

DATED [•]

[•]

AS CONTRACTOR

- AND -

[•]

AS BORROWER

- AND -

[•]

AS FACILITY AGENT

- AND -

[•]

AS SECURITY TRUSTEE

STS CRANE SUPPLY CONTRACT
DIRECT AGREEMENT

relating to Works at DCT Gdansk Container Terminal 2

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THIS DEED is made the [•]

BETWEEN:

- (1) [•] of [•] (herein after called the "**Contractor**");
- (2) [•] of [•] (herein after called the "**Borrower**");
- (3) [•] of [•], as facility agent for the Lenders (herein after called the "**Facility Agent**");
and
- (4) [•] of [•], for and on behalf of the Lenders (herein after called the "**Security Trustee**").

WHEREAS the Contractor and the Borrower [have entered] / [are to enter] into a supply contract dated [•] / [on or around the date of this Agreement] (the "**STS Crane Supply Contract**" which, for the purposes of this Agreement, shall include all amendments, modifications and variations to it) for the design, assembly and installation of five Ship To Shore cranes at the DCT Gdansk Container Terminal 2 (the "**Project**").

WHEREAS pursuant to a facility agreement dated [•] and entered into between, *inter alia*, the Borrower, the Facility Agent, the Security Trustee and the Lenders (as defined below) in respect of the Project (the "**Facility Agreement**"), the Lenders have agreed to make certain credit facilities available to the Borrower for the purpose of financing the Project.

WHEREAS it is a condition precedent to the availability of funding under the Facility Agreement that this Agreement is executed and delivered by the Parties hereto.

The Parties to this Agreement agree as follows:

PART 1 DEFINITIONS AND INTERPRETATION

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

Except where the context otherwise requires, in this Agreement the following terms and expressions shall bear the following meanings:

"**Accession Date**" has the meaning given to it in Clause 12 (*Accession*);

"**Accession Notice**" means a notice in substantially the form set out at Annex 2;

"**Additional Obligor**" has the meaning given to it in Clause 11 (*Step-In Notice*);

"**Deed of Novation**" has the meaning given to it in Clause 15 (*Novation Proposal*);

"**Dispute**" has the meaning given to it in Clause 39 (*Arbitration*);

"**Eligible Person**" has the meaning given to it in Clause 11.2 (*Step-In Notice*);

"Insolvency Proceedings" means the "winding up", "dissolution", "administration", "insolvency" or "reorganisation" of a company or corporation and shall be construed so as to include any equivalent or analogous proceedings under the law of the jurisdiction in which such company or corporation is incorporated or constituted or any jurisdiction in which such company or corporation carries on business including, the seeking of liquidation, winding up, reorganisation, dissolution, administration, bankruptcy, arrangement, adjustment, protection or relief of debtors;

"Insurance Proceeds Account" means the account entitled [•] held with [•] or such other account notified in writing by the Security Trustee to the Contractor;

"Lenders" means the banks or other financial institutions providing certain credit facilities to or at the request of the Borrower which are secured by, *inter alia*, the Security Agreement;

"Notice of Restricted Action" has the meaning given to it in Clause 7 (*Notice of Restricted Action and Step-In Decision Period*);

"Novation Date" has the meaning given to it in Clause 17 (*Novation*);

"Party" means a party to this Agreement;

"Proceeds Account" means the account entitled [•] held with [•] or such other account notified in writing by the Security Trustee to the Contractor;¹

"Proceedings" has the meaning given to it in Clause 40.1 (*Submission to Courts*);

"Relevant Documents" means the documents listed at Annex 1;

"Restricted Action" means:

- (a) the right to terminate the STS Crane Supply Contract or its employment under the STS Crane Supply Contract [(other than due to an event of Force Majeure)], or rescind the STS Crane Supply Contract or purport to accept a repudiatory breach of the STS Crane Supply Contract by the Borrower [or taking of any step in connection with such termination, rescission or repudiation]; or
- (b) enforcing a decision of [an adjudicator, an arbitral award or judgement of a Court] if such enforcement could or could reasonably be expected to cause the Borrower to become insolvent, or commencing or supporting any Insolvency Proceedings in respect of the Borrower or any of its assets.

"Revival Date" has the meaning given to it in Clause 18 (*Revival of Remedies*);

"Secured Liabilities" means the Borrower's obligations to, *inter alia*, the Lenders under the Facility Agreement and the other Finance Documents (each as defined in the Facility Agreement) whether present, future, actual or contingent;

¹ This and a number of other provisions will need to be aligned with the relevant terminology from the final STS Contract and the Finance Documents when available.

"Security Agreement" means the [English] law charge[s] and assignment[s] dated on or about the date of this Agreement and entered into between the Borrower and the Security Trustee pursuant to which the Borrower assigns to the Security Trustee, by way of security, its rights under the Relevant Documents;

"STS Crane Supply Contract Security Interests" has the meaning given to it in Clause 2 (*Notice of EPC Contract Security Interests*);

"Step-In Decision Period" has the meaning given to it in Clause 7 (*Notice of Restricted Action and Step-In Decision Period*);

"Step-In Notice" has the meaning given to it in Clause 11 (*Step-In Notice*);

"Step-In Period" in relation to an Additional Obligor means the period from and including the Accession Date to and including:

- (a) the date upon which any notice served by such Additional Obligor pursuant to Clause 14 (*Step-Out*) expires; or
- (b) the date falling [sixty (60)] days after the Accession Notice if the Security Trustee has not given a Substitution Notice; or
- (c) the Novation Date occurs (if earlier);

"Substitute" has the meaning given to it in Clause 15 (*Novation Proposal*);

"Substitution Notice" has the meaning given to it in Clause 15.1 (*Novation Proposal*);

"Suspension Notice" has the meaning given to it in Clause 8 (*Suspension*); and

"Works" means the Project and Materials to be supplied and the entire Works and Services to be carried out by the Contractor under the STS Crane Supply Contract as defined in the STS Crane Supply Contract.

1.2 Interpretation

In this Agreement, except where the context otherwise requires, a reference to:

- 1.2.1 a statutory provision includes a reference to the statutory provision as modified or re-enacted or both from time to time whether before or after the date of this Agreement and any subordinate legislation made or other thing done under the statutory provision whether before or after the date of this Agreement;
- 1.2.2 a person includes a reference to a government, state, state agency, corporation, body corporate, association or partnership;
- 1.2.3 any person (including an Additional Obligor, Lender or Substitute) shall be construed so as to include that person's legal personal representatives, successors, transferees and permitted assigns in accordance with their respective interests;

- 1.2.4 words importing the singular shall include the plural and vice versa;
- 1.2.5 words importing one gender shall include all genders;
- 1.2.6 the words "include" and "including" are to be construed without limitation;
- 1.2.7 this Agreement or any other agreement or document shall be construed as a reference to this Agreement or, as the case may be, such other agreement or document as the same may have been, or may from time to time be, amended, varied, novated, replaced or supplemented; and
- 1.2.8 a Clause and a Part shall, respectively, be construed as a reference to a clause or part to this Agreement.

