*Maintenance, Fittings, Repairs and Inspections*) and (iii) have had removed all insignia, marks or distinguishing colours.

Handwritten initials 'OG' and 'YK' in a circle, and another circle containing 'OSX' and '22'.

- (b) The place of return shall be the OSX shipyard located in the municipality of São João da Barra or such other safe port as may be agreed between the Charterer and the Owner (the "Redelivery Location").
- (c) Any consumables (including, without limitation, fuel, lubricants and paint) stored on the Vessel at the moment of its return shall become, free of charge, the property of the Owner on the date of redelivery. Title thereto shall be transferred, free of cost, to the Owner on the date of redelivery of the Vessel unless the Owner shall require that they be removed.
- (d) The costs of the redelivery of the Vessel, as well as any costs relating to the repair and replacement of Vessel Components and, if applicable, of restoring the Vessel to the condition required by this Clause 10.1 (*Redelivery*) shall be borne wholly and exclusively by the Charterer.
- (e) At the time of the return, the Vessel shall be in class (free of overdue conditions and recommendations affecting the class with the Classification Society) with all certificates of class valid at redelivery and all Continuous Machinery Survey items up to date. The Charterer will deliver to the Owner all the obligatory vessel-board documents of the Vessel.
- (f) All cargo tanks shall be clean and certified gas-free suitable for human access and all process equipment shall be clean and free of all hydrocarbons and other process residues, including but not limited to sludge and scale.

#### 10.2 Independent Inspection

The Owner, at Charterer's expense, shall be entitled to request an independent inspector to inspect the Vessel upon redelivery thereof in order to ascertain whether the requirements of Clause 10.1 (*Redelivery*) have been satisfied.

#### 10.3 Payment on Redelivery

In addition to any amounts then owing hereunder, the Charterer shall pay the Owner on first demand any Charter Rates or Supplemental Charter Rates from the Termination Date to the date of redelivery in accordance with Clause 10.1 (*Redelivery*).

#### 10.4 Continuance of Obligations

Until such time as the Vessel is returned to the Owner in full compliance with all the terms of this Agreement and all sums expressed herein to be payable by the Charterer have been paid, the Charterer and the Alternative Payer shall remain obliged to perform all of their respective obligations under this Agreement as if the Charter Period were continuing, including but not limited to those obligations relating to the Charter Rate payments, operation, maintenance and insurance of the Vessel.

### 11. INSURANCE

#### 11.1 Owner Required Insurances

11.1.1 The Owner hereby undertakes with the Charterer that, at its own cost, but subject to Clause 8.3, it will obtain and maintain at all times throughout the Charter Period the following Insurances each with Approved Insurers/Reinsurers:

- (a) hull and machinery insurance against fire and usual marine risks (including excess liabilities); and



- (b) war and usual dispossession risks (including war protection and indemnity risks and terrorism risks).

11.1.2 The Owner undertakes to effect the Owner Required Insurances referred to in Clause 11.1.1:

- (a) in Dollars;
- (b) on an agreed value basis and in an amount which shall not be less than the greater of (i) the Required Insured Value and (ii) the market value of the Vessel;
- (c) with an Approved Broker and with Approved Insurer/Reinsurer(s);
- (d) with the Owner named as assured in its capacity as owner and the Charterer named as assured in its capacity as bareboat charterer, with full waiver of rights of subrogation, but without the Charterer being liable to pay (but having the right to pay following the Owner's failure to pay and the expiry of any applicable grace period) premiums, calls, or other assessments in respect of such insurance; and
- (e) on terms and conditions reasonably satisfactory to the Charterer.

## 11.2 Charterer Required Insurances

11.2.1 The Charterer hereby undertakes with the Owner that, at its own cost, it will obtain and maintain at all times throughout the Charter Period the following Insurances each with Approved Insurers/Reinsurers:

- (a) protection and indemnity risks (including pollution liability risks) for the highest amount then available in the market for vessels of similar age, size and type as the Vessel (but in relation to liability for oil pollution, for an amount not less than seven hundred and fifty million Dollars (US\$750,000,000)) in a protection and indemnity association or club, which is a member of the 'International Group of P&I Clubs'; and
- (b) all other insurances which are required by Applicable Law and/or international market practice for the operation of the Vessel.

11.2.2 The Charterer undertakes to effect the Insurances referred to in Clause 11.2.1:

- (a) in Dollars;
- (b) in the case of the Insurances referred to in paragraph (a) of Clause 11.2.1, in an amount consistent with best industry practice for vessels of similar age, size and type as the Vessel from protection and indemnity associations that are members of the 'International Group of P&I Clubs';
- (c) with an Approved Broker and with Approved Insurer/Reinsurer(s);
- (d) with the Charterer named as assured in its capacity as bareboat charterer and the Owner named as additional assured in its capacity as owner, with full waiver of rights of subrogation, but without the Owner being liable to pay (but having the right to pay following the Charterer's failure to pay and the expiry of any applicable grace period) premiums, calls, or other assessment in respect of such insurance or, in the case of the P&I Club entry, as joint members with the Charterer (or equivalent highest level of cover allowed by

the P&I Club and generally taken out by first class ship owners) and with the benefit of the misdirected arrow clause in respect of the Owner; and

- (e) on terms and conditions reasonably satisfactory to the Owner.

### 11.3 Insurance Covenants

The Owner shall procure in respect of the Owner Required Insurances, and the Charterer shall procure in respect of the Charterer Required Insurances, that:

- (a) at least ten (10) days prior to the expiry of any Insurance, instructions shall be given to brokers, insurers and/or associations for such Insurance to be renewed or replaced, and at least forty-five (45) days before any Insurances are due to expire, the other Party shall be told the names of the brokers, insurers and associations proposed to be used for the renewal of such Insurances and the amounts, risks and terms in, against and on which the Insurances are proposed to be renewed;
- (b) the Insurances shall be renewed upon their expiry in a manner and on terms which comply with this Clause 11 (*Insurance*) and confirmation of such renewal given by Approved Brokers or Insurers to the Owner (in the case of Charterer Required Insurances) or to the Charterer (in the case of Owner Required Insurances) at least seven (7) days (or such shorter period as may be approved) before such expiry;
- (c) procure that copies of all Insurance Instruments, as soon as they are available after they have been placed or renewed (but in any case no later than sixty (60) days following such placement or renewal), shall be delivered to and held by the other Party;
- (d) all Insurance Instruments shall contain at least the following information: (i) full details of the assured clause; (ii) the period of the policy; (iii) the interests (subject matter) insured and the insured values/amounts/limits; (iv) the sums insured (order/share) pursuant to each policy; (v) the policy trading warranties; (vi) copies of any non-standard or bespoke clauses or wordings; (vii) full details of the insurers and their individual percentage participation, including details of any intermediary brokers or agents; (viii) details of applicable law and jurisdiction; and, if relevant, (ix) copies of the P&I certificates of entry (or, if final certificates are not available, draft copies);
- (e) all Insurance Instruments shall contain a provision prohibiting or disapplying any retroactive cancellation of the Insurances for non payment of premiums.
- (f) it shall punctually pay all premiums, calls, contributions or other sums payable in respect of all Insurances and within any applicable grace period, and the other Party shall be provided with all relevant receipts or other evidence of payment upon request;
- (g) it shall arrange for the execution of such guarantees as may from time to time be required by any protection and indemnity and/or war risks association;
- (h) all Insurance Instruments shall provide that the insurers waive all rights of subrogation against the other Party, and that they waive any right of cancellation of any cover due to, or any exclusion of liability for loss or damage caused by, the gross negligence or wilful misconduct of the master of the Vessel;
- (i) subject to Clause 12, all such sums as are received by it in respect of the Insurances shall be applied for the purpose of discharging the liability or repairing the damage in respect whereof the insurance moneys shall have been received, except to the extent that such liability has already been discharged or such damage has already been repaired;





- (j) it shall take all necessary action and comply with all requirements which may, from time to time, be applicable to the Insurances (including, without limitation, the making of all requisite declarations within any prescribed time limits and the payment of any additional premiums or calls) so as to ensure that the Insurances are not made subject to any exclusions or qualifications that might have a Material Adverse Effect on the other Party;
- (k) all steps under its control shall be taken to seek to avoid the occurrence of any act or omission, which would enable cancellation of any of the Insurances or render any of the Insurances invalid, void, unenforceable or render any sum paid out under any of the Insurances repayable in whole or in part;
- (l) if so required by the other Party, it shall promptly provide to the other Party copies of all written communications between the assureds and the brokers, insurers and associations relating to any of the Insurances as soon as they are available; and
- (m) it shall provide to the other Party all documents and other information and all assistance required by the other Party to assist in trying to collect or recover under any claims in respect of the Vessel's Insurances.

#### 11.4 Charterer's Additional Covenants

11.4.1 The Charterer hereby covenants in favour of the Owner that throughout the Charter Period it shall:

- (a) not employ the Vessel or suffer the Vessel to be employed otherwise than in conformity with the terms of the Insurance Instruments (including any express or implied warranties contained therein) without first obtaining the consent of the insurers to such employment and complying with such requirements as to extra premium or otherwise as the insurers may prescribe;
- (b) if so required by the Owner, change the terms and requirements of this Clause 11 (which the Owner may do in such manner as it considers appropriate as a result of changes of circumstances or practice after the date of this Agreement), and modify this Clause 11 in the manner so notified by the Owner to the Charterer on the date fourteen (14) days after such notice from the Owner is received; and
- (c) not settle, compromise or abandon any claim under the Charterer Required Insurances for an amount exceeding the Major Casualty Amount without Owner's prior approval.

#### 11.5 Owner's Right to Insure

11.5.1 Without prejudice to the rights of the Owner under Clause 16.2 (*Rights of Owner on an Owner Termination Event*), in the event that the Charterer fails to procure and maintain the Charterer Required Insurances in accordance with this Clause 11 (*Insurance*), the Owner may (but shall not be obliged to), with prior written notice to the Charterer, procure and maintain insurance and entries in a protection and indemnity association or club as required herein and pay the premiums therefor at any time whilst such failure is continuing and may require the Vessel to remain in port, or (as the case may be) to proceed to and remain at the nearest port which is mutually acceptable to the Charterer and the Owner (each acting reasonably) until such provisions are fully complied with.

11.5.2 Upon the Owner giving notice to the Charterer of any amounts of premiums so paid and of any other expenses incurred by the Owner pursuant to this Clause 11.5 (*Owner's Right to Insure*), the Charterer shall reimburse the Owner in full therefor as

Supplemental Charter Rate no later than fifteen (15) days from the date of the Charterer's receipt of such notice together with interest thereon at the Default Rate.

#### 11.6 Additional Insurance

The Charterer, for its own benefit and cost, may arrange additional insurances by separate contracts, provided that such additional insurances shall not have any adverse effect on the Insurances or proceeds thereof or on the rights of the Owner to receive payment of the proceeds of the Insurances pursuant to and in accordance with this Agreement.

#### 11.7 Fleet Insurance

If any of the Insurances referred to in Clause 11.2 (*Charterer Required Insurances*) form part of a fleet cover, the Charterer will provide to the Owner a letter of undertaking from the brokers or (if such cover is not placed through brokers or the brokers do not, under any Applicable Law or insurance terms, have such rights of set off and cancellation) the insurers, that the brokers of (if relevant) the insurers will not: (i) set off against any claims in respect of the Vessel any premiums due in respect of any other vessels insured under the fleet cover; or (ii) cancel cover of the Vessel because of non-payment of premiums in respect of such other vessels.

### 12. LOSSES

#### 12.1 Event of Loss

12.1.1 If an Event of Loss is suffered by the Vessel or the Vessel causes any Loss, the Charterer shall, in accordance with the normal practices of a prudent first class FPSO operator (taking into account the materiality or otherwise of the Event of Loss or other loss or damage in question), make claims to the relevant insurance companies or clubs.

12.1.2 The Charterer shall give the Owner written notice of any Event of Loss in an amount greater than the Major Casualty Amount as soon as reasonably practicable and, in any event, within five (5) Business Days of becoming aware thereof.

12.1.3 The Charterer shall, upon the occurrence of an Event of Loss, take all reasonable steps to limit the extent of the damage. Except in case of a Total Loss, Charterer alone will bear all costs not reimbursed or paid by the insurance companies.

12.1.4 If an Event of Loss occurs which does not and is not likely to give rise to a Total Loss but which (if not repaired) would place the Charterer in breach of its obligations under Clause 7.1 (*Maintenance*), the Charterer shall repair it or cause it to be repaired at the Charterer's own cost, as soon as practicable. The Charterer shall not be entitled to claim any suspension of or reduction in the Charter Rates, which will remain payable throughout the repair period. The Charterer will promptly inform the Owner of the completion of any material repairs to the Vessel for an amount greater than the Major Casualty Amount.

#### 12.2 Compulsory Acquisition

The Charterer shall promptly give the Owner written notice of any Compulsory Acquisition of the Vessel.

#### 12.3 Insurance Proceeds

12.3.1 Unless an Owner Termination Event shall have occurred, (i) any payment in respect of any damage or loss which is less than the Major Casualty Amount shall be payable directly to the Charterer or to its order and any payment made by the insurers to the Charterer shall be paid in or towards the costs of repairs of replacement and (ii) any



payment in respect of any damage or loss which exceeds the Major Casualty Amount shall be payable (in full and not just as to the excess) in accordance with the instructions of the Owner.

- 12.3.2 Where an Owner Termination Event or Potential Termination Event shall have occurred, any payment in respect of any damage or loss shall be payable in accordance with the instructions of the Owner.

#### 12.4 Total Loss

- 12.4.1 The Charterer shall provide notice to the Owner of the occurrence of a Total Loss as soon as the Charterer becomes aware of such Total Loss, whereupon the charter of the Vessel to the Charterer pursuant to this Agreement shall automatically terminate.

- 12.4.2 Any payment in respect of a Total Loss made by the insurers shall be paid to the Owner.

- 12.4.3 Notwithstanding the occurrence of a Total Loss, the Charterer shall (in the case of a constructive, compromised, agreed or arranged Total Loss) remain in exclusive possession of the Vessel until the abandonment thereof to the insurers, and will assume all risks in connection therewith. In the event of the Vessel becoming a wreck or obstruction to navigation, the Charterer shall indemnify the Owner against any Losses suffered or incurred by the Owner as a consequence thereof.

- 12.4.4 For the avoidance of doubt, the Charterer shall not be obliged to pay any Charter Rate due during the period following a Total Loss, but shall be obliged to pay an amount equal to the Default Rate accrued on any overdue payments during such period.

#### 12.5 Abandonment

The Charterer shall not abandon the Vessel, the Vessel Components or its development project at the Operation Site unless as a result of a Total Loss of the Vessel or the Vessel Components and then only with prior written consent of the Owner.

### 13. WAR, REQUISITION FOR HIRE

#### 13.1 Acts of War

- 13.1.1 The Charterer shall not allow the Vessel to enter or remain in in any territory where Acts of War are occurring and shall at all times remain exclusively responsible for all consequences resulting from any Acts of War which may affect the Vessel or any part thereof and shall take all actions necessary in order to ensure the safety of the Vessel, the crew and the passengers.

- 13.1.2 If Acts of War occur in a country in which the Vessel is to call, or in the country under whose flag the Vessel is operated which pose a material risk to the Vessel, the crew or the Owner, the Charterer shall, without delay, remove the Vessel to safety (if the Vessel is not already in a safe port or safe waters) or re-register the Vessel at the Owner's request under a different flag.

- 13.1.3 If consent is given for the Charterer to operate the Vessel in a territory where Acts of War are occurring, such operation shall be subject to the proviso that the Owner's war risk insurers have confirmed to the Owner that the Vessel is held covered under the Insurances for the voyage(s) in question and provided that the Charterer complies with any requirements of the Owner and/or the Vessel's insurers necessary to ensure that the Vessel remains properly and fully insured in accordance with the Transaction Documents (including any requirement for the payment of extra insurance premiums).



## 13.2 Requisitions for Hire

For so long as no Owner Termination Event has occurred and is continuing, any compensation paid or payable for Requisition for Hire (other than proceeds of Insurances) shall be paid to the Charterer. Where an Owner Termination Event has occurred and is continuing and such amounts shall be paid to the Owner.

## 13.3 Continuance of Charter Rates

The Charterer and the Alternative Payer shall, throughout any period referred to in Clause 13.1 (*Acts of War*) and Clause 13.2 (*Requisitions for Hire*), continue to perform all of their respective obligations under this Agreement (including to pay Charter Rates and any other payments), notwithstanding any interruption of the operation of the Vessel.