1.3 **"holding company" and "subsidiary"**

For the purposes of this Agreement, a company is a "subsidiary" of another company, its "holding company", if that other company (a) holds a majority of the voting rights in it, or (b) is a member of it and has the right to appoint or remove a majority of its board of directors, or (c) is a member of it and controls alone, pursuant to an agreement with other members, a majority of the voting rights in it, or if it is a subsidiary of a company that is itself a subsidiary of that other company.

1.4 **Headings**

Headings are for ease of reference only and shall not affect the construction of this Agreement.

1.5 **Computing of Time**

Where a Party is required by any provision of this Agreement to give notice or take any action within a period specified by a number of days, such period shall be calculated not by counting the first day of such period but counting the last day, and such last day shall end at 5.00pm [GMT].

1.6 **Rules of interpretation**

No rule of construction applies to the interpretation of this Agreement to the advantage or disadvantage of any one party on the basis that such party prepared this Agreement or any relevant part of it.

supplement, consent or approval or which exceeds a total amount of [] for all such variations, amendments, supplements, consents or approvals in the aggregate.]

6. INSOLVENCY PROCEEDINGS

The Contractor agrees that it will not, without the prior written consent of the Security Trustee, institute (including by presenting any petition for) any Insolvency Proceedings against the Borrower prior to the full and irrevocable discharge of the Secured Liabilities, other than on and after the Revival Date.

PART 3
SUSPENSION OF REMEDIES

7. NOTICE OF RESTRICTED ACTION AND STEP-IN DECISION PERIOD

- 7.1 The Contractor undertakes not to take any Restricted Action for a period of [thirty (30)] days (the "**Step-In Decision Period**") after actual receipt by the Security Trustee of written notice (a "**Notice of Restricted Action**") from the Contractor specifying the grounds for entitling the Contractor to take a Restricted Action. Such notice shall be clearly marked as a "Notice of Restricted Action" in relation to the Relevant Document and include reasonable details of the events or circumstances that led to such notification being issued, state the action on which the Contractor proposes to take and the date by which the Contractor proposes to take the Restricted Action referred to in the relevant Notice of Restricted Action.
- 7.2 The Contractor undertakes to the Security Trustee that during the Step-In Decision Period it shall continue to perform its obligations under the STS Crane Supply Contract in accordance with the terms thereof, unless and to the extent the Contractor is entitled to suspend its obligations under the STS Crane Supply Contract, provided that any such suspension is in accordance with Clause 8.1 (*Suspension*).
- 7.3 The Security Trustee shall be entitled at any time following receipt of a Notice of Restricted Action, without being required to exercise its rights under Part 4 (*Step-In and Step-Out Rights*) or Part 5 (*Novation*), to remedy or procure the remedy of the relevant event or other circumstances giving rise to the Notice of Restricted Action.
- 7.4 If at any time during a Step-In Decision Period the breach or failure or cause giving rise to a right on the part of the Contractor to issue a Notice of Restricted Action is cured, any Restricted Action suspended by Clause 7.1 shall be of no further effect.

8. SUSPENSION

- 8.1 The Contractor shall not suspend the performance of its obligations under the STS Crane Supply Contract without giving the Security Trustee [fourteen (14)] days prior written notice (a "**Suspension Notice**") stating:

8.1.1 the proposed date of suspension; and

8.1.2 the grounds for suspension.

In the event that the Contractor is entitled to suspend the performance of its obligations under the STS Crane Supply Contract and a Suspension Notice has been issued in accordance with this Clause 8.1, the Security Trustee acknowledges that unless it takes any action pursuant to Clause 11.1 (*Step-In Notice*) the Contractor may be entitled to suspend the performance of its obligations under the STS Crane Supply Contract to the extent expressly permitted to do so.

A Notice of Restricted Action or Suspension Notice can be revoked by the Contractor at any time. On any such revocation, the rights and obligations of the Parties shall be construed as if the relevant notice had not been given and, for the avoidance of doubt, in order for the Contractor to take any Restricted Action or suspend the performance of its obligations under the STS Crane Supply Contract (as the case may be), the

Contractor shall be required to issue a further Notice of Restricted Action or Suspension Notice (as the case may be) in accordance with Clause 7.1 (*Notice of Restricted Action and Step In Decision Period*) or this Clause 8.1 (as the case may be).

9. STATEMENT OF OUTSTANDING OBLIGATIONS AND AMOUNTS DUE

9.1 Within [fourteen (14)] days of receipt of written notice from the Security Trustee (a "**Statement Request**") and in any event within [five (5)] days of the date of any Notice of Restricted Action, the Contractor shall submit to the Security Trustee statements of:

9.1.1 all amounts due and payable by the Borrower to the Contractor under the STS Crane Supply Contract on or before the date of such Notice of Restricted Action or Statement Request and which remain unpaid at such date;

9.1.2 if a Notice of Restricted Action has been served, all outstanding or, to the extent that the Contractor is aware of the same (having made reasonable enquiry), potential claims by the Contractor under or pursuant to the STS Crane Supply Contract against the Borrower whether arising out of or in connection with any breach or default or otherwise or which may arise by the passing of time specifying:

- (a) the provisions of the STS Crane Supply Contract under or in respect of which such claim arises or may arise;
- (b) such information as is available to the Contractor in relation to the acts or omissions of the Borrower giving rise to such claim;
- (c) in respect of any breach or default, the steps which the Contractor considers are required to remedy such breach or default and the time which might reasonably be required to take such steps;
- (d) in respect of any potential claim, the steps which the Contractor considers are required to prevent such potential claim from arising; and
- (e) the amount of any monetary claim and the basis of calculation thereof;

9.1.3 to the best of the Contractor's knowledge and belief, a breakdown of the nature and the amounts of any sum or monetary claim which is likely to or will become due from the Borrower under the STS Crane Supply Contract during the following [•] days on the two differing assumptions that:

- (a) firstly, the Contractor continues to perform the Works in accordance with the STS Crane Supply Contract; and
- (b) secondly, the Contractor suspends performance of its obligations under the STS Crane Supply Contract in accordance with its terms and including details of the costs sustained during, as well as the costs of resuming work following, any such suspension,

provided that if the Contractor has also given a Suspension Notice in accordance with Clause 8 (*Suspension*), the breakdown referred to above shall only be given in respect of the assumption set out in paragraph (b) above; and