## 14. COVENANTS

## 14.1 General Covenants

The Charterer hereby covenants and undertakes to the Owner that throughout the Charter Period it shall, and will procure that the Charter Guarantor shall, at the Charterer's expense:

- (a) promptly upon being dispatched, provide the Owner with copies of all documents dispatched by either the Charterer or the Charter Guarantor to its shareholders or creditors generally or any class of them;
- (b) provide, procure, execute, sign, perfect and do any and every such further assurance, document, act or thing as in the reasonable opinion of the Owner is necessary in connection with making and maintaining the Transaction Documents valid, binding and enforceable against the Charterer and the Charter Guarantor and perfecting the security contemplated or constituted in connection with the Bond Financing and the Long Term Financing;
- (c) take all such action as may be required to maintain its corporate existence;
- (d) promptly upon becoming aware of the occurrence of any Owner Termination Event or Potential Termination Event give notice thereof to the Owner;
- (e) allow a representative or appointee of the Owner to produce a valuation annually or at any time following the occurrence of an Owner Termination Event or Potential Termination Event to ascertain the fair market value of the Vessel. Unless otherwise reasonably required by the Owner, such valuation shall be performed without physical inspection. The Charterer shall promptly provide to the Owner and such representative or appointee with any information which they reasonably require for the purposes of providing such a valuation and shall reimburse the costs of such valuation within five (5) Business Days following the Owner's request therefor, accompanied by necessary supporting documentation;
- (f) provide the Owner promptly with all information which the Owner may from time to time reasonably require regarding the Charterer, the Charter Guarantor, the Vessel and its condition, maintenance, employment, position or other operational matters relating thereto, including details of towages and salvages;
- (g) promptly give written notice to the Owner of (i) the details of any litigation or arbitration or administrative or other proceedings before or of any arbitration tribunal, court, governmental agency or administrative body affecting the Vessel which, if adversely determined, might have a Material Adverse Effect and (ii) the Charterer's or, as the case may be, the Charter Guarantor's intention, if any, to contest such litigation, arbitration or administrative or other proceedings;



- (h) pay and discharge all Taxes and Corporate Taxes imposed on the Charterer by any competent authority prior to the date on which the same shall become delinquent subject to applicable grace periods and unless contested in good faith and by appropriate means, and for the payment of which adequate reserves have been provided by the Charterer;
- (i) comply with all Applicable Laws, including without limitation, all Environmental Laws and Environmental Licences applicable to (i) the Charterer in respect of or connection with the condition, repair, maintenance, modification, fuelling, supplying, manning, servicing, seaworthiness, use, employment or operation of the Vessel and/or (ii) the Vessel and/or (iii) the Owner (but only to the extent such Applicable Law applies as a result of the Owner's ownership or chartering of the Vessel);
- (j) notify the Owner as soon as possible, but in any event within two (2) Business Days of its occurrence, of any fact, circumstances, condition or occurrence that has resulted or could likely result in any of the following relating to the Project:
- (i) any material adverse impact relating to any Environmental and Social Matters, including any deaths or significant injuries or accidents, any Spills, explosions or fires originating from or in connection with the Vessel or the Project;
  - (ii) any Environmental Claim and any Environmental Incident giving rise to such a claim in each case which may reasonably be expected to result in a liability in excess of one million Dollars (US\$1,000,000) in respect of the Vessel and/or the Project or against the Vessel, and of any Environmental Incident which may give rise to such a claim; and will keep the Owner regularly and promptly informed in reasonable detail of the nature of, and response to, any such Environmental Incident and the defence to any such claim; and
  - (iii) any material complaints relating to Environmental and Social Matters.
- (k) cooperate with the Owner and any environmental consultant appointed by it in the preparation of any reports, action plans and other materials that may be from time to time required from the Owner under the Bond Financing or the Long Term Financing and to reasonably consider and hold good faith discussions with the Owner and any such environmental consultant in order to address any recommendations and considerations that may be reasonably made by them in respect of Environmental and Social Matters relating to the Project;
- (l) duly and punctually perform, comply with and observe each of its obligations under any environmental management plan required for the Vessel and any emergency response plan (if applicable), and shall provide the Owner with all environmental monitoring reports prepared (if any) pursuant to this on a semi-annual basis;
- (m) ensure that at all times the management of the Vessel shall remain with the Operator, the Charterer or any Affiliate of the Charterer and in the event that the manager is not the Charterer, procure a letter of undertaking and subordination (in the form approved by the Owner) from such manager in favour of the bondholders under the Bond Financing or the lenders under the Long Term Financing;
- (n) enforce any rights that it may have to ensure that the Vessel is operated and maintained throughout the Charter Period in accordance with the Transaction Documents and appropriate industry standards;
- (o) provide from time to time to the Owner (upon request) copies of all the class and statutory certificates of the Vessel, including the ISPS certificate, the Vessel's safety



management certificate (both issued pursuant to the ISM Code) and all renewals thereof;

- (p) provide to the Owner full details of any material inspections, investigations, studies, audits, tests, reviews or other analyses received by the Charterer in relation to Environmental and Social Matters in respect of the Project relating to the Owner and/or the Charterer, the Project, the Vessel and the Operation Site and all Environmental Licences.
- (q) following any Owner Termination Event or Potential Termination Event and on request by Owner, prepare any report or investigate any concerns of the Owner in each case in respect of such matters as the Owner may advise;
- (r) promptly upon becoming aware thereof, provide written notice to the Owner of:
  - (i) any damage to the Vessel where the cost of the resulting repairs is reasonably likely to exceed the Major Casualty Amount;
  - (ii) any occurrence which is reasonably likely to result in the Vessel becoming a Total Loss;
  - (iii) any requisition of the Vessel for hire;
  - (iv) any requirement or recommendation made in relation to the Vessel by any insurer or the Classification Society or by any competent Government Entity which is not, or cannot be, complied with in the manner or time required or recommended; and
  - (v) any arrest or detention of the Vessel or any exercise or purported exercise of a lien or other claim on the Vessel, the Charter Rates or its Insurances.
- (s) Provide evidence to the Owner that the ROF has been obtained and is in full force and effect.

#### 14.2 Negative Covenants

The Charterer undertakes to the Owner that throughout the Charter Period it shall not, without the prior written consent of the Owner such consent not to be unreasonably withheld or delayed:

- (a) change the class or flag of the Vessel;
- (b) change the Operation Site;
- (c) let, lease, licence, subcharter the Vessel;
- (d) modify the structure, type or performance characteristics of the Vessel in any way that might: (i) materially alter the Vessel except pursuant to the terms of this Agreement; or (ii) materially reduce its value;
- (e) make any change or allow Charter Guarantor to make any change in the general nature of their respective businesses from that carried on at the date of this Agreement;
- (f) consent to the determination, cancellation, rescission, suspension, waiver, repudiation, revocation, annulment or cancellation of the whole of, or any material provision of, an Environmental Licence, a Project Authorisation or any other agreement relating to the Project;



- (g) do anything or take any action against any person (including, without limitation any insolvency official or similar officer of, or any creditor of, the Charterer or any other person claiming through, under or in place of the Charterer) which has or is reasonably likely to have the effect of materially prejudicing any Encumbrance created in connection with the Bond Financing or the Long Term Financing;

14.3 Charterer Corporate Structure

14.3.1 The Charterer undertakes to the Owner that from the Commencement Date until such date on which no further sums are owed by the Owner pursuant to the Bond Financing and the Long Term Financing it shall not, without the prior written consent of the Owner such consent not to be unreasonably withheld or delayed:

- (a) transfer, lease or otherwise dispose of all or the majority of its assets, whether by one transaction or a number of transactions, whether related or not;
- (b) enter into any amalgamation, demerger, merger, consolidation or corporate reconstruction.

14.3.2 Clause 14.3.1 does not apply to a transaction under an intra-Group reorganisation on a solvent basis and not involving any third party provided that: (i) in the reasonable opinion of the Owner, such reorganisation does not adversely affect the enforceability of this Agreement, the Charter Guarantee or any assignment of this Agreement by way of security; and (ii) no Owner Termination Event or Potential Termination Event is continuing or would occur as a result of such reorganisation.

14.3.3 The Charterer shall give reasonable prior notice to the Owner of any proposed intra-Group reorganisation in respect of the Charter Guarantor or any of its Subsidiaries and which it is not prohibited from disclosing by any applicable law or regulation.

14.3.4 For the purposes of this Clause, "intra-Group reorganisation" shall mean any amalgamation, demerger, merger, consolidation or corporate restructuring within the Charterer Group, and "Charterer Group" shall mean the Charter Guarantor and any Subsidiary of the Charter Guarantor.

15. REPRESENTATIONS

15.1 The Charterer makes and repeats the representations and warranties set out in this Clause 15 to the Owner and the Owner makes and repeats the representations and warranties set out in the Clause 15 (except in Clauses 15.9, 15.17 and 15.18) to the Charter, each at the times specified in Clause 15.21 (*Times when representations are made*).

15.2 Status

15.2.1 It is duly incorporated and validly existing under the laws of the jurisdiction of its incorporation as a limited liability company or corporation and has no centre of main interests, permanent establishment or place of business outside the jurisdiction in which it is incorporated or where the Vessel is located.

15.2.2 It has the corporate power and authority to carry on its business as it is now being conducted and to own its property and other assets.

15.3 Binding obligations

Subject to any applicable Legal Reservation, the obligations expressed to be assumed by it in each Transaction Document to which it is, or is to be, a party are or, when entered into by it, will be legal, valid, binding and enforceable obligations and any Encumbrance purported to be created thereby are or will be valid and effective.



15.4 Power and authority

15.4.1 It has the corporate power to enter into, perform and deliver and comply with its obligations under, and has taken all necessary action to authorise its entry into, each Transaction Document and the transactions contemplated by the Transaction Documents to which it is or will be a party.

15.4.2 No limitation on the its powers to create security or give guarantees will be exceeded as a result of any transaction under, or the entry into of, any Transaction Document to which it is, or is to be, a party.

15.5 Non-conflict

The entry into and performance by it of, and the transactions contemplated by the Transaction Documents and the granting by it of any Encumbrances thereunder do not and will not conflict with:

15.5.1 any law or regulation applicable to it in the jurisdiction of its incorporation;

15.5.2 its constitutional documents; or

15.5.3 any agreement or other instrument binding upon it or its assets or constitute a default or termination event (however described) under any such agreement or instrument.

15.6 Validity and admissibility in evidence

All Consents required:

15.6.1 to enable it to lawfully enter into, exercise its rights and comply with its obligations under each Transaction Document to which it is a party;

15.6.2 to make each Transaction Document to which it is a party admissible in evidence in any relevant jurisdiction;

have been obtained or effected and are in full force and effect.

15.7 Governing law and enforcement

Subject to any Legal Reservations:

15.7.1 the choice of English law or any other applicable law as the governing law of each Transaction Document to which it is a party will be recognised and enforced in any relevant jurisdiction; and

15.7.2 any judgment obtained in England in relation to it will be recognised and enforced in any relevant jurisdiction.

15.8 Original Financial Statements

15.8.1 The audited consolidated financial statements for its financial year ended 2010 (or, in the event that such statements have not been published or made available at the relevant time, the financial year ended 2009) (the "Original Financial Statements") were prepared in accordance with GAAP consistently applied.

15.8.2 The audited Original Financial Statements give a true and fair view of the financial condition and results of operations of its group, during the relevant financial year.



15.8.3 There has been no material adverse change in the assets, business or financial condition of the its since the date of the Original Financial Statements.

15.9 Pari passu ranking

Its payment obligations under the Transaction Documents rank at least pari passu with all its other present and future unsecured and unsubordinated payment obligations, except for obligations mandatorily preferred by law applying to companies generally.

15.10 No insolvency

No corporate action, legal proceeding or other procedure or step described in Clause 16.1(g) or creditors' process described in Clause 16.1(h) has, to its knowledge, been taken or threatened in relation to it and none of the circumstances described in Clause 16.1(f) applies to it or any Transaction Documents to which it is, or is to be, party.

15.11 No Default

15.11.1 No Termination Event is continuing or will result from the entry into, the performance of, or any transaction contemplated by, any Transaction Document to which it is a party.

15.11.2 It is not aware of any event or circumstance that is outstanding which constitutes (or, with the expiry of a grace period, the giving of notice, the making of any determination or any combination of any of the foregoing, would constitute) a default or termination event (however described) under any Transaction Document to which it is party.

15.12 No proceedings pending or threatened

Except as disclosed to the other party, no litigation, arbitration or administrative proceedings or investigations of, or before, any court, arbitral body or agency have (to the best of the its knowledge and belief) been started or threatened against it which could reasonably be expected to have a Material Adverse Effect.

15.13 No breach of laws

It has not breached any applicable law or regulation which is reasonably likely to have a Material Adverse Effect.

15.14 Information

To the best of its knowledge and belief,

15.14.1 any Information is true and accurate in all material respects at the time it was given or made;

15.14.2 at the time it was given or made, there are no facts or circumstances or any other information which could make the Information untrue, inaccurate or misleading in any material respect;

15.14.3 at the time it was given or made, the Information does not omit anything which could make the Information untrue, inaccurate or misleading in any material respect;

15.14.4 all opinions, projections, forecasts, estimates or expressions of intention contained in the Information and the assumptions on which they are based have been arrived at after due and careful enquiry and consideration and were believed to be reasonable by the person who provided that Information as at the date it was given or made; and

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15.14.5 for the purposes of this Clause 15.14, Information means: any information provided by the relevant party to any other party in connection with the Transaction Documents or the transactions referred to in them, excluding any Information concerning any third party (which is not an Affiliate of the relevant party) which was received and provided by it in good faith and to the best of its knowledge and belief.

15.15 Taxation

15.15.1 It is not overdue in the filing of any Tax returns or overdue in the payment of any amount in respect of Tax unless the same is being contested by such party in good faith and with adequate and proper reserves.

15.15.2 No claims or investigations are being made or conducted against it, to the best of its knowledge, with respect to Taxes such that a liability of, or claim against, such party is reasonably likely to arise for an amount for which adequate reserves have not been provided in the financial statements relevant to the relevant party and which could reasonably be expected to have Material Adverse Effect.

15.15.3 It is resident for Tax purposes only in the jurisdiction of its respective incorporation.

15.16 No immunity

Neither it nor any of its assets is immune to any legal action or proceeding.

15.17 Environmental matters

15.17.1 The Charterer and the Vessel (i) are in compliance with all applicable Labour Laws, Environmental Laws and Environmental Licences applicable to the Vessel and the Project and (ii) no Labour Law, Environmental Law or Environmental Licences applicable to the Charterer and/or the Vessel has been breached, where in each case such noncompliance or breach could reasonably be expected to have a Material Adverse Effect.

15.17.2 As far as the Charterer is aware, no Environmental Claim has been made or threatened or is pending against the Vessel or the Charterer (or any of the Charterer's officers) in relation to the Vessel or the Project and the Charterer has no reason to believe that it has or is likely to have any liability in relation to Environmental Claims in relation to the Vessel or the Project.

15.18 No Spills

No Spill has at any time occurred from the Vessel, nor has any Hazardous Material or Pollutant been (a) deposited or disposed of in the Environment by the Charterer or by or from the Vessel or otherwise in connection with the production of hydrocarbons at the Operation Site or (b) kept, treated, imported, exported, processed, manufactured, used, collected, sorted or produced in the Environment by the Charterer or by or from the Vessel or otherwise in connection with the production of hydrocarbons at the Operation Site, in each case in connection with the Vessel or the Project and in circumstances which are likely to result in an Environmental Claim against the Owner or any of its Affiliates, the Charterer or the Vessel.

15.19 No Prohibited Payments

To the best of its knowledge, no Prohibited Payment has been made or provided, directly or indirectly, by (or on behalf of) it, any of its Affiliates, its officers, directors or any other person acting on its behalf to, or for the benefit of, any Government Entity (or any official, officer, director, agent or key employee of, or other person with management responsibilities in, any Government Entity) in connection with any Transaction Document.





15.20 Times when representations are made

- 15.20.1 All of the representations and warranties set out in this Clause 15 are deemed, unless otherwise specified, to be made on the date of this Agreement and repeated on the date of signature of any other Transaction Document by the Charterer or Charter Guarantor. In addition, each of the representations and warranties set out in Clauses 15.2, 15.3, 15.4, 15.5, 15.6, 15.7, 15.14, 15.16 and 15.19 is deemed to be repeated on each day of the Charter Period.
- 15.20.2 Each representation or warranty deemed to be made after the date of this Agreement shall be deemed to be made by reference to the facts and circumstances then existing at the date the representation or warranty is deemed to be made.

16. TERMINATION

16.1 Owner Termination Events

Each of the following events and occurrences shall constitute an Owner Termination Event under this Agreement:

- (a) **Non-Payment:** the Charterer or the Charter Guarantor fails to pay any amount due from it under any Transaction Document to which it is a party on its due date in the currency and in the manner specified herein or therein within two (2) Business Days after written notice of such non-payment has been received by the Charterer;
- (b) **Failure to Insure:** at any time: (i) any of the Charterer Required Insurances ceases to be in full force and effect for any reason; (ii) any insurer cancels any of the Charterer Required Insurances; (iii) any insurer fails to renew any of the Charterer Required Insurances or such renewal is not confirmed in accordance with Clause 11.3(b) and the Charterer has failed to place alternative Charterer Required Insurances with an alternative insurer on terms as required under Clause 11 (*Insurance*); (iv) any insurer disclaims liability under any of the Charterer Required Insurances by reason of any mis-statement or failure or default by any person; or (v) the Insurances are not placed and kept in force in the manner required by Clause 11 (*Insurance*).
- (c) **Breach of Other Obligations:** the Charterer or the Charter Guarantor materially fails to perform any of its material obligations under any Transaction Document to which it is a party (not otherwise provided for specifically in this Clause 16.1 (*Owner Termination Events*)), and, if such failure is capable of remedy, fails to remedy such non-performance within fifteen (15) Business Days after written notice of such failure has been received by the Charterer;
- (d) **Illegality:** it shall become unlawful for the Owner or the Charterer to perform any of their respective material obligations under this Agreement;
- (e) **Litigation:** any material litigation, alternative dispute resolution, arbitration or administrative proceeding related to the Vessel or the production of hydrocarbons at the Operation Site is taking place, or a claim in respect of any such proceedings is brought against the Charterer or the Charter Guarantor or any of its assets, rights or revenues, which could reasonably be expected to have a Material Adverse Effect;
- (f) **Insolvency:** (i) the Charterer or the Charter Guarantor is unable or admits inability to pay its debts as they fall due, suspends making payments on any of its debts or, by reason of actual or anticipated financial difficulties, commences negotiations with one or more of its creditors with a view to rescheduling any indebtedness; (ii) the value of the assets of the Charterer or the Charter Guarantor is less than its liabilities (taking into account contingent and prospective liabilities to the extent that any prospective liabilities would be shown in the balance sheet of the relevant company in accordance

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with IFRS; or (iii) a moratorium is declared in respect of the Charterer or the Charter Guarantor (which Owner Termination Event will not be remedied by the ending of the moratorium).

- (g) **Insolvency Proceedings:** (i) the suspension of payments, a moratorium of any indebtedness, winding-up, dissolution, administration or reorganisation (by way of voluntary arrangement, scheme of arrangement or otherwise) of the Charterer or Charter Guarantor; (ii) a composition, compromise, assignment or arrangement with any creditor of the Charterer or Charter Guarantor; (iii) the appointment of a liquidator, receiver, administrator, administrative receiver, compulsory manager or other similar officer in respect of the Charterer or Charter Guarantor or any of their respective assets (including the directors of the Charterer or Charter Guarantor requesting a person to appoint any such officer in relation to such companies or any of their respective assets); or (iv) enforcement of any Encumbrance over any assets of the Charterer or the Charter Guarantor, provided that no Owner Termination Event under this clause 16.1(g) shall occur in respect of any winding-up petition (or analogous procedure or step) which is frivolous or vexatious and is discharged, stayed or dismissed within fourteen (14) days of commencement or, if earlier, the date on which it is advertised;
- (h) **Creditor's Process:** (i) any expropriation, attachment, sequestration, distress, execution or analogous process affects any asset or assets of the Charterer or the Charter Guarantor and is not discharged within ten (10) Business Days or (ii) (ii) any judgement or order is made against the Charterer or the Charter Guarantor and is not stayed or complied with within ten (10) Business Days, in each case unless (a) it is being contested in good faith with due diligence or (b) the Charterer or the Charter Guarantor, as the case may be, has sufficient funds available to it to meet any related liability;
- (i) **Misrepresentation:** any material representation or statement made or deemed to be made by the Charterer or the Charter Guarantor (for as long as the Charter Guarantee remains in effect) in this Agreement or in any of the other Transaction Documents to which it is a party, shall have been incorrect or misleading in any material respect when made or deemed to be made;
- (j) **Registration:** the registration of the Vessel under the laws and flag of the flag state is cancelled or terminated or, where applicable, not renewed within the time frame permitted by the laws of the flag state;
- (k) **Cross Default:** (i) any indebtedness of the Charterer or the Charter Guarantor is declared to be or otherwise becomes due and payable prior to its specified maturity as a result of an event of default (however described); (ii) any commitment for indebtedness of the Charterer or the Charter Guarantor is cancelled or suspended by a creditor of such party as a result of an event of default (however described); (iii) any creditor of the Charterer or the Charter Guarantor becomes entitled to declare any indebtedness of that party due and payable prior to its specified maturity as a result of an event of default (however described), provided that no Owner Termination Event under this clause 16.1(k) shall occur if the aggregate amount of indebtedness or commitment for indebtedness falling within sub-clauses (i) to (iii) above is less than the greater of (i) \$10,000,000 and (ii) five per cent (5%) of the net equity of the Charterer or Charter Guarantor (or its equivalent in any other currency or currencies), as the case may be, and in each case, the Owner considers (acting reasonably) that such breach is capable of remedy and the failure is remedied within fifteen (15) Business Days of the Owner giving notice to the Charterer;



- (l) **Cessation of Business:** the Charterer or the Charter Guarantor suspends or ceases to carry on (or threatens to suspend or cease to carry on) all or a substantial part of its business.
- (m) **Repudiation or Rescission of Documents:** the Charterer or Charter Guarantor repudiates or purports to repudiate, or evidences an intention to rescind or purports to rescind, a Transaction Document or document entered into in connection with the Bond Financing or the Long Term Financing to which it is a party;
- (n) **Arrest of Vessel:** the Vessel is arrested, confiscated, seized, taken in execution, impounded, forfeited, detained in exercise or purported exercise of any possessory lien or other claim by a creditor and the Charterer fails to procure the release of the Vessel within a period of thirty (30) days thereafter (or such longer period as may be approved);
- (o) **Qualification of Accounts:** the auditors of the Charterer or the Charter Guarantor qualify their report on the audited financial statements of the Charterer or the Charter Guarantor, as the case may be, in any way whatsoever which is reasonably likely to have a Material Adverse Effect;
- (p) **Environmental Incidents:** there is an Environmental Incident and the Vessel is arrested or attached in connection with such Environmental Incident and not released within a period of thirty (30) days thereafter;
- (q) **Abandonment:** The project for the production of hydrocarbons at the Operation Site or the Vessel or any part thereof considered by the Owner to be material, is abandoned by the Charterer or the Charter Guarantor or Vessel operations suffer permanent cessation (other than permitted shutdown in accordance with the terms of this Agreement) and in each case the same cannot be remedied to the satisfaction of the Owner within twenty (20) days;
- (r) **Operation of the Vessel:** the Operator ceases to be the operator in respect of the Vessel and a replacement operator (approved by the Owner) is not appointed within thirty five (35) Business Days of the Operator ceasing to be the operator of the Vessel;
- (s) **Redeployment of the Vessel:** there is a redeployment of the Vessel or a relocation from the Operation Site (other than for (i) the normal operation of the Vessel within the Operation Site; (ii) to dry dock or other redeployment of the Vessel for repairs in accordance with the terms of this Agreement; or (iii) or a short-term relocation (of no more than thirty (30) days (during which the Charter Rates continues to be paid)) required in the case of an emergency or security reason where the prior written consent of the Owner cannot be obtained in sufficient time) without the prior written consent of the Owner, such consent not to be unreasonably withheld.

#### 16.2 Rights of Owner on an Owner Termination Event

If an Owner Termination Event occurs and is continuing, the Owner may take any one or more of the following actions:

- (a) proceed by appropriate court action to enforce performance by the Charterer of the applicable covenants and provisions of this Agreement and/or to recover damages for the breach thereof; and/or
- (b) terminate the charter of the Vessel to the Charterer by serving notice of such termination on the Charterer, following which the Charterer shall immediately return or cause to be returned the Vessel to the Owner in accordance with Clause 10 (*Redelivery of the Vessel*); and/or



- (c) apply to competent authorities in England, Brazil and/or in any country where the Vessel may be located for issuance of a repossession order for the Vessel; and/or
- (d) by notice to the Charterer, require the Charterer to pay and if so required, the Charterer shall pay, by way of agreed compensation for loss to the Owner in accordance with Clause 8.5 (*Manner of Payments*), no later than three (3) Business Day's after receipt of such notice by the Charterer, the Termination Sum. Notwithstanding the foregoing, the Owner shall use reasonable endeavours to find alternative employment for the Vessel during the period prior to the Expiry Date upon commercially reasonable terms and shall reimburse to the Charterer, within thirty (30) days following receipt thereof, any amounts received from any third party in respect of charter rates for such alternative employment up to amount received from the Charterer, less any costs reasonably incurred in finding and contracting such alternative employment, including, without limitation, any costs incurred in adapting, modifying or customising the Vessel for use in such alternative employment. Without prejudice to Clause 5 (*Risks and Indemnities*), payment of the amount calculated pursuant to this Clause 16.2(d) and exercise of any other rights under this Clause 16.2 shall be the Owner's sole and exclusive remedy in respect of termination of this Agreement for an Owner Termination Event and the Parties hereby acknowledge and agree that such amount is a genuine pre-estimate of the loss likely to be suffered by the Owner in the event of such termination.

16.3 Charterer Termination Events

Each of the following events and occurrences shall constitute a Charterer Termination Event under this Agreement:

- (a) **Vessel Unavailability:** the Vessel is not able to produce any hydrocarbons due to any defect, damage or loss of the Vessel for a consecutive period of three hundred and sixty five (365) days, which consecutive period, for the avoidance of doubt, shall only commence following the expiry of a period of six (6) years following the Commencement Date;
- (b) **Breach of Obligations:** the Owner materially fails to perform any of its material obligations under this Agreement;
- (c) **Judgement:** there is a non-appealable judgment or arbitral award against the Owner, which has a Material Adverse Effect on the Owner;
- (d) **Insolvency:** (i) the Owner is unable or admits inability to pay its debts as they fall due, suspends making payments on any of its debts or, by reason of actual or anticipated financial difficulties, commences negotiations with one or more of its creditors with a view to rescheduling any indebtedness; (ii) the value of the assets of the Owner is less than its liabilities (taking into account contingent and prospective liabilities to the extent that any prospective liabilities would be shown in the balance sheet of the relevant company in accordance with IFRS; or (iii) a moratorium is declared in respect of the Owner (which Owner Termination Event will not be remedied by the ending of the moratorium).
- (e) **Insolvency Proceedings:** (i) the suspension of payments, a moratorium of any indebtedness, winding-up, dissolution, administration or reorganisation (by way of voluntary arrangement, scheme of arrangement or otherwise) of the Owner; (ii) a composition, compromise, assignment or arrangement with any creditor of the Owner; (iii) the appointment of a liquidator, receiver, administrator, administrative receiver, compulsory manager or other similar officer in respect of the Owner or any of its assets (including the directors of the Owner requesting a person to appoint any such officer in relation to the Owner or any of its assets); or (iv) enforcement of any Encumbrance over any assets of the Owner;





- (f) **Winding-Up:** a non-appealable order, judgment or decree shall be entered by any court of competent jurisdiction in respect of the Owner approving a petition seeking reorganisation or the winding-up of the Owner or appointing a receiver, trustee or liquidator of the Owner or of all or a substantial part of its assets;

16.4 Rights of Charterer on a Charterer Termination Event

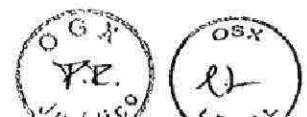
- 16.4.1 If a Charterer Termination Event occurs and is continuing at any time after the expiry of a period of six (6) years following the Commencement Date, the Charterer may give notice thereof to the Owner, giving details of such Charterer Termination Event. In case of the Charterer Termination Event set out in Clauses 16.3(a) and 16.3(f) the Charterer may thereafter immediately terminate the charter of the Vessel by notice to the Owner. In case of the Charterer Termination Events set out in Clauses 16.3(b) to 16.3(e) the Charterer may terminate the charter of the Vessel by notice to the Owner only if the Owner does not commence and thereafter diligently proceed with action reasonably satisfactory to the Charterer to remedy such Charterer Termination Event within fifteen (15) Business Days (or such other period as is reasonable taking into account the nature of the Charterer Termination Event and the remedy required).
- 16.4.2 Upon termination of the charter of the Vessel pursuant to Clause 16.4.1, the Charterer shall immediately return or cause to be returned the Vessel to the Owner in accordance with Clause 10 (*Redelivery of the Vessel*).

17. TRANSFERS

No Party may transfer or assign any of its rights and obligations under this Agreement without the prior written consent of the other Parties provided always that the Owner may so assign or transfer without the prior written consent of the other Parties to the bond trustee under the Bond Financing or to any lender or security trustee under the Long Term Financing.

18. CHARTER GUARANTEE

- 18.1 The Charterer shall cause the Charter Guarantor to grant the Charter Guarantee in substantially the form set out in Schedule 3 (*Form of Charter Guarantee*) in favour of the Owner, with effect from Effective Date and until such time as the Vessel has reached twenty percent (20%) of its nominal production capacity and all of the following conditions are met by the Charterer:
- 18.1.1 minimum annual revenue of one billion Dollars (US\$1,000,000,000);
- 18.1.2 minimum annual EBITDA of five hundred million Dollars (US\$500,000,000);
- 18.1.3 maximum Debt / EBITDA ratio of 2.5:1;
- 18.1.4 minimum Net Worth / Total Liability ratio of 30/70.
- 18.2 The financial conditions set out in Clause 18.1 shall be calculated in accordance with generally accepted accounting practices in Brazil and tested on a semi-annual basis by reference to the most recent audited quarter financial statements of the Charterer.
- 18.3 Upon satisfaction of the conditions set out in Clause 18.1, the Charterer shall provide the Owner with a copy of its audited quarter financial statements demonstrating the satisfaction of such conditions in the immediately preceding 12-month period, together with a compliance certificate in a form reasonably acceptable to the Owner, which shall set out, in reasonable detail, the computations as to compliance with the conditions set out in Clause 18.1 and be signed by the finance director or chief financial officer of the Charterer or, in his or her absence, by two (2) directors.





- 18.4 Following the termination of the Charter Guarantee in accordance with Clause 18.1, the Charterer shall provide the Owner with copies of its audited financial statements for each quarter as soon as the same become available, but in any event within ninety (90) days after the end of the quarter to which they relate. Such copies shall be accompanied by a compliance certificate, which shall set out, in reasonable detail, the computations as to continuing compliance with the conditions set out in Clause 18.1, in accordance with Clause 18.3.
- 18.5 In the event that the Charterer's audited quarter financial statements do not confirm its continuing compliance with the conditions set out in Clause 18.1 or if the Charterer becomes aware, at any time, that it no longer satisfies such conditions, the Charterer shall immediately give notice thereof to the Owner and, within ten days thereafter, shall cause the Charter Guarantor to grant a new Charter Guarantee in favour of the Owner, with immediate effect, which Charter Guarantee shall be maintained until such time as its audited quarter financial conditions show that the conditions set out in Clause 18.1 were satisfied in respect of the immediately preceding 12-month period.

**19. VESSEL FINANCING**

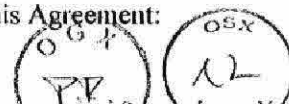
- 19.1 The Charterer expressly acknowledges and agrees on behalf of itself and the Charter Guarantor that the engineering, procurement, construction and installation of the Vessel will be partially financed by the Owner pursuant to the Bond Financing, which is in turn expected to be taken out by the Long Term Financing and that the security to be provided in connection therewith shall include a naval mortgage on the Vessel and security assignments of this Agreement. The Charterer shall provide an acknowledgement of the assignment of this Agreement and shall procure that the Charter Guarantor shall provide an acknowledgement of the assignment of the Charter Guarantee in such forms as may be reasonably required by the Owner.
- 19.2 If required by the bond trustee in connection with the Bond Financing or by lenders in connection with the Long Term Financing, the Charterer hereby irrevocably agrees to enter into a direct agreement with such bond trustee or lenders (or any of them) on terms that are customary or usual in the context of similar financings. The Charterer agrees that the bond trustee and the lenders shall have step-in rights upon the occurrence of a default by the Owner under the Bond Financing and the Long Term Financing, subject to Charterer's right of quiet enjoyment, as set out in Clause 4.6.
- 19.3 The Charterer shall provide all necessary co-operation, access and assistance or, as the case may be, procure that the same is provided to enable any technical, environmental or insurance adviser appointed pursuant to the Bond Financing or the Long Term Financing to complete its scope of work and produce any reports required in connection therewith. The Charterer shall promptly address any material concern raised by any such adviser in any report, at the request of the Owner.