- 9.1.4 a statement of any obligations of the Borrower to the Contractor under the STS Crane Supply Contract which the Borrower was obliged to perform prior to the date of the Notice of Restricted Action or Statement Request and which remain unperformed.
- 9.2 The Security Trustee may issue Statement Requests at any time during the Step-In Decision Period for the Step-In Period.
- 9.3 The Contractor shall submit to the Security Trustee any additional information reasonably requested by the Security Trustee or an Additional Obligor from time to time.
- 9.4 The Contractor warrants to the Security Trustee that the statements submitted by it pursuant to Clause 9.1 shall be in good faith and prepared with reasonable skill and care and, so far as reasonably practicable in relation to Clauses 9.1.2 and 9.1.3, true, complete and accurate statements of the amounts to which the Contractor considers itself entitled.
- 9.5 The Facility Agent or the Security Trustee may appoint a firm of independent chartered accountants:
 - 9.5.1 to verify the statements submitted by the Contractor pursuant to Clause 9.1; or
 - 9.5.2 where the Contractor fails to submit statements in accordance with Clause 9.1, to prepare such statements themselves.
- 9.6 The Contractor shall permit any firm of independent chartered accountants appointed pursuant to Clause 9.5 to have access to and to make copies of all records, documents, data and accounting and other information not subject to legal (including solicitor and own client) and other professional privilege which is reasonably required with a view to verifying or preparing the statements referred to in Clause 9.1.1.
- 9.7 If a firm of independent chartered accountants is appointed pursuant to Clause 9.5 to verify any statements submitted by the Contractor pursuant to Clause 9.1 and such firm determines that such statements contain an amount which is in excess of the amount which such firm believes to be accurate, fair and reasonable (the "**independently estimated amount**"), the Contractor and the Security Trustee shall meet to discuss such excess in good faith for a period of [•] days but if no agreement is reached between the Contractor and the Security Trustee, the independently estimated amount shall be deemed to prevail for the purposes of this Part 3 (*Suspension of Remedies*), provided that nothing in this provision shall be interpreted as limiting in any manner whatsoever the Contractor's rights pursuant to Clause 39 (*Arbitration*).
- 9.8 If a firm of independent chartered accountants is appointed pursuant to Clause 9.5 to prepare any statements which should have been submitted by the Contractor pursuant to Clause 9.1, then such statements shall be prepared by such firm on the basis of such

information as may be available to it and shall be treated as having been prepared by the Contractor for the purposes of this Part 3 (*Suspension of Remedies*) and contain the independently estimated amount.

9.9 The cost and expenses of any firm of independent chartered accountants appointed by the Facility Agent or the Security Trustee pursuant to Clause 9.5 shall be for the account of the Borrower (or, if the Borrower has not made such payment, the Security Trustee) except that, if such firm is appointed to prepare any statements which should have been prepared by the Contractor pursuant to Clause 9.1, then the Contractor shall reimburse the Security Trustee on demand for any amounts paid by it to such firm in respect of the preparation of such statements.

10. **STATEMENTS TO BE CONCLUSIVE EVIDENCE**

10.1 Subject to Clause 39 (*Arbitration*), any statements submitted by:

10.1.1 the Contractor pursuant to Clause 9.1 (*Statement of Outstanding Obligations and Amounts Due*) (as the same may be adjusted pursuant to Clause 9.7); or

10.1.2 a firm of independent chartered accountants pursuant to Clause 9.5,

shall be conclusive evidence for the Borrower, the Security Trustee, the Facility Agent, the Lenders, any receiver and manager of the Borrower, any Substitute and any Additional Obligor that the Contractor has waived and abandoned all claims arising out of or in connection with the STS Crane Supply Contract prior to the date of the Notice of Restricted Action to which such statements relate other than those disclosed in such statements.

PART 4
STEP-IN AND STEP-OUT RIGHTS

11. STEP-IN NOTICE

11.1 At any time:

11.1.1 on or after any event of default entitling the Lenders to the acceleration of amounts due and owing under the Facility Agreement and/or a notice of enforcement of the security constituted by the Security Agreement over the STS Crane Supply Contract Security Interests until the Revival Date (if any) (and the Contractor may treat the certification of the Security Trustee that such a default or enforcement has occurred as conclusive evidence of its occurrence); or

11.1.2 during any Step-In Decision Period,

the Security Trustee may give written notice (a "**Step-In Notice**") to the Contractor in respect of any one of:

- (a) the Security Trustee itself;
- (b) any receiver, manager or administrative receiver of the Borrower appointed under the Security Agreement;
- (c) a company substantially the whole of whose issued share capital is owned by the Security Trustee and/or any one or more of the Lenders; or,
- (d) any Eligible Person,

(each an "**Additional Obligor**"), stating that the Additional Obligor is entitled to exercise the rights of the Borrower under the Relevant Document and this Agreement in accordance with the terms hereof.

11.2 For the purposes of this Agreement, "Eligible Person" means a person approved by the Contractor (such approval not to be unreasonably withheld or delayed) to act as an Additional Obligor provided that the Contractor shall only be entitled to withhold its approval if the person proposed in the Step-In Notice as an Eligible Person:

11.2.1 is not of sound financial standing or is not guaranteed by a person or persons of sound financial standing; or

11.2.2 does not have the legal capacity, power and authorisation to become a party to and perform the obligations of the Borrower under the Relevant Document,

and, in any case, such approval shall be deemed to have been given, in the absence of a written response from the Contractor, within [seven (7)] days after service of a Step-In Notice by the Security Trustee. Where the Contractor withholds its consent, it shall provide details of its objection in its written response.

- 11.3 [Notwithstanding anything to the contrary in this Agreement, if in the period immediately prior to the expiry of the Step-In Period, the Security Trustee is in the course of conducting active discussions in good faith with a proposed Substitute then, if agreed between the Contractor and the Security Trustee, the Step-In Period shall not expire but shall continue until a date agreed between the Contractor and the Security Trustee (both Parties acting reasonably).]²

12. ACCESSION

If the Additional Obligor named in a Step-In Notice signs and delivers to the Contractor (with a copy thereof to the other Parties to this Agreement) an Accession Notice, then such Additional Obligor shall become jointly and severally entitled to exercise the rights of the Borrower under the Relevant Document and this Agreement pursuant to Clause 13 (*Rights and Obligations on Accession*) on and from the date of such Accession Notice (the "**Accession Date**").

13. RIGHTS AND OBLIGATIONS ON ACCESSION

- 13.1 During the Step-In Period, provided that the Additional Obligor complies with the requirements of Clause 13.2:

13.1.1 the Additional Obligor shall be jointly and severally entitled to exercise and enjoy the rights, benefits, powers and discretions expressed to be assumed by or granted to the Borrower under the Relevant Document as if the Additional Obligor were party to the Relevant Document and this Agreement;

13.1.2 the Additional Obligor shall be entitled to exercise and enjoy the rights, benefits, powers and discretions expressed to be assumed by or granted to an Additional Obligor under this Agreement as if the Additional Obligor were party to this Agreement;

13.1.3 subject to Clause 13.1.4 below, the receipt of or performance by the Contractor in favour of either the Additional Obligor or the Borrower shall be a good discharge of the relevant obligation of the Contractor to the Borrower under the Relevant Document; and

13.1.4 the Security Trustee shall be entitled at any time by notice in writing to the Contractor to direct (such direction being binding on the Contractor and the Borrower) that, subject to any further notice from the Security Trustee, such Additional Obligor shall be solely entitled to make any decisions, to give any directions, approvals or consents or otherwise to deal with the Contractor under the Relevant Document.

- 13.2 From the Accession Date:

13.2.1 the Additional Obligor shall perform, or cause to be performed, the obligations of the Borrower under the Relevant Document arising after the Accession Date including any obligation to pay the Contractor [in respect of Works] performed after the Accession Date;

² To be considered in light of the length of the proposed Step-In Period.