**20. NOTICES**

**20.1 Delivery**

Every notice, request, demand or other communication under this Agreement shall be in writing and shall:

- (a) be delivered:
  - (i) personally; or
  - (ii) by registered post or courier with acknowledgement of receipt; or
  - (iii) by facsimile transmission in permanent written form;
- (b) be deemed to have been received, subject as otherwise provided in this Agreement:



- (i) in the case of personal delivery, on the date of delivery; and
- (ii) in the case of a letter sent by registered post on the date indicated on the acknowledgement of receipt; and
- (iii) in the case of a fax, on the date of actual receipt.

## 20.2 Contact Details

For the purposes of any notice, request, demand or other communication sent in accordance with Clause 20.1 (*Delivery*) the contact details of each of the Parties are as follows:

- (a) to the Owner:

OSX 3 LEASING B.V.  
Haagsche Hof, Parkstraat 83, offices 209/210  
2514 JG, the Hague  
The Netherlands

Attention: Flavia Kaczelnik  
Fax: +31(0)70 353 8333

c.c. Luciano Porto  
Praça Mahatma Gandhi, 14 - 13º Andar  
Centro, Rio de Janeiro, RJ  
Brasil, CEP - 20031-100  
Fax: +55 21 2555-4079

- (b) to the Charterer:

OGX PETRÓLEO E GÁS LTDA.  
Praça Mahatma Gandhi, 14 - part  
Centro, Rio de Janeiro, RJ  
Brasil, CEP - 20031-100

Attention: José Roberto Faveret - General Counsel  
Fax: +55 21 2555 5202

- (c) to the Alternative Payer:

OSX 3 HOLDING B.V.  
Haagsche Hof, Parkstraat 83, offices 209/210  
2514 JG, the Hague  
The Netherlands

Attention: Flavia Kaczelnik  
Fax: +31(0)70 353 8333

c.c. Luciano Porto  
Praça Mahatma Gandhi, 14 - 13º Andar  
Centro, Rio de Janeiro, RJ  
Brasil, CEP - 20031-100  
Fax: +55 21 2555-4079

or to such other address and/or numbers as is notified in writing by one Party to the other Parties under this Agreement.



20.3 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 and in this case the English translation will prevail.

21. GOVERNING LAW - JURISDICTION

21.1 Governing Law

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

21.2 Amicable Settlement

21.2.1 In the event of any dispute, difference or disagreement between the Parties arising under, out of or in connection with this Agreement, including any question regarding its existence, validity or termination and any non contractual obligations arising out of this Agreement) (a "Dispute"), the Parties shall attempt to settle such Dispute amicably and the chief executive officer of each Party shall in that respect meet and endeavour to resolve issues between them.

21.2.2 The joint and unanimous decision of such chief executive officers of the Parties shall be binding upon the Parties. If they do not meet or are unable to reach an agreement within thirty (30) days of the referral of a Dispute to them then the Dispute shall be referred to arbitration in accordance with Clause 21.3 (*Arbitration*).

21.3 Arbitration

21.3.1 All Disputes shall be finally settled by arbitration in accordance with the rules of the (LCIA) London Court of Arbitration as at present in force. There shall be three (3) arbitrators. Each party shall appoint an arbitrator and the two so appointed shall jointly appoint a third arbitrator. The seat and place of arbitration shall be London, England. The English language shall be used throughout the arbitral proceedings.

21.3.2 The Parties hereby waive any rights under the Arbitration Act 1996 or otherwise to appeal any arbitration award to, or to seek determination of a preliminary point of law by, the courts of England.

22. WAIVER, CUMULATIVE RIGHTS AND SUBSTITUTION

22.1 Waiver and Cumulative Rights

No failure or delay on the part of any Party in exercising any right, power or privilege hereunder shall operate as a waiver thereof; nor shall any single or partial exercise thereof preclude any other or further exercise thereof by such person or the exercise by such person of any other right, power or privilege. The rights and remedies of the Parties herein provided are cumulative and not exclusive of any rights or remedies provided by law.

22.2 Substitution

If the Charterer fails to comply with any provision of this Agreement, the Owner may, without being in any way obliged to do so or responsible for so doing or not doing so, and without prejudice to the ability of the Owner to treat such failure as a Termination Event, with prior written notice to the Charterer, effect compliance on behalf of the Charterer, whereupon the Charterer shall indemnify the Owner in respect of any amount thereby expended by the Owner together with all costs and expenses incurred in connection therewith and interest at the Default

Rate accruing thereon from the date such costs and expenses are incurred by the Owner to the date of payment thereof by the Charterer.

**23. SET OFF**

Each Party hereby expressly waives any right of set-off as between the claims of itself and any other Party under this Agreement and/or any act relating hereto and any claims whatsoever that it may have against any other Party.

**24. CURRENCY INDEMNITY**

If any amount payable by the Charterer under or in connection with this Agreement is paid or is recovered in a currency (the "other currency") other than that in which it is required to be paid hereunder (the "original currency"), whether as a result of a judgment against the Charterer or the liquidation or similar procedure in respect of the Charterer or for any other reason whatsoever, then, to the extent that the payment (when converted to the original currency at the rate of exchange on the date of payment or, in the case of a liquidation or similar procedure, the latest date for the determination of liabilities permitted by the applicable law) falls short of the amount payable in the original currency under this Agreement, the Charterer shall fully indemnify the Owner against the amount of the shortfall and for the purposes of this Clause 24 (*Currency Indemnity*), "rate of exchange" means the rate at which the Owner is able on the relevant date to purchase the original currency in the London Interbank Market with the other currency.

**24.1 Calculation**

The certificate of the Owner as to the amount of any such deficiency as aforesaid (which shall be deemed to constitute a Loss without any further proof of evidence of any actual loss being required) shall, save for any manifest error, be conclusive and binding on the Charterer.

**25. FEES, EXPENSES AND VAT**

**25.1 Expenses**

The following costs shall be either borne by the Charterer or, if paid by the Owner, promptly reimbursed by the Charterer, by way of Supplemental Charter Rate:

- (a) all costs and expenses (including legal, survey and other costs) reasonably incurred by the Owner in contemplation of, or otherwise in connection with, the enforcement, preservation, waiver or amendment of any rights or terms and conditions under the Transaction Documents or the Bond Financing or the Long Term Financing and any other document entered into in connection therewith or otherwise in respect of moneys owing under the Transaction Documents or the Bond Financing or the Long Term Financing and any other document entered into in connection therewith, or in respect of breach of any representation, warranty, covenant, agreement, condition or stipulation therein contained, or in respect of the repossession of the Vessel; and
- (b) all costs and expenses reasonably incurred by the Owner in connection with registration of the Vessel at the Maritime Registry and perfection of any security required to be perfected in connection with the Bond Financing or the Long Term Financing (including, without limitation, the filing of any naval mortgage required to be filed with the Maritime Registry and the fees of counsel to the Owner in the Netherlands with respect to the filing of any naval mortgage required to be filed with the Maritime Registry and registration of the Vessel with the Maritime Registry).



## 25.2 VAT

All costs and expenses referred to in Clause 25.1 (*Expenses*) shall be paid by the Charterer together with any value added tax or similar Tax thereon, and in the currency in which the same are incurred by the Owner.

## 26. MISCELLANEOUS

## 26.1 Variations and Amendment

This Agreement shall not be capable of being varied or amended otherwise than by an express variation or amendment in writing signed on behalf of the Charterer and the Owner and, only if its obligations hereunder would be thereby varied or amended, by the Alternative Payer and by the Charter Guarantor reconfirming its obligations under the Charter Guarantee.

## 26.2 Partial Invalidity

If any one or more of the provisions contained in this Agreement shall be invalid, illegal or unenforceable under the laws of any jurisdiction, the validity, legality and enforceability of the remaining provisions contained herein or therein shall not in any way be affected or impaired under the laws of such jurisdiction and the validity, legality and enforceability of any provisions contained in this Agreement shall not be affected under the laws of any other jurisdiction.

## 26.3 Survival and Independence of Indemnities

Each and all of the indemnities contained in this Agreement shall:

- (a) constitute a separate and independent obligation of the Charterer from its other obligations under this Agreement, shall give rise to separate and independent causes of action against the Charterer, shall apply irrespective of any indulgence granted to the Charterer and shall continue in full force and effect notwithstanding any judgment or order; and
- (b) survive the termination of this Agreement for a term of five (5) years.

## 26.4 Contractor Performance

Any obligation of any Party hereunder shall be deemed to be satisfied if such Party procures the performance of such obligation by any third party, including its contractors, and for the avoidance of doubt, the Owner shall accept payment of any amount due pursuant to any indemnity given by the Charterer, directly from any contractor of the Charterer in discharge of the Charterer's obligation to pay such amount.





**SCHEDULE 1****CHARTER RATE CALCULATION METHODOLOGY****PROCEDURES FOR CALCULATING DAILY RENTALS  
PURSUANT TO SECTION 8.2****1. Calculation of Indicative Rentals**

1.1 The Indicative Rentals set out in Clause 8.2 of the Agreement have been calculated on the basis of the foregoing principal assumptions and principles:

- Overall cost of the Project estimated at USD 975.005 million, as follows: (i) EPCI Contract costs: USD 803.572 million; (ii) approved change orders: USD 16.814 million; (iii) replacement parts: USD 20 million; (iv) pre-delivery interest under the Bond Financing and Long Term Financing: USD 61,741 million; (v) insurance costs and fees/costs under the Bond Financing and Long Term Financing: USD 72.877 million; (for the purposes of this Schedule 1, all such costs the "Project Costs").
- The Indicative Rentals shall ensure a fifteen percent (15%) leveraged return on Owner's leveraged equity in real terms in respect of the Project Costs since the first equity contribution made into Owner in connection with the Project until the Expiry Date (assuming revenue corresponding to an operational efficiency of ninety-five percent (95%)).
- Owners' equity/leverage ratio in respect of the Long Term Financing is assumed to be 80%/20% (the "Leverage") and Owner's contributions (funded by equity) assumed to be assumed to be fully made upfront, with no other contributions by Owner being required.
- Bond Financing in the amount of USD 450 million to be taken out by a Long Term Financing in the amount of USD 850 million.
- Long Term Financing with a tenor of 12 years.
- For the Long Term Financing, fixed nominal interest after hedging the Libor of 6.35%.
- For the Bond Financing, a coupon of 8.50% and a redemption call price of 103% of par value.
- Indicative Rentals determined in order to achieve compliance with the financial covenants of the Long Term Financing.
- Tax Sparring of 20% of the leasing revenues in the Netherlands.

1.2 In order to determine the Indicative Rentals in accordance with the premises set out in item 1.1, the following procedures were observed:



- 1.2.1 In order to meet the forecasted financial covenants of the Long Term Financing, a minimum Day Rate was calculated for each 12-month period of the forecasted repayment schedule of the Long Term Financing ("Minimum Day Rate"), taking into account the forecasted decrease of the debt service payments.
- 1.2.2 A flat Day Rate ("Flat Day Rate") is calculated in such a way to ensure a fifteen percent (15%) leveraged return on Owner's equity in real terms in respect of the Vessel over the Charter Period (assuming revenue corresponding to an operational efficiency of ninety-five percent (95%). This Flat Day Rate will be considered as Indicative Rental during the tenor of the Long Term Financing if it is higher than the Minimum Day Rate.
- 1.2.3 A final flat Day Rate ("Final Day Rate") is contemplated to be payable throughout the period from the first day of the month immediately following the final payment due pursuant the forecasted terms of the Long Term Financing and the Expiry Date (i.e. during the period covered in clause 8.2(h) of the Agreement) and shall be calculated together with the Recalibrated Rentals pursuant to Item 2 hereof. Such Final Day Rate, when taken together with the other Indicative Rentals calculated pursuant to items 1.2.1 and 1.2.2 above (in the amounts set out in subitems (a) through (g) of clause 8.2 of the Agreement), shall ensure a fifteen percent (15%) leveraged return on Owner's equity in real terms in respect of the Vessel over the Charter Period (assuming revenue corresponding to an operational efficiency of ninety-five percent (95%)).
- 1.3 A chart exemplifying the method for calculating the Indicative Rentals is attached hereto as Exhibit A (the "Financial Model Annual Cash Flow") and a chart exemplifying the Day Rates evolution along the life of the Charter is attached hereto as Exhibit B (the "Day Rates Steps").

## 2. Calculation of Recalibrated Rentals under Clause 8.3.1

- 2.1 As promptly as practicable upon the occurrence of the last of the events set out in Clause 8.3.1 of the Agreement, the Owner shall submit to the Charterer a notice setting out the recalibration of the revised Indicative Rentals set out in items (a) through (g) of Clause 8.2 of the Agreement (such revised Rentals, the "Recalibrated Rentals" for the purposes of this Schedule 1), providing the Charterer with (i) an updated determination of the Project Costs and the Leverage (and of any other of the assumptions and principles set out in clause 1 above as the Parties may agree) and; (ii) a revised Exhibit A, evidencing the calculation of the Recalibrated Rentals on the same basis of the Financial Model Annual Cash Flow (with the necessary adjustments to accommodate changes to the Project Costs, Leverage, assumptions and principles, as the case may be).
- 2.2 In order to calculate the Recalibrated Rentals, the Owner will follow the same procedures set out in item 1.2 above, producing a new Financial Model Annual Cash Flow with the actual Project data as indicated in Owner's financial statements. Any historical data used by the Owner shall be discounted by using the inflation index set out in clause 8.3.4 of the Agreement (i.e. PPI) in order to achieve a FCFE on real basis. Such Recalibrated Rentals shall include the calculation of the Final Day Rate referred to in clause 8.2(h) of the Agreement.
- 2.3 The notice referred to in item 2.1 above shall only be presented by the Owner to the Charterer, after all the information taken into consideration to recalibrate the Indicative Rentals has been duly audited and the relevant auditor has confirmed that the revised Financial Model Annual Cash Flow has been prepared in such a way to ensure the leveraged return on Owner's equity in accordance with the Agreement, by one of the

following firms, mutually chosen by the Parties: (i) PriceWaterhouseCoopers (ii) Delloite Touche Tohmatsu; (iii) Ernst & Young; and (iv) KPMG. All costs arising out of the auditing procedures shall be borne by the Charterer.

- 2.4 Notwithstanding the provisions set out in items 2.1 through 2.3 above, to the extent that the auditing procedures set out in item 2.3 above have not yet been completed, the Owner may, by serving a notice in writing to the Charterer, require that the Indicative Rentals payable within the first year following the occurrence of the last of the events set out in Clause 8.3.1 be immediately revised in order and to the extent necessary to ensure compliance with financial covenants of the Long Term Financing. In such event, the following shall apply:
- (a) The notice shall set out in sufficient detail the calculation of the revised Indicative Rentals in order to achieve compliance with the financial covenants of the Long Term Financing;
  - (b) The revision of the applicable day rates pursuant to this item 2.4 shall take immediate effect upon receipt of the notice by the Charterer;
  - (c) The Recalibrated Rentals (for the avoidance of doubt, to be presented upon completion of the auditing review set out in item 2.3 above) shall take into consideration the day rates revised pursuant to this item 2.4.

**3. Procedures for Calculating the Daily Rental due after payment of the final amount due pursuant to the Long Term Financing (Clause 8.2 (h) – Final Day Rate).**

- 3.1 As promptly as possible following the date on which Owner makes payment of the final amount due pursuant to the Long Term Financing, the Owner shall submit to the Charterer a notice setting out the calculation of the Final Day Rate payable throughout the period running between the first day of the month following the final payment due pursuant to the Long Term Financing and the Expiry Date, following the same procedures set out in item 1.2 above. The Owner shall produce a new Financial Model Annual Cash Flow with the actual Project data as indicated in Owner's financial statements. Any historical data used by the Owner shall be discounted by using the inflation index set out in clause 8.3.4 of the Agreement (i.e. PPI) in order to achieve a FCFE on real basis.
- 3.2 The notice referred to in item 3.1 above shall only be presented by the Owner to the Charterer, after all the information taken into consideration to calculate the Final Day Rate has been dully audited and the leveraged return on Owner's equity, has been accredited in accordance with the Agreement, by one of the following firms, mutually chosen by the Parties: (i) PriceWaterhouseCoopers (ii) Delloite Touche Tohmatsu; (iii) Ernst & Young; and (iv) KPMG, considering that all costs arising out of the auditing procedures shall be borne by the Charterer. While such auditing review is not completed and the Final Day Rate is not ascertained, the Charter shall continue to pay the Flat Day Rate and any Flat Day Rates so paid shall be taken into account for purposes of the calculation of the Final Day Rate.

**4. Final Provisions**

- 4.1 For the avoidance of doubt, notwithstanding the provisions of this Schedule 1, Rentals may be further adjusted during the Charter Period by operation of Clauses 8.3.2, 8.3.3, 8.3.4 and 8.4 of the Agreement.



- 4.2 In the absence of manifest error, the Recalibrated Rentals and the Final Day Rate shall become effective from receipt of the Charterer of the notice set out in items 2.1 and 2.2 above).

Exhibits to Schedule 1 (Charter Rate Calculation Methodology)

Exhibit A – Financial Model Annual Cashflow

Exhibit B – Day Rate Steps

# Exhibit A – Financial Model Annual Cashflow

Financials	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021
<b>CASH FLOW</b>												
(-) Net Income	-	-	724	5,530	66,772	64,928	63,115	61,860	58,812	58,272	60,241	63,536
(+) Depreciation and amortization	-	-	-	4,074	48,898	48,898	48,898	48,898	48,898	48,898	48,898	48,898
(+) Interest revenue	-	-	(794)	(74)	(107)	(106)	(105)	(101)	(98)	(95)	(92)	(90)
(-) Interest expense	-	-	-	2,747	31,376	38,446	26,516	22,586	19,656	18,728	13,796	10,888
(+/-) Change in working capital	-	-	-	(7,813)	336	336	336	336	336	336	336	336
Cash flow from operating activities	-	-	-	4,364	147,264	142,489	137,750	133,568	128,892	124,127	123,168	123,535
(-) Capex	-	(174,908)	(642,201)	(2,48,928)	-	-	-	-	-	-	-	-
(+) Profit on asset sale	-	-	-	-	-	-	-	-	-	-	-	-
Cash flow from investing activities	-	(174,908)	(642,201)	(2,48,928)	-	-	-	-	-	-	-	-
(+) Debt issue	-	-	450,000	787,771	-	-	-	-	-	-	-	-
(-) Debt amortization	-	-	-	(450,000)	(87,257)	(87,257)	(87,257)	(87,257)	(87,257)	(87,257)	(87,257)	(87,257)
(-) Debt fees paid	-	-	(12,253)	(54,978)	-	-	-	-	-	-	-	-
(-) Interest paid	-	-	(8,827)	(41,824)	(31,854)	(28,924)	(28,004)	(23,074)	(20,144)	(17,274)	(14,284)	(11,344)
(-) Interest revenue	-	-	724	74	107	108	105	101	98	95	92	90
(-) Equity increase	-	174,908	47,892	15,152	12,077	0	-	-	-	-	-	-
(-) Equity decrease (Distributions to OSX GmbH - equity reduction)	-	-	-	(63,452)	(63,452)	(67,520)	(43,831)	(44,220)	(42,412)	(40,563)	(42,156)	(42,280)
Cash flow from financing activities	-	174,908	465,658	246,184	(130,459)	(143,713)	(138,838)	(134,856)	(128,817)	(125,042)	(123,653)	(123,901)
Cash (sep)	-	-	23,457	23,457	23,000	41,845	40,822	39,435	38,247	37,024	36,108	35,622
Cash (corp)	-	-	23,457	25,080	41,845	40,822	39,435	38,247	37,024	36,108	35,622	35,256
Free cash flow to firm (FCFF)	-	(174,908)	(442,201)	(244,561)	147,264	142,488	137,750	133,568	128,892	124,127	123,168	123,535
Free cash flow to equity (FCFE)	-	(174,908)	(7,052)	(13,152)	31,384	47,629	45,691	44,228	42,413	40,563	42,156	42,280

In order to avoid issuer payment, distributions are claimed through equity reduction instead of dividends.

03360





# Exhibit A – Financial Model Annual Cashflow

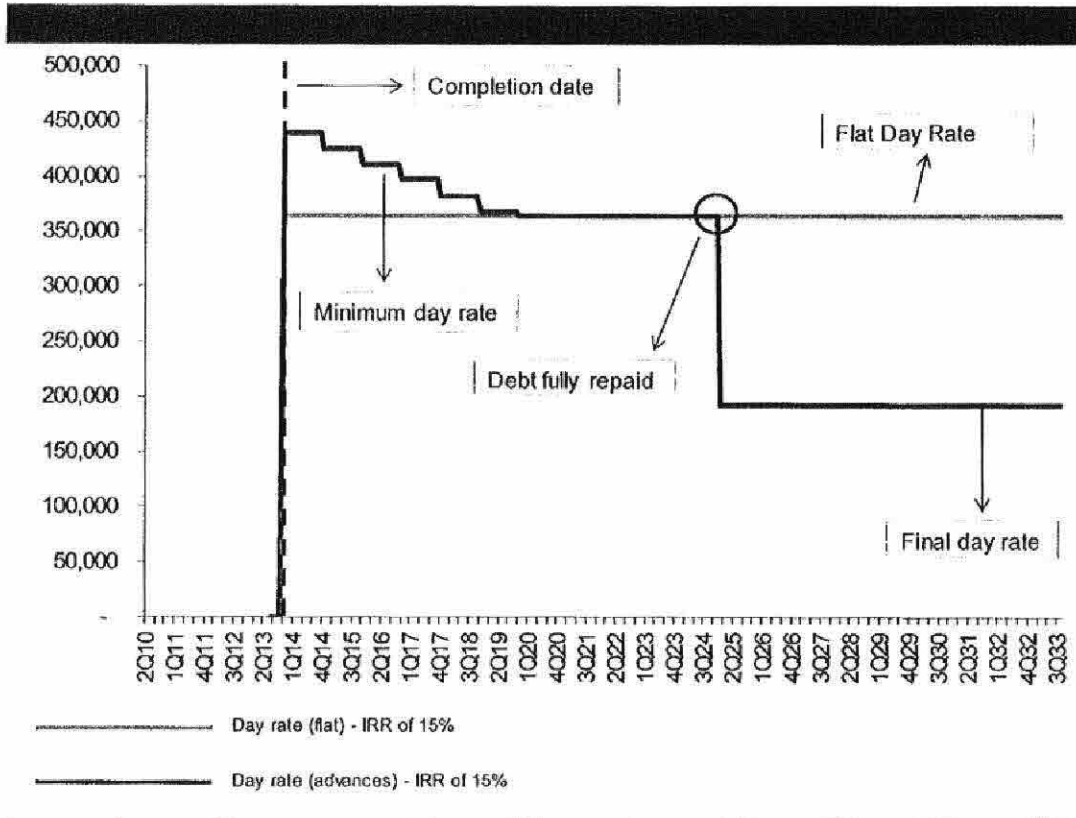
Financials	2022	2023	2024	2025	2026	2027	2028	2029	2030	2031
<b>CASH FLOW</b>										
(+) Net income	66,630	70,125	73,418	20,033	15,384	13,751	18,118	16,464	16,851	17,219
(-) Depreciation and amortization	48,888	48,888	48,888	48,888	48,888	48,888	48,888	48,888	48,888	48,888
(-) Interest revenue	(86)	(95)	(84)	(13)	-	-	-	-	-	-
(+) Interest expense	7,935	5,025	2,075	61	-	-	-	-	-	-
(+/-) Change in working capital	338	336	336	336	336	336	336	336	336	336
<b>Cash flow from operating activities</b>	<b>123,902</b>	<b>124,288</b>	<b>124,635</b>	<b>69,305</b>	<b>64,608</b>	<b>64,975</b>	<b>65,341</b>	<b>65,708</b>	<b>66,074</b>	<b>66,441</b>
(-) Capex	-	-	-	-	-	-	-	-	-	-
(+) Profit on asset sale	-	-	-	-	-	-	-	-	-	-
<b>Cash flow from investing activities</b>	<b>(67,357)</b>	<b>(67,357)</b>	<b>(67,357)</b>	<b>(16,833)</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>
(-) Debt issue	-	-	-	-	-	-	-	-	-	-
(-) Debt amortization	-	-	-	-	-	-	-	-	-	-
(-) Debt fees paid	-	-	-	-	-	-	-	-	-	-
(-) Interest paid	(6,424)	(5,484)	(2,564)	(183)	-	-	-	-	-	-
(+) Interest revenue	86	86	84	13	-	-	-	-	-	-
(+) Equity increase	-	-	-	-	-	-	-	-	-	-
(-) Equity decrease (Distributions to OSX GmbH - equity reduction)	(45,574)	(51,859)	(55,163)	(66,452)	(64,503)	(64,975)	(65,341)	(65,708)	(66,074)	(66,441)
<b>Cash flow from financing activities</b>	<b>(124,288)</b>	<b>(124,634)</b>	<b>(125,001)</b>	<b>(163,461)</b>	<b>(64,608)</b>	<b>(64,975)</b>	<b>(65,341)</b>	<b>(65,708)</b>	<b>(66,074)</b>	<b>(66,441)</b>
Cash (bop)	35,256	34,888	34,522	34,157	-	-	-	-	-	-
Cash (eop)	34,888	34,523	34,157	-	-	-	-	-	-	-
<b>Free cash flow to firm (FCFF)</b>	<b>123,902</b>	<b>124,288</b>	<b>124,635</b>	<b>69,305</b>	<b>64,608</b>	<b>64,975</b>	<b>65,341</b>	<b>65,708</b>	<b>66,074</b>	<b>66,441</b>
<b>Free cash flow to equity (FCFE)</b>	<b>48,574</b>	<b>51,859</b>	<b>55,163</b>	<b>86,452</b>	<b>64,608</b>	<b>64,975</b>	<b>65,341</b>	<b>65,708</b>	<b>66,074</b>	<b>66,441</b>

In order to avoid taxes' payment, distributions are carried through equity reduction instead of dividends.



03009

Exhibit B – Day Rate Steps



SCHEDULE 2

03871

VESSEL INFORMATION

Part 1

Description of the Vessel

Name	"OSX 3" (formerly, "TAR III")
Port of Registration	Morovia, Liberia
Gross Tons	157,196
Year of Building	1989
Type	FPSO (prior to conversion, Crude Oil Tanker)
Official Number	8526
IMO Number	8715027



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**Part 2**  
**Vessel Information (upon conversion)**

<b>Builder</b>	Modec Inc.
<b>Builder's registered office</b>	25 <sup>th</sup> floor, Kasumigaseki Common Gate, West Tower 2-1, Kasumigaseki, 3 chome, Chiyoda-ku, Tokyo, Japan
<b>Date and description of Building Contract:</b>	EPCI contract in relation to the Vessel between the Builder and the Borrower dated 15 July 2011
<b>Flag State</b>	Liberia
<b>Classification:</b>	"Maltese Cross" IA1 Ship Shape Oil Production and Storage Unit PROD ECO TMON (or other proper classification for FPSOs of its type and class)
<b>Classification Society:</b>	American Bureau of Shipping (ABS)



03370

**SCHEDULE 3**  
**FORM OF CHARTER GUARANTEE**





03371

Execution Version

Dated February 2012

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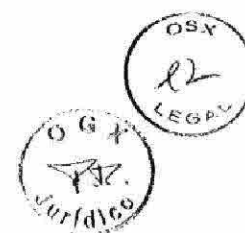
**OGX PETRÓLEO E GÁS PARTICIPAÇÕES S.A.**  
as Guarantor

**OSX 3 LEASING B.V.**  
As Beneficiary

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**CHARTER CONTRACT GUARANTEE**

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**THIS DEED OF GUARANTEE AND INDEMNITY** ("Guarantee") is made on the    day of  
February 2012

**BETWEEN:**

- (1) **OGX PETRÓLEO E GÁS PARTICIPAÇÕES S.A.**, a company duly incorporated and validly existing in accordance with the laws of the Federative Republic of Brazil, whose registered office is at Praça Mahatma Gandhi, 14, part, Rio de Janeiro, registered with the Brazilian tax authority under registered number CNPJ 07.957.093/0001-96 (the "Guarantor"); and
- (2) **OSX 3 LEASING B.V.**, a company duly incorporated and validly existing in accordance with the laws of the Netherlands, whose registered office is at Haagsche Hof, Parkstraat 83, offices 209/210, 2514 JG, the Hague, the Netherlands and with company registration number 850139090 (the "Beneficiary").

**WHEREAS:**

- (A) Pursuant to an agreement entered on or about the same date hereof by and among the Beneficiary, OGX Petróleo e Gás Ltda. (the "Charterer") and OSX 3 Holding B.V. (the "Alternative Payer") the Charterer has agreed to bare boat charter from the Beneficiary a floating production, storage and offloading vessel (FPSO), to be named "OSX 3" (the "Vessel") (as may be amended, novated, supplemented, extended, restated or varied from time to time, the "Charter Contract").
- (B) It is a condition of the entering into of the Charter Contract that the Guarantor enters into and delivers this Guarantee in favour of the Beneficiary to guarantee the due performance of the Charter Contract by its subsidiary, the Charterer, in the manner hereinafter described.

**NOW IT IS HEREBY AGREED** as follows:

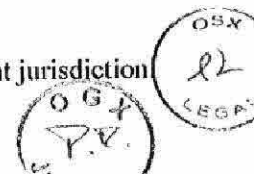
**1. Definitions and Interpretations**

**1.1 In this Guarantee:**

1.1.1 "Charterer's Obligations" shall mean (i) all liabilities and each and all of the obligations, warranties, duties, indemnities and undertakings of the Charterer to the Beneficiary under or in connection with the Charter Contract; and (ii) the payment and discharge of all sums of money and liabilities due, owing or incurred or payable, actual and contingent, by the Charterer to the Beneficiary under or in connection with the Charter Contract or as a result of any breach thereof including, without limitation, all expenses (including, without limitation, legal fees and taxes) incurred by the Beneficiary in connection with the Beneficiary seeking to enforce and/or exercise or preserve any of its rights in respect of any of the above;

1.1.2 "Legal Reservations" means:

- (a) the principle that equitable remedies may be granted or refused at the discretion of a court and the limitation of enforcement by laws relating to insolvency, reorganisation and other laws generally affecting the rights of creditors;
- (b) the time barring of claims under any applicable law and defences of set-off or counterclaim; and
- (c) similar principles, rights and defences under the laws of any relevant jurisdiction



- 1.1.3 references to Clauses are, unless otherwise stated, to clauses of this Guarantee;
- 1.1.4 references to "Charterer", "Guarantor" and/or "Beneficiary" shall include their respective transferees, successors and permitted assigns whether immediate or derivative;
- 1.1.5 the headings to Clauses are for convenience only and have no legal effect;
- 1.1.6 references herein to any agreement or document shall be construed as referring to such agreement or document as the same may have been, or may from time to time be, varied, amended, supplemented, substituted, novated or assigned;
- 1.1.7 the expression "person" shall be construed to include reference to any person, firm, company, partnership, corporation or unincorporated body of persons or any state or government or any agency thereof;
- 1.1.8 unless the context otherwise requires, words denoting the singular number only shall include the plural and vice versa; and
- 1.1.9 where any action or decision is subject to the consent or opinion of the Beneficiary, it shall not be unreasonable for the Beneficiary to withhold its consent or deliver an opinion to the extent any financiers of the Beneficiary are entitled to (a) withhold, and have withheld, their consent to such action or decision, or (b) direct an opinion in connection with such action or decision.

1.2 The parties to this Guarantee intend it to be a deed.

**2. Guarantee and Indemnity**

2.1 The Guarantor irrevocably and unconditionally:

- 2.1.1 guarantees to the Beneficiary the prompt performance or discharge by the Charterer of the Charterer's Obligations;
- 2.1.2 undertakes with the Beneficiary that whenever the Charterer does not pay any amount or perform or discharge any obligation in respect of the Charterer's Obligations when due, it shall within five business days of demand by the Beneficiary pay that amount or perform or discharge such obligation as if it, instead of the Charterer, were expressed to be the principal obligor; and
- 2.1.3 as principal obligor, agrees to indemnify the Beneficiary within five business days of demand against any cost, loss or liability suffered by it if any obligation guaranteed by the Guarantor is or becomes unenforceable, invalid or illegal.

2.2 The Guarantor's liability under Clause 2.1 shall be no greater than the liability of the Charterer under or pursuant to the Charter Contract or what would have been the liability of the Charterer under or pursuant to the Charter Contract were it not for the unenforceability, invalidity or illegality of the Charter Contract.

**3. Continuing Guarantee**

3.1 This Guarantee is a continuing guarantee and shall remain in operation and in full force and effect (notwithstanding any intermediate satisfaction of the obligations and liabilities guaranteed hereunder by the Charterer, the Alternative Payer, the Guarantor or any other person) until the earlier of:

- 3.1.1 the date of termination pursuant to Clause 16; or



- 3.1.2 the date upon which all obligations (whether actual or contingent), warranties, duties, indemnities and undertakings now or hereafter to be carried out or performed by the Charterer under the Charter Contract and all the obligations (whether actual or contingent) of the Guarantor under this Guarantee have been satisfied or performed in full, which shall extend to the ultimate balance of all sums payable by the Charterer in respect of the Charterer's Obligations, regardless of any intermediate payment or discharge in whole or in part.