- 13.2.2 without prejudice to any right that the Contractor may have to claim an extension of time under the STS Crane Supply Contract, the Additional Obligor shall have a reasonable time to perform, or cause to be performed, those obligations that arise soon after the Accession Date before any breach of contract or entitlement to compensation shall be deemed to have occurred and any time period that may be specified for such performance in the STS Crane Supply Contract shall be amended to a period of time as may be reasonable in the circumstances;
- 13.2.3 for the avoidance of doubt, the Additional Obligor shall not have any liability to the Contractor in respect of any claims by the Contractor arising before the Accession Date or claims for payment [in respect of Works] carried out before the Accession Date; and
- 13.2.4 without prejudice to Clause 18 (*Revival of Remedies*), any Restricted Action suspended by virtue of Clause 7 (*Notice of Restricted Action and Step-In Decision Period*) shall be of no further effect and the Contractor shall not be entitled to a Restricted Action by virtue of any act, omission or circumstance prior to the Accession Date.

14. **STEP-OUT**

- 14.1 The Additional Obligor's obligation to the Contractor under the Relevant Documents shall terminate:
- 14.1.1 automatically in the event that the Security Trustee has not given a Substitution Notice within the Step-In Period; or
- 14.1.2 at any time during the Step-in Period, following [•] days prior written notice of the Additional Obligor's intention to terminate its obligations under the Relevant Documents and end the Step-in Period.
- 14.2 On the expiry of the Step-In Period, the Additional Obligor shall be released from all obligations hereunder except for any obligation which has arisen during the Step-In Period.

**PART 5
NOVATION**

15. NOVATION PROPOSAL

15.1 Subject to Clause 16 (*Consent of the Contractor*), at any time:

15.1.1 on or after any event of default entitling the Lenders to the acceleration of amounts due and owing under the Facility Agreement and/or a notice of enforcement of the security constituted by the Security Agreement over the STS Crane Supply Contract Security Interests until the Revival Date (if any) (and the Contractor may treat the certification of the Security Trustee that such a default or enforcement has occurred as conclusive evidence of its occurrence); or

15.1.2 during any Step-In Decision Period; or

15.1.3 during any Step-In Period,

the Security Trustee shall be entitled to procure that the rights and obligations of the Borrower under the Relevant Documents are novated to another person (a "Substitute") upon issue by the Security Trustee of written notice (a "**Substitution Notice**") pursuant to a deed of novation in substantially the same form as the deed of novation contained in Annex 3 (the "**Deed of Novation**").

15.2 In any Substitution Notice the Security Trustee shall:

15.2.1 state that it wishes a Substitute to assume the rights and perform the obligations of the Borrower under the Relevant Documents and this Agreement;

15.2.2 provide reasonably sufficient details of the proposed Substitute to enable the Contractor to consider its decision under Clause 16.1; and

15.2.3 specify a date on which it is proposed that such assumption is to be effective, it being acknowledged that the actual substitution proposed in the Substitution Notice shall take effect on the Novation Date.

16. CONSENT OF THE CONTRACTOR

16.1 The Security Trustee shall not exercise its rights under Clause 15 (*Novation Proposal*) unless it has received prior written approval from the Contractor (such approval not to be unreasonably withheld or delayed) save that the Contractor shall only be entitled to withhold its approval to a novation where reasonable in accordance with Clause 16.2 and such approval shall be deemed to be given, in the absence of a written response from the Contractor, within [fourteen (14)] days after service of the Substitution Notice.

16.2 Withholding approval of a proposed Substitute shall only be deemed reasonable if the proposed Substitute:

- 16.2.1 is not of sound financial standing or is not guaranteed by a person or persons of sound financial standing;
 - 16.2.2 does not have the legal capacity, power and authorisation to become a party to and perform the obligations of the Borrower under the Relevant Document; or
 - 16.2.3 does not have access to the appropriate experience and technical competence and does not have the technical resources available to it which are sufficient to enable it to perform the obligations of the Borrower under the Relevant Document.
- 16.3 If the Contractor gives notice in writing that the proposed Substitute is not acceptable, the Security Trustee and the Contractor shall then consult, for a period not exceeding [seven (7)] days, upon the issues raised in the Contractor's notice.
- 16.4 If, by the expiry of the period specified in Clause 16.3:
- 16.4.1 the Contractor has not withdrawn its objections; or
 - 16.4.2 the Security Trustee has not agreed to withdraw its written notice containing details of the proposed Substitute,
- then within [seven (7)] days of that date, the Security Trustee and the Contractor shall appoint an independent person having the appropriate degree of expertise (the "**Expert**") to determine the matter. Failing agreement by them on the choice of Expert within that period, the Expert shall be appointed by [•].
- 16.5 Subject to the provisions of this Agreement, the Expert shall resolve the dispute in such manner as he shall in his sole discretion see fit and shall have power to request the Parties to the dispute to provide him with such statements, documents or information as he may determine. He shall act as an expert and not as an arbitrator and his decision shall be final and binding on the Parties to the dispute.
- 16.6 The Security Trustee and the Contractor shall use all reasonable endeavours to procure that the Expert shall, within [fourteen (14)] days of his appointment, give written notice of his decision to the Parties to the dispute, stating in reasonable details the reasons for it.

17. **NOVATION**

- 17.1 If the Contractor approves (or is deemed to have approved) a proposed Substitute pursuant to Clause 16 (*Consent of the Contractor*), the Contractor, the Borrower, the Security Trustee and the Substitute shall enter into a Deed of Novation. Following the date of execution of the Deed of Novation (the "**Novation Date**"):
- 17.1.1 such Substitute shall:
 - (a) become a party to the Relevant Document in place of the Borrower and/or the Additional Obligor who shall be immediately released from its obligations under, and cease to be a party to, the Relevant Document and this Agreement and thereafter such Substitute shall be treated as if it had originally been named as a party thereto in place of

the Borrower with the rights, benefits, powers, discretions and obligations of the Borrower under the Relevant Document;

- (b) be entitled to exercise and enjoy the rights, benefits, powers and discretions expressed to be in favour of a Substitute under this Agreement; and
- (c) be liable for the performance of the obligations expressed to be owing by a Substitute under this Agreement,

and the Contractor shall owe its obligations (including any undischarged liability in respect of any loss or damage suffered or incurred by the Borrower and/or the Additional Obligor (if any) prior to the Novation Date) under the Relevant Document to such Substitute in place of the Borrower and/or the Additional Obligor;

17.1.2 for the avoidance of doubt, the effect of the Deed of Novation (amongst other things) shall be that from the Novation Date:

- (a) any amount due from the Borrower to the Contractor:
 - (i) under the STS Crane Supply Contract and notified to the Security Trustee under Clause 9 (*Statement of Outstanding Obligations and amounts due*) which has not been paid; and
 - (ii) in respect of Works carried out or a claim arising between the Accession Date and the Novation Date and notified to the Security Trustee prior to the Novation Date which has not been paid;

shall be paid by the Substitute to the Contractor within [•] days after the Novation Date, failing which the Contractor shall be entitled to exercise its rights under the STS Crane Supply Contract in respect of the amount so due and unpaid, save that the Substitute will not be in breach of its obligations under this Clause 17.1.2(a) if the failure to make such payment is caused by an administrative or technical error and the Substitute makes the required payment within [•] days of the error being remedied; and