#### 4. Reinstatement

- 4.1 Where any discharge (whether in respect of the Charterer's Obligations or any security for such obligations or otherwise) is avoided or reduced as a result of insolvency, liquidation or otherwise without limitation:

4.1.1 the liability of the Guarantor under this Guarantee shall continue as if such discharge had not occurred, to the extent of such avoidance or reduction; and

4.1.2 the Beneficiary shall be entitled to recover the value or amount of that security or payment from the Guarantor as if such discharge had not occurred, to the extent of such avoidance or reduction.

- 4.2 The Beneficiary may concede or compromise any claim that any payment, security or other disposition is liable to avoidance or restoration.

#### 5. Waiver of Defences

- 5.1 Subject to Clause 16, the obligations of the Guarantor under this Guarantee will not be affected by any act, omission, matter or thing (whether or not known to it or to the Beneficiary) which, but for this provision, would reduce, release or prejudice any of its obligations under this Guarantee or prejudice or diminish those obligations in whole or in part, including without limitation:

5.1.1 any time or waiver or consent granted to, or composition with, the Charterer or any other person;

5.1.2 the release of the Charterer or any Alternative Payer or any other person under the terms of any composition or arrangements with any creditor of the Charterer, any Alternative Payer or such other person;

5.1.3 any delay or forbearance (whether or not negligent) by the Beneficiary in exercising its rights or remedies under this Guarantee;

5.1.4 the taking, variation, compromise, exchange, renewal or release of, loss of, or refusal or neglect to perfect, take up or enforce, (whether or not negligent) any rights against, or security over assets of, the Charterer or any other person or any non-presentation or non-observance of any formality or other requirement in respect of any instrument or any failure to realise the full value of any security;

5.1.5 any incapacity or lack of powers, authority or legal personality of, or dissolution or change in the members or status of, the Charterer or any other person;

5.1.6 any amendment, novation, supplement, extension, restatement or variation (however fundamental and whether or not more onerous) or replacement of the Charter Contract or any other document or security;

5.1.7 any unenforceability, illegality or invalidity of any obligation of any person under the Charter Contract or any other document or security, to the intent that the Guarantor's obligations under this Guarantee shall remain in full force and its guarantee be



construed accordingly, as if there were no such unenforceability, illegality or invalidity; or

5.1.8 any insolvency, liquidation or dissolution proceedings or any postponement, discharge, non-provability or similar circumstance resulting from any applicable law, regulation or order,

so that the Guarantor's obligations under this Guarantee shall be construed as if there were no such circumstance.

**6. Immediate Recourse**

**6.1 The Guarantor:**

6.1.1 gives the guarantee contained in this Guarantee as principal and independent obligor and not merely as a surety;

6.1.2 waives any right it may have of first requiring the Beneficiary to proceed against, or enforce any other rights or security or claim payment from, any person before claiming from the Guarantor under this Guarantee; and

6.1.3 irrevocably, absolutely and unconditionally, expressly waives the benefits set out in the sole paragraph of Article 333 and Articles 366, 821, 824, 827, 829, 834, 835, 837, 838 and 839 of the Brazilian Civil Code and Articles 77 and 595 of the Brazilian Code of Civil Procedure (to the extent that such benefits may be available to the Guarantor).

This waiver applies irrespective of any law or provision of the Charter Contract or any other document or security to the contrary.

**7. Appropriations**

7.1 Until all amounts which may be or become payable in respect of the Charterer's Obligations have been irrevocably paid in full, the Beneficiary may:

7.1.1 refrain from applying or enforcing any other moneys, security or rights held or received by the Beneficiary in respect of those amounts, or apply and enforce the same in such manner and order as it sees fit (whether against those amounts or otherwise) and the Guarantor shall not be entitled to the benefit of the same; and

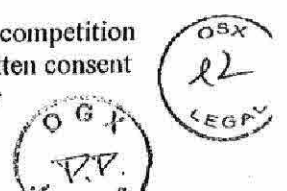
7.1.2 hold in a suspense account any moneys received from the Charterer on account of the Charterer's Obligations or on account of the Guarantor's liability under this Guarantee.

**8. Non-Competition**

8.1 Until all amounts which may be or become payable and all liabilities, obligations, warranties, duties and undertakings in respect of the Charterer's Obligations have been irrevocably paid, performed or discharged in full, the Guarantor shall not exercise any rights which it may have by reason of performance by it of its obligations under this Guarantee:

8.1.1 to be subrogated to any rights, security or moneys held, received or receivable by the Beneficiary or be entitled to any right of contribution or indemnity in respect of any payment made or moneys received on account of the Guarantor's liability under this Guarantee;

8.1.2 to claim, rank, prove or vote as a creditor of the Charterer or its estate in competition with the Beneficiary unless the Beneficiary so directs (with the prior written consent of any financiers of the Beneficiary, if required) in which case it shall; or



8.1.3 to receive, claim or have the benefit of any payment, distribution or security from or on account of the Charterer, or exercise any right of set-off as against the Charterer unless the Beneficiary (with the prior written consent of any financiers of the Beneficiary, if required) so directs in which case it shall.

8.2 If the Guarantor receives any benefit, payment or distribution in relation to such rights, it shall hold in trust for, and promptly pay an equal amount to, the Beneficiary.

## 9. Additional Security

This Guarantee is in addition to and is not in any way prejudiced by any other security now or subsequently held by the Beneficiary.

## 10. Representations and Warranties

The Guarantor represents and warrants to the Beneficiary as follows.

10.1 **Status.** The Guarantor is duly incorporated and validly existing under the laws of the Brazil.

10.2 **Corporate power.** The Guarantor has the corporate capacity, and has taken all corporate action and obtained all consents necessary for it:

- (a) to execute this Guarantee; and
- (b) to make all the payments contemplated by, and to comply with, this Guarantee.

10.3 **Consents in force.** All the consents referred to in Clause 11.2 remain in force and nothing has occurred which makes any of them liable to revocation.

10.4 **Legal validity.** Subject to any applicable Legal Reservations, this Guarantee constitutes the Guarantor's legal, valid and binding obligations enforceable against the Guarantor in accordance with their respective terms and subject to any relevant insolvency laws affecting creditors' rights generally.

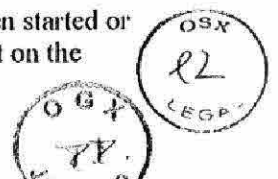
10.5 **No conflicts.** The execution by the Guarantor of this Guarantee and its compliance with this Guarantee will not involve or lead to a contravention of:

- (a) any law or regulation applicable to the Guarantor in the jurisdiction of its incorporation; or
- (b) the constitutional documents of the Guarantor; or
- (c) any agreement or other instrument binding upon the Guarantor or its assets which would constitute a default or termination event (howsoever described) under any such agreement or instrument.

10.6 **No default.** To the knowledge of the Guarantor, no Termination Event (as defined in the Charter Contract) has occurred and is continuing.

10.7 **Information.** All information which has been provided in writing by or on behalf of the Guarantor to the Beneficiary in connection with this Guarantee satisfies the requirements of Clause 11.1; and there has been no material adverse change in the financial position or state of affairs of the Guarantor from that disclosed in the latest of those accounts.

10.8 **No litigation.** No legal or administrative action involving the Guarantor has been started or threatened, which could reasonably be expected to have a material adverse effect on the



financial condition of the Guarantor or its ability to perform its obligations under, or otherwise comply with the terms of, this Guarantee.

- 10.9 **Commercial benefit.** This Guarantee is entered into for the Guarantor's commercial benefit and for a commercial purpose.
- 10.10 **Absence of Immunity.** The Guarantor is subject to civil and commercial law with respect to its obligations under this Guarantee, and the making and performance by it of its obligations under this Guarantee constitute private and commercial acts rather than public or governmental acts. The Guarantor is not entitled to immunity on the grounds of sovereignty or otherwise from the jurisdiction of any court or from any action, suit, set-off or proceeding, or service of process in connection therewith, arising under this Guarantee.

## 11. Undertakings

The Guarantor undertakes with the Beneficiary to comply with the following provisions of this Clause 11.

- 11.1 **Information provided to be accurate.** All financial and other information which is provided in writing by or on behalf of the Guarantor under or in connection with this Guarantee will be true and not misleading and will not omit any material fact or consideration.
- 11.2 **Consents.** The Guarantor will maintain in force and promptly obtain or renew, and will promptly send certified copies to the Beneficiary of, all consents required:

- (a) for the Guarantor to perform its obligations under this Guarantee;
- (b) for the validity or enforceability of this Guarantee,

and the Guarantor will comply with the terms of all such consents.

- 11.3 **Notification of litigation.** The Guarantor will provide the Beneficiary with details of litigation, arbitration or administrative proceedings which are current or pending against the Guarantor, and which, if adversely determined, might have a material adverse effect on the financial condition of the Guarantor or its ability to perform its obligations under, or otherwise comply with the terms of, this Guarantee.
- 11.4 **Notification of default.** The Guarantor will immediately notify the Beneficiary as soon as the Guarantor becomes aware of:
- (a) the occurrence of a Termination Event; or
  - (b) any occurrence which might adversely affect its ability to perform its obligations under this Guarantee.
- 11.5 **Maintenance of status.** The Guarantor will maintain its separate corporate existence and remain in good standing under the laws of Brazil.
- 11.6 **Registration.** The Guarantor shall as soon as reasonably practicable and in any event within twenty (20) days from the date on which it receives an original copy of this Guarantee executed by the Beneficiary (with the Beneficiary's signature notarized and consularized as set out below), file or cause to be filed a sworn translation of this Guarantee with the competent Registry of Titles and Deeds in Brazil. For the purposes of this Clause 11.6, the Beneficiary shall procure that (i) the signatures of each person signing this Guarantee on behalf of the Beneficiary be notarized by a notary public qualified as such under the laws of the place of signing and (ii) the signature of such notary public be authenticated by a Brazilian consular officer at a competent Brazilian consulate.



## 11.7 Corporate Structure.

11.7.1 The Guarantor shall not, without the prior written consent of the Owner, such consent not to be unreasonably withheld or delayed:

- (a) transfer, lease or otherwise dispose of all or the majority of its assets, whether by one transaction or a number of transactions, whether related or not;
- (b) the Guarantor shall remain the direct or indirect legal holder and beneficial owner of more than fifty per cent. (50%) of the issued and allotted share capital of the Charterer; and
- (c) enter into any amalgamation, demerger, merger, consolidation or corporate reconstruction.

11.7.2 Clause 11.7.1 does not apply to a transaction under an intra-Group reorganisation on a solvent basis and not involving any third party provided that: (i) in the reasonable opinion of the Beneficiary, such reorganisation does not adversely affect the enforceability of this Guarantee, the Charter Contract or any assignment of the Charter Contract by way of security; and (ii) no Owner Termination Event or Potential Termination Event (as described in the Charter Contract) is continuing or would occur as a result of such reorganisation.

11.7.3 The Guarantor shall give reasonable prior notice to the Beneficiary of any proposed intra-Group reorganisation in respect of the Guarantor or any of its Subsidiaries and which it is not prohibited from disclosing by any applicable law or regulation.

11.7.4 For the purposes of this Clause, "intra-Group reorganisation" shall mean any amalgamation, demerger, merger, consolidation or corporate restructuring within the Charterer Group, and "Charterer Group" shall mean the Guarantor and any Subsidiary of the Guarantor.

## 12. Assignment

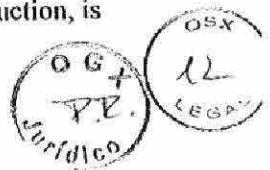
The Beneficiary may assign, charge or transfer any of its rights under this Guarantee without the consent of the Guarantor.

## 13. Payments

13.1 Any amount due under this Guarantee shall be paid:

- 13.1.1 in immediately available funds;
- 13.1.2 to such account as the Beneficiary may from time to time notify to the Guarantor;
- 13.1.3 without any form of set-off, cross-claim or condition; and
- 13.1.4 free and clear of any tax deduction except a tax deduction which the Guarantor is required by law to make.

13.2 If the Guarantor is required by law to make a tax deduction, the amount due to the Beneficiary shall be increased by the amount necessary to ensure that the Beneficiary and (if the payment is not due to the Beneficiary for its own account) the party (including any assignee) beneficially interested in the payment receives and retains a net amount which, after the tax deduction, is equal to the full amount that it would otherwise have received



**14. Interest**

14.1 It is confirmed that this Guarantee covers all interest payable under and in accordance with the Charter Contract.

**15. Judgements and currency indemnity**

15.1 This Guarantee shall cover any amount payable by the Charterer under or in connection with any judgement relating to the Charter Contract. Any judgement or order of a court in England, Brazil or the Netherlands in connection with the Charter Contract and any statement of admission of the Charterer in connection with the Charter Contract shall be binding and conclusive as to all matters of fact and law to which it relates.

15.2 Clause 23 (Currency Indemnity) of the Charter Contract shall apply, with any necessary adaptations, in relation to this Guarantee.

**16. Termination**

16.1 This Guarantee shall continue in full force and effect, subject to Clause 3.1.2, until such time as the Vessel has reached twenty percent (20%) of its nominal production capacity and all of the following conditions are met by the Charterer:

- 16.1.1 minimum annual revenue of one billion Dollars (US\$1,000,000,000);
- 16.1.2 minimum annual EBITDA of five hundred million Dollars (US\$500,000,000);
- 16.1.3 maximum Debt / EBITDA ratio of 2.5:1;
- 16.1.4 minimum Net Worth / Total Liability ratio of 30/70.

16.2 The financial conditions set out in Clause 16.1 shall be calculated in accordance with generally accepted accounting practices in Brazil and tested on a semi-annual basis by reference to the most recent audited quarter financial statements of the Charterer.

16.3 Upon satisfaction of the conditions set out in Clause 16.1, the Charterer shall provide the Beneficiary with notice thereof, together with a copy of its audited quarter financial statements demonstrating the satisfaction of such conditions in the immediately preceding 12-month period, together with a compliance certificate in a form reasonably acceptable to the Beneficiary, which shall set out, in reasonable detail, the computations as to compliance with the conditions set out in Clause 16.1 and be signed by the finance director or chief financial officer of the Charterer or, in his or her absence, by two (2) directors, whereupon this Guarantee shall automatically terminate, without prejudice to Clause 16.4.

16.4 If required pursuant to the terms of the Charter Contract, the Guarantor agrees that it will enter into a replacement guarantee on the same terms as this Guarantee, notwithstanding the prior termination of this Guarantee. For the avoidance of doubt, this Clause 16.4 shall survive termination of this Guarantee for the duration of the Charter Contract.

**17. Notices**

Any notice to be given under this Guarantee shall be in writing and delivered by hand and/or sent by post (first class recorded delivery) or facsimile (in the case of facsimile to be confirmed in writing within twenty four (24) hours of being sent by such notice being delivered or sent by first class recorded delivery as aforesaid). The address for service of each party shall be as follows:

**Guarantor:**





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OGX PETRÓLEO E GÁS PARTICIPAÇÕES S.A.  
Praça Mahatma Gandhi, 14, part  
Centro, Rio de Janeiro, RJ  
Brasil, CEP - 20031-100

Attention: José Roberto Faveret  
Fax: +51 21 2555 5202

**Beneficiary:**

OSX 3 LEASING B.V.  
Haagsche Hof, Parkstraat 83, offices 209/210  
2514 JG, the Hague  
The Netherlands

Attention: Flavia Kaczelnik  
Fax: +31(0)70 353 8333

c.c. Luciano Porto  
Praça Mahatma Gandhi, 14 - 13º Andar  
Centro, Rio de Janeiro, RJ  
Brasil, CEP - 20031-100  
Fax: +55 21 2555 4079

**18. Miscellaneous**

- 18.1 The Beneficiary is entitled to make any number of demands under this Guarantee.
- 18.2 The invalidity, illegality or unenforceability in whole or in part of any of the provisions of this Guarantee shall not affect the validity, legality and enforceability of the remaining part or provisions of this Guarantee.
- 18.3 The Beneficiary's rights under and in connection with this Guarantee are cumulative, may be exercised as often as appears expedient and shall not be taken to limit any right or remedy conferred by law.
- 18.4 If any provision of this Guarantee is or subsequently becomes void, illegal, unenforceable or otherwise invalid, that shall not affect the validity or enforceability of the other provisions of this Guarantee.
- 18.5 This Guarantee shall not impair, nor be impaired by, any other guarantee, security interest or right of set-off or netting or to combine accounts, which the Beneficiary or any assignee may hold in connection with the Charter Contract.
- 18.6 Nothing in this Guarantee is intended to confer on any person any right to enforce any provision of this Guarantee which that person would not have had but for the Contracts (Rights of Third Parties) Act 1999.

**19. Counterparts**

- 19.1 This Guarantee may be executed in any number of counterparts each of which shall be an original and all of such counterparts taken together shall be deemed to constitute one and the same instrument.

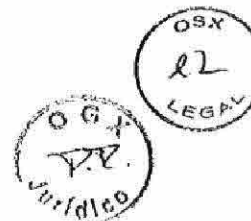
**20. Governing Law and Arbitration**

- 20.1 This Guarantee and any non-contractual obligations connected with it are governed by and shall be construed in accordance with English law.

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LEASING B.V.

- 20.2 Any dispute, difference or disagreement arising under, out of or in connection with this Guarantee, including any question regarding its existence, validity or termination and any non contractual obligations arising out of this Guarantee shall be finally settled by arbitration in accordance with the rules of the London Court of International Arbitration (LCIA) as at present in force. There shall be three (3) arbitrators. Each party shall appoint an arbitrator and the two so appointed shall jointly appoint a third arbitrator. In the event that a party fails to appoint an arbitrator within fourteen (14) days of a request to do so, the party referring the dispute to arbitration may, without the requirement of any further prior notice to the other party, appoint its arbitrator as sole arbitrator and advise the other party accordingly. The award of a sole arbitrator shall be final and binding on both parties as if he had been appointed by agreement. The seat and place of arbitration shall be London, England, provided that the arbitral award shall be rendered in Rio de Janeiro, Brazil. The English language shall be used throughout the arbitral proceedings.
- 20.3 The parties to this Guarantee hereby waive any rights under the Arbitration Act 1996 or otherwise to appeal any arbitration award to, or to seek determination of a preliminary point of law by, the courts of England.
- 20.4 If arbitral proceedings are commenced under this Guarantee and any other Transaction Document(s) (as such term is defined in the Charter Contract), and any party to such proceedings contends that the proceedings are substantially related or involve the same parties and that the issues should be heard in one arbitration, the tribunal first appointed under any Transaction Document (the "Tribunal") shall have the power to determine whether, in the interests of justice, consistency and efficiency, the whole or part of the matters at issue should be consolidated before the Tribunal upon such terms as the Tribunal thinks fit. The Parties expressly accept that any dispute under this Guarantee may accordingly be disposed of in the same arbitration proceedings as any dispute arising under any other Transaction Document, even in the presence of parties other than the parties to this Guarantee and even where the parties in each of the arbitrations differ. If any or all members of the Tribunal shall be unable or unwilling to act, the replacement member(s) of the Tribunal shall be directly appointed by the Party that originally appointed such member (if any) or, if such member was appointed by the other arbitrators, by such arbitrators.

**IN WITNESS** whereof this Guarantee has been executed as a deed and delivered by the Guarantor and the Beneficiary the day and year first before written.



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**GUARANTOR**

EXECUTED AS A DEED by )  
OGX PETRÓLEO E GÁS PARTICIPAÇÕES S.A. )  
on being signed by a duly authorised signatory )  
acting with the authority of the Guarantor )

.....  
(Authorised Signatory)

**BENEFICIARY**

EXECUTED AS A DEED by )  
OSX 3 LEASING B.V. )  
on being signed by a duly authorised signatory )  
acting with the authority of the Beneficiary )

.....  
(Authorised Signatory)

**WITNESS**

Name:

Address:

**WITNESS**

Name:

Address:



**SCHEDULE 4**

03387

**BOND FINANCING TERM SHEET**





ISIN: [●]

**OSX 3 Leasing B.V. Senior Secured Bond Issue 2012/2015**  
(“the Bonds” / the “Bond Issue”)

**Settlement date: [●] 2012**

- Issuer:** OSX 3 Leasing B.V., (registration no. 34366118), incorporated in the Netherlands.
- Guarantors:** Means the following Group Companies:
- OSX Brasil S/A, (registration no. 09.112.685/0001-32), incorporated in Brazil and being the 100% indirect owner of the Issuer (the “Ultimate Parent”);
  - OSX 3 Holding B.V. (registration no. [●]), incorporated in the Netherlands and being the direct 100% direct owner of the Issuer (the “Issuer Parent”); and
  - OSX Leasing Group B.V., (registration no. [●]), incorporated in the Netherlands (“OSX Leasing”).
- Group:** The Ultimate Parent with all its subsidiaries from time to time (each a “Group Company”).
- Currency:** USD
- Loan Amount:** USD [400-500] million.
- Coupon Rate:**
- From and including the Settlement Date, the coupon rate shall be [●] % p.a., semi-annual interest payments; and
  - From and including the Interest Payment Day falling 12 months after Settlement Date to and (including) the Final Maturity Date, the coupon shall be increased by [●] % p.a. to [●] % p.a., semi-annual interest payments.
- Settlement Date:** [●] 2012.
- Notice to be given to subscribers a minimum of two banking days prior to the Settlement Date (on which date the net proceeds of the Bond Issue shall be credited to the Escrow Account (as defined below)).
- Final Maturity Date:** [●] 2015 (3 years after Settlement Date).
- Amortization:** The Bonds shall be repaid at Final Maturity Date at 100% of par value (plus accrued interest on redeemed amount).
- First Interest Payment Day:** [●] 2012 (6 months after Settlement Date).
- Last Interest Payment Day:** Final Maturity Date.
- Interest Payments:** Interest on the Bonds will accrue from (and including) the Settlement Date and





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- shall be payable semi-annually in arrears on the Interest Payment Day in [●] and [●] each year, or if not a banking day in Norway and New York on the first subsequent banking day. Daycount fraction is 30/360 unadjusted.
- Price: [●] % of par value.
- Yield: [●] % p.a.
- Nominal value: The Bonds will have a nominal value of USD 1. The minimum subscription and allotment amount shall be USD 100,000, and integral multiples of USD 100,000 thereof.
- Status of the Bonds: The Bonds shall be senior debt of the Issuer and secured initially by way of an assignment of the EPCI Contract on a first priority basis and certain other assets of the Issuer as set out herein, and otherwise rank at least *pari passu* with the claims of its other creditors, except for obligations which are mandatorily preferred by law.
- Call options (American): The Issuer may redeem the Bonds (all or nothing, subject to the DSRA cash sweep partial redemption) at any time from and including:
- (i) the date falling 1 year after Settlement Date to, but not including, the date falling 2 years after Settlement Date at a price equal to [●] % of par value (plus accrued interest on redeemed amount); and
  - (ii) the date falling 2 years after Settlement Date to, but not including, the Final Maturity Date at a price equal to [●] % of par value (plus accrued interest on redeemed amount).
- Purpose of the Bond Issue: The net proceeds from the Bond Issue (net of legal costs, fees of the managers and the Trustee and any other agreed costs and expenses) shall exclusively be employed (i) to partly finance the remaining payments under the EPCI Contract, (ii) in respect of other costs directly related to the construction and delivery of the FPSO (including preparation costs as budgeted for in the Private Placement Memorandum) and (iii) in respect of the first two coupon payments as further described in the Private Placement Memorandum. The employment of the net proceeds from the Bonds shall be evidenced to the satisfaction of the Trustee.
- FPSO: Means the FPSO OSX-3 (based on a VLCC owned by Modec or any of its affiliates (IMO No 8715027)) which is under construction at Jurong Shipyard in Singapore (the "Yard") under the EPCI Contract. The FPSO is currently scheduled for delivery on the Delivery Date, and it shall include all equipment that is or becomes the property of the Issuer in order for the FPSO to be accepted under the OGX Charter Contract. The FPSO shall be registered in Liberia or such other registry reasonably satisfactory to the Trustee.
- Delivery Date: The date the FPSO has arrived at the designated location, installed, commissioned and accepted by the Issuer as ready to receive hydrocarbons under the EPCI Contract, such date currently scheduled for [25 September] 2013.
- EPCI Contract: The contract for the Engineering, Procurement, Construction, Installation & Commissioning of the FPSO entered into between (i) the Issuer and (ii) Modec Inc. (the "Contractor") dated 15 July 2011 (as amended from time to time).
- Security: All amounts outstanding under the Finance Documents to the Trustee and the



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bondholders, including but not limited to interest and expenses, shall be secured by:

Pre-Settlement Security:

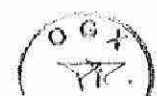
- (i) a pledge over the Escrow Account (as defined below) (according to Norwegian law) (the "Escrow Account Pledge");

Pre-Disbursement:

*From the Issuer:*

- (ii) a mortgage over the FPSO including all relevant equipment being legally part of the FPSO under Liberian law (the "Mortgage");
- (iii) an assignment of the rights of the Issuer under any OGX Charter Contract (including step-in rights), and the Issuer shall give notice and obtain consent and acknowledgement of such assignment from the Charterer ("OGX Charter Contract Assignment");
- (iv) an assignment of the Insurances (other than any third party liability insurances), (the "Assignment of Insurances");
- (v) an assignment of the Issuer's rights under the Charterer Parent Guarantee;
- (vi) a pledge over the Issuer's claim against the bank for the amount from time to time standing to the credit of the Issuer in the Earnings Account (as defined below) (the "Earnings Account Pledge");
- (vii) a pledge over the Issuer's claim against the bank for the amount from time to time standing to the credit of the Issuer in the DSRA (as defined below) (the "DSRA Pledge");
- (viii) a pledge over the Issuer's claim against the bank for the amount from time to time standing to the credit of the Issuer in the Operating Account(s) (as defined below) (the "Operating Account Pledge");
- (ix) a pledge over the Issuer's claim against the bank for the amount from time to time standing to the credit of the Issuer in the Retention Account (as defined below) (the "Retention Account Pledge");
- (x) an assignment of the EPCI Contract (including a direct agreement (step-in rights) with the Contractor to include, *inter alia*, the Contractor's consent to the security interest in respect of the EPCI Contract, and additional cure periods), all warranty rights and guarantees (including but not limited to the refund guarantee provided as security for the Issuer's claim for repayment of pre-delivery payments under the EPCI Contract (the "EPCI Contract Assignment")) and the Issuer shall give notices and obtain consent and acknowledgements of such assignment from the Contractor and the refund guarantor.];
- (xi) an English law floating charge (subject to mandatory laws of the Netherlands and any other applicable laws) over all the assets of the Issuer (the "Floating Charge");

*From the Issuer Parent:*



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- (xii) a pledge granted by the Issuer Parent over all of the shares (100%) in the Issuer (the "Share Pledge"), together with, inter alia, letters of resignation (effective upon an Event of Default) from current board members and covenants to obtain such from future board members;
- (xiii) an assignment by way of security from the Issuer Parent of all present and future intra-group receivables from the Issuer, including a right for the Trustee to release those receivables on enforcement (the "Assignment of Receivables").

*From the Guarantors:*

- (xiv) an unconditional and irrevocable on-demand financial guarantee issued by each of the Guarantors (payment by the Ultimate Parent to be made within [14 banking days] of any demand) (the "Guarantees");

The Pre-Settlement Security shall be established no later than at the Settlement Date. The Pre-Disbursement Security shall be established prior to the first release from the Escrow Account as described below under Conditions Precedent Pre-Disbursement.

The Security in (i) - (xiv) to be referred to herein as the Security Documents.

Ranking:

The Security shall, subject to applicable law only, rank on a first priority basis.

## Quiet Enjoyment Letter

The Trustee shall issue a quiet enjoyment letter if so required by the Charterer containing the covenant set out below.

"The Trustee may not interrupt the quiet use, possession and enjoyment of the FPSO by the Charterer, so long as no [Owner Termination Event] (as such term is defined in the Charter Contract) is continuing and except as required by any applicable law binding on the Trustee. The exercise by the Trustee of its rights under this Term Sheet or any Finance Document will not constitute such an interruption."

## Application of Earnings:

All earnings under the OGX Charter Contract shall be paid into the Earnings Account, and the following transfers and payments shall be made on a monthly basis within five banking days after receipt of such earnings ("Transfer Date"):

- (i) firstly, the Issuer shall transfer from the Earnings Account to the Retention Account an amount equal to 1/6 of the next interest payment;
- (ii) secondly, the Issuer shall transfer from the Earnings Account to an Operating Account (a) its budgeted operating, general and administrative expenses for the next month from the relevant Transfer Date; (b) any shortfall from the previous month's transfer; (c) one month's estimated insurance cost (by way of calculating the periodical portion of the next insurance cash cost) and (d) an additional amount necessary to fill up the account with a buffer ("Operating Account Buffer") of USDm 1 at any time; and;
- (iii) finally, the Issuer shall transfer all remaining funds on the Earnings Account to the DSRA.



Application of Proceeds following an Event of Default: Proceeds following an Event of Default shall be applied in the following order of priority:

- (i) firstly; in respect of all costs and expenses whatsoever incurred by the Trustee, and the Issuer will indemnify the Trustee for all costs and expenses in any event;
- (ii) secondly; in or towards payment of all sums outstanding pursuant to the Finance Documents; and
- (iii) finally; the balance, if any, shall be paid to the Issuer.

Accounts: The Issuer shall maintain each of the following accounts with Citibank International Plc acting through its Netherlands branch, or any such account with any other international bank (with minimum "A" credit rating from S&P, Moody's or Fitch or, in each case, an affiliate thereof) ("**Account Bank**"), except in the case of the Escrow Account which shall be maintained with [●]:

- (i) the Escrow Account (in connection with the Settlement of the Bonds);
- (ii) the Earnings Account;
- (iii) any Operating Account;
- (iv) the Retention Account; and
- (v) the DSRA.

Escrow Account: The Issuer shall prior to issue of the Bonds establish an Escrow Account in USD and the net proceeds from the Bond Issue shall be transferred to the Escrow Account in connection with the issuance of the Bonds. The Escrow Account shall be pledged in favor of the Trustee and blocked. The amount on the Escrow Account shall only be used and the Issuer shall be entitled to withdraw amounts for use only according to the Purpose of the Bond Issue.

Before the first release from the Escrow Account takes place, all the Pre-Disbursement Conditions Precedent (as described below) shall be complied with, or otherwise waived by the Trustee.

Earnings Account: The Issuer shall procure that all earnings of the Issuer and all net earnings relating to the FPSO owing to it shall be paid directly from the relevant contracting party to the Earnings Account of the Issuer. The Earnings Account shall be pledged in favor of the Trustee, but not blocked (unless there is an outstanding default).

Retention Account: The Issuer shall deposit an amount from the first release from the Escrow Account equal to 12 months interest on the Bonds in a retention account. Such amount shall be used to pay the first two coupon payments under the Bond Issue. The Issuer shall, on every Transfer Date commencing 12 months after the Settlement Date (regardless of whether or not the OGX Charter Contract has started to run) transfer from the Escrow Account, or as the case may be, the Earnings Account or the Operating Account an amount equal to 1/6 of the next interest payment under the Bond Issue to the Retention Account. The Retention Account shall be pledged in favor of the Trustee and blocked save for coupon payments to be paid in accordance with the terms of the Bonds.



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Debt Service  
Reserve Account  
("DSRA"):

All cash deposited on the debt service reserve account in accordance with Application of Earnings (above) shall be used to repay the Bonds at par value. Such redemption shall take place on each Interest Payment Day after the date (if and when) the credit balance on the debt service reserve account has reached an amount equal to USD 30 million ("Cash Sweep Amount"), and in each case for the full amount on the debt service account on such date shall be used to repay Bonds. However, the first redemption may not take place prior to the Interest Payment Day 2 years after the Settlement Date. The DSRA shall be pledged in favor of the Trustee and blocked, save for payments of principal as permitted above.

Operating Account  
(s):

The budgeted expenses of the Issuer shall be transferred from the Earnings Account to the Operating Account in accordance with the Application of Earnings (above). The Issuer may open several operating accounts (each deemed to be an "Operating Account"), provided that each such operating account is pledged in favor of the Trustee.

In addition, any cash equity granted to the Issuer or proceeds of Group Loans received shall be transferred into any Operating Account. Such proceeds on such Operating Account may be used to fund the construction of the FPSO under the EPCI contract or other project costs and expenses related to the FPSO.

The Operating Accounts shall be pledged in favor of the Trustee but not blocked (unless there is an outstanding Event of Default), and amounts standing to the credit of the Issuer in the Operating Accounts may be utilized by the Issuer for the purposes referred to above and for mobilization costs and other working capital matters.

If the Issuer has no revenues transferred to the Earnings Account during a certain period of time, the Issuer may use the amounts on the Operating Accounts to service the monthly transfers to the Retention Account.