- (b) any outstanding performance obligations of the Borrower to the Contractor under the STS Crane Supply Contract and notified to the Security Trustee under Clause 9 (*Statement of Outstanding Obligations and Amounts Due*) shall be performed or discharged by the Substitute as soon as reasonably practical, failing which the Contractor shall be entitled to exercise its rights under the STS Crane Supply Contract in respect of the outstanding performance obligations;

17.1.3 for the avoidance of doubt, the Substitute shall not have any liability to the Contractor in respect of any claims by the Contractor arising before the Novation Date except as set out in Clause 17.1.2;

- 17.1.4 subject to this Clause 17, any Restricted Action suspended by virtue of Clause 7 (*Notice of Restricted Action and Step-In Decision Period*) shall be of no further effect and the Contractor shall not be entitled to a Restricted Action by virtue of any act, omission or circumstance prior to the Novation Date; and
- 17.1.5 if any Additional Obligor has any outstanding obligations or liabilities under this Agreement on the Novation Date, such Additional Obligor shall be deemed to be discharged from all such obligations and liabilities.
- 17.2 The Borrower and the Contractor each undertake to do all such things and to execute all such documents as may be reasonably necessary or desirable to ensure that all of the Borrower's right, title and interest in and to the Relevant Documents vest in the Substitute from the date of entry into force at the Deed of Novation.

PART 6
REVIVAL OF REMEDIES

18. REVIVAL OF REMEDIES

18.1 If a Notice of Restricted Action has been given, the grounds for that notice are continuing and either:

18.1.1 the Step-In Decision Period relating to that notice ends before an Additional Obligor is appointed under Clause 12 (*Accession*) or the Relevant Documents are novated to a Substitute under Clause 17 (*Novation*); or

18.1.2 an Additional Obligor is appointed under Clause 12 (*Accession*) but the Step-In Period ends and the Relevant Documents have not been novated to a Substitute under Clause 17 (*Novation*),

then, on and from the date (the "**Revival Date**") such Step-In Decision Period or, as the case may be, such Step-In Period expires, the Contractor shall be entitled to:

- (a) act upon any and all grounds for Restricted Action available to it in relation to the STS Crane Supply Contract in respect of breaches not remedied or waived provided that no account shall be taken of the number of days from the date such Notice of Restricted Action was given to such Revival Date (both dates inclusive) when determining any time for the exercise of the Contractor's rights or the time for the service of any notice by the Contractor under the STS Crane Supply Contract; and
- (b) if and to the extent that it is then entitled to do so under the STS Crane Supply Contract, pursue any and all claims and exercise any and all remedies against the Borrower.

PART 7
CONSIDERATION

19. **CONSIDERATION**

The Contractor acknowledges that the Lenders will make advances to the Borrower pursuant to the Facility Agreement in consideration of, *inter alia*, the agreements and undertakings given by the Contractor in this Agreement and that the execution of this Agreement is a condition precedent to the availability of funding under the Facility Agreement.

**PART 8
MISCELLANEOUS**

20. TERMINATION AND SUSPENSION NOTICES

The Contractor undertakes and confirms to the Security Trustee that it will immediately give written notification to the Security Trustee of any written notice of breach of the STS Crane Supply Contract, any other written notice which could reasonably be expected to lead to the suspension or termination of the STS Crane Supply Contract, or any suspension or Notice of Restricted Action issued pursuant to the STS Crane Supply Contract.

21. FORCE MAJEURE

The Contractor undertakes and confirms to the Security Trustee that it shall immediately give written notification to the Security Trustee of any notice that it issues to the Borrower in relation to Force Majeure (as defined in the STS Crane Supply Contract) and in relation to any Force Majeure which could reasonably be expected to lead to the suspension or termination of the STS Crane Supply Contract.

22. DIRECT DISBURSEMENTS AND PAYMENTS

The Parties agree that the Security Trustee may, acting on the instructions of the [Majority Lenders (as defined in the Facility Agreement)], directly pay the Contractor any amount due from the Borrower to the Contractor (and the Contractor shall notify the Borrower of any such payment) and such payment shall discharge the Borrower from liability to the extent of such payment.

23. STATUS AND LEGAL AND BINDING OBLIGATIONS

23.1 Each of the Borrower and the Contractor warrant to and for the benefit of the Facility Agent and the Security Trustee that as at the date of this Agreement:

23.1.1 it is a company duly incorporated and validly existing under the laws of its jurisdiction of incorporation and has the power to own its assets and conduct its business as it is being conducted;

23.1.2 this Agreement and the STS Crane Supply Contract as appropriate, is its legally binding obligation, is within its powers, has been duly authorised by it, and does not conflict with any law, agreement to which it is a party or its constitutional documents and that all consents and authorisations required by it in relation to this Agreement and the STS Crane Supply Contract have been obtained.

23.1.3 no filing has been made for any Insolvency Proceedings relating to the Contractor in any jurisdiction; and

23.1.4 no circumstances have occurred or are foreseeable, which are likely to lead to any Insolvency Proceedings against the Contractor.

24. DECLARATION OF TRUST

The benefit of this Agreement (including all warranties and undertakings and any sums received by the Security Trustee pursuant to this Agreement) shall be held by the Security Trustee on trust for the benefit of the Lenders.

25. ASSIGNMENT

25.1 The Facility Agent or the Security Trustee may (without the consent of the Contractor being required) assign, transfer, charge, novate or otherwise dispose of all or any of the benefit of this Agreement and/or any of the present or future rights, interest and benefits of the Facility Agent or the Security Trustee.

25.2 The Contractor shall not be entitled to assign, transfer, charge, novate or otherwise dispose of all or any of its rights, obligations or benefits arising under this Agreement to any other person without the prior written consent of the Security Trustee.

26. VARIATION

No variation of this Agreement shall be effective unless in writing and signed by or on behalf of the Parties.

27. NO WAIVER AND SEVERANCE

27.1 No failure or delay by the Parties in exercising any right under this Agreement shall operate as a waiver thereof or prejudice any other or further exercise by the Parties of any of its rights or remedies under this Agreement. The rights and remedies under this Agreement may be exercised as often as necessary and are cumulative and not exclusive of any rights or remedies provided by law.

27.2 If a provision of this Agreement is or becomes illegal, invalid or unenforceable in any jurisdiction, that shall not affect:

27.2.1 the validity or enforceability in that jurisdiction of any other provision of the Agreement; or

27.2.2 the validity or enforceability in other jurisdictions of that or any other provision of the Agreement.

28. NO PARTNERSHIP

Neither this Agreement nor any other agreement or arrangement of which it forms part, nor the performance by the Parties of their respective obligations under any such agreement or arrangement, shall constitute a partnership between the Parties.

29. COUNTERPARTS

29.1 This Agreement may be executed in any number of counterparts, each of which is an original and all of which together evidence the same agreement.

29.2 This Agreement shall not come into effect until each Party has executed at least one counterpart.

30. **CONTINUING NATURE OF OBLIGATIONS**

This Agreement shall remain in full force and effect until the Borrower has no actual or contingent obligations owing to the Lenders in relation to the Project or, if earlier, the date on which all of the obligations of the Contractor under the Relevant Documents have been discharged in full.

31. **ACKNOWLEDGEMENT BY BORROWER**

31.1 None of the provisions of this Agreement shall be enforceable by the Borrower and the Borrower joins in this Agreement to acknowledge:

31.1.1 that any payment of amounts due from the Borrower to the Contractor made by any Additional Obligor, Substitute or the Security Trustee shall create a liability on the part of Borrower to reimburse the Additional Obligor, Substitute or Security Trustee (as appropriate) therefore; and

31.1.2 that it has notice of, and agrees to be bound by, the provisions of this Agreement.

32. **NO SET-OFF**

The Contractor agrees with the Security Trustee that it will not exercise any right of set-off or counterclaim it may have against the Borrower which would reduce any monies payable by the Contractor under the STS Crane Supply Contract except where the right of set-off or counterclaim is contained within the STS Crane Supply Contract itself.

33. **PAYMENT OF MONIES**

33.1 The Contractor agrees with the Security Trustee that it will pay all monies due from the Contractor under the STS Crane Supply Contract to the Proceeds Account unless and until, after the date of enforcement of the Security Agreement, the Security Trustee otherwise directs, whereupon the Contractor shall comply with the directions of the Security Trustee.

33.2 [The Contractor agrees with the Security Trustee that it will pay all monies received by the Contractor under the [Construction All Risks] and [Marine Transit] insurance policies to the Insurance Proceeds Account in accordance with the terms of the STS Crane Supply Contract.]

34. **CONFIDENTIALITY**

34.1 In this Clause 34, "Confidential Information" means all information disclosed (whether in writing, orally or by another means and whether directly or indirectly) by a party (the "**Disclosing Party**") to the other party (the "**Receiving Party**") whether before or after the date of this Agreement.

34.2 Subject to Clause 34.3, during the term of this Agreement and after termination or expiration of this Agreement for any reason the Receiving Party:

- 34.2.1 may not use Confidential Information for a purpose other than the performance of its obligations under this Agreement;
 - 34.2.2 may not disclose Confidential Information to a person except with the prior written consent of the Disclosing Party; and
 - 34.2.3 shall make every effort to prevent the use or disclosure of Confidential Information
- 34.3 A Disclosing Party shall not be required to obtain consent for the disclosure of Confidential Information:
- 34.3.1 to directors, officers, employees or affiliates of a Party, provided that they in turn are required by that Party to treat the Confidential Information as confidential in favour of the other Parties on terms substantially the same as those set out in this Clause 34;
 - 34.3.2 to persons professionally engaged by a Party, provided that they in turn are required by that Party to treat the Confidential Information as confidential in favour of the other Parties on terms substantially the same as those set out in this Clause 34;
 - 34.3.3 to the extent required by any government department or agency or regulatory authority having jurisdiction over that Party;
 - 34.3.4 to any bank, other financial institution or rating agency to the extent required in relation to the financing or refinancing of a Party's business activities, provided that the bank, or other financial institution or rating agency, as the case may be, is required by that Party to treat the Confidential Information as confidential in favour of the other Parties on terms substantially the same as those set out in this Clause 34;
 - 34.3.5 to the extent required by any applicable laws, judicial process or the rules and regulations of any recognised stock exchange;
 - 34.3.6 to any intending assignee of the rights and interests of a Party under this Agreement or to a person intending to acquire an interest in a Party or that Party's holding company provided that the intending assignee or acquirer in turn is required by that Party to treat the Confidential Information as confidential in favour of the other Parties on terms substantially the same as those set out in this Clause 34; or
 - 34.3.7 to the extent that the Confidential Information is in or lawfully comes into the public domain other than by breach of this Clause 34.

35. **NEW DIRECT AGREEMENT**

- 35.1 In the event of any refinancing of the Borrower's debt, the Contractor shall enter into a new direct agreement on substantially the same terms as this Agreement for the benefit of the new facility agent and new security trustee (or equivalent parties representing the lenders in relation to such refinancing).

35.2 In the event of any novation to a Substitute, the Contractor shall enter into a new direct agreement on substantially the same terms as this Agreement with the Substitute, Facility Agent and Security Trustee.

36. FURTHER ASSURANCES

The Contractor shall take any action the Facility Agent, Security Trustee, any Additional Obligor or any Substitute taking a transfer under this Agreement may require for perfecting any transfer or release to be carried out under this Agreement including the execution of any transfer or assignment, and the giving of any notice, order or direction and the making of any registration which, in each case, the Facility Agent, Security Trustee, Additional Obligor or Substitute reasonably requires.

37. NOTICES

37.1 Save as otherwise expressly provided in this Agreement, all notices or other communications which are required or permitted hereunder shall be in writing, in the English language and sufficient if delivered personally or sent by registered or certified mail, facsimile or electronic data exchange addressed as follows:

37.1.1 if to the Borrower:

Address: [•]

Attention: [•]

Fax No.: [•]

37.1.2 if to the Contractor:

Address: [•]

Attention: [•]

Fax No.: [•]

37.1.3 if to the Facility Agent:

Address: [•]

Attention: [•]

Fax No.: [•]

37.1.4 if to the Security Trustee:

Address: [•]

Attention: [•]

Fax No.: [•]

37.1.5 if to any Additional Obligor or Substitute, to the address or fax number specified in the Accession Notice delivered by it pursuant to Clause 12 (*Accession*) or, as the case may be, the Deed of Novation delivered by it pursuant to Clause 17 (*Novation*).

37.2 All notices shall be deemed delivered upon receipt.

37.3 Any Party may by notice of at least [•] days to the other Party change the addressee, fax number or address and/or addresses to which such notice and communications to it are to be delivered or mailed.

38. GOVERNING LAW

This Agreement and all non-contractual obligations arising from or connected with it are governed by [English] law.

39. ARBITRATION

39.1 Any dispute, controversy or claim arising from or connected with this Agreement, including one regarding the existence, validity or termination of this Agreement or the consequences of its nullity and any non-contractual or other dispute (a "**Dispute**") shall be referred to, and finally settled by, arbitration in accordance with the Rules of Arbitration of the International Chamber of Commerce (respectively, the "ICC" and the "**ICC Rules**") as at present in force and as modified by this Clause [39], which ICC Rules are deemed to be incorporated by reference to this Clause [39].

39.2 Any Party seeking to commence an arbitration under this Agreement shall serve a copy of its Request for Arbitration (as defined in the ICC Rules) on all parties to this Agreement, whether or not they are a party to the Dispute in question. The Request for Arbitration shall be sufficiently detailed so as to describe the nature of the Dispute, the claims being advanced, the identity of the parties to the Dispute and the relief being sought.

39.3 The arbitral tribunal shall consist of three (3) arbitrators. The Claimant(s) shall jointly appoint one (1) arbitrator and the Respondent(s) shall jointly appoint one (1) arbitrator, and the two (2) arbitrators thus appointed shall appoint the third arbitrator, provided that:

39.3.1 if a party to the Dispute fails to appoint an arbitrator within thirty (30) days of receipt of a request to do so from the other party, such appointment shall be made, at the request of such other party, by the International Court of Arbitration of the ICC (the "**ICC Court**"); or

39.3.2 if the two (2) arbitrators appointed by the Claimant(s) and the Respondent(s) fail to agree on the third arbitrator within thirty (30) days of the later of their respective appointments or such longer period as agreed, such third arbitrator shall be appointed by the ICC Court at the request of either party.

39.4 Arbitrators nominated or appointed by the Claimants, the Respondents or the ICC Court shall be persons with experience of the interpretation of contracts relating to the design, engineering, construction, operation and maintenance of the works of a similar nature to the Works. The third arbitrator shall be a qualified lawyer and shall be the

Chairman of the arbitral tribunal. No arbitrator shall be a present or former employee of the agent of, or consultant or counsel to, any Party of any affiliate thereof.

- 39.5 The seat of the arbitration shall be [London, England] and all hearings shall take place in [London, England].
- 39.6 The language of the arbitration shall be English and, if requested by a party to a Dispute, simultaneous translation into the English language shall be provided in respect of witness testimony given in any other language.
- 39.7 The Parties waive any right to refer points of law or to appeal to the courts, to the extent that such waiver can validly be made.
- 39.8 The Parties agree that the arbitral tribunal shall have the power to order on a provisional basis any relief which it would have power to grant in a final award.
- 39.9 Nothing in this Clause 39 shall be construed as preventing any party to a Dispute from seeking conservatory or similar interim relief in any court of competent jurisdiction.
- 39.10 For the purposes of arbitration pursuant to this Clause 39, the parties waive any right of application to determine a preliminary point of law or appeal on a point of law to a court of law under Sections 45 and 69 of the Arbitration Act 1996.
- 39.11 The arbitrators and the Parties to the arbitration shall keep confidential all matters, together with all materials, relating to the arbitral proceedings. Confidentiality also extends to the arbitral award, save and to the extent that disclosure may be required of a party by legal duty, to protect or pursue a legal right or to enforce or challenge an award in *bona fide* legal proceedings before a judicial authority.
- 39.12 The decision of the arbitral tribunal shall be final and legally binding upon the parties to the Dispute and nothing shall prevent any party to such Dispute from enforcing such award in any court.
- 39.13 Neither the existence of any Dispute or any related Dispute nor any legal or arbitral proceedings arising out of or in connection with this Agreement shall prejudice the Parties' obligations under either this Agreement or the performance thereof.
- 39.14 The arbitral tribunal shall have power to direct a Party to pay some or all of the other Party's costs, and to direct which Party (or in which proportions the Parties) should pay the arbitrators' fees and expenses.

40. **SUBMISSION TO COURTS**

- 40.1 Subject to Clause 39 (*Arbitration*), the courts of [England] have exclusive jurisdiction to settle any Dispute (including a dispute regarding the existence, validity or termination of this Agreement or relating to any non-contractual or other obligation arising out of or in connection with this Agreement or the consequences of its nullity).
- 40.2 The Parties agree that the courts of England are the most appropriate and convenient courts to settle any Dispute and, accordingly, that they will not argue to the contrary.

- 40.3 This Clause 40 is for the benefit of the Facility Agent or the Security Trustee only. As a result, and notwithstanding Clause 40.1, it does not prevent the Facility Agent or the Security Trustee from taking proceedings relating to a Dispute ("**Proceedings**") in any other courts with jurisdiction. To the extent allowed by law, the Facility Agent or the Security Trustee may take concurrent Proceedings in any number of jurisdictions.
- 40.4 Without prejudice to any other mode of service allowed under any relevant law:
- 40.4.1 The Borrower hereby irrevocably appoints [•] as its agent for service of process in relation to any Proceedings;
- 40.4.2 The Contractor hereby irrevocably appoints [•] as its agent for service of process in relation to any Proceedings;
- 40.4.3 The Borrower and the Contractor agree that failure by a process agent to notify them of the process will not invalidate the Proceedings concerned; and
- 40.4.4 This Clause applies to Proceedings in England and to Proceedings elsewhere.

41. **THIRD PARTY RIGHTS**

Without prejudice to the rights conferred upon the Additional Obligor under Part 4 (*Step-In and Step-Out Rights*), no other provision of this Agreement is intended to nor confers upon any third party any benefit or right enforceable at the option of the third party against any Party and any rights of any third party under the Contracts (Rights of Third Parties) Act 1999 are hereby expressly excluded.

42. **COSTS**

Except where this Agreement provides otherwise, each Party shall pay its own costs relating to the negotiation, preparation, execution and performance by it of this Agreement.

43. **CONFLICT**

In the event of any conflict between the terms of this Agreement and the terms of the Relevant Document, the terms of this Agreement shall prevail.

IN WITNESS whereof the Parties hereto have executed and delivered this Agreement as a deed on the date stated at the beginning of this Agreement.

ANNEX 1
RELEVANT DOCUMENTS

The Relevant Documents are:

1. the STS Crane Supply Contract;
2. the Performance Security, Advance Payment Bond, the Retention Guarantee (if any) and any other bond or similar security procured or to be procured by the Contractor pursuant to the STS Crane Supply Contract or any replacement thereof;
3. [insert other relevant Documents]

**ANNEX 2
ACCESSION NOTICE**

To: [Contractor]
[address]
For the attention of [•]

Copied to: [*Borrower*]
[address]
For the attention of [•]

From: [Additional Obligor]

Countersigned by: [*Facility Agent*]
[Security Trustee]

Accession Notice

We [*insert name of Additional Obligor*] refer to the supply contract dated [•] and originally made between [•] and [•] (the "**STS Crane Supply Contract**") and the direct agreement dated [•] and originally made between the Contractor, the Borrower, [•] as Facility Agent and [•] as Security Trustee (the "**Direct Agreement**"). Terms defined in the STS Crane Supply Contract or, if not defined therein, in the Direct Agreement shall have the same meanings in this Accession Notice.

1. We hereby confirm that we are an Additional Obligor pursuant to Part 4 (*Step-In and Step-Out Rights*) of the Direct Agreement.
2. The Security Trustee and Facility Agent have countersigned this Notice in order to acknowledge our entitlement to exercise our rights as Additional Obligor under clause 13 (*Rights and Obligations on Accession*) of the Direct Agreement.
3. Our address, fax and telephone number for the purpose of receiving communications under the STS Crane Supply Contract and the Direct Agreement are as follows:

Attention:

Address:

Fax No:

Telephone No:

Signed for and on behalf of the Additional Obligor:

Countersigned by the Facility Agent:

Countersigned by the Security Trustee:

**ANNEX 3
DEED OF NOVATION**

DATED [•]

[CONTRACTOR]

AND

[BORROWER]

AND

[SECURITY TRUSTEE]

and

[SUBSTITUTE]

DEED OF NOVATION
RELATING TO A STS CRANE SUPPLY CONTRACT

THIS DEED OF NOVATION is made on [•]

THIS DEED is made on [•]

BETWEEN:

- (1) [•] of [•] (herein after called the "**Contractor**");
- (2) [•] of [•] (herein after called the "**Borrower**");
- (3) [•] of [•] (herein after called the "**Security Trustee**");
- (4) [•] of [•] (herein after called the "**Substitute**");

Whereas the Borrower intends to procure the construction of [•] (the "Project") and obtain financing in respect of the same.

Whereas the Contractor is to provide to the Borrower all work and services necessary in connection with the design, assembly and installation required in respect of the Project (the "Works") pursuant to an agreement dated [•] between the Contractor and the Borrower (the "STS Crane Supply Contract").

Whereas the terms and conditions governing the provision of the Works are set out in the STS Crane Supply Contract.

Whereas by a [•] facility agreement dated on [•] and made between, amongst others, the Borrower, the Lenders, the Facility Agent and the Security Trustee (the "Facility Agreement"), the Lenders have agreed, subject to the terms and conditions of the Facility Agreement, to make available to the Borrower the loan facilities specified therein to finance the development, construction and operation of, and certain costs in relation to, the Project.

Whereas the Contractor entered into a direct agreement dated [•] in respect of the performance of the STS Crane Supply Contract (the "Direct Agreement") with the Borrower, Facility Agent and Security Trustee as security trustee for and on behalf of the Lenders.

Whereas the Security Trustee has exercised its right under the Direct Agreement to require that the rights and obligations of the Borrower are novated to the Substitute.

Whereas terms defined in the Direct Agreement shall have the same meaning in this Deed of Novation

OPERATIVE PROVISIONS

1. INTERPRETATION

1.1 In this Deed of Novation, unless the context requires otherwise:

1.1.1 any reference to a Clause, Schedule or Annex shall mean a clause, schedule or annex of this Deed of Novation;

1.1.2 any reference to a document is a reference to that document as modified, amended, restated or replaced from time to time;

- 1.1.3 any reference to "include", "includes" and "including", and words of similar import, are not limiting or exclusive;
- 1.1.4 the Clause titles or headings appearing are for reference only and shall not affect construction or interpretation;
- 1.1.5 any reference to the singular includes the plural and vice versa.

2. UNDERTAKINGS

- 2.1 The Substitute undertakes to perform and observe the STS Crane Supply Contract as from the date of this Deed of Novation and agrees to be bound by the terms of the STS Crane Supply Contract in all respects as if the Substitute had been named as a party to the STS Crane Supply Contract in place of the Borrower *ab initio*.
- 2.2 The Contractor agrees to be bound by the terms of the STS Crane Supply Contract in all respects as if the Substitute had been named in the STS Crane Supply Contract as a party to the STS Crane Supply Contract in place of the Borrower *ab initio*.
- 2.3 Provided that:
 - 2.3.1 the Substitute shall only be liable to the Contractor in respect of any claims by the Contractor arising before the date of this Deed of Novation to the extent set out in clause 17.1.2(a) (*Novation*) of the Direct Agreement; and
 - 2.3.2 any right of termination suspended by virtue of clause 7 (*Notice of Restricted Action and Step-In Decision Period*) of the Direct Agreement shall be of no further effect and the Contractor shall not be entitled to bring any claim or terminate the STS Crane Supply Contract by virtue of any act, omission or circumstance prior to the date of this Deed of Novation.

3. WARRANTIES AND ACKNOWLEDGEMENT

- 3.1 The Contractor hereby warrants to the Substitute that prior to the date hereof the Contractor has observed and performed its obligations and duties under the STS Crane Supply Contract as though such obligations and duties had been performed by the Contractor for the Substitute.
- 3.2 Without prejudice to the foregoing, the Contractor's liability to the Substitute for breach of the STS Crane Supply Contract prior to the date of this Deed shall not be affected or diminished where the Borrower would not have suffered or incurred any loss or damage as a result of the breach or suffered or incurred loss or damage to the same extent and no waiver by the Borrower, either express or implied, will affect the Contractor's liability to the Substitute pursuant to this Deed of Novation and/or the STS Crane Supply Contract.
- 3.3 Subject to clause 9 (*Statement of Outstanding Obligations and Amounts Due*) and clause 13.2 (*Rights and Obligations on Accession*) of the Direct Agreement, the Contractor hereby acknowledges that prior to the date hereof the Borrower has observed and performed its obligations and duties under the STS Crane Supply Contract.

4. RELEASE AND DISCHARGE

4.1 The Contractor hereby:

4.1.1 releases and discharges the Borrower from the performance and observance of its duties and obligations under the STS Crane Supply Contract and from all past and future claims, demands and liabilities arising thereunder or in respect thereof; and

4.1.2 agrees to accept the liability of the Substitute to perform and observe the STS Crane Supply Contract in lieu of the liability of the Borrower thereunder.

5. GOVERNING LAW AND DISPUTE RESOLUTION

5.1 This Deed of Novation and all non-contractual or other obligations arising out of or in connection with it are governed by [English] law.

5.2 The courts of [England] have exclusive jurisdiction to settle any dispute arising from or connected with this Deed of Novation (a "Dispute") (including a Dispute regarding the existence, validity or termination of this Deed of Novation or the consequences of its nullity).

5.3 The parties agree that the courts of England are the most appropriate and convenient courts to settle any Dispute and that they will not argue to the contrary.

6. ENTIRE AGREEMENT

6.1 This Deed of Novation constitutes the entire agreement between the parties with respect to the novation of the STS Crane Supply Contract from the Borrower to the Substitute and supersedes all prior commitments, arrangements, agreements and contracts (whether written or oral) made between or entered into by the parties with respect thereto prior to the date of this Deed of Novation except to the extent they are expressly incorporated herein. The parties acknowledge that:

6.1.1 each party has not entered into this Deed of Novation in reliance upon any representation, warranty or undertaking of any party which is not expressly set out or referred to in this Deed of Novation;

6.1.2 no party shall have any remedy in respect of misrepresentation or untrue statement made by any other party which is not contained in this Deed of Novation nor for breach of warranty which is not contained in this Deed of Novation; and

6.1.3 this provision shall not exclude any liability for, or remedy in respect of, fraud or fraudulent misrepresentation.

IN WITNESS whereof this Deed of Novation has been executed and delivered as a deed on the date stated at the beginning of this Deed of Novation.

Executed as a deed by)
[insert name of company])

Signature of Director

Name of Director

Executed as a deed by)
[insert name of company])

Signature of Director

Name of Director

Executed as a deed by)
[insert name of company])

Signature of Director

Name of Director

Executed as a deed by)
[insert name of company])

Signature of Director

Name of Director

SIGNATURE PAGE

Executed as a deed by
[insert name of company]

)
)

Signature of Director

Name of Director

Executed as a deed by
[insert name of company]

)
)

Signature of Director

Name of Director

Executed as a deed by
[insert name of company]

)
)

Signature of Director

Name of Director

Executed as a deed by
[insert name of company]

)
)

Signature of Director

Name of Director

Executed as a deed by
[insert name of company]

)
)

Signature of Director

Name of Director