Conditions  
Precedent:

Pre-Settlement:

Disbursement of the net proceeds from the Bond Issue to the Escrow Account will be subject to certain conditions precedent customary for these types of transactions, including but not limited to:

- a) the Bond Agreement duly executed;
- b) an agreement between the Trustee and the Issuer related to expenses and fees duly executed;
- c) corporate documents, necessary corporate resolutions and any necessary governmental approvals, consent or waivers (as the case may be) required at such time to issue the Bonds and the Escrow Account Pledge;
- d) audited financial statements/reports for 3Q 2011 (YTD) and 2010 (annual) for the Issuer and the Guarantors (on an unconsolidated basis and, in the case of the Guarantors a consolidated basis at the level of the Ultimate Parent);
- e) any statements or legal opinions reasonably required by the Trustee;
- f) satisfactory documentation evidencing that the OGX Charter Contract is agreed and signed by both parties;





Issuer, including transcript from the relevant registry;

- u) all relevant Security (including, the Mortgage) (except the Escrow Account Pledge which is being delivered Pre-Settlement) being executed and perfected;
- v) all legal opinions reasonably requested by the Trustee have been received in form and substance satisfactory to the Trustee; and
- w) any other Finance Documents (unless delivered Pre-Settlement and to the extent applicable) are in acceptable form and are executed.

Disbursement:

Prior to each disbursement from the Escrow Account after the initial disbursement:

- x) relevant invoices or other supporting documentation evidencing that the amount to be released shall be applied in accordance with the Purpose of the Bond Issue;
- y) no (potential) Event of Default has occurred and is continuing.

The Trustee may waive or postpone the delivery of certain conditions precedent at its sole discretion.

Issuer's Positive Covenants:

The Issuer shall, *inter alia*:

- a) prepare unconsolidated annual audited and quarterly interim unaudited reports and make such reports available on the website of the Ultimate Parent or a website relating to the Issuer (in addition to sending them to the Trustee) as soon as they become available, and not later than 90 days after the end of the financial year and not later than 60 days after the end of the relevant interim period. Such reports shall be prepared in accordance with IFRS, and include a profit and loss account, balance sheet, cash flow statement and management commentary or report from the Board of Directors;
- b) up to and including the month the FPSO is delivered to the Issuer, provide to the Trustee monthly updates on the progression of the construction of the FPSO, in a reporting form and content reasonably satisfactory to the Trustee with any applicable commentaries from the Board of Directors, supported by an opinion by the Technical Advisor on the construction pursuant to the EPCI Contract and regarding compliance with the budget, schedule and technical specifications set out in the EPCI Contract and the Private Placement Memorandum;
- c) remain as a single-purpose company owning and bareboat chartering the FPSO;
- d) upon request with 30 days prior notice of the Trustee, allow the Technical Adviser to undertake during normal business hours a technical inspection of the FPSO without interference to the daily operation of the FPSO provided that such inspections shall be limited to once every year, for so long as no Event of Default is outstanding, in each case at the expense of the Issuer;
- e) do all acts which may be necessary to ensure that each Security Document remains duly created, enforceable and perfected first priority, at the



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- expense of the Issuer or the relevant security provider (as the case may be);
- f) enforce any rights that it has to ensure that the project is to the best of its knowledge at all times operated and maintained in accordance with the Project Documents;
  - g) on the Delivery Date, provide evidence of all insurances then relevant being taken out;
  - h) on the Delivery Date, provide a further Assignment of Insurances for any remaining, relevant Insurances;
  - i) on the Delivery Date, provide certified copies of customary delivery documents;
  - j) ensure that the transfer of title to the FPSO from the Contractor to the Issuer takes place when possible pursuant to the terms of the EPCI Contract; and
  - k) procure that any payments under any Management Agreement (if applicable) are subordinated to the obligations under the Finance Documents and shall procure that the Operator will covenant to the Trustee that, following an enforcement of the Mortgage, it will on demand hand over all manuals and technical records in respect of the FPSO to the Trustee.

The Trustee may and shall upon request distribute such above-mentioned reports referred to in (a) and (b) above to the bondholders and any other party requesting such report, provided that the Trustee is provided coverage by the bondholders for any costs incurred (unless covered by the Issuer).

**Issuer's Negative Covenants:**

The Issuer shall not without the approval of the Trustee or, where necessary, the bondholders' meeting:

- a) during the term of the Bonds, declare or make any dividend payment, repurchase of shares or make other capital distributions to its shareholders (included but not limited to total return swaps involving any shares issued by any party);
- b) amend its constitutional documents in such a way which would have a Material Adverse Effect, it being understood that any amendment relating to issuance of new shares to the Issuer Parent in connection with conversion of debt to equity or otherwise, provided that such shares are subject to the Share Pledge or are otherwise secured in favour of the Trustee will be permitted;
- c) cease to carry on its business or change the general nature of its business from that carried on at the date of this Term Sheet;
- a) sell or dispose of all or a substantial part of its assets (including but not limited to the FPSO) or operations in connection with a sale to a third party or an internal reorganization, unless the Bonds are redeemed in full in accordance with the Mandatory Prepayment provisions, provided always that any such sales or disposals shall be permitted:



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- (i) in order for the Issuer to keep the FPSO in good, safe and efficient state of repair;
  - (ii) in connection with any required modifications to the FPSO; and
  - (iii) where a material part of the FPSO is removed, provided that the part so removed is replaced promptly by a suitable part or item, which upon installation becomes the property of the Issuer and subject to a security interest in favour of the Trustee;
- d) enter into any de-merger, merger or other corporate restructuring;
- e) in respect of any Project Documents (i) transfer by way of assignment any of its rights and interests other than pursuant to the Finance Documents, (ii) amend, supplement, modify or give any consent under any Project Document or exercise any material option thereunder, except for (a) variation orders within the project budget (as set out in the Private Placement Memorandum), and/or (b) other amendments to the extent that, where applicable, such amendments are fully pre-funded by equity or Group Loans, and/or (c) amendments not having any material negative impact on the value of the FPSO as contemplated pursuant to the Project Documents, or (iii) agree to the cancellation or termination of any Project Document or take any legal or administrative action that seeks to rescind or terminate such Project Documents, except in the event that it constitutes a substitution of the said Project Document which is acceptable to the Trustee acting reasonably;
- f) agree to or permit the assignment of any rights under the Project Documents unless expressly permitted thereunder;
- g) incur or permit to remain outstanding any additional Financial Indebtedness (whether secured or unsecured) other than (i) any Financial Indebtedness arising under the Bond Issue, (ii) currency hedging entered into in the ordinary course of business and up to a total nominal amount of USD 50 million, (iv) after the Settlement Date unsecured Financial Indebtedness in an amount not to exceed USD 3 million and (v) any Group Loans. For the avoidance of doubt, (a) any indebtedness (other than Financial Indebtedness arising in the ordinary course of business for working capital purposes and as part of the daily operation of the Issuer (including the assumption of any indemnity or guarantee obligations relating to employment of the FPSO) shall be permitted and (b) any refinancing of the Bonds (all or nothing) where such Financial Indebtedness arises prior to the redemption of the Bonds for the express purpose of, inter alia, redeeming the Bonds shall be permitted;
- h) create or permit to subsist any security over any of its assets or enter into arrangements having a similar effect except for (i) any security contemplated by the Finance Documents, (ii) any lien or security arising by operation of law or in the ordinary course of business or operation of the FPSO (including collateral in connection with credit purchases of goods and services), (iii) any ship repairer's or outfitter's possessory lien in respect of the FPSO (iv) any lien on the FPSO for master's, officer's or crew's wages outstanding in the ordinary course of its trading which are not overdue (v) any lien on the FPSO for salvage and (vi) any contractor or subcontractor's possessory lien. For the avoidance of doubt security provided in connection with a refinancing of the Bonds (all or nothing) where security must be provided for technical reasons before the Bonds



have been redeemed shall be permitted;

- i) make any other financial or other arrangements concerning the FPSO and its employment other than provided for in the Finance Documents, which is likely to have a Material Adverse Effect on the Issuer's ability to fulfill its obligations under the Bond Agreement;
- j) grant any loans, guarantees or other financial assistance to any Group Company and/or any third party, except for guarantees issued for the benefit of third parties in the ordinary course of business (including guarantees relating to employment of the FPSO);
- k) make any investments or capital expenditures, other than (i) acquisitions of assets in the ordinary course of business relating to the construction and employment of the FPSO and which are contemplated by the project budget (as set out in the Private Placement Memorandum) and (ii) solely related to the ownership in and operation of the FPSO provided, in each case, that to the extent not contemplated by the project budget such investments or capital expenditures are fully pre-funded by equity or any Group Loans subordinated in accordance with the terms of the Subordination Deed; and
- l) engage directly or indirectly, in any transaction with any related party (without limitation, the purchase, sale or exchange of assets or the rendering of any service), except in the ordinary course of business and pursuant to the reasonable requirement of the Issuer's business and upon fair and reasonable terms that are not less favorable to the Issuer, as the case may be, than those which might be obtained in an arm's length transaction at the time.

The Bond Agreement shall include other standard covenants as customary in the Norwegian high-yield bond market.

Ultimate Parent  
Covenants:

The Ultimate Parent shall procure (such covenants to be included in the Guarantees):

- b) to deliver on its own accord the annual audited and quarterly interim unaudited reports of itself (on an unconsolidated basis) and the Group (on a consolidated basis), which in the case of the consolidated and unconsolidated accounts shall be made available on the Ultimate Parent's website (in addition to sending them to the Trustee) as soon they are available, and not later than 180 days after the end of the financial year and not later than 90 days after the end of the relevant interim period. Such reports shall be prepared in accordance with IFRS, and include a profit and loss account, balance sheet, cash flow statement and management commentary or report from the Board of Directors);
- c) not and procure that no member of the Group shall enforce and/or accelerate any monetary claim against the Issuer without prior written consent of the Trustee and ensure that any monetary claims are subordinated to the bondholders' claim in an insolvency, and subject to the Subordination Deed;
- d) not and procure that no member of the Group will demand any dividend payments or other distributions from the Issuer;



- e) to maintain 100% direct or indirect control of the Issuer;
- f) to exercise management control to ensure that prior to the Delivery Date the Issuer will arrange and maintain adequate supervision and control in respect of the completion of the FPSO under the EPCI Contract;
- g) that the Issuer does not sell or dispose of all or a substantial part of its assets (including but not limited to the FPSO) or operations in connection with a sale to a third party or an internal reorganization, unless the Bonds are redeemed in full in accordance with the Mandatory Prepayment provisions, provided always that any such sales or disposals shall be permitted:
  - (i) in order for the Issuer to keep the FPSO in good, safe and efficient state of repair;
  - (ii) in connection with any required modifications to the FPSO; and
  - (iii) where a material part of the FPSO is removed, provided that the part so removed is replaced promptly by a suitable part or item, which upon installation becomes the property of the Issuer and subject to a security interest in favour of the Trustee;
- h) that the Issuer Parent and the Issuer does not de-merge, merge or in any other way restructure its business; and
- i) (to the extent applicable) to perform and observe all of its covenants and agreements contained in any of the Project Documents to which it is or becomes a party, shall take all necessary action to prevent the termination of any such Project Documents in accordance with the terms thereof or otherwise, and shall take any and all action as may be reasonably necessary promptly to enforce its rights and to collect any and all sums due to it under the Project Documents.

The Trustee may and shall upon request distribute such above-mentioned reports referred to in (a) above to the bondholders and any other party requesting such report, provided that the Trustee is provided coverage by the bondholders for any costs incurred (unless covered by the Issuer).

Issuer Parent  
Covenants:

The Issuer Parent shall procure (such covenants to be included in the Guarantees):

- a) not to enforce and/or accelerate any monetary claim against the Issuer without prior written consent of the Trustee and ensure that any monetary claims are subordinated to the bondholders' claim in an insolvency, subject to the Subordination Deed;
- b) not demand any dividend payments or other distributions from the Issuer;
- c) to maintain the Issuer as owner of the FPSO, all owner furnished equipment and other equipment related to the FPSO and required pursuant to the OGX Charter Contract to be owned by the Issuer;
- d) to maintain itself as a special purpose company with no other purpose or activity other than owning the shares of the Issuer;
- e) to maintain 100% direct ownership and voting rights of the Issuer;





- j) that the Issuer does not sell or dispose of all or a substantial part of its assets (including but not limited to the FPSO) or operations in connection with the sale to a third party or an internal reorganization, unless the Bonds are redeemed in full in accordance with the Mandatory Prepayment provisions, provided always that any such sales or disposals shall be permitted:
  - (i) in order for the Issuer to keep the FPSO in good, safe and efficient state of repair;
  - (ii) in connection with any required modifications to the FPSO; and
  - (iii) where a material part of the FPSO is removed, provided that the part so removed is replaced promptly by a suitable part or item, which upon installation becomes the property of the Issuer and subject to a security interest in favour of the Trustee; and
- f) that it and the Issuer does not de-merge, merge or in any other way restructure its business;
- g) that it does not encumber any of its assets, incur any Financial Indebtedness or provide any loans or guarantees other than (i) Group Loans, (ii) the Guarantee, and (iii) security provided to the Trustee as security for the Finance Documents; and
- h) (to the extent applicable) to perform and observe all of its covenants and agreements contained in any of the Project Documents to which it is or becomes a party, shall take all necessary action to prevent the termination of any such Project Documents in accordance with the terms thereof or otherwise, and shall take any and all action as may be reasonably necessary promptly to enforce its rights and to collect any and all sums due to it under the Project Documents.

FPSO Covenants:

Standard FPSO covenants: (i) maintenance of insurances (see below), (ii) no sale of the FPSO, (iii) maintenance of class; (iv) maintenance of flag, name and registry; (v) Issuer to exercise its right under the Project Documents for the FPSO to be kept in a good and safe condition and repair consistent with prudent ownership and industry standards applied by FPSO operators operating offshore Brazil, and to ensure operation in accordance with applicable laws and regulations.

Maintenance and Insurances:

The Issuer shall provide for reasonable and satisfactory maintenance of insurance of the FPSO and all relevant equipment related thereto at all times, hereunder to retain the FPSO in class. During operation of the FPSO, the Issuer shall exercise its rights under the Project Documents that the FPSO is properly maintained according to a pre-agreed planned maintenance system. The FPSO shall also be adequately insured as set out in Schedule 1 (Insurances before the Delivery Date) and, Schedule 2 (Insurances after the Delivery Date) (the "Insurances").

The Issuer shall keep a Mortgagee's Interest Insurance on standard market terms in respect of FPSOs of this type in Brazilian waters.

The insurances and Loss Payee Clause shall be in accordance with the Norwegian Marine Insurance Plan or on London terms or at least similar terms.



Change of Control clause:

Upon a Change of Control Event occurring, each bondholder shall have a right of pre-payment (Put Option) of the Bonds at a price of 100% of par value (plus accrued interest), such option to be exercised within 60 days following the notice of a Change of Control Event.

Change of Control Event:

Change of Control Event means:

- (i) Eike Fuhrken Batista or any of his heirs, successors or assigns, ceases to own directly or indirectly 50% or more of the outstanding shares and/or voting capital of the Ultimate Parent; or
- (ii) any other person becomes the owner directly or indirectly of 50% or more of the outstanding shares and/or voting capital of the Ultimate Parent; or
- (iii) a de-listing of the Ultimate Parent's shares from the stock exchange.

Mandatory Prepayment:

Upon a Mandatory Prepayment Event (other than a Total Loss Event) occurring, the Issuer shall, not later than 30 days following the relevant Mandatory Prepayment Event, unless there is an Event of Default in which case it will be promptly, redeem 100% of the outstanding bonds at a price as follows:

- (i) if occurring anytime from Settlement Date to, but not including, the interest payment day 1 year after Settlement Date, at a price equivalent to the sum of:
  - a. the present value on the relevant record date of [●] % of the par value due on the interest payment day 1 year after Settlement Date;
  - b. the present value on the relevant record date of the remaining coupon payments (less any accrued but unpaid interest) through and including the interest payment day 1 year after Settlement Date; and
  - c. accrued interest on the redeemed amount

both a. and b. above calculated by using a discount rate of 50 basis points over the comparable U.S. Treasury Rate (i.e. comparable to the remaining duration of the Bonds until the mentioned interest payment day 1 year after Settlement Date) and where "relevant record date" shall mean a date agreed upon between the Trustee, the Paying Agent, VPS and the Issuer in connection with the such repayment;

- (ii) if occurring anytime from and included the Interest Payment Day 1 year after Settlement Date to, but not including, the Interest Payment Day 2 years after Settlement Date, at a price equal to [●]% of par value (plus accrued interest on redeemed amount);
- (iii) if occurring anytime from and including the Interest Payment Day 2 years after Settlement Date to, but not including, the Final Maturity Date, at a price equal to [●]% of par value (plus accrued interest on redeemed amount).

For the avoidance of doubt, the redemption price shall be determined based on the date the Mandatory Prepayment Event occurred and not based on the date the repayment is carried out.





**PODER JUDICIÁRIO DO ESTADO DO RIO DE JANEIRO**

**COMARCA DA CAPITAL  
TERCEIRA VARA EMPRESARIAL**

**Termo de encerramento de volume**

Processo nº 0392511-55.2013.8.19.0001

Nesta data encerrei o 1º volume dos autos acima mencionado, a partir da folha nº 3400

Rio de Janeiro, 10 de Julho de 2